Another Broadside on *Miranda*:
The 2003–2004 U.S. Supreme Court Term and the Fifth Amendment Privilege against Self-Incrimination

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Almost since the day it was handed down, the nation’s “most famous criminal procedure decision” has been under attack by the very body that made famous the words “you have the right to remain silent.” For more than thirty years, the Supreme Court weakened the force and implications of its landmark decision, *Miranda v. Arizona*, through a series of blows to the reach—if not relevance—of the case. Four terms ago, the Court was finally poised to land a knockout punch to the famous case as it considered argument in *Dickerson v. United States*. In a surprising turn of events, the Court not only upheld *Miranda*, but also deemed it to be “a constitutional decision,” rather than a mere “prophylactic” measure designed to protect Fifth Amendment rights. The 2003–2004 Supreme Court term, however, demonstrated that the Court had no intention of expanding the scope of this “constitutional decision.” In three cases addressing the scope of *Miranda*, the Court reversed its course in *Dickerson* and reverted to its old ways by further limiting *Miranda’s* reach, while disapproving of only the most egregious violations of *Miranda’s* original intent.

This article will provide a brief overview of *Miranda* as it emerged nearly forty years ago and of the subsequent cases which significantly limited its reach. It will then examine its status through the lens of *Dickerson* and the most recent Supreme Court decisions. Finally, the article suggests some lessons from these most recent cases and proposes strategies for both prosecutors and defense counsel who are faced with confession issues.

In order to place the three cases from the past term into context, a quick overview of *Miranda* and its progeny is provided.

*Miranda v. Arizona*

The landmark 1966 Supreme Court decision of *Miranda v. Arizona* established new procedural requirements for all law enforcement officials. The Court expressed great concern over protecting “precious” Fifth Amendment rights and promulgated a series of safeguards designed to permit the accused a “full opportunity to exercise the privilege against self-incrimination.” The Court mandated that, as a prerequisite to custodial interrogation, the police advise all suspects of the right to remain silent and you are not required to make any statement unless you want to do so voluntarily. Anything you say will be used against you in a court of law. You also have a right to consult with your attorney, and have him present with you. If you can not afford an attorney, one will be appointed to represent you.

**MIRANDA RIGHTS**

“You are under arrest for your part in the offense of __________________.”

I hereby notify you that you have a right to remain silent and you are not required to make any statement unless you want to do so voluntarily. Anything you say will be used against you in a court of law. You also have a right to consult with your attorney, and have him present with you. If you can not afford an attorney, one will be appointed to represent you.
admissibility of any statement made by the defendant.14

In the years since, the Court has been compelled to deal with the myriad issues that Miranda created but did not address. For example: When is a suspect in “custody”?15 When does police questioning actually involve “interrogation”?16 And are there any exceptions to Miranda?17 For the most part, the Court’s answers to these and other questions have significantly confined the Miranda decision. The Court has limited the instances when a suspect is considered to be in “custody”18 and when a suspect is considered to be “under interrogation.”19 The Court also has allowed statements obtained in violation of Miranda to be used for impeachment purposes.20 It has imposed increasingly stringent standards on the invocation of a suspect’s rights21 and has created a “public safety” exception to Miranda.22 Finally, if a suspect invokes his right to remain silent, the police may still approach him later for questioning under certain circumstances.23

The steady march toward the erosion of Miranda has not been without detours, however.24 In Edwards v. Arizona,25 for example, the Court held that when once a suspect is advised of his rights and invokes his right to counsel, then the interrogation must cease until counsel has been provided. In Arizona v. Roberson,26 the Court extended the Edwards bar to further interrogation about all crimes for which the suspect may be investigated. But the impact of Edwards and Roberson has been minimized because the Court has made it relatively easy to show that the suspect “initiated” the interview with the police after having first invoked his Miranda rights.27

