



***Miranda v. Arizona* (1966): Notes for Teachers and Facilitator**

Key Points:

- *Miranda* was one of a series of decisions by the Warren Court that dramatically changed police procedures. Until these decisions, the Supreme Court had intervened only when state actors had acted in a manner that, in the words of one Justice “shocked the conscience of English-speaking people.” Coerced confessions were one example. Not only did they “shock the conscience,” but very possibly under compulsion a person might indeed admit to a crime that he or she had not committed. Under the same standard, the Court had found that attorneys needed to be provided for at trial when the defendant was accused of a “capital crime” or when other “special circumstances” prevailed, *e.g.*, a complex set of facts.
- *Miranda v. Arizona* established that police must administer warnings—now known as “Miranda Warnings” to anyone in custody. These warnings inform a person of the right to remain silent, that anything the person says can and will be used against him or her, that the person has a right to see a lawyer and have a lawyer present for questioning, and that a lawyer will be appointed if the person cannot afford one.

Additional Resources:

[Miranda v. Arizona \[Oyez\]](#)

[The Privilege Against Self-Incrimination \[Highly Recommended\]](#)



Miranda v. Arizona

This moot court concerns the case of *Miranda v. Arizona.*, in which the Supreme Court held that the Fifth Amendment requires those in custody to be informed of their right against self-incrimination and the right to an attorney.

Facts

On March 13, 1963, Ernesto Miranda was arrested in his home and brought to a police station in connection with recent crimes in the area, in this case, kidnapping and rape. For two hours police questioned Miranda without an attorney present before obtaining his signed confession. At trial the confession was entered into evidence over the objection of Miranda’s attorney, who argued in vain that the Fifth Amendment required police to inform Miranda of his right against self-incrimination, and his right to an attorney, before interrogating him. Miranda was convicted, and the conviction was affirmed by the Arizona Supreme Court, which held that Miranda’s rights were not violated because he had not requested an attorney.

At the time, it was common practice for police to interrogate suspects without informing them of their constitutional rights. Indeed, *Miranda* was one of four cases consolidated and granted *certiorari* by the U.S. Supreme Court. (To say that the cases were “consolidated” means that, because each turned on the same issue—whether suspects in custody must be informed of their right to remain silent and right to an attorney—the Court would decide them together as if they were one case.)

Central Issue

Does the Fifth Amendment require police to inform someone in custody of the right against self-incrimination and to defense counsel?

Legal Background

The Fifth Amendment provides that:

No person . . . shall be compelled in any criminal case to be a witness against himself . . .

The Sixth Amendment allows that

In all criminal prosecutions, the accused shall enjoy the right. . . to have the Assistance of Counsel for his defense.

For most of its history, the privilege against self-incrimination was seen solely as a protection at the trial stage. This is why a person who refuses to testify at trial is said to “plead the Fifth.”

The rights granted by the Fifth and Sixth Amendments against self-incrimination and to legal representation in criminal trials, respectively, lie at the heart of *Miranda*. To appreciate the Court’s reasoning in *Miranda*, it is necessary to see these rights in relation to one another, and to understand how the Court, in the 1960s, came to expand its interpretation of the right against self-incrimination after first expanding the right to defense counsel.

Before *Gideon v. Wainwright*, 372 U.S. 335 (1963), the right to defense counsel meant only that the state could not keep a criminal defendant from having a lawyer at trial. *Gideon* established that, under the Sixth Amendment, not only must the government allow you to have a lawyer in a criminal case, *if you so choose*; the government must guarantee you a lawyer in a criminal case, and, if you could not afford one, provide an attorney.

In *Escobedo v. Illinois*, 378 U. S. 478 (1964), the Court held that the right to counsel existed not just in a trial, but in police custody as well. The police denied Escobedo’s request to see his lawyer, who was in the building, and then questioned the suspect at length about a shooting. He confessed, and his confession was used to convict him. The Court overturned this conviction because, once the suspect was in custody and subject to interrogation, it did not matter that no trial had yet begun for the purposes of the Sixth Amendment. He had a right to consult with his attorney.

If the right to defense counsel in a criminal case is a positive right, as the Court held in *Gideon*, and as *Escobedo* had found a person being interrogated had a right to see an attorney, did this mean that the Constitution required individuals in police custody to be informed of these rights before being questioned?

In a 5-4 decision by Chief Justice Earl Warren, the Court held that any statements made by a defendant in custody are admissible at a criminal trial only if police told the defendant of the right to remain silent and the right to speak with an attorney before the interrogation started, and the rights were either exercised or waived in a knowing, voluntary, and intelligent manner.

For Warren the right against self-incrimination was invented by the English to protect against the use of coercion and abuse to obtain confessions; the framers of the Fifth Amendment understood it as such; and it therefore ought to apply in any circumstance in which there is the threat or possibility of coercion and abuse to obtain testimonial evidence against a criminal defendant. After reviewing key elements from various manuals for police interrogation, Warren concluded that police custody creates circumstances that lend themselves to coercion and abuse, and that such circumstances violate suspects’ Fifth Amendment right to remain silent. Failing to inform a suspect of this right to counsel furthermore violates the Sixth Amendment’s guarantee of counsel.

In contrast, the Arizona Supreme Court had held that while in *Escobedo* the police denied the suspect’s request for counsel, in *Miranda* the suspect never asked. For the four dissenting justices, they argued that there was no reason to totally upend good police practices. Those police who would engage in actions that ‘shocked the conscience’ had lied about their actions and would lie

about whether the suspect has in fact waived his or her rights. They also pointed out that the linkage the majority made between the two rights, ignored the fact that they were found in two different amendments and that the Fifth Amendment language demonstrated that it was restricted to courtroom proceedings since it speaks of a right not “to be a witness against himself.”



