



# LEGAL DEFENSE TRUST TRAINING BULLETIN

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## CIVIL RIGHTS LIABILITY FOR INTENTIONAL VIOLATIONS OF *MIRANDA*: AN UPDATE

By

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*Miranda* warnings have been part of the criminal justice landscape for over 40 years. During that time, the courts of this country have clarified that the prosecution will not be permitted to build its case on statements obtained without giving *Miranda* warnings, but such statements may be admissible to impeach the defendant's testimony.

That rule encouraged some law enforcement agencies to adopt a practice of interrogation outside *Miranda*, and even to train investigators in the practice. Courts have determined that interrogation "outside *Miranda*" or in violation of *Miranda* can result in civil rights liability under 42 USC §1983. It has now been clarified that where statements taken in violation of *Miranda* are not used against the defendant, civil liability will be imposed in only due to the most egregious violations.

The *Miranda* rule co-exists with an older legal rule that involuntary confessions are generally inadmissible, even for impeachment. When a criminal defendant seeks to exclude a confession on the ground prohibited admission into evidence of

that it was coerced, the giving of *Miranda* warnings and their effectiveness under the circumstances play an important role in the analysis of voluntariness.

This article examines major cases clarifying the rules governing civil rights liability for violation of the *Miranda* rule, and governing admissibility of statements and confessions in criminal trials.

### The *Miranda* rule

Under the United States Supreme court decision *Miranda v. Arizona*, 384 U.S. 436 (1966), when police interrogate a criminal suspect in custody, the prosecution will not be permitted to use the suspect statements in presenting its case at trial unless the suspect was forewarned: (1) of the right to remain silent, (2) that any statement can be used as evidence, (3) of the right to an attorney, and (4) that an attorney will be provided if requested.

The Court in *Miranda* observed that the Constitution had always coerced or involuntary confessions. *Id.* at

461-462, citing *Bram v. United States*, 168 U.S. 532, 542 (1897). Quoting from contemporaneous police manuals on interrogation technique (see 384 U.S. at 450-452), the Court concluded that unless a suspect in custody is properly advised of the effect of the constitutional protection against self-incrimination, the prevailing use of these interrogation techniques justifies a presumption that any confession is involuntary. *Id.* at 467; see also *Oregon v. Elstad*, 470 U.S. 298, 307 (1985). The Court observed, that “An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion described ... cannot be otherwise than under compulsion to speak.” *Miranda*, 384 U.S. at 461.

Soon after *Miranda*, the Supreme Court in *Harris v. New York*, 401 U.S. 222 (1971), held that a statement obtained in violations of *Miranda* is admissible as impeachment, if the defendant testifies at trial contrary to the statement made in custody. The Court in *Harris* reasoned that the requirement to give *Miranda* warnings should not be interpreted to enable a criminal defendant to lie with impunity at trial. *Id.* at 226.

*Harris* drastically altered the strategic landscape for in-custody interrogation. The prospect that a statement taken in violation of *Miranda* can become admissible to impeach a suspect who testifies at trial contrary to the in-custody statement gave investigators a huge incentive to deliberately violate *Miranda*. The investigators would know the statement obtained would be inadmissible for the prosecution’s case-in-chief, but could easily cripple the suspect’s trial defense, because the suspect would be unable to safely deny the admitted facts at trial, and as a practical

matter would often be deterred from testifying altogether.

Investigators would consequently elect to deliberately violate *Miranda*, by not giving the required warnings, or by persisting in the questioning in disregard of a suspect’s assertion of *Miranda* rights. Some agencies even trained and conducted seminars in the practice, which became known as “interrogation outside *Miranda*.”

In recent years, courts have encountered various fact patterns under a variety of procedural setting presenting a need to decide the consequences of investigators’ deliberate violations of *Miranda*. These deliberate violations of *Miranda* also lead courts into examining whether the statements thereby obtained become involuntary in the traditional sense.

In *Chavez v. Martinez*, 428 U.S. 760 (2003), the United States Supreme Court ruled that investigators would have no civil liability for coercive questioning in violation of *Miranda* and the Fifth Amendment if the compelled statements were never used against the suspect in a criminal case. On the criminal front, the California Supreme Court in *People v. Neal*, 31 Cal. 4th 63 (2003), and the Ninth Circuit Court of Appeals in *Doody v. Schriro*, 548 F.3d 847 (9th Cir. 2008), have held that deliberate violations of *Miranda* could result in excluding the suspect’s statements even as impeachment, at least where the questioning also meets the traditional test of coercion.