**Dickerson v. United States**

In 1968, two years after Miranda was decided, the U. S. Congress passed 18 U.S.C. § 3501, a law intended to overrule the Supreme Court decision.28 According to this legislation, the admissibility of a confession in federal prosecutions was to be determined by whether the statement was made voluntarily.29 Congress based this legislation on the Court’s statement in Miranda that the Congress and the state legislatures were “free to develop their own safeguards for the privilege, so long as they are fully as effective as those described” in the opinion.30 Miranda held that other procedures could accomplish the same purpose, and § 3501 made the Miranda warnings just one of several factors for the courts to consider in determining whether a confession was voluntary.31 In other words, even if the suspect was not advised of his rights, his confession could still be admissible if, based on criteria established by § 3501, the trial court determined that the confession was voluntary.32 This legislation, however, was generally not utilized by the federal authorities.33

The 2000 case of Dickerson v. United States,34 which originated in the Fourth Circuit, finally presented the Supreme Court with the opportunity to determine the validity of the 1968 legislation. Petitioner Charles Dickerson, charged with several serious crimes, was granted a motion to suppress his confession on the grounds that he had not received a Miranda warning.35 The Fourth Circuit reversed the suppression, holding that the statement was voluntary pursuant to a § 3501 analysis.36 The Fourth Circuit went on to conclude that Miranda was not a constitutional holding and that Congress could, therefore, determine admissibility of a confession through legislation.37

The Supreme Court was presented with the perfect opportunity to finally abrogate the rule that had been eroding for thirty-four years. Given the trend of limiting the force and effect of Miranda, an affirmation of the Fourth Circuit’s decision seemed almost a foregone conclusion. But the Court ruled that Miranda was a “constitutional decision” and could not be overruled by an act of Congress;38 and the Court declined to take the opportunity to overrule Miranda itself.39 In its analysis, the Supreme Court traced the history of Miranda and went to great lengths to establish error by the Fourth Circuit.40 At the end of the day, Miranda survived, even if as only a shell of its former incarnation. Although the congressional legislation only applied to federal prosecutions, if the Supreme Court had allowed the legislation to stand, then the states would have been free to enact their own Miranda-busting legislation.

**2003–2004 U. S. Supreme Court Cases on Miranda**

Although Dickerson emphasized the importance to the Supreme Court of procedural safeguards afforded by Miranda, the 2003–2004 session made clear that the Court had no intention of expanding (or, some would argue, restoring) a suspect’s constitutional rights during the course of interrogation. In United States v. Patane,41 the Court held that the fruits of an unwarned voluntary confession were not fruits of the poisonous tree, and therefore were not worthy of exclusion. Yarborough v. Alvarado42 addressed the issues of age and experience of a defendant as they relate to custody status. And in Missouri v. Seibert,43 the Court demonstrated its willingness to reign in police practices when they play too fast and loose with the Miranda requirements.44

**United States v. Patane**

Patane is probably the most significant of the three Miranda-related decisions handed down by the Court this past term. The police arrested Samuel Patane at his home for violating a restraining order.45 As one officer attempted to advise him of his rights, Patane interrupted and stated that he knew his rights.46 The officer then asked Patane about a pistol suspected to be in his possession.47 After some discussion, Patane told the officer where to find the gun.48 Patane was then indicted for possession of a firearm by a convicted felon and sought to suppress the firearm as fruit of an unwarned statement.49

In this case, the Court was asked whether physical evidence recovered as a result of
voluntary custodial statements, obtained in violation of Miranda, should be suppressed. In the 1974 case of Michigan v. Tucker and the 1985 case of Oregon v. Elstad, the Court declined to apply the fruit of the poisonous tree doctrine to Miranda violations, relying on the proposition that Miranda was a “prophylactic” rule. The issue gained significance again in 2000 when the Dickerson decision decreed Miranda to be a “constitutional decision.” The sense of the legal community was that with the elevation of Miranda from a “prophylactic” rule to “constitutional” one, the fruit of the poisonous tree doctrine should now apply to Miranda violations, and physical evidence recovered pursuant to an unwarned custodial confession should be suppressed.

The Patane Court declined to apply the fruit of the poisonous tree doctrine and held that the failure to give a suspect Miranda warnings does not require suppression of the physical fruits of the suspect’s unwarned but voluntary statements. The Court minimized the impact of Dickerson and repeatedly referred to Miranda as a “prophylactic” rule. The Court also took note of the “continuing validity” of Tucker and Elstad, cases that had declined to apply the fruit of the poisonous tree doctrine to Miranda violations. The Court also relied on the proposition that the Fifth Amendment does not apply to nontestimonial evidence.

