

Miranda v. Arizona (1966)

"... the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination."

—Chief Justice Earl Warren,
speaking for the majority



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About landmarkcases.org

This site was developed to provide teachers with a full range of resources and activities to support the teaching of landmark Supreme Court cases, helping students explore the key issues of each case. The "Resources" section features basic building blocks such as background summaries and excerpts of opinions that can be used in multiple ways. The "Activities" section contains a range of short activities and in-depth lessons that can be completed with students. While these activities are online, many of them can be adapted for use in a one-computer classroom or a classroom with no computer.

Depending upon the amount of time you have to teach the case, you may want to use one or more of the "Resources" or "Activities" in conjunction with one or more of the general teaching strategies. These general teaching strategies include moot court activities, political cartoon analysis, continuum exercises, and Web site evaluation.

If you have time constraints, look at the Teaching Recommendations on page 3.

Feel free to experiment with these materials!

Teaching Recommendations Based on Your Time

If you have one day . . .

- Begin with a video clip from a television series that depicts the police reciting the *Miranda* warnings. Discuss these warnings with students, soliciting their ideas about what rights the accused are entitled to based on what they have seen on television.
- Read the "Background" as a class. Have students identify the arguments for each side and predict the outcome.
- For homework, have students read the [Key Excerpts from the Majority Opinion](#) and answer the accompanying questions. .

If you have two days . . .

- Complete all activities for the first day.
- On the second day, complete the activity titled "[Miranda Warnings and the Bill of Rights](#)" to help refresh students' memories of how the Bill of Rights relates to the *Miranda* warnings.
- Complete the activity titled "[Controversy over the Court's Decision](#)" to help students understand why the *Miranda* decision is still controversial.
- For homework, have students analyze the [political cartoon](#) using what they learned from the "[Controversy over the Court's Decision](#)."

If you have three days . . .

- Complete all activities suggested for the first and second days.
- On the third day, discuss the [political cartoon](#).
- Alternatively, on the third day, complete the jigsaw activity titled "[Should Miranda Warnings Be Required Police Procedure?](#)"
- Assess students' understanding of the principles of *Miranda* by completing the activity "[Beyond Miranda](#)."
- For homework, have students read the excerpt from David Simon's book *Homicide* provided in the activity titled "[A Real World Case Study: Homicide by David Simon](#)" and answer the questions or write the short essay described in the assignment.

If you have four days . . .

- Complete all the activities for the first, second, and third days.
- On the fourth day, have students complete [Miranda Rights for Juveniles: Yarborough v. Alvarado](#).
- Alternatively, on the third and fourth day, conduct a mini-moot court in triads according to the instructions in the activity "[Should Miranda Be Overturned in Dickerson v. the United States?](#)" Additionally, refer to [Miranda v. Arizona: A Primer](#) to crystallize the key concepts of the doctrine.

Background Summary and Questions • • •

Ernesto Miranda was a poor Mexican immigrant living in Phoenix, Arizona, in 1963. Miranda was arrested after a crime victim identified him in a police lineup. Miranda was charged with rape and kidnapping and interrogated for two hours while in police custody. The police officers questioning him did not inform him of his Fifth Amendment right against self-incrimination, or of his Sixth Amendment right to the assistance of an attorney.

As a result of the interrogation, he confessed in writing to the crimes with which he was charged. His written statement also included an acknowledgement that he was aware of his right against self-incrimination. During his trial, the prosecution used his confession to obtain a conviction, and he was sentenced to 20 to 30 years in prison on each count.

Miranda's defense attorney appealed to the Arizona Supreme Court. His attorney argued that his confession should have been excluded from trial because he had not been informed of his rights, nor had an attorney been present during his interrogation. The police officers involved admitted that they had not given Miranda any explanation of his rights. They argued, however, that because Miranda had been convicted of a crime in the past, he must have been aware of his rights. The Arizona Supreme Court denied his appeal and upheld his conviction.

The case comes down to this fundamental question: What is the role of the police in protecting the rights of the accused, as guaranteed by the Fifth and Sixth Amendments to the Constitution? The Fifth Amendment states that no person "shall be compelled in any criminal case to be a witness against himself. . . ." The Sixth Amendment states that, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." The Supreme Court of the United States had made previous attempts to deal with these issues. In *Brown v. Mississippi* (1936), the Court had ruled that the Fifth Amendment protected individuals from being forced to confess. In *Gideon v. Wainwright* (1963), the Court held that persons accused of felonies have a fundamental right to an attorney, even if they cannot afford one. In 1964, after Miranda's arrest, the Court ruled that when an accused person is denied the right to consult with his attorney, his or her Sixth Amendment right to counsel is violated (*Escobedo v. Illinois*). But do the police have an obligation to ensure that the accused person is aware of these rights? If so, at what point in the criminal justice process must the defendant learn of these rights?

In 1965, the Supreme Court of the United States agreed to hear Miranda's case. At the same time, the Court agreed to hear three similar cases, *Vignera v. New York*, *Westover v. United States*, and *California v. Stewart*. The Court combined the four cases. Since Miranda was listed first among the four cases considered by the Court, the decision came to be known by that name. The decision in *Miranda v. Arizona* was handed down in 1966.

Background Summary and Questions • • •

Questions to Consider:

1. What rights of the accused does the Fifth Amendment protect? The Sixth Amendment?
2. How might knowledge of these rights have changed what Ernesto Miranda did when the police questioned him?
3. Individual rights must be balanced against the values of society at large. For instance, the right to free speech must be balanced against our desire for an orderly society. This is why demonstrations, while protected by the First Amendment, can have certain restrictions placed on them. In *Miranda*, what values must be balanced against the right against self-incrimination and the right to counsel?
4. You are probably learning about the rights of the accused in a government or history class. Some would argue that it is the individual's responsibility to know what his or her rights are under the Constitution, and the government can assume that accused persons know their rights without informing them. Do you think the government should have to inform each individual who is arrested of his or her rights? Why or why not?

Background Summary and Questions • •

Ernesto Miranda was a poor Mexican immigrant living in Phoenix, Arizona in 1963. A Phoenix woman was kidnapped and raped. She identified Miranda in a police lineup. Miranda was arrested, charged with the crimes, and questioned by the police for two hours. The police officers questioning him did not inform him of his Fifth Amendment right against self-incrimination or of his Sixth Amendment right to the assistance of an attorney. The Fifth Amendment states that no person "shall be compelled in any criminal case to be a witness against himself. . . ." The Sixth Amendment states that, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

As a result of the questioning, Miranda confessed in writing to the crimes. His statement also said that he was aware of his right against self-incrimination. During his trial, the prosecution used his confession to obtain a conviction, and he was sentenced to 20 to 30 years in prison on each count.

Miranda appealed his case to the Arizona Supreme Court. His attorney argued that his confession should have been excluded from trial because he had not been informed of his rights, nor had an attorney been present during his interrogation. The police officers involved admitted that they had not given Miranda any explanation of his rights. The state argued, however, that because Miranda had been convicted of a crime in the past, he must have been aware of his rights. The Arizona Supreme Court denied Miranda's appeal and upheld his conviction.

The case comes down to this fundamental question: What is the role of the police in protecting the rights of the accused, as guaranteed by the Fifth and Sixth Amendments to the Constitution? The Supreme Court of the United States had made previous attempts to deal with these issues. The Court had already ruled that the Fifth Amendment protected individuals from being forced to confess. They had also held that persons accused of serious crimes have a fundamental right to an attorney, even if they cannot afford one. In 1964, after Miranda's arrest, but before the Court heard his case, the Court ruled that when an accused person is denied the right to consult with his attorney, his or her Sixth Amendment right to the assistance of a lawyer is violated. But do the police have an obligation to ensure that the accused person is aware of these rights before they question that person?