In deciding these issues, courts generally consider such factual variants as which party initiates the discussion after the *Miranda* warnings are given, whether the suspect was particularly vulnerable to coercion, and whether a conviction could

have been sustained by independently obtained evidence. The potentially infinite factual variations in these cases makes it difficult to derive broadly applicable predictions of the results that will follow in court from the practice of interrogating suspects outside *Miranda*. See, e.g., *Doody*, 548 F.3d at 859.

**CIVIL RIGHTS LIABILITY:**

**Where statements obtained in violation of Miranda are not used against the suspect, civil liability will be imposed in only the most egregious cases.**

In *Cooper v. Dupnik*, 963 F.2d 1220 (9<sup>th</sup> Cir. 1992), and in *California Attorneys for Criminal Justice v. Butts*, 195 F.3d 1039 (9<sup>th</sup> Cir. 2000), the Ninth Circuit Court of Appeals had held that civil liability could be imposed for deliberate violation of *Miranda*, even if the suspect was not arrested or prosecuted and the statement was never used at trial. These cases reasoned that a Fifth Amendment violation is completed by any questioning outside *Miranda*, regardless whether or not the statement is ever used against the suspect, and therefore a bare violation of *Miranda* in itself could give rise to liability under the federal civil rights statute, 42 U.S.C., section 1983.

The Ninth Circuit in *Butts* justified the imposing of civil liability for bare violations of *Miranda* on the basis of evidence presented in the case, that the Los Angeles and Santa Monica Police Departments had fostered a practice of interrogating outside *Miranda*, with the goal of *not simply using the statement for impeachment, but to deter the defendant from taking the stand at all*. That practice, according to the Ninth Circuit, "corrupts" the impeachment exception as announced in *Harris*. *Butts*, 195 F.3d at

1049, quoting *Cooper*, 963 F.2d at 1249. In a general sense, the court recognized that the purpose of the *Harris* impeachment exception was to prevent a defendant from benefitting from dishonesty. It was not meant to encourage officers to deliberately violate *Miranda*.

In *Cooper*, a rape suspect was interrogated at length despite repeated requests for counsel. The *Miranda* warnings were given in a manner that the officer admitted "he hoped Cooper would perceive as a joke." *Id.* at 1228. The officer admitted it was a technique to induce Cooper to talk and not request an attorney. *Id.*

Cooper gave a lengthy statement. At one point Cooper said he was breaking down, and became physically ill, but he did not confess, and he turned out to be innocent. 963 F.2d at 1223, 1228-34. After being cleared, Cooper brought a federal civil rights suit alleging violations of the Fifth and Fourteenth Amendments, and claiming that because of the media announcement of his detention as a suspect, he had been fired and evicted.

Under the Fifth Amendment, the Court found a violation of not only *Miranda*, but also of the substantive Fifth Amendment right to remain silent. The Court found Cooper "adequately has stated a cause of action under section 1983 for a violation *in the sheriff's department* of his clearly established Fifth Amendment right against self-incrimination." *Id.* at 1242 (emphasis as in the original). The interrogators "conspired not only to ignore Cooper's response to the advisement of rights pursuant to *Miranda*, but also to defy any assertion of the Constitution's Fifth Amendment substantive right to silence, and to grill Cooper until he confessed." *Id.*

The Ninth Circuit in *Cooper* explained that its holding "does not create a Fifth Amendment cause of action under section 1983 for conduct that merely violates *Miranda* safeguards without also trespassing on the actual Constitutional right against self-incrimination that those safeguards are designed to protect." *Id.* at 1243-44. For example, no liability would arise where officers continue speaking to a suspect after an assertion of the right to remain silent, as long as there is no compulsion or coercion. *Id.* at 1244.

