

Miranda at 50: A Psychological Analysis

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Abstract

In 1966, the U.S. Supreme Court handed down a controversial ruling in *Miranda v. Arizona*, which required police to inform suspects, prior to custodial interrogation, of their constitutional rights to silence and to counsel. In commemoration of the 50th anniversary of *Miranda*, we present a psychological analysis of the Court's ruling. We show how the Court's assumption that the provisions of the *Miranda* ruling would enable suspects to make knowing, intelligent, and voluntary decisions regarding whether to invoke or waive their constitutional rights has not been borne out by scientific research. Hence, we argue that even well-adjusted, intelligent adults are at risk of succumbing to police pressure during custodial interrogation. We conclude with policy implications and directions for future *Miranda* research.

Keywords

Miranda rights, criminal interrogation, confession, police custody, self-incrimination

Fifty years ago, the United States Supreme Court delivered a then-controversial ruling in *Miranda v. Arizona* (1966) that required police to inform all suspects who are in custody, prior to interrogation, of their constitutional rights to remain silent and to have a lawyer present (Table 1). Intended to protect citizens from the modern American police interrogation, described as inherently coercive,¹ the Court provided a remedy: Any statement taken from a suspect without a waiver of these rights—a waiver made “knowingly, intelligently, and voluntarily”—would be considered unlawful and hence inadmissible at trial. At the time, the decision created an uproar within the law enforcement community, which feared that criminals would invoke their rights, lawyer up, refuse to answer questions, and escape prosecution.

That did not happen. Observations of live and videotaped police interrogations indicate that four out of five suspects waive their rights and submit to questioning (Leo, 1996a). Moreover, large numbers of innocent individuals have been prosecuted and wrongfully convicted on the basis of false confessions given to police following *Miranda* waivers. To date, the Innocence Project reports that approximately 29% of the 347 wrongful convictions uncovered through postconviction DNA testing involved false confessions or admissions as a contributing factor (Innocence Project, 2016). Adding to this sample are numerous false-confession cases in the broader (not just

DNA-based) sample of wrongful convictions tracked by the National Registry of Exonerations (www.law.umich.edu/special/exoneration/Pages/about.aspx), as well as unknown numbers of cases in which innocent suspects waived their rights and confessed but the charges were dropped or in which innocent confessors pled guilty and faded from view without further scrutiny. These sobering statistics, all collected post-*Miranda*, provide clear evidence that the *Miranda* Court's efforts to protect crime suspects from self-incrimination in the face of coercive police interrogation have not functioned as intended. In commemoration of the 50th anniversary of this landmark decision, we offer a research-based psychological analysis of why *Miranda* has failed as a safeguard and present alternative approaches for protecting the accused during custodial interrogation.

A Brief Overview

Since 1966, the Supreme Court has upheld the basic warning-and-waiver requirement set forth in *Miranda* (*Dickerson v. United States*, 2000)—for example, refusing

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Table 1. Components of the Warning-and-Waiver Requirement in *Miranda v. Arizona* (1966)

Prong 1	You have the right to remain silent.
Prong 2	Anything you say can and will be used against you in a court of law.
Prong 3	You have the right to an attorney.
Prong 4	If you cannot afford an attorney, one will be provided for you.
Prong 5	You can invoke these rights at any time.

Note: The first four Miranda prongs are standard across all jurisdictions. The fifth prong, while consistent with the Court's opinion, is not essential and is applied inconsistently across jurisdictions (see Rogers, Hazelwood, Harrison, Sewell, & Shuman, 2008).

to accept confessions given after a warning that was tactically delayed to produce an earlier inadmissible statement (*Missouri v. Seibert*, 2004). Although *Miranda* is here to stay, research has challenged three assumptions concerning the protections it affords. Specifically, in response to the evaluation criteria articulated by the *Miranda* Court, we describe research assessing the extent to which suspects (a) “knowingly” comprehend the warnings used to communicate their Miranda rights, (b) can “intelligently” reason about invoking or waiving their rights, and (c) are able to “voluntarily” decide to exercise their rights, free of police coercion. Finally, we use the body of psychological research on Miranda to consider implications for policy and practice.

