

**DON'T TALK YOUR WAY  
INTO TROUBLE**

*What you say in the wake of a self-defense incident can undermine your otherwise-ironclad claim that you were forced to act in self-defense.*

# HOLD YOUR TONGUE

**INTERACTIONS AFTER A SELF-DEFENSE INCIDENT**

**PAUL PENG**







## DO YOUR BEST TO STAY CALM AND QUIET

It is essential to understand that your Miranda rights are only read as you are arrested, and that any statements made during your law enforcement encounter can later be used in an attempt to incriminate you.



One of the most common questions asked during my Concealed Carry Weapon (CCW) certification courses is whether it is a good idea for someone to talk to law enforcement after a self-defense incident. You will have to interact with an officer at some point following a self-defense incident, but the words you choose are critical. If you aren't careful, you could jeopardize your case for lawful self-defense.

## FIFTH AMENDMENT

*"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor 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; nor shall private property be taken for public use, without just compensation."*

## MIRANDIZED

We have all seen TV shows, movies and documentaries depicting law enforcement officers and activities and are to some degree familiar with the "Miranda warning." But what is it, and where did it come from?

Miranda came into being on June 13, 1966, in the wake of the U.S. Supreme Court's ruling in *Miranda v. Arizona*. The court required that all criminal suspects be read their rights prior to interrogation. In other words, law enforcement officers are only required to give the Miranda warning upon arrest. Today, the Miranda warning is standard procedure for all law enforcement agencies

nationwide.

The Miranda warning dates back to March 1963, in Phoenix, Arizona, where an 18-year-old woman stated she was kidnapped and raped. After taking a statement from the woman, detectives responsible for the case arrested Ernesto Miranda. The details of what exactly happened during the investigation are up for debate, but it was widely believed that Miranda did not know his rights and there were credible suspicions that he was coerced into providing a guilty statement. On June 27, 1963, he was convicted of rape and kidnapping as well as a robbery pending on his record.

Such discrepancies led the American Civil Liberties Union (ACLU) to take up the case, which caused the guilty conviction to be overturned by the U.S. Supreme Court in a 5-4 ruling. However, in 1967, Miranda was retried and found guilty. He was released in 1972 but was stabbed to death in a bar fight four years later.<sup>1</sup>

Interestingly enough, pursuant to the U.S. Supreme Court's ruling in *Vega v. Tekoh* on June 23, 2022, law enforcement officials cannot be sued for damages under civil rights law for failing to issue the Miranda warning to suspects who are about to undergo interrogation.<sup>2</sup>

## SIXTH AMENDMENT

*"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."*

### 'SMILE!'

Body cameras were first introduced in the U.K. around 2005.<sup>3</sup> Since then, seven U.S. states — Colorado, Connecticut, Illinois, Maryland, New Jersey, New Mexico and South Carolina — have mandated the statewide use of body-worn cameras by law enforcement officers.<sup>4</sup> Cameras are mainly worn for transparency and accountability reasons: Basically, it was an attempt to rebuild the public's trust in law enforcement.

So did it work? Well, sort of. It makes sure that law enforcement officials — particularly the questionable ones — are on their P's and Q's and, for the most part, ensures that all cases are treated equally according to established policy. Law enforcement officials not only have to be better versed in the law and citizens' rights but also must improve their customer service skills and understanding of PTSD, depression and other mental health issues.

On the other hand, body cameras also ensure that suspects don't undermine the law by lying or omitting potentially incriminating statements. In other words, private citizens, just like law enforcement officers, have to study and better understand their rights to avoid being taken advantage of — especially during a self-defense encounter, where emotions and adrenaline tend to run high.

### SPONTANEOUS STATEMENTS

Individuals generally believe that statements can only be used against them once the Miranda warning has been read to them. This belief is unequivocally false.

As mentioned above, many law enforcement agencies now require officers and deputies to wear body cameras. So unless the content of a video (either visual or audio) violates the law, all content recorded can be admissible in a court of law. What

is captured is otherwise known as "spontaneous statements."