In 1965, the Supreme Court of the United States agreed to hear Miranda's case. At the same time, the Court agreed to hear three similar cases. The Court combined all the cases into one case. Since Miranda was listed first among the four cases considered by the Court, the decision came to be known by that name. The decision in *Miranda v. Arizona* was handed down in 1966.

Background Summary and Questions • •

Questions to Consider:

1. What rights of the accused does the Fifth Amendment protect? The Sixth Amendment?
2. If the police had informed Ernesto Miranda of these rights, do you think he might have done anything differently?
3. Individual rights must be balanced against the values of society at large. For instance, the right to free speech must be balanced against our desire for an orderly society. This is why demonstrations, while protected by the First Amendment, can have certain restrictions placed on them. In *Miranda*, what values or goals of society must be balanced against the right against self-incrimination and the right to counsel?
4. You are probably learning about the rights of the accused in a government or history class. Some would argue that it is the individual's responsibility to know what his or her rights are under the Constitution, and the government can assume that accused persons know their rights without informing them after they are arrested. Do you think the government should have to inform each individual who is arrested of his or her rights? Why or why not?

Background Summary and Questions •

Vocabulary

immigrant (to immigrate)

Define:

Use in a sentence:

accused (to accuse)

Define:

Use in a sentence:

confession

Define:

Use in a sentence:

appealed (to appeal)

Define:

Use in a sentence:

interrogation (to interrogate)

Define:

Use in a sentence:

Miranda v. Arizona

Ernesto Miranda was a poor Mexican *immigrant* who lived in Arizona in 1963. A woman *accused* Miranda of committing a crime against her. The police arrested Miranda and asked him questions about the crime for two hours.

In the United States, people who are accused of crimes have certain rights granted by the Constitution. The Fifth Amendment of the Constitution says that they have the right to be silent. The Sixth Amendment of the Constitution says that they have the right to have a lawyer to help defend themselves.

The police did not tell Miranda that he had these rights when they arrested him. After the police were finished asking Miranda questions, he signed a *confession*. The police used his confession in the trial and Miranda was convicted of the crime. The judge decided he should serve 20 to 30 years in prison for each crime.

Miranda *appealed* his case to the highest court in Arizona, called the Supreme Court of Arizona. His attorney argued that his confession should not have been used as evidence in his trial because Miranda had not been informed of his rights, and no attorney had been present to assist him during his *interrogation*. The Arizona Supreme Court denied his appeal and upheld Miranda's conviction.

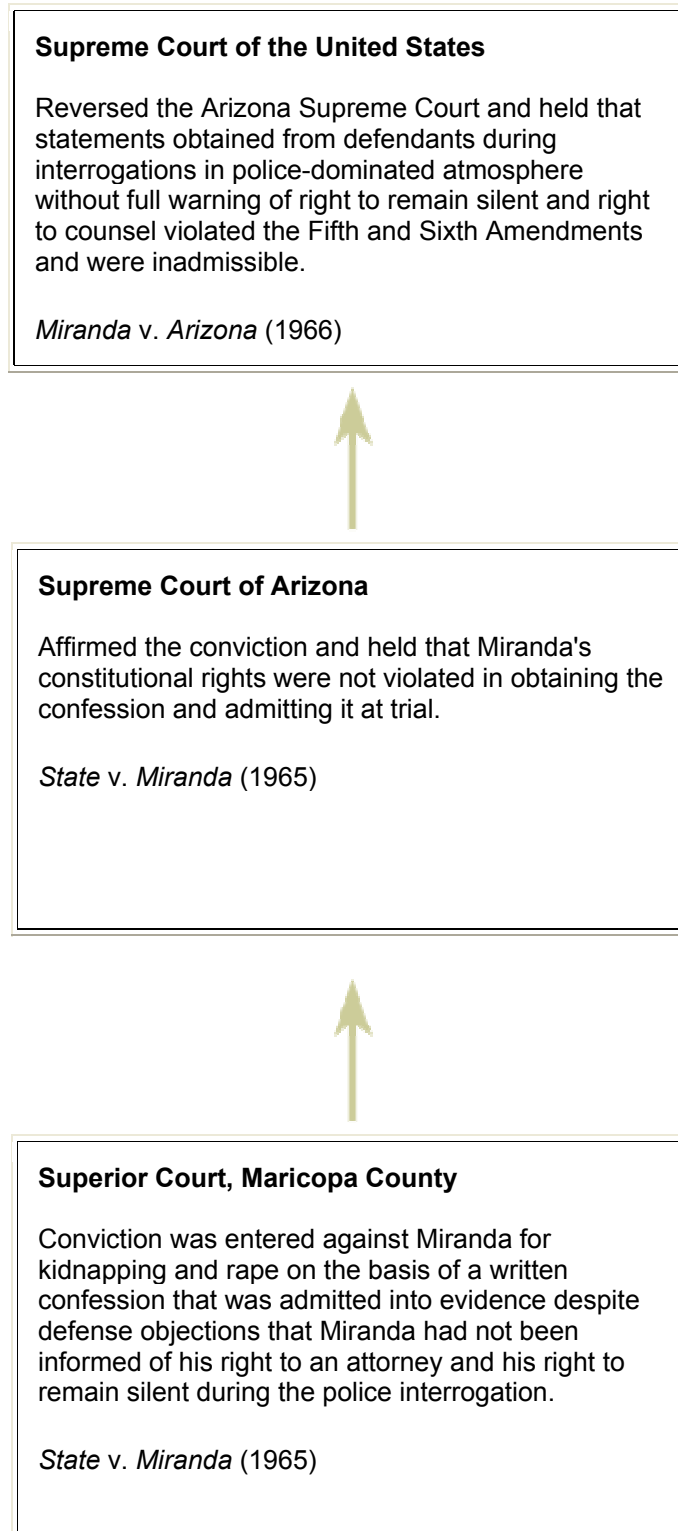
The Supreme Court of the United States agreed to hear Miranda's case. The decision in *Miranda v. Arizona* was handed down in 1966.

Background Summary and Questions •

Questions to Consider:

1. What rights of the accused does the Fifth Amendment protect? The Sixth Amendment?
2. If the police had informed Ernesto Miranda of these rights, do you think he would have done anything differently?
3. This case involves balancing the rights of the accused against society's need to to fight crime. Could informing accused persons of their rights hurt the ability of the police to fight crime? Why or why not?
4. Do you think that informing people of their rights when they are accused of crimes helps protect innocent citizens? Why or why not?

Diagram of How the Case Moved Through the Court System



Miranda v. Arizona

Miranda appeals his conviction. His lawyer argues that his confession should not have been used against him because he was not advised of his right to remain silent and to have the assistance of an attorney before he was questioned. The Appeals Court rules against Miranda.



Supreme Court for the State of Arizona (1963)

Miranda, a poor immigrant from Mexico, is convicted of rape and kidnapping. During the trial, his written confession, obtained during a two-hour interrogation, is used against him. The police admit that they did not inform Miranda of his rights.

State of Arizona v. Miranda

Key Excerpts from the Majority Opinion

**The case was decided 5 to 4.
Chief Justice Warren delivered the opinion of the Court.**

The cases before us raise questions which go to the roots of our concepts of American criminal jurisprudence: the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime. More specifically, we deal with the admissibility of statements obtained from an individual who is subjected to custodial police interrogation and the necessity for procedures which assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself. . . .

