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## Self-Incrimination

### CASES COVERED

*Miranda v. Arizona*,  
384 U.S. 436 (1966)

*Berkemer,  
Sheriff of Franklin  
County v. McCarty*,  
468 U.S. 420 (1984)

*New York v. Quarles*,  
467 U.S. 649 (1984)

*Berghuis v. Thompkins*,  
130 S.Ct. 2250 (2010)

*Colorado v. Connelly*,  
479 U.S. 157 (1986)

### Learning Objectives

- 1 Understand the role, nature, and importance of confessions and incriminating statements.
- 2 Know the constitutional amendments that impact criminal confessions and the three different approaches to custodial interrogation. Know which stages of the criminal process are relevant to each.
- 3 Understand the “bright-line” rule established in *Miranda v. Arizona* and appreciate its importance to custodial interrogation. Know the wide variety of police behavior that can be considered custodial interrogation and the circumstances in which unwarned statements are admissible in trial.

- 4 Know the factors considered when determining if a waiver of the right to remain silent is valid.
- 5 Know the factors considered when determining if a suspect confessed made incriminating statements voluntarily.
- 6 Understand the evidence-based decision-making ideal as it applies to false confessions and custodial interrogation. Appreciate the severe loss innocent people experience when they confess to crimes they didn't commit.

*While the other privileges [in the Bill of Rights] accord with notions of decent conduct generally accepted in life outside the court room, the privilege against self-incrimination defies them. No parent would teach such a doctrine to his children; the lesson parents preach is that while a misdeed, even a serious one, will generally be forgiven, a failure to make a clean breast of it will not be. Every hour of the day people are being asked to explain their conduct to parents, employers and teachers. Those who are questioned consider themselves to be morally bound to respond, and the questioners believe it proper to take action if they do not.*

—Judge Henry F. Friendly (1968)

*People intuitively feel that they would never confess to something they did not do. But people do confess. They confess to things they actually do (in confessionals, in psychotherapy, and in police interrogations). And they confess to things they did not do. One goal of our legal system must be to secure conviction of the guilty, but another must be to minimize wrongful convictions, including those involving false confessions.*

—Elizabeth Loftus (2004, i)

*In some unknown number of cases, Miranda will return a killer, a rapist or other criminal to the streets and to the environment which produced him, to repeat his crime whenever it pleases him. As a consequence, there will not be a gain, but a loss, in human dignity. The real concern is not the unfortunate consequences*

### **The Nature and Role of Confessions**

The Self-Incrimination Setting  
The Importance of Confessions and Interrogation

### **The Constitution and Self-Incrimination**

The Due Process Approach  
The Right-to-Counsel Approach  
The Self-Incrimination Approach  
*The meaning of "witness against himself"*  
*The meaning of "compelled"*

### **Miranda v. Arizona**

The *Miranda* "Bright-Line" Rules  
The Meaning of "Custody"  
The Public Safety Exception  
The Meaning of "Interrogation"  
*The Fifth Amendment "functional equivalent of a question" test*  
*The Sixth Amendment "deliberately eliciting a response" test*

### **The Waiver of the Right to Remain Silent**

#### **Voluntary Self-Incrimination False Confessions: Popular Belief and Empirical Evidence**

Why Do Innocent People Confess to Crimes?  
The Impact of False Confessions  
Reforms Aimed at Reducing the False Confession Problem  
*Limit time in custody and interrogation*  
*Restrict police use of false information during interrogations*  
*Record interrogations and confessions*