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**Civil Rights Liability for Intentional Violations of *Miranda*  
Part Two: Criminal Admissibility**

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***Part One – Liability Considerations (last issue)***

- Introduction
- The *Miranda* rule
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***Part Two – Criminal Admissibility (this issue)***

- California Supreme Court – *People v. Neal*
- Ninth Circuit – *Doody v. Schriro*

[Part One](#) noted that some law enforcement agencies adopted a practice of interrogation outside *Miranda*, and even trained investigators in the practice.

❖ **California Supreme Court holds that a coerced confession is inadmissible for impeachment purposes in a criminal trial**

Less than two months after *Chavez* was announced, the California Supreme Court in [People v. Neal](#), 31 Cal. 4th 63 (2003), reinforced a criminal suspect's core Fifth Amendment protection against admissibility of involuntary confessions, holding that such confessions are not even admissible as impeachment.

An 18-year-old defendant, Kenneth Ray Neal, was charged and convicted of murdering a 69-year-old homosexual former child care worker. The old man had taken Neal in and often referred to him as a grandson, but had recently been making sexual advances to the

boy. The old man was strangled by the cord from an electric griddle while barbecuing cheeseburgers. *Id.* at 69-70. Neal was detained as a witness, and initially denied the crime. *Id.* at 70-71.

During the initial interrogation, Neal denied the murder. *Id.* at 72. The detective gave Neal *Miranda* warnings, and Neal repeatedly invoked his rights to remain silent and to consult with an attorney, including at least seven requests to talk to an attorney before making further statements. *Id.* at 72-74. But the detective persisted in a line of questioning that was combined with various threats, intimidation and advice.

The investigator threatened Neal that if he did not cooperate, “the system is going to stick it to you as hard as they can” including the possibility of a first-degree murder charge.” *Id.* at 73. The detective later admitted that in continuing the questioning, “he was applying what he called a ‘useful tool’ that he had learned from a supervisor and knew to be improper.” *Id.* at 74.

Neal promised to “sleep on it and maybe get back in touch...” *Id.* at 74. Neal was then placed in a cell, without food, water, a toilet or a sink. He was not given water or permitted to use the bathroom until morning. *Id.*

The following morning, Neal sent word that he wanted to talk to the detective, and submitted to a recorded interview, in which he was again given *Miranda* warnings. In that session, Neal confessed that he killed the old man because Neal wanted to watch MTV, while the old man wanted to watch the news. *Id.* at 75.

Neal also eventually admitted that the reason he did not attempt to flee after the murder was because he felt guilty and hoped the police would catch him. *Id.* at 76. Not until after more than 24 hours in custody, during which time he had made three taped confessions, was Neal finally given any food. *Id.*

At trial, the trial court excluded the portion of the first interview after the *Miranda* warnings because the detective’s “blatant disregard of *Miranda* came ‘very close to coercion.’” *Id.* at 77, fn. 3. But the taped confessions were admitted on the ground Neal voluntarily initiated the interview. *Id.*

Reviewing the conviction on appeal, the Supreme Court began its analysis by referring to a California precedent, [\*People v. Peevy\*](#), 17 Cal. 4th 1184, 953 P.2d 1212 (1998), which held that even if officers deliberately violate *Miranda* by continuing an interrogation after the suspect has invoked the right to counsel, the suspect’s statement remains admissible as impeachment. Adopting the rationale of *Harris*, the Court in *Peevy* held that a

statement obtained in deliberate violation of *Miranda* may be admissible as impeachment. 17 Cal. 4th at 1193-1194.

But the *Neal* case raised an issue left open by *Peevy*. Defendant in *Peevy* contended that his statement was obtained in deliberate violation of *Miranda*, but did not claim that the statement was actually involuntary. 17 Cal. 4th at 1198, fn. 2. As stated above, even before *Miranda* a confession could be excluded on the ground that it was involuntary.

Neal argued both violation of *Miranda* and factual involuntariness—that officers continued to question him after he invoked his rights to remain silent and to consult with counsel; and, that this questioning coerced him into making an involuntary confession the following morning. On that basis, Neal argued that his confession should be held inadmissible even for purposes of impeachment.