Our holding will be spelled out with some specificity in the pages which follow but briefly stated it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody. . . . As for the procedural safeguards to be employed . . . the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned. . . .

The Fifth Amendment privilege is so fundamental to our system of constitutional rule and the expedient of giving an adequate warning as to the availability of the privilege so simple, we will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given. . . .

The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of forgoing it. . . . [T]his warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary system—that he is not in the presence of persons acting solely in his interests. . . .

. . . [W]e hold that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation under the system for protecting the privilege we delineate today. . . . No amount of circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead: Only through such a warning is there ascertainable assurance that the accused was aware of this right.

If an individual indicates that he wishes the assistance of counsel before any interrogation occurs, the authorities cannot rationally ignore or deny his request on the basis that the individual does not have or cannot afford a retained attorney. . . . The privilege against self-incrimination secured by the Constitution applies to all individuals. The need for counsel in order to protect the privilege exists for the indigent as well as the affluent. . . .

The principles announced today deal with the protection which must be given to the privilege against self-incrimination when the individual is first subjected to police interrogation while in custody at the station or otherwise deprived of his freedom of action in any significant way. It is at this point that our adversary system of criminal proceedings commences, distinguishing itself at the outset from the inquisitorial system

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recognized in some countries. Under the system of warnings we delineate today or under any other system which may be devised and found effective, the safeguards to be erected about the privilege must come into play at this point. . . .

. . . [W]e hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. . . .

Key Excerpts from the Majority Opinion

Questions to Consider:

1. According to Chief Justice Warren, what fundamental questions does this case raise about the American justice system?
2. What does he mean by "custodial interrogation"?
3. Why does he say that we should not rely on asking individuals whether they are aware of their rights without a warning being given?
4. What does Chief Justice Warren say the police have to do to ensure due process?
5. Do you agree that when a person is taken into custody and subjected to questioning, the privilege against self-incrimination is jeopardized unless explicit warnings are given about rights? Why or why not? Should there be any exceptions to this rule? Explain.

Key Excerpts from the Dissenting Opinion

The case was decided 5 to 4.

Mr. Justice Harlan, with Justices Stewart and White joining, wrote the main dissenting opinion.

I believe the decision of the Court represents poor constitutional law and entails harmful consequences for the country at large. How serious these consequences may prove to be only time can tell. But the basic flaws in the Court's justification seem to me readily apparent now once all sides of the problem are considered. . . .

The new rules are not designed to guard against police brutality or other unmistakably banned forms of coercion. Those who use third-degree tactics and deny them in court are equally able and destined to lie as skillfully about warnings and waivers. Rather, the thrust of the new rules is to negate all pressures, to reinforce the nervous or ignorant suspect, and ultimately to discourage any confession at all. The aim in short is toward "voluntariness" in a utopian sense, or to view it from a different angle, voluntariness with a vengeance. . . .

Without at all subscribing to the generally black picture of police conduct painted by the Court, I think it must be frankly recognized at the outset that police questioning allowable under due process precedents may inherently entail some pressure on the suspect and may seek advantage in his ignorance or weaknesses. . . .

The Court's new rules aim to offset . . . minor pressures and disadvantages intrinsic to any kind of police interrogation. The rules do not serve due process interests in preventing blatant coercion since . . . they do nothing to contain the policeman who is prepared to lie from the start. The rules work for reliability in confessions almost only in the . . . sense that they can prevent some from being given at all. In short, the benefit of this new regime is simply to lessen or wipe out the inherent compulsion and inequalities to which the Court devotes some nine pages of description.

What the Court largely ignores is that its rules impair, if they will not eventually serve wholly to frustrate, an instrument of law enforcement that has long and quite reasonably been thought worth the price paid for it. There can be little doubt that the Court's new code would markedly decrease the number of confessions. To warn the suspect that he may remain silent and remind him that his confession may be used in court are minor obstructions. To require also an express waiver by the suspect and an end to questioning whenever he demurs must heavily handicap questioning. And to suggest or provide counsel for the suspect simply invites the end of the interrogation.

How much harm this decision will inflict on law enforcement cannot fairly be predicted with accuracy. . . . We do know that some crimes cannot be solved without confessions, that ample expert testimony attests to their importance in crime control, and that the Court is taking a real risk with society's welfare in imposing its new regime on the country. The social costs of crime are too great to call the new rules anything but a hazardous experimentation. . . .

Though at first denying his guilt, within a short time Miranda gave a detailed oral confession and then wrote out in his own hand and signed a brief statement admitting and describing the crime. All this was accomplished in two hours or less without any force, threats or promises and . . . without any effective warnings at all.

Miranda's oral and written confessions are now held inadmissible under the Court's new rules. One is entitled to feel astonished that the Constitution can be read to produce this result. These confessions were obtained during brief, daytime questioning conducted by two officers and unmarked by any of the traditional indicia of coercion. They assured a conviction for a brutal and unsettling crime, for which the police had and quite possibly could obtain little evidence other than the victim's identifications, evidence which is frequently unreliable. There was, in sum, a legitimate purpose, no perceptible unfairness, and

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certainly little risk of injustice in the interrogation. Yet the resulting confessions, and the responsible course of police practice they represent, are to be sacrificed to the Court's own finespun conception of fairness which I seriously doubt is shared by many thinking citizens in this country. . . .

Nothing in the letter or the spirit of the Constitution or in the precedents squares with the heavy-handed and one-sided action that is so precipitously taken by the Court in the name of fulfilling its constitutional responsibilities. The foray which the Court makes today brings to mind the wise and farsighted words of Mr. Justice Jackson in *Douglas v. Jeannette*: "This Court is forever adding new stories to the temples of constitutional law, and the temples have a way of collapsing when one story too many is added."

Key Excerpts from the Dissenting Opinion

Questions to Consider:

1. Why does Justice Harlan say the *Miranda* warnings are not designed to guard against "police brutality or other unmistakably banned forms of coercion"?
2. According to Justice Harlan, how will the Court's new rules impair "an instrument of law enforcement that has long and quite reasonably been thought worth the price paid for it"?
3. Why does Harlan say the Court's new rules are "hazardous experimentation"?
4. This case involves the balancing of individual rights against the desire of society to fight crime. How do Justice Harlan and Chief Justice Warren disagree in how they believe these rights and values should be balanced?
5. Has reading the excerpts from the majority and dissenting opinions changed your opinion about this case? How?

MIRANDA v. ARIZONA: A PRIMER

Constitutional Foundations of *Miranda*

The *Miranda* case dealt with the admissibility of statements made during "**custodial interrogation**" under the Fifth Amendment's privilege against self-incrimination and the Sixth Amendment's right to counsel. Under *Miranda*, prior to interrogation, a person in custody must be told of the right to remain silent and the likelihood that statements made by the person will be used against him or her in court. Recognizing that the average citizen might not understand which statements are incriminating or how they might be used in court, the Supreme Court requires persons in custody to be told of their right to an attorney. The Court saw an obvious connection between the two amendments—statements made without counsel tended to self-incriminate (protected by the Fifth Amendment) and the right to counsel (protected by the Sixth Amendment) was not particularly helpful once the incriminating statements had been made.

