

Delaware Law Related Education Center, Inc.

Recommended Law Day 2016 Visiting Attorney's or Teacher Lesson based on the ABA Theme: *Miranda*, More Than Words

Lesson Description:

“In 2016, the nation marks the 50th anniversary of perhaps the nation’s best-known U.S. Supreme Court case, *Miranda v. Arizona*. The Miranda Warning has become ingrained in law enforcement and has permeated popular consciousness through countless recitations in films and television shows. Yet Miranda is only part of the story when it comes to the procedures for ensuring justice. The 2016 Law Day theme — **Miranda: More than Words** — will explore the procedural protections afforded to all of us by the U.S. Constitution, how these rights are safeguarded by the courts, and why the preservation of these principles is essential to our liberty.” From ABA Law Day Planning Manual

The lesson uses materials from the *Landmark Cases of the U. S. Supreme Court* web site developed by *Street law, Inc.* and *the Supreme Court Historical Society* and can be found at www.landmarkcases.org. Background material on the case is provided with the Lesson.

Grade Level: 9-12

Standard: Civic Standard Two: Students will understand the principles and ideals underlying the American political system.

End of Cluster Expectations (Benchmarks): Students will understand that the functioning of the government is a dynamic process which combines the formal balances of power incorporated in the Constitution with traditions, precedents, and interpretations which have evolved over the past 200 years.

Essential Question: What rights from the Bill of Rights was *Miranda* designed to protect and why is the Decision controversial?

LESSON PLAN FOR VISITING ATTORNEY

Write the Essential Question from above on the Board. **Essential Question:** What rights from the Bill of Rights was *Miranda* designed to protect and why is the Decision controversial?

1. Introduce yourself and explain to the students that the focus of this year’s Law Day program is the theme of “*Miranda, More Than Words*”. Tell them they will be looking at the significance of the Supreme Court’s Decision on *Miranda* fifty years ago and why it remains controversial.

2. Hand out copies of “**Miranda Warnings and the Bill of Rights**” and a copy of the **Bill of Rights** to each student. Have them individually complete the Chart at the bottom of the page on a sheet of paper. First, they should translate the warnings into their own words and next match the reworded warning with the right in the Bill of Rights that it is designed to protect. Give students about 10 minutes to complete the Chart.
3. Place the students into groups of 3 or 5 and ask them discuss the three questions on the Handout. Give the groups about 5 minutes for discussion.
4. Have groups present examples of their reworded warnings and the right it protects, Ask the groups to present their answers to the three questions on the Handout. Group presentations should take 10 – 15 minutes.
5. Give each student a copy of the student handout titled “**Controversy Over the Court’s Decision**”. Break small groups into pairs. Ask the pairs to read each quote and to decide if the quote is **Pro- Miranda** or **Con-Miranda**. Give pairs about 5- 10 minutes to read and decide on each quote.
6. Select different pairs to present their position on each quote. Ask if anyone disagrees. Discuss positions taken.

CLOSING: Ask students to discuss the Essential Question: What rights from the Bill of Rights was *Miranda* designed to protect and why is the Decision controversial?

The teacher may wish to assign the writing assignment from the second Handout as homework

Student Handouts

Landmark Cases of the U.S. Supreme Court

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?

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 an attorney.
4. If you cannot afford an attorney, one will be appointed for you.

Directions

For this activity, you will work in small groups. Each group will need a copy of the *Miranda* warnings (found above) 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, using the chart below, take each sentence of the *Miranda* warnings and translate them into language that makes sense to you.

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?

Sentence from <i>Miranda</i>	Put in your own words	Bill of Rights
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 BILL OF RIGHTS – FULL TEXT

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Controversy Over the Court's Decision

Directions

The Court's decision in *Miranda* was met with criticism when it was handed down in 1966, and it continues to be controversial today. The table below contains commentary on the decision and its effect on law enforcement. For each quote decide whether the writer is supporting (pro) or criticizing (con) the decision in *Miranda*.

Quote	Pro or Con?
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 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 *Miranda* 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."

Write a paragraph expressing your opinion about the decision:

Sources of the Quotes

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.

**Background
Information
And
Lesson with Key
Excerpts**

Landmark Cases of the U.S. Supreme Court

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 compelled self-incrimination. Under *Miranda*, a person in custody must be told of the right to remain silent and warned that any statements can and will be used against the individual in court. Recognizing that even this warning will not by itself fully protect the average citizen from the pressures of custodial interrogation, the Supreme Court also requires that persons in custody be given the right to consult with a lawyer before and during interrogation and that this right to counsel be included in the warnings given by the police. Unless the person being interrogated receives the required warnings and waives their right to silence and counsel, no statements they make may be used in court.

When the *Miranda* rules are not followed, statements made by a suspect are not allowed as evidence for three reasons:

1. to avoid the risk that statements were forced in violation of the defendant's Fifth Amendment rights;
2. to encourage officers to comply with the *Miranda* rules, thereby lessening the future likelihood of compelled self-incrimination; and
3. to discourage any 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 and waiver. However, a majority of the Court viewed custodial interrogations as an extremely intimidating and potentially unfair procedure. Fearing that the Fifth Amendment would become meaningless without warning suspects and informing them of the right to counsel, the Court determined that evidence which was the product of a confession without these warnings could not be used at trial. Textualists, those advocating a strictly text-based interpretation of the Constitution, criticize this methodology as judicial creation of rights.

The Four *Miranda* Warnings

If *Miranda* applies, a suspect must be given warnings before being questioned that indicate:

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 the presence of an attorney, and
4. If you cannot afford an attorney one will be appointed for you prior to any questioning if you so desire.

Is Miranda Applicable?

Miranda does NOT apply unless a person is in custody and subjected to interrogation by a law enforcement officer.

1. Custody

Definitions:

- **Custody** requires a significant deprivation of liberty.
- A person is in custody only if they are subjected to either **formal arrest or its functional equivalent**.
 - *Formal arrest*—occurs when a person is explicitly told they are being placed under arrest or is booked at the stationhouse.
 - *Functional equivalent*—occurs when a suspect is “deprived of his freedom of action in any significant way.”

Consider a reasonable person under the same conditions of the suspect:

- Would a reasonable person under the same circumstances believe they were free to leave? (In other words: what would an *average or typical member of the community* think under the same circumstances?)
- The Court is not trying to figure out what this particular suspect thought.

2. Interrogation by a law enforcement officer

Even if the person is in custody, *Miranda* only applies if the suspect was interrogated by known law enforcement officers.

Definitions:

- **Interrogation**—includes any direct questioning by officers about a crime under investigation and more subtle statements or conduct that are the functional equivalent of direct questioning
- The **functional equivalent** of direct questioning is any speech or actions by an officer that they should have known were reasonably likely to elicit an incriminating response.

Determining the functional equivalent:

- Reasonably likely:
 - Courts will deem it "interrogation" only if officers **knew or should have known** an 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 their 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.

Spontaneous, volunteered statements:

Spontaneous statements volunteered by the suspect without questioning are NOT considered the product of interrogation even if the suspect was in custody at the time.

3. The Public Safety Exception to Miranda

The U.S. Supreme Court has ruled that *Miranda* warnings are unnecessary prior to questioning that is “reasonably prompted by a concern for the public safety”

- Consider whether a reasonable officer in the same position would conclude that there is a significant threat to the public safety
- Example: interrogation that occurs as police try to locate a bomb they believe is set to go off

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 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. . . .

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.