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Review of The Miranda Debate - Law, Justice, and Policing

Editors: Richard A. Leo and George C. Thomas III.

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For over 30 years custodial interrogations in the United States have been governed by the United States Supreme Court case Miranda v. Arizona (1966). The so-called Miranda warnings are familiar to nearly everyone. As the editors of The Miranda Debate point out, this familiarity is especially due to the impact of television shows, movies, books, and other media. Who cannot recite, "You have the right to remain silent. . ." Yet the seeming simplicity of these rules should not be misconstrued to mean that the decision is without controversy. Indeed, Miranda is an extremely contentious decision. Argument often centers on the appropriateness of the rules and the underpinnings of the decision. Within the context of Miranda, many other topics are often discussed such as the need for 'bright-line' rules, judicial influence on street police, court activism, legal versus attitudinal decision-making by courts, the importance of truth and fact-finding, and countless other issues.

The editors of The Miranda Debate have woven together a fine assortment of works written by highly esteemed authors to produce a coherent and timely, if not fascinating, account of the basic arguments regarding the Miranda decision. These arguments are logically presented in four parts: an overview of the issues, ethical and policy topics, empirical perspectives, and possibilities for the future.

In the first part, we are introduced to Miranda by George Thomas III. He presents an historical perspective, taking us from the country's origins, through the Civil War, into the mid-1900's, and finally to Miranda. This historical view is important to understanding practices and developments leading up to Miranda, especially the pre-Miranda voluntariness test. A main point made by Thomas on this issue is that:

the "voluntariness" inquiry often did not

produce clear answers. . . If the Court was

to regulate police interrogation more

effectively, it needed a clean test that did

not require litigation about "focus" on the

suspect or the often excruciating

metaphysical inquiry into whether the

suspect had confessed "voluntarily" (Leo and

Thomas, 1998:21).

Yale Kamisar's essay on the gatehouse (police station house) versus the mansion (the court) was a critical part of this section. His analogy suggests that the "dignified" and stirring "ceremony" of the mansion is meaningless unless ideals are maintained at the gatehouse.

Richard Leo describes how police interrogation has changed over the years. He points out that police no longer beat suspects into confession but use [End page 91] trickery, most significantly due to Miranda. Although constricted by legal decisions, the police adapt their methods. This, he claims, is no small feat. Also, he writes that, "By failing to lay down many bright lines, the courts have indirectly encouraged the police to engage in deceptive practices. One reason police trick and deceive suspects is to circumvent the legal restrictions placed on them by court rulings" (p. 72).

These and other works in Part I neatly set the stage for the heated discussions that follow. The first part of the book captured my attention and introduced issues that were debated in depth in the next two parts. Part II discusses the strengths and weaknesses of Miranda. The arguments of each chapter are presented in a logical sequence such that the contentions of one chapter lead into the next.

The editors begin this part with a report to the Attorney General (written by the U.S. Department of Justice, Office of Legal Policy, in the mid 1980's) on the law of pretrial interrogation. This report presents a very negative view of Miranda. It basically indicates that Miranda is not an effective way to control police behavior, hurts the truth- finding process, and has hindered the development of alternatives.

Stephen Schulhofer's work appropriately follows, and he is very critical of the previous report. In general, he argues that the Court was trying to protect suspects from custodial interrogation because such interrogation constitutes compulsion. He also argues that the rules actually help the police, and he admonishes the report as failing to come up with a viable alternative.

Gerald Caplan then gives a rebuttal and argues that Miranda went too far. He feels that a non- coercive and voluntary confession should be admissible. Soon following is Lawrence Herman who suggests that the definition of "involuntary" is vague. Further, the bright-line approach of Miranda does, at least somewhat, give better guidance to lower court judges as well as to law enforcement.

The third part of the book is a synopsis of some empirical work assessing the impact of Miranda. Here too the editors place the articles in sensible order. These works take the debate to a different level. Arguments take place about various methodologies, statistical assumptions, and interpretations. It is interesting to see how such research, though "scientific," is still the subject of heated controversy. Paul Cassell's article is appropriately placed first in the series. He sets the tone by writing "this [chapter] contends that the conventional wisdom about Miranda's effects is simply wrong" (p. 175). He reviews previous research and suggests that Miranda has resulted in a 16 percent drop in confessions. This evidence, he maintains, supports the position that the cost of Miranda is too high. [End page 92]

Schulhofer, by contrast, argues that the cost of Miranda is slight. He takes issue with several assumptions made by Cassell. He suggests that once we account for Cassell's faulty assumptions, the "detectable harm to law enforcement shrinks to virtually zero" (p. 192). Leo conducts his own study and argues Miranda does have an impact; however, he contends that the impact is not necessarily a poor one. He argues that the case has had a "... civilizing influence on police behavior, ... has transformed the culture, ...increased public awareness of constitutional rights, ... and, inspired police to develop more specialized, more sophisticated and seemingly more effective interrogation techniques...." (p. 219).

Cassell and Hayman conducted a study in Salt Lake County during a six week period in the summer of 1994. They also make their own assumptions and conclude that:

Our 33.3 percent overall success rate (and

even our 42.2 percent questioning success

rate) [based on their study] is well below

the 55-60 percent estimated pre-Miranda

rate and, therefore, is consistent with the

hypothesis that Miranda has harmed the

confession rate ... In our view, then, the

benefits of Miranda seem slim while the

costs seem substantial (pp. 228, 232).

George Thomas III discusses the "Steady-State" theory on confessions. He argues that "... Miranda either has no effect at all, or it has effects in individual cases which cancel each other out. In either case, the confession rate will be the same now as in 1965. " (p. 237)

With the issues thoroughly debated in previous parts, one would have hoped for a comprehensive analysis of these issues in Part IV. Instead, the editors grapple with the future of Miranda. These chapters focus on a feminist interpretation of Miranda, videotaping, the search for truth compared to the fairness of the process, calling on future researchers to study the topic, and other such issues. The final part of the book, therefore, is somewhat of a disappointment.

Interestingly, a recent 4th U.S. Circuit Court of Appeals decision in Richmond, Virginia, has brought the idea of a statute overruling Miranda to the forefront of the debate. The court held that a statute enacted by the Congress of the United States as part of the Omnibus Crime Control Act of 1968, 18 U.S.C.A. § 3501, "governs the admissibility of confessions in a federal court." The Circuit Court in United States v. Dickerson (1999) has opened the door for the United States Supreme Court to overrule Miranda. Note that the amici (the Washington Legal Foundation and the Safe Streets Coalition), neither a party in the case, make the argument that §3501 overrules Miranda. Even though the court explicitly states, "Fortunately, we are a court of law and not politics," one might ponder the motives of the court. Note that the partial dissent in the case is [End page 93] highly critical of the decision on this issue. Also, recent research supporting the attitudinal model of jurisprudence (i.e., court decisions are based on the attitudes of judges as opposed to legal criteria such as precedent, the intent of the framers, and so forth) would have been an interesting addition to the book (see, for example, Segal and Spaeth, 1993).

One refreshing aspect of this book is that it presents many viewpoints. The arguments and counter- arguments are well composed and executed. This allows readers to evaluate various perspectives and come to their own conclusions. The book, therefore, can be an excellent classroom tool; it will be especially useful as a springboard for discussion and the development of critical thinking skills. While the conclusion is somewhat lacking in substance, overall, the editors have put together a fine work on American jurisprudence.

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