SUMMARY
In 1966, the Supreme Court handed down a controversial 5-4 ruling in *Miranda v. Arizona* that dramatically changed criminal procedures throughout the country. For the first time in history, the Court linked the Fifth Amendment’s privilege against self-incrimination to the Sixth Amendment’s guarantee of a right to counsel and applied both to protect a suspect’s rights from arrest through trial.

Within a year, every state had integrated specific guidelines given in the majority opinion into a series of questions or statements known as Miranda warnings. To this day, all police officers seeking evidence for a conviction must inform a custodial suspect of their “Miranda rights” before an interrogation by reading (or reciting) the Miranda warnings.

The process of “Mirandizing” is very well known, but it has changed over the years. Legal challenges made in the interest of liberty and security have brought about Court-approved modifications. Now, in the age of global terrorism, Miranda faces new issues. Are more changes ahead?

This lesson is based on a video about the landmark Supreme Court case that made law enforcement the protectors of individual liberty where people are most vulnerable—in the interrogation room.

“No person . . . shall be compelled in any criminal case to be a witness against himself.” (Fifth Amendment)

*You have the right to remain silent* (Miranda warnings)

NOTES AND CONSIDERATIONS
• This lesson presupposes that students are familiar with Supreme Court cases, legal terminology, and constitutional principles.

• Technology is relied on to facilitate learning.

• This is a self-contained lesson with resources and activities that can be adapted to different teaching styles, length of classes, and levels of students.
Grades 5-8 Organizing Questions

The national content standards for civics and government are organized under five significant questions. The following outline lists the high-level organizing questions supported by this lesson.

I. What are civic life, politics, and government?
   A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
   B. What are the essential characteristics of limited and unlimited government?
   C. What are the nature and purposes of constitutions?

II. What are the foundations of the American political system?
   A. What is the American idea of constitutional government?
   B. What are the distinctive characteristics of American society?
   C. What is American political culture?
   D. What values and principles are basic to American constitutional democracy?

III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
   A. How are power and responsibility distributed, shared, and limited in the government established by the United States Constitution?
   C. How are state and local governments organized and what do they do?
   E. What is the place of law in the American constitutional system?
   F. How does the American political system provide for choice and opportunities for participation?

V. What are the roles of the citizen in American democracy?
   B. What are the rights of citizens?
   C. What are the responsibilities of citizens?
   D. What dispositions or traits of character are important to the preservation and improvement of American constitutional democracy?
   E. How can citizens take part in civic life?
Grades 9-12 Organizing Questions

The national content standards for civics and government are organized under five significant questions. The following outline lists the high-level organizing questions supported by this lesson.

I. What are civic life, politics, and government?
   A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
   B. What are the essential characteristics of limited and unlimited government?
   C. What are the nature and purposes of constitutions?

II. What are the foundations of the American political system?
   A. What is the American idea of constitutional government?
   B. What are the distinctive characteristics of American society?
   C. What is American political culture?
   D. What values and principles are basic to American constitutional democracy?

III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
   A. How are power and responsibility distributed, shared, and limited in the government established by the United States Constitution?
   B. How is the national government organized, and what does it do?
   C. How are state and local governments organized and what do they do?
   D. What is the place of law in the American constitutional system?

V. What are the roles of the citizen in American democracy?
   A. What are the rights of citizens?
   B. What are the responsibilities of citizens?
   C. What civic dispositions or traits of private and public character are important to the preservation and improvement of American constitutional democracy?
   E. How can citizens take part in civic life?

Note: A more detailed standards-level alignment related to these questions can be found in the Standards section at the end of this lesson plan.
COMMON CORE STANDARDS

Document: English Language Arts & Literacy in History/Social Studies, Science and Technical Subjects
Standards: Grades 6-12 Literacy in History/Social Studies, Science and Technical Subjects
http://www.corestandards.org/ELA-Literacy

Reading in History/Social Studies 6-8
Key Ideas and Details
CCSS.ELA-Literacy.RH.6-8.1
CCSS.ELA-Literacy.RH.6-8.2
CCSS.ELA-Literacy.RH.6-8.3
Craft and Structure
CCSS.ELA-Literacy.RH.6-8.4
CCSS.ELA-Literacy.RH.6-8.6
Integration of Knowledge and Ideas
CCSS.ELA-Literacy.RH.6-8.7
CCSS.ELA-Literacy.RH.6-8.8
CCSS.ELA-Literacy.RH.6-8.9
Range of Reading and Level of Text Complexity
CCSS.ELA-Literacy.RH.6-8.10
Writing 6-8
Text Types and Purposes
CCSS.ELA-Literacy.WHST.6-8.1
CCSS.ELA-Literacy.WHST.6-8.2
Production and Distribution of Writing
CCSS.ELA-Literacy.WHST.6-8.4
CCSS.ELA-Literacy.WHST.6-8.6
Research to Build and Present Knowledge
CCSS.ELA-Literacy.WHST.6-8.7
CCSS.ELA-Literacy.WHST.6-8.8
CCSS.ELA-Literacy.WHST.6-8.9
Range of Writing
CCSS.ELA-Literacy.WHST.6-8.10

Reading in History/Social Studies 9-10
Key Ideas and Details
CCSS.ELA-Literacy.RH.9-10.1
CCSS.ELA-Literacy.RH.9-10.2
CCSS.ELA-Literacy.RH.9-10.3
Craft and Structure
CCSS.ELA-Literacy.RH.9-10.4
CCSS.ELA-Literacy.RH.9-10.6
Integration of Knowledge and Ideas
CCSS.ELA-Literacy.RH.9-10.9
Range of Reading and Level of Text Complexity
CCSS.ELA-Literacy.RH.9-10.10
Writing 9-10
Text Types and Purposes
CCSS.ELA-Literacy.WHST.9-10.1
CCSS.ELA-Literacy.WHST.9-10.2
Production and Distribution of Writing
CCSS.ELA-Literacy.WHST.9-10.4
CCSS.ELA-Literacy.WHST.9-10.6
Research to Build and Present Knowledge
CCSS.ELA-Literacy.WHST.9-10.7
CCSS.ELA-Literacy.WHST.9-10.8
CCSS.ELA-Literacy.WHST.9-10.9
Range of Writing
CCSS.ELA-Literacy.WHST.9-10.10

Reading in History/Social Studies 11-12
Key Ideas and Details
CCSS.ELA-Literacy.RH.11-12.1
CCSS.ELA-Literacy.RH.11-12.2
Craft and Structure
CCSS.ELA-Literacy.RH.11-12.4
CCSS.ELA-Literacy.RH.11-12.5
CCSS.ELA-Literacy.RH.11-12.6
Integration of Knowledge and Ideas
CCSS.ELA-Literacy.RH.11-12.7
CCSS.ELA-Literacy.RH.11-12.8
CCSS.ELA-Literacy.RH.11-12.9
Range of Reading and Level of Text Complexity
CCSS.ELA-Literacy.RH.11-12.10
Writing 11-12
Text Types and Purposes
CCSS.ELA-Literacy.WHST.11-12.1
CCSS.ELA-Literacy.WHST.11-12.2
Production and Distribution of Writing
CCSS.ELA-Literacy.WHST.11-12.4
Research to Build and Present Knowledge
CCSS.ELA-Literacy.WHST.11-12.7
CCSS.ELA-Literacy.WHST.11-12.8
CCSS.ELA-Literacy.WHST.11-12.9
Range of Writing
CCSS.ELA-Literacy.WHST.11-12.10
Knowledge, skills, and dispositions

Students will . . .

- Identify, connect, and relate historical events to the right to remain silent.
- Recognize the confluence of factors that brought about the decision in Miranda v. Arizona.
- Explore pro and con arguments related to Miranda.
- Gain insight into the reasoning used by the Supreme Court in Miranda v. Arizona.
- Explore the development, use, impact, and controversy surrounding the Miranda warnings.
- Appreciate the constitutional protections due each person in our system of justice.
- Make real-world connections.

Integrated Skills

1. Information literacy skills
   Students will . . .
   - Extract, organize and analyze information from different sources.
   - Use skimming and research skills.
   - Organize information into usable forms.
   - Build background knowledge to support new learning.
   - Use technology to facilitate learning.

2. Media literacy skills
   Students will . . .
   - Gather and interpret information from different media.
   - Use online sources to support learning.

3. Communication skills
   Students will . . .
   - Write and speak clearly to contribute ideas, information, and express own point of view.
   - Write in response to questions.
   - Respect diverse opinions and points of view.
   - Interpret visual models.
   - Develop interpretive skills.

4. Study skills
   Students will . . .
   - Take notes.
   - Manage time and materials.
   - Complete an outline.

5. Thinking skills
   Students will . . .
   - Describe and recall information.
   - Make personal connections.
   - Explain ideas or concepts.
   - Draw conclusions.
   - Analyze and evaluate issues.
   - Use sound reasoning and logic.
   - Evaluate information and decisions.
   - Critique arguments.

6. Problem-solving & Decision-making
   Students will . . .
   - Identify issues and facts.
   - Analyze cause and effect relationships.
   - Examine reasoning used in making decisions.
   - Evaluate proposed solutions.
   - Ask meaningful questions.
   - Base decisions on sound reasoning.

7. Participation skills
   Students will . . .
   - Contribute to small and large group discussion.
   - Work responsibly both individually and with diverse people.
   - Express own beliefs, feelings, and convictions.
   - Show initiative and self-direction.
   - Interact with others to deepen understanding.

STUDENT OUTCOMES

• Identify, connect, and relate historical events to the right to remain silent.
• Recognize the confluence of factors that brought about the decision in Miranda v. Arizona.
• Explore pro and con arguments related to Miranda.
• Gain insight into the reasoning used by the Supreme Court in Miranda v. Arizona.
• Explore the development, use, impact, and controversy surrounding the Miranda warnings.
• Appreciate the constitutional protections due each person in our system of justice.
• Make real-world connections.
Evidence of understanding may be gathered from student performance related to the following:
- Class-Prep Assignment
- Responses to each section in video guide
- Class discussion and daily assignments

**VOCABULARY**

admission of guilt  
adversarial system of justice  
amicus curiae  
appeal  
arrest  
Bill of Rights  
burden of proof  
certiorari  
Chief Justice Earl Warren  
civil liberties  
compelled  
concurring opinion  
confession  
conviction  
crime  
criminal  
criminal justice system  
criminal law  
criminal procedure  
criminal trial  
cruel and unusual punishment  
custody  
defendant  
Dickerson v. United States  
dissenting opinion  
due process  
Escobedo v. Illinois  
evidence  
felony  
Fifth Amendment privilege  
framers  
Gideon v. Wainwright  
government  
guilt  
innocent until proven guilty  
interrogation  
James Hundley  
John Lilburn  
judicial opinion  
jurisdiction  
Justice Byron White  
Justice Hugo Black  
liberty  
magisterial opinion  
majority opinion  
Miranda rights  
Miranda warnings  
Mirandize  
misdemeanor  
noncustodial interview  
opinion of the Court  
petitioner  
police  
police custody  
police interview  
prosecution  
public safety exception  
Richard Nixon  
respondent  
rights  
right to counsel  
right to remain silent  
security  
self-incrimination  
shall  
Sixth Amendment  
Star Chamber  
suspect  
taking the Fifth  
the third degree  
U.S. Constitution  
voluntary confession  
Warren Court  
Wickersham Commission

**Resources for Definitions**

- Findlaw—Law Dictionary  
  http://dictionary.lp.findlaw.com/
- National Standards for Civics and Government: Glossary  
- NOLO’s Free Dictionary of Law Terms and Legal Definitions  
  http://www.nolo.com/dictionary
- Merriam-Webster Online  
  http://www.merriam-webster.com/
- Annenberg Classroom – Glossary  
  http://www.annenbergclassroom.org/terms
Goal: Students will . . .
• Learn about the U.S. Supreme Court decision in *Miranda v. Arizona* that extended the Fifth Amendment privilege against self-incrimination to individuals in the interrogation room and made the police responsible for informing custodial suspects of their right to remain silent.

• Gain insight into the development, use and controversy surrounding the Miranda warnings.

• Develop an appreciation for what is required of all Americans to help ensure the protection of individual rights and society under the Fifth Amendment.

Class-Prep Assignment:
Students complete an independent assignment to build background knowledge for the video they will watch and study during the first in-class session.

DAY 1: Right in the Interrogation Room
Students watch the video *The Right to Remain Silent: Miranda v. Arizona* and begin a guided study of the landmark Supreme Court decision.

DAY 2: The “Right to Remain Silent” Case
Students extract information from the video and other sources to complete a detailed outline as a brief for *Miranda v. Arizona* in order to learn more about the case that requires police to inform criminal suspects of their right to remain silent.

DAY 3: Making the Rules
Students make connections between the language used in the Miranda warnings and the words written by Chief Justice Earl Warren in the *Miranda* opinion. Through closer analysis of the sections, they learn about the reasons and principles of law upon which the decision is based and the arguments presented by the majority.

“The Fifth Amendment was designed to protect the accused against infamy as well as against prosecution.”

**Class-Prep Assignment**

This assignment provides important background knowledge and context for the content and concepts that will be covered in the video through narration, interviews, graphics, and embedded audio and video clips. Students should complete it as an independent activity before the first in-class session.

**Materials/Technology Needed:**
- Class-Prep Assignment Sheet (Student Handout)
- Information & Excerpts for Background (Student Handout)
- Computer with Internet access

**Students will . . .**

- **Watch**
  - Annenberg Classroom: Online Video Documentaries
  - The Story of the Bill of Rights (16:20)
  - The Fifth Amendment (3:07)
  - The Sixth Amendment (1:26)

- **Read and Respond**
  After reading each section in the handout (Information & Excerpts for Background), students will identify ONE significant point (e.g., problem, fact, idea, concept, value, principle, concern, issue, controversy, conclusion) and explain its importance. It may be important to them personally or important to others.

Sections in the Readings:
1. Rights, Liberties, and the Common Good
2. Commitment to Justice
3. Criminal Justice
4. U.S. Constitution and Bill of Rights
5. Protection Against Self-Incrimination
6. U.S. Court System
   - 6.1 Federal and State Courts
   - 6.2 Supreme Court
7. Law Enforcement
   - 7.1 Federal Law Enforcement
   - 7.2 State and Local Law Enforcement
8. Criminal Procedures

Remind students to bring their Class-Prep Assignment Sheet to class.
DAY 1: RIGHT IN THE INTERROGATION ROOM

Overview: Students watch the video The Right to Remain Silent: Miranda v. Arizona and begin a guided study divided into three sections: video study questions, brief outline for the case for Miranda v. Arizona, and reflection and follow-up with questions and activities.

Goal: Students gain information, understanding and appreciation for the controversy, challenges, principles, people and processes that make law enforcement responsible for protecting our liberty should we be accused of a crime.

Materials/Equipment:

- Technology
  Computer lab with internet connection
  Video: The Right to Remain Silent: Miranda v. Arizona (25 min.)
  Available from Annenberg Classroom:
  http://www.annenbergclassroom.org/page/all-videos

- Student Materials (Included)
  Student’s Video Guide
  A Closer Look at Miranda Warnings
  Through the Lens of the Common Core

- Readings and Resources: (Included)
  Video transcript: The Right to Remain Silent: Miranda v. Arizona
  Opinion of the Court, Miranda v. Arizona
  Available online from Cornell University Law School at this link:

  Chapter 17: The Right to Remain Silent, The Pursuit of Justice
  Available online from Annenberg Classroom at this link:
  http://www.annenbergclassroom.org/page/the-pursuit-of-justice

  Chapter 17: The Privilege Against Self-Incrimination, Our Rights
  Available from Annenberg Classroom at this link:
  http://www.annenbergclassroom.org/page/our-rights

- Teacher Materials (Included)
  Teacher’s Video Guide
  A Closer Look at Miranda Warnings (Key)

Procedure:
1. Write these words on the board: You have the right to remain silent. Ask students what statement comes next. Most likely they will know. (Anything you say can and will be used against you in a court of law.) Record all versions given.

2. Ask students to share what they know about the right to remain silent: Where does it come from? What does it mean? When and why is it given? Without any confirmation of responses, compile a list called “What We Know about the Right to Remain Silent” that can be revisited at the end of the lesson.

3. Distribute and review the handouts, show the video, and, if there is time remaining, allow students to begin work. Assign SECTION I: Video Study Questions for homework.
DAY 2: THE “RIGHT TO REMAIN SILENT” CASE

Overview: Students develop a brief for *Miranda v. Arizona* by completing a detailed outline.

Goal: Students extract information from the video and other sources to complete a detailed outline as a brief for *Miranda v. Arizona* in order to learn more about the case that requires police to inform criminal suspects of their right to remain silent.

Materials Needed:

- **Technology**
  - Computer with internet connection

  Video: *The Right to Remain Silent: Miranda v. Arizona* (25 min.)
  - Available from Annenberg Classroom:
    - [http://www.annenbergclassroom.org/page/all-videos](http://www.annenbergclassroom.org/page/all-videos)

- **Resources: (Included)**
  - Video transcript: *The Right to Remain Silent: Miranda v. Arizona*
  - Opinion of the Court, *Miranda v. Arizona*
    - Available online from Cornell University Law School at this link:

  - Chapter 17: The Right to Remain Silent, *The Pursuit of Justice*
    - Available online from Annenberg Classroom at this link:

- **Student Materials (Included)**
  - Student’s Video Guide (Focus on Section II)

- **Teacher Materials**
  - Teacher’s Video Guide (Included)
  - Game Guide for Teachers on *Argument Wars*:

Procedure:

1. Assign SECTION II: Brief the Case: An Outline (in the Video Guide)
2. Review the parts in the outline and give students a chance to ask clarifying questions.
3. Students may collaborate or work independently to develop the brief.
4. Use class time as a research and work period.

Homework:

1. Complete the brief for Section II.
2. Play this iCivics game at [http://www.icivics.org/games](http://www.icivics.org/games)
   - Select the *Argument Wars* game in *The Judicial Branch* section at the bottom of the page.
   - Select the case of *Miranda v. Arizona* for the game.
   - Print the Certificate at the end or provide a screen shot to verify completion of the game.
DAY 3: MAKING THE RULES

Overview: Students search the opinion of the Court to “find the Miranda warnings” and analyze it section by section.

Goal: Students make connections between the language used in the Miranda warnings and the words written by Chief Justice Earl Warren in the Miranda opinion. Through closer analysis of the sections, students learn about the reasons and principles of law upon which the decision is based and the arguments presented by the majority.

Materials Needed:

• Technology
  Computer with internet connection

• Resources: (Included)
  Opinion of the Court, Miranda v. Arizona
  Available online from Cornell University Law School at this link:

• Student Materials (Included)
  Making the Rules
  A Closer Look at Miranda Warnings
  Student’s Video Guide (Focus on Section III)
  “What We Know about the Right to Remain Silent” (class list produced in Lesson 1)
  Through the Lens of the Common Core

• Teacher Materials (Included)
  A Closer Look at Miranda Warnings (Key)
  Making the Rules (Key)

• Other needs
  Highlighters (5 different colors) or
  Software with searching and highlighting capabilities

Procedure:
1. Use a sports metaphor to introduce this lesson. Discuss the importance of rules in a game, why rules are made, how rules are made, compare/contrast rules and laws etc.
2. Assign Making the Rules and go over the instructions for both activities.

Homework:
1. Review the class list created in the first lesson: “What We Know about the Right to Remain Silent.”
   Correct any misconceptions.

2. Respond to this quote in the opinion: “The quality of a nation’s civilization can be largely measured by the methods it uses in the enforcement of its criminal law.” – Chief Justice Earl Warren quoting Mr. Justice Schaefer on Federalism and State Criminal Procedure
EXTENSION ACTIVITIES

Have more time to teach?

1. Research to identify changes made to Miranda warnings by the U.S. Supreme Court, and discuss their implications:
   - Has the Supreme Court Decimated Miranda?  
     http://www.time.com/time/nation/article/0,8599,1993580-1,00.html
   - Miranda Warnings tweaked by the Court  
     http://www.caselaw4cops.net/questioning/miranda.htm
   - Supreme Court Expands Juveniles’ Miranda Rights  
   - Mere Silence Doesn’t Invoke Miranda, Justices Say  
     http://www.nytimes.com/2010/06/02/us/02scotus.html?_r=0
   - Supreme Court Nipping at Miranda Rights  

2. Discuss/debate timely topics:
   - Are there limits to whom the protections of the Constitution apply?
     - Should suspected terrorists arrested abroad be read Miranda rights if they are not U.S. citizens? Consider this case: On February 28, 2013, Osama bin Laden’s son-in-law, Suleiman Abu Ghaith, was arrested in Jordan and flown to the U.S. for trial in a New York criminal court where Miranda rights apply. He pleaded not guilty.
   - Topic: The increasing number of federal crimes  
     http://www.heritage.org/research/reports/2008/06/revisiting-the-explosive-growth-of-federal-crimes
     National Association of Criminal Defense Lawyers – Overcriminalization—Are We a Nation of Criminals?  

3. Explore how Miranda rights relate to juveniles:
   - Do Kids Get It? (Miranda Rights)  
   - Annenberg Classroom: Speak Out  
     Juveniles and Miranda  
     http://www.annenbergclassroom.org/speakout/you-have-a-right-to-remain-silent-juveniles-and-miranda-rights
   - Supreme Court: Children are different when it comes to Miranda warning against self-incrimination  
   - Landmark U.S. Supreme Court Decision Protects Miranda Rights for Youth  
   - National Juvenile Defense Center: Know Your Rights  
     http://www.njdc.info/gaultat40/knowyourrights.php
4. Argue by playing an iCivics Game for *Miranda v. Arizona*:
   
   http://www.icivics.org/games

   • Select the Argument Wars game in The Judicial Branch section at the bottom of the page.
   • Select the case of Miranda v. Arizona for the game.

5. Help students learn how to develop an effective argument:
   
   • Annenberg Classroom: Critical Thinking Lesson Plan - Building a Better Argument
     http://www.annenbergclassroom.org/page/buildingabetterargument

   • iCivics Lessons for Teachers:
     Select from 8 lessons that cover the development of a well-written argument.
     Lesson 1: So You Think You Can Argue
     http://www.icivics.org/teachers/lesson-plans/lesson-1-so-you-think-you-can-argue

   • iCivics Drafting Board (requires login, which is free)
     Drafting Board “guides your students through the process of producing a clear and polished argumentative essay. Students will learn to connect claims, evidence, and reasoning to ultimately produce a structured and effective argument.” It is also aligned to Common Core Standards.
     http://www.icivics.org/draftingboard/

6. Learn more about decision-making and judicial interpretation at the Supreme Court:
   
   • View the video: Conversation on the Constitution: Judicial Interpretation (37 min.)
     http://www.annenbergclassroom.org/page/a-conversation-on-the-constitution-judicial-interpretation
     Justices Stephen G. Breyer and Antonin Scalia and a group of students discuss the different theories of how to interpret and apply the Constitution to cases.

   • View the video: The Origin, Nature and Importance of the Supreme Court (37 min.)
     http://www.annenbergclassroom.org/page/a-conversation-on-the-origin-nature-and-importance-of-the-supreme-court
     Chief Justice John G. Roberts Jr. and a group of students discuss the Supreme Court: its history, how it selects and decides cases, and the role of an independent judiciary.

   • United States Supreme Court
     http://www.supremecourt.gov
RESOURCES

Miranda v. Arizona (1966)

- United States Reports: Miranda v. Arizona

- OYEZ: Miranda v. Arizona

Find the audio and transcript for the argument presented by John J. Flynn on behalf of Ernesto Miranda linked under Miranda v. Arizona - Oral Argument, Part 1

- Cornell University Law School: Miranda v. Arizona
  Syllabus, Opinion, Dissent

- Findlaw: Miranda v. Arizona

- U.S. Courts: Amendment V (Includes educational resources related to Miranda v. Arizona)
  http://www.uscourts.gov/EducationalResources/ClassroomActivities/FifthAmendment.aspx

- Street Law: Landmark Supreme Court Cases (Includes educational resources)
  Miranda v. Arizona
  http://www.streetlaw.org/en/landmark/cases/miranda_v_arizona

Miranda – A Primer

- Center for Civic Education: Miranda v. Arizona
  http://www.civiced.org/pdfs/WTP/resources/MirandaVsArizona.pdf

- C-SPAN: Miranda v. Arizona
  http://www.c-spanvideo.org/program/59486-1

- iCivics Game
  http://www.icivics.org/games
  Select the Argument Wars game in The Judicial Branch section at the bottom of the page. Select the case of Miranda v. Arizona for the game.

Fifth Amendment & Self-Incrimination

- Annenberg Online Video Documentaries
  The Story of the Bill of Rights (16:20)
  Fifth Amendment (3:07)
  Sixth Amendment (1.06)

- Annenberg Classroom: Fifth Amendment
  http://www.annenbergclassroom.org/page/fifth-amendment
• Annenberg Classroom: Timeline - Right Against Self-Incrimination
  http://www.annenbergclassroom.org/timeline/right-against-self-incrimination

• Annenberg Classroom: Chapter 17: The Right to Remain Silent, The Pursuit of Justice—Kermit L. Hall and John J. Patrick

• Annenberg Classroom: Chapter 17: The Privilege Against Self-Incrimination, Our Rights—David J. Bodenhamer

• Annenberg Classroom: Fifth Amendment, Our Constitution—Donald Ritchie and Justicelearning.org

• U.S. Constitution: Fifth Amendment (Self-Incrimination)
  http://constitution.findlaw.com/amendment5/annotation07.html

• Findlaw: Annotation 7: Fifth Amendment – Self Incrimination
  http://constitution.findlaw.com/amendment5/annotation07.html

• Lexis Nexis: Criminal Procedure Capsule Summary
  Chapter 8: Privilege Against Self-Incrimination
  http://www.lexisnexis.com/lawschool/study/outlines/html/crimpro/crimpro08.htm

• iCivics (Interactives)
  The Constitution and Bill of Rights
  http://www.icivics.org/subject/constitution-and-bill-rights

• ACLU History: The Right to Remain Silent
  http://www.aclu.org/criminal-law-reform/aclu-history-right-remain-silent

Criminal Law and Procedures

• Cornell University Law School: Criminal Procedure: An Overview
  http://www.law.cornell.edu/wex/criminal_procedure

• Lexis Nexis: Criminal Procedure Capsule Summaries: Index

• Findlaw: Criminal Law
  http://criminal.findlaw.com/

• The Reid Technique of Interviewing and Interrogation
  http://www.reid.com/educational_info/r_updates.html
State and Federal Courts

- Supreme Court of the United States
  http://www.supremecourtus.gov

- United States Courts
  http://www.uscourts.gov

- Federal Judicial Center
  http://www.fjc.gov

- Findlaw: State Laws
  http://statelaws.findlaw.com/

Online Books from Annenberg

- Understanding Democracy, A Hip Pocket Guide—John J. Patrick
  http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide

- Our Constitution—Donald Ritchie and Justicelearning.org
  http://www.annenbergclassroom.org/page/our-constitution

- Our Rights—David J. Bodenhamer
  http://www.annenbergclassroom.org/page/our-rights

- The Pursuit of Justice—Kermit L. Hall and John J. Patrick
  http://www.annenbergclassroom.org/page/the-pursuit-of-justice

“The quality of a nation’s civilization can be largely measured by the methods it uses in the enforcement of its criminal law.”

Student Materials

• Class-Prep Assignment Sheet

• Information & Excerpts for Background

• Student’s Video Guide: *The Constitution Project: The Right to Remain Silent: Miranda v. Arizona*

• A Closer Look at Miranda Warnings

• Making the Rules

• Through the Lens of the Common Core
Complete this assignment before watching the 25-minute video *The Right to Remain Silent: Miranda v. Arizona*. It provides important background knowledge and context for the content and concepts that will covered in the video through narration, interviews, graphics, and embedded audio and video clips.

