



Investigating Miranda waiver decisions: An examination of the rational consequences[☆]



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ABSTRACT

Millions of custodial suspects waive their Miranda rights each year without the benefit of legal counsel. Miranda understanding, appreciation, and reasoning abilities are essential to courts' acceptance of Miranda waivers (Grisso, 2003; Rogers & Shuman, 2005). The question posed to forensic psychologists and psychiatrists in the disputed Miranda waivers is whether a particular waiver decision was knowing, intelligent, and voluntary. Despite the remarkable development of Miranda research in recent decades, studies have generally focused on understanding and appreciation of Miranda rights, but with comparatively minimal emphasis on Miranda reasoning and attendant waiver decisions. Research on defendants' decisional capacities constitutes a critical step in further developing theoretical and clinical models for Miranda waiver decisions. The current study evaluated Miranda waiver decisions for 80 pretrial defendants from two Oklahoma jails to study systematically how rational decision abilities affect defendants' personal waiver decisions. In stark contrast to what was expected, many defendants were able to identify a rational decisional process in their own legal cases, yet cast such reasoning aside and chose a completely contradictory Miranda waiver decision.

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In *Miranda v. Arizona* (1966), the Supreme Court of the United States affirmed that “an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation.” The Court specified that “as with the warnings of the right to remain silent and that anything stated can be used in evidence against him, this warning is an absolute prerequisite to interrogation.” Moreover, the Court disallowed any inferences from custodial suspects regarding their knowledge of Miranda rights, concluding that “no amount of circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead,” inasmuch as “only through such a warning is there ascertainable assurance that the accused was aware of this right” (pp. 471–472).

Embodying this conclusive affirmation of the 5th Amendment privilege against self-incrimination, Miranda warnings have continued to serve for the last four decades as the primary procedural safeguard for custodial suspects. The centrality and longevity of Miranda warnings are especially noteworthy because the Supreme Court of the United States never intended the warnings to be a “constitutional straitjacket” (Miranda, p. 467) and was very open to “other fully effective means” (p. 479) of ensuring the 5th Amendment privilege. With a proactive stance, the Court

encouraged legislative bodies to “continue their laudable search for increasingly effective ways of protecting the right of the individual while promoting efficient enforcement of our criminal laws” (p. 467).

Miranda did not herald a change in the existing law as much as it served to explicate key elements for the benefit of law enforcement officers and prosecutors. For example, just two years earlier in *Escobedo v. Illinois* (1964), the Court “dealt with certain phases” (*Miranda v. Arizona*, 1966) of police procedures that were likely to result in constitutionally inadmissible statements, but it did not prescribe a method for warning custodial suspects of their rights during such interrogations. Again, it is important to bear in mind that the Court in *Miranda* did not supply the specific language of these warnings but rather a description of its core components. Reflecting a decade and a half later upon the lack of requisite language for Miranda warnings, the Court commented that “no talismanic incantation was required to satisfy its strictures” (*California v. Prysock*, 1981, p. 359).

1. Overview of Miranda waivers

The *Miranda* decision addressed more than the need to warn custodial suspects of their rights; it also established criteria for a valid *relinquishment* of those rights—specifically, by requiring that such waivers be made “voluntarily, knowingly and intelligently” (p. 444). The Supreme Court of the United States has consistently upheld these criteria, although in *Colorado v. Connelly* (1986), it subsequently narrowed the determination of voluntariness to focus upon externally imposed forces by asserting that “the sole concern of the Fifth Amendment, on which

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Miranda was based, is governmental coercion” (p. 170). Although coercive activity by the police may differentially impair the volitional abilities of defendants with mental disorders—thus implicating the notion of whether a privilege was waived “voluntarily”—most forensic psychological Miranda waiver determinations focus primarily on the “knowingly” and “intelligently” prongs of this test (Rogers & Shuman, 2005).

Interestingly, the knowing and intelligent prongs sometimes appear to be blended into a single standard rather than treated as distinct—albeit related—determinations. *Johnson v. Zerbst* (1938) and *Edwards v. Arizona* (1981) are examples of cases in which the Supreme Court of the United States generally construed these notions as simply comprising a basic awareness or knowledge of one's legal rights. Even more concretely, the Supreme Court of Illinois held in *People v. Bernasco* (1990) that a waiver was both knowing and intelligent as long as the defendant possessed an accurate understanding of the words used in the Miranda warnings.

A much more stringent conceptualization of what constitutes a valid Miranda waiver is outlined in *Fare v. Michael C.* (1979). In this case, the Supreme Court of the United States identified three requisite elements: whether a suspect “has the capacity to understand the warnings given to him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights” (p. 725). This particularized test requires a globally adequate understanding of the constitutional protections against self-incrimination as well as the consequences associated with Miranda waiver decisions.

The requirement that custodial suspects understand the consequences of a Miranda waiver was addressed by the Supreme Court of the United States in two subsequent decisions. In *Colorado v. Spring* (1987), the Court held that valid Miranda waivers require a “full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it” (p. 573), while in *Moran v. Burbine* (1986) the Court required even more explicitly that the custodial suspect be “aware of the State's intention to use his statements to secure a conviction” (p. 422).