The California Supreme Court agreed, 31 Cal. 4th at 68. In reversing the Court of Appeal’s decision to affirm the conviction, the Supreme Court stated, “the Court of Appeal did not adequately take into account the circumstances establishing involuntariness, especially the officer’s deliberate violation of *Miranda*.” 31 Cal. 4th at 69.

The Supreme Court in *Neal* found the defendant’s initiation of further conversation, and confession, were involuntary because he “remained in custody without being provided access to counsel” and because of his “youth, inexperience, minimal education, and low intelligence....” *Id.* at 78. The finding also rested on the “deprivation and isolation imposed on defendant during his confinement; and the promise and the threat ... after questioning should have ceased. *Id.*

The Court commented that the detective’s conduct was “‘unethical’ and must be ‘strongly disapproved.’” *Id.* at 81, citation omitted. Considering the totality of the circumstances, the Court found that the detective’s persistence in questioning sent defendant a clear message that he “would not honor defendant’s right to silence or his right to counsel until defendant gave him a confession.” *Id.* at 82.

The Court distinguished precedent recognizing that a suspect’s request for counsel could be satisfied by a break in questioning sufficient to permit the suspect “reasonable time and opportunity, while free from coercive custodial pressures, to consult counsel if he or she wishes to do so.” *Id.* at 83, emphasis omitted.

The decision was also influenced by the detective’s threats and promises, which “traditionally have been recognized as corrosive of voluntariness.” *Id.* at 84. The Court adverted to defendant’s admitted guilty conscience, but found the detective’s misconduct

“played the dominant role” in causing the confession. *Id.* at 85.

The Court finally held Neal’s confessions were inadmissible for the prosecution’s case-in-chief, “but also were inadmissible for *any* purpose because they were involuntary.” *Id.* *Neal* establishes that a confession obtained in violation of *Miranda* remains admissible for impeachment, but a coerced confession is inadmissible for any purpose. In so holding, the opinion features detailed discussion of the specific factors that may bear on any finding of involuntariness.

❖ **Ninth Circuit finds that a confession was coerced even though adequate *Miranda* warnings were given.**

In a further refinement of the legal rules surrounding *Miranda* and coerced confessions, the Ninth Circuit Court of Appeals in [\*Doody v. Schriro\*](#), 548 F.3d 847 (9th Cir. 2008), suppressed a confession that was found involuntary even though *Miranda* warnings were formally given.

The Ninth Circuit reversed the denial of a petition for habeas corpus filed by Johnathan Andrew Doody, a 17-year-old suspect with no prior criminal history, who had been convicted of involvement in the murder of nine monks at a Thai Buddhist temple in Phoenix, Arizona in 1991. *Id.* at 849-850.

In his petition, Doody argued that the perfunctory manner in which the warnings were given, combined with the officers’ repeated insistence during a 12-hour overnight interrogation, that he must answer, that the officers would not disclose his answers, and that they would not stop until he answered their questions, effectively “de-*Mirandized*” him and rendered his confession involuntary. *Id.* at 857-858.

Doody had been picked up at an evening football game and taken to the police station. The officers read him his *Miranda* rights, interspersed with statements designed to discount their significance. Doody agreed to speak to the officers without an attorney, and two officers launched into a taped interrogation that lasted from 9:25 that evening until 10:00 the following morning. *Id.* at 851.

More than two hours into the interrogation, as the officers were asking Doody whether he had borrowed the murder weapon from its owner, the officers told Doody that it was important for him to tell them, and that he had to tell them. Doody then admitted he had borrowed the murder weapon, but said he had returned it long before the murders, and denied involvement in the murders. *Id.* at 852.

For two more hours, officers insisted Doody knew more than he was telling, and told him he had to tell the truth to protect himself from what others were saying, because the officers knew what had happened. An hour later, two more officers entered the room, and Doody stopped responding. During one 20-minute stretch, officers peppered Doody with 45 questions and received only one answer. *Id.* at 853.