**Materials & Technology Needed:**
- Information & Excerpts for Background (Student Handout)
- Computer and Internet access

**Instructions:**
1. Read through the information and excerpts in each section. Use the questions to engage your thinking about the material and as a self-check of your understanding.
2. Complete the following activities.

**Activities:**
1. **Watch:**
   - Annenberg Classroom: Online Video Documentaries
   - The Story of the Bill of Rights (16:20)
   - The Fifth Amendment (3:07)
   - The Sixth Amendment (1:26)

2. **Read and Respond:**
   - Read through each section in the handout (Information & Excerpts for Background) and review the questions.
   - For each section below, identify ONE significant point (e.g., problem, fact, idea, concept, value, principle, concern, issue, controversy, conclusion) and explain its importance. It may be important to you personally or important to others. **Bring your responses to class.**
   1. Rights, Liberties, and the Common Good
   2. Commitment to Justice
   3. Criminal Justice
   4. U.S. Constitution and Bill of Rights
5. Protection Against Self-Incrimination

6. U.S. Court System

   6.1 Federal and State Courts

   6.2 Supreme Court

7. Law Enforcement

   7.1 Federal Law Enforcement

   7.2 State and Local Law Enforcement

8. Criminal Procedures

**REMEMBER: Bring your responses to class.**
About:

The information and excerpts in this resource are included to build essential background and context for the concepts covered in the video The Right to Remain Silent: Miranda v. Arizona. They are organized under the following headings:

1. Rights, Liberties, and the Common Good
2. Commitment to Justice
3. Criminal Justice
4. U.S. Constitution and Bill of Rights
5. Protection Against Self-Incrimination
6. U.S. Court System
   6.1 Federal and State Courts
   6.2 Supreme Court
7. Law Enforcement
   7.1 Federal Law Enforcement
   7.2 State and Local Law Enforcement
8. Criminal Procedures

Instructions to Students:

Prepare for the video The Right to Remain Silent and activities in this lesson by reading the information and excerpts on these pages. Use the questions to engage your thinking about the material and as a self-check of your understanding. If you don’t know the answers, read or research to find them.

1. Rights, Liberties, and the Common Good

Questions:

1. Why spend time learning about the U.S. Constitution and issues related to it?
2. What responsibilities do you have as an individual living under the Constitution?
3. Do you have any concerns about the power of government? Explain.
4. In our constitutional democracy, who has ultimate control over the government?
5. How can you protect your rights and liberties?
6. Identify the two competing purposes of government and explain why there is tension between the two.

Readings:

1. “When it comes to your rights and liberties, it would be dangerous to be indifferent. True, the U.S. Constitution has stood the test of time for more than two hundred years, preserving our rights, preventing despotism, and adjusting to the needs of an evergrowing nation. Yet despite its appearance of strength and stability, time and again constitutional rights and liberties have been imperiled and might have crumbled if taken for granted.” . . .

   “Because we live under . . . rules [outlined by the Constitution], it is essential that we know what they are, why they were established, how they have been implemented, and how they directly affect us. The Constitution not only designed a government but also placed limits on it to prevent arbitrary rule. Particularly through its amendments, the Constitution guarantees every American fundamental rights and protection of life, liberty, and property.”

   “The continuing debates over how to interpret the Constitution influence your freedom to worship, to read what you want, to speak your mind, and to protest injustices. They involve your life, liberty, and property, everything that you consider valuable. For these reasons, it is in your interest to know your constitutional rights. You will have the opportunity to choose your leaders—and perhaps to become one yourself. That carries with it a civic responsibility to understand how government works, to know its powers and its limits, and the meaning of a constitution written in the name of ‘we the people.’”
2. “The common good (sometimes called the public good) may refer to the collective welfare of the community. It also may refer to the individual welfare of each person in the community. A communitarian view of the common good in a democracy is equated with the collective or general welfare of the people as a whole. The well-being of the entire community is considered to be greater than the sum of its parts, and the exemplary citizen is willing to sacrifice personal interests or resources for the good of the entire community. The good of the country or the community is always placed above the personal or private interests of particular groups or individuals. From this communitarian perspective, the ultimate expression of the common good is the elevation of public or community interests above private or individual interests.”

“When viewed individualistically, however, the common good is based on the well-being of each person in the community. In a democracy, the government is expected to establish conditions of liberty and order that enable each person to seek fulfillment and happiness on his or her own terms. The exemplary citizen respects and defends the individual rights of each person in the expectation of reciprocity from others. From the perspective of individualism, the ultimate achievement of the common good is when the rights of each person in the community are protected and enjoyed equally.”

Source:
http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide

2. Commitment to Justice

Questions:
1. Who is ultimately responsible for establishing justice in this country?
2. How are the three branches of government involved in establishing justice?
3. What does justice “look like” in practical terms?
4. Write a short paragraph that explains what justice means to you.

Readings:
1. “In a democracy, the source of a government’s authority is the people, the collective body of citizens by and for whom the government is established. The ultimate goal of government in a democracy is to protect individual rights to liberty within conditions of order and stability.”

   “The government may not assume powers that are not listed or granted to it [by the Constitution].”

   “An independent judiciary that can declare null and void an act of the government it deems contrary to the constitution is an especially important means to prevent illegal use of power by any government official.”

Source:
Annenberg Classroom: Understanding Democracy, pg. 42
http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide

2. “We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

Source:
Annenberg Classroom: Constitution Guide - Preamble
http://www.annenbergclassroom.org/page/preamble
3. Justice is the “Fair distribution of benefits and burdens, fair correction of wrongs and injuries, or use of fair procedures in gathering information and making decisions.”
   
   Source: Center for Civic Education: Glossary

4. “Justice is one of the main goals of democratic constitutions, along with the achievement of order, security, liberty, and the common good. The Preamble to the Constitution of the United States, for example, says that one purpose of the document is to ‘establish Justice.’ And, in the 51st paper of The Federalist, James Madison proclaims, ‘Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.’” So, what is justice? And how is it pursued in a constitutional democracy?”

   “Since ancient times, philosophers have said that justice is achieved when everyone receives what is due to her or him. Justice is certainly achieved when persons with equal qualifications receive equal treatment from the government. For example, a government establishes justice when it equally guarantees the human rights of each person within its authority. As each person is equal in her or his membership in the human species, each one possesses the same immutable human rights, which the government is bound to protect equally. By contrast, the government acts unjustly if it protects the human rights of some individuals under its authority while denying the same protection to others.”

   Source: Annenberg Classroom: Understanding Democracy, pgs 49-51
   http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide

5. The separation of powers is a constitutional doctrine that “allocates the powers of national government among three branches: the legislative, which is empowered to make laws; the executive, which is required to carry out the laws; and the judicial, whose job it is to interpret and adjudicate (hear and decide) legal disputes.”

   Source: Annenberg Classroom: Glossary – Separation of Powers
   http://www.annenbergclassroom.org/term/separation-of-powers

6. “Separation and sharing of powers among the three branches, through checks and balances, is the basic constitutional means for achieving limited government and thereby protecting the people from governmental abuses. . . .Under the system of checks and balances, no branch of the government can accumulate too much power. But each branch, and the government generally, is supposed to have enough power to do what the people expect of it. So, the government is both limited and empowered; neither too strong for survival of the people’s liberty nor too limited to be effective in maintaining order, stability, and security for the people.”

   Source: Annenberg Classroom: Understanding Democracy, pgs. 91-92
   http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide

7. “Agreement on certain fundamental values and principles is essential to the preservation and improvement of American constitutional democracy. They are stated in the Declaration of Independence, the Constitution, the Gettysburg Address, and other significant documents, speeches, and writings. They provide common ground on which Americans can work together to decide how best to promote the attainment of individual, community, and national goals. The values and principles of American constitutional democracy have shaped the nation’s political institutions and practices. These values and principles are sometimes in conflict, however, and their very meaning and application are often disputed.”

   For example, conflicts inevitably arise when individuals are confronted with the power of the government, or the government is confronted by the constitutional protections granted individuals.

   The process required to bring law-breakers to justice often results in loud debates about
   - conflicts between liberty and security
   - conflicts between individual rights and the common good
   - conflicts between the rights of different individuals
In a changing society, ensuring that justice is upheld in criminal matters is a pursuit that will never end. It’s the Constitution that gives the government competing responsibilities (e.g., protecting individual rights and promoting the common good) and it gives the people the power to decide what matters most.

Source:
Center for Civic Education: National Civics and Government Standards, Grade 5-8, pgs. 101, 123-127

3. Criminal Justice

Questions:
1. What do Americans expect from their criminal justice system?
2. What is the objective of the criminal justice system?
3. When the power of the government threatens your liberty, what legal protections do you have?
4. When your safety is threatened, what legal protections do you have?

Readings:
1. “In general, the goal of the American legal system is justice. As a community, we want to get the “perp,” right the wrong and restore our sense of order. We put bad guys behind bars to keep the rest of us safe. But justice also requires providing those accused of crimes with a fair and appropriate adjudication of their guilt. They are not only given, but informed of their rights to counsel and silence, and they should have the right to due process upheld at each step. Justice, therefore, means avoiding mistakes. It keeps those who are innocent out of the criminal system, and its utmost end is to find the truth.”
   Source:
   American Criminal Law Review: “Defining Justice” by Emily Smith

2. The criminal justice system is “the system of law enforcement that is directly involved in apprehending, prosecuting, defending, sentencing, and punishing those who are suspected or convicted of criminal offenses.”
   Source:
   Oxford Dictionaries
   http://oxforddictionaries.com/definition/english/criminal%2Bjustice%2Bsystem

3. “The criminal justice system is comprised of three major institutions which process a case from inception, through trial, to punishment. A case begins with law enforcement officials, who investigate a crime and gather evidence to identify and use against the presumed perpetrator. The case continues with the court system, which weighs the evidence to determine if the defendant is guilty beyond a reasonable doubt. If so, the corrections system will use the means at their disposal, namely incarceration and probation, to punish and correct the behavior of the offender.”
   “Throughout each stage of the process, constitutional protections exist to ensure that the rights of the accused and convicted are respected. These protections balance the need of the criminal justice system to investigate and prosecute criminals with the fundamental rights of the accused (who are presumed innocent).”
   Source:
   Findlaw: How Does the Criminal Justice System Work?

4. “All of us rely on the criminal justice system to keep us safe and maintain order. We expect it to meet the fundamental aims of our criminal laws: to separate the guilty from the innocent, to incapacitate truly dangerous individuals, and to promote deterrence and retribution for those who violate law. We also expect the criminal law and the criminal justice system to be fair and even-handed and to rehabilitate criminal offenders. And we expect the criminal justice system to assist offenders who have completed their sentences to reenter the community as productive citizens and to avoid commission of crimes in the future.
5. The mission statement of the United States Department of Justice is “To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.”

Source:
United States Department of Justice
http://www.justice.gov/about/about.html

6. “The U.S. Constitution generally, and especially its Bill of Rights, protects individuals accused of crimes from wrong or unjust accusations and punishments by government officials. But the Constitution and laws made in conformity with it also authorize the federal and state governments to exercise certain powers in order to protect people from criminals intending to harm them. So Americans want their federal and state governments to be simultaneously powerful enough to protect them from criminals and sufficiently limited to prevent the government from abusing anyone, including those accused of criminal behavior.”

“Constitutional issues inevitably arise when the government’s efforts to prevent crime [or identify and punish a criminal] clash with the need to protect those accused of a crime.”

Source:
Annenberg Classroom: The Pursuit of Justice, pg. 140
http://www.annenbergclassroom.org/page/the-pursuit-of-justice

4. U.S. Constitution and Bill of Rights

Questions:
1. What is the purpose of the U.S. Constitution?
2. After the Constitution was written, why were the states reluctant to ratify it? What convinced them to proceed with ratification?
3. What is the significance of these dates? 1787, 1791
4. Explain the relationship between the Constitution and the Bill of Rights?
5. What authority did the Bill of Rights have over the states in 1800? 1925? 1931?
6. Do all rights in the Bill of Rights apply to your state today? Explain.
7. Describe the relationship of the government to the people under the Constitution.
8. Respond to this statement: Constitutional challenges over issues of liberty and security are signs of a healthy democracy.

Readings:
1. The ratification of the U.S. Constitution in 1787 depended on a promise by James Madison that a bill of rights would be added. The people recognized that the Constitution established the federal government and determined its relationship to the states, but it did not include protections for individual liberties.

Source:
Annenberg Classroom: Online Video Documentaries
Story of the Bill of Rights (16:20)
2. In 1791, the Bill of Rights was ratified, resulting in the addition of the first 10 amendments to the Constitution. Now the Constitution protected individual rights from the new federal government and from popular majorities who might use their power to abuse the minority.
   
   Source:
   Annenberg Classroom: Online Video Documentaries
   The Story of the Bill of Rights (16:20)

3. When ratified in 1791, the Bill of Rights applied only to the federal government, not the states. The Supreme Court’s practice of selective incorporation (application) of the Bill of Rights didn’t actively start until 1925, when the Court began interpreting the due process clause of the Fourteenth Amendment (1868) as a limit on the power of state governments, as well as the federal government. Since the 1960s, practically all clauses in the Bill of Rights have been incorporated. But, there are some the Supreme Court has expressly refused to do.

   Sources:
   Annenberg Classroom: Our Constitution, pgs. 158-161
   http://www.annenbergclassroom.org/page/our-constitution
   United States Courts: Judicial Interpretation of the Fourteenth Amendment
   http://www.uscourts.gov/EducationalResources/ConstitutionResources/LegalLandmarks/
   JudicialInterpretationFourteenthAmendment.aspx

4. “The U.S. Constitution generally, and especially its Bill of Rights, protects individuals accused of crimes from wrong or unjust accusations and punishments by government officials. But the Constitution and laws made in conformity with it also authorize the federal and state governments to exercise certain powers in order to protect people from criminals intending to harm them. So Americans want their federal and state governments to be simultaneously powerful enough to protect them from criminals and sufficiently limited to prevent the government from abusing anyone, including those accused of criminal behavior.”

   “Constitutional issues inevitably arise when the government’s efforts to prevent crime clash with the need to protect those accused of crime.”

   “Tensions between liberty and order in the United States [are ongoing]. In our free society, there will always be questions about the proper balance between the rights of criminal suspects and the need for safety and security against criminals. The exact meaning and practical applications of due process rights . . . will continue to be debated in community forums and courts of law. Such constructive controversies are vital signs of a healthy constitutional democracy.”

   Source:
   Annenberg Classroom: Pursuit of Justice, pg. 140
   http://www.annenbergclassroom.org/page/the-pursuit-of-justice

5. Protection Against Self-Incrimination

Questions:
1. Define self-incrimination.
2. Why is the privilege against self-incrimination essential for individual liberty?
3. Why do we have the privilege against self-incrimination?
4. Quote the clause that is the basis for this privilege and give the reference.
5. Consider the use of these statements:
   a. “You have the right to remain silent.”
      • Who says it?
      • What circumstances prompt its use?
      • Why say it?
b. “I take the Fifth.”
   • Who says it?
   • What circumstances prompt its use?
   • Why say it?

Readings:
1. “Right against Self-Incrimination: This provision of the Fifth Amendment is probably the best-known of all constitutional rights, as it appears frequently on television and in movies—whether in dramatic courtroom scenes (“I take the Fifth!”) or before the police question someone in their custody (“You have the right to remain silent. Anything you do say can be used against you in a court of law.”). The right protects a person from being forced to reveal to the police, prosecutor, judge, or jury any information that might subject him or her to criminal prosecution. Even if a person is guilty of a crime, the Fifth Amendment demands that the prosecutors come up with other evidence to prove their case. If police violate the Fifth Amendment by forcing a suspect to confess, a court may suppress the confession, that is, prohibit it from being used as evidence at trial.”

“The right to remain silent also means that a defendant has the right not to take the witness stand at all during his or her trial, and that the prosecutor cannot point to the defendant’s silence as evidence of guilt. There are, however, limitations on the right against self-incrimination. For example, it applies only to testimonial acts, such as speaking, nodding, or writing. Other personal information that might be incriminating, like blood or hair samples, DNA or fingerprints, may be used as evidence. Similarly, incriminating statements that an individual makes voluntarily—such as when a suspect confesses to a friend or writes in a personal diary—are not protected.”

Source:
Annenberg Classroom: Constitution Guide - Fifth Amendment
http://www.annenbergclassroom.org/page/fifth-amendment

2. “The Fifth Amendment’s privilege against self-incrimination . . . is necessary for our sense of justice because it helps to ensure fairness. We assume the innocence of an individual until the government proves otherwise. Government has vast power, so we balance the scales of justice by, among other things, protecting the individual from a forced confession, an involuntary admission of guilt. Without it, there can be no due process of law.”

“The privilege against self-incrimination is also essential to our understanding of individual liberty. As a society, we believe freedom rests upon a fundamental right to privacy and human dignity. Central to our conception of privacy is the need for men and women to be custodians of their own consciences, thoughts, feelings, and sensations. Forcing us to reveal these things, making us confess without our consent, robs us of the things that make us individuals. No one and no power has the right to take something so precious from us, and the Fifth Amendment exists to ensure that we guarantee to each citizen the dignity and self-respect that allows us all to be free.”

Source:
Annenberg Classroom: Our Rights, pg. 141
http://www.annenbergclassroom.org/page/our-rights

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

Source:
Findlaw: U.S. Constitution - Fifth Amendment (Annotation 7 - Self-Incrimination)
http://constitution.findlaw.com/amendment5/annotation07.html

Learn more:
Annenberg Online Video Documentaries – The Story of the Bill of Rights
Fifth Amendment (3:07)
Questions:
1. What is the purpose of a court?
2. Compare and contrast the two types of court systems in the U.S.
3. What is the highest court in the U.S.?
4. Why are there two court systems in the U.S.?
5. Define the two types of cases heard by the courts.
6. What constitutes a crime and who gets to decide?
7. What is the difference between a federal crime and a state crime?
8. Where are most criminal cases heard? Why?
9. What process makes it possible to move a case along in the judicial system?
10. How does the U.S. Supreme Court relate to the federal and state courts?
11. Under what circumstances would a state criminal case be heard by the U.S. Supreme Court?
12. Explain the role and responsibility of the U.S. Supreme Court.
13. What is the jurisdiction of the U.S. Supreme Court and the source of its authority?
14. To which branch of government does the U.S Supreme Court belong?
6.1 Federal and State Courts

Readings:
1. Comparison of Federal and State Courts:

<table>
<thead>
<tr>
<th>Federal Courts</th>
<th>State Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Establishment:</strong> Established under the U.S. Constitution by Congress to decide disputes involving the Constitution and laws passed by Congress.</td>
<td><strong>Establishment:</strong> Established by a state (within states there are also local courts that are established by cities, counties, and other municipalities)</td>
</tr>
<tr>
<td><strong>Jurisdiction:</strong> Federal court jurisdiction is limited to the types of cases listed in the Constitution and specifically provided for by Congress.</td>
<td><strong>Jurisdiction:</strong> State court jurisdiction is geographically limited.</td>
</tr>
<tr>
<td>- Cases in which the United States is either the plaintiff or the defendant</td>
<td>- Cases individuals most likely to be involved in, (e.g., robberies, traffic violations, broken contracts, and family disputes).</td>
</tr>
<tr>
<td>- Cases involving violations of the U.S. Constitution or federal laws</td>
<td>- Most criminal cases involve violations of state law and are tried in state courts</td>
</tr>
<tr>
<td>- Cases between citizens of different states if the amount in controversy exceeds $75,000</td>
<td><strong>State crimes:</strong></td>
</tr>
<tr>
<td>- Bankruptcy, copyright, patent, and maritime law cases</td>
<td>- State legislatures make crime laws that define what constitutes a crime in their state. Not all states have the same crimes so the number of criminal laws varies.</td>
</tr>
<tr>
<td><strong>Federal crimes:</strong></td>
<td>- Actions that break state laws are crimes.</td>
</tr>
<tr>
<td>- Congress determines what constitutes a federal crime by passing laws against a particular behavior. There are “over 4,450 crimes scattered throughout the federal code and hundreds of thousands more hidden in federal regulations.” (NACDL)</td>
<td><strong>Examples of state crimes:</strong></td>
</tr>
<tr>
<td>- Every year, Congress passes more criminal laws</td>
<td>- Murder, rape, DUI, theft, drug possession, robbery and shoplifting, and assault. The majority of misdemeanors are state crimes.</td>
</tr>
<tr>
<td>- Actions that break federal laws or violate the Constitution constitute a crime.</td>
<td><strong>Note:</strong></td>
</tr>
<tr>
<td><strong>Examples of federal crimes:</strong></td>
<td>- The only cases state courts are not allowed to hear are lawsuits against the United States and those involving certain specific federal laws: criminal, antitrust, bankruptcy, patent, copyright, and some maritime law cases.</td>
</tr>
<tr>
<td>Bank robbery, trafficking in illegal drugs, tax evasion, crimes committed on federal property, such as national parks or military reservations</td>
<td>- A case that only involves a state law can be heard only in state court.</td>
</tr>
<tr>
<td><strong>Note:</strong></td>
<td>- In many cases, both federal and state courts have jurisdiction. Parties may choose whether to go to state or federal court.</td>
</tr>
<tr>
<td>1. Criminal cases involving federal laws can be tried only in federal court.</td>
<td></td>
</tr>
<tr>
<td>2. Federal courts may hear cases concerning state laws if the issue is whether the state law violates the federal Constitution.</td>
<td></td>
</tr>
<tr>
<td><strong>Both Federal and State</strong></td>
<td></td>
</tr>
<tr>
<td>- Both courts hear civil and criminal cases</td>
<td></td>
</tr>
<tr>
<td>- In cases where both federal and state courts have jurisdiction, parties may choose whether to go to state or federal court.</td>
<td></td>
</tr>
</tbody>
</table>

Sources:
2. “The U.S. Constitution created a governmental structure for the United States known as federalism. Federalism refers to a sharing of powers between the national government and the state governments. The Constitution gives certain powers to the federal government and reserves the rest for the states. Therefore, while the Constitution states that the federal government is supreme with regard to those powers expressly or implicitly delegated to it, the states remain supreme in matters reserved to them. This supremacy of each government in its own sphere is known as separate sovereignty, meaning each government is sovereign in its own right.”

“Both the federal and state governments need their own court systems to apply and interpret their laws. Furthermore, both the federal and state constitutions attempt to do this by specifically spelling out the jurisdiction of their respective court systems.”

Source:
United States Courts: Understanding Federal and State Courts
3. Below is a simple diagram of the U.S. Court System, showing how cases generally move through the courts.

Sources:
United States Courts: Understanding Federal and State Courts
Federal Judicial Center: History of the Federal Judiciary
http://www.fjc.gov/history/home.nsf/page/courts.html
Federal Judicial Center: Federal Courts Outside the Judicial Branch
http://www.fjc.gov/history/home.nsf/page/courts_special_fcotj.html

4. “State courts are the final deciders of state laws and the state constitutions. Most criminal cases end up in state court. Their interpretations of federal law or the U.S. Constitution may be appealed to the U.S. Supreme Court. The Supreme Court may choose to hear or not to hear such cases.”

Source:
United States Courts: The Difference between Federal and State Courts

5. The law recognizes two types of cases: civil and criminal
- “Civil cases involve conflicts between people or institutions such as businesses. A civil case usually begins when a person or organization determines that a problem can’t be solved without the intervention of the courts. In civil cases, one (or more) of these persons or organizations brings suit (i.e., files a complaint in court that begins a lawsuit).”
- “Criminal cases involve enforcing public codes of behavior as embodied in the laws, with the government prosecuting individuals or institutions. In a criminal case, the government brings charges against the person alleged to have committed the crime.”

Source:
American Bar Association: Steps in a Trial – Civil and Criminal Cases

Learn more:
Federal Judicial Center: What the Federal Courts Do – What’s the difference between a civil and a criminal case?
United States Courts: Jurisdiction of State and Federal Courts

6.2 Supreme Court

Readings:
1. The Supreme Court is the highest court in the federal judiciary. Specifically established by Article III of the U.S. Constitution, the Supreme Court and the lower federal courts established by Congress (appellate courts and trial courts) make up the judicial branch of the federal government.

2. “It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.” —Chief Justice John Marshall, Marbury v. Madison (1803)
3. Cases that are reviewed by the Supreme Court are selected at the discretion of the Justices based on their national significance, matters of federal law, and the Constitutional principles involved. In some special cases, the Supreme Court is the first to hear a case.

_Sources:_

Annenberg Classroom: Constitution Guide- Article III, Section 2
http://www.annenbergclassroom.org/page/article-iii-section-2

Supreme Court: The Court and Constitutional Interpretation
http://www.supremecourt.gov/about/constitutional.aspx

Federal Judicial Center: The Supreme Court of the United States and the Federal Judiciary
http://www.fjc.gov/history/home.nsf/page/courts_supreme.html

United States Courts: Understanding State and Federal Courts

7. Law Enforcement

_Questions:_

1. What branch of government is responsible for law enforcement?
2. Compare and contrast the duties of federal, state, and local enforcement officers.
3. When does police questioning become interrogation?
4. Explain the importance of timing and context when police question individuals.
5. Should individuals be careful about what they say to the police? Explain.

_Readings:_

1. “Law enforcement” is the term that describes the individuals and agencies responsible for enforcing laws and maintaining public order and public safety. Law enforcement includes the prevention, detection, and investigation of crime and the apprehension and detention of individuals suspected of law violation.”

_Source:_

Bureau of Justice Statistics: Law Enforcement
http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=7

2. Law enforcement is the responsibility of the executive branch of the federal government. States model their governments after the federal government, so the same is true for the executive branch in state governments.

_Sources:_

The White House: The Executive Branch

The White House: State and Local Government

3. “A law enforcement officer is a government employee who is responsible for the prevention, investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws, including an employee engaged in this activity who is transferred to a supervisory or administrative position; or serving as a probation or pretrial services officer.”

_Source:_

USLegal: Definitions
http://definitions.uslegal.com/l/law-enforcement-officer/
7.1 Federal Law Enforcement

Readings:
1. “There are 65 federal agencies and 27 offices of inspector general that employ full time personnel authorized to make arrests and carry firearms.” . . . “Federal officers’ duties include police response and patrol, criminal investigation and enforcement, inspections, security and protection, court operations, and corrections.”
   Source: Discover Policing: Types of Law Enforcement Agencies
   http://discoverpolicing.org/whats_like/?fa=types_jobs

2. Criminal cases involving violations of federal law are tried in federal court.

3. Federal law enforcement agencies include the following:
   U.S. Federal Bureau of Investigation
   U.S. Customs Bureau and Investigations
   U.S. Marshal Service
   U.S. Department of Homeland Security
   U.S. Secret Service
   U.S. Central Intelligence Agency
   Source: Go Law Enforcement: Federal Law Enforcement Agencies
   http://www.golawenforcement.com/FederalLawEnforcementAgenciesHighSpeedConnection.htm

7.2 State and Local Law Enforcement

Readings:
1. There are more than 17,000 state and local law enforcement agencies in the United States, ranging in size from one officer to more than 30,000.
   - Criminal cases involving violations of state law are tried in state court
   - Local police, state police/ highway patrol, special jurisdiction police, and deputy sheriffs are state law enforcement officers.
   - State-level police departments are operated by the state government.
   - Municipal police departments are operated by local governments.
   Source: Discover Policing: Types of Law Enforcement Agencies
   http://discoverpolicing.org/whats_like/?fa=types_jobs

Learn more:
Discover Policing: Find a Law Enforcement Agency
http://discoverpolicing.org/discover/

2. “Uniformed police officers typically do the following:
   - Enforce laws
   - Respond to calls for service
   - Patrol assigned areas
   - Conduct traffic stops and issue citations
   - Arrest suspects
   - Write detailed reports and fill out forms
   - Prepare cases and testify in court
Police officers pursue and apprehend people who break the law and then warn them, cite them, or arrest them. Most police officers patrol their jurisdictions and investigate any suspicious activity they notice. They also respond to calls, issue traffic tickets, investigate domestic issues, and give first aid to accident victims."