When the *Miranda* rules are not followed, statements are excluded for three reasons: (1) to avoid the risk that statements were compelled in violation of the defendant's constitutional rights; (2) to encourage officers to comply with the *Miranda* rules, thereby lessening the future likelihood of compelled self-incrimination; and (3) to discourage the kinds of unsavory police practices that tended to "compel" confessions from suspects.

The Constitution does not explicitly require such warnings or the exclusion of statements given in the absence of such warnings. However, a majority of the Court viewed custodial interrogations as inherently coercive and feared that the absence of a warning requirement and exclusionary rule (the rule that excludes the evidence from being used at trial under most circumstances) would render the Fifth Amendment meaningless. Textualists, those advocating a strictly text-based interpretation of the Constitution, criticize this methodology as judicial "creation" of rights.

Analytical Approaches to *Miranda*: Is *Miranda* Applicable?

Miranda does not apply unless a person is in custody and subjected to official interrogation.

1. Was the suspect in custody?

Definitions

- Custody requires a "significant deprivation of liberty."

- A person is in custody only if he or she is subjected to either formal arrest or its functional equivalent.
 - Formal arrest – occurs when a person is explicitly told he or she is being placed under arrest.

 - Functional equivalent – occurs when a suspect's freedom of action is significantly curtailed to a degree associated with a formal arrest.

Objective vs. Subjective Analysis

- The custody issue is most difficult when evaluating functional equivalents of arrests. From whose perspective do we evaluate whether the suspect's freedom of action is significantly

curtailed? There are three possible approaches:

- The particular suspect involved (subjective analysis)
 - Did this particular suspect actually believe that he or she was not free to leave?
 - This approach is most favorable to suspects, but suspects will always argue that they believed they were not free to leave.
- That particular officer(s) involved (subjective analysis) –
 - Did the actual officer(s) involved intend to restrict the suspect's freedom of movement?
 - This approach is most deferential to the officers, who will always argue that they did not intend to restrict the suspect's freedom of movement.
- A reasonable person under the same conditions of the suspect (objective analysis) –
 - Would a reasonable person under the same circumstances believe he or she was free to leave? (In other words: what would an average or typical member of the community think under the same circumstances? – the idea being that it gets the court out of the business of trying to figure out what *this particular person* thought.)
 - This approach creates a body of law that allows some predictability to determine whether custody was established in the situation.
- The Court has chosen to use this third approach – the objective analysis.

2. Did a known government agent¹ interrogate the suspect?

Definitions:

- "Interrogation" includes any direct questioning by officers about a crime under investigation and more subtle forms of questioning that are the "functional equivalent" of direct questioning.
- The "functional equivalent" of direct questioning is any speech or actions by an officer that she should have known were reasonably likely to elicit an incriminating response.
 - Determining the "functional equivalent"
 - In determining whether an officer's words or actions constituted the "functional equivalent" of direct questioning, several principles should be considered:
 - **Reasonably likely:** Courts will deem it "interrogation" only if

officers knew (subjective analysis) or should have known (objective analysis) and incriminating response was *reasonably likely*.

- NOTE: What the officer should have known is judged from the perspective of a reasonable officer in the same situation.

- **Officer's intent:** Courts will probably consider it to be "interrogation" if the officer actually intended that his words or conduct would elicit an incriminating response.

- **Officer's knowledge of the suspect:** Courts will usually treat it as "Interrogation" if an officer was aware of – and exploited – a suspect's unusual weakness or fear.

- **Link between the question and crime:** Courts will be more apt to deem a question "interrogation" if there was direct link between the question and the crime under investigation.

- **Accusations:** Accusing a suspect of committing a crime is virtually always "interrogation" because an incriminating response is reasonably foreseeable.

- NOTE that subtle actions by the officer, statements to suspects, and conversations in the presence of suspects which were meant to elicit a particular response, may be deemed interrogation. However, spontaneous statements volunteered by the suspect are NOT considered the product of interrogation even if the suspect was in custody at the time.

¹ Even if the person is in custody, *Miranda* only applies if the suspect was interrogated by known government agents.

A *Miranda* Checklist

Step #1 - Was the person "in custody"?

- a. Was there a formal arrest?
 - If yes — Step #2
 - If no — Analyze functional equivalent at Step #1(b)
- b. If there was no formal arrest, would a reasonable suspect in the same situation have believed he or she was not free to leave?
 - If yes — Step #2
 - If no — No custody; *Miranda* does not apply

Step #2 - If the person was in custody, was the person "interrogated" by an official?

- a. Given the officer's knowledge of the suspect, did the officer know his or her questions or statements were reasonably likely to elicit an incriminating response?
 - If yes — ***Miranda* applies**
 - If no — Analyze whether the officer should have known at Step #2(b)
- b. Would a "reasonable officer" under the same circumstance and with the same knowledge of the suspect have known that an incriminating response was reasonably likely?
 - If yes — ***Miranda* applies**
 - If no — *Miranda* does not apply

****NOTE: The words "reasonable" and "reasonably" indicate that an objective standard is being used.****

Miranda Warnings and the Bill of Rights

You may be familiar with the "*Miranda* Warnings" from television and the movies. But what do they really mean? What rights from the Bill of Rights are they designed to protect?

For this activity, you will work in small groups. Each group will need a copy of the *Miranda* Warnings (see below) and a copy of the Bill of Rights. Your group should be prepared to share what you do with the rest of the class, either on poster paper, an overhead projector, or the board.

First, within your group, take each sentence of the *Miranda* Warnings and translate them into language that makes sense to you. You might reword "You have the right to remain silent" as "You do not have to speak if you don't want to."

Next, match each phrase of your reworded *Miranda* Warnings with the right in the Bill of Rights that it is designed to protect. Discuss the following questions within your group:

1. Why is this right so important that the Supreme Court of the United States decided people accused of crimes must be informed of it?
2. Does informing a person of the right provide absolute protection against a violation of that right?
3. How can police be certain that an accused person understands the meaning of the *Miranda* Warnings?

Make a chart like the one shown below to help you organize your thoughts. Your teacher will lead a class activity during which you will share what you discussed in your group.

Miranda Warnings

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to have an attorney present before any questioning.
4. If you cannot afford an attorney, one will be appointed to represent you before any questioning.
Do you understand these rights?

Sentence from <i>Miranda</i>	Put in your own words	Bill of Rights
1.		
2.		
3.		
4.		

Miranda and the Exclusionary Rule

In the United States, one of the ways that the judicial branch checks the executive branch is through the exclusionary rule. Under this policy, illegally obtained evidence is inadmissible in court. While this applies primarily to Fourth Amendment protections against illegal search and seizure, it also applies to the Fifth Amendment protections against self-incrimination. This means that if the police fail to inform a suspect of his or her right to remain silent, and the suspect confesses, the confession cannot be introduced as evidence in the suspect's trial.

There has been a great deal of controversy over this, so in recent years, the Courts have relaxed the standard a bit. For instance, courts now apply what is known as the "good faith" exception. Under this standard, if police believed, for instance, that a search warrant was legal, but later found out that it was technically flawed, the evidence obtained in the search would still be admissible.

In many democratic nations, violations of police procedure are handled quite differently. For example, in England, if the police violate criminal procedure, they are reprimanded; they might be punished or sued. However, the illegally obtained evidence is still admissible in court.

Questions to Consider:

1. What is the purpose of the exclusionary rule?
2. What are some potential consequences of the exclusionary rule?
3. What is your opinion of how violations of police procedure are handled in England?
4. Should the United States keep or abolish the exclusionary rule? Explain your answer.
5. Some criticize the exclusionary rule as only protecting guilty people. Critics argue that it does nothing, for example, to protect against an illegal search or a failure to give *Miranda* warnings that produce no evidence or confession. Do you agree or disagree with this criticism? Explain.