“Knowingly”: Comprehension of the Warning

“In order to combat [interrogation-room] pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights” (*Miranda v. Arizona*, 1966, p. 467). The *Miranda* Court assumed that informing suspects of their constitutional rights to silence and to counsel would level the playing field in the interrogation room. Suspects who know their rights, the Court reasoned, would be protected from wittingly or unwittingly incriminating themselves under pressure. Research on Miranda comprehension, however, has challenged this assumption.

Over the years, psychologists have devised standardized instruments to assess Miranda comprehension (A. M. Goldstein & Goldstein, 2010; N. E. S. Goldstein, Zelle, & Grisso, 2012; Grisso, 1998; Rogers, Sewell, et al., 2013). Using these tests, studies have shown that in benign environments, most adults exhibit reasonably good understanding (Everington & Fulero, 1999; Grisso, 1981, 1998). But there are problems. Despite the often-articulated belief that Americans learn their rights through exposure to TV and other popular media, research shows that people continue to harbor misconceptions about the

meaning and function of Miranda rights (see Rogers et al., 2010; Rogers, Fiduccia, et al., 2013). In addition, numerous studies have exposed substantial limits of comprehension in adults with intellectual disabilities (e.g., Fulero & Everington, 1995) and serious psychological disorders (e.g., Cooper & Zapf, 2008) and in adolescents below the age of 16 (e.g., Redlich, Silverman, & Steiner, 2003; Viljoen, Zapf, & Roesch, 2007)—especially as moderated by IQ and academic achievement (Zelle, Romaine, & Goldstein, 2015).

Moreover, although the key rights were clearly defined in the Court's opinion, the language used to communicate those rights was not. As a result, police are free to devise their own warnings. In a content analysis of 560 Miranda forms used throughout the United States, Rogers and his colleagues showed that warnings varied greatly in both content and format (Rogers, Harrison, Shuman, Sewell, & Hazelwood, 2007). For example, reading-level requirements ranged from the third-grade level to a level characteristic of postgraduate textbooks, with most warnings written at above a sixth-grade level—a highly problematic finding given that 70% of inmates read at or below this level (Haigler, Harlow, O'Connor, & Campbell, 1992).

The picture is even grimmer when situationally relevant factors are taken into consideration. Experiments using physiological and self-report data have demonstrated that individuals experience stress upon being accused of wrongdoing (Guyl et al., 2013; Scherr & Franks, 2015). This stress can substantially undermine Miranda comprehension (Rogers, Gillard, Wooley, & Fiduccia, 2011). In one study, stress elicited by an accusation of misconduct reduced the comprehension levels of highly functioning college students down to those of adult psychiatric patients and adults diagnosed as psychotic (Scherr & Madon, 2012). Additionally, observations of police interrogations have identified a variety of manipulative, yet legally permissible, social-influence tactics utilized by police to obtain waivers (Leo, 1996b; see the “Voluntarily”: A Waiver Free of Police Coercion section below), some of which have been shown to impair comprehension (e.g., Scherr & Madon, 2013).

“Intelligently”: Appreciation of the Consequences

The *Miranda* Court did not specify what constitutes an “intelligent” waiver—an oversight that has led to variability in lower courts’ judgments regarding the validity of *Miranda* waivers. The Supreme Court did, however, state that “any assurance of real understanding and intelligent exercise” of one’s constitutional rights to silence and to counsel requires that suspects have “an awareness of [the] consequences” of foregoing those rights (*Miranda v. Arizona*, 1966, p. 469). To what extent do suspects appreciate the potential consequences of waiving their *Miranda* rights?

In a recent examination of the reasoning underlying the *Miranda* decisions made by 80 pretrial defendants, results showed that only about half reported that they had considered the long-term risks associated with waiving their rights. Instead, many defendants said they were influenced by the immediate risks associated with *invoking* their rights (Blackwood, Rogers, Steadham, & Fiduccia, 2015). For example, many people hold the false belief that invoking one’s right to silence can be used against them, or even that one could be punished or prosecuted for it (Grisso, 1998). Yet *Miranda* warnings rarely contain language to correct such misconceptions. An analysis of 385 *Miranda* warnings from across the country revealed that only 7% informed suspects that invoking their rights would result in the immediate cessation of questioning; none assured suspects that it could not be used as evidence of guilt (Rogers, Hazelwood, Harrison, Sewell, & Shuman, 2008). In its current form, therefore, *Miranda* may function to perpetuate an erroneous belief that one has nothing to gain—and potentially something to lose—by invoking these rights.