Our Mission in this Moot Court

Our moot court begins at the point that the United States Supreme Court has agreed to resolve the issue of whether police must inform a suspect of his or her Fifth Amendment right to remain silent before commencing interrogation.

Brainstorming

Break into three groups:

Group 1: Attorneys representing Miranda

Group 2: Attorneys representing the State of Arizona

Group 3: Justices who will ask probing questions and decide the case.

Each side will have 15 minutes to present its arguments. Those representing Korematsu will go first and may reserve 5 minutes for rebuttal. Justices who will hear the case will have engaged in brainstorming and will interrupt the arguments with questions.

Hints for attorneys representing Miranda:

The history and theory supporting the Court's decision in *Miranda* is *complicated*. Thus, for attorneys representing Miranda, the best strategy is to simplify as much as possible. The aim should be to argue that *Gideon* makes the right to counsel a positive right, and that *Escobedo* extends this right to suspects in criminal cases who have not yet been charged. The hard part for Miranda advocates is that this is a Fifth Amendment case, not a Sixth Amendment case. This means that attorneys for Miranda draw on *Gideon*, *Escobedo*, and Fifth Amendment precedent to tie the right to counsel to the right to remain silent. The task is that much harder, because Miranda advocates must argue that Miranda's failure to request an attorney, which appeared to be central in *Escobedo*, does not matter. The key is to argue that a suspect must waive his or her rights to counsel and to remain silent, that to waive these rights, a suspect must have the opportunity to do so, and that Miranda was not given the opportunity to waive his rights because police did not inform him of them.

Hints for attorneys representing the State of Arizona:

In some respects, attorneys representing the State of Arizona have less to lift. The strategy to take is to focus on a *narrow* reading of the Fifth Amendment, the Sixth Amendment, *Gideon*, and *Escobedo*. A narrow reading is one that draws limited legal conclusions. For example, *Gideon* and *Escobedo* are Sixth Amendment cases. But the framers of the Bill of Rights included the right to remain silent in the Fifth Amendment. Attorneys for the State of Arizona might argue that the framers believed these rights to be independent, not connected. If they are independent rights, then it is harder to base an elaboration of the right to remain silent on the expansion of the right to counsel in *Gideon* and *Escobedo*. Moreover, even if *Gideon* does grant a positive right to counsel, meaning that a suspect is entitled to a defense attorney, it is not clear that this is incompatible with

requiring a suspect to request the attorney. The goal, then, would be to distinguish *Escobedo* on the facts (because *Escobedo*, but not *Miranda* involved the denial of an explicit request). This means arguing that neither *Gideon* nor *Escobedo* required informing a person of the right to counsel, but only providing counsel if requested.

Hints for Justices: Your job is to think about both sides of the case and develop questions for each side. Good questions will dig deeper into the arguments made and help clarify both sides.

Summary of tasks:

1. Engage in general brainstorming of arguments for your side or if you are a justice of questions to ask.
2. As part of that brainstorming, review and consider the arguments on the Argument Sheet.
3. Attorneys: Write out a bullet point list of the arguments you want to make and begin with the most persuasive. Use the attorney worksheet.
4. Attorneys: Think of counters to those arguments and develop answers.
5. Justices: Fill out the Justice worksheet
6. Attorneys: Designate the person to make the argument (All attorneys can answer questions posed by the Justices)

Attorneys making argument: Introduce yourself by saying, “May It Please the Court, I’m _____ and I represent _____ in this matter.”



Arguments

Look over these arguments. Decide whether they help Miranda or the State of Arizona.

_____ The Sixth Amendment’s right to counsel is negated if the defendant has already confessed to the crime.

_____ Article III provides that in cases where the defendant is accused of treason only a “Confession in open Court” is admissible.

-----Justice Byron White, dissenting in *Miranda*, pointed out that “Neither the Framers, . . . a century of decisions of this Court, nor [the foremost authority on rules of evidence] provides an iota of support for the idea that an accused has an absolute constitutional right not to answer even in the absence of compulsion. . . .”

_____ Subsequent to the Court’s decision in *Miranda*, the Supreme Court held that its decision was not retroactive, *i.e.*, it only applied to cases after the ruling in *Miranda*.

_____ The history and language of the Fifth Amendment’s protection against self-incrimination that it is limited to trials.

_____ Since only a small percentage of cases involving confessions ever reach the Supreme Court, the Court needs to abandon the “totality of the circumstances” rule used up to *Miranda* and replace it with a clear standard that lower courts can enforce.

_____ The Supreme Court in *Miranda* split 5-4.

----- Before *Miranda*, the police relied too much on confessions and did not do enough independent investigations of crimes.

----- Any intelligent person knows that if you are arrested it is stupid to speak to the police without an attorney.



Justice Brainstorming Worksheet

You are a Supreme Court Justice hearing *Miranda v. Arizona*. Please answer the following questions. Be sure to reference the facts and the relevant cases on the argument sheet.

1. Pretend that you are listening to the oral arguments of the attorneys representing Marbury. What two questions would you ask?

A.

B.

2. Pretend that you are listening to the oral arguments of the attorneys representing Madison. What two questions would you ask?

A.

B.

3. At the conclusion of hearing the case, you have to write a court opinion ruling either in favor of Miranda or the State of Arizona. Without precedent to rely upon, you have little to support your position but general principles of government and constitutional interpretation.

_____ Miranda _____ Arizona

4. Prepare a bullet point list of your reasons. Include why you rejected the losing side's arguments.