Controversy Over the Court's Decision

The Court's decision in *Miranda* was met with criticism when it was handed down in 1966, and it continues to be controversial today. In this exercise you will read some recent pieces of commentary on the decision and its effect on law enforcement. Decide whether the writer is supporting (pro) or criticizing (con) the decision in *Miranda*. Write a paragraph expressing your opinion about the decision.

Read each selection, then write "Pro" or "Con" in the right-hand column. Sources are listed below.

1	". . . the idealistic impulse toward protecting individuals from overbearing state authority has resulted in a system where we deny people the opportunity to take responsibility for their criminal acts. In our system, a man or woman who takes responsibility must be crazy!"	
2	"[T]here is little evidence that a significant [number of guilty people are going free because of the <i>Miranda</i> warning. The chief reason for this is that, contrary to expectations, most people under arrest do not keep their mouths shut and do not ask for a lawyer, even though it is almost always in their interest to do so."	
3	"Our citizens' confidence in the criminal justice system will be strengthened by ensuring that the rules will be fair to crime victims as well as suspects; will protect the public by helping convict those who voluntarily confess their guilt; and will promote honesty and accuracy in criminal trials by allowing the jury to hear all truthful evidence. . . A society that beats confessions out of suspects has lost its morals. But a society that rejects a suspect's voluntarily given confession has lost its marbles."	
4	"When people around the world go to the movies, they see a bad guy who has just murdered a nun, impaled a policeman and blown up a school, collared by Eastwood or Stallone or Tommy Lee Jones. What are the first words out of the good guy's mouth? 'You have the right to remain silent.' The viewer has to wonder what kind of political paradise America really is. People seeing this in Belgrade and Harare and Kuala Lumpur, places where the innocent get whacked and beaten and tortured at the whim of the authorities, can only be awestruck at a country that treats even its monsters with such delicacy."	
5	"Who invokes their right to remain silent or, especially, their right to counsel? The usual suspects: the hardened criminals, the ones who have been through the system many times before or who come into it well-heeled and well-counseled. These offenders don't need the warnings to understand their rights, and they are quick to assert them. For all the rest, <i>Miranda</i> amounts to little more than red tape, just another part of the ritual of putting on the handcuffs and making the trip to the station . . . <i>Miranda</i> does little, if anything, to protect the most vulnerable suspects."	
6	"In the common view, <i>Miranda</i> was necessary to protect accused criminals from being forced to confess through coercion or torture. Everyone is justifiably horrified at the possibility of punishing an innocent man. In order to avoid this extreme injustice, it was argued, it might be necessary at first to let a few obviously guilty murderers, rapists, and robbers go free on 'technicalities,' while the police 'learned the ropes.' . . . Yet twenty years later, the police still seem to 'make mistakes' all the time. Confessions are continually ruled inadmissible because they have been 'coerced.' . . . Investigations	

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	carried out under highly trained prosecutors often fail to issue in a conviction because the investigators did not 'observe the defendant's constitutional rights.'"	
7	"Unless <i>Miranda</i> warnings are a totally impotent gesture . . . there must be some percentage of suspects who invoke their right to remain silent who would not have done so. Some subset of that group, in turn, presumably would have gone on to make truthful confessions that would not have been 'involuntary' in the classic beaten-out-of-him sense. And in some subcategory of that subset, the confession would have been crucial to building a case against that suspect."	

1. Rothwax, Harold. *Guilty: The Collapse of Criminal Justice*. New York: Random House, 1996, p. 79.
2. "A Pillar of the Law Assailed." *Economist* 12/11/99 v 353 i8149 p. 23.
3. Otis, William G. "Miranda: Morals and Marbles." *The Washington Post* 24 November 1999: A23.
4. Krauthammer, Charles. "Supreme Hypocrisy." *The Washington Post* 30 June 2000: A31.
5. Coughlin, Anne M., "Miranda Only Works for the Usual Suspects." *The Washington Post* 12 December 1999: B1.
6. Tucker, William, "True Confessions: The Long Road Back from Miranda." *National Review* 18 October 1985: 28.
7. Parloff, Roger, "Miranda on the Hot Seat." *New York Times Magazine* 26 September 1999: 84-87.

Should the Miranda Warnings Be Required Police Procedure?

(Note to teacher: Before beginning this activity, you may want to have your students read the Background Information and complete the activity "[Controversy over the Court's Decision](#)." This will help familiarize them with the arguments for and against *Miranda*.)

In this activity, you will consider the value of that warning from the perspective of various interest groups. After considering these viewpoints, you will make your own decision and try to persuade others to adopt your viewpoint.

Your teacher will assign you to one of the following groups:

- Law enforcement officials
 - Civil/criminal rights group
 - Federal prosecutors
 - Defense attorneys
 - Victims' rights group
 - General public
1. Meet with the other members of your group. As individuals, you probably have certain opinions about the requirement that police read suspects the *Miranda* warning. For the remainder of this activity, set aside your personal opinion, and try to instead play the assigned role. In other words, think about the case from the perspective of an individual who is a member of your assigned group.
 2. Brainstorm the position that "real" members of that group would take about the requirement that police read suspects the *Miranda* warning. Consider issues such as the:
 - purpose of the *Miranda* warning and the extent to which it is successful in achieving that goal;
 - extent to which the warning protects defendants and which defendants it protects;
 - extent to which the warning helps or hinders law enforcement officials; the alternatives to reading the *Miranda* warning;
 - consequences for police, defendants, and the general public of overturning *Miranda*;
 - costs and benefits of the *Miranda* ruling for your group.
 3. As a group, write an outline of your position. Each person should make a copy of this outline, as students will need their own copy for the next activity.
 4. Form a "jigsaw group" composed of students who represent each of the groups. Discuss your viewpoints. During the discussion, each individual should remember to argue from the assigned perspective. Can your new group reach a consensus? On what aspects of the issue do you agree? On which aspects do you disagree? All members of the group should take notes.
 5. The teacher will conduct a discussion to "debrief" the class.

Should the Miranda Warnings Be Required Police Procedure?

For Extension:

Now that you have heard many different perspectives on the issue, you are in a position to develop your own, educated opinion regarding the requirement that suspects be read the *Miranda* warning. Convince other members of the general public to adopt your personal viewpoint on this issue by completing one of the assignments below. In your product, clearly state and support your position.

- Write an editorial.
- Create a political cartoon.
- Write a speech to be delivered to an audience. On a separate sheet of paper, write a paragraph in which you describe the target audience and the speech techniques used.
- Create a brochure or print advertisement. Your brochure should contain visuals and text. On a separate sheet of paper, write a paragraph in which you explain the message, the target audience, and the propaganda techniques used.
- Create a storyboard for a television commercial. On a separate sheet of paper, write a paragraph in which you explain the message, the target audience, the propaganda techniques, and the video and audio techniques used.

Beyond *Miranda*

In the time since *Miranda* was decided in 1966, the Supreme Court of the United States has decided several cases directly related to the issues in the *Miranda* case. Below are brief descriptions of the issues presented to the justices in several of these cases. How would you decide these cases if you were a Supreme Court justice? For the purpose of this exercise, you should assume that you cannot overturn the *Miranda* decision. First, let's review the main points of the *Miranda* decision, written by Chief Justice Earl Warren in 1966:

Persons in police custody must be warned of their rights before they are questioned, as follows:

- You have the right to remain silent.
- Anything you say can and will be used against you in a court of law.
- You have the right to an attorney.
- If you cannot afford an attorney, one will be appointed for you.