Analyzing the same conduct from a substantive due process perspective, the Court in *Cooper* answered "no" to a rhetorical question whether coercing of a statement from a suspect in custody could "ripen into a full-blown Constitutional violation only if and when the statement is tendered and used against the declarant in court." *Id.* at 1244. Pointing to precedent for excluding involuntary statements, the Court concluded "the due process violation caused by coercive behavior of law-enforcement officers in pursuit of a confession is complete with the coercive behavior itself.... The actual use or attempted use of the coerced statement in a court of law is not necessary to complete the affront to the Constitution." *Id.* at 1245. The fact the suspect was never charged and his statements were not offered into evidence was held "relevant only to damages, not to whether he has a civil cause of action in the first place." *Id.*

The holding in *Cooper*, that a constitutional violation is complete as soon as the officer disregards an assertion of *Miranda* rights, is apparently overruled by the Supreme Court's holding in *Chavez*, that the constitutional violation does not become complete unless and until the coerced

statement is actually introduced against the suspect in a criminal trial. Recognizing the overruling effect of *Chavez*, see *Doody v. Schriro*, 548 F.3d 847, 861 (9th Cir. 2008). The Fourteenth Amendment substantive due process analysis in *Cooper* remains good law, but a claim of a substantive due process violation must meet the very strict "shock the conscience" standard.

In *Butts*, where evidence showed that Los Angeles and Santa Monica officers interrogated suspects outside *Miranda* in accordance with Department training, 195 F.3d at 1041, the Ninth Circuit held that an officer who violated a suspect's *Miranda* rights in that way could be subject to federal civil rights liability.

The officers in *Butts* defended the civil case under the qualified immunity doctrine, which protects government employees from federal civil rights liability except where their conduct violates *clearly established* constitutional or federal rights. The officers argued that the right to *Miranda* warnings is not *in itself*, a constitutional right, and not a right that is *clearly established*.

Supporting the argument that any rights violated were not clearly established, the officers asserted they were only following Department training in conducting interrogation outside *Miranda*. *Id.* at 1049.

The Ninth Circuit rejected the qualified immunity defense, and ruled that *Miranda* rights can be treated as constitutional rights, that questioning a suspect outside *Miranda* violates a constitutional right that is clearly established, and that following training and department policy is no excuse. 195 F.3d at 1049-50.

Rejecting the officers' argument that "*Miranda* is a prophylactic rule, not a constitutional right," the Court in *Butts* explained, "In the narrowest sense, this contention is correct: there is no constitutional right to the *Miranda* warnings themselves. But *Miranda* rights are brigaded with the right against self-incrimination and supply practical reinforcement for the Fifth Amendment right." *Id.* at 1045.

The Court observed that the *Miranda* decision itself had reversed a state court even though the statements were not "involuntary in traditional terms." *Id.* The *Butts* opinion thus recognizes a common distinction that arises repeatedly in *Miranda* cases, between statements that are actually involuntary, and statements that are presumed involuntary because of the absence of *Miranda* warnings. The Court in *Butts*, though aware of this distinction, did not attach any legal significance to it.

The Supreme Court's *Chavez* decision, however, will inevitably focus the attention of future civil rights cases on this distinction. It will now appear to be more important for both criminal and civil purposes, to inquire, after establishing a violation of *Miranda*, whether or not the statement given after the violation was truly involuntary in the traditional sense.

In *Chavez*, the Supreme Court reversed a District Court finding of liability that had been affirmed by the Ninth Circuit, and held that a police officer has no federal civil rights liability to a suspect who makes potentially self-incriminating statements while being interrogated outside *Miranda*, where the suspect was not arrested, charged or brought to trial based on the statements, and the interrogation was not

so coercive or extreme that it could be said to "shock the conscience." The *Chavez* decision thus weakened the precedential force of *Butts*, and as stated above, implicitly overruled *Cooper* to the extent it permitted civil liability for coercive interrogation not resulting in use of the statement at trial.

In the *Chavez* case, the suspect who was questioned had been involved in a scuffle with police where he was shot so badly he thought he was going to die, and ended up permanently blinded and paralyzed. 538 U.S. at 764. Without ever giving *Miranda* warnings, the interrogator elicited admissions the suspect had fought with police and grabbed the officer's gun. *Id.*

After the suspect made these admissions, the interrogator noticeably switched his emphasis to getting the suspect to say he thought he was about to die (*id.* at 784-786), which would have established a record to support the admissibility of the statements about the incident if the suspect had died. The interrogation did not end until medication was finally administered to the suspect. The suspect was never charged with a crime or prosecuted. *Id.* at 764.