Doody then answered a few questions about whether anyone had threatened him, then fell silent again. After asking seven times whose idea it was to go to the temple, a detective told Doody, “I’m gonna stay here until I get an answer.” *Id.*

More than six hours into the interrogation, “after forty-five minutes of relentless questioning in the face of Doody’s almost complete silence,” Doody finally admitted he was involved. *Id.* Doody then fell silent again for a half hour, but after 4 a.m., began to talk about the details of the incident. *Id.* at 854. Doody was charged with the murders and was tried as an adult. *Id.*

At trial, a ten-day hearing was held on Doody’s motion to suppress the interrogation, and the trial court denied the motion, finding the *Miranda* warning was adequate and the confession was voluntary. *Id.* Doody was convicted of felony murder without premeditation and was sentenced to nine consecutive life terms. *Id.* at 855-856. The convictions were affirmed on appeal, and Doody later petitioned for habeas corpus under the representation of constitutional law professor Alan Dershowitz.

***Buddhist monks campaigned against the death penalty for Mr. Doody!***

The habeas corpus petition presented two alternative theories of violating *Miranda*: First, that the manner in which the warnings were given, interspersed with statements designed to minimize their significance, resulted in an overall ineffective recitation of the warnings.

Secondly, that the officers’ repeated insistence on receiving answers, combined with vague assurances the answers would not be disclosed, and the statement that the interrogation would not end until answers were given, negated the *Miranda* warnings, and effectively “de-*Mirandized*” Doody, since they essentially told Doody that he did not have the right to remain silent, and that his statements would not be used against him. *Id.*

at 857. The petition also argued that the conviction was involuntary in the traditional sense.

The Court observed that voluntariness is tested according to the factors “length and location of the interrogation; evaluation of the maturity, education, physical and mental condition of the defendant; and determination of whether the defendant was properly advised of his *Miranda* rights.” *Id.* at 859. Thus *Miranda* warnings, in addition to being a distinct ground for exclusion of a statement, also enter into the general analysis of whether the statement was voluntary.

The Court observed that the *Miranda* rule “admittedly sweeps in noncoerced statements, and in that respect is broader than the due process voluntariness requirement. *Id.* at 860. The *Miranda* rule produces the “disadvantage” that “statements which may be by no means involuntary, made by a defendant who is aware of his ‘rights,’ may nonetheless be excluded and a guilty defendant go free as a result.” *Id.* (citation omitted).

The perceived countervailing advantages of *Miranda*, however, are that it is a bright-line test easier to apply than voluntariness alone, and it is the lesser of two evils compared to the risk that a conviction would result from overlooking the coerced nature of a custodial confession. *Id.*

Consequently, while failure to give *Miranda* warnings could result in exclusion of a confession that in fact was voluntary, the giving of *Miranda* warnings would not necessarily guarantee that the confession would be found voluntary.

Recognizing it would be rare that a confession following adequate *Miranda* warnings would be found involuntary, *id.* at 860 fn. 14, the Court nevertheless held that “when analyzing the voluntariness of a confession following *Miranda* warnings, the delivered warnings, even if sufficient to satisfy *Miranda*’s prophylactic rule, must be examined in detail, as they are part of the circumstances pertinent to the voluntariness inquiry.” *Id.* at 860-861.

From the perspective of the *Miranda* rule, the Court in *Doody* found the warnings themselves were adequate, even though they were done in a perfunctory manner and interspersed with statements minimizing their significance. The Court compared the manner of giving the warnings with *Cooper*, where the officer “deliberately turned the advisement into what he hoped Cooper would perceive as a joke” and as a “psychological ploy ... designed to make Cooper ignore the warnings....” *Id.* at 861, citing *Cooper*, 963 F.2d at 1228.

