

## Once-Voided Confession Still Usable

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Ernesto Miranda, the convicted Arizona rapist who gave his name to the Supreme Court's restrictive ruling on police questioning, may wind up as one of the big losers in the confession cases.

Arizona prosecutors say that the very same confession that was thrown out by the Supreme Court in his prosecution for rape may still be allowed to sustain a companion prosecution for robbery.

If State authorities are correct, this development may stand as the crowning irony to the high court's decision to limit its confession guidelines to new cases.

Miranda, a 26-year-old Phoenix warehouse worker, was among four prisoners whose cases were selected by the Court for full review of then constitutional issues involved in confessions obtained by police without warning suspects of their rights.

He had confessed to unrelated crimes of rape and robbery at one two-hour sitting with police officers. The Arizona Supreme Court upheld his rape sentence of 20 to 30 years and a separate, consecutive robbery sentence of 20 to 25 years.

For a man who lacked a lawyer and money to hire one, Miranda seemed for a while to be among the lucky ones. The

American Civil Liberties Union asked John P. Frank, a highly regarded constitutional lawyer, to handle Miranda's petition to the Supreme Court.

Partly because of slightly differing factual settings in the two cases, Frank chose to seek review of the rape conviction, leaving the robbery case in temporary suspension.

On June 13 the Supreme Court reversed Miranda's conviction and three others, deferring for one week its announcement in a fifth case as to whether the ruling would be made retroactive to old, closed cases.

In the light of recent Supreme Court decisions, few doubted that the ruling would give new trials to dozens of defendants on the Court docket whose appeals were filed about the same time as Miranda's. The issue appeared to be whether the ruling would benefit prisoners filing habeas corpus petitions who had exhausted their direct appeals.

But last Monday the Court surprised everyone. A majority of seven said the new rules applied only to defendants whose trials began after June 13.

Both of Miranda's trials, of course, began before that date, but the rape trial was covered by the case entitled *Miranda v. Arizona*. Not so the robbery trial, according to Arizona Assistant Attorney General Gary K. Nelson.

Frank said yesterday that his office was studying the problem and he did not know how the case would come out.

Dissenting from last Monday's ruling were Justices Hugo L. Black and William O. Douglas. Only Douglas registered the opinion that the majority was discriminating against at least 40 other prisoners in similar situations whose appeals had been of the same "vintage" as Miranda's.