Even more problematic is the paradox of *Miranda* for innocent suspects, who may fail to recognize the peril of their situation. Given the often hostile nature of police interrogation, which can increase the likelihood of false confession (Kassin, 1997; Kassin et al., 2010), one would expect most innocent suspects to exercise their rights to silence and to counsel. Yet research suggests the opposite tendency. In a pivotal test of the hypothesis that innocence puts innocents at risk, Kassin and Norwick (2004) conducted an experiment in which participants who were guilty or innocent of a mock theft were apprehended and confronted by a neutral, sympathetic, or hostile investigator seeking a *Miranda* waiver. Overall, those who were innocent were substantially more likely to sign a waiver than those who were guilty (81% vs. 36%). This decision-making tendency was so strong that two-thirds of innocents signed the waiver even when paired with a hostile investigator (the overall result was later replicated in a Canadian study; see Moore & Gagnier, 2008). When asked to explain, most innocent suspects said they signed

the waiver precisely because they were innocent (e.g., “I did nothing wrong”; “I had nothing to hide”).

Kassin (2005) theorized that the failure of innocent suspects to appreciate the significance of their *Miranda* rights is driven largely by “the phenomenology of innocence,” which describes the tendency for people to have a naïve faith in the power of their own innocence to set them free. This mental state may be rooted in a generalized and perhaps motivated “belief in a just world” (Lerner, 1980) and/or an “illusion of transparency” by which people overestimate the extent to which their true guilt or innocence can be seen by others (Gilovich, Savitsky, & Medvec, 1998). Either way, the results suggest that *Miranda* warnings may not adequately protect the citizens who need them most—those accused of crimes they did not commit.

Additional research has confirmed the naïveté that accompanies actual innocence. Innocent people have been shown to be particularly likely to speak freely with police, often putting themselves at risk (Hartwig, Granhag, & Strömwall, 2007). More recent work has shown that innocent suspects exhibit a weaker physiologic stress reaction in response to an accusation than do guilty suspects, a tendency that may keep them from taking other self-protective actions (e.g., Guyll et al., 2013; Scherr & Franks, 2015).

“Voluntarily”: A Waiver Free of Police Coercion

In *Miranda v. Arizona*, the Supreme Court was explicit in stating that “any evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege” (p. 476). Yet police have developed several social-influence strategies to secure *Miranda* waivers. Referring to police interrogation as a “confidence game,” Leo (1996b) noted that police create a perception of scarcity by suggesting to suspects that this is a one-time-only opportunity to tell their side of the story; ingratiate themselves with suspects so as to trigger a reciprocity norm; deemphasize the significance of the *Miranda* waiver by characterizing the process as a mere formality; and construct implicit waivers, which create a social pressure to submit to questioning (see also Leo, 2001). Although some legal scholars have argued that these tactics are coercive, only recently have psychological scientists examined their effects on the waiver rate.

Two police tactics in particular have received attention: deemphasizing the significance of the *Miranda* waiver and constructing implicit waivers. In an examination of the effect of trivializing suspects’ waiver decisions, participants who were innocent of a mock crime were told either that the *Miranda* waiver had unimportant

implications for their future outcomes or that it had important implications (Scherr & Madon, 2013). When the waiver was characterized as being unimportant in this regard, innocent suspects waived their rights at higher rates than when the waiver was characterized as important (81% vs. 62%). Likewise, the use of implicit waivers—a strategy in which police read suspects their Miranda rights and then launch into questioning without asking suspects whether they understand or want to invoke their rights—not only increases the waiver rate (e.g., Scherr, Alberts, Franks, & Hawkins, 2016) but also leads suspects to make more self-incriminating statements relative to when a waiver was requested explicitly (Gillard, Rogers, Kelsey, & Robinson, 2014). In short, these studies suggest that the subtle but lawful social-influence strategies used routinely by police to administer Miranda warnings serve to increase the waiver rate, even among innocent suspects.