In contrast, in the warnings given to Doody, “the essential rights were conveyed,” and the interspersed “oral elaborations ... were not affirmatively misleading.” *Id.* at 864. The Ninth Circuit called it a “close question” but found the warnings adequate. *Id.*

But turning to the voluntariness issue, the Court agreed with Doody’s argument that the subsequent conduct of the interrogation “undercut the purpose of the *Miranda* warnings: to ensure that a suspect fully understands his rights and the implications of waiving them.” *Id.* The Court stated that “the officers explicitly and implicitly told Doody—an increasingly sleep-deprived juvenile—that he did *not* have the right to remain silent.” *Id.*

The Court noted that during the warnings, Doody was told he could be quiet, but when he fell silent during the interrogation, “the officers told him expressly that he had to answer them—in other words, that he could not remain silent. *Id.* at 865. And as a result of the officer’s statement that he was going to stay until he gets an answer, “the officers’ original warning informing Doody of his right to remain silent, itself a casual and underplayed message, was negated by their subsequent conduct....” *Id.*

Under these circumstances, the Court found that although the warnings were technically adequate, “the safety net that proper, serious *Miranda* warnings provide—that of informing a suspect of his rights and of the gravity of the situation—was quite weak in this case, prone to give way as a protection against an involuntary confession if conditions were otherwise conducive to such a confession.” *Id.* at 865-866.

The Court determined that Doody’s will had been overcome “by the officers’ overall, interrelated, coercive messages that they would continue relentlessly questioning him until he told them what they wanted to hear, and that he would eventually have to do so.” *Id.* at 866. The Court also considered Doody’s age, lack of criminal history, the length of the interrogation, and the fact it occurred outside the presence of an attorney or family member. *Id.* at 866-867.

The opinion criticized the state court for finding that “Doody was ‘alert and responsive throughout the interrogation.’” The tape featured “long stretches of silence—as long as ten minutes—in the face of dozens of questions in a row.” *Id.* at 868-869. The state court found the interrogation “courteous” but the tape showed the officers “tones varied from ‘pleading’ to scolding to sarcastic to demanding.” *Id.* at 869.

And, as exemplified by the statement that the officers were going to stay until they get an answer, the Ninth Circuit pointed out that “no matter what the tone, twelve hours of insistent questioning of a juvenile by tag-teams of two, three and four officers became menacing and coercive, and decidedly *not* courteous.” *Id.*

Finally, in an error to which the Ninth Circuit ascribed “great significance” the state court had found that Doody confessed after two hours, when the tape showed he “did not confess to *any* connection to the temple murders until over six hours of interrogation.” *Id.* The Court held, “A key factor in this voluntariness inquiry is the length of the interrogation before the confession.” *Id.*

The Court then found that the conviction relied almost entirely on the confession, and accordingly, reversed with directions to grant the writ. *Id.* at 870. The *Doody* case demonstrates that 40 years after *Miranda*, the star chamber interrogation methods surveyed in that opinion can still occasionally rear their head, especially in the investigation of a particularly atrocious crime.

The opinion contains a wealth of case history examining the adequacy of *Miranda* warnings, the voluntariness of confessions, and the judicial system’s ongoing efforts to balance the competing rights of fairness and truth involved in the quest for justice. As shown by this history, improper interrogation procedures result in innocent parties being convicted, and guilty parties going free.

The public interest in avoiding these evils calls on law enforcement professionals to pay close attention to the constantly evolving legal framework within which investigation and interrogation must be conducted.

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- Also see. [Intentional Violations of Miranda: A Strategy for Liability](#), by Kimberly A. Crawford, J.D., FBI Law Enforcement Bulletin, Aug. 1997.
- AELE editor's note: After this article was written, the Supreme Court decided [Montejo v. Louisiana](#), #07-1529, 2009 U.S. Lexis 3973. Several news articles erroneously reported that police may now freely interrogate prisoners who are represented by legal counsel. The *Montejo* decision has a narrow application, to those instances where a suspect has not met with his court-appointed lawyer and has not asked for the assistance of counsel.

Although the Supreme Court reversed a 1986 holding (*Michigan v. Jackson*), many states have interpreted their state constitutions in conformity with the 1986 decision. Those state court decisions also must be overturned before the holding in *Montejo* is effective. It is unclear whether state supreme courts will do so, and they are free to interpret their state constitutions in a more restrictive manner.

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