*Source:*
Bureau of Labor of Statistics: What Police and Detectives Do

*Learn more:*
O*NET:  
http://www.onetonline.org/  
(For more information, conduct an occupation search using the database created for the U.S. Department of Labor.)

## 8. Criminal Procedures

### Questions:
1. How did the ruling in *Miranda v. Arizona* affect criminal procedures?
2. What are Miranda rights and where did they come from?
3. What impact, if any, do you think *Miranda* had on the training programs offered by Reid and Associates? Provide details to support your conclusion.
4. For which category of crimes would you expect police to always read a suspect their Miranda rights? Why?
5. Why is it important to distinguish between an interview and interrogation?

### Readings:
1. Crimes are classified according to their severity. The more serious the crime the more serious the punishment. “The classification of a crime influences both the substance and procedure of a criminal charge.”
   - Infraction – mildest; sometimes called a “petty offense” is the violation of an administrative regulation, an ordinance, a municipal code, and, in some jurisdictions, a state or local traffic rule. Most traffic offenses fall in this category and are considered to be non-criminal. Generally the offenders are issued a ticket and have monetary punishments. In some states, however, can arrest someone who is speeding.
   - Misdemeanor – less serious than a felony and more serious than an infraction, this type of crime is generally punishable by a fine or incarceration in a local jail, or both.
   - Felony – most serious crimes; examples include terrorism, treason, arson, murder, rape, robbery, burglary, and kidnapping

*Source:*
Findlaw: Classification of Crimes  

2. “An ‘arrest’ occurs when a person has been taken into police custody and is no longer free to leave or move about. The use of physical restraint or handcuffs is not necessary. An arrest can be complete when a police officer simply tells a crime suspect that he or she is “under arrest,” and the suspect submits without the officer’s use of any physical force. The key to an arrest is the exercise of police authority over a person, and that person’s voluntary or involuntary submission.”

*Source:*
Findlaw: Arrest  

*Learn more:*
Findlaw: Chronology: The Arrest Process  
3. “The rules regarding what an officer must do while making an arrest vary by jurisdiction.”

“There are only a very limited number of circumstances in which an officer may make an arrest:
  o The officer personally observed a crime;
  o The officer has probable cause to believe that person arrested committed a crime;
  o The officer has an arrest warrant issued by a judge.”

“An officer cannot arrest someone just because she feels like it or has a vague hunch that someone might be a criminal. Police officers have to be able to justify their arrest usually by showing some tangible evidence that led them to probable cause.”

*Source:* Findlaw: What Procedures Must Police Follow While Making an Arrest?  

4. “‘Police custody’ is generally defined as anytime the police deprive you of your freedom of action in a significant way. Realistically though, it means being arrested. Some jurisdictions treat detentions differently than arrests, though, and a Miranda warning isn’t required in such a situation.”

“Generally speaking, an actual arrest must take place before the police need to give you a Miranda warning. This means that simple things such as traffic stops or a police officer walking up to you and asking you questions are not considered police custody. When in doubt, just stay silent (except for the exception about identification discussed below).

“Finally . . . the warning must come before you are being interrogated, so until the interrogation has begun, you are not necessarily owed a Miranda warning. A request for identification is generally not considered an interrogation, nor have the police placed you into custody simply by asking about your identity. In general, you must always give a police officer identification.”

“Once police officers begin asking questions that may implicate involvement in a crime, however, an interrogation has begun.”

*Source:*  
Findlaw: FAQs: Police Interrogations  

5. Interview or Interrogation? There is a difference.

In the 1940s, police interrogation procedures became more formalized when John E. Reid and Associates developed The Reid Technique. As the law changed, the technique evolved, too. The current version, The Reid Technique for Interviewing and Interrogation, has been used to train hundreds of thousands of law enforcement officers since 1974. According to its website (www.reid.com), “The Reid Technique of Interviewing and Interrogation, [is] widely recognized as the most effective means available to exonerate the innocent and identify the guilty.”

**Interview**
- An interview is non-accusatory.
- The purpose for an interview is to gather information.
- An interview may be conducted early during an investigation.
- An interview may be conducted in a variety of environments.
- Interviews are free flowing and relatively unstructured.
- The investigator should take written notes during a formal interview.
Interrogation

- An interrogation is accusatory.
- An interrogation involves active persuasion.
- The purpose for an interrogation is to learn the truth.
- An interrogation is conducted in a controlled environment.
- An interrogation is conducted only when the investigator is reasonably certain of the suspect’s guilt.
- The investigator should not take any notes until after the suspect has told the truth and is fully committed to that position.

Source:
The Reid Technique of Interviewing and Interrogation by Joseph P. Buckley, President John E. Reid and Associates, Inc.
http://law.wisc.edu/fjr/clinicals/ip/wcjsc/files/buckley_chapter_on_reid_technique.doc

Learn more:
The Reid Technique of Interviewing and Interrogation
http://www.reid.com/index.html

6. In 1966, the U.S. Supreme Court handed down a ruling in Miranda v. Arizona that dramatically changed criminal procedure and sparked debates that continue to this day. Because of Miranda, the police are required to inform arrested suspects of their Fifth Amendment privilege against self-incrimination by telling them they have the right to remain silent before an interrogation.

Source:
Findlaw: Miranda Warnings and Police Questioning
Overview

In 1966, the U.S. Supreme Court handed down a ruling in *Miranda v. Arizona* that was “the most controversial criminal procedure decision ever.” When the practical guidelines given in the opinion of the Court became the Miranda warnings used in every state, government power was limited and individual liberties were protected. The Court’s ruling, however, did not stop the controversy or the legal challenges that would seek changes. Because of *Miranda*, the police are required to inform arrested suspects of their Fifth Amendment privilege against self-incrimination by telling them before an interrogation that they have the right to remain silent. The line between liberty and security had shifted.

This video tells the story behind the landmark case, highlights the changes brought about by the Court’s decision, and explores the controversy that continues under the Constitution. It’s the Constitution that gives the government competing responsibilities (e.g., protecting individual rights and promoting the common good) and it gives the people the power to decide what matters most.

Background Knowledge

More than likely you already know something about Miranda warnings because you’ve seen crime dramas on TV or in the movies. But for this video and the related activities, you will need a broader base of knowledge. Complete the Class-Prep Assignment to help you develop that base.

Words and Phrases

Review the words/phrases below. Look up definitions as needed so you are better prepared to understand what you see and hear in the video. Because the video is about legal matters, you will need to understand legal terms.

<table>
<thead>
<tr>
<th>admission of guilt</th>
<th>Eighth Amendment</th>
<th>prosecution</th>
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<tbody>
<tr>
<td>adversarial system of justice</td>
<td><em>Escobedo v. Illinois</em></td>
<td>public safety exception</td>
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<td>evidence</td>
<td>Richard Nixon</td>
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<td>Fifth Amendment privilege</td>
<td>rights</td>
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<td>Bill of Rights</td>
<td>framers</td>
<td>right to counsel</td>
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<tr>
<td>burden of proof</td>
<td><em>Gideon v. Wainwright</em></td>
<td>right to remain silent</td>
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<tr>
<td>Chief Justice Earl Warren</td>
<td>government</td>
<td>security</td>
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<td>civil infraction</td>
<td>guilt</td>
<td>self-incrimination</td>
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<tr>
<td>civil liberties</td>
<td>innocent until proven guilty</td>
<td>Sixth Amendment</td>
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<tr>
<td>civilized society</td>
<td>interrogation</td>
<td>Star Chamber</td>
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<td>compelled</td>
<td>James Hundley</td>
<td>suspect</td>
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<td>confession</td>
<td>John Lilburn</td>
<td>taking the Fifth</td>
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<td>conviction</td>
<td>jurisdiction</td>
<td>the third degree</td>
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<td>crime</td>
<td>Justice Byron White</td>
<td>U.S. Constitution</td>
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<tr>
<td>criminal</td>
<td>Justice Hugo Black</td>
<td>voluntary confession</td>
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<td>criminal justice system</td>
<td>liberty</td>
<td>Warren Court</td>
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<td>criminal procedure</td>
<td>magisterial opinion</td>
<td>Wickersham Commission</td>
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<tr>
<td>criminal trial</td>
<td>Miranda warnings</td>
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</table>
Preparation for Viewing and Study

1. Complete the Class-Prep Assignment before watching the video.
2. Review the words and phrases listed above.
3. In addition to Internet access, you will need these materials and references AFTER watching the video.
   - Student Handout: (Included)
     - A Closer Look at Miranda Warnings
   - Lesson Resources:
     - Video transcript: *Miranda v. Arizona*
       - Opinion of the Court, *Miranda v. Arizona*
       - Also available online from Cornell University Law School at this link: [http://www.law.cornell.edu/supct/html/historics/USSC_CR_0384_0436_ZO.html](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0384_0436_ZO.html)
     - Chapter 17: The Right to Remain Silent, *The Pursuit of Justice*
       - Also available online from Annenberg Classroom at this link: [http://www.annenbergclassroom.org/page/the-pursuit-of-justice](http://www.annenbergclassroom.org/page/the-pursuit-of-justice)
     - Chapter 17: The Privilege Against Self-Incrimination, *Our Rights*
       - Also available from Annenberg Classroom at this link: [http://www.annenbergclassroom.org/page/our-rights](http://www.annenbergclassroom.org/page/our-rights)

During the Video (1st Viewing)

For the first viewing, stay focused and attentive to the whole story. You will have a chance to revisit the video as needed to complete the questions and activities in this guide.

After 1st Viewing

The study assignments for this video are organized into three sections:
- SECTION I: Video Study Questions
- SECTION II: Brief the Case: Outline
- SECTION III: Reflection & Follow-up

Revisit the video and consult other resources as needed to complete the questions and activities.

SECTION I. Video Study Questions

1. Identify the amendment and quote the relevant part that is the focus of the video.
   
   Explain what the phrase means in practical terms.

2. Write down the Miranda warnings shown in the video.
   
   Which Miranda warning relates to the phrase you quoted when answering Question #1?

3. What are the Miranda warnings?

4. In the opening scenes of the video, a suspect is being read the Miranda warnings. Explain why the narrator said, “It’s like watching the Bill of Rights go to work.”

5. Give the two reasons *Miranda* was considered the most controversial criminal procedure decision ever.

6. Explain these statements:
   a. “The Miranda warnings are a staple of popular culture.”
   b. “*Miranda* is really one of our iconic Supreme Court decisions.”
   c. “. . . the right that says you can’t be forced to confess or testify against yourself is a fundamental protection of our liberty.”
d. “Interrogation rooms can be the ultimate home court advantage.”
e. “Silence is a vacuum that humans don’t like.”


8. Explain what happened in the Star Chamber in 1637 and how it relates to us today?

9. When it comes to the criminal justice system, what problem did the framers face, and what was their solution?

10. Identify the fundamental principle of our criminal justice system.

11. Explain how our adversarial system of justice works in a criminal trial? Give specifics.

12. Why does the law allow the accused to not answer any questions?

13. Explain the significance of a confession for the police and for the accused.

14. Identify the legal problem with Miranda’s confession.

15. At the time of Miranda . . .
   What rights did the accused have when he/she went to trial?
   What rights did the accused have in the interrogation room?

16. When police departments finally got started in the middle of the 19th century, the local police didn’t care about the U.S. Constitution. Explain why. Identify the problem.

17. How were the states forced to comply with the Bill of Rights?

18. Discuss the circumstances that led to the creation of the Wickersham Commission. What was learned through the commission’s report?

SECTION II: Student Brief – An Outline

For this section, use the Student Brief Outline as a framework for gathering and organizing your notes about the featured Supreme Court case. While most of the information can be obtained from the video, you will need to consult the following resources to fill in gaps.

- Opinion of the Court, Miranda v. Arizona (Included as a lesson resource)
  Also available online from Cornell University Law School at this link: http://www.law.cornell.edu/supct/html/historics/USSC_CR_0384_0436_ZO.html
- The Pursuit of Justice: Chapter 17: The Right to Remain Silent (Included as a lesson resource)
  Also available online from Annenberg Classroom at this link: http://www.annenbergclassroom.org/page/the-pursuit-of-justice
- Oyez: Miranda v. Arizona
- C-SPAN: Miranda v. Arizona
  1994 8-minute segment containing an interview with professor Peter Irons about the background story in Miranda
  Begin listening at 00:25. (The audio for the oral argument is not included in this video)
  http://www.c-spanvideo.org/program/59486-1
1. Official Title and Citation
   *Miranda v. Arizona* (No. 759)
   384 U.S. 436 (1966)

2. Consolidated Cases

3. Reason for Consolidation

4. Constitutional issue

5. Lower courts and their rulings
   a. Court of original jurisdiction
   b. Appeal court

6. Why the Supreme Court granted *certiorari* (decided to hear the case)

7. Petitioner/Counsel

8. Respondent/Counsel

9. Legal basis for appeal

10. Question before the Court
   (Write a Yes/No question for the Court to decide that focuses on the issue.)

11. Background Information
    a. Facts of the Case
       • Overview: (Write as a narrative.)
       • **Immediate Context** (Essential details about the incident behind the question.)
         Where did the problem occur?
         Describe the nature of the setting.
         Who was involved?
         Describe the relationship between the two sides.
         What expectations or goals did each side have?
         How did each side behave?
       • **Issues/Concerns in Society**
    b. Legal context (Understandings/problems before *Miranda*)
    c. Legal Precedents: Cases, decisions, implications
       • *Gideon v. Wainwright*:
         Date:
         Decision:
       • *Escobedo v. Illinois*:
         Date:
         Decision:

12. Parties
    a. Petitioner:
       • Name:
       • Position: (basis for appeal)
       • Arguments:
b. Respondent:
   • Name:
   • Position:
   • Arguments:

13. Decisions of the Court (Holding)
   a. Vote of the court:
   b. For *Miranda v. Arizona* (No. 759):
   c. For the three other cases:

14. Reasoning (Rationale) - Majority Opinion
   a. Which justice wrote the opinion of the Court?
   b. What arguments and instructions were given by the Court?

15. Opinions of other Justices
   a. Complete the chart below. Identify the other justices and tell how each voted. Circle the justices who wrote their opinions. Consult the following sites to supplement the information provided in the video.
      • Cornell University Law School
        *Miranda v. Arizona*
        Syllabus, Opinion, Dissent
      • OYEZ: Case Summary
        *Miranda v. Arizona*

<table>
<thead>
<tr>
<th>Full Names of Justices</th>
<th>Vote</th>
<th>Reasons/Reactions (if available)</th>
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SECTION III: Reflection & Follow-Up

*Additional resources to consult:*

- Opinion of the Court, *Miranda v. Arizona* (Included as a lesson resource)
  Also available online from Cornell University Law School at this link:
- Chapter 17: The Privilege Against Self-Incrimination, *Our Rights* by David J. Bodenhamer (Included as a lesson resource)
  Also available from Annenberg Classroom at this link:
- 1994, 8-minute C-SPAN segment containing an interview with professor Peter Irons about the background story in *Miranda*
  Begin listening at 00:25. (The audio for the oral argument is not included in this video)
  [http://www.c-spanvideo.org/program/59486-1](http://www.c-spanvideo.org/program/59486-1)
- About Ernesto Arturo Miranda
Questions:

1. Who was Ernesto Arturo Miranda? What was his life situation at the time of his arrest?
2. Given his background, how is it possible that Ernesto Miranda’s case not only made it to the Supreme Court but convinced the justices to rule as they did?
3. Explain the ironic ending to Ernesto Miranda’s life.
4. Compare and contrast police practices before and after the ruling in Miranda. Who’s got the power in the interrogation room – in principle, in reality?
5. What is the significance of the decision in Miranda? (immediate and long term)
   For Miranda:
   For the consolidated cases:
   For all the states:
   For police procedures:
   For fighting crime:
   For American society:
   For the government:
   For every individual:
   For the law:
   For our constitutional democracy:

Activity:
A Closer Look at Miranda Warnings (Student Handout)

For Discussion or Argument:

1. In your view, should any changes be made to the Miranda warnings either in words or application?
2. Shouldn’t it be the responsibility of individuals to KNOW their Fifth Amendment rights? Why does the law make it the responsibility of the police to inform custodial suspects? Police aren’t required to inform individuals or their other rights. Is there a difference?
3. Why be concerned if a confession is given voluntarily or not? A confession is a confession whether given voluntarily or when under duress. Isn’t the goal to get the truth?
4. When it comes to catching a criminal, does the end justify the means?
5. Has the public’s perception of police behavior changed since the Wickersham Report? Explain.
6. Are there any situations that should give more power back to the government in the interrogation room? Explain.
1. **Versions of Miranda Warnings**

   a. Why are there different versions of the Miranda warnings?

   b. Write the Miranda warnings as shown in the video.

   c. Compare and contrast the Miranda warnings below to the ones in the video. Chart the similarities and differences. Comment on the significance (if any) of the differences.

   

   ![Miranda Warning Card](http://www.houstoncriminallawjournal.com/tags/miranda-warning/)

2. **Who, what, where, when, why and how: It all matters.**

Evaluate the numbered statements listed below that relate to situations requiring the Miranda warnings by doing the following:

a. Highlight or underline the **two prerequisites** that are essential BEFORE Miranda warnings must be given by police.
b. Circle the numbers for the TRUE or GENERALLY TRUE statements.
c. Correct the FALSE statements.
d. Refer to the video and these resources as needed:
   - What Procedures Must the Police Follow While Making an Arrest
   - Miranda Warnings and Police Questioning
   - FAQs: Police Interrogations
   - Waiving Miranda Rights

**Statements Related to the Individual**

1. An individual is suspected of committing a crime.
2. The suspect is in police custody.
3. Suspect is under interrogation by police.
4. Suspect is free to leave.
5. Suspect is not free to leave.
6. Noncustodial suspects are owed their Miranda rights.
7. After hearing the Miranda warnings, the suspect must indicate he or she understands.
8. You are owed a Miranda warning every time you are stopped by the police.
9. Suspects must verbally respond to the Miranda warnings.
10. A suspect may waive his/her rights.
11. Miranda warnings may be read by the suspect.
12. Any individual who is stopped for a traffic ticket is owed the Miranda rights.
13. A request for identification by police must always be followed by a Miranda warning.
14. To gain the full protection of Miranda rights, suspects must clearly invoke either the right to remain silent or the right to an attorney, and must not waive their Miranda rights.
15. Only those living in the U.S. are required to be Mirandized when arrested.
16. Miranda warnings give a person the right to stop a police interrogation at any time even if the person already waived the right to remain silent.
17. Waiving your Miranda rights means you can say anything you want without fear of the consequences.
18. You cannot change your mind after waiving your Miranda rights.
19. Miranda rights are constitutional rights that belong to citizens and noncitizens alike.
20. Having the right to remain silent means custodial suspects do not have to orally answer any questions asked of them by the police, except Miranda warnings asked in the form of a question.
Statements Related to the Police

1. In all circumstances, police must read Miranda warnings before they can ask any questions.
2. Police must take a suspect to an interrogation room before questioning.
3. Police are legally obligated to read Miranda warnings to a suspect at the time of an arrest.
4. Police are required by law to read Miranda warnings any time they question an individual.
5. Police may ask questions before giving Miranda warnings without jeopardizing their case.
6. The purpose of a police interrogation is to get incriminating evidence for a trial.
7. A custodial suspect is someone who is under arrest and suspected of committing a crime.
8. Under the law, police may ask personal ID questions without having to give Miranda warnings.
9. Miranda warnings can be read by police any time during an interrogation.
10. Miranda warnings are read when the suspect is in court.
11. Simply reading the Miranda warnings to a suspect is enough to satisfy the law.
12. When the suspect signs a waiver, the questioning stops.
13. Failure to give Miranda warnings to a suspect makes any evidence gained admissible in court.
14. Many states have their own particular variation of Miranda requirements that their police officers must use.
15. If police want to use any evidence gained from questioning a suspect, the suspect must first be Mirandized.
16. Police are not allowed to use lying, trickery, and other types of noncoercive methods to obtain a confession from a suspect.
17. Even after Mirandizing a suspect, a confession may be inadmissible if it was gained through coercive tactics.
18. If the police fail to Mirandize a suspect, the case will be thrown out of court.
19. The goal of a police interrogation is to learn the truth.
20. The purpose of Mirandizing a suspect is to gain a voluntary confession.

3. Advice to a Criminal Suspect (Refer to the video)
   Find the “best advice that a criminal suspect can receive” in the script of the video.
   a. Where can it be found? (Give the time markers)
   b. Who said it?
   c. What is his/her title in the video?
   d. Quote the entire section of dialogue that contains the advice:
   e. How do you know the advice is credible?
      Use the Internet to find additional information about the speaker. Name the source and include the link.
      https://law.newark.rutgers.edu/faculty/faculty-profiles/george-c-thomas-iii
   f. Is this considered good advice? Explain.
Making the Rules

Materials Needed:

- **Technology**
  - Computer with Internet connection

- **Resources (Included)**
  - Opinion of the Court, *Miranda v. Arizona*
    - Also available online from Cornell University Law School at this link: [http://www.law.cornell.edu/supct/html/historics/USSC_CR_0384_0436_ZO.html](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0384_0436_ZO.html)
    - Note: A searchable version is preferable for this activity.

- **Student Handouts (Included)**
  - A Closer Look at Miranda Warnings
  - Student’s Video Guide (Focus on Section III)

- **Other needs**
  - Highlighters (5 different colors) *or*
  - Software with highlighting capability

**Activity 1: Colorful Connections**

**Instructions:**

1. Using one of the lists of Miranda warnings in the Video Guide (either version) and the opinion of the Court...
   - Highlight each of the 5 Miranda warnings in the list with a different color.
   - Show the connection to language in the opinion. Using appropriate software, find and highlight (using the same set of colors) every incidence of language in the opinion that is common to each warning.

2. Describe the nature and extent of the connection between the Miranda warnings and the opinion.

3. Did the Court require or recommend the use of specific language? Provide quotes to support your answer.

**Activity 2: Examine the Opinion**

A Supreme Court opinion is the formal written expression of the reasons and principles of law upon which the decision in a case is based.

1. Read through the opinion of the Court for content and meaning.
   - TIP: (To stay focused on the content and not interrupt the flow, “bleep” over the inserted citations. You can always circle back to get them later if needed.)

   **NOTE:** For easier reading and study, use the copy provided with this lesson. Although it is from a reputable source, it is not considered “official.”

   When it comes to analyzing Supreme Court opinions, the Court gives this warning:

   **“Caution:** Only the bound volumes of the United States Reports contain the final, official text of the opinions of the Supreme Court of the United States. In case of discrepancies between the bound volume and any other version of a case – whether print or electronic, official or unofficial – the bound volume controls.”

   Source: Supreme Court of the United States: Information About Opinions

### 2. Analyze the Sections

The opinion in *Miranda* is organized into six sections. Discover what is covered in each section. Set up an outline with the sections bulleted below. After reading a section, select statements that are true about what you read. **Write the entire statement, not just number.**

The completed outline will give you insight into the organization of the opinion and the reasons and reasoning it contains.

- **Opinion**
  - **I**
  - **II**
  - **III**
  - **IV**
  - **V**

Note: Any differences in the placement of the statements should be accompanied by a documented explanation.

1. Describes principles and practices that became the “new rules” for interrogating custodial suspects.
2. Applies the constitutional principles set forth in the decision to the consolidated cases.
3. Gives the directive that safeguards must be observed.
4. Summarizes the decision and the reasoning behind it.
5. Traces the historical basis for the self-incrimination clause.
6. Uses history to add significance to the Fifth Amendment privilege.
7. Emphasizes the importance of the question before the Court.
8. Obtains support from precedents.
9. Summarizes the facts of Miranda’s case.
10. Describes the “salient features” of the consolidated cases.
11. Gives the holding of the Court.
12. Provides evidence supporting the widespread problem with interrogation practices.
13. Links the Court’s role of interpreting the law to making the rules.
14. Describes the importance of warnings in the interrogation room.
15. Counterargument addressed: society’s need for security outweighs the privilege.
16. Introduces and explains the need for safeguards.
17. Cites FBI practices as supporting evidence.
18. Gives the definition used by the court for custodial interrogation.
19. Claims an “intimate connection between privilege against self-incrimination with police custodial interrogation.”
20. Uses history and precedent underlying the self-incrimination clause to determine its applicability in this situation.
21. Provides a brief review of each consolidated case.
22. Claims that the limits being placed on the interrogation process should not unduly interfere with a “proper system of law enforcement.”
23. Gives a ruling for each consolidated case.
24. Reviews the current nature of interrogation practices and effects on those in custody.
25. Issues the order of the court.
26. Identifies the circumstances that created the constitutional problem needing resolution by the court.
27. Identifies specific safeguards, links each to the Fifth Amendment, and explains how and why they work to uphold the Constitution.
28. Identifies the constitutional issue that must be decided for all the consolidated cases.
29. Identifies the reasons the Court decided to hear the case.
30. Discusses the use of the third degree.
31. Discusses problems related to confessions and how they are obtained.
32. Addresses the responsibilities of government and citizens.
3. How are the sections related? How does each section contribute to the opinion?

4. Bracket transitional paragraphs that tie sections together.

5. Using the opinion of the Court, conduct word searches, read the context, and select a significant quote to include for each word:

- confession
- counsel
- guidelines
- incriminate
- in-custody
- lawyer
- privilege
- procedural
- remain silent
- rights
- safeguards
- waiver
- warnings

6. Reflect on these quotes:

a. “Our decision in no way creates a constitutional straitjacket which will handicap sound efforts at reform, nor is it intended to have this effect. We encourage Congress and the States to continue their laudable search for increasingly effective ways of protecting the rights of the individual while promoting efficient enforcement of our criminal laws. However, unless we are shown other procedures which are at least as effective in apprising accused persons of their right of silence and in assuring a continuous opportunity to exercise it, the following safeguards must be observed.”

b. “Procedural safeguards must be employed to protect the privilege [against self-incrimination], and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required.”

c. “As courts have been presented with the need to enforce constitutional rights, they have found means of doing so.”

d. “Procedural safeguards must be employed to protect the privilege [against self-incrimination], and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that, if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.”

**What do you think?**
Did the Court venture beyond the bounds of its constitutional responsibility to interpret the law and also make law? Explain your answer.
Use the following Common Core Standards to guide discussions, assist with writing, and analyze arguments related to *Miranda* covered in the video and in the majority and minority opinions.