Yarborough v. Alvarado

Alvarado presented the issue of whether the age and inexperience of a suspect should be factors in determining whether the suspect is in “custody” for the purposes of Miranda. Michael Alvarado, a seventeen-year-old juvenile at the time of his arrest, was brought to the police station by his parents for questioning regarding a murder. Out of the presence of his parents, he was interviewed for two hours by police without being advised of Miranda rights and was then released. During the course of the interview, however, he made several incriminating statements. Alvarado was charged with murder and attempted robbery and sought to suppress the statements that he made during the interview.

The issue raised by this case was whether the defendant was in custody during the interview, thereby creating the requirement of a Miranda warning. If the Court determined that the defendant was not in custody, then police were not required to advise him of his Miranda rights. The Court reaffirmed the principle that the Miranda custody test is an objective one, and then went on to rule that the person’s age and inexperience with law enforcement were not factors in determining the custody question. But the Court ruled that the two factors might be considered in determining whether the suspect made a voluntary waiver of his rights.

Missouri v. Seibert

The police questioned Patrice Seibert for murder without first advising her of her rights. After she confessed, the police then advised her of her rights and obtained a second confession. This “question first” strategy of withholding Miranda warnings until after interrogating and eliciting a confession from a suspect was an established police practice. This method allowed the police to obtain the confession they sought without first reading the suspect her rights, but then using at trial a second immediate confession obtained after a Miranda warning was given.

Seibert addressed the legality of this tactic. The State of Missouri argued that the legitimacy of this method derived from the Supreme Court decision of Elstad. (In that case, the police had obtained a brief, unwarned statement at the suspect’s house and then had obtained a statement in compliance with Miranda at the sheriff’s office.) But the Court distinguished Elstad from Seibert on the grounds that a clear and distinct break existed between interviews in the former case, and that Miranda warnings were ineffective in preparing a suspect for successive interrogations like the one featured in Seibert. The Court also pointed out that the police tactic in question was clearly designed to “undermine” Miranda’s dictates and was not acceptable.

1. The Miranda warning is not a constitutional guarantee, and, therefore, failure to warn a prisoner does not violate his constitutional rights.

2. The rules set forth in Miranda were not originally limited in their application, but Patane suggests that they are optional so long as admission of a confession is not sought.

3. The Court gives the police freer reign for their interrogation methods.

The Impact of the 2003–2004 U.S. Supreme Court Cases on Miranda

A closer analysis of Patane, Seibert and Alvarado reveals at least four major effects that these cases will have on the original Miranda doctrine.
Any defense approach to a Miranda issue should bear in mind the two Fifth Amendment goals regarding the interrogation of suspects: deterring improper police conduct and assuring trustworthy evidence.

4. Special needs defendants do not receive special protection from the Constitution.

In construing narrowly the objective test to determine custodial status, the Alvarado Court discounted age and inexperience with law enforcement as factors in determining custody status. One may only assume now that the Alvarado holding would extend to individuals in other similar, though not identical, situations. Accordingly, it is doubtful that special consideration would extend to people with mental disabilities, language barriers or cultural differences, even though those factors could very well lead members of those groups to reasonably believe that they are in custody, even if the “reasonable person” would not.

Practice Lessons from the 2003–2004 U. S. Supreme Court Term

Defense Lessons

Any defense approach to a Miranda issue should bear in mind the two Fifth Amendment goals regarding the interrogation of suspects: deterring improper police conduct and assuring trustworthy evidence. These goals were reiterated in Seibert and can be helpful in articulating arguments in support of a motion to suppress. Some issues that counsel should explore include the following:

1. Was there sufficient cause to have the suspect in custody in the first place?

Often this preliminary issue is overshadowed by more complex questions. Advising a suspect of Miranda rights does not cure the issue of whether there was justification to seize the person in the first place. Counsel should explore the information available to the police when the suspect was taken into custody.

2. Was the statement or confession that led to the discovery of additional evidence “voluntary”?

The issue of voluntariness takes on significance because of Patane’s holding that the fruit of the poisonous tree doctrine would still exclude evidence derived from an involuntary statement (as opposed to a simply unwarned statement). If the client’s statement leads to other evidence, the issue of voluntariness should be explored. (Needless to say, the voluntariness question should always be examined, whether or not there is a fruit of the poisonous tree issue.)