The failure to warn the accused prior to interrogation leads to the presumption that statements made by the accused were involuntary and must be suppressed because of the Fifth Amendment's protection against a person being "compelled in a criminal case to be a witness against himself."

Post-*Miranda* Cases:

***Harris v. New York* (1971)**

Harris was arrested for selling heroin to an undercover detective. He had not been given his *Miranda* warnings when he said to the police officers that he had made the sales at the request of the undercover officer. At trial, the prosecution did not use the statement the defendant made during their case. However, when he took the stand, he denied making the sales, contradicting what he had previously told the police. The prosecutors then used his initial statement to impeach, or make less credible, his testimony.

Should the prosecutors have been allowed to use Harris's pre-*Miranda* statement at trial, or did its use violate his constitutional rights?

***Michigan v. Tucker* (1974)**

In this case, the accused was warned of his right against self-incrimination, but not of his right to a lawyer. In the defendant's statement, a person was identified as a potential witness. The defendant's lawyer argued that the witness could not testify, since the witness would be "derivative evidence" arising from the defendant's statement, which was not allowed in court because of the violation of *Miranda*.

Since the statement itself could not be used in court against the defendant, could the witness still testify, even though the witness would never have been found if not for the statement?

***New York v. Quarles* (1984)**

A woman told two police officers that she had been raped at gunpoint. She gave them a description of the suspect and told them he had gone into a nearby supermarket. One of the officers apprehended Quarles, the suspect, in the store, searched him, and found that he was wearing an empty holster. The officer

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asked Quarles where his gun was and he told him. The officer arrested Quarles and read him his *Miranda* rights.

Should the suspect's statement about the gun be suppressed at trial, since it was made before the *Miranda* warnings were given?

Oregon v. Elstad (1985)

Elstad was suspected of committing burglary. He was arrested in his home, and he made an incriminating statement before being read his *Miranda* warnings. He was then taken to the police station where the police read him his *Miranda* rights. He waived his *Miranda* rights and the police questioned him; during the questioning, he confessed to the crime and signed a written confession.

Elstad's first statement that he was involved in the crime was suppressed at trial, but his second statement was used against him and he was convicted. Should the second statement also be suppressed at trial?

Illinois v. Perkins (1990)

In this case, police informants posed as prisoners in order to obtain evidence of Perkins' involvement in a murder. Perkins made statements to the one of the "prisoners" implicating himself. This information was subsequently used at trial and Perkins was convicted. There had been no *Miranda* warning, since the defendant did not know he was speaking to someone acting on behalf of the police.

Should the defendant's incriminating statements have been allowed at trial, considering that they were made without the defendant being warned of his rights?

Post-Miranda Cases: How the Supreme Court of the United States Decided

Harris v. New York (1971)

The Court said that *Miranda* did not mean that evidence barred from use during the prosecution's case could not be used for any purpose. They said the *Miranda* protection could not be "perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances."

Michigan v. Tucker (1974)

The Court ruled that the witness could testify. In this case they made a distinction between a violation of the Fifth Amendment right against self-incrimination and a mere violation of the *Miranda* rule. Since the defendant was warned about his right against self-incrimination, the Court allowed the witness to testify.

New York v. Quarles (1984)

The Court said there is a "public safety" exception which applies in this case. The police officer acted to further public safety and therefore the statement made by the defendant (telling of the location of the weapon) before his *Miranda* rights were read to him was admissible in court.

Oregon v. Elstad (1985)

The Court ruled that admissions made prior to *Miranda* warnings must be suppressed, but later statements, if made voluntarily, may be used in court. "[T]he mere fact that a suspect has made an unwarned admission does not warrant a presumption of compulsion," Justice O'Connor wrote.

Illinois v. Perkins (1990)

Justice Kennedy, writing for the majority, held that conversations between suspects and undercover officers are not held in a "police-dominated atmosphere" and therefore *Miranda* warnings are not necessary. No coercion was possible because there was no official interrogation.

A Real World Case Study: *Homicide by David Simon*

In this activity, you will consider one of the main points of Chief Justice Warren's decision in *Miranda* and how it relates to real-life police work as depicted in David Simon's book about Baltimore Police Department homicide detectives. You will examine passages and answer questions in small groups. Finally, you will write a short essay in response to the prompt at the end of this activity.

In his majority opinion in *Miranda v. Arizona*, Chief Justice Warren writes that one of the main purposes of the *Miranda* warnings is "to make the individual more acutely aware that he is faced with a phase of the adversary system-that he is not in the presence of persons acting solely in his interest." He also disapprovingly cites passages from police interrogation manuals that instruct police to "persuade, trick, or cajole" suspects. Chief Justice Warren writes:

"any evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege. The requirement of warnings and waiver of rights is a fundamental . . . and not simply a preliminary ritual to existing methods of interrogation."

Questions to Consider:

1. Why is it important that an accused person be aware that he or she is "faced with a phase of the adversary system", that is, that the police are not on his or her side?
2. Should the police be allowed to "persuade, trick, or cajole" people suspected of committing crimes in order to get them to confess?
3. What is Chief Justice Warren's goal in trying to ensure that defendants voluntarily waive their privilege before being questioned?
4. Have you seen-either in real life, on television or in a movie-an instance of police interrogation that you think violates the standard set by Chief Justice Warren in his opinion? If so, describe it.

Miranda v. Arizona

In 1991 David Simon, a *Baltimore Sun* reporter, wrote a book about the Baltimore Police Department's homicide squad. The book, *Homicide: A Year on the Killing Streets*, was later adapted for television.

Simon describes in his book how Baltimore homicide detectives deal with the requirements of the *Miranda* decision. He writes that before a suspect is asked whether he wants to waive his rights and talk about his case, the detective offers him a chance to tell his side of the story, warning that asserting his rights will only make things worse:

"Once you up and call for that lawyer, son, we can't do a damn thing for you. . . . [T]he next authority figure to scan your case will be a tie-wearing, three-piece bloodsucker - a no-nonsense prosecutor from the Violent Crimes Unit . . . And God help you then, son Now's the time to speak up . . . because once I walk out of this room any chance you have of telling your side of the story is gone and I gotta write it up the way it looks. . . . And it looks right now [like] first- . . . degree murder."

Simon concludes that "the fraud that claims it is somehow in a suspect's interest to talk with police will forever be the catalyst in any criminal interrogation." He says detectives try to get suspects to speak by offering them "the Out." Suspects must be "baited by detectives with something more tempting than penitence. They must be made to believe that their crime is not really murder, that their excuse is both accepted and unique, that they will, with the help of the detective, be judged less evil than they truly are." The goal is to get the suspect to believe the detective is on his side and will help him, when in fact the detective is trying to get the suspect to confess.

Simons, David. *Homicide: A Year on the Killing Streets*. New York: Ballantine Books, 1991.

Questions to Consider:

1. Do the actions of Baltimore homicide detectives, as described by David Simon, seem to be in compliance with Chief Justice Warren's opinion in *Miranda*? Why or why not?
2. Do you think it is fair for police officers to deceive or trick suspects in custody? Why or why not? If you do not think it is fair, can you think of circumstances when you think it would be fair?
3. How would strict compliance with *Miranda* change homicide interrogations as depicted in David Simon's book?
4. How would strict compliance with *Miranda* protect individual rights in homicide interrogations as depicted in David Simon's book?