<table>
<thead>
<tr>
<th>Writing – Grades 6-8</th>
<th>Writing – Grades 9-10</th>
<th>Writing – Grades 11-12</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Text Type and Purposes</strong></td>
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<tr>
<td>Write arguments focused on discipline-specific content.</td>
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</tr>
<tr>
<td>Introduce claim(s) about a topic or issue, acknowledge and distinguish the claim(s) from alternate or opposing claims, and organize the reasons and evidence logically.</td>
<td>Introduce precise claim(s), distinguish the claim(s) from alternate or opposing claims, and create an organization that establishes clear relationships among the claim(s), counterclaims, reasons, and evidence.</td>
<td>Introduce precise, knowledgeable claim(s), establish the significance of the claim(s), distinguish the claim(s) from alternate or opposing claims, and create an organization that logically sequences the claim(s), counterclaims, reasons, and evidence.</td>
</tr>
<tr>
<td>Support claim(s) with logical reasoning and relevant, accurate data and evidence that demonstrate an understanding of the topic or text, using credible sources.</td>
<td>Develop claim(s) and counterclaims fairly, supplying data and evidence for each while pointing out the strengths and limitations of both claim(s) and counterclaims in a discipline-appropriate form and in a manner that anticipates the audience’s knowledge level and concerns.</td>
<td>Develop claim(s) and counterclaims fairly and thoroughly, supplying the most relevant data and evidence for each while pointing out the strengths and limitations of both claim(s) and counterclaims in a discipline-appropriate form that anticipates the audience’s knowledge level, concerns, values, and possible biases.</td>
</tr>
<tr>
<td>Use words, phrases and clauses to create cohesion and clarify the relationships among claim(s), counterclaims, reasons, and evidence.</td>
<td>Use words, phrases and clauses to link the major sections of the text, create cohesion, and clarify the relationships between claim(s) and reasons, between reasons and evidence, and between claim(s) and counterclaims.</td>
<td>Use words, phrases and clauses as well as varied syntax to link the major sections of the text, create cohesion, and clarify the relationships between claim(s) and reasons, between reasons and evidence, and between claim(s) and counterclaims.</td>
</tr>
<tr>
<td>Establish and maintain a formal style.</td>
<td>Establish and maintain a formal style and objective tone while attending to the norms and conventions of the discipline in which they are writing.</td>
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<tr>
<td>Provide a concluding statement or section that follows from and supports the argument presented.</td>
<td>Provide a concluding statement or section that follows from or supports the argument presented.</td>
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</tr>
</tbody>
</table>

Source: Grades 6-12 Literacy in History/Social Studies, Science and Technical Subjects
Teacher Materials

- A Closer Look at Miranda Warnings (KEY)
- Making the Rules (KEY)
- Through the Lens of the Common Core
Teacher's Video Guide

Video: The Constitution Project: The Right to Remain Silent
(Time: 25 minutes)

Overview

In 1966, the U.S. Supreme Court handed down a ruling in *Miranda v. Arizona* that was “the most controversial criminal procedure decision ever.” When the practical guidelines given in the opinion of the Court became the Miranda warnings used in every state, government power was limited and individual liberties were protected. The Court’s ruling, however, did not stop the controversy or the legal challenges that would seek changes. Because of *Miranda*, the police are required to inform arrested suspects of their Fifth Amendment privilege against self-incrimination by telling them before an interrogation that they have the right to remain silent. The line between liberty and security had shifted.

This video tells the story behind the landmark case, highlights the changes brought about by the Court’s decision, and explores the controversy that continues under the Constitution. It’s the Constitution that gives the government competing responsibilities (e.g., protecting individual rights and promoting the common good) and it gives the people the power to decide what matters most.

Background Knowledge

More than likely students already know something about Miranda warnings because they’ve seen crime dramas on TV or in the movies. But for this video and the related activities, they need a broader base of knowledge. Review the Class-Prep Assignment with students to help them to develop that base.

Words and Phrases

Review the words/phrases below. Because the video is about legal matters, they should know legal definitions.

- admission of guilt
- adversarial system of justice
- appeal
- arrest
- Bill of Rights
- burden of proof
- Chief Justice Earl Warren
- civil infraction
- civil liberties
- civilized society
- compelled
- confession
- conviction
- crime
- criminal
- criminal justice system
- criminal procedure
- criminal trial
- cruel and unusual punishment
- custody
- defendant
- *Dickerson v. United States*
- dissent
- due process
- Eighth Amendment
- *Escobedo v. Illinois*
- evidence
- Fifth Amendment privilege
- framers
- *Gideon v. Wainwright*
- government
- guilt
- innocent until proven guilty
- interrogation
- James Hundley
- John Lilburn
- jurisdiction
- Justice Byron White
- Justice Hugo Black
- liberty
- magisterial opinion
- Miranda warnings
- opinion (Supreme Court)
- opinion for the majority
- plead guilty
- police
- police custody
- police interview
- prosecution
- public safety exception
- Richard Nixon
- rights
- right to counsel
- right to remain silent
- security
- self-incrimination
- Sixth Amendment
- Star Chamber
- suspect
- taking the Fifth
- the third degree
- U.S. Constitution
- voluntary confession
- Warren Court
- Wickersham Commission
Preparation for Viewing and Study

1. Complete the Class-Prep Assignment before watching the video.
2. Review the words and phrases listed above.
3. In addition to Internet access, you will need these materials and references AFTER watching the video.
   - Student Handout: (Included)
   - A Closer Look at Miranda Warnings
   - Lesson Resources:
     - Video transcript: Miranda v. Arizona
       Opinion of the Court, Miranda v. Arizona
       Also available online from Cornell University Law School at this link:
     - Chapter 17: The Right to Remain Silent, The Pursuit of Justice
       Also available online from Annenberg Classroom at this link:
       http://www.annenbergclassroom.org/page/the-pursuit-of-justice
     - Chapter 17: The Privilege Against Self-Incrimination, Our Rights
       Also available from Annenberg Classroom at this link: http://www.annenbergclassroom.org/page/our-rights

During the Video (1st Viewing)

For the first viewing, stay focused and attentive to the whole story. You will have a chance to revisit the video as needed to complete the questions and activities in this guide.

After 1st Viewing

The study assignments for this video are organized into three sections:
   SECTION I: Video Study Questions
   SECTION II: Brief the Case: Outline
   SECTION III: Reflection & Follow-up
Revisit the video and consult other resources as needed to complete the questions and activities.

SECTION I. Video Study Questions

Suggested answers are provided.

1. Identify the amendment and quote the relevant part that is the focus of the video.
   Fifth Amendment, “No person . . . shall be compelled in any criminal case to be a witness against himself.”
   Explain what the phrase means in practical terms.
   Example: The words you say can’t be used as evidence against you in a court.

2. Write down the Miranda warnings shown in the video.
   1. Do you understand that you have a right to remain silent?
   2. Do you understand that anything you say can and will be used against you in a court of law?
   3. Do you understand that you have a right to talk to a lawyer and have one present with you while you are questioned?
   4. Do you understand that if you cannot afford to hire a lawyer, if you wish one, one will be appointed to represent you free of charge?
   5. Do you understand each of these rights I have explained to you?

Which Miranda warning relates to the phrase you quoted when answering Question #1?

Warning #1: Do you understand that you have a right to remain silent?

3. What are the Miranda warnings?
   Rights read to suspects when they are under arrest and facing interrogation.
4. In the opening scenes of the video, a suspect is being read the Miranda warnings. Explain why the narrator said, “It’s like watching the Bill of Rights go to work.”
Miranda warnings are based on amendments that are part of the Bill of Rights.

5. Give the two reasons *Miranda* was considered the most controversial criminal procedure decision ever.
   - The right that says you can’t be forced to confess or testify against yourself, which is a fundamental protection of our liberty
   - Seemed as if it might interfere with convicting criminals

6. Explain these statements: *Answers will vary*
   a. “The Miranda warnings are a staple of popular culture.”
   b. “*Miranda* is really one of our iconic Supreme Court decisions.”
   c. “…the right that says you can’t be forced to confess or testify against yourself is a fundamental protection of our liberty.”
   d. “Interrogation rooms can be the ultimate home court advantage.”
   e. “Silence is a vacuum that humans don’t like.”

   Saying something that establishes or indicates your guilt

8. Explain what happened in the Star Chamber in 1637 and how it relates to us today?
   The Star Chamber is an English court that met in secret and sentenced religious opponents of the King to torture. Individuals were tortured until the court got the answers it wanted. John Lilburn stood his ground against government power and refused to incriminate himself. His response was popular with the people and became a fundamental right in the U.S. Constitution.

9. When it comes to the criminal justice system, what problem did the framers face, and what was their solution?
   Challenge: How do you create a system that gives the government the power it needs to have to punish wrongdoers without giving the government the power to be abusive?

10. Identify the fundamental principle of our criminal justice system.
    Solution: They loaded the Bill of Rights with protections for the accused—4th, 5th, 6th, & 8th Amendments place limits on what our government can do to people as they go through the criminal justice system.

11. Explain how our adversarial system of justice works in a criminal trial? Give specifics.
    There are two sides—the prosecutor and the defense. In a criminal trial, the prosecution (government) must make its case and the defense has the option of making its case or doing nothing. The defense doesn’t have to argue to the jury, call witnesses, cross-examine the government witnesses. The defendant doesn’t have to testify or say anything.

12. Why does the law allow the accused to not answer any questions?
   It’s totally up to the government to prove its case.
   The Fifth Amendment privilege against self-incrimination means that the accused has the right to remain silent. (“No person . . . shall be compelled in any criminal case to be a witness against himself.”)

13. Explain the significance of a confession for the police and for the accused.
    Police: It’s pretty much all the evidence the state needs to convict. It’s the most powerful tool for law enforcement. It saves the police and the court a lot of work. It saves time and money because the trial is shorter.
    Accused: It’s self-incriminating evidence because a confession is an admission of guilt.

14. Identify the legal problem with Miranda’s confession.
    Miranda had been arrested and questioned by police in an interrogation room. While under interrogation, he wrote out his confession. Was he “compelled” by outside pressures to confess or was his confession voluntary? It was difficult to say. There were no guidelines.
15. At the time of *Miranda* . . .
What rights did the accused have when he/she went to trial?
• Sixth Amendment right to counsel: “In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence”
• Fifth Amendment right to say nothing and “Take the Fifth”

What rights did the accused have in the interrogation room?
“at the time Miranda confessed, it wasn’t clear what rights a suspect had in the interrogation room”

16. When police departments finally got started in the middle of the 19th century, the local police didn’t care about the U.S. Constitution. Explain why. Identify the problem.
When the Bill of Rights was written, it applied only to the federal government, not the states. So police in the states often made up their own rules. The problem was that states are responsible for most laws regarding crime and different states could have different rules.

17. How were the states forced to comply with the Bill of Rights?
The Supreme Court handed down some controversial but important decisions that didn’t give the states the option to ignore the Fifth Amendment. In Gideon v. Wainwright (1963) the Court ruled that individuals have the right to a lawyer at trial, whether they can afford one or not. In Escobedo v. Illinois, the Supreme Court recognized that suspects needed lawyers even before their case came to trial.

18. Discuss the circumstances that led to the creation of the Wickersham Commission. What was learned through the commission’s report?
Beatings had become a regular part of police interrogations

**SECTION II: Student Brief – An Outline**

For this section, use the Student Brief Outline as a framework for gathering and organizing your notes about the featured Supreme Court case. While most of the information can be obtained from the video, you will need to consult the following resources to fill in gaps.

- Opinion of the Court, *Miranda v. Arizona* (Included as a lesson resource)
  Also available online from Cornell University Law School at this link: [http://www.law.cornell.edu/supct/html/histories/USSC_CR_0384_0436_ZO.html](http://www.law.cornell.edu/supct/html/histories/USSC_CR_0384_0436_ZO.html)
- *The Pursuit of Justice*: Chapter 17: The Right to Remain Silent (Included as a lesson resource)
  Also available online from Annenberg Classroom at this link: [http://www.annenbergclassroom.org/page/the-pursuit-of-justice](http://www.annenbergclassroom.org/page/the-pursuit-of-justice)
- Oyez: Miranda v. Arizona
- C-SPAN: Miranda v. Arizona
  1994 8-minute segment containing an interview with professor Peter Irons about the background story in *Miranda*
  Begin listening at 00:25. (The audio for the oral argument is not included in this video)
  [http://www.c-spanvideo.org/program/59486-1](http://www.c-spanvideo.org/program/59486-1)
Brief the Case: An Outline

Case: ________________________________

1. Official Title and Citation
   Miranda v. Arizona (No. 759)
   384 U.S. 436 (1966)

2. Consolidated Cases
   a. Vignera v. New York (No. 760): Conviction upheld by the New York Court of Appeals was appealed to the
      Supreme Court
   b. Westover v. United States (No. 761): Conviction upheld by the Court of Appeals for the Ninth Circuit was
      appealed to the Supreme Court
   c. California v. Stewart (No. 584): The Supreme Court of California had reversed the conviction of a lower court
      saying the accused should have been informed of his right to remain silent, but the case was appealed to
      the Supreme Court.

3. Reason for Consolidation
   The cases had similar complaints about the use of confessions and rights not given the suspects in the interrogation
   room. When the Supreme Court consolidates cases, the decision made in one is applied to all.

4. Constitutional issue
   Fifth Amendment’s privilege against self-incrimination

5. Lower courts and their rulings
   a. Court of original jurisdiction
      Maricopa County Court; Miranda was convicted based on his confession in the interrogation room. It was
      admitted as evidence and Miranda was sentenced to 20-30 years in prison. (Ch. 17)
   b. Appeal court
      Supreme Court of Arizona; upheld decision of the lower court

6. Why the Supreme Court granted certiorari (decided to hear the case)
   “There were unresolved issues about the constitutional rights of an accused person that the Court wanted to settle.”
   (Ch. 17) There was a lot of confusion about what the law meant and it needed to be cleared up.
   “in order further to explore some facets of the problems thus exposed of applying the privilege against self-
   incrimination to in-custody interrogation, and to give concrete constitutional guidelines for law enforcement agencies
   and courts to follow”  (Opinion of the Court)

7. Petitioner/Counsel
   Ernesto Miranda/John J. Flynn (Oyez)

8. Respondent /Counsel   (C-SPAN)
   State of Arizona/Gary Nelson, Assistant Attorney General of Arizona

9. Legal basis for appeal
   Miranda had not been informed of his Fifth Amendment right to remain silent when he was in the interrogation room
   so his confession should not have been admitted as evidence against him.

10. Question before the Court
    (Write a Yes/No question for the Court to decide that focuses on the issue.)
    “Does the police practice of interrogating individuals without notifying them of their right to counsel and their
    protection against self-incrimination violate the Fifth Amendment?” (Oyez)
11. Background Information

a. Facts of the Case
   • Overview: (Write as a narrative.)
     Miranda was accused of rape and abduction. He was arrested and interrogated. Under interrogation, he confessed to the crime. He was not informed of his 5th Amendment right to remain silent at the time of the interrogation nor did he request a lawyer. He was convicted primarily because of his confession and sentenced to 20-30 years in prison. He appealed to the Supreme Court of Arizona, which upheld his conviction. He then appealed to the Supreme Court.

   • Immediate Context (Essential details about the incident behind the question.)
     Where did the problem occur?
     Describe the nature of the setting.
     Who was involved?
     Describe the relationship between the two sides.
     What expectations or goals did each side have?
     How did each side behave?

b. Legal context (Understandings/problems before Miranda)
   • The objective for police interrogation was to get a confession and the means could be rough on the suspect.
   • The law at the time did not require suspects to be informed of their Fifth Amendment rights in the interrogation room, only when they got to trial.
   • Only way to tell if a confession was voluntary was to try to get into the minds of the suspect case by case
   • In the Escobedo decision, it wasn’t clear when a suspect had become the focus of an investigation.
   • No lawyers had been allowed in the interrogation room, which is where most confessions took place and one would be most vulnerable to self-incrimination.

12. Parties

a. Petitioner:
   • Name: Miranda
   • Position: (basis for appeal)
     Miranda’s confession should be inadmissible as evidence because he was not informed of his Fifth Amendment rights against self-incrimination in the interrogation room
   • Arguments: Protect the civil liberties of the one in custody

b. Respondent:
   • Name: Government of Arizona
   • Position: Police need the freedom and necessary power to solve crimes.
   • Arguments:
     - Miranda had given his confession voluntarily so it should be admitted.
     - No law that said police had to inform someone under arrest of their rights before interrogating them so they didn’t
13. Decisions of the Court (Holding)
   a. Vote of the court: 5 to 4, a split decision
   b. For *Miranda v. Arizona* (No. 759): The conviction upheld by the Supreme Court of Arizona was reversed
   c. For the three other cases:
      (See Opinion of the Court)
      • *Vignera v. New York* (No. 760): Conviction upheld by the New York Court of Appeals was reversed
      • *Westover v. United States* (No. 761): Conviction upheld by the Court of Appeals for the Ninth Circuit was reversed
      • *California v. Stewart* (No. 584): Judgment of the Supreme Court of California was affirmed

14. Reasoning (Rationale) - Majority Opinion
   a. Which justice wrote the opinion of the Court?
      Chief Justice Earl Warren
   b. What arguments and instructions were given by the Court?
      answers will vary, but should address the “procedural safeguards” described in the opinion

15. Opinions of other Justices
   a. Complete the chart below. Identify the other justices and tell how each voted. Circle the justices who wrote their opinions. Consult the following sites to supplement the information provided in the video.
      • Cornell University Law School
         *Miranda v. Arizona*
         Syllabus, Opinion, Dissent
      • OYEZ: Case Summary
         *Miranda v. Arizona*
<table>
<thead>
<tr>
<th>Full Names of Justices</th>
<th>Vote</th>
<th>Reasons/Reactions (if available)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Justice Hugo Black (in video)</td>
<td>voted with majority</td>
<td>Believed the decision would make it more difficult to convict people of crime, which is the way the Constitution intended it to be.</td>
</tr>
<tr>
<td>Justice William Orville Douglas</td>
<td>voted with majority</td>
<td></td>
</tr>
<tr>
<td>Justice William J. Brennan, Jr.</td>
<td>voted with majority</td>
<td></td>
</tr>
<tr>
<td>Justice Abe Fortas</td>
<td>voted with majority</td>
<td></td>
</tr>
<tr>
<td>Justice Tom C. Clark</td>
<td>wrote a dissent</td>
<td>“I am unable to join the majority because its opinion goes too far on too little . . .” He didn’t believe there was sufficient documentation to prove widespread abuse by police. He didn’t join with the Court’s criticism of the police. He disagreed with the Court’s interpretation on a number of points.</td>
</tr>
<tr>
<td>Justice John Harlan (in video)</td>
<td>wrote a dissent; joined</td>
<td>“I believe the decision of the Court represents poor constitutional law and entails harmful consequences for the country at large.”</td>
</tr>
<tr>
<td></td>
<td>White’s dissent</td>
<td></td>
</tr>
<tr>
<td>Justice Potter Stewart</td>
<td>joined Harland’s dissent,</td>
<td>“One is entitled to feel astonished that the Constitution can produce this result”</td>
</tr>
<tr>
<td></td>
<td>joined White’s dissent</td>
<td></td>
</tr>
<tr>
<td>Justice Byron White (in video)</td>
<td>wrote a dissent; joined</td>
<td>The Miranda decision was going to make it harder for the police to do their job and make the country a more dangerous place to live</td>
</tr>
<tr>
<td></td>
<td>Harland’s dissent</td>
<td></td>
</tr>
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</table>

SECTION III: Reflection & Follow-Up

Additional resources to consult:

- Opinion of the Court, *Miranda v. Arizona* (Included as a lesson resource)
  Also available online from Cornell University Law School at this link: [http://www.law.cornell.edu/supct/html/histories/USSC_CR_0384_0436_ZO.html](http://www.law.cornell.edu/supct/html/histories/USSC_CR_0384_0436_ZO.html)
- Chapter 17: The Privilege Against Self-Incrimination, *Our Rights* by David J. Bodenhamer (Included as a lesson resource)
  Also available from Annenberg Classroom at this link: [http://www.annenbergclassroom.org/page/our-rights](http://www.annenbergclassroom.org/page/our-rights)
- 1994, 8-minute C-SPAN segment containing an interview with professor Peter Irons about the background story in *Miranda*
  Begin listening at 00:25. (The audio for the oral argument is not included in this video) [http://www.c-spanvideo.org/program/59486-1](http://www.c-spanvideo.org/program/59486-1)
- About Ernesto Arturo Miranda
Questions:

1. Who was Ernesto Arturo Miranda? What was his life situation at the time of his arrest?
   “twenty-three-year-old Mexican American dockworker who lived with his girlfriend in Mesa, a Phoenix suburb. Miranda was known to the police. He had a record of six arrests and four imprisonments by the time he was eighteen. He also had a history of sexual problems: one of the arrests was for attempted rape; another was for Peeping Tom activities.” (Ch. 17)

2. Given his background, how is it possible that Ernesto Miranda’s case not only made it to the Supreme Court but convinced the justices to rule as they did?
   He had help from the Constitution -- the Sixth Amendment right “to have the Assistance of Counsel for his defence.” Miranda had a court-appointed attorney. Other lawyers from the American Civil Liberties Union (ACLU) also assisted in the appeal process by filing an amicus curiae brief for the Supreme Court. Miranda’s attorney argued before the Supreme Court

3. Explain the ironic ending to Ernesto Miranda’s life.
   Ernesto Miranda was eventually convicted without a confession, and after he got out of prison, he was stabbed to death in a bar fight. Ironically, in what might be the best proof that these rights are for everyone, the man suspected of killing Ernesto Miranda was read his Miranda rights.

4. Compare and contrast police practices before and after the ruling in Miranda. Who’s got the power in the interrogation room – in principle, in reality?
   Answers will vary

5. What is the significance of the decision in Miranda? (immediate and long term)
   For Miranda: It gave him the opportunity for a new trial. “His case was remanded, or sent back, to the court of original jurisdiction for retrial without the inadmissible evidence. Nonetheless, Miranda was convicted again and sent to prison.” (Ch. 17)

   For the consolidated cases:
   • Vignera v. New York (No. 760): Conviction upheld by the New York Court of Appeals was reversed
   • Westover v. United States (No. 761): Conviction upheld by the Court of Appeals for the Ninth Circuit was reversed
   • California v. Stewart (No. 584): Judgment of the Supreme Court of California was affirmed

   For all the states: every police precinct in the U.S. would have to start warning suspects of their rights before interrogation began
   For police procedures: answers will vary but should relate to the use of Miranda warnings
   For fighting crime: answers will vary
   For American society: answers will vary
   For the government: answers will vary
   For every individual: answers will vary
   For the law: It was the most controversial criminal procedure decision ever. Guidelines in the Court’s opinion were incorporated into a series of statements/questions known as Miranda warnings, which became an essential requirement for criminal procedures.
   For our constitutional democracy: answers will vary

Activity:
A Closer Look at Miranda Warnings (Student Handout)
For Discussion or Argument:

1. In your view, should any changes be made to the Miranda warnings either in words or application?
2. Shouldn’t it be the responsibility of individuals to KNOW their Fifth Amendment rights? Why does the law make it the responsibility of the police to inform custodial suspects? Police aren’t required to inform individuals or their other rights. Is there a difference?
3. Why be concerned if a confession is given voluntarily or not? A confession is a confession whether given voluntarily or when under duress. Isn’t the goal to get the truth?
4. When it comes to catching a criminal, does the end justify the means?
5. Has the public’s perception of police behavior changed since the Wickersham Report? Explain.
6. Are there any situations that should give more power back to the government in the interrogation room? Explain.
1. Versions of Miranda Warnings
   
a. Why are there different versions of the Miranda warnings?
   States are allowed to write their own version as long as they follow the guidelines required by the Supreme Court.

b. Write the Miranda warnings as shown in the video.
   1. Do you understand that you have a right to remain silent?
   2. Do you understand that anything you say can and will be used against you in a court of law?
   3. Do you understand that you have a right to talk to a lawyer and have one present with you while you are questioned?
   4. Do you understand that if you cannot afford to hire a lawyer, if you wish one, one will be appointed to represent you free of charge?
   5. Do you understand each of these rights I have explained to you?

c. Compare and contrast the Miranda warnings below to the ones in the video. Chart the similarities and differences. Comment on the significance (if any) of the differences.
   Students will notice the difference in formats. One set is written as questions; the other as statements. Does that matter?

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**MIRANDA WARNING**

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 TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
4. IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING IF YOU WISH.
5. YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.

**WAIVER**

DO YOU UNDERSTAND EACH OF THESE RIGHTS I HAVE EXPLAINED TO YOU? HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO US NOW?

---

Source: http://www.houstoncriminallawjournal.com/tags/miranda-warning/
2. **Who, what, where, when, why and how: It all matters.**
Evaluate the numbered statements listed below that relate to situations requiring the Miranda warnings by doing the following:

a. Highlight or underline the **two prerequisites** that are essential BEFORE Miranda warnings must be given by police.
b. Circle the numbers for the TRUE or GENERALLY TRUE statements.
c. Correct the FALSE statements.
d. Refer to the video and these resources as needed:
   - What Procedures Must the Police Follow While Making an Arrest
   - Miranda Warnings and Police Questioning
   - FAQs: Police Interrogations
   - Waiving Miranda Rights

**Statements Related to the Individual**

1. An individual is suspected of committing a crime.  
   (True)
2. The suspect is in police custody.  
   (True) Highlighted
3. Suspect is under interrogation by police.  
   (True) Highlighted
4. Suspect is free to leave.  
   (False – Those under arrest are not free to leave.)
5. Suspect is not free to leave.  
   (True)
6. Noncustodial suspects are owed their Miranda rights.  
   (False—Custodial suspects (arrested suspects) are owed their Miranda rights.)
7. After hearing the Miranda warnings, the suspect must indicate he or she understands.  
   (True)
8. You are owed a Miranda warning every time you are stopped by the police.  
   (False—Only if you are arrested)
9. Suspects must verbally respond to the Miranda warnings.  
   (False—they may respond in writing or implicitly by their actions)
10. A suspect may waive his/her rights.  
    (True)
11. Miranda warnings may be read by the suspect.  
    (False—they must be read by the police)
12. Any individual who is stopped for a traffic ticket is owed the Miranda rights.  
    (False—not unless the person is arrested at the time)
13. A request for identification by police must always be followed by a Miranda warning.  
    (False—asking for personal ID is not the same as taking someone into custody)
14. To gain the full protection of Miranda rights, suspects must clearly invoke either the right to remain silent or the right to an attorney, and must not waive their Miranda rights.  
   (True)

15. Only those living in the U.S. are required to be Mirandized when arrested.  
   (False—anyone who is in our criminal justice system is subject to the law)

16. Miranda warnings give a person the right to stop a police interrogation at any time even if the person already waived the right to remain silent.  
   (True)

17. Waiving your Miranda rights means you can say anything you want without fear of the consequences.  
   (False—what you say will be used as evidence against you)

18. You cannot change your mind after waiving your Miranda rights.  
   (False—you can change your mind and invoke your rights later in the questioning)

19. Miranda rights are constitutional rights that belong to citizens and noncitizens alike.  
   (True)

20. Having the right to remain silent means custodial suspects do not have to orally answer any questions asked of them by the police, except Miranda warnings asked in the form of a question.  
   (False—they may stay silent but respond in writing or through nonverbal actions)

**Statements Related to the Police**

1. In all circumstances, police must read Miranda warnings before they can ask any questions.  
   (False—only if the police want to use the evidence gained at trial)

2. Police must take a suspect to an interrogation room before questioning.  
   (False—interrogation can occur at any location)

3. Police are legally obligated to read Miranda warnings to a suspect at the time of an arrest.  
   (False - Police do not have to read Miranda rights at the time of arrest. However, the police must read a suspect his Miranda rights before an interrogation, so many police departments recommend that Miranda rights be read at the time of arrest.)