So what does the legal system consider to be admissible spontaneous statements? Once law enforcement arrives on scene, any private conversations (such as those between you and your spouse, you and your child, and any phone conversations) taking place where audio can be picked up are essentially admissible.

For example, if a self-defense incident occurs and a homeowner invokes his Fifth and Sixth Amendment rights but goes in the corner and states something potentially incriminating to his spouse or relative, as long as the audio content is picked up by a law enforcement officer's body camera and the audio content does not violate the law, the district attorney could use the audio in court should he or she decide to file charges against the homeowner. It is also worth mentioning that it is not illegal for law enforcement officials to lie to an arrestee to harvest needed statements or a confession.

You may have already correctly concluded the importance of you, a responsibly armed individual, understanding that the Miranda warning does not have to be read to you in order for your statements to be used against you.

### SHORT AND SWEET

If you find yourself in a self-defense situation, the only statement that you should provide to the police is, "I defended myself because I was in fear for my life." Simply saying you were scared will paint an incorrect picture of the incident and will end up being used against you in court. Most self-defense laws in the United States do not allow the deployment of deadly force simply because someone is scared. For instance, California Penal Code Section 198 states that fear alone is not enough to justify

the utilization of deadly force.<sup>5</sup>

Following the succinct statement mentioned above, kindly refrain from answering any questions from any law enforcement official by invoking your Fifth Amendment right to remain silent until you have invoked your Sixth Amendment right to counsel by speaking to a qualified legal professional.

The unpleasant truth is that nothing good can come from speaking to law enforcement officials after a self-defense incident. After communicating that you were under imminent, unavoidable threat of death, it's time to keep to yourself until you have spoken to a qualified attorney.

### ENDNOTES

(1) "1966: *Miranda v. Arizona*," Library of Congress, accessed April 10, 2023, [Guides. LOC.gov/latinx-civil-rights/miranda-v-arizona](https://www.loc.gov/latinx-civil-rights/miranda-v-arizona); "Facts and Case Summary — *Miranda v. Arizona*," [USCourts.gov](https://www.uscourts.gov/uscourts/education-resources/educational-activities/facts-and-case-summary-miranda-v-arizona), accessed April 4, 2023, [USCourts.gov/education-resources/educational-activities/facts-and-case-summary-miranda-v-arizona](https://www.uscourts.gov/education-resources/educational-activities/facts-and-case-summary-miranda-v-arizona). (2) Shannon Bond, "Supreme Court says police can't be sued for not reading out Miranda rights," NPR, July 3, 2022, [NPR.org/2022/07/03/1109607667/supreme-court-says-police-cant-be-sued-for-not-reading-out-miranda-rights](https://www.npr.org/2022/07/03/1109607667/supreme-court-says-police-cant-be-sued-for-not-reading-out-miranda-rights). (3) "Britain straps video cameras to police helmets," NBC News, July 13, 2007, [NBCNews.com/id/wbna19750278](https://www.nbcnews.com/id/wbna19750278). (4) "Body-Worn Camera Laws Database," NCSL, April 30, 2021, [NCSL.org/civil-and-criminal-justice/body-worn-camera-laws-database](https://www.ncsl.org/civil-and-criminal-justice/body-worn-camera-laws-database). (5) It reads: "A bare fear of the commission of any of the offenses mentioned in subdivisions 2 and 3 of Section 197, to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted under the influence of such fears alone." *Cal. Pen. Code § 198*, [CaseText.com](https://www.casetext.com/statute/california-codes/california-penal-code/part-1-of-crimes-and-punishments/title-8-of-crimes-against-the-person/chapter-1-homicide/section-198-bare-fear), accessed April 10, 2023, [CaseText.com/statute/california-codes/california-penal-code/part-1-of-crimes-and-punishments/title-8-of-crimes-against-the-person/chapter-1-homicide/section-198-bare-fear](https://www.casetext.com/statute/california-codes/california-penal-code/part-1-of-crimes-and-punishments/title-8-of-crimes-against-the-person/chapter-1-homicide/section-198-bare-fear).

