Here is an addendum to the **Michigan Legal Guide**. The Guide is excellent information.

As the ACLU states - shut up, don't say anything, keep your mouth closed.

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The following is culled from "**Criminal Procedure Handbook**" (West Group, 2000/2001 edition). It seems to be a pretty good book. West Group, 620 Opperman Drive, St. Paul, MN 55162; 800-328-4880.

A confession must be voluntary to be admitted into evidence. Dickerson v. U.S., 120 S.Ct. 2326 (2000).

An involuntary confession obtained through police coercion violates the Due Process Clause. U.S. v Carroll, 207 F.3d 465 (8th Cir. 2000).

No Miranda warning required while being detained for traffic violation and driver made spontaneous statement which was not made in response to questioning by officer. U.S. v. McCoy, 200 F.3d 582 (8th Cir. 2000).

The statement was made after the officer told the driver that he was going to search the car without his consent.

A statement made to the media after a prior involuntary statement, is admissible, even though the original statement to the detective would have been inadmissible. Clagett v. Angelone, 209 F.3d 370 (4th Cir. 2000).

"Police officers are not required to administer Miranda warnings to everyone they question. Instead, the warnings mandated by Miranda apply only to statements obtained from an individual who is subjected to custodial police interrogation. The question to ask when determining whether custody existed at the time of police questioning is whether there is a formal arrest or restraint on the freedom of movement of the degree associated with a formal arrest. The standard to be used in asking the question is whether a reasonable person in the suspect's position would have understood this situation as the functional equivalent of a formal arrest." (Section 2:6)

No Miranda warning required where the interview occurred in defendant's home, in the afternoon, after defendant invited the agents in, defendant was never handcuffed, and neither agent exhibited any sign of force, defendant never asked for an attorney and he never refused to answer a question, and the interview lasted only twenty to thirty minutes.
U.S. v. Kennedy, 81 F.Supp.2d 1103 (D. Kan. 2000).

"For purposes of determining if a suspect is in custody, as would require Miranda warnings, the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation. However, Miranda warnings are not required prior to routine questioning when officers have no details concerning what happened when they arrive on the scene. Section 2:6.)

"Statements taken during legal custody are inadmissible if they were the product of coercion, if Miranda warnings were not given, or if there was a violation of the rule of Edwards v. Arizona, concerning the right to have counsel present during custodial interrogation. Two requirements must be met before Miranda is applicable: the suspect must be in 'custody,' and the questioning must meet the legal definition of 'interrogation.' Therefore, it was held in U.S. v. Miles [82 F.Supp.2d 1201 (D. Kan. 1999)], a person is 'in custody' for the purposes of Miranda if he has been deprived of his freedom of action in any significant way, or his freedom of action has been curtailed to a degree associated with a formal arrest." (Section 2:6.)

"A factor in determining if a suspect was in custody, for Miranda purposes, that looks to whether the suspect possessed unrestrained freedom of movement during the questioning focuses on any restraint on a suspect's freedom of movement during questioning. While suspects are often escorted or chaperoned during questioning for reasons unrelated to custody such as a concern for officer safety, the relevant inquiry is the effect on the suspect. However, physical restraint of a suspect alone does not invoke a suspect's Miranda rights. Yet, custody may be found even though no strong-arm tactics are used during questioning of a suspect. For purposes of deciding whether suspect was in custody when interrogated, and thus entitled to protections under Miranda, some considerations in determining whether the atmosphere of interrogation is dominated by police are whether the police assume control of the interrogation site, whether police dictate the course of conduct followed by the suspect, and whether other persons are present at the scene. Applying these principles in Evans v. Rogerson [77F.Supp.2d 1014 (S.D. Iowa 1999)], defendant was in custody when he was

interrogated by law enforcement officers in his home, even though officers informed him that he was not under arrest, where officer chaperoned defendant as he checked his mail and had defendant leave bathroom door open as he used facilities, without informing defendant that safety concerns dictated such precautions, defendant asked permission to use his own telephone, officers initiated interview by asking him to agree to questioning, officer gave misleading advice in telling defendant that he would not get into trouble by signing waiver form, officer returned to topic of investigation after defendant, who had invoked right to silence, initiated conversation on personal matters, and officers controlled situation despite being in defendant's home." (Section 2:6.)

An individual is "in custody" at the point a reasonable person would feel that he was not free to terminate the interrogation. Bains v. Cambra, 204 F.3d 964 (9th Cir. 2000) (Targeted questioning, during which officers interrogating defendant lied to him about whether alleged accomplice had made statements incriminating him, was *not* custodial interrogation sufficient to trigger Miranda requirements solely by virtue of occurring at police station to which defendant voluntarily accompanied officers for purposes of questioning).

"The term 'interrogation' encompasses not only express questioning but also any words or actions on the part of the police, other than those normally attendant to arrest and custody, that the police should know are reasonably likely to elicit an incriminating response from the suspect." (Section 2:6.) U.S. v. Li, 206 F.3d 78 (1st Cir. 2000).

A waiver of Miranda may occur, although defendant was illegally arrested. Bradley v. Nagle, 212 F.3d 559 (11th Cir. 2000).

Miranda may not in effect be overruled by an Act of Congress. Dickerson v. U.S., 120 S.Ct. 2326 (2000).

"The fact that an individual is a suspect in a criminal case is not relevant to the issue of whether he is 'in custody' for Miranda purposes, as long as the police do not convey to the individual that he is a suspect. However, the fact that interrogation of a suspect occurred at the police station is not dispositive of the issue of whether the suspect was 'in custody;' some suspects are free to come and go until the police decide to make an arrest." (Section 2:7.)

The privilege against self-incrimination attaches either when a person is legally compelled to testify, or during custodial interrogation, where the compulsion comes from the custodial environment. U.S. v. Hunerlach, 197F.3d 1059 (11th Cir. 1999).

"For Miranda purposes, an individual is 'in custody at the point a reasonable person would feel that he was not free to terminate the interrogation. (Section 2:7.)

Opinion on Miranda: (1) When the Miranda warning is required, but not given, the police will usually lie about the facts, so that the court will rule that no Miranda warning was required (the courts nearly always believe the police lies), and (2) the best thing to do when confronted by the police is to assert one's 5th Amendment right to remain silent, whether or not Miranda is given. People have the right to remain silent, even if an interrogation without Miranda is "lawful." Of course this is only opinion and not meant to be legal advice.