4. Police are required by law to read Miranda warnings any time they question an individual.  
   (False—only before the arrested suspect is interrogated for a crime)

5. Police may ask questions before giving Miranda warnings without jeopardizing their case.  
   (True)

6. The purpose of a police interrogation is to get incriminating evidence for a trial.  
   (True)

7. A custodial suspect is someone who is under arrest and suspected of committing a crime.  
   (True)

8. Under the law, police may ask personal ID questions without having to give Miranda warnings.  
   (True)
9. Miranda warnings can be read by police any time during an interrogation.
   (True—but any evidence gained before the warnings is inadmissible in court.)
10. Miranda warnings are read when the suspect is in court.
   (False)
11. Simply reading the Miranda warnings to a suspect is enough to satisfy the law.
   (False—the suspect must respond in some fashion.)
12. When the suspect signs a waiver, the questioning stops.
   (False—questioning continues)
13. Failure to give Miranda warnings to a suspect makes any evidence gained admissible in court.
   (False—the evidence is not admissible)
14. Many states have their own particular variation of Miranda requirements that their police officers must use.
   (True)
15. If police want to use any evidence gained from questioning a suspect, the suspect must first be Mirandized.
   (True)
16. Police are not allowed to use lying, trickery, and other types of noncoercive methods to obtain a confession from a suspect.
   (False—it is allowable)
17. Even after Mirandizing a suspect, a confession may be inadmissible if it was gained through coercive tactics.
   (True)
18. If the police fail to Mirandize a suspect, the case will be thrown out of court.
   (False—the prosecution may still bring charges and present other evidence)
19. The goal of a police interrogation is to learn the truth.
   (True)
20. The purpose of Mirandizing a suspect is to gain a voluntary confession.
   (True)

3. Advice to a Criminal Suspect (Refer to the video)
   Find the “best advice that a criminal suspect can receive” in the script of the video.
   a. Where can it be found? (Give the time markers) 10:35
   b. Who said it? George Thomas
   c. What is his/her title in the video? Professor, Rutgers University
   d. Quote the entire section of dialogue that contains the advice:
      THE BEST ADVICE THAT A CRIMINAL SUSPECT CAN RECEIVE, EVEN ONE WHO'S INNOCENT, IS SHUT UP, TALK TO YOUR LAWYER, HAVE YOUR LAWYER TALK TO THE POLICE. //SILENCE IS A VACUUM THAT HUMANS DON’T LIKE.
   e. How do you know the advice is credible?
      Use the Internet to find additional information about the speaker. Name the source and include the link.
      George Thomas is a law professor at Rutgers University with the following credentials
      Board of Governors Professor of Law and Judge Alexander P. Waugh, Sr. Distinguished Scholar
      Source: Rutgers University
      https://law.newark.rutgers.edu/faculty/faculty-profiles/george-c-thomas-iii
   f. Is this considered good advice? Explain.
      Answers will vary.
Teacher Key: Making the Rules

Answers are only provided for this portion of the lesson.

Activity 2: Examine the Opinion

2. Analyze the Sections
The opinion in *Miranda* is organized into six sections. Discover what is covered in each section.
Set up an outline with the sections bulleted below. After reading a section, select statements that are true about what you read. Write the entire statement, not just number. The completed outline will give you insight into the organization of the opinion and the reasons and reasoning it contains.

- Opinion
  No header indicated
  4, 7, 8, 11, 18, 26, 29
- I
  8, 10, 12, 19, 24, 28, 30
- II
  5, 6, 8, 20, 31
- III
  1, 3, 8, 14, 16, 27
- IV
  8, 13, 15, 17, 22, 32
- V
  2, 8, 9, 21, 23, 25

Note: Any differences in placement of the statements should be accompanied by a documented explanation by the student.

1. Describes principles and practices that became the “new rules” for interrogating custodial suspects. (III)
2. Applies the constitutional principles set forth in the decision to the consolidated cases. (V)
3. Gives the directive that safeguards must be observed. (III)
4. Summarizes the decision and the reasoning behind it. (Opinion)
5. Traces the historical basis for the self-incrimination clause. (II)
6. Uses history to add significance to the Fifth Amendment privilege. (II)
7. Emphasizes the importance of the question before the Court. (Opinion)
8. Obtains support from precedents. (Opinion, I, II, III, IV)
9. Summarizes the facts of Miranda’s case. (IV)
10. Describes the “salient features” of the consolidated cases. (I)
11. Gives the holding of the Court. (Opinion)
12. Provides evidence supporting the widespread problem with interrogation practices. (I)
13. Links the Court’s role of interpreting the law to making the rules. (IV)
14. Describes the importance of warnings in the interrogation room. (III)
15. Counterargument addressed: society’s need for security outweighs the privilege. (IV)
16. Introduces and explains the need for safeguards. (III)
17. Cites FBI practices as supporting evidence. (IV)
18. Gives the definition used by the court for custodial interrogation. (Opinion)
19. Claims an “intimate connection between privilege against self-incrimination with police custodial interrogation.” (I)
20. Uses history and precedent underlying the self-incrimination clause to determine its applicability in this situation. (II)
21. Provides a brief review of each consolidated case. (V)
22. Claims that the limits being placed on the interrogation process should not unduly interfere with a “proper system of law enforcement.” (IV)
23. Gives a ruling for each consolidated case. (V)
24. Reviews the current nature of interrogation practices and effects on those in custody. (I)
25. Issues the order of the court. (V)
26. Identifies the circumstances that created the constitutional problem needing resolution by the court. (Opinion)
27. Identifies specific safeguards, links each to the Fifth Amendment, and explains how and why they work to uphold the Constitution. (III)
28. Identifies the constitutional issue that must be decided for all the consolidated cases. (I)
29. Identifies the reasons the Court decided to hear the case. (Opinion)
30. Discusses the use of the third degree. (II)
31. Discusses problems related to confessions and how they are obtained. (III)
32. Addresses the responsibilities of government and citizens. (IV)
Opinion

4. Summarizes the decision and the reasoning behind it. (Opinion)
7. Emphasizes the importance of the question before the Court. (Opinion)
8. Obtains support from precedents. (Opinion, I, II, III, IV, V)
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I.
8. Obtains support from precedents. (Opinion, I, II, III, IV, V)
10. Describes the “salient features” of the consolidated cases. (I)
12. Provides evidence supporting the widespread problem with interrogation practices. (I)
19. Claims an “intimate connection between privilege against self-incrimination with police custodial interrogation.” (I)
24. Reviews the current nature of interrogation practices and effects on those in custody. (I)
28. Identifies the constitutional issue that must be decided for all the consolidated cases. (I)
30. Discusses the use of the third degree. (I)

II.
5. Traces the historical basis for the self-incrimination clause. (II)
6. Explains why “adequate warnings” need to paired with the rights of counsel in the interrogation room. (II)
8. Obtains support from precedents. (Opinion, I, II, III, IV, V)
20. Looks to history to determine applicability of self-incrimination clause in this situation. (II)
31. Explains the significance of the trial of John Lilburn. (II)

III.
1. Describes principles and practices that became the “new rules” for interrogating custodial suspects. (III)
3. Gives the directive that safeguards must be observed. (III)
8. Obtains support from precedents. (Opinion, I, II, III, IV, V)
14. Describes the importance of warnings in the interrogation room. (III)
16. Introduces and explains the need for safeguards. (III)
27. Identifies specific safeguards, links each to the Fifth Amendment, and explains how and why they work to uphold the Constitution. (III)

IV.
8. Obtains support from precedents. (Opinion, I, II, III, IV, V)
13. Links the Court’s role of interpreting the law to making the rules. (IV)
15. Counterargument addressed: society’s need for security outweighs the privilege (IV)
17. Cites FBI practices as supporting evidence. (IV)
22. Claims that the limits being placed on the interrogation process should not unduly interfere with a “proper system of law enforcement.” (IV)
32. Addresses the responsibilities of government and citizens. (IV)

V.
2. Applies the constitutional principles set forth in the decision to the consolidated cases. (V)
8. Obtains support from precedents. (Opinion, I, II, III, IV, V)
9. Summarizes the facts of Miranda’s case. (V)
21. Provides a brief review of each consolidated case. (V)
23. Gives a ruling for each consolidated case. (V)
25. Issues the order of the Court. (V)
Use the following Common Core Standards to guide discussions, assist with writing, and analyze arguments related to *Miranda* covered in the video and in the majority and minority opinions.

<table>
<thead>
<tr>
<th>Writing – Grades 6-8</th>
<th>Writing – Grades 9-10</th>
<th>Writing – Grades 11-12</th>
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<tr>
<td><strong>Text Type and Purposes</strong></td>
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<td>CCSS.ELA-Literacy.WHST.6-8.1</td>
<td>CCSS.ELA-Literacy.WHST.6-8.1a</td>
<td>CCSS.ELA-Literacy.WHST.6-8.1b</td>
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<tr>
<td>Write arguments focused on discipline-specific content.</td>
<td>Introduce claim(s) about a topic or issue, acknowledge and distinguish the claim(s) from alternate or opposing claims, and organize the reasons and evidence logically.</td>
<td>Support claim(s) with logical reasoning and relevant, accurate data and evidence that demonstrate an understanding of the topic or text, using credible sources.</td>
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<td>CCSS.ELA-Literacy.WHST.6-8.1c</td>
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<td>Use words, phrases and clauses to create cohesion and clarify the relationships among claim(s), counterclaims, reasons and evidence.</td>
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<td>Write arguments focused on discipline-specific content.</td>
<td>Introduce precise claim(s), distinguish the claim(s) from alternate or opposing claims, and create an organization that establishes clear relationships among the claim(s), counterclaims, reasons, and evidence.</td>
<td>Develop claim(s) and counterclaims fairly, supplying data and evidence for each while pointing out the strengths and limitations of both claim(s) and counterclaims in a discipline-appropriate form and in a manner that anticipates the audience’s knowledge level and concerns.</td>
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<td>Use words, phrases and clauses to link the major sections of the text, create cohesion, and clarify the relationships between claim(s) and reasons, between reasons and evidence, and between claim(s) and counterclaims.</td>
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<td>Establish and maintain a formal style and objective tone while attending to the norms and conventions of the discipline in which they are writing.</td>
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Source: Grades 6-12 Literacy in History/Social Studies, Science and Technical Subjects
• Annotated Video Transcript: *The Right to Remain Silent: Miranda v. Arizona*

• Opinion of the Court: *Miranda v. Arizona*  
  Cornell University Law School

• Chapter 17: The Privilege Against Self-Incrimination, *Our Rights* by David J. Bodenhamer

• Chapter 17: The Right to Remain Silent, *The Pursuit of Justice* by Kermit L. Hall and John J. Patrick

• Fifth & Sixth Amendments, *Our Constitution* by Donald A. Ritchie & JusticeLearning.org

• Common Good; Government, Constitutional and Limited; Justice; Liberty; Rights from *Understanding Democracy, a Hip Pocket Guide* by John J. Patrick
The Constitution Project: The Right to Remain Silent

Video Transcript

NARRATOR [00:01]
This film is a project of the Leonore Annenberg Institute for Civics, in partnership with the Annenberg Foundation Trust at Sunnylands. Citizenship is every person’s highest calling.

NARRATOR [00:20]
Every time you hear this phrase...

POLICE OFFICERS [00:24]
YOU HAVE THE RIGHT TO REMAIN SILENT
YOU HAVE THE RIGHT TO REMAIN SILENT
YOU HAVE THE RIGHT TO REMAIN SILENT

NARRATOR [00:28]
What you’re really hearing is a simple way of saying this, from the Fifth Amendment: “No person...shall be compelled in any criminal case to be a witness against himself.” This is just one right from the Miranda warnings – rights read to suspects when they’re under arrest and facing interrogation.

POLICE OFFICER [00:45]
YOU HAVE THE RIGHT TO REMAIN SILENT.

NARRATOR [00:47]
It’s like watching the Bill of Rights go to work.

COUGHLIN [00:49]
THE MIRANDA WARNINGS ARE A STAPLE OF POPULAR CULTURE.

KERMIT ROOSEVELT [00:52]
MIRANDA IS REALLY ONE OF OUR ICONIC SUPREME COURT DECISIONS.

GEORGE THOMAS [00:56]
WHEN IT WAS HANDED DOWN IT WAS THE MOST CONTROVERSIAL CRIMINAL PROCEDURE DECISION EVER.

NARRATOR [01:00]
That’s because the right that says you can’t be forced to confess or testify against yourself is a fundamental protection of our liberty, but it also seems like it might interfere with convicting criminals. Are we giving criminals an advantage? Or did the framers want to make it difficult for the government to take away someone’s liberty?

The line between liberty and security has always been a place for some of the loudest debates in America. And right there in the middle is the Miranda case, the Fifth Amendment, and the right to remain silent.

(Fade to black)
In March 1963 an 18-year-old woman was coming home from her job at a movie theater in Phoenix, Arizona, when she was pulled into a stranger’s car, kidnapped and raped, then driven home. She couldn’t identify her attacker, but after piecing together parts of her story, 10 days later the police showed up at the front door of Ernesto Miranda.

ANNE COUGHLIN [1:59]
ERNESTO MIRANDA IS A CRIMINAL SUSPECT.
THEY JUST TAKE HIM DOWN TO THE STATION AND QUESTION HIM.

KERMIT [2:04]
HE WAS INTERROGATED THERE FOR TWO HOURS. WE DON'T KNOW EXACTLY ALL OF THE DETAILS OF THAT INTERROGATION. WHAT WE DO KNOW IS THAT TWO HOURS LATER, THE POLICE CAME OUT WITH A CONFESSION.

NARRATOR [02:13]
And as confessions go, Miranda’s was about as complete as they come.

GEORGE THOMAS [2:18]
HE WROTE IT OUT. IT TOLD HOW HE PICKED HER UP. HOW HE FORCED HER INTO THE CAR. THAT HE DROVE HER OUT TO THIS RURAL – ISOLATED AREA AND RAPED HER AND DROVE HER BACK HOME.

NARRATOR [02:28]
Okay, this is a really big moment in the case. Because in the prosecution of criminal trials, there’s nothing more important to the police than a confession.

GEORGE THOMAS [2:37]
CONFESSIONS ARE HUGELY IMPORTANT. IT'S PROBABLY THE SINGLE MOST VALUABLE PIECE OF EVIDENCE.

JEANNIE SUK [2:43]
THERE'S NOTHING AS POWERFUL AS A PERSON WHO'S ACCUSED ACTUALLY SAYING, "YES, YOU'RE RIGHT. I DID DO THIS THING."

DANIEL RICHMAN [2:50]
IT WILL PROBABLY BE THE BASIS FOR A CONVICTION IN THE CASE, OR THE DEFENDANT PROBABLY WON'T EVEN STAND TRIAL 'CAUSE HE'LL KNOW IT'S GOING TO COME AND THEY WILL KNOW IT WILL SINK HIM, SO HE'S GOING TO PLEAD GUILTY.

NARRATOR [2:59]
If there’s a confession, that’s pretty much all the evidence the state needs. It’s a powerful tool for law enforcement – and that’s why the Fifth Amendment protects us from being forced to incriminate ourselves.

KERMIT ROOSEVELT [3:12]
SELF-INCRIMINATION IS SAYING SOMETHING THAT ESTABLISHES OR INDICATES YOUR GUILT.

NARRATOR [03:20]
This right not to betray yourself goes back a long, long way.

GEORGE THOMAS [3:25]
HISTORICALLY THE PRIVILEGE AGAINST SELF-INCRIMINATION STARTED AT THE STAR CHAMBER WITH JOHN LILBURN.

NARRATOR [03:29]
John Lilburn stood up to the Star Chamber in 1637. The Star Chamber was an English court that met in secret and sentenced religious opponents of the king to torture.

SUSAN HERMAN [3:39]
WHAT HAPPENED IN THE STAR CHAMBER WAS THAT THEY WOULD CALL IN PEOPLE AND ASK THEM QUESTIONS. DID YOU COMMIT THIS CRIME? WELL, YOU HAD NO GOOD CHOICES.

NARRATOR [03:47]
If you said yes, they’d torture you. If you said no, they’d say you were lying and torture you. If you refused to answer, they’d torture you until you said yes or no. John Lilburn refused to incriminate himself, and what became a rallying cry in England became a fundamental right in the U.S. Constitution.

GEOFFREY STONE [4:07]
THE FRAMERS WERE VERY AWARE THAT THE CRIMINAL JUSTICE SYSTEM COULD BE THE SOURCE OF ALL SORTS OF ABUSE. IT’S A SETTING IN WHICH THE GOVERNMENT IS AUTHORIZED TO REALLY TAKE COMPLETE CONTROL OVER AN INDIVIDUAL’S LIFE, AND GIVING THE GOVERNMENT THAT KIND OF AUTHORITY IS BOTH NECESSARY TO HAVE AN ORDERED CIVILIZED SOCIETY, BUT EXTREMELY DANGEROUS. AND SO THE IDEA IS TO FIGURE OUT HOW DO YOU CREATE A SYSTEM THAT GIVES THE GOVERNMENT THE POWER IT NEEDS TO HAVE TO PUNISH WRONGDOERS WITHOUT GIVING THE GOVERNMENT THE POWER TO BE ABUSIVE.

NARRATOR [04:48]
So the Bill of Rights is loaded with protections throughout the 4th, 5th, 6th and 8th Amendments that limit what our government can do to people as they go through the criminal justice system. Rules – or due process – about things like search and seizure; juries to give citizens (not the government) the last word before we take away someone’s liberty; a right to a lawyer; no cruel and unusual punishment.

JEANNIE SUK [5:13]
THE FUNDAMENTAL PRINCIPLE OF OUR CRIMINAL JUSTICE SYSTEM IS THAT YOU ARE INNOCENT UNTIL YOU ARE PROVEN GUILTY. SO THE BURDEN OF PROVING AN INDIVIDUAL GUILTY OF A CRIME RESTS WITH THE GOVERNMENT.
NARRATOR [05:26]
We have an adversarial system of justice. Two sides – the prosecutor and the defense. The prosecution (the government) has to make its case, and the defense can put up a good fight – or do absolutely nothing. The entire burden to prove guilt beyond a reasonable doubt is on the government.

PAUL RADVANY [5:47]
BECAUSE THE DEFENDANT IS PRESUMED INNOCENT AND IS NOT REQUIRED TO DO ANYTHING ACTUALLY IN A CRIMINAL TRIAL. SO THEY DON’T HAVE TO ARGUE TO THE JURY. THEY DON’T HAVE TO CALL WITNESSES. THEY DON’T EVEN HAVE TO CROSS-EXAMINE THE GOVERNMENT WITNESSES. AND THE DEFENDANT CERTAINLY DOESN’T HAVE TO TESTIFY.

SUSAN HERMAN [6:01]
BECAUSE YOU HAVE A PRIVILEGE AGAINST SELF-INCRIMINATION THAT MEANS THAT YOU HAVE THE RIGHT TO REMAIN SILENT.

NARRATOR [06:08]
And a confession is the farthest thing from silence. But here’s where it gets really tricky. Ernesto Miranda, like most people, confessed while he was in an interrogation room. And at the time Miranda confessed, it wasn’t clear what rights a suspect had in the interrogation room, which had a reputation for being a pretty scary place.

DANIEL RICHMAN [6:27]
THERE’S A SAD HISTORY IN THE UNITED STATES...OF NOT JUST LIGHTS BEING SHOWN IN DEFENDANTS’ EYES, NOT JUST LONG QUESTIONING OF THE SORT THAT REALLY CAN MAKE YOU FEEL UNDER PRESSURE, BUT OF ACTUAL VIOLENCE.

GEORGE THOMAS [6:46]
THE POLICE DEVELOPED THE THIRD DEGREE, AN ABUSIVE FORM OF INTERROGATION WHERE THEY WOULD DO SOME PRETTY AWFUL THINGS TO PEOPLE TO TRY TO GET THEM TO CONFESS AND BEAT THEM, SOMETIMES MERCILESSLY.

NARRATOR [06:55]
It’s hard to imagine today, but when the United States was formed, most areas policed themselves.

DANIEL RICHMAN [7:03]
THE IDEA THAT A POLICE OFFICER, THE GUY WALKING UP AND DOWN THE BEAT WITH THE STICK WHO REALLY IS GOING TO SORT OF MAINTAIN ORDER. YOU KNOW, IT’S A NEW IDEA IN THE UNITED STATES. THE POLICE DEPARTMENTS DON’T START IN THE UNITED STATES FOR THE MOST PART UNTIL THE MIDDLE OF THE 19TH CENTURY IN ANY REAL WAY.

NARRATOR [07:20]
Not only were departments kind of new, but local police didn’t care much about the U.S. Constitution – look at this: “Congress shall make no law.” Back then, the courts said the Bill
of Rights only applied to the federal government – not the states, which to this day are responsible for most laws regarding crime.

Now, it wasn’t legal to torture anyone, but check this out. In 1931, a presidential committee called the Wickersham Commission said *beatings* had become a regular part of police interrogations.

GEORGE THOMAS [7:53]
THEY HAD BOXES AND BOXES OF DOCUMENTS – MANY OF THEM FROM POLICE THEMSELVES SAYING, “YEAH, WE’VE SEEN OUR COLLEAGUES DO THIS,” OR EVEN, “I’VE DONE THIS.” AND THAT CAUSED A TREMENDOUS – NATIONAL OUTRAGE.

ANNE COUGHLIN [8:05]
THE QUESTION IS WHAT ELSE SHOULD THE CONSTITUTION HAVE TO SAY ABOUT WHAT WAS GOING ON IN THE INTERROGATION ROOM?

*(Dragnet theme)*

NARRATOR [08:19]
Look at this. Dragnet was one of the most popular television series of the 1950s – just a few years before Miranda was arrested. Now, they're about to make the arrest. Wait for it...and...um, nothing. There was no rule that said they had to inform someone under arrest of their rights before interrogating them, so they didn’t.

REID DVD [9:00]
THE IDEAL PLACE FOR AN INTERVIEW IN MOST CASES IS GOING TO BE THE POLICE STATION INTERVIEW ROOM. IT HAS MANY ADVANTAGES. NOT ONLY IS IT PRIVATE BUT YOU ARE IN PSYCHOLOGICAL CONTROL OF THE ENVIRONMENT.

NARRATOR [09:12]
This is from a police training DVD on interrogation. The Reid Technique is a video update of training manuals that haven’t changed much since they first came out in the 1940s. To the police, a trip to the interrogation room should come only when they think they can make a case against a citizen.

RICHMAN (9:30)
YOU’RE DEALING WITH A VERY SPECIAL KIND OF CONTACT BETWEEN THE POLICE AND A CITIZEN. THE AIM OF AN INTERROGATOR IS TO GET WHAT WILL AMOUNT TO A CONFESSION OF THE CRIME.

NARRATOR [09:43]
There’s a presumption of innocence before the trial, and that starts all over again when the trial begins. But in between, the police gather evidence they hope will lead to an arrest of someone they think is guilty.
INTERROGATION IS A PROCESS THAT IS SPECIFICALLY DESIGNED TO DEVELOP AN ADMISSION OF GUILT.

WHAT THE TRAINING MANUALS ADVISED IS THAT WHAT THE POLICE SHOULD DO IS TO BRING A SUSPECT INTO THE STATION, TELL THE SUSPECT, "WE’VE GOT THE GOODS ON YOU. WE CAN PROVE THAT YOU DID IT. WE HAVE YOUR FINGERPRINTS. WE HAVE EYE WITNESSES. WE’VE GOT EVERYTHING." SOMETIMES THEY DO; BUT THEY ARE AUTHORIZED TO, AND THEY’RE TOLD TO LIE.

Interrogation rooms can be the ultimate home court advantage. And if you don’t know your rights, chances are you’re in deep trouble – whether you did anything or not.

AND THERE’S NO LAWYER THERE TO – TO ADVISE YOU, TO TELL YOU SHOULD SHUT YOUR MOUTH. THE – THE BEST ADVICE THAT A CRIMINAL SUSPECT CAN RECEIVE, EVEN ONE WHO’S INNOCENT, IS SHUT UP, TALK TO YOUR LAWYER, HAVE YOUR LAWYER TALK TO THE POLICE. SILENCE IS A VACUUM THAT HUMANS DON’T LIKE.

At the time Miranda gave up his right to be silent and confessed, it was hard to tell if the police had crossed a line in the interrogation room, and the courts had to get inside the mind of each suspect to determine if the confession was given voluntarily.

SO THE QUESTION WAS, WAS THIS CONFESSION GIVEN VOLUNTARILY OR WAS THE WILL OF THE DEFENDANT OVERBORNE BY THE POLICE? DID THEY SOMEHOW FORCE THIS OUT OF HIM?

But how can you tell? There’s Ernesto Miranda, who was never told he was under arrest. The police told him he was identified in a lineup when he really wasn’t. He probably didn’t know he had a right to remain silent – and he didn’t have a lawyer until he got to trial, which was too late because the one piece of evidence the prosecution had in court was the confession he wrote in the interrogation room. So was Miranda’s confession given voluntarily in a situation where the police just had some leverage? Or was the situation so lopsided, the confession was compelled and a violation of his Fifth Amendment rights?

At the trial, Miranda’s lawyer argued that Miranda had the right to have an attorney present in the interrogation room, and that he should have been told he had the right to remain silent. But that wasn’t the law, so the trial judge overruled him, and allowed Miranda’s confession to be admitted as evidence.

Ernesto Miranda was convicted of rape and abduction and sentenced to 20 to 30 years in prison. His appeal, based on his confession, went all the way to the Supreme Court.
EARL WARREN [12:32]
I’M OF THE OPINION THAT THE DECISIONS OF THE COURT HAVE IN NO WAY ADVERSELY AFFECTED THE PROSECUTION OF CRIME.

NARRATOR [12:44]
Chief Justice Earl Warren had been a prosecutor and Attorney General AND Governor of California before he was appointed to the Supreme Court by President Dwight Eisenhower in 1953.

KERMIT ROOSEVELT [12:56]
EARL WARREN HAD ACTUALLY PRETTY GOOD LAW AND ORDER CREDENTIALS. PEOPLE HAVE A LOT OF DIFFERENT VIEWS OF THE WARREN COURT. BUT ONE WAY TO THINK ABOUT IT IS AS A COURT THAT WAS VERY CONCERNED ABOUT FAIR PROCESS.

JAMES HUNDLEY [13:09]
THE PERCEPTION WAS GROWING THAT TOO MANY CONVICTIONS WEREN’T BEING OBTAINED JUSTLY.

KERMIT ROOSEVELT [13:17]

NARRATOR [13:34]
The Supreme Court handed down some controversial but important decisions that forced the states to comply with the Bill of Rights. In March 1963, the Court ruled in Gideon v. Wainwright that everyone has the right to a lawyer at trial, whether they can afford one or not.

JUDGE THEODORE MCKEE [13:52]
I THINK PEOPLE NOW WOULD BE SURPRISED TO KNOW THAT THERE WAS A LONG PERIOD OF TIME IN THE NATION’S HISTORY WHERE SOMEBODY COULD BE MADE TO GO TO TRIAL WITHOUT A LAWYER.

NARRATOR [14:00]
The key word is “trial.” The 6th Amendment gives everyone the right to counsel “in all criminal prosecutions,” which everyone assumed meant “in court.” But in a case called Escobedo (that’s how it was pronounced in Court), Escobedo v. Illinois, the Supreme Court recognized that suspects needed lawyers even before their case came to trial. But how long before?
ANNE COUGHLIN [14:28]
IF YOU DON'T HAVE THE RIGHT TO COUNSEL DURING POLICE INTERROGATION, THEN YOUR RIGHT TO COUNSEL AT TRIAL IS MEANINGLESS. YOU'VE GIVEN THE ENTIRE THING UP, YOU'VE GIVEN IT AWAY. THERE'S NOTHING FOR COUNSEL TO DO AT TRIAL BECAUSE YOU'VE CONFESSIONED.

GEORGE THOMAS [14:42]
IN ESCOBEDO IT HAD BEEN ESTABLISHED YOU HAD A RIGHT TO COUNSEL WHEN YOU HAD BECOME THE FOCUS OF THE INVESTIGATION, WHATEVER THAT MEANT.

TED MCKEE [14:49]
THAT HAD CREATED A LOT OF CONFUSION.

NARRATOR [14:51]
The right to counsel is a Sixth Amendment right. The right against self-incrimination doesn't come from the Sixth Amendment, it comes from the Fifth.

JEANNIE SUK [15:00]
NOTHING IN THE FIFTH AMENDMENT MENTIONS HAVING A LAWYER AT ANY OF THESE THINGS.

NARRATOR [15:03]
Before Miranda, everyone thought the Fifth Amendment really only applied at a trial or at one of these...

(Hearing montage) [15:10]
I respectfully decline to answer on the grounds that my answer might tend to incriminate me.

NARRATOR [15:15]
In fact, invoking the right against self-incrimination came to be known as “taking the Fifth.” The lawyers present at a trial or these hearings understood they had to respect those rights. But no one thought this right applied to the interrogation room, when lawyers weren't around – but where most confessions took place.