Miranda v. Arizona

Short Essay

Respond to the following statement in at least three paragraphs. Use what you have learned about the *Miranda* case as evidence to support your thesis, either agreeing or disagreeing with the statement.

"The Supreme Court's decision in *Miranda* restricts the ability of the police to fight crime. Police officers are on the front lines in the fight against crime, and they should be allowed to interrogate suspects as they best see fit. Society's right to public safety is more important than the rights of criminals."

You Be the Judge (and the Lawyers): Should *Miranda* Be Overturned in *Dickerson v. the United States*?

(Note to teacher: Before beginning this activity, students should complete the activity "[Controversy over the Court's Decision](#)." This will help them become familiar with the arguments in *Miranda*.)

Background Reading

***Miranda v. Arizona* (1966)**

In the 1966 case *Miranda v. Arizona*, the Supreme Court of the United States decided that when police arrest a suspect and are about to question that individual, they must inform the suspect of his or her constitutional rights to remain silent and to consult with an attorney prior to and during interrogation. Through this decision, the Court hoped to alleviate what they perceived to be "the inherent pressures of the interrogation atmosphere." As Chief Justice Earl Warren pointed out, the Court wanted to make sure that a suspect who waived his or her right to silence did so "voluntarily, knowingly, and intelligently."

If you watch television, you are probably familiar with the *Miranda* warning. What you may not know is that in the case, Chief Justice Warren stressed that those exact words are not required, as long as the words used are "fully as effective . . . in informing accused persons of their right of silence and in affording a continuous opportunity to exercise it." This meant that all states and the federal government could actually decide for themselves how to inform suspects of their rights.

Section 3501 of the 1968 Crime Bill

To that end, in 1968, the Congress passed a law which said that in determining whether or not confessions are voluntary and admissible in Court, the reading of *Miranda* warnings is just one of several factors that should be considered. Other factors the Court should think about include the following: 1) whether any warnings were given, 2) the time that elapsed between arrest and confession, and 3) whether the defendant knew with certainty that he could request a lawyer. Missteps in any one of these areas would not necessarily result in the inadmissibility of the confession. In essence, this made the admissibility of confessions hinge exclusively on whether or not they were made "voluntarily". This law was virtually ignored for decades because both Democrats and Republicans questioned its constitutionality.

***Dickerson v. United States*, 2000**

In 2000, a case that hinged on the constitutionality of the 1968 law came before the Supreme Court. The case began when federal law enforcement officials followed a man suspected of driving the getaway car in a bank robbery in Virginia to his home in Takoma Park, Maryland. He refused to let them search his apartment, but while they were there, they noticed a large wad of money on his bed. Though he wouldn't allow a search, he did agree to accompany police to headquarters, where they questioned him and told him they had gotten a warrant to search his home. He confessed. Later, he claimed that he was not read his *Miranda* rights in a timely manner.

His lawyers presented this argument to the U.S. District Court, which agreed with him. As a result, the District Court threw out his confession and the evidence found in his apartment. When the case was appealed, the Fourth Circuit Court of Appeals cited the 1968 crime bill, saying that "technical violations" of *Miranda* should no longer result in the inadmissibility of evidence.

The case was appealed to the Supreme Court, which was faced with whether to let the decision made by the Fourth Circuit stand, thus overturning the precedent that requires law enforcement officials to read suspects the *Miranda* warnings.

"Triad" Activity: You Be the Judge (and the Lawyers)

1. After the class has read the material above, the class should divide into three groups of equal size.

- Group One will be composed of lawyers who will argue that the Supreme Court of the United States should uphold the decision of the Fourth Circuit Court of Appeals and overturn (reverse the decision) *Miranda v. Arizona*.
- Group Two will be composed of lawyers who will argue that the Supreme Court of the United States should overturn the decision of the Fourth Circuit Court of Appeals and affirm (keep the decision) *Miranda v. Arizona*.
- Group Three will be composed of justices on the Supreme Court of the United States who will listen to arguments presented by the two sides and make a decision.

2. In order to begin preparing for the activity, all groups will answer the questions that follow:

- What are the competing interests that the Court needs to weigh in this case?
- What are the arguments for upholding *Miranda v. Arizona* and requiring that police read suspects the *Miranda* warning?
- What are the arguments for overturning *Miranda v. Arizona*?
What are some potential consequences if *Miranda* were overturned and states could decide for themselves how to inform suspects of their rights?
- According to the Constitution, can a law passed by Congress invalidate a decision of the Supreme Court of the United States?
- Can the Court make a decision that overturns one of its earlier decisions? In this case, should it?

Record your group's responses in your notebook or on a piece of paper.

3. Groups One and Two, the lawyers, will outline their arguments. Group Three, the Supreme Court justices, will prepare questions to ask the lawyers. Again, all individuals will record these questions in their notebooks or on a piece of paper.

4. The teacher will assign all students to a "triad" composed of one member from each of the three groups. In this triad, the lawyers will each present their side of the case. The justice will listen to the arguments and ask questions. The lawyers will be given an opportunity to respond to the questions and to the arguments presented by the other side. The teacher can time these arguments and questions to ensure efficient use of class time.

5. After both sides have presented their arguments and answered questions posed by the justice, the justice will take some time to think about the case. The justice will then make a decision and share that decision, including the reasoning behind it, with the lawyers.

6. The teacher will conduct a discussion to debrief the class.

The Outcome of *Dickerson v. United States*

The Majority Opinion

In the 7 to 2 decision, the Supreme Court of the United States found that the appeals court was wrong. Chief Justice William Rehnquist wrote the majority opinion in which the Court upheld or affirmed *Miranda*, saying that it was a "Constitutional decision" of the Supreme Court and such decisions can not be overturned by a law passed by Congress. Rehnquist concedes that the *Miranda* warnings are not required by the constitution, saying "The dissent argues that it is judicial overreaching for this Court to hold §3501 unconstitutional unless we hold that the *Miranda* warnings are required by the Constitution. . . . But we need not go farther than *Miranda* to decide this case. Whether or not we would agree with *Miranda*'s reasoning and its resulting rule, were we addressing the issue in the first instance, the principles of stare decisis weigh heavily against overruling it now. . . . We do not think there is such justification for overruling *Miranda*. *Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture."

The Dissenting Opinion

In his dissent, Justice Scalia, who is joined by Justice Thomas, is critical of the reasoning used by Rehnquist. He says: "*Marbury v. Madison*, 1 Cranch 137 (1803), held that an Act of Congress will not be enforced by the courts if what it prescribes violates the Constitution of the United States. That was the basis on which *Miranda* was decided. One will search today's opinion in vain, however, for a statement (surely simple enough to make) that what 18 U. S. C. §3501 prescribes—the use at trial of a voluntary confession, even when a *Miranda* warning or its equivalent has failed to be given—violates the Constitution. The reason the statement does not appear is not only (and perhaps not so much) that it would be absurd, inasmuch as §3501 excludes from trial precisely what the Constitution excludes from trial, viz., compelled confessions; but also that Justices whose votes are needed to compose today's majority are on record as believing that a violation of *Miranda* is *not* a violation of the Constitution.... And so, to justify today's agreed-upon result, the Court must adopt a significant new, if not entirely comprehensible, principle of constitutional law. As the Court chooses to describe that principle, statutes of Congress can be disregarded, not only when what they prescribe violates the Constitution, but when what they prescribe contradicts a decision of this Court that "announced a constitutional rule," *ante*, at 7. As I shall discuss in some detail, the only thing that can possibly mean in the context of this case is that this Court has the power, not merely to apply the Constitution but to expand it, imposing what it regards as useful "prophylactic" restrictions upon Congress and the States. That is an immense and frightening antidemocratic power, and it does not exist.

