Thanks to *Law and Order* and a plethora of other cop shows, the U.S. Supreme Court’s decision in *Miranda v Arizona* (1966) may well be the Court’s most widely known and widely recognized piece of jurisprudence. Not only inveterate television watchers but even children often know that “you have the right to remain silent.” Indeed, the Court itself has recognized that the now-familiar warnings contained in *Miranda* have become “embedded in routine police practice to the point where the warnings have become part of our national culture” (*Dickerson v United States*, 2000). In the book *The Miranda Ruling: Its Past, Present, and Future*, authors Lawrence Wrightsman and Mary Pitman suggest, with more than a little intuitive appeal, that along with knowledge of the warnings goes a widespread
belief that the warnings effectively inform suspects of their rights and rigorously protect their ability to invoke them.

The authors then challenge this popular perception and argue that the Miranda rule is not nearly as protective as is commonly believed and is not always applied in practice by the police in a uniform or comprehensible manner. In other words, Wrightsman and Pitman argue, the *Miranda* decision has failed to live up to its promise of making suspects aware of their Constitutional right against involuntary self-incrimination and has failed to effectively curtail overreaching by the police. The authors conclude by offering policy and jurisprudential changes that they believe will effectively reduce the number of false confessions and wrongful convictions.

In setting the stage for their argument, Wrightsman and Pitman do a competent and thorough job of discussing and analyzing the decisions that informed the Court’s ruling in *Miranda v Arizona* (1966). They highlight the inherent tension between controlling crime through maximum enforcement of the criminal law and affording every defendant sufficient process to minimize the chances of a wrongful conviction.

The text analyzes how these competing values clash and are played out on the canvas of various Supreme Court decisions that indicate a preference for either crime control or due process. This extensive examination of precedent is useful and allows those less versed in constitutional jurisprudence to understand competing interpretations because concurring and dissenting opinions are discussed in tandem with the majority opinion in cases in which the Court was seriously divided.

*The Miranda Ruling: Its Past, Present, and Future* is not only a useful primer for people unfamiliar with *Miranda*’s antecedents and progeny, but it also makes a significant contribution to the literature by explicitly applying psychological expertise to understanding how *Miranda* came to be and how this decision has shaped interrogation practices. For example, Wrightsman and Pitman discuss how knowledge that behavior is a function of both personal internal qualities and environmental conditions can enhance one’s understanding of diverse phenomena, including why justices decide particular cases as they do and why certain suspects are more likely to waive their rights and falsely confess. Lawyers wishing to augment their legal understanding of voluntariness with an introduction to the psychological literature pertinent to whether a confessor was coerced will, therefore, also find this work helpful. Graduate students interested in interrogation specifically or the accommodation of competing considerations within our justice system will also find it informative.

Although there is much to recommend about this text, it is far from a dispassionate or even-handed analysis. A liberal bias is apparent throughout, and at times basic strands of constitutional jurisprudence are ignored in an effort to discredit conservatives. For example, it is clear that Congress has only limited legislative authority pursuant to its expressed or implied powers (Article 1, Section 8). Granting Congress general police powers is contrary to the text of the Constitution and flies in the face of the federalist system enshrined therein.
Invalidating federal enactments that regulate conduct that has no impact on interstate commerce, such as the possession of a gun near a school, does not suggest that the Rehnquist Court approved of or wished to protect such conduct but merely that Congress lacked the power to regulate it *(United States v Lopez*, 1995). Wrightsman and Pitman’s critique of the Rehnquist Court appears to imply otherwise without directly addressing the federalism issue (p. 137).

In addition to perspective bias, a number of incorrect factual statements, assumptions, and conclusions are contained in the text. For example, the authors indicate that the police need a conviction to clear a case (p. 139). Clearance rates have nothing to do with whether a conviction is obtained (Federal Bureau of Investigation, 2009). The assertion that the Reid technique does not train people to determine if a suspect did not commit the crime is also factually incorrect (p. 145). As a “graduate” of the basic and advanced Reid training courses, I know that a considerable amount of time is spent on this subject, including viewing the interrogation of an innocent person to evaluate behavioral and linguistic cues of truthfulness. Moreover, John E. Reid and Associates’ (2010) current training manuals cover behavioral assessment for both truth and deception (Senese, 2009).