And the Supreme Court hadn't cleared up another area of confusion: The only way to tell if a confession is voluntary was to try to get in the mind of each suspect, case by case by case.

JAMES HUNDLEY [15:49]
THE EXACT SAME QUESTION KEPT COMING BEFORE THEM IN THESE CONFESSION CASES. IS IT VOLUNTARY? IS IT NOT VOLUNTARY? IT IS VOLUNTARY. IS IT NOT VOLUNTARY?

NARRATOR [15:59]
Part of the Supreme Court’s job is to make sure the law is clear and all the courts know how to interpret it. The Miranda case and three others like it were bundled together and argued before the Supreme Court for over two days. One side fighting to protect civil liberties in
police custody, the other fighting to give police all the freedom they needed to solve crimes. The Miranda decision split the Court, 5-4.

GEORGE THOMAS [16:24]
I THINK IT’S FAIR TO SAY THAT ON JUNE 13, 1966, WHEN THE JUSTICES READ THEIR OPINIONS, THEY WERE VERY PASSIONATE ABOUT – WHAT THEY WERE DOING – ON BOTH SIDES.

NARRATOR [16:31]
Chief Justice Warren read his opinion for the majority, in favor of Miranda’s right against self-incrimination. He says the police have an unfair psychological advantage in the interrogation room – they have all the power and can operate in secret. It is not physical intimidation, but it is equally destructive of human dignity.

JEANNIE SUK [16:53]
IT’S A VERY MAGISTERIAL OPINION. IT’S ABOUT RESPECT FOR HUMAN DIGNITY.

NARRATOR [17:02]
The Chief Justice insists that once a suspect has been taken into custody or cut off from the outside world, he must be informed of his right against self-incrimination. The Court was telling every police precinct in the nation they would have to start warning suspects of their rights before the interrogation began.

JEANNIE SUK [17:24]
THE COURT WAS CREATING SOMETHING THAT WAS NEW. THE COURT HAD NEVER SAID ANYTHING LIKE THIS BEFORE.

NARRATOR [17:31]
These are what we know as the Miranda warnings. And one of Chief Justice Warren’s warnings included a right to an attorney because that right “is indispensable to the protection of the Fifth Amendment privilege.”

ANNE COUGHLIN [17:45]
THE COURT SAYS, IN EFFECT, WAIT A MINUTE. INSTEAD OF APPLYING THE SIXTH AMENDMENT RIGHT, WE’RE GOING TO RECOGNIZE THAT THE FIFTH AMENDMENT PRIVILEGE APPLIES. AND THE FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION INCLUDES THE RIGHT TO HAVE A LAWYER TO PROTECT THE PRIVILEGE.

DANIEL RICHMAN [18:03]
THE NEAT MOVE THAT WARREN COMES UP WITH IS TO USE A SIXTH AMENDMENT ANIMAL AS A MEANS OF DEALING WITH A FIFTH AMENDMENT PROBLEM. THE CONSEQUENCES OF THE DEFENDANT INVOKING HIS RIGHTS UNDER MIRANDA ISN’T NECESSARILY THAT A LAWYER WILL RUSH IN AND THE INTERROGATION WILL PROCEED. IT’S MORE LIKELY THAT THE INTERROGATION WILL STOP.
By telling the suspect he has a tool to stop the interrogation until a lawyer arrives, the majority in the Miranda decision is trying to level the playing field in the interrogation room and protect the Fifth Amendment right against self-incrimination.

The dissents were furious. Justice John Harlan said, “One is entitled to feel astonished that the Constitution can produce this result.”

And Justice Byron White’s dissent said what a lot of people in the country thought. He argued that the Miranda decision was going to make it harder for the police to do their job and make the country a more dangerous place to live. He said, “The Court’s rule will return a killer, a rapist or other criminal to the streets...to repeat his crime whenever it pleases him.”

NARRATOR [19:28]
This is Richard Nixon's nomination speech at the 1968 convention.

NIXON [19:33]
LET US ALWAYS RESPECT, AS I DO, OUR COURTS AND THOSE WHO SERVE ON THEM. BUT LET US ALSO RECOGNIZE THAT SOME OF OUR COURTS IN THEIR DECISIONS HAVE GONE TOO FAR IN WEAKENING THE PEACE FORCES AS AGAINST THE CRIMINAL FORCES IN THIS COUNTRY.

NARRATOR [19:50]
But as the next President and Congress worried on behalf of the police, something unexpected happened –police all over the country embraced Miranda.

GEORGE THOMAS [19:59]
EVERY JURISDICTION WITHIN SIX MONTHS OR A YEAR HAD A MIRANDA CARD, A LAMINATED CARD. THEY TOOK THE LANGUAGE DIRECTLY OUT OF THE OPINION, WORD FOR WORD.

JAMES HUNDLEY [20:07]
NUMBER 1. DO YOU UNDERSTAND THAT YOU HAVE A RIGHT TO REMAIN SILENT? 2) DO YOU UNDERSTAND THAT ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW? 3) DO YOU UNDERSTAND THAT YOU HAVE A RIGHT TO TALK TO A LAWYER AND HAVE ONE PRESENT WITH YOU WHILE YOU ARE QUESTIONED? 4) DO YOU UNDERSTAND THAT IF YOU CANNOT AFFORD TO HIRE A LAWYER, IF YOU WISH ONE, ONE WILL BE APPOINTED TO REPRESENT YOU FREE OF CHARGE? 5) DO YOU UNDERSTAND EACH OF THESE RIGHTS I HAVE EXPLAINED TO YOU?
PUTTING A LEGAL FORMULA IN THE STATIONHOUSE COP’S MOUTH IS – IS A POWERFUL MESSAGE. NOT JUST TO THE SUSPECT BUT TO ALL OF US. AND OVER TIME, THE POLICE GET USED TO THAT AND – AND FRANKLY, OVER TIME, THEY REALIZE THAT THIS ISN’T THE BAD THING FROM THEIR PERSPECTIVE.

NARRATOR [21:01]
For one, relying less on confessions pushed the police to gather evidence more professionally. It standardized the admissibility of confessions, because courts didn’t have to go case-by-case to determine if a confession was voluntary. If the Miranda rights were read and then waived by a suspect who confessed, the confession was admitted.

(\textit{Dragnet theme})

And Dragnet, on the air but in color after Miranda, worked the warnings into its new scripts whenever an arrest was made.

(\textit{Dragnet clip})

And while it’s been a source of debate ever since, Miranda is still the law today. The Court has granted a public safety exception and ruled that it’s not enough simply to remain silent – you actually have to invoke the right. There’s even been debate over whether or not to give terrorist suspects Miranda warnings.

In 2000, James Hundley – this is him, right here – James Hundley successfully argued \textit{Dickerson v. United States}. In that decision, Chief Justice William Rehnquist wrote for the 7-2 majority that “Miranda is embedded in the national culture.”

JAMES HUNDLEY [22:17]
HE SAID MIRANDA’S PROBABLY THE BEST KNOWN CRIMINAL DECISION OF THE PAST 50 YEARS AT LEAST. IT’S BEEN SHOWN THAT LAW ENFORCEMENT HAS WORKED WITH IT FOR MANY YEARS AND LEARNED TO WORK WITH IT EFFECTIVELY.

KERMIT ROOSEVELT [22:31]
IT DID HAVE A BIG EFFECT ON PEOPLE WHO WERE LESS LIKELY TO STAND UP FOR THEMSELVES AGAINST THE GOVERNMENT. IT DID MAKE THEM AWARE THAT THEY HAD CONSTITUTIONAL RIGHTS THAT THE GOVERNMENT WAS BOUND TO RESPECT.

NARRATOR [22:44]
Justice Hugo Black appeared on television not long after the Miranda decision. He was asked whether the Court had made police work more difficult. Justice Black said the Court didn’t do it...

JUSTICE HUGO BLACK [22:57]
NO. THE CONSTITUTION MAKERS DID IT. THEY WERE THE ONES THAT PUT IN NO MAN SHOULD BE COMPELLED TO CONVICT HIMSELF.
MARTIN AGRONSKY [23:00]
MR. JUSTICE, DO YOU THINK THAT THOSE DECISIONS HAVE MADE IT MORE DIFFICULT FOR THE POLICE TO COMBAT CRIME?

JUSTICE HUGO BLACK [23:10]
CERTAINLY, WHY SHOULDN'T IT? WHAT WERE THEY WRITTEN FOR? WHY DID THEY WRITE THE BILL OF RIGHTS? THEY PRACTICALLY ALL RELATE TO THE WAY CASES SHALL BE TRIED. AND, IN FACT, THEY ALL MAKE IT MORE DIFFICULT TO CONVICT PEOPLE OF CRIME.

NARRATOR [23:24]
Not impossible. Just difficult. Because the framers wanted it to be difficult to deprive people of their liberty.

We'll end the film on this. Ernesto Miranda was eventually convicted without a confession, and after he got out of prison, he was stabbed to death in a bar fight. Ironically, in what might be the best proof that these rights are for everyone, the man suspected of killing Ernesto Miranda was read his Miranda rights.

(Dialogue ends; Audio from arrest – You have the right to remain silent.) [23:58]
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. [p440]

We dealt with certain phases of this problem recently in Escobedo v. Illinois, 378 U.S. 478 (1964). There, as in the four cases before us, law enforcement officials took the defendant into custody and interrogated him in a police station for the purpose of obtaining a confession. The police did not effectively advise him of his right to remain silent or of his right to consult with his attorney. Rather, they confronted him with an alleged accomplice who accused him of having perpetrated a murder. When the defendant denied the accusation and said "I didn't shoot Manuel, you did it," they handcuffed him and took him to an interrogation room. There, while handcuffed and standing, he was questioned for four hours until he confessed. During this interrogation, the police denied his request to speak to his attorney, and they prevented his retained attorney, who had come to the police station, from consulting with him. At his trial, the State, over his objection, introduced the confession against him. We held that the statements thus made were constitutionally inadmissible.

This case has been the subject of judicial interpretation and spirited legal debate since it was decided two years ago. Both state and federal courts, in assessing its implications, have arrived at varying conclusions.[n1] A wealth of scholarly material has been written tracing its ramifications and underpinnings.[n2] Police and prosecutor [p441] have speculated on its range and desirability.[n3] We granted certiorari in these cases, 382 U.S. 924, 925, 937, in order further to explore some facets of the problems thus exposed of applying the privilege against self-incrimination in in-custody interrogation, and to give [p442] concrete constitutional guidelines for law enforcement agencies and courts to follow.

We start here, as we did in Escobedo, with the premise that our holding is not an innovation in our jurisprudence, but is an application of principles long recognized and applied in other settings. We have undertaken a thorough reexamination of the Escobedo decision and the principles it announced, and we reaffirm it. That case was but an explication of basic rights that are enshrined in our Constitution -- that "No person . . . shall be compelled in any criminal case to be a witness against himself," and that "the accused shall . . . have the Assistance of Counsel" -- rights which were put in jeopardy in that case through official overbearing. These precious rights were fixed in our Constitution only after centuries of persecution and struggle. And, in the words of Chief Justice Marshall, they were secured "for ages to come, and . . . designed to approach immortality as nearly as human institutions can approach it," Cohens v. Virginia, 6 Wheat. 264, 387 (1821).

Over 70 years ago, our predecessors on this Court eloquently stated:

The maxim nemo tenetur seipsum accusare had its origin in a protest against the inquisitorial and manifestly unjust methods of interrogating accused persons, which [have] long obtained in the continental system, and, until the
expulsion of the Stuarts from the British throne in 1688 and the erection of additional barriers for the protection of
the people against the exercise of arbitrary power, [were] not uncommon even in England. While the admissions or
confessions of the prisoner, when voluntarily and freely made, have always ranked high in the scale of
incriminating evidence, if an accused person be asked to explain his apparent connection with a crime under
investigation, the ease with which the [p443] questions put to him may assume an inquisitorial character, the
temptation to press the witness unduly, to browbeat him if he be timid or reluctant, to push him into a corner, and
to entrap him into fatal contradictions, which is so painfully evident in many of the earlier state trials, notably in
those of Sir Nicholas Throckmorton and Udal, the Puritan minister, made the system so odious as to give rise to a
demand for its total abolition. The change in the English criminal procedure in that particular seems to be founded
upon no statute and no judicial opinion, but upon a general and silent acquiescence of the courts in a popular
demand. But, however adopted, it has become firmly embedded in English as well as in American jurisprudence.
So deeply did the iniquities of the ancient system impress themselves upon the minds of the American colonists
that the States, with one accord, made a denial of the right to question an accused person a part of their
fundamental law, so that a maxim, which in England was a mere rule of evidence, became clothed in this country
with the impregnability of a constitutional enactment.

Brown v. Walker, 161 U.S. 591, 596-597 (1896). In stating the obligation of the judiciary to apply these
constitutional rights, this Court declared in Weems v. United States, 217 U.S. 349, 373 (1910):

. . . our contemplation cannot be only of what has been, but of what may be. Under any other rule, a constitution
would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would
have little value, and be converted by precedent into impotent and lifeless formulas. Rights declared in words
might be lost in reality. And this has been recognized. The [p444] meaning and vitality of the Constitution have
developed against narrow and restrictive construction.

This was the spirit in which we delineated, in meaningful language, the manner in which the constitutional rights
of the individual could be enforced against overzealous police practices. It was necessary in Escobedo, as here, to
insure that what was proclaimed in the Constitution had not become but a "form of words," Silverthorne Lumber
Co. v. United States, 251 U.S. 385, 392 (1920), in the hands of government officials. And it is in this spirit,
consistent with our role as judges, that we adhere to the principles of Escobedo today.

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 or otherwise deprived of his freedom of action in any significant way. [n4] As
for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused
persons of their right of silence and to assure a continuous opportunity to exercise it, 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
[p445] 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.

I

The constitutional issue we decide in each of these cases is the admissibility of statements obtained from a
defendant questioned while in custody or otherwise deprived of his freedom of action in any significant way. In each, the defendant was questioned by police officers, detectives, or a prosecuting attorney in a room in which he was cut off from the outside world. In none of these cases was the defendant given a full and effective warning of his rights at the outset of the interrogation process. In all the cases, the questioning elicited oral admissions, and in three of them, signed statements as well which were admitted at their trials. They all thus share salient features -- incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights.

An understanding of the nature and setting of this in-custody interrogation is essential to our decisions today. The difficulty in depicting what transpires at such interrogations stems from the fact that, in this country, they have largely taken place incommunicado. From extensive factual studies undertaken in the early 1930's, including the famous Wickersham Report to Congress by a Presidential Commission, it is clear that police violence and the "third degree" flourished at that time. In a series of cases decided by this Court long after these studies, the police resorted to physical brutality -- beating, hanging, whipping -- and to sustained and protracted questioning incommunicado in order to extort confessions. The Commission on Civil Rights in 1961 found much evidence to indicate that "some policemen still resort to physical force to obtain confessions," 1961 Comm'n on Civil Rights Rep. Justice, pt. 5, 17. The use of physical brutality and violence is not, unfortunately, relegated to the past or to any part of the country. Only recently in Kings County, New York, the police brutally beat, kicked and placed lighted cigarette butts on the back of a potential witness under interrogation for the purpose of securing a statement incriminating a third party. People v. Portelli, 15 N.Y.2d 235, 205 N.E.2d 857, 257 N.Y.S.2d 931 (1965). The examples given above are undoubtedly the exception now, but they are sufficiently widespread to be the object of concern. Unless a proper limitation upon custodial interrogation is achieved -- such as these decisions will advance -- there can be no assurance that practices of this nature will be eradicated in the foreseeable future.

The conclusion of the Wickersham Commission Report, made over 30 years ago, is still pertinent:

To the contention that the third degree is necessary to get the facts, the reporters aptly reply in the language of the present Lord Chancellor of England (Lord Sankey):

It is not admissible to do a great right by doing a little wrong. . . . It is not sufficient to do justice by obtaining a proper result by irregular or improper means.

Not only does the use of the third degree involve a flagrant violation of law by the officers of the law, but it involves also the dangers of false confessions, and it tends to make police and prosecutors less zealous in the search for objective evidence. As the New York prosecutor quoted in the report said, "It is a short-cut, and makes the police lazy and unenterprising." Or, as another official quoted remarked: "If you use your fists, you are not so likely to use your wits." We agree with the conclusion expressed in the report, that

The third degree brutalizes the police, hardens the prisoner against society, and lowers the esteem in which the administration of Justice is held by the public.


Again we stress that the modern practice of in-custody interrogation is psychologically, rather than physically, oriented. As we have stated before,

Since Chambers v. Florida, 309 U.S. 227, this Court has recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition.
Blackburn v. Alabama, 361 U.S. 199, 206 (1960). Interrogation still takes place in privacy. Privacy results in secrecy, and this, in turn, results in a gap in our knowledge as to what, in fact, goes on in the interrogation rooms. A valuable source of information about present police practices, however, may be found in various police manuals and texts which document procedures employed with success in the past, and which recommend various other effective tactics.[n8] These [p449] texts are used by law enforcement agencies themselves as guides.[n9] It should be noted that these texts professedly present the most enlightened and effective means presently used to obtain statements through custodial interrogation. By considering these texts and other data, it is possible to describe procedures observed and noted around the country.

The officers are told by the manuals that the principal psychological factor contributing to a successful interrogation is privacy -- being alone with the person under interrogation.[n10]

The efficacy of this tactic has been explained as follows:

If at all practicable, the interrogation should take place in the investigator's office or at least in a room of his own choice. The subject should be deprived of every psychological advantage. In his own home, he may be confident, indignant, or recalcitrant. He is more keenly aware of his rights and [p450] more reluctant to tell of his indiscretions or criminal behavior within the walls of his home. Moreover his family and other friends are nearby, their presence lending moral support. In his own office, the investigator possesses all the advantages. The atmosphere suggests the invincibility of the forces of the law.[n11]

To highlight the isolation and unfamiliar surroundings, the manuals instruct the police to display an air of confidence in the suspect's guilt and, from outward appearance, to maintain only an interest in confirming certain details. The guilt of the subject is to be posited as a fact. The interrogator should direct his comments toward the reasons why the subject committed the act, rather than court failure by asking the subject whether he did it. Like other men, perhaps the subject has had a bad family life, had an unhappy childhood, had too much to drink, had an unrequited desire for women. The officers are instructed to minimize the moral seriousness of the offense,[n12] to cast blame on the victim or on society.[n13] These tactics are designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already -- that he is guilty. Explanations to the contrary are dismissed and discouraged.

The texts thus stress that the major qualities an interrogator should possess are patience and perseverance. [p451] One writer describes the efficacy of these characteristics in this manner:

In the preceding paragraphs, emphasis has been placed on kindness and stratagems. The investigator will, however, encounter many situations where the sheer weight of his personality will be the deciding factor. Where emotional appeals and tricks are employed to no avail, he must rely on an oppressive atmosphere of dogged persistence. He must interrogate steadily and without relent, leaving the subject no prospect of surcease. He must dominate his subject and overwhelm him with his inexorable will to obtain the truth. He should interrogate for a spell of several hours, pausing only for the subject's necessities in acknowledgment of the need to avoid a charge of duress that can be technically substantiated. In a serious case, the interrogation may continue for days, with the required intervals for food and sleep, but with no respite from the atmosphere of domination. It is possible in this way to induce the subject to talk without resorting to duress or coercion. The method should be used only when the guilt of the subject appears highly probable.[n14]

The manuals suggest that the suspect be offered legal excuses for his actions in order to obtain an initial admission of guilt. Where there is a suspected revenge killing, for example, the interrogator may say:

Joe, you probably didn't go out looking for this fellow with the purpose of shooting him. My guess is, however,
that you expected something from him, and that's why you carried a gun -- for your own protection. You knew him for what he was, no good. Then when you met him, he probably started using foul, abusive language and he gave some indication [p452] that he was about to pull a gun on you, and that's when you had to act to save your own life. That's about it, isn't it, Joe?[n15]

Having then obtained the admission of shooting, the interrogator is advised to refer to circumstantial evidence which negates the self-defense explanation. This should enable him to secure the entire story. One text notes that,

Even if he fails to do so, the inconsistency between the subject's original denial of the shooting and his present admission of at least doing the shooting will serve to deprive him of a self-defense "out" at the time of trial.[n16]

When the techniques described above prove unavailing, the texts recommend they be alternated with a show of some hostility. One ploy often used has been termed the "friendly-unfriendly," or the "Mutt and Jeff" act:

. . . In this technique, two agents are employed. Mutt, the relentless investigator, who knows the subject is guilty and is not going to waste any time. He's sent a dozen men away for this crime, and he's going to send the subject away for the full term. Jeff, on the other hand, is obviously a kindhearted man. He has a family himself. He has a brother who was involved in a little scrape like this. He disapproves of Mutt and his tactics, and will arrange to get him off the case if the subject will cooperate. He can't hold Mutt off for very long. The subject would be wise to make a quick decision. The technique is applied by having both investigators present while Mutt acts out his role. Jeff may stand by quietly and demur at some of Mutt's tactics. When Jeff makes his plea for cooperation, Mutt is not present in the room.[n17] [p453]

The interrogators sometimes are instructed to induce a confession out of trickery. The technique here is quite effective in crimes which require identification or which run in series. In the identification situation, the interrogator may take a break in his questioning to place the subject among a group of men in a line-up.

The witness or complainant (previously coached, if necessary) studies the line-up and confidently points out the subject as the guilty party.[n18]

Then the questioning resumes "as though there were now no doubt about the guilt of the subject." A variation on this technique is called the "reverse line-up":

The accused is placed in a line-up, but this time he is identified by several fictitious witnesses or victims who associated him with different offenses. It is expected that the subject will become desperate and confess to the offense under investigation in order to escape from the false accusations.[n19]

The manuals also contain instructions for police on how to handle the individual who refuses to discuss the matter entirely, or who asks for an attorney or relatives. The examiner is to concede him the right to remain silent.

This usually has a very undermining effect. First of all, he is disappointed in his expectation of an unfavorable reaction on the part of the interrogator. Secondly, a concession of this right to remain silent impresses [p454] the subject with the apparent fairness of his interrogator.[n20]

After this psychological conditioning, however, the officer is told to point out the incriminating significance of the suspect's refusal to talk:

Joe, you have a right to remain silent. That's your privilege, and I'm the last person in the world who'll try to take it away from you. If that's the way you want to leave this, O. K. But let me ask you this. Suppose you were in my shoes, and I were in yours, and you called me in to ask me about this, and I told you, "I don't want to answer any of your questions." You'd think I had something to hide, and you'd probably be right in thinking that. That's
exactly what I'll have to think about you, and so will everybody else. So let's sit here and talk this whole thing over.\[n21\]

Few will persist in their initial refusal to talk, it is said, if this monologue is employed correctly.

In the event that the subject wishes to speak to a relative or an attorney, the following advice is tendered:

[T]he interrogator should respond by suggesting that the subject first tell the truth to the interrogator himself, rather than get anyone else involved in the matter. If the request is for an attorney, the interrogator may suggest that the subject save himself or his family the expense of any such professional service, particularly if he is innocent of the offense under investigation. The interrogator may also add, "Joe, I'm only looking for the truth, and if you're telling the truth, that's it. You can handle this by yourself."\[n22\] \[p455\]

From these representative samples of interrogation techniques, the setting prescribed by the manuals and observed in practice becomes clear. In essence, it is this: to be alone with the subject is essential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe. Patience and persistence, at times relentless questioning, are employed. To obtain a confession, the interrogator must "patiently maneuver himself or his quarry into a position from which the desired objective may be attained."\[n23\] When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems such as giving false legal advice. It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then persuade, trick, or cajole him out of exercising his constitutional rights.

Even without employing brutality, the "third degree" or the specific stratagems described above, the very fact of custodial interrogation exacts a heavy toll on individual liberty, and trades on the weakness of individuals.\[n24\] \[p456\] This fact may be illustrated simply by referring to three confession cases decided by this Court in the Term immediately preceding our Escobedo decision. In Townsend v. Sain, 372 U.S. 293 (1963), the defendant was a 19-year-old heroin addict, described as a "near mental defective," id. at 307-310. The defendant in Lynnum v. Illinois, 372 U.S. 528 (1963), was a woman who confessed to the arresting officer after being importuned to "cooperate" in order to prevent her children from being taken by relief authorities. This Court, as in those cases, reversed the conviction of a defendant in Haynes v. Washington, 373 U.S. 503 (1963), whose persistent request during his interrogation was to phone his wife or attorney.\[n25\] In other settings, these individuals might have exercised their constitutional rights. In the incommunicado police-dominated atmosphere, they succumbed.

In the cases before us today, given this background, we concern ourselves primarily with this interrogation atmosphere and the evils it can bring. In No. 759, Miranda v. Arizona, the police arrested the defendant and took him to a special interrogation room, where they secured a confession. In No. 760, Vignera v. New York, the defendant made oral admissions to the police after interrogation in the afternoon, and then signed an inculpatory statement upon being questioned by an assistant district attorney later the same evening. In No. 761, Westover v. United States, the defendant was handed over to the Federal Bureau of Investigation by \[p457\] local authorities after they had detained and interrogated him for a lengthy period, both at night and the following morning. After some two hours of questioning, the federal officers had obtained signed statements from the defendant. Lastly, in No. 584, California v. Stewart, the local police held the defendant five days in the station and interrogated him on nine separate occasions before they secured his inculpatory statement.

In these cases, we might not find the defendants' statements to have been involuntary in traditional terms. Our concern for adequate safeguards to protect precious Fifth Amendment rights is, of course, not lessened in the slightest. In each of the cases, the defendant was thrust into an unfamiliar atmosphere and run through menacing police interrogation procedures. The potentiality for compulsion is forcefully apparent, for example, in Miranda, where the indigent Mexican defendant was a seriously disturbed individual with pronounced sexual fantasies, and in Stewart, in which the defendant was an indigent Los Angeles Negro who had dropped out of school in the sixth
grade. To be sure, the records do not evince overt physical coercion or patent psychological ploys. The fact remains that in none of these cases did the officers undertake to afford appropriate safeguards at the outset of the interrogation to insure that the statements were truly the product of free choice.

It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity.[n26] The current practice of incommunicado interrogation is at odds with one of our Nation's most cherished principles -- that the individual may not be compelled to incriminate himself. Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice.

From the foregoing, we can readily perceive an intimate connection between the privilege against self-incrimination and police custodial questioning. It is fitting to turn to history and precedent underlying the Self-Incrimination Clause to determine its applicability in this situation.

II

We sometimes forget how long it has taken to establish the privilege against self-incrimination, the sources from which it came, and the fervor with which it was defended. Its roots go back into ancient times.[n27] Perhaps the critical historical event shedding light on its origins and evolution was the trial of one John Lilburn, a vocal anti-Stuart Leveller, who was made to take the Star Chamber Oath in 1637. The oath would have bound him to answer to all questions posed to him on any subject. The Trial of John Lilburn and John Wharton, 3 How.St.Tr. 1315 (1637). He resisted the oath and declaimed the proceedings, stating:

Another fundamental right I then contended for was that no man's conscience ought to be racked by oaths imposed to answer to questions concerning himself in matters criminal, or pretended to be so.

Haller & Davies, The Leveller Tracts 1647-1653, p. 454 (1944)

On account of the Lilburn Trial, Parliament abolished the inquisitorial Court of Star Chamber and went further in giving him generous reparation. The lofty principles to which Lilburn had appealed during his trial gained popular acceptance in England.[n28] These sentiments worked their way over to the Colonies, and were implanted after great struggle into the Bill of Rights.[n29] Those who framed our Constitution and the Bill of Rights were ever aware of subtle encroachments on individual liberty. They knew that illegitimate and unconstitutional practices get their first footing . . . by silent approaches and slight deviations from legal modes of procedure.