3. Was the suspect questioned prior to receiving a Miranda warning?

This would include any “small talk” that elicited statements from the suspect. Detectives will often engage in such “small talks” with suspects to establish a rapport; these talks are an integral part of the interrogation and counsel should cite Seibert in arguing that the suspect should have been advised of his rights before the first words were uttered. Miranda came into being because of the inherent coercive nature of the interrogation process. The “small talk” is part of that process.

4. When a juvenile is involved, keep in mind that, despite Alvarado, age is still a factor in the Miranda analysis, especially when it comes to determining whether the waiver of Miranda rights was voluntary.

A client’s youth and/or inexperience should always be explored in a confession case. If not relevant to the custody issue, these factors are always relevant to the involuntariness issue. Even with the Alvarado case, counsel should not be deterred from arguing the youth and inexperience of the defendant on the issue of custody. In state court cases, the Supreme Court’s standards only establish the minimum rights which are to be afforded to a suspect. A state may always create or protect more rights than the floor provided by the Supreme Court.

Prosecution Lessons

1. Miranda is your friend.

As many prosecutors quickly realized, Miranda is their friend. It is hard for a suspect to claim coercion or involuntariness when he has been directly advised that he does not have to talk. But Miranda issues can still pose traps that can be fatal to a major crimes case. Having officers advise suspects of rights will not deter many confessions and at the same time will eliminate a major issue of litigation: whether the suspect was in custody.

2. Determine what was said, and to whom.

In light of Seibert, the prosecutor needs to interview all officers who spoke with the defendant before he was advised of his rights. This should be done with an eye towards arguing that any pre-Miranda statements fall under the Elstad exception or, in the alternative, did not
involve “interrogation” or its functional equivalent.

3. The Miranda requirements should be followed and no policy should be in effect that attempts to contradict Miranda’s intent.

From a law enforcement standpoint, any attempt to evade Miranda’s mandates, as was done in Seibert, is simply not good strategy. Any miniscule benefit that is derived from a blatant maneuver around Miranda is outweighed by the significant risk of having a confession in a case suppressed. If there is a true emergency in which Miranda cannot be applied, then the “public safety” exception to the Miranda under Quarles should address the situation.

Conclusion

The three cases from this term continue the pattern of transforming Miranda into a doctrine that would be barely recognizable to the Court that issued it. At almost every opportunity, the Court has relaxed the dictates of Miranda. Analysis of the Court’s 2003–2004 decisions reveals abandonment of some spiritual intent—if not the constitutional principles—expressed in the landmark 1966 decision. Gone seems to be the concern for adequate safeguards to protect “precious rights,” which has been replaced with ambivalence towards procedure and police conduct.

Of course, this trend is not necessarily bad. Miranda, in its original form, can be viewed as unduly hampering law enforcement without sufficiently protecting constitutional rights. Under this view, the subsequent limitation of Miranda has struck the right balance between law enforcement needs and citizens’ rights against unreasonable governmental intrusion. Others may argue that the Court got it right with Miranda, and the subsequent decisions have been a series of regressions from the original intent. Wherever the right balance may be, undoubtedly that balance will constantly shift as defense attorneys and prosecutors continue to litigate the issue of admissibility of confessions.

Endnotes:

5. Id. at 432.
8. 384 U.S. 436.
9. Id. at 442, 467.
10. Id. at 472-75.
11. Id. at 474-75.
12. Id. at 474.
13. Id.
14. Id. at 476.
16. Rhode Island v. Innis, 446 U.S. 291 (1980) (“Miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent”). Illinois v. Perkins, 496 U.S. 292 (1990) (“Miranda warnings are not required when the suspect is unaware that he is speaking to a law enforcement officer and gives a voluntary statement”).
17. Quarles, 467 U.S. 649 (“overriding considerations of public safety justify [an] officer’s failure to provide Miranda warnings”).
18. Bebeler, 463 U.S. 1121 (“Miranda is applicable when suspect’s freedom is curtailed to a “degree associated with formal arrest”).
19. Perkins, 496 U.S. 292 (“Miranda warnings are not required when the suspect is unaware that he is speaking to a law enforcement officer and gives a voluntary statement”).
20. Harris, 403 U.S. 222 (defendant statements preceded by defective warnings can be used to impeach defendant’s testimony). Hass, 420 U.S. 714 (even if defendant asserts his rights upon being advised of Miranda, prosecution can still use statements for impeachment purposes).
22. Quarles, 467 U.S. 649 (“overriding considerations of public safety justify [an] officer’s failure to provide Miranda warnings”).
24. See WHITE, supra note 1, at 61, for further discussion of this issue.
25. 451 U.S. 477 (1981). Note the distinction between invoking the right to counsel—which
would bar police approaching suspect—and invoking right to remain silent—which, pursuant to Moledy, 425 U.S. 96, would leave room for police to approach the suspect later.


