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THE ATTEMPTED MURDER OF THE MIRANDA DECISION

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Miranda v. Arizona, 384 U. S. 436 (1966), the landmark United States Supreme Court decision, recently had a near-death experience. A determined group of right-wing law and order zealots, cheered on by the law enforcement establishment, tried to have Miranda overturned. These zealots even succeeded in persuading one federal appellate court to hold that police no longer had to obey Miranda. It took a surprising Supreme Court decision last June to resuscitate Miranda from the deathblow Miranda's enemies were endeavoring to inflict.

Many provisions of the Bill of Rights are directed at protecting the rights of persons charged with crime. The Bill of Rights is designed to prevent prosecutors and police from engaging in unfair, improper or abusive practices that savor of tyranny, even though they help catch more criminals. Underlying the Bill of Rights, therefore, are at least two fundamental principles applicable to law enforcement: first, the end does not justify the means; and second, there are some things more important than punishing the guilty.

For a century the standard procedures used by American police to obtain confessions from persons they hold in custody on criminal charges have been, as the Supreme Court noted in Miranda, "at odds ... with our Nation's most cherished principles...." Arrested persons are taken to back rooms in police stations, detained incommunicado, and pressured to confess. There are no stenographers or recording devices present to provide a verbatim record of what goes on during the interrogation.

Until around 1950 police use of the third degree--the infliction of physical or mental suffering--to extract confessions was common. Although the third degree is still practiced, since the 1950's the most frequently utilized interrogation techniques have involved mental and psychological stratagems--trickery, deceit, deception, cajolery, subterfuge, chicanery, wheedling, false pretenses of sympathy, and various other artifices and ploys. These techniques can and do induce innocent persons to make false confessions; a significant number of the 95 death row inmates who have been exonerated based on DNA evidence and released since 1973 had been convicted based

in part on confessions obtained by police interrogation.

In Miranda the Supreme Court found that custodial interrogation as carried on by police in this country involves "inherent compulsion," is "inherently coercive," and "exact[s] a heavy toll on individual liberty and trades on the weakness of individuals." Concluding that previous constitutional rules it had prescribed had failed to curb the widespread use of "menacing police interrogation procedures," the Court declined to impose a blanket ban on those procedures. But it did hold that under the self-incrimination privilege (1) every person has a right to remain silent and a right to be advised prior to any custodial interrogation that anything he or she says may be used against him or her, (2) every person has a right to consult with a lawyer before being subjected to custodial interrogation and to have the lawyer present during the interrogation, (3) the lawyer must be provided free of charge if the suspect is indigent, (4) a suspect may waive these Miranda rights, but only if advised of those rights before interrogation and only if the waiver is voluntarily and knowingly made, and (5) no confession secured in violation of Miranda's requirements is admissible in court.

Although it is rooted in the harsh realities of police interrogation tactics and represents a noble effort to maintain a healthy balance between the individual and the state, Miranda has always been anathema to right-wingers; and in the last two decades conservative appointments to the Supreme Court have resulted in numerous decisions by that Court carving out exceptions to Miranda or otherwise weakening Miranda. It was these decisions that were seized upon by the zealots who recently tried to slay Miranda.

In 1997 FBI agents arrested one Charles Dickerson for robbing a Virginia bank. They interrogated Dickerson and procured a confession; prior to Dickerson's trial in federal court, however, the judge ruled the confession was inadmissible because the advice of rights--popularly known as the Miranda warnings--had been given after rather than before Dickerson confessed. The government appealed the trial judge's pretrial ruling to the United States Court of Appeals for the Fourth Circuit, contending that in fact Dickerson had been given the warnings before he confessed. The Fourth Circuit then permitted two right-wing legal foundations to intervene in the case and argue that even if the confession violated Miranda it was nonetheless admissible under a 1968 federal statute which allows admission of confessions inadmissible under Miranda. Both Dickerson and the government maintained that the 1968 statute was unconstitutional.

On Feb. 8, 1999, in a weird decision which described any FBI failure to give Dickerson the warnings prior to questioning as a "technical violation of Miranda," and

which relied heavily on Supreme Court decisions eroding Miranda, the Fourth Circuit held, by a 2-1 vote, that the statute trumped Miranda and rendered the confession admissible, notwithstanding any Miranda violation.

Both Dickerson and the government then asked the Supreme Court to review the Fourth Circuit decision that Miranda was no longer good law. In late 1999 the Court agreed to hear the case, and appointed Paul Cassell, a professional prosecutor and right-wing law professor, to argue in favor of the Fourth Circuit decision. Cassell, who regards Miranda as evil, is notorious for writing numerous articles claiming Miranda is an illegitimate decision benefitting only "criminals." Meanwhile, numerous organizations of police and prosecutors such as the Fraternal Order of Police, the National Sheriffs' Association, the International Association of Chiefs of Police, the FBI Agents Association, and the National District Attorneys Association filed briefs urging the Supreme Court to overrule Miranda.

In Dickerson v. United States, 530 U. S. 428 (2000), however, the Supreme Court stunned many observers by reaffirming Miranda and striking down the 1968 statute as unconstitutional. Even more astonishing was the fact that Chief Justice Rehnquist wrote the opinion reversing the Fourth Circuit decision. It was the first time in his 28 years on the Court that Rehnquist had authored a pro-Miranda opinion. Only the Court's two most conservative justices, Scalia and Thomas, dissented.

If the Fourth Circuit decision had been upheld, the Miranda warnings would have passed away. Even more importantly, the basic right of each of us to have a lawyer present before and during custodial interrogation conducted by police would have perished.

The story of how right-wingers and the crime control establishment recently attempted to murder Miranda v. Arizona must be remembered by all human rights supporters.