Boyd v. United States, 116 U.S. 616, 635 (1886). The privilege was elevated to constitutional status, and has always been "as broad as the mischief [p459] against which it seeks to guard." Counselman v. Hitchcock, 142 U.S. 562 (1892). We cannot depart from this noble heritage.

Thus, we may view the historical development of the privilege as one which groped for the proper scope of governmental power over the citizen. As a "noble principle often transcends its origins," the privilege has come rightfully to be recognized in part as an individual's substantive right, a "right to a private enclave where he may lead a private life. That right is the hallmark of our democracy." United States v. Grunewald, 233 F.2d 556, 579, 581-582 (Frank, J., dissenting), rev'd, 353 U.S. 391 (1957). We have recently noted that the privilege against self-incrimination -- the essential mainstay of our adversary system -- is founded on a complex of values, Murphy v. Waterfront Comm'n, 378 U.S. 52, 55-57, n. 5 (1964); Tehan v. Shott, 382 U.S. 406, 414-415, n. 12 (1966). All these policies point to one overriding thought: the constitutional foundation underlying the privilege is the respect
a government -- state or federal -- must accord to the dignity and integrity of its citizens. To maintain a "fair
state-individual balance," to require the government "to shoulder the entire load," 8 Wigmore, Evidence 317
(McNaughton rev.1961), to respect the inviolability of the human personality, our accusatory system of criminal
justice demands that the government seeking to punish an individual produce the evidence against him by its own
independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth. Chambers v.
Florida, 309 U.S. 227, 235-238 (1940). In sum, the privilege is fulfilled only when the person is guaranteed the
right "to remain silent unless he chooses to speak in the unfettered exercise of his own will." Malloy v. Hogan, 378
U.S. 1, 8 (1964).

The question in these cases is whether the privilege is fully applicable during a period of custodial interrogation.
[p461] In this Court, the privilege has consistently been accorded a liberal construction. Albertson v. SACB, 382
U.S. 70, 81 (1965); Hoffman v. United States, 341 U.S. 479, 486 (1951); Arndstein v. McCarthy, 254 U.S. 71,
72-73 (1920); Counselman v. Hitchcock, 142 U.S. 547, 562 (1892). We are satisfied that all the principles
embodied in the privilege apply to informal compulsion exerted by law enforcement officers during in-custody
questioning. An individual swept from familiar surroundings into police custody, surrounded by antagonistic
forces, and subjected to the techniques of persuasion described above cannot be otherwise than under compulsion
to speak. As a practical matter, the compulsion to speak in the isolated setting of the police station may well be
greater than in courts or other official investigations, where there are often impartial observers to guard against
intimidation or trickery.[n30]

This question, in fact, could have been taken as settled in federal courts almost 70 years ago, when, in Bram v.
United States, 168 U.S. 532, 542 (1897), this Court held:

In criminal trials, in the courts of the United States, wherever a question arises whether a confession is
incompetent because not voluntary, the issue is controlled by that portion of the Fifth Amendment . . .
commanding that no person "shall be compelled in any criminal case to be a witness against himself.

In Bram, the Court reviewed the British and American history and case law and set down the Fifth Amendment
standard for compulsion which we implement today:

Much of the confusion which has resulted from the effort to deduce from the adjudged cases what [p462] would be
a sufficient quantum of proof to show that a confession was or was not voluntary, has arisen from a misconception
of the subject to which the proof must address itself. The rule is not that, in order to render a statement admissible,
the proof must be adequate to establish that the particular communications contained in a statement were
voluntarily made, but it must be sufficient to establish that the making of the statement was voluntary; that is to
say, that from the causes, which the law treats as legally sufficient to engender in the mind of the accused hope or
fear in respect to the crime charged, the accused was not involuntarily impelled to make a statement, when, but for
the improper influences, he would have remained silent. . .

168 U.S. at 549. And see id. at 542.

The Court has adhered to this reasoning. In 1924, Mr. Justice Brandeis wrote for a unanimous Court in reversing a
conviction resting on a compelled confession, Wan v. United States, 266 U.S. 1. He stated:

In the federal courts, the requisite of voluntariness is not satisfied by establishing merely that the confession was
not induced by a promise or a threat. A confession is voluntary in law if, and only if, it was, in fact, voluntarily
made. A confession may have been given voluntarily, although it was made to police officers, while in custody,
and in answer to an examination conducted by them. But a confession obtained by compulsion must be excluded
whatever may have been the character of the compulsion, and whether the compulsion was applied in a judicial
266 U.S. at 14-15. In addition to the expansive historical development of the privilege and the sound policies which have nurtured its evolution, judicial precedent thus clearly establishes its application to incommunicado interrogation. In fact, the Government concedes this point as well established in No. 761, Westover v. United States, stating:

We have no doubt . . . that it is possible for a suspect's Fifth Amendment right to be violated during in-custody questioning by a law enforcement officer.[n31]

Because of the adoption by Congress of Rule 5(a) of the Federal Rules of Criminal Procedure, and this Court's effectuation of that Rule in McNabb v. United States, 318 U.S. 332 (1943), and Mallory v. United States, 354 U.S. 449 (1957), we have had little occasion in the past quarter century to reach the constitutional issues in dealing with federal interrogations. These supervisory rules, requiring production of an arrested person before a commissioner "without unnecessary delay" and excluding evidence obtained in default of that statutory obligation, were nonetheless responsive to the same considerations of policy that unavoidably face us now as to the States. In McNabb, 318 U.S. at 343-344, and in Mallory, 354 U.S. at 455-456, we recognized both the dangers of interrogation and the appropriateness of prophylaxis stemming from the very fact of interrogation itself.[n32]

Our decision in Malloy v. Hogan, 378 U.S. 1 (1964), necessitates an examination of the scope of the privilege in state cases as well. In Malloy, we squarely held the privilege applicable to the States, and held that the substantive standards underlying the privilege applied with full force to state court proceedings. There, as in Murphy v. Waterfront Comm'n, 378 U.S. 52 (1964), and Griffin v. California, 380 U.S. 609 (1965), we applied the existing Fifth Amendment standards to the case before us. Aside from the holding itself, the reasoning in Malloy made clear what had already become apparent -- that the substantive and procedural safeguards surrounding admissibility of confessions in state cases had become exceedingly exacting, reflecting all the policies embedded in the privilege, 378 U.S. at 7-8.[n33] The voluntariness doctrine in the state cases, as Malloy indicates, encompasses all interrogation practices which are likely to exert such pressure upon an individual as to disable him from making a free and rational choice.[n34] The implications of this proposition were elaborated in our decision in Escobedo v. Illinois, 378 U.S. 478, decided one week after Malloy applied the privilege to the States.

Our holding there stressed the fact that the police had not advised the defendant of his constitutional privilege to remain silent at the outset of the interrogation, and we drew attention to that fact at several points in the decision, 378 U.S. at 483, 485, 491. This was no isolated factor, but an essential ingredient in our decision. The entire thrust of police interrogation there, as in all the cases today, was to put the defendant in such an emotional state as to impair his capacity for rational judgment. The abdication of the constitutional privilege -- the choice on his part to speak to the police -- was not made knowingly or competently because of the failure to apprise him of his rights; the compelling atmosphere of the in-custody interrogation, and not an independent decision on his part, caused the defendant to speak.

A different phase of the Escobedo decision was significant in its attention to the absence of counsel during the questioning. There, as in the cases today, we sought a protective device to dispel the compelling atmosphere of the interrogation. In Escobedo, however, the police did not relieve the defendant of the anxieties which they had created in the interrogation rooms. Rather, they denied his request for the assistance of counsel, 378 U.S. at 481, 488, 491.[n35] This heightened his dilemma, and [p465] made his later statements the product of this compulsion. Cf. Haynes v. Washington, 373 U.S. 503, 514 (1963). The denial of the defendant's request for his attorney thus undermined his ability to exercise the privilege -- to remain silent if he chose or to speak without any intimidation, blatant or subtle. The presence of counsel, in all the cases before us today, would he the adequate protective device necessary to make the process of police interrogation conform to the dictates of the privilege. His presence would insure that statements made in the government-established atmosphere are not the product of compulsion.

It was in this manner that Escobedo explicated another facet of the pretrial privilege, noted in many of the Court's prior decisions: the protection of rights at trial.[n36] That counsel is present when statements are taken from an
individual during interrogation obviously enhances the integrity of the factfinding processes in court. The presence of an attorney, and the warnings delivered to the individual, enable the defendant under otherwise compelling circumstances to tell his story without fear, effectively, and in a way that eliminates the evils in the interrogation process. Without the protections flowing from adequate warnings and the rights of counsel, all the careful safeguards erected around the giving of testimony, whether by an accused or any other witness, would become empty formalities in a procedure where the most compelling possible evidence of guilt, a confession, would have already been obtained at the unsupervised pleasure of the police.


III

Today, then, there can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings, and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves. We have concluded that, without proper safeguards, the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights, and the exercise of those rights must be fully honored.

It is impossible for us to foresee the potential alternatives for protecting the privilege which might be devised by Congress or the States in the exercise of their creative rulemaking capacities. Therefore, we cannot say that the Constitution necessarily requires adherence to any particular solution for the inherent compulsions of the interrogation process as it is presently conducted. Our decision in no way creates a constitutional straitjacket which will handicap sound efforts at reform, nor is it intended to have this effect. We encourage Congress and the States to continue their laudable search for increasingly effective ways of protecting the rights of the individual while promoting efficient enforcement of our criminal laws. However, unless we are shown other procedures which are at least as effective in apprising accused persons of their right of silence and in assuring a continuous opportunity to exercise it, the following safeguards must be observed.

At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent. For those unaware of the privilege, the warning is needed simply to make them aware of it -- the threshold requirement for an intelligent decision as to its exercise. More important, such a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere. It is not just the subnormal or woefully ignorant who succumb to an interrogator's imprecations, whether implied or expressly stated, that the interrogation will continue until a confession is obtained or that silence in the face of accusation is itself damming, and will bode ill when presented to a jury. Further, the warning will show the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it.

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. Assessments of the knowledge the defendant possessed, based on information as to his age, education, intelligence, or prior contact with authorities, can never be more than speculation; a warning is a clear-cut fact. More important, whatever the background of the person interrogated, a warning at the time of the interrogation is indispensable to overcome its pressures and to insure that the individual knows he is free to exercise the privilege at that point in time.
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. It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege. Moreover, this 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 interest.

The circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators. Therefore, the right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege under the system we delineate today. Our aim is to assure that the individual's right to choose between silence and speech remains unfettered throughout the interrogation process. A once-stated warning, delivered by those who will conduct the interrogation, cannot itself suffice to that end among those who most require knowledge of their rights. A mere warning given by the interrogators is not alone sufficient to accomplish that end. Prosecutors themselves claim that the admonishment of the right to remain silent, without more, "will benefit only the recidivist and the professional." Brief for the National District Attorneys Association as amicus curiae, p. 14. Even preliminary advice given to the accused by his own attorney can be swiftly overcome by the secret interrogation process. Cf. Escobedo v. Illinois, 378 U.S. 478, 485, n. 5. Thus, the need for counsel to protect the Fifth Amendment privilege comprehends not merely a right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires.

The presence of counsel at the interrogation may serve several significant subsidiary functions, as well. If the accused decides to talk to his interrogators, the assistance of counsel can mitigate the dangers of untrustworthiness. With a lawyer present, the likelihood that the police will practice coercion is reduced, and, if coercion is nevertheless exercised, the lawyer can testify to it in court. The presence of a lawyer can also help to guarantee that the accused gives a fully accurate statement to the police, and that the statement is rightly reported by the prosecution at trial. See Crooker v. California, 357 U.S. 433, 443-448 (1958) (DOUGLAS, J., dissenting).

An individual need not make a pre-interrogation request for a lawyer. While such request affirmatively secures his right to have one, his failure to ask for a lawyer does not constitute a waiver. No effective waiver of the right to counsel during interrogation can be recognized unless specifically made after the warnings we here delineate have been given. The accused who does not know his rights and therefore does not make a request may be the person who most needs counsel. As the California Supreme Court has aptly put it:

Finally, we must recognize that the imposition of the requirement for the request would discriminate against the defendant who does not know his rights. The defendant who does not ask for counsel is the very defendant who most needs counsel. We cannot penalize a defendant who, not understanding his constitutional rights, does not make the formal request, and, by such failure, demonstrates his helplessness. To require the request would be to favor the defendant whose sophistication or status had fortuitously prompted him to make it.


[I]t is settled that, where the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not depend on a request.

This proposition applies with equal force in the context of providing counsel to protect an accused's Fifth Amendment privilege in the face of interrogation. Although the role of counsel at trial differs from the role during interrogation, the differences are not relevant to the question whether a request is a prerequisite.

Accordingly, we 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. As with the warnings of the right to remain silent and that anything stated can be used in evidence against him, this warning is an absolute prerequisite to interrogation. 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 financial ability of the individual has no relationship to the scope of the rights involved here. 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. In fact, were we to limit these constitutional rights to those who can retain an attorney, our decisions today would be of little significance. The cases before us, as well as the vast majority of confession cases with which we have dealt in the past, involve those unable to retain counsel. While authorities are not required to relieve the accused of his poverty, they have the obligation not to take advantage of indigence in the administration of justice. Denial of counsel to the indigent at the time of interrogation while allowing an attorney to those who can afford one would be no more supportable by reason or logic than the similar situation at trial and on appeal struck down in Gideon v. Wainwright, 372 U.S. 335 (1963), and Douglas v. California, 372 U.S. 353 (1963).

In order fully to apprise a person interrogated of the extent of his rights under this system, then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that, if he is indigent, a lawyer will be appointed to represent him. Without this additional warning, the admonition of the right to consult with counsel would often be understood as meaning only that he can consult with a lawyer if he has one or has the funds to obtain one. The warning of a right to counsel would be hollow if not couched in terms that would convey to the indigent -- the person most often subjected to interrogation -- the knowledge that he too has a right to have counsel present. As with the warnings of the right to remain silent and of the general right to counsel, only by effective and express explanation to the indigent of this right can there be assurance that he was truly in a position to exercise it.

Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point, he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked. If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning. If the individual cannot obtain an attorney and he indicates that he wants one before speaking to police, they must respect his decision to remain silent.

This does not mean, as some have suggested, that each police station must have a "station house lawyer" present at all times to advise prisoners. It does mean, however, that, if police propose to interrogate a person, they must make known to him that he is entitled to a lawyer and that, if he cannot afford one, a lawyer will be provided for him prior to any interrogation. If authorities conclude that they will not provide counsel during a reasonable period of time in which investigation in the field is carried out, they may refrain from doing so without violating the person's Fifth Amendment privilege so long as they do not question him during that time.

If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. Escobedo v. Illinois, 378 U.S. 478, 490, n. 14.
This Court has always set high standards of proof for the waiver of constitutional rights, Johnson v. Zerbst, 304 U.S. 458 (1938), and we reassert these standards as applied to in-custody interrogation. Since the State is responsible for establishing the isolated circumstances under which the interrogation takes place, and has the only means of making available corroborated evidence of warnings given during incommunicado interrogation, the burden is rightly on its shoulders.

An express statement that the individual is willing to make a statement and does not want an attorney, followed closely by a statement, could constitute a waiver. But a valid waiver will not be presumed simply from the silence of the accused after warnings are given, or simply from the fact that a confession was, in fact, eventually obtained. A statement we made in Carnley v. Cochran, 369 U.S. 506, 516 (1962), is applicable here:

Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver.

See also Glasser v. United States, 315 U.S. 60 (1942). Moreover, where in-custody interrogation is involved, there is no room for the contention that the privilege is waived if the individual answers some questions or gives some information on his own prior to invoking his right to remain silent when interrogated.[n45]

Whatever the testimony of the authorities as to waiver of rights by an accused, the fact of lengthy interrogation or incommunicado incarceration before a statement is made is strong evidence that the accused did not validly waive his rights. In these circumstances, the fact that the individual eventually made a statement is consistent with the conclusion that the compelling influence of the interrogation finally forced him to do so. It is inconsistent with any notion of a voluntary relinquishment of the privilege. Moreover, 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 with respect to the Fifth Amendment privilege, and not simply a preliminary ritual to existing methods of interrogation.

The warnings required and the waiver necessary in accordance with our opinion today are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by a defendant. No distinction can be drawn between statements which are direct confessions and statements which amount to "admissions" of part or all of an offense. The privilege against self-incrimination protects the individual from being compelled to incriminate himself in any manner; it does not distinguish degrees of incrimination. Similarly, [p477] for precisely the same reason, no distinction may be drawn between inculpatory statements and statements alleged to be merely "exculpatory." If a statement made were, in fact, truly exculpatory, it would, of course, never be used by the prosecution. In fact, statements merely intended to be exculpatory by the defendant are often used to impeach his testimony at trial or to demonstrate untruths in the statement given under interrogation, and thus to prove guilt by implication. These statements are incriminating in any meaningful sense of the word, and may not be used without the full warnings and effective waiver required for any other statement. In Escobedo itself, the defendant fully intended his accusation of another as the slayer to be exculpatory as to himself.

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.

Our decision is not intended to hamper the traditional function of police officers in investigating crime. See Escobedo v. Illinois, 378 U.S. 478, 492. When an individual is in custody on probable cause, the police may, of course, seek out evidence in the field to be used at trial against him. Such investigation may include inquiry of
persons not under restraint. General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the factfinding process is not affected by our holding. It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. In such situations, the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present. [n46]

In dealing with statements obtained through interrogation, we do not purport to find all confessions inadmissible. Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of warnings and counsel, but whether he can be interrogated. There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime,[n47] or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment, and their admissibility is not affected by our holding today.

To summarize, we 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. Procedural safeguards must be employed to protect the privilege, and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that, if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.[n48]

IV

A recurrent argument made in these cases is that society's need for interrogation outweighs the privilege. This argument is not unfamiliar to this Court. See, e.g., Chambers v. Florida, 309 U.S. 227, 240-241 (1940). The whole thrust of our foregoing discussion demonstrates that the Constitution has prescribed the rights of the individual when confronted with the power of government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. That right cannot be abridged. As Mr. Justice Brandeis once observed:

Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fail to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that, in the administration of the criminal law, the end justifies the means . . . would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

Olmstead v. United States, 277 U.S. 438 (1928) (dissenting opinion).[n49] In this connection, one of our country's distinguished jurists has pointed out: "The quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of its criminal law."[n50]

If the individual desires to exercise his privilege, he has the right to do so. This is not for the authorities to decide. An attorney may advise his client not to talk to police until he has had an opportunity to investigate the case, or he
may wish to be present with his client during any police questioning. In doing so an attorney is merely exercising the good professional judgment he has been taught. This is not cause for considering the attorney a menace to law enforcement. He is merely carrying out what he is sworn to do under his oath -- to protect to the extent of his ability the rights of his client. [p481] In fulfilling this responsibility, the attorney plays a vital role in the administration of criminal justice under our Constitution.

In announcing these principles, we are not unmindful of the burdens which law enforcement officials must bear, often under trying circumstances. We also fully recognize the obligation of all citizens to aid in enforcing the criminal laws. This Court, while protecting individual rights, has always given ample latitude to law enforcement agencies in the legitimate exercise of their duties. The limits we have placed on the interrogation process should not constitute an undue interference with a proper system of law enforcement. As we have noted, our decision does not in any way preclude police from carrying out their traditional investigatory functions. Although confessions may play an important role in some convictions, the cases before us present graphic examples of the overstatement of the "need" for confessions. In each case, authorities conducted interrogations ranging up to five days in duration despite the presence, through standard investigating practices, of considerable evidence against each defendant. [n51] Further examples are chronicled in our prior cases. See, e.g., Haynes v. Washington, 373 U.S. 503, 518-519 (1963); Rogers v. Richmond, 365 U.S. 534, 541 (1961); Malinski v. New York, 324 U.S. 401, 402 (1945). [n52]

It is also urged that an unfettered right to detention for interrogation should be allowed because it will often redound to the benefit of the person questioned. When police inquiry determines that there is no reason to believe that the person has committed any crime, it is said, he will be released without need for further formal procedures. The person who has committed no offense, however, will be better able to clear himself after warnings with counsel present than without. It can be assumed that, in such circumstances, a lawyer would advise his client to talk freely to police in order to clear himself.

Custodial interrogation, by contrast, does not necessarily afford the innocent an opportunity to clear themselves. A serious consequence of the present practice of the interrogation alleged to be beneficial for the innocent is that many arrests "for investigation" subject large numbers of innocent persons to detention and interrogation. In one of the cases before us, No. 584, California v. Stewart, police held four persons, who were in the defendant's house at the time of the arrest, in jail for five days until defendant confessed. At that time, they were finally released. Police stated that there was "no evidence to connect them with any crime." Available statistics on the extent of this practice where it is condoned indicate that these four are far from alone in being subjected to arrest, prolonged detention, and interrogation without the requisite probable cause. [n53]

Over the years, the Federal Bureau of Investigation has compiled an exemplary record of effective law enforcement while advising any suspect or arrested person, at the outset of an interview, that he is not required to make a statement, that any statement may be used against him in court, that the individual may obtain the services of an attorney of his own choice, and, more recently, that he has a right to free counsel if he is unable to pay. [n54] A letter received from the Solicitor General in response to a question from the Bench makes it clear that the present pattern of warnings and respect for the rights of the individual followed as a practice by the FBI is consistent with the procedure which we delineate today. It states:

At the oral argument of the above cause, Mr. Justice Fortas asked whether I could provide certain information as to the practices followed by the Federal Bureau of Investigation. I have directed these questions to the attention of the Director of the Federal Bureau of Investigation, and am submitting herewith a statement of the questions and of the answers which we have received.

(1) When an individual is interviewed by agents of the Bureau, what warning is given to him?

The standard warning long given by Special Agents of the FBI to both suspects and persons under arrest is that the
person has a right to say nothing and a right to counsel, and that any statement he does make may be used against him in court. Examples of this warning are to be found in the Westover case at 342 F.2d 684 (1965), and Jackson v. U.S., 337 F.2d 136 (1964), cert. den., 380 U.S. 935.

After passage of the Criminal Justice Act of 1964, which provides free counsel for Federal defendants unable to pay, we added to our instructions to Special Agents the requirement that any person who is under arrest for an offense under FBI jurisdiction, or whose arrest is contemplated following the interview, must also be advised of his right to free counsel if he is unable to pay, and the fact that such counsel will be assigned by the Judge. At the same time, we broadened the right to counsel warning to read counsel of his own choice, or anyone else with whom he might wish to speak.

(2) When is the warning given?

The FBI warning is given to a suspect at the very outset of the interview, as shown in the Westover case, cited above. The warning may be given to a person arrested as soon as practicable after the arrest, as shown in the Jackson case, also cited above, and in U.S. v. Konigsberg, 336 F.2d 844 (1964), cert. den., 379 U.S. 933, but, in any event, it must precede the interview with the person for a confession or admission of his own guilt.

(3) What is the Bureau's practice in the event that (a) the individual requests counsel and (b) counsel appears?

When the person who has been warned of his right to counsel decides that he wishes to consult with counsel before making a statement, the interview is terminated at that point, Shultz v. U.S., 351 F.2d 287 (1965). It may be continued, however, as to all matters other than the person's own guilt or innocence. If he is indecisive in his request for counsel, there may be some question on whether he did or did not waive counsel. Situations of this kind must necessarily be left to the judgment of the interviewing Agent. For example, in Hiram v. U.S., 354 F.2d 4 (1965), the Agent's conclusion that the person arrested had waived his right to counsel was upheld by the courts.

A person being interviewed and desiring to consult counsel by telephone must be permitted to do so, as shown in Caldwell v. U.S., 351 F.2d 459 (1965). When counsel appears in person, he is permitted to confer with his client in private.

(4) What is the Bureau's practice if the individual requests counsel, but cannot afford to retain an attorney?

If any person being interviewed after warning of counsel decides that he wishes to consult with counsel before proceeding, further the interview is terminated, as shown above. FBI Agents do not pass judgment on the ability of the person to pay for counsel. They do, however, advise those who have been arrested for an offense under FBI jurisdiction, or whose arrest is contemplated following the interview, of a right to free counsel if they are unable to pay, and the availability of such counsel from the Judge.

The practice of the FBI can readily be emulated by state and local enforcement agencies. The argument that the FBI deals with different crimes than are dealt with by state authorities does not mitigate the significance of the FBI experience.

The experience in some other countries also suggests that the danger to law enforcement in curbs on interrogation is overplayed. The English procedure, since 1912 under the Judges' Rules, is significant. As recently strengthened, the Rules require that a cautionary warning be given an accused by a police officer as soon as he has evidence that affords reasonable grounds for suspicion; they also require that any statement made be given by the accused without questioning by police. The right of the individual to consult with an attorney during this period is expressly recognized.

The safeguards present under Scottish law may be even greater than in England. Scottish judicial decisions bar use
in evidence of most confessions obtained through police interrogation. In India, confessions made to police not in the presence of a magistrate have been excluded by rule of evidence since 1872, at a time when it operated under British law. Identical provisions appear in the Evidence Ordinance of Ceylon, enacted in 1895. Similarly, in our country, the Uniform Code of Military Justice has long provided that no suspect may be interrogated without first being warned of his right not to make a statement, and that any statement he makes may be used against him. Denial of the right to consult counsel during interrogation has also been proscribed by military tribunals. There appears to have been no marked detrimental effect on criminal law enforcement in these jurisdictions as a result of these rules. Conditions of law enforcement in our country are sufficiently similar to permit reference to this experience as assurance that lawlessness will not result from warning an individual of his rights or allowing him to exercise them. Moreover, it is consistent with our legal system that we give at least as much protection to these rights as is given in the jurisdictions described. We deal in our country with rights grounded in a specific requirement of the Constitution, whereas other jurisdictions arrived at their conclusions on the basis of principles of justice not so specifically defined.

It is also urged upon us that we withhold decision on this issue until state legislative bodies and advisory groups have had an opportunity to deal with these problems by rulemaking. We have already pointed out that the Constitution does not require any specific code of procedures for protecting the privilege against self-incrimination during custodial interrogation. Congress and the States are free to develop their own safeguards for the privilege, so long as they are fully as effective as those described above in informing accused persons of their right of silence and in affording a continuous opportunity to exercise it. In any event, however, the issues presented are of constitutional dimensions, and must be determined by the courts. The admissibility of a statement in the face of a claim that it was obtained in violation of the defendant's constitutional rights is an issue the resolution of which has long since been undertaken by this Court. See Hopt v. Utah, 110 U.S. 574 (1884). Judicial solutions to problems of constitutional dimension have evolved decade by decade. As courts have been presented with the need to enforce constitutional rights, they have found means of doing so. That was our responsibility when Escobedo was before us, and it is our responsibility today. Where rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them.

V

Because of the nature of the problem and because of its recurrent significance in numerous cases, we have to this point discussed the relationship of the privilege to police interrogation without specific concentration on the facts of the cases before us. We turn now to these facts to consider the application to these cases of the constitutional principles discussed above. In each instance, we have concluded that statements were obtained from the defendant under circumstances that did not meet constitutional standards for protection of the privilege.

No. 759. Miranda v. Arizona

On March 13, 1963, petitioner, Ernesto Miranda, was arrested at his home and taken in custody to a Phoenix police station. He was there identified by the complaining witness. The police then took him to "Interrogation Room No. 2" of the detective bureau. There he was questioned by two police officers. The officers admitted at trial that Miranda was not advised that he had a right to have an attorney present. Two hours later, the officers emerged from the interrogation room with a written confession signed by Miranda. At the top of the statement was a typed paragraph stating that the confession was made voluntarily, without threats or promises of immunity and "with full knowledge of my legal rights, understanding any statement I make may be used against me."[n67]

At his trial before a jury, the written confession was admitted into evidence over the objection of defense counsel, and the officers testified to the prior oral confession made by Miranda during the interrogation. Miranda was found guilty of kidnapping and rape. He was sentenced to 20 to 30 years' imprisonment on each count, the sentences to
run concurrently. On appeal, the Supreme Court of Arizona held that Miranda's constitutional rights were not violated in obtaining the confession, and affirmed the conviction. 98 Ariz. 18, 401 P.2d 721. In reaching its decision, the court emphasized heavily the fact that Miranda did not specifically request counsel.