The suspect later sued for violation of his constitutional right to remain silent. The District Court and the Ninth Circuit held that the suspect had stated a valid civil rights claim, and that the officers were not entitled to qualified immunity. Based on *Cooper*, the Ninth Circuit held essentially that the Fifth Amendment right to remain silent was violated by the interrogation itself, never mind that it was never used at trial or in any official proceeding. *Id.* at 765.

Reversing the Ninth Circuit, the Supreme Court held that regardless whether it is possible for questioning outside *Miranda* to violate the Fifth Amendment at some stage in litigation earlier than trial, it takes more than was done here to violate the Fifth Amendment. The Court emphasized that the text of the Fifth Amendment protects against self-incrimination in a "criminal case." 538 U.S. at 766.

From the perspective of the text, the Court noted, "Although Martinez contends that the meaning of 'criminal case' should encompass the entire criminal investigatory process, including police interrogations ... we disagree. In our view, a 'criminal case' at the very least requires the initiation of legal proceedings." *Id.* Therefore, "mere coercion does not violate the text of the Self-Incrimination Clause absent use of the compelled statements in a criminal case against the witness." *Id.* at 769.

Addressing the *Cooper* and *Butts* precedents, the Court observed that "The Ninth Circuit's view that mere compulsion violates the Self-Incrimination Clause ... finds no support in the text of the Fifth Amendment and is irreconcilable with our case law." *Id.* at 772-773.

At the same time, however, the Court clarified that its decision did not entirely preclude liability for questioning outside *Miranda*. The Court concluded that, "Our views on the proper scope of the Fifth Amendment's Self-Incrimination Clause do not mean that police torture or other abuse that results in a confession is constitutionally permissible so long as the statements are not used at trial; it simply means that the Fourteenth Amendment's Due Process Clause, rather than the Fifth Amendment's Self-Incrimination Clause,

would govern the inquiry in those cases and provide relief in appropriate circumstances." *Id.* at 773.

The doctrine of "substantive due process" under the Fourteenth Amendment has always provided an alternative basis of liability for all forms of extremely oppressive governmental conduct. A liability claim under the "substantive due process" doctrine is adjudicated under a very strict standard, as the plaintiff must show governmental conduct so extreme that it can be said to "shock the conscience." For example, in the classic substantive due process case, the Court in *Rochin v. California*, 342 U.S. 165 (1952) reversed a narcotics conviction that was obtained by pumping the stomach of a suspect who swallowed two capsules of morphine when arrested. *Id.* at 172.

By holding that a claim of coercive interrogation without use of the statement in criminal proceedings will now be evaluated solely under Fourteenth Amendment "substantive due process," the Supreme Court relegated civil claims based on interrogation outside *Miranda* to the strict "shocks the conscience" standard that applies to substantive due process. *Id.* at 774. Thus, where the statement has not been used against the suspect, civil liability for interrogation outside *Miranda* will only be imposed if it was so coercive and egregious as to "shock the conscience."

Although the *Chavez* decision tips the scales in civil court slightly in favor of law enforcement, it probably will not have a major effect on the conduct of officers in the field. At the time an officer makes a decision to continue interrogation outside *Miranda*, it cannot be known whether or not the prosecutors will elect to try to use the statement in a criminal case. Consequently,

we cannot receive this new Supreme Court decision, should *not* be received as an open invitation to erode *Miranda* protections.

In an article responding to the *Cooper* and *Butts* decisions, we advised that investigators conducting in-custody interrogations should: **(1) not press a suspect for a statement after an invocation of the right to silence or an attorney absent a clear, unequivocal, coercion-free decision to waive rights; (2) not encourage suspects who have invoked *Miranda* rights to speak by saying the statement cannot be used against them; and (3) seek the advice from their Department legal advisors and from prosecutors on how to proceed, until this issue is finally resolved.** The *Chavez* decision does *not* persuade us to change the advice we gave in response to *Cooper* and *Butts*.

Henceforth, interrogation outside *Miranda*, without subsequent use of the statement in a criminal proceeding, will not violate the Fifth Amendment. Such interrogation, however, may violate the Fourteenth Amendment if it rises to the high level of egregiousness that applies to the substantive due process doctrine.

Benign conversation after a *Miranda* assertion will probably not be actionable. Tactical interrogation outside *Miranda*, designed to prevent the defendant from testifying, may well meet the Fourteenth Amendment standard, but not necessarily and not in all cases. See *Butts*, 195 F.3d at 1046.