Beyond *knowledge*, appellate decisions have grappled with the minimum level of rational *ability* required for intelligent waivers. In *Iowa v. Tovar* (2004), the Supreme Court of the United States emphasized that fully informed choices are what form the rational basis for intelligent Miranda waivers, requiring—on the basis of a principle established at least as early as the Court's decision in *Adams v. U.S.* (1942)—that the custodial suspect “knows what he is doing and his choice is made with eyes open” (*Tovar*, p. 88). The Court in *Tovar* ultimately concluded that an unawareness of the consequences typically associated with waiving counsel (e.g., risks of a poor legal defense and of being deprived of the right to seek legal counsel before making important legal decisions) resulted in a waiver that was not sufficiently knowing and intelligent.

The Supreme Court of the United States held in *Godinez v. Moran* (1993) that defendants must demonstrate “the capacity for *reasoned* [emphasis added] choice among the alternatives” (p. 389), and later elaborated in *U.S. v. Ruiz* (2002) that the complex task of waiving one's Miranda rights requires more than a mere abstract understanding of relevant rights. Thus, essential to a valid waiver is comprehension of how such rights apply to one's own legal circumstances.

Born from controversy, *Miranda v. Arizona* (1966) retains its iconic stature in the criminal law after a span approaching half a century, and seems likely to do so for the foreseeable future. Valid waiver of one's Miranda rights must be knowing, intelligent, and voluntary—a test that in many cases will compel counsel to obtain a forensic psychological evaluation of the defendant's capacity for relevant reasoning.

2. Research on Miranda reasoning

Miranda reasoning abilities have rarely been empirically evaluated, although they are featured prominently in legal (*Godinez v. Moran*, 1993; *Iowa v. Tovar*, 2004) and clinical (Grisso, 2003; Rogers & Shuman, 2005) conceptualizations of valid Miranda waivers. Policy-

relevant empirical research on Miranda reasoning is challenged by the absence of both clearly defined legal definitions and standardized assessment instruments. Grisso's (1981) trail-blazing research establishes a core foundation for the measurement of intelligent Miranda waivers. His seminal study assessed how juveniles with felony arrests applied legal rights to hypothetical situations. Using the Function of Rights in Interrogation (FRI), these juveniles were asked questions relevant to their rights to silence and counsel and to the nature of interrogation. With further research, the FRI is now included in the Miranda Rights Comprehension Instruments (MRCI; Goldstein, Zelle, & Grisso, 2012).

Using the FRI with adult probationers, Grisso's (1998, p. 6) research examined how they may fail to “grasp the significance of the warnings” as applied to the adversarial nature of the interrogation and their rights to silence and counsel. For the right to silence, Grisso found that 21.7% of offenders failed to understand this “right” as a constitutional safeguard (i.e., could not be punished or prosecuted for exercising this right). If silence is perceived as incriminating, then offenders may reason that they have *nothing to lose* by talking (Rogers & Drogin, 2014). Even more concerning, 42.9% believed a judge could revoke their right to silence. Surely, a revocable safeguard is no safeguard at all.

An investigation by Rogers, Harrison, Hazelwood, and Sewell (2007) examined common reasons for exercising and waiving Miranda rights using a sample of mentally disordered defendants participating in an inpatient competency restoration program. Not surprisingly, substantial numbers of these defendants lacked the basic ability to generate reasons for their own waiver decisions. Even when reasons were given, the basic reasoning underlying them was often, at best, questionable. Common but dubious reasons for *waiving* rights included (a) an ability to handle the case alone (19.6%), (b) an ability to prove one's innocence (17.8%), and (c) an inability to afford counsel (17.8%)—this final reason demonstrates the incapacity to rationally apply the “free legal services” component of Miranda to their own cases. For *exercising* rights, the clear majority understood that it would avoid incrimination (63.6%), whereas most (83.2%) saw the need for legal expertise. Several declared reasons for *not exercising* rights appeared less rational, such as avoiding further charges (6.5%) or being punished with even harsher sentences (8.4%).

Rogers, Sewell, Drogin, and Fiduccia (2012) developed and validated the Miranda Reasoning Measure (MRM) as a systematic method to assess suspects' ability to reason about exercising or waiving their rights. It is indebted to Grisso's (1981) scoring of the Waiver Expectancy Interview with its dual focus on short- and long-range consequences. This differentiation is essential because many defendants engage in temporal discounting (Rogers & Shuman, 2005); that is, they may value immediate benefits (e.g., coffee) over life-changing consequences (e.g., felony conviction). Incorporating this time-oriented perspective, the MRM has four scoring categories: (a) “0” for impaired reasoning (i.e., delusional or self-defeating) or a damaging factual error that compromises reasoning (e.g., unavailability of counsel for an indigent defendant); (b) “1” for an unclear reason that is not obviously impaired; (c) “2” for a clear reason that only takes into account immediate circumstances; and (d) “3” for a clear reason that explicitly takes into account long-range considerations. The MRM covers four content areas: Defendants identified pros (“good reasons”) and cons (“possible problems”) with respect to exercising and waiving their Miranda rights. Even during the MRM's initial conceptualization, however, an important asymmetry was observed. Specifically, custodial suspects are assessed concerning their competency to *waive* their rights. The asymmetry occurs because suspects are never evaluated regarding their competency to *exercise* their rights.

Rogers et al. (2012, p. 101, Table 7.22) found that poor Miranda vocabulary produced the largest effect sizes between failed and adequate Miranda reasoning for MRM waiver ($d = 0.66$) and exercise ($d = 0.81$) decisions. For the same comparisons, intelligence and Miranda comprehension provided better discrimination for exercising (ds of 0.70 and 0.44) than waiving (ds of 0.36 and 0.04) MRM items. For a review of the integration of MRM results with other

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