The authors go on to suggest that prior to most interviews, the police have already formed an impression that the interviewee is the culprit (p. 145). This ignores the fact that, in addition to suspects, police routinely interview victims and witnesses because prosecutors must know what victims and witnesses can testify about in order to make the state’s case. In addition, the evidence cited to refute Reid’s claimed deception detection rate of 85 percent does not appear to test Reid-trained personnel versus other people. Reid’s data may be wrong, but the authors do not convincingly establish that with the evidence they cite.

Wrightsman and Pitman conclude with a number of policy reforms, some of which are commendable. They advocate videotaping the entirety of all custodial interviews and interrogations of felony suspects with equal focus on suspects and interrogators. They convincingly justify this recommendation by reference to empirical evidence that indicates that focusing only on the suspect reduces jurors’ ability to assess voluntariness. They also provide anecdotal evidence, such as details about Michael Crowe’s case, that highlight how important a videotape can be in establishing involuntariness. Because custodial interrogations almost always occur on government property and the technology is available and inexpensive, such a requirement should not unduly hinder legitimate law enforcement efforts.

Their recommendation that a professional advocate, preferably an attorney, be present when “vulnerable” suspects are Mirandized and interrogated is much more problematic. Vulnerable suspects are not specifically defined with reference to the recommendation, but elsewhere in the text the special problems that juveniles; non-English speakers; and people who are deaf, mentally ill, emotionally disturbed, or intellectually challenged have in comprehending Miranda warnings are discussed. In this context, they argue convincingly that police officers are not capable of reliably detecting some of these potential impairments.
If police officers cannot make these assessments, as a practical matter they would have to treat everyone as potentially vulnerable.

Extending this protection to everyone the police might want to interrogate may be exactly what the authors have in mind because they seem to object to any efforts by the police to encourage suspects to talk, including benign tactics like rapport building. If the police were required to obtain a lawyer to advise every person about whether he or she should waive his or her Miranda rights, interrogations would come to a halt.

As a former prosecutor and defense attorney, I can state with certainty that very few lawyers would permit clients to be interviewed, much less interrogated, by the police. Defense attorneys, unlike police and prosecutors, are not charged with identifying and punishing criminals. Instead, they have an ethical obligation to zealously represent their clients, which includes protecting them from punishment whether it is deserved or not. Competent defense attorneys are unlikely to stray from the time-honored advice of “don’t talk, and you might walk.” Requiring the presence of attorneys is thus tantamount to totally barring interrogations.

Is relegating interrogation as an investigative tool to the history books good public policy? Possibly, but arriving at that policy decision without a comprehensive and forthright assessment of the utility of interrogation as a crime-solving tool versus the harm it wreaks on people’s rights is unwise. Wrightsman and Pitman undertake no such assessment, making this recommendation premature at best.

A recent article makes an interesting argument that the legal system is in need of reforms that will encourage defendants to speak in order to enhance the truth-seeking function of trials (Sampsell-Jones, 2009). It might also be argued that interrogation enhances the truth-seeking function of the criminal justice system and should not be precluded on a wholesale basis except in situations in which there are legitimate concerns about the confession’s accuracy.

The authors also call for a return to voluntariness as the standard for confession admissibility. This is what Public Law 3501 (Title 18, 1968) attempted to do, and while the Supreme Court could reverse its decision upholding Miranda in Dickerson (2000) and abandon the Miranda requirements, it is unlikely that would provide any real benefit. Miranda did not supplant voluntariness as the standard of admissibility for confessions. Rather, post-Miranda, a custodial confession must be both voluntary and warned.

## References