It takes only a small step to bring today's opinion out of the realm of power-judging and into the mainstream of legal reasoning: The Court need only go beyond its carefully couched iterations that "*Miranda* is a constitutional decision," *ante*, at 8, that "*Miranda* is constitutionally based," *ante*, at 10, that *Miranda* has "constitutional underpinnings," *ante*, at 10, n. 5, and come out and say quite clearly: "We reaffirm today that custodial interrogation that is not preceded by *Miranda* warnings or their equivalent violates the Constitution of the United States." It cannot say that, because a majority of the Court does not believe it. The Court therefore acts in plain violation of the Constitution when it denies effect to this Act of Congress."

Miranda v. Arizona

Questions to consider:

1. According to the Supreme Court of the United States, is the *Miranda* warning required by the United States constitution?
2. What justification does the Court provide for affirming *Miranda*?
3. Justice Scalia says, "And so, to justify today's agreed-upon result, the Court must adopt a significant *new*, if not entirely comprehensible, principle of constitutional law." What does he mean by this? What is the "new . . . principle of constitutional law"?
4. What are Scalia's concerns regarding the future of the Court?

***Miranda Rights for Juveniles:
Yarborough v. Alvarado***

Directions:

1. Read the [synopsis of facts](#) for *Yarborough v. Alvarado*.
2. Complete the legal arguments for each side using the [graphic organizer](#).
3. With your class, review the [possible opinions](#). Have students select the opinion they find most persuasive and articulate reasons why.
4. Read the [actual decision](#) in *Yarborough v. Alvarado* and discuss which arguments appeared most persuasive to the Court.

Synopsis of Facts

Yarborough v. Alvarado

Michael Alvarado was convicted of second-degree murder and robbery for his alleged role in a 1995 killing. Alvarado, who was not the triggerman, was convicted in large part because of incriminating statements he made during a two hour interview with a police detective. At the time of the interview, Alvarado was a 17-year-old high school student with no prior arrest record. The detective had contacted Alvarado's mother, who agreed to bring him to the police station for questioning. When Alvarado arrived with his parents, the detective denied the parents' request to remain with their son during the interview. While they waited in the lobby, Alvarado was questioned alone for two hours. He was not placed under arrest and was allowed to leave after the questioning ended. At no time was Alvarado advised that he had a right to remain silent, a right to consult an attorney prior to answering, or a right to leave the police station at any time. Alvarado alleges he was deprived of his Fifth and Sixth Amendment rights in violation of *Miranda v. Arizona*.

Following his criminal conviction, Alvarado brought a petition in federal district court against Yarborough, the warden of the prison where he was being held. The district court denied Alvarado's petition. However, the Ninth Circuit Court of Appeals reversed, holding that Alvarado was "in custody" when he was interrogated by police and, therefore, should have been read his *Miranda* warnings. The Ninth Circuit insisted that federal criminal law treated children differently and this principle should apply to *Miranda* custody determinations.

Graphic Organizer

Yarborough v. Alvarado

Legal Issue: In determining "custody" for purposes of *Miranda*, should a court apply a different standard for juveniles?

Arguments for Yarborough	Arguments for Alvarado

Possible Opinions

Yarborough v. Alvarado

Opinion A

The Supreme Court established the legal principle that juvenile defendants are, in general, more susceptible to police coercion than adults; as such, due process demands that a defendant's juvenile status be taken into consideration when determining the proper procedural safeguards that attach to a custodial interrogation. During the last half century, the Court has consistently reaffirmed this principle. If a juvenile is more susceptible to police coercion during a custodial interrogation, then the same juvenile is also more susceptible to the impression that he is, in fact, in custody in the first instance.

... But the lower court failed to address how Alvarado's juvenile status, including the involvement of his parents at the behest of police, affected the "in custody" determination. Relevant Supreme Court precedents lead us to conclude that Alvarado's youth and inexperience with the police are simply too important to be ignored. *Miranda* warnings should have been given before the interrogation took place. The Court of Appeals was correct in reversing the trial court's conclusion that *Miranda* warnings were not required.

Opinion B

The Court adopted *Miranda* to provide an additional degree of protection for the constitutional rights to counsel and against self-incrimination. It does this by prohibiting evidence of any confession given during a custodial interrogation from being heard at trial unless the defendant was made aware of his rights in advance. *Miranda* notices are only required when the defendant is in custody, and the goal of the protection is adequately served by an objective test for custody that focuses only on the restrictive circumstances of the interview, rather than on the suspect's perceptions of them.

... This Court has often noted that one of the principal advantages of *Miranda* is that it provides police and courts with clear guidance about how custodial questioning must be conducted for statements obtained to be admissible. Because of the considerable advantage afforded by the clear guidance *Miranda* provides, this Court has stated that the "simplicity and clarity of the holding of *Miranda*" are not to be compromised "absent a compelling justification."

The facts of this case make clear that respondent was not in custody at the time of his interview. There is no indication that he was present at the interview involuntarily, and he was not handcuffed, arrested, or told he was not free to leave. [Alvarado] was interviewed by a single officer, and agreed at trial that the encounter was a "friendly conversation" and was not confrontational. Taken as a whole, the objective circumstances indicate that [Alvarado] was not subjected to the functional equivalent of a formal arrest. The Ninth Circuit misapplied the law in considering Alvarado's age as part of the broader custody determination. Such consideration of age was beyond the clear weight of Supreme Court precedent, therefore the Ninth Circuit was wrong to upset the state court's ruling. Alvarado's conviction on the basis of his testimony is reinstated.

Actual Decision

Yarborough v. Alvarado

Majority

Justice Kennedy delivered the majority opinion in a 5-4 decision that reversed the Ninth Circuit. The majority found that the state criminal court that convicted Alvarado had reached a reasonable conclusion that the minor was not in custody for *Miranda* purposes when he was interviewed. The Court cited a number of factors that indicated that Alvarado was not in custody at the time he was questioned, including the fact that he went to the station voluntarily, was never told he could not leave, was not threatened by authorities, was told the interview would be brief, and was allowed to return home afterwards. According to the Court, *Miranda* can be distinguished from other cases that require special consideration of age for juvenile offenders.

The majority also stressed the importance of a clear rule for police to apply. Allowing different standards for juveniles would make it more difficult for police to determine when *Miranda* warnings are necessary.

Concurrence

Though she joined the majority, Justice O'Connor wrote a separate, single paragraph to emphasize her sense that in other cases the age of the defendant could be relevant to the custody determination. She suggested that the failure to consider age could justify reversal in other circumstances. The fact that Alvarado was 17 years old made a difference to her.

Dissent

Justice Breyer wrote a forceful dissent in which he criticized the majority's characterization of the facts. Justice Breyer framed the issue in the following way:

What reasonable person...brought to a police station by his parents at police request, put in a small interrogation room, questioned for a solid two hours, and confronted with claims that there is strong evidence that he participated in a serious crime, could have thought to himself, "Well, anytime I want to leave I can just get up and walk out?"

The dissent said that the involvement of Alvarado's parents suggested that his participation was not voluntary and that a two-hour meeting gave the appearance of custody. The dissent also considered the many ways in which the court system treats juveniles differently, emphasizing that confinement determinations for juveniles should also be treated differently.