

# Why Should I Care That No One's Reading Dzhokhar Tsarnaev His Miranda Rights?

When the law gets bent out of shape for him, it's easier to bend out of shape for the rest of us.

By [Emily Bazelon](#) | Posted Friday, April 19, 2013, at 11:29 PM

Dzhokhar Tsarnaev will not hear his Miranda rights before the FBI questions him Friday night. He will have to remember on his own that he has a right to a lawyer, and that anything he says can be used against him in court, because the government won't tell him. This is an extension of a rule the Justice Department wrote for the FBI—without the oversight of any court—called the “public safety exception.”

There is *one* specific circumstance in which it makes sense to hold off on Miranda. It's exactly what the name of the exception suggests. The police can interrogate a suspect without offering him the benefit of Miranda if he could have information that's of urgent concern for public safety. That may or may not be the case with Tsarnaev. The problem is that Attorney General Eric Holder has stretched the law beyond that scenario. And that should trouble anyone who worries about the police railroading suspects, which can end in false confessions. No matter how unsympathetic accused terrorists are, the precedents the government sets for them matter outside the easy context of questioning them. When the law gets bent out of shape for Dzhokhar Tsarnaev, it's easier to bend out of shape for the rest of us.

Here's the legal history. In the 1984 case [New York v. Quarles](#), the Supreme Court carved out the public safety exception for a man suspected of rape. The victim said her assailant had a gun, and he was wearing an empty holster. So the police asked him where the gun was before reading him his Miranda rights. That exception was allowable, the court said, because of the immediate threat that the gun posed.

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Fine. Good, even—that gun could have put other people in danger. Things start to get murkier in 2002, after the FBI bobbled the interrogation of Zacarias Moussaoui, the 20<sup>th</sup> 9/11 hijacker—the one who didn't get on the plane—former FBI special agent [Coleen Rowley](#) wrote a [memo](#) pleading that “if prevention rather than prosecution is to be our new main goal, (an objective I totally agree with), we need more guidance on when we can apply the Quarles 'public safety' exception to Miranda's 5<sup>th</sup> Amendment requirements.” For a while, nothing much happened.

Then the Christmas Day bomber, Umar Farouk Abdulmutallab, was apprehended in December 2009, before he could blow up a plane bound for Detroit. The FBI invoked the public safety exception and interrogated. When the agents stopped questioning Abdulmutallab after 50 minutes and Mirandized him—after getting what they said was valuable information—Abdulmutallab asked for a lawyer and stopped talking. Republicans in Congress denounced the Obama administration for going soft.

Next came Faisal Shahzad, caught for attempting to bomb Times Square in May 2010. [He was interrogated without Miranda warnings](#) via the public safety exception, and again, the FBI said it got useful information. This time, when the suspect was read his rights, he kept talking. But that didn't stop Sen. John McCain and then Sen. Christopher Bond from railing against Miranda. "We've got to be far less interested in protecting the privacy rights of these terrorists than in collecting information that may lead us to details of broader schemes to carry out attacks in the United States," [Bond said](#). "When we detain terrorism suspects, our top priority should be finding out what intelligence they have that could prevent future attacks and save American lives," [McCain said](#). "Our priority should not be telling them they have a right to remain silent."

[Holder started talking about a bill](#) to broadly expand the exception to Miranda a few months later. Nothing came of that idea, but in October of 2010, Holder's Justice Department took it upon itself to widen the exception to Miranda beyond the Supreme Court's 1984 ruling. "Agents should ask any and all questions that are reasonably prompted by an immediate concern for the safety of the public or the arresting agents," stated a DoJ [memo to the FBI](#) that wasn't disclosed at the time. Again, fine and good. But the memo continues, "there may be exceptional cases in which, although all relevant public safety questions have been asked, agents nonetheless conclude that continued unwarned interrogation is necessary to collect valuable and timely intelligence not related to any immediate threat, and that the government's interest in obtaining this intelligence outweighs the disadvantages of proceeding with unwarned interrogation."

Who gets to make this determination? The FBI, in consultation with DoJ, if possible. In other words, the police and the prosecutors, with no one to check their power.

[The New York Times published the Justice Department's memo in March 2011](#). The Supreme Court has yet to consider this hole the Obama administration has torn in Miranda. In fact, no court has, as far as I can tell.

And so the FBI will surely ask 19-year-old Tsarnaev anything it sees fit. Not just what law enforcement needs to know to prevent a terrorist threat and keep the public safe but anything else it deemed related to "valuable and timely intelligence." Couldn't that be just about anything about Tsarnaev's life, or his family, given that his alleged accomplice was his older brother (killed in a shootout with police)? There won't be a public uproar. Whatever the FBI learns will be secret: We won't know how far the interrogation went. And besides, no one is crying over the rights of the young man who is accused of killing innocent people, helping his brother set off bombs that were loaded to maim, and terrorizing Boston Thursday night and Friday. But the next time you read about an abusive interrogation, or a wrongful conviction that resulted from a false confession, think about why we have Miranda in the first place. It's to stop law enforcement authorities from committing abuses. Because when they can make their own rules, sometime, somewhere, they inevitably will.

**[Read more on Slate about the Boston Marathon bombing.](#)**