

A precursor of *Miranda v. Arizona*

The growth of our common law evolves on a case-by-case basis, beginning in the Middle Ages during the time of Henry II in the 1160s. The king created the King's Bench, a circuit of judges known as the Assizes. They extended the customary law of the Normans throughout the realm, instilling it as "common" for all.

It can be instructive to look back in legal history to observe how one precedent leads to another, and how the law evolves to achieve greater justice. Consider the law relating to confessions by those accused of crimes. We travel from the Middle Ages to premodern times and then to modern times, culminating with the watershed *Miranda v. Arizona* case.

In early times, physical torture was the norm to extract confessions. One mode of torture known as "pressing" involved slowly placing heavy weights on the body until the person confessed or died. In more modern times, while physical coercion was eschewed, psychological coercion was predominant.

Then came more appropriate thinking where the courts insisted on the right of an accused to entitlement to a voluntary confession. But many of those confessions were obtained under intense psychological pressure — they were not voluntary, but were nevertheless admitted as evidence during trial.

Such was the situation in *United*

PAUL MARK
SANDLER
Commentary



States v. Ziang Sung Wan, 266 U.S. 1 (1924).

The facts relating to the confession by Wan were egregious. On Jan. 31, 1919, three Chinese diplomats — Dr. Theodore Wong, Mr. Chang His Hasie, and Ben Sen Wu — were found murdered. They were shot to death in the Chinese Education Mission in Washington, D.C. The grand jury indicted 25-year-old Ziang Sung Wan for the murder of Wu, one of the victims.

Wan gave a confession after an intense prolonged interrogation by the police while he was suffering from intense pain from the Spanish flu. For example, Wan was taken — before he was arrested — to a secluded room. In the presence of three detectives and others, he was questioned for six hours.

Then he was taken to a hotel, and detained there for one week while being questioned. All the while he was complaining of being ill and in pain. The ordeal continued for days while Wan continued to be sick and exhausted. But he signed a confession.

Prior to trial, he recanted the confession. Over objection at trial the court admitted the confession, and the jury returned a verdict of guilty. Wan was sentenced to death by hanging. The D.C. Court of Appeals affirmed. The U.S. Supreme Court reversed. The case was recently brought to light by Scott Seligman in his marvelous book, "The Third Degree: The Triple Murder That Shook Washington and Changed American Criminal Justice" (Potomac Books, 2018).

Writing the opinion for a unanimous court, Justice Louis Brandeis explained the court's reversal of the conviction of the defendant for murder, based on a confession from psychological pressure of intense protracted questioning by authorities. In reversing the conviction, Brandeis, writing for the court, stated: "A confession is voluntary in law if, and only if, it was, in fact, voluntarily made. A confession may have been given voluntarily, although it was made to police officers, while in custody, and in answer to an examination conducted by them. But a confession obtained by compulsion must be excluded whatever may have been the character of the compulsion, and whether the compulsion was applied in a judicial proceeding or otherwise."

Then, in 1966, along came *Miranda v. Arizona*. Citing *Wan* and other cases, the U.S. Supreme Court, in a 5-to-4 opin-

ion authored by Chief Justice Earl Warren, reversed the decisions of numerous appellate courts for admitting custodial confessions that were not voluntary.

Miranda had been arrested in his home. The police interrogated him for two hours. He then signed a confession. Notwithstanding argument at trial that the confession violated *Miranda's* constitutional rights, the confession was admitted. He was convicted of rape and kidnapping.

The *Miranda* opinion articulated strict protections to an accused in custody relating to questioning, requiring authorities to advise what we know today to be the *Miranda* rights: **You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be appointed for you.**

At last the issue of fair custodial questioning was recognized by the Supreme Court as an integral aspect of the Fifth Amendment: "[No person shall] be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law..."

Thus, Plutarch is right. "The wheels of justice grind slowly, but they grind exceedingly fine."

Paul Mark Sandler, trial lawyer and author, can be reached at pms@shapirosher.com.