The interrogation in *Cooper* clearly met the “shocks the conscience” standard, and *Cooper* is still good law on the Fourteenth Amendment. Though *Butts* did not address the Fourteenth Amendment standard, the

interrogation there would probably meet that standard in the eyes of the Ninth Circuit, primarily because of the deliberate institutional effort to deter suspects from taking the witness stand, and the making of false assurances that the statement would be inadmissible, when in fact it could be used as impeachment.

It would be a close and interesting question whether the United States Supreme Court would have found the interrogations in *Butts* to meet the “shocks the conscience” standard. But the “shocks the conscience” standard clearly was not met in *Chavez*, because the police were able to articulate a rational reason for conducting the questioning: the suspect was expected to die, and the information he could give would be important for the purpose of investigating any possible police misconduct in the incident.

In analyzing *Chavez* from the perspective of an officer in the field, some of the best guidance can be derived from the legal standard for qualified immunity, which is, no liability unless the officer violates a constitutional or statutory right that is clearly established such that a *reasonable officer would know the conduct violates the right*. In a sense, *Chavez* does not leave the suspect with any less established right than before, to be free from coercive questioning.

If you engage in questioning outside *Miranda*, knowing there is no plan to ever use the information against the suspect in any way, you now know that the questioning does not violate the Fifth Amendment. But a reasonable officer can be expected to know there is still a clearly established Fourteenth Amendment right to be free from coercive questioning that is found to “shock the conscience.” With that

in mind, the officer must proceed prudently.

And it appears that the *Butts* holding that following orders is no excuse is probably still accurate under the Fourteenth Amendment. As explained in *Butts*, "these officers had discretion over their interrogation methods. Their training did not require officers to interrogate 'outside *Miranda*.' They acted at their own election." 195 F.3d at 1050.

It remains prudent to refrain from deliberate interrogation outside *Miranda*. In defending against federal civil rights liability, the *Chavez* decision gives officers better odds, but does not transform the landscape. At the time of deciding to continue interrogating a suspect who asserts a right to an attorney or to remain silent, no one knows whether or not the prosecutors would eventually seek to use the statement in a criminal proceeding. An appreciable possibility of being held liable for this conduct remains, and no one needs the prolonged agony of being sued. Officers should continue to keep updating themselves on advice from departmental and prosecutorial authorities as this issue evolves. In fact, a final resolution appears no closer than it did back in the quieter era when *Cooper* and *Butts* were decided.

And, while the *Chavez* decision showed the United States Supreme Court tending to restrict civil liability arising from *Miranda* violations, the California Supreme Court in *People v. Neal* displayed the opposite tendency, in a ruling that reinforces the core Fifth Amendment protection against the use of a coerced statement in a criminal trial.

### **CRIMINAL ADMISSIBILITY: California Supreme Court Holds A Coerced Confession Inadmissible For Impeachment In A Criminal Trial**

Less than two months after *Chavez* was announced, the California Supreme Court in *People v. Neal*, 31 Cal. 4th 63 (2003), reinforced a criminal suspect's core Fifth Amendment protection against admissibility of involuntary confessions, holding that such confessions are not even admissible as impeachment.

An 18-year-old defendant, Kenneth Ray Neal, was charged and convicted of murdering a 69-year-old homosexual former child care worker. The old man had taken Neal in and often referred to him as a grandson, but had recently been making sexual advances to the boy. The old man was strangled by the cord from an electric griddle while barbecuing cheeseburgers. *Id.* at 69-70. Neal was detained as a witness, and initially denied the crime. *Id.* at 70-71.

During the initial interrogation, Neal denied the murder. *Id.* at 72. The detective gave Neal *Miranda* warnings, and Neal repeatedly invoked his rights to remain silent and to consult with an attorney, including at least seven requests to talk to an attorney before making further statements. *Id.* at 72-74. But the detective persisted in a line of questioning that was combined with various threats, intimidation and advice. The investigator threatened Neal that if he did not cooperate, "the system is going to stick it to you as hard as they can" including the possibility of a first-degree murder charge." *Id.* at 73. The detective later admitted that in continuing the questioning, "he was applying what he called a 'useful tool' that he had learned from a supervisor and knew to be

improper.” *Id.* at 74.