Implications for Research, Policy, and Practice

Early Miranda research focused predominantly on the extent to which *Miranda's* warning-and-waiver requirement fulfilled its safeguarding function for vulnerable populations such as juveniles (e.g., Grisso, 1981; also see Grisso & Ring, 1979, for the collateral point that the presence of parents does not remedy the problem). More recent work, however, has converged on the provocative conclusion that once under suspicion, and targeted for interrogation, even well-adjusted, intelligent adults are at risk despite *Miranda*.

At present, 50 years after *Miranda v. Arizona*, three critical issues remain unaddressed. First, whereas the U.S. Supreme Court identified “custody” as the triggering event for a Miranda warning, research has yet to examine what dispositional and situational factors lead people to perceive themselves as free, or not free, to leave. Second, whereas police seek to get signed waivers from suspects, the law—as stated in *Miranda*—provides that a person may re-invoke his or her rights at any time. Research needs to address the question of whether people are aware of this right and whether the act of eliciting a waiver by signature implies a contractual and irrevocable forfeiture of rights, thereby making it more difficult for suspects to re-invoke at a later time. Third, it is clear that *Miranda* provided trial judges with a shorthand means of determining that a confession was voluntary and hence admissible as evidence (i.e., if a defendant waived his or her rights, the confession that followed was by definition voluntary). What remains to be seen is whether the warning-and-waiver process also leads juries to perceive greater voluntariness in an interrogation and attach greater credibility to the statement ultimately taken.

Well-intentioned as it was, *Miranda* has not served the protective functions that the U.S. Supreme Court intended. What can be done in law to more meaningfully protect the accused from the guilt-presumptive process of interrogation? One possibility is to stop the practice of requiring suspects to self-invoke their constitutional rights to silence and to counsel. By making these rights the presumptive starting point of every interrogation, suspects would no longer have to break their silence in order to invoke their right to silence, and the presence of a defense attorney might curb the use of excessive interrogation tactics.

A second possibility is to shift the burden of proof for evaluations of Miranda waivers at pretrial hearings. Rather than requiring the defense to prove that a waiver was given unknowingly, unintelligently, or involuntarily, the prosecution could be burdened to prove that it was given knowingly, intelligently, and voluntarily. This measure would likely increase the number of confessions that are suppressed and raise important questions regarding the relative value of safeguarding the innocent versus the cost of limiting police efforts to secure confessions from the guilty.

Echoing the official white paper of the American Psychology-Law Society on police-induced confessions (Kassin et al., 2010), we believe that a more practical avenue for reform—which is already in effect in more than 20 states and hundreds of jurisdictions throughout the country—is to mandate the video recording of custodial interrogations in their entirety, from start to finish. A video-recording requirement has an inherent advantage over *Miranda* in that it does not require the suspect to activate this means of self-protection, something that experimental research suggests innocent suspects in particular often will not do. In addition, the findings of a recent field experiment suggest that informing police that an interrogation is being recorded will reduce their use of coercive tactics (Kassin, Kukucka, Lawson, & DeCarlo, 2014). Perhaps even more important, the practice of video recording will ensure an accurate and objective record for judges and juries of everything that transpired during the interrogation—including, ironically, the often-disputed process by which suspects are informed of and waive their Miranda rights.

Recommended Reading

- Kassin, S. M., Drizin, S. A., Grisso, T., Gudjonsson, G. H., Leo, R. A., & Redlich, A. D. (2010). (See References). A comprehensive overview of the literature on police-induced confessions and proposed reforms that serves as an official white paper of the American Psychology-Law Society.
- Leo, R. A. (2008). *Police interrogation and American justice*. Cambridge, MA: Harvard University Press. A historical overview of the evolution of American police interrogation practices that sheds light on the coercive nature of custodial

interrogation, from the Miranda waiver through the elicitation of a confession.

Miranda v. Arizona, 384 U.S. 436 (1966). The Supreme Court's decision in a controversial ruling intended to guarantee suspects' rights to silence and counsel that has now become a landmark precedent in American legal history.

Declaration of Conflicting Interests

The authors declared that they had no conflicts of interest with respect to their authorship or the publication of this article.

Note

1. In the history of American interrogations, the 20th century saw a shift from the use of physical "third-degree" tactics, which the courts had begun to reject, to a psychologically oriented approach (see Leo, 2008). As stated by the *Miranda* Court, "the modern practice of in-custody interrogation is psychologically rather than physically oriented. As we have stated before, ' . . . this Court has recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition'" (p. 448).

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