27 Oregon v. Bradshaw, 462 U.S. 1039 (1983) ("Well, what is going to happen to me now?" was deemed to have "initiated" a conversation with the police).

28 Dickerson, 530 U.S. at 432.

29 § 3501.

30 384 U.S. at 490. The Miranda decision further encouraged "Congress and the States to continue their laudable search for increasingly effective ways of protecting the rights of the individual while promoting efficient enforcement of our criminal laws." Id. at 467. The Court further noted that the new safeguards must be observed "unless we are shown other procedures which are at least as effective in apprising accused persons of their right of silence and in assuring a continuous opportunity to exercise it." Id.

31 § 3501.

32 Id.

33 WHITE, supra note 1, at 57-58 (describing §3501 as being "rarely used"). The FBI was advising suspects of their "Miranda" rights long before Miranda was decided. Miranda, 384 U.S. at 485.

34 530 U.S. 428.

35 Id. at 432.

36 Id.

37 Id.

38 Id. at 437-38.

39 Id. at 443.

40 Id. at 438-41. Although the Court disagreed with the Fourth Circuit’s conclusion, it "conceded" that there is language in some of [the Supreme Court’s] opinions that supports the view taken by" the Fourth Circuit. Id. at 438.

41 124 S. Ct. 2620.

42 124 S. Ct. 2140.

43 124 S. Ct. 2601.

44 The Court in this term decided a fourth case, Fellers v. United States, 124 S. Ct. 1019 (2004), which touched upon Mirandola. That case involved the police interrogation of a suspect after he had been indicted. Relying on the 6th Amendment and the accompanying precedent, including Massiah v. United States, 377 U.S. 201 (1964), the Court reversed the conviction because the suspect had not properly waived his rights. Because Miranda deals only with the 5th Amendment and not 6th Amendment, Fellers is not discussed in this article. Moreover, Fellers' impact is "limited . . . because the vast majority of police interrogations take place prior to indictment." WHITE, supra note 1, at 52 (description of Massiah's impact) (emphasis added).

45 124 S. Ct. at 2625.

46 Id.

47 Id.

48 Id.

49 Id.

50 417 U.S. 433.

51 470 U.S. 298.

52 530 U.S. at 438.

53 124 S. Ct. at 2626.

54 Id. at 2627-28.

55 Id. at 2628.

56 Id. at 2630.

57 124 S. Ct. 2140.

58 Id. at 2145.

59 Id. at 2146.

60 Id. 2145-46.

61 Id. at 2146.

62 Id. at 2148.

63 Id. at 2151.

64 Id.

65 124 S. Ct. at 2606.

66 Id.

67 Id. at 2608.

68 Id. at 2608-09.

69 470 U.S. 298.

70 124 S. Ct. at 2611-12.

71 Id. at 2612.

72 384 U.S. at 471.

73 124 S. Ct. at 2626.

74 384 U.S. at 456.

75 Although this proposition has been questioned in recent years by Prof. Paul Cassell, who led the charge against Miranda in Dickerson, WHITE, supra note 1, at 5, the majority of studies point to Miranda's relatively minimal impact on inhibiting confessions. Id. at 76. Even a study done by Prof. Cassell has been cited as supporting the proposition that Miranda does not have a significant impact on whether a suspect confesses. Id. The authors' experience bears this out. Accord Telephone Interview with Sgt. Shawn Hoffman, supervisor of the Homicide Squad, Virginia Beach Police Department (July 27, 2004).

76 467 U.S. 649.

77 384 U.S. 442.