

Tough-on-crime chief justice helped lead way on 'Miranda'

William C. Kashatus

is a historian, educator, and writer

Fifty years ago, the U.S. Supreme Court, in a decision written by Chief Justice Earl Warren, affirmed the protections of the Fifth and Fourteenth Amendments by ruling that a suspect must be clearly informed prior to any questioning that he has the right to remain silent and that anything he says can be used against him in a court of law; that he has the right to the presence of an attorney; and that if he cannot afford an attorney, one must be appointed to him.

Hailed by civil liberties advocates as a victory for individual rights, *Miranda v. Arizona* was one of four landmark decisions that established the Warren Court as one of the most liberal in the nation's history, and Warren as a champion of individual rights.

Ironically, *Miranda* and the warnings established by the decision contradict Warren's earlier reputation as a tough, crime-busting California prosecutor and state attorney general who supported Japanese American internment during World War II.

In addition to *Miranda*, the court's liberal reputation was built on three other landmark decisions: *Brown v. Board of Education* (1954), outlawing segregation in public schools; *Gideon v. Wainwright* (1963), ensuring that all indigent criminal defendants receive publicly funded counsel; and *Reynolds v. Sims* (1964), requiring "one man, one vote" rules of apportionment of election districts.

But *Miranda* stands out because of Warren's background as a "law and order" prosecutor.

Unlike his liberal colleagues on the court, he had actually interrogated murder suspects, knew firsthand how police obtained confessions,



Chief Justice Earl Warren. File Photo

and was keenly aware of the opportunities for coercion in the custodial setting.

Prior to his appointment to the Supreme Court, Warren spent nearly two decades as a tough-on-crime district attorney. Not one of the convictions he obtained was upset on appeal. He was proud of his legal footwork, which was thorough and widely supported by police departments, district attorneys; and Republican legislators.

During World War II, Warren, as attorney general of California, was the moving force behind the compulsory relocation of 120,000 Americans of Japanese ancestry from the West Coast to inland internment camps. His actions were undertaken without any evidence of disloyalty or due process.

Nevertheless, when he became the Republican governor of California in 1943, he opposed the return of the evacuees, warning that "if the Japs are released, no one will be able to tell a saboteur from

any other Jap."

Like many of the law enforcement techniques used during Warren's tenure as a district attorney, Japanese American internment would later be declared unconstitutional.

Miranda drove a wedge between Warren and the law-and-order conservatives who once supported him. The notion of a criminal suspect having to be informed of certain rights at the time of his or her arrest not only divided the court, resulting in a 5-4 split, but earned the chief justice the wrath of the conservative establishment.

Critics charged that the *Miranda* warnings protected the suspected criminal at the expense of the victim by reducing, if not eliminating, an important tool of evidence-gathering in criminal cases — questioning the defendant upon arrest. They also charged that the decision would undermine the efficiency of the police and insisted it would contribute to an increase in crime. There were even some critics who demanded that Warren be impeached.

Responding to these complaints, Congress, in 1968, enacted a statute purporting to overrule *Miranda*. Subsequent decisions by the Burger and Rehnquist Courts significantly limited the applicability of *Miranda* while not overruling the case outright. But none of that seemed to matter to Warren.

Before his death July 9, 1974, the former chief justice was asked if he had become "soft on crime" during his tenure on the Supreme Court. "I wasn't 'softer' on crime than I ever was," he declared, bristling at the charge. "All we did on the court was to apply the Constitution, which says that any defendant is entitled to due process and to certain basic rights."

✉ bill@historylive.net