Neal promised to “sleep on it and maybe get back in touch...” *Id.* at 74. Neal was then placed in a cell, without food, water, a toilet or a sink. He was not given water or permitted to use the bathroom until morning. *Id.*

The following morning, Neal sent word that he wanted to talk to the detective, and submitted to a recorded interview, in which he was again given *Miranda* warnings. In that session, Neal confessed that he killed the old man because Neal wanted to watch MTV, while the old man wanted to watch the news. *Id.* at 75. Neal also eventually admitted that the reason he did not attempt to flee after the murder was because he felt guilty and hoped the police would catch him. *Id.* at 76. Not until after more than 24 hours in custody, during which time he had made three taped confessions, was Neal finally given any food. *Id.*

At trial, the trial court excluded the portion of the first interview after the *Miranda* warnings because the detective’s “blatant disregard of *Miranda* came ‘very close to coercion.’” *Id.* at 77, fn. 3. But the taped confessions were admitted on the ground Neal voluntarily initiated the interview. *Id.*

Reviewing the conviction on appeal, the Supreme Court began its analysis by referring to a California precedent, *People v. Peevy*, 17 Cal. 4th 1184 (1998), which held that even if officers deliberately violate *Miranda* by continuing an interrogation after the suspect has invoked the right to counsel, the suspect’s statement remains admissible as impeachment. Adopting the rationale of *Harris*, the Court in *Peevy* held that a statement obtained in deliberate violation of *Miranda* may be admissible as

impeachment. 17 Cal. 4th at 1193-1194.

But the *Neal* case raised an issue left open by *Peevy*. Defendant in *Peevy* contended that his statement was obtained in deliberate violation of *Miranda*, but did not claim that the statement was actually involuntary. 17 Cal. 4th at 1198, fn. 2. As stated above, even before *Miranda* a confession could be excluded on the ground that it was involuntary. Neal argued both violation of *Miranda* and factual involuntariness--that officers continued to question him after he invoked his rights to remain silent and to consult with counsel; and, that this questioning coerced him into making an involuntary confession the following morning. On that basis, Neal argued that his confession should be held inadmissible even for purposes of impeachment. The California Supreme Court agreed. 31 Cal. 4th at 68. In reversing the Court of Appeal’s decision to affirm the conviction, the Supreme Court stated, “the Court of Appeal did not adequately take into account the circumstances establishing involuntariness, especially the officer’s deliberate violation of *Miranda*.” 31 Cal. 4th at 69.

The Supreme Court in *Neal* found the defendant’s initiation of further conversation, and confession, were involuntary because he “remained in custody without being provided access to counsel” and because of his “youth, inexperience, minimal education, and low intelligence...” *Id.* at 78. The finding also rested on the “deprivation and isolation imposed on defendant during his confinement; and the promise and the threat ... after questioning should have ceased. *Id.* The Court commented that the detective’s conduct was “‘unethical’ and must be ‘strongly disapproved.’” *Id.* at 81,

citation omitted. Considering the totality of the circumstances, the Court found that the detective's persistence in questioning sent defendant a clear message that he "would not honor defendant's right to silence or his right to counsel until defendant gave him a confession." *Id.* at 82.

The Court distinguished precedent recognizing that a suspect's request for counsel could be satisfied by a break in questioning sufficient to permit the suspect "reasonable time and opportunity, while free from coercive custodial pressures, to consult counsel if he or she wishes to do so." *Id.* at 83, emphasis omitted. The decision was also influenced by the detective's threats and promises, which "traditionally have been recognized as corrosive of voluntariness." *Id.* at 84. The Court adverted to defendant's admitted guilty conscience, but found the detective's misconduct "played the dominant role" in causing the confession. *Id.* at 85.

The Court finally held Neal's confessions were inadmissible for the prosecution's case-in-chief, "but also were inadmissible for *any* purpose because they were involuntary." *Id.* Neal establishes that a confession obtained in violation of *Miranda* remains admissible for impeachment, but a coerced confession is inadmissible for any purpose. In so holding, the opinion features detailed discussion of the specific factors that may bear on any finding of involuntariness.

#### Ninth Circuit Finds Confession Coerced Even Though Adequate *Miranda* Warnings Were Given

In a further refinement of the legal rules surrounding *Miranda* and coerced confessions, the Ninth Circuit Court of

Appeals in *Doody v. Schriro*, 548 F.3d 847 (9th Cir. 2008), suppressed a confession that was found involuntary even though *Miranda* warnings were formally given. The Ninth Circuit reversed the denial of a petition for habeas corpus filed by Johnathan Doody, a 17-year-old suspect with no prior criminal history, who had been convicted of involvement in the murder of nine monks at a Thai Buddhist temple in Phoenix, Arizona in 1991. *Id.* at 849-850.

In his petition, Doody argued that the perfunctory manner in which the warnings were given, combined with the officers' repeated insistence during a 12-hour overnight interrogation, that he must answer, that the officers would not disclose his answers, and that they would not stop until he answered their questions, effectively "de-Mirandized" him and rendered his confession involuntary. *Id.* at 857-858.

Doody had been picked up at an evening football game and taken to the police station. The officers read him his *Miranda* rights, interspersed with statements designed to discount their significance. Doody agreed to speak to the officers without an attorney, and two officers launched into a taped interrogation that lasted from 9:25 that evening until 10:00 the following morning. *Id.* at 851.

More than two hours into the interrogation, as the officers were asking Doody whether he had borrowed the murder weapon from its owner, the officers told Doody that it was important for him to tell them, and that he had to tell them. Doody then admitted he had borrowed the murder weapon, but said he had returned it long before the murders, and denied involvement in the

murders. *Id.* at 852.

For two more hours, officers insisted Doody knew more than he was telling, and told him he had to tell the truth to protect himself from what others were saying, because the officers knew what had happened. An hour later, two more officers entered the room, and Doody stopped responding. During one 20-minute stretch, officers peppered Doody with 45 questions and received only one answer. *Id.* at 853.

Doody then answered a few questions about whether anyone had threatened him, then fell silent again. After asking seven times whose idea it was to go to the temple, a detective told Doody, "I'm gonna stay here until I get an answer." *Id.* More than six hours into the interrogation, "after forty-five minutes of relentless questioning in the face of Doody's almost complete silence," Doody finally admitted he was involved. *Id.* Doody then fell silent again for a half hour, but after 4 a.m., began to talk about the details of the incident. *Id.* at 854. Doody was charged with the murders and was tried as an adult. *Id.*

At trial, a ten-day hearing was held on Doody's motion to suppress the interrogation, and the trial court denied the motion, finding the *Miranda* warning was adequate and the confession was voluntary. *Id.* Doody was convicted of felony murder without premeditation and was sentenced to nine consecutive life terms. *Id.* at 855-856. The convictions were affirmed on appeal, and Doody later petitioned for habeas corpus under the representation of constitutional law professor Alan Dershowitz.

The habeas corpus petition presented two alternative theories of violating *Miranda*:

First, that the manner in which the warnings were given, interspersed with statements designed to minimize their significance, resulted in an overall ineffective recitation of the warnings. Secondly, that the officers' repeated insistence on receiving answers, combined with vague assurances the answers would not be disclosed, and the statement that the interrogation would not end until answers were given, negated the *Miranda* warnings, and effectively "de-Mirandized" Doody, since they essentially told Doody that he did not have the right to remain silent, and that his statements would not be used against him. *Id.* at 857. The petition also argued that the conviction was involuntary in the traditional sense.

The Court observed that voluntariness is tested according to the factors "length and location of the interrogation; evaluation of the maturity, education, physical and mental condition of the defendant; and determination of whether the defendant was properly advised of his *Miranda* rights." *Id.* at 859. Thus *Miranda* warnings, in addition to being a distinct ground for exclusion of a statement, also enter into the general analysis of whether the statement was voluntary.

The Court observed that the *Miranda* rule "admittedly sweeps in noncoerced statements, and in that respect is broader than the due process voluntariness requirement. *Id.* at 860. The *Miranda* rule produces the "disadvantage" that "statements which may be by no means involuntary, made by a defendant who is aware of his 'rights,' may nonetheless be excluded and a guilty defendant go free as a result." *Id.* (citation omitted). The perceived countervailing advantages of *Miranda*, however, are that it is a bright-line

test easier to apply than voluntariness alone, and it is the lesser of two evils compared to the risk that a conviction would result from overlooking the coerced nature of a custodial confession. *Id.*

Consequently, while failure to give *Miranda* warnings could result in exclusion of a confession that in fact was voluntary, the giving of *Miranda* warnings would not necessarily guarantee that the confession would be found voluntary. Recognizing it would be rare that a confession following adequate *Miranda* warnings would be found involuntary, *id.* at 860 fn. 14, the Court nevertheless held that “when analyzing the voluntariness of a confession following *Miranda* warnings, the delivered warnings, even if sufficient to satisfy *Miranda*’s prophylactic rule, must be examined in detail, as they are part of the circumstances pertinent to the voluntariness inquiry.” *Id.* at 860-861.

From the perspective of the *Miranda* rule, the Court in *Doody* found the warnings themselves were adequate, even though they were done in a perfunctory manner and interspersed with statements minimizing their significance. The Court compared the manner of giving the warnings with *Cooper*, where the officer “deliberately turned the advisement into what he hoped Cooper would perceive as a joke” and as a “psychological ploy ... designed to make Cooper ignore the warnings....” *Id.* at 861, citing *Cooper*, 963 F.2d at 1228. In contrast, in the warnings given to Doody, “the essential rights were conveyed,” and the interspersed “oral elaborations ... were not affirmatively misleading.” *Id.* at 864. The Ninth Circuit called it a “close question” but found the warnings adequate. *Id.*

But turning to the voluntariness issue, the Court agreed with Doody’s argument that the subsequent conduct of the interrogation “undercut the purpose of the *Miranda* warnings: to ensure that a suspect fully understands his rights and the implications of waiving them.” *Id.* The Court stated that “the officers explicitly and implicitly told Doody—an increasingly sleep-deprived juvenile--that he did *not* have the right to remain silent.” *Id.* The Court noted that during the warnings, Doody was told he could be quiet, but when he fell silent during the interrogation, “the officers told him expressly that he had to answer them--in other words, that he could not remain silent. *Id.* at 865. And as a result of the officer’s statement that he was going to stay until he gets an answer, “the officers’ original warning informing Doody of his right to remain silent, itself a casual and underplayed message, was negated by their subsequent conduct....” *Id.*

Under these circumstances, the Court found that although the warnings were technically adequate, “the safety net that proper, serious *Miranda* warnings provide--that of informing a suspect of his rights and of the gravity of the situation--was quite weak in this case, prone to give way as a protection against an involuntary confession if conditions were otherwise conducive to such a confession.” *Id.* at 865-866.

The Court determined that Doody’s will had been overcome “by the officers’ overall, interrelated, coercive messages that they would continue relentlessly questioning him until he told them what they wanted to hear, and that he would eventually have to do so.” *Id.* at 866. The Court also considered Doody’s age, lack of criminal history, the length of the interrogation, and the fact it occurred outside the presence of

an attorney or family member. *Id.* at 866-867.

The opinion criticized the state court for finding that “Doody was ‘alert and responsive throughout the interrogation.’” The tape featured “long stretches of silence--as long as ten minutes--in the face of dozens of questions in a row.” *Id.* at 868-869. The state court found the interrogation “courteous” but the tape showed the officers “tones varied from ‘pleading’ to scolding to sarcastic to demanding.” *Id.* at 869. And, as exemplified by the statement that the officers were going to stay until they get an answer, the Ninth Circuit pointed out that “no matter what the tone, twelve hours of insistent questioning of a juvenile by tag-teams of two, three and four officers became menacing and coercive, and decidedly *not* courteous.” *Id.*

Finally, in an error to which the Ninth Circuit ascribed “great significance” the state court had found that Doody confessed after two hours, when the tape showed he “did not confess to *any* connection to the temple murders until over six hours of interrogation.” *Id.* The Court held, “A key factor in this voluntariness inquiry is the length of the interrogation before the confession.” *Id.*

The Court then found that the conviction relied almost entirely on the confession, and accordingly, reversed with directions to grant the writ. *Id.* at 870. The *Doody* case demonstrates that 40 years after *Miranda*, the star chamber interrogation methods surveyed in that opinion can still occasionally rear their head, especially in the investigation of a particularly atrocious crime.

The opinion contains a wealth of case history examining the adequacy of *Miranda* warnings, the voluntariness of confessions, and the judicial system’s ongoing efforts to balance the competing rights of fairness and truth involved in the quest for justice. As shown by this history, improper interrogation procedures result in innocent parties being convicted, and guilty parties going free. The public interest in avoiding these evils calls on law enforcement professionals to pay close attention to the constantly evolving legal framework within which investigation and interrogation must be conducted.

#### STAY SAFE

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