We reverse. From the testimony of the officers and by the admission of respondent, it is clear that Miranda was not in any way apprised of his right to consult with an attorney and to have one present during the interrogation, nor was his right not to be compelled to incriminate himself effectively protected in any other manner. Without these warnings, the statements were inadmissible. The mere fact that he signed a statement which contained a typed-in clause stating that he had "full knowledge" of his "legal rights" does not approach the knowing and intelligent waiver required to relinquish constitutional rights. Cf. Haynes v. Washington, 373 U.S. 503, 512-513 (1963); Haley v. Ohio, 332 U.S. 596, 601 (1948) (opinion of MR JUSTICE DOUGLAS).

No. 760. Vignera v. New York

Petitioner, Michael Vignera, was picked up by New York police on October 14, 1960, in connection with the robbery three days earlier of a Brooklyn dress shop. They took him to the 17th Detective Squad headquarters in Manhattan. Sometime thereafter, he was taken to the 66th Detective Squad. There a detective questioned Vignera with respect to the robbery. Vignera orally admitted the robbery to the detective. The detective was asked on cross-examination at trial by defense counsel whether Vignera was warned of his right to counsel before being interrogated. The prosecution objected to the question, and the trial judge sustained the objection. Thus, the defense was precluded from making any showing that warnings had not been given. While at the 66th Detective Squad, Vignera was identified by the store owner and a saleslady as the man who robbed the dress shop. At about 3 p.m., he was formally arrested. The police then transported him to still another station, the 70th Precinct in Brooklyn, "for detention." At 11 p.m., Vignera was questioned by an assistant district attorney in the presence of a hearing reporter, who transcribed the questions and Vignera's answers. This verbatim account of these proceedings contains no statement of any warnings given by the assistant district attorney. At Vignera's trial on a charge of first degree robbery, the detective testified as to the oral confession. The transcription of the statement taken was also introduced in evidence. At the conclusion of the testimony, the trial judge charged the jury in part as follows:

The law doesn't say that the confession is void or invalidated because the police officer didn't advise the defendant as to his rights. Did you hear what I said? I am telling you what the law of the State of New York is.

Vignera was found guilty of first degree robbery. He was subsequently adjudged a third-felony offender and sentenced to 30 to 60 years' imprisonment.[n68] The conviction was affirmed without opinion by the Appellate Division, Second Department, 21 App.Div.2d 752, 252 N.Y.S.2d 19, and by the Court of Appeals, also without opinion, 15 N.Y.2d 970, 207 N.E.2d 527, 259 N.Y.S.2d 857, remittitur amended, 16 N.Y.2d 614, 209 N.E.2d 110, 261 N.Y.2d 65. In argument to the Court of Appeals, the State contended that Vignera had no constitutional right to be advised of his right to counsel or his privilege against self-incrimination.

We reverse. The foregoing indicates that Vignera was not warned of any of his rights before the questioning by the detective and by the assistant district attorney. No other steps were taken to protect these rights. Thus, he was not effectively apprised of his Fifth Amendment privilege or of his right to have counsel present, and his statements are inadmissible.

No. 761. Westover v. United States

At approximately 9:45 p.m. on March 20, 1963, petitioner, Carl Calvin Westover, was arrested by local police in Kansas City as a suspect in two Kansas City robberies. A report was also received from the FBI that he was wanted on a felony charge in California. The local authorities took him to a police station and placed him in a line-up on the local charges, and, at about 11:45 p.m., he was booked. Kansas City police interrogated Westover[p495] on the night of his arrest. He denied any knowledge of criminal activities. The next day, local officers
interrogated him again throughout the morning. Shortly before noon, they informed the FBI that they were through interrogating Westover and that the FBI could proceed to interrogate him. There is nothing in the record to indicate that Westover was ever given any warning as to his rights by local police. At noon, three special agents of the FBI continued the interrogation in a private interview room of the Kansas City Police Department, this time with respect to the robbery of a savings and loan association and bank in Sacramento, California. After two or two and one-half hours, Westover signed separate confessions to each of these two robberies which had been prepared by one of the agents during the interrogation. At trial, one of the agents testified, and a paragraph on each of the statements states, that the agents advised Westover that he did not have to make a statement, that any statement he made could be used against him, and that he had the right to see an attorney.

Westover was tried by a jury in federal court and convicted of the California robberies. His statements were introduced at trial. He was sentenced to 15 years' imprisonment on each count, the sentences to run consecutively. On appeal, the conviction was affirmed by the Court of Appeals for the Ninth Circuit. 342 F.2d 684.

We reverse. On the facts of this case, we cannot find that Westover knowingly and intelligently waived his right to remain silent and his right to consult with counsel prior to the time he made the statement. At the time the FBI agents began questioning Westover, he had been in custody for over 14 hours, and had been interrogated at length during that period. The FBI interrogation began immediately upon the conclusion of the interrogation by Kansas City police, and was conducted in local police headquarters. Although the two law enforcement authorities are legally distinct, and the crimes for which they interrogated Westover were different, the impact on him was that of a continuous period of questioning. There is no evidence of any warning given prior to the FBI interrogation, nor is there any evidence of an articulated waiver of rights after the FBI commenced its interrogation. The record simply shows that the defendant did, in fact, confess a short time after being turned over to the FBI following interrogation by local police. Despite the fact that the FBI agents gave warnings at the outset of their interview, from Westover’s point of view, the warnings came at the end of the interrogation process. In these circumstances, an intelligent waiver of constitutional rights cannot be assumed.

We do not suggest that law enforcement authorities are precluded from questioning any individual who has been held for a period of time by other authorities and interrogated by them without appropriate warnings. A different case would be presented if an accused were taken into custody by the second authority, removed both in time and place from his original surroundings, and then adequately advised of his rights and given an opportunity to exercise them. But here, the FBI interrogation was conducted immediately following the state interrogation in the same police station -- in the same compelling surroundings. Thus, in obtaining a confession from Westover the federal authorities were the beneficiaries of the pressure applied by the local in-custody interrogation. In these circumstances, the giving of warnings alone was not sufficient to protect the privilege.

No. 584. California v. Stewart

In the course of investigating a series of purse-snatch robberies in which one of the victims had died of injuries inflicted by her assailant, respondent, Roy Allen Stewart, was pointed out to Los Angeles police as the endorser of dividend checks taken in one of the robberies. At about 7:15 p.m., January 31, 1963, police officers went to Stewart's house and arrested him. One of the officers asked Stewart if they could search the house, to which he replied, "Go ahead." The search turned up various items taken from the five robbery victims. At the time of Stewart's arrest, police also arrested Stewart's wife and three other persons who were visiting him. These four were jailed along with Stewart, and were interrogated. Stewart was taken to the University Station of the Los Angeles Police Department, where he was placed in a cell. During the next five days, police interrogated Stewart on nine different occasions. Except during the first interrogation session, when he was confronted with an accusing witness, Stewart was isolated with his interrogators.

During the ninth interrogation session, Stewart admitted that he had robbed the deceased and stated that he had not meant to hurt her. Police then brought Stewart before a magistrate for the first time. Since there was no evidence to
connect them with any crime, the police then released the other four persons arrested with him.

Nothing in the record specifically indicates whether Stewart was or was not advised of his right to remain silent or his right to counsel. In a number of instances, however, the interrogating officers were asked to recount everything that was said during the interrogations. None indicated that Stewart was ever advised of his rights.

Stewart was charged with kidnapping to commit robbery, rape, and murder. At his trial, transcripts of the first interrogation and the confession at the last interrogation were introduced in evidence. The jury found Stewart guilty of robbery and first degree murder, and fixed the penalty as death. On appeal, the Supreme Court of California reversed. 62 Cal.2d 571, 400 P.2d 97, 43 Cal.Rptr. 201. It held that, under this Court's decision in Escobedo, Stewart should have been advised of his right to remain silent and of his right to counsel, and that it would not presume in the face of a silent record that the police advised Stewart of his rights.

We affirm.[n70] In dealing with custodial interrogation, we will not presume that a defendant has been effectively apprised of his rights and that his privilege against self-incrimination has been adequately safeguarded on a record that does not show that any warnings have been given or that any effective alternative has been employed. Nor can a knowing and intelligent waiver of these rights be assumed on a silent record. Furthermore, Stewart's steadfast denial of the alleged offenses through eight of the nine interrogations over a period of five days is subject to no other construction than that he was compelled by persistent interrogation to forgo his Fifth Amendment privilege.

Therefore, in accordance with the foregoing, the judgments of the Supreme Court Of Arizona in No. 759, of the New York Court of Appeals in No. 760, and of the Court of Appeals for the Ninth Circuit in No. 761, are reversed. The judgment of the Supreme Court of California in No. 584 is affirmed.

It is so ordered.

* Together with No. 760, Vignera v. New York, on certiorari to the Court of Appeals of New York and No. 761, Westover v. United States, on certiorari to the United States Court of Appeals for the Ninth Circuit, both argued February 28-March 1, 1966, and No. 584, California v. Stewart, on certiorari to the Supreme Court of California, argued February 28-March 2, 1966.


3. For example, the Los Angeles Police Chief stated that,

If the police are required . . . to . . . establish that the defendant was apprised of his constitutional guarantees of silence and legal counsel prior to the uttering of any admission or confession, and that he intelligently waived these guarantees . . . a whole Pandora's box is opened as to under what circumstances . . . can a defendant
intelligently waive these rights. . . . Allegations that modern criminal investigation can compensate for the lack of a confession or admission in every criminal case is totally absurd!

Parker, 40 L.A.Bar Bull. 603, 607, 642 (1965). His prosecutorial counterpart, District Attorney Younger, stated that

[It begins to appear that many of these seemingly restrictive decisions are going to contribute directly to a more effective, efficient and professional level of law enforcement.

L.A. Times, Oct. 2, 1965, p. 1. The former Police Commissioner of New York, Michael J. Murphy, stated of Escobedo:

What the Court is doing is akin to requiring one boxer to fight by Marquis of Queensbury rules while permitting the other to butt, gouge and bite.

N.Y. Times, May 14, 1965, p. 39. The former United States Attorney for the District of Columbia, David C. Acheson, who is presently Special Assistant to the Secretary of the Treasury (for Enforcement), and directly in charge of the Secret Service and the Bureau of Narcotics, observed that

Prosecution procedure has, at most, only the most remote causal connection with crime. Changes in court decisions and prosecution procedure would have about the same effect on the crime rate as an aspirin would have on a tumor of the brain.


4. This is what we meant in Escobedo when we spoke of an investigation which had focused on an accused.


7. In addition, see People v. Wakat, 415 Ill. 610, 114 N.E.2d 706 (1953); Wakat v. Harlib, 253 F.2d 59 (C.A. 7th Cir.1958) (defendant suffering from broken bones, multiple bruises and injuries sufficiently serious to require eight months' medical treatment after being manhandled by five policemen); Kier v. State, 213 Md. 556, 132 A.2d 494 (1957) (police doctor told accused, who was strapped to a chair completely nude, that he proposed to take hair and skin scrapings from anything that looked like blood or sperm from various parts of his body); Bruner v. People, 113 Colo.194, 156 P.2d 111 (1945) (defendant held in custody over two months, deprived of food for 15 hours, forced to submit to a lie detector test when he wanted to go to the toilet); People v. Matlock, 51 Cal.2d 682, 336 P.2d 505 (1959) (defendant questioned incessantly over an evening's time, made to lie on cold board and to answer questions whenever it appeared he was getting sleepy). Other cases are documented in American Civil Liberties Union, Illinois Division, Secret Detention by the Chicago Police (1959); Potts, The Preliminary

8. The manuals quoted in the text following are the most recent and representative of the texts currently available. Material of the same nature appears in Kidd, Police Interrogation (1940); Mulbar, Interrogation (1951); Dienstein, Technics for the Crime Investigator 97-115 (1952). Studies concerning the observed practices of the police appear in LaFave, Arrest: The Decision To Take a Suspect Into Custody 244-437, 490-521 (1965); LaFave, Detention for Investigation by the Police: An Analysis of Current Practices, 1962 Wash.U.L.Q. 331; Barrett, Police Practices and the Law -- From Arrest to Release or Charge, 50 Calif.L.Rev. 11 (1962); Sterling, supra, n. 7, at 47-65.

9. The methods described in Inbau & Reid, Criminal Interrogation and Confessions (1962), are a revision and enlargement of material presented in three prior editions of a predecessor text, Lie Detection and Criminal Interrogation (3d ed.1953). The authors and their associates are officers of the Chicago Police Scientific Crime Detection Laboratory, and have had extensive experience in writing, lecturing and speaking to law enforcement authorities over a 20-year period. They say that the techniques portrayed in their manuals reflect their experiences, and are the most effective psychological stratagems to employ during interrogations. Similarly, the techniques described in O'Hara, Fundamentals of Criminal Investigation (1956), were gleaned from long service as observer, lecturer in police science, and work as a federal criminal investigator. All these texts have had rather extensive use among law enforcement agencies and among students of police science, with total sales and circulation of over 44,000.


12. Inbau & Reid, supra, at 34-43, 87. For example, in Leyra v. Denno, 347 U.S. 556 (1954), the interrogator-psychiatrist told the accused, "We do sometimes things that are not right, but in a fit of temper or anger we sometimes do things we aren't really responsible for," id. at 562, and again, "We know that morally, you were just in anger. Morally, you are not to be condemned," id. at 582.

13. Inbau Reid, supra, at 43-55.

14. O'Hara, supra, at 112.

15. Inbau & Reid, supra, at 40.

16. Ibid.


Why this talk about being undressed? Of course, they had a right to undress him to look for bullet scars, and keep the clothes off him. That was quite proper police procedure. That is some more psychology -- let him sit around with a blanket on him, humiliate him there for a while; let him sit in the corner, let him think he is going to get a shellacking.

18. O'Hara, supra, at 105-106.

19. Id. at 106.
20. Inbau & Reid, supra, at 111.

21. Ibid.

22. Inbau & Reid, supra, at 112.


24. Interrogation procedures may even give rise to a false confession. The most recent conspicuous example occurred in New York, in 1964, when a Negro of limited intelligence confessed to two brutal murders and a rape which he had not committed. When this was discovered, the prosecutor was reported as saying:

Call it what you want -- brainwashing, hypnosis, fright. They made him give an untrue confession. The only thing I don't believe is that Whitmore was beaten.


25. In the fourth confession case decided by the Court in the 1962 Term, Fay v. Noia, 372 U.S. 391 (1963), our disposition made it unnecessary to delve at length into the facts. The facts of the defendant's case there, however, paralleled those of his codefendants, whose confessions were found to have resulted from continuous and coercive interrogation for 27 hours, with denial of requests for friends or attorney. See United States v. Murphy, 222 F.2d 698 (C.A.2d Cir.1955) (Frank, J.); People v. Bonino, 1 N.Y.2d 752, 135 N.E.2d 51 (1956).

26. The absurdity of denying that a confession obtained under these circumstances is compelled is aptly portrayed by an example in Professor Sutherland's recent article, Crime and Confession, 79 Harv.L.Rev. 21, 37 (1965):

Suppose a well-to-do testatrix says she intends to will her property to Elizabeth. John and James want her to bequeath it to them instead. They capture the testatrix, put her in a carefully designed room, out of touch with everyone but themselves and their convenient "witnesses," keep her secluded there for hours while they make insistent demands, weary her with contradictions of her assertions that she wants to leave her money to Elizabeth, and finally induce her to execute the will in their favor. Assume that John and James are deeply and correctly convinced that Elizabeth is unworthy, and will make base use of the property if she gets her hands on it, whereas John and James have the noblest and most righteous intentions. Would any judge of probate accept the will so procured as the "voluntary" act of the testatrix?

27. Thirteenth century commentators found an analogue to the privilege grounded in the Bible. "To sum up the matter, the principle that no man is to be declared guilty on his own admission is a divine decree." Maimonides, Mishneh Torah (Code of Jewish Law), Book of Judges, Laws of the Sanhedrin, c. 18, 116, III Yale Judaica Series 52-53. See also Lamm, The Fifth Amendment and Its Equivalent in the Halakhah, 5 Judaism 53 (Winter 1956).


32. Our decision today does not indicate in any manner, of course, that these rules can be disregarded. When federal officials arrest an individual, they must as always comply with the dictates of the congressional legislation and cases thereunder. See generally Hogan & Snee, The McNabb-Mallory Rule: Its Rise, Rationale and Rescue, 47 Geo.L.J. 1 (1958).

33. The decisions of this Court have guaranteed the same procedural protection for the defendant whether his confession was used in a federal or state court. It is now axiomatic that the defendant's constitutional rights have been violated if his confession is based, in whole or in part, on an involuntary confession, regardless of its truth or falsity. Rogers v. Richmond, 365 U.S. 534, 544 (1961); Wan v. United States, 266 U.S. 1 (1924). This is so even if there is ample evidence aside from the confession to support the conviction, e.g., Malinski v. New York, 324 U.S. 401, 404 (1945); Bram v. United States, 168 U.S. 532, 540-542 (1897). Both state and federal courts now adhere to trial procedures which seek to assure a reliable and clear-cut determination of the voluntariness of the confession offered at trial, Jackson v. Denno, 378 U.S. 368 (1964); United States v. Carignan, 342 U.S. 36, 38 (1951); see also Wilson v. United States, 162 U.S. 613, 624 (1896). Appellate review is exacting, see Haynes v. Washington, 373 U.S. 503 (1963); Blackburn v. Alabama, 361 U.S. 199 (1960). Whether his conviction was in a federal or state court, the defendant may secure a post-conviction hearing based on the alleged involuntary character of his confession, provided he meets the procedural requirements, Fay v. Noia, 372 U.S. 391 (1963); Townsend v. Sain, 372 U.S. 293 (1963). In addition, see Murphy v. Waterfront Comm'n, 378 U.S. 52 (1964).


35. The police also prevented the attorney from consulting with his client. Independent of any other constitutional proscription, this action constitutes a violation of the Sixth Amendment right to the assistance of counsel, and excludes any statement obtained in its wake. See People v. Donovan, 13 N.Y.2d 148, 193 N.E.2d 628, 243 N.Y.S.2d 841 (1963) (Fuld, J.)


37. See p. 454, supra. Lord Devlin has commented:

It is probable that, even today, when there is much less ignorance about these matters than formerly, there is still a general belief that you must answer all questions put to you by a policeman, or at least that it will be the worse for you if you do not.


In accord with our decision today, it is impermissible to penalize an individual for exercising his Fifth Amendment privilege when he is under police custodial interrogation. The prosecution may not, therefore, use at trial the fact that he stood mute or claimed his privilege in the face of accusation. Cf. Griffin v. California, 380 U.S. 609 (1965); Malloy v. Hogan, 378 U.S. 1, 8 (1964); Comment, 31 U.Chi.L.Rev. 556 (1964); Developments in the Law -- Confessions, 79 Harv.L.Rev. 935, 1041-1044 (1966). See also Bram v. United States, 168 U.S. 532, 562 (1897).

38. Cf. Betts v. Brady, 316 U.S. 455 (1942), and the recurrent inquiry into special circumstances it necessitated. See generally Kamisar, Betts v. Brady Twenty Years Later: The Right to Counsel and Due Process Values, 61


40. Estimates of 50-90% indigency among felony defendants have been reported. Pollock, Equal Justice in Practice, 45 Minn. L. Rev. 737, 738-739 (1961); Birzon, Kasanof & Forma, The Right to Counsel and the Indigent Accused in Courts of Criminal Jurisdiction in New York State, 14 Buffalo L. Rev. 428, 433 (1965).


When government chooses to exert its powers in the criminal area, its obligation is surely no less than that of taking reasonable measures to eliminate those factors that are irrelevant to just administration of the law, but which, nevertheless, may occasionally affect determinations of the accused's liability or penalty. While government may not be required to relieve the accused of his poverty, it may properly be required to minimize the influence of poverty on its administration of justice.


43. While a warning that the indigent may have counsel appointed need not be given to the person who is known to have an attorney or is known to have ample funds to secure one, the expedient of giving a warning is too simple, and the rights involved too important, to engage in ex post facto inquiries into financial ability when there is any doubt at all on that score.

44. If an individual indicates his desire to remain silent, but has an attorney present, there may be some circumstances in which further questioning would be permissible. In the absence of evidence of overbearing, statements then made in the presence of counsel might be free of the compelling influence of the interrogation process and might fairly be construed as a waiver of the privilege for purposes of these statements.

45. Although this Court held in Rogers v. United States, 340 U.S. 367 (1951), over strong dissent, that a witness before a grand jury may not in certain circumstances decide to answer some questions and then refuse to answer others, that decision has no application to the interrogation situation we deal with today. No legislative or judicial factfinding authority is involved here, nor is there a possibility that the individual might make self-serving statements of which he could make use at trial while refusing to answer incriminating statements.

46. The distinction and its significance has been aptly described in the opinion of a Scottish court:

In former times, such questioning, if undertaken, would be conducted by police officers visiting the house or place of business of the suspect and there questioning him, probably in the presence of a relation or friend. However convenient the modern practice may be, it must normally create a situation very unfavourable to the suspect.


49. In quoting the above from the dissenting opinion of Mr. Justice Brandeis we, of course, do not intend to pass
on the constitutional questions involved in the Olmstead case.


51. Miranda, Vignera, and Westover were identified by eyewitnesses. Marked bills from the bank robbed were found in Westover's car. Articles stolen from the victim as well as from several other robbery victims were found in Stewart's home at the outset of the investigation.


53. See, e.g., Report and Recommendations of the [District of Columbia] Commissioners' Committee on Police Arrests for Investigation (1962); American Civil Liberties Union, Secret Detention by the Chicago Police (1959). An extreme example of this practice occurred in the District of Columbia in 1958. Seeking three "stocky" young Negroes who had robbed a restaurant, police rounded up 90 persons of that general description. Sixty-three were held overnight before being released for lack of evidence. A man not among the 90 arrested was ultimately charged with the crime. Washington Daily News, January 21, 1958, p. 5, col. 1; Hearings before a Subcommittee of the Senate Judiciary Committee on H.R. 11477, S. 2970, S. 3325, and S. 3355, 85th Cong., 2d Sess. (July 1958), pp. 40, 78.

54. In 1952, J. Edgar Hoover, Director of the Federal Bureau of Investigation, stated:

Law enforcement, however, in defeating the criminal, must maintain inviolate the historic liberties of the individual. To turn back the criminal, yet, by so doing, destroy the dignity of the individual, would be a hollow victory.

* * * *

We can have the Constitution, the best laws in the land, and the most honest reviews by courts -- but unless the law enforcement profession is steeped in the democratic tradition, maintains the highest in ethics, and makes its work a career of honor, civil liberties will continually -- and without end -- be violated. . . . The best protection of civil liberties is an alert, intelligent and honest law enforcement agency. There can be no alternative.

* * * *

. . . Special Agents are taught that any suspect or arrested person, at the outset of an interview, must be advised that he is not required to make a statement and that any statement given can be used against him in court. Moreover, the individual must be informed that, if he desires, he may obtain the services of an attorney of his own choice.

Hoover, Civil Liberties and Law Enforcement: The Role of the FBI, 37 Iowa L.Rev. 175, 177-182 (1952).

55. We agree that the interviewing agent must exercise his judgment in determining whether the individual waives his right to counsel. Because of the constitutional basis of the right, however, the standard for waiver is necessarily high. And, of course, the ultimate responsibility for resolving this constitutional question lies with the courts.


57. [1964] Crim.L.Rev. at 166-170. These Rules provide in part:

II. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offence.

The caution shall be in the following terms:

You are not obliged to say anything unless you wish to do so, but what you say may be put into writing and given in evidence.

When, after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended and of the persons present.

III . . .

* * * *

(b) It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted.

* * * *

IV. All written statements made after caution shall be taken in the following manner:

(a) If a person says that he wants to make a statement, he shall be told that it is intended to make a written record of what he says.

He shall always be asked whether he wishes to write down himself what he wants to say; if he says that he cannot write, or that he would like someone to write it for him, a police officer may offer to write the statement for him . . .

(b) Any person writing his own statement shall be allowed to do so without any prompting, as distinct from indicating to him what matters are material.

* * * *

(d) Whenever a police officer writes the statement, he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters: he shall not prompt him.


Despite suggestions of some laxity in enforcement of the Rules, and despite the fact some discretion as to admissibility is invested in the trial judge, the Rules are a significant influence in the English criminal law enforcement system. See, e.g., [1964] Crim.L.Rev. at 182, and articles collected in [1960] Crim.L.Rev. at 298-356.

58. The introduction to the Judges' Rules states in part:
These Rules do not affect the principles

* * * *

(c) That every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor. This is so even if he is in custody provided that, in such a case, no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so. . . .


The theory of our law is that, at the stage of initial investigation, the police may question anyone with a view to acquiring information which may lead to the detection of the criminal; but that, when the stage has been reached at which suspicion, or more than suspicion, has in their view centered upon some person as the likely perpetrator of the crime, further interrogation of that person becomes very dangerous, and, if carried too far, e.g., to the point of extracting a confession by what amounts to cross-examination, the evidence of that confession will almost certainly be excluded. Once the accused has been apprehended and charged, he has the statutory right to a private interview with a solicitor and to be brought before a magistrate with all convenient speed so that he may, if so advised, emit a declaration in presence of his solicitor under conditions which safeguard him against prejudice.

60. "No confession made to a police officer shall be proved as against a person accused of any offence." Indian Evidence Act § 25.

No confession made by any person whilst he is in the custody of a police officer unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Indian Evidence Act § 26. See 1 Ramaswami & Rajagopalan, Law of Evidence in India 553-569 (1962). To avoid any continuing effect of police pressure or inducement, the Indian Supreme Court has invalidated a confession made shortly after police brought a suspect before a magistrate, suggesting:

[I]t would, we think, be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession.


62. 10 U.S.C. § 831(b) (1964 ed.)


64. Although no constitution existed at the time confessions were excluded by rule of evidence in 1872, India now has a written constitution which includes the provision that "No person accused of any offence shall be compelled to be a witness against himself." Constitution of India, Article 20(3). See Tope, The Constitution of India 63-67 (1960).


66. Miranda was also convicted in a separate trial on an unrelated robbery charge not presented here for review. A
statement introduced at that trial was obtained from Miranda during the same interrogation which resulted in the confession involved here. At the robbery trial, one officer testified that, during the interrogation, he did not tell Miranda that anything he said would be held against him or that he could consult with an attorney. The other officer stated that they had both told Miranda that anything he said would be used against him and that he was not required by law to tell them anything.

67. One of the officers testified that he read this paragraph to Miranda. Apparently, however, he did not do so until after Miranda had confessed orally.

68. Vignera thereafter successfully attacked the validity of one of the prior convictions, Vignera v. Wilkins, Civ. 9901 (D.C.W.D.N.Y. Dec. 31, 1961) (unreported), but was then resentenced as a second-felony offender to the same term of imprisonment as the original sentence. R. 31-33.

69. The failure of defense counsel to object to the introduction of the confession at trial, noted by the Court of Appeals and emphasized by the Solicitor General, does not preclude our consideration of the issue. Since the trial was held prior to our decision in Escobedo and, of course, prior to our decision today making the objection available, the failure to object at trial does not constitute a waiver of the claim. See, e.g., United States ex rel. Angelet v. Fay, 333 F.2d 12, 16 (C.A.2d Cir.1964), aff'd, 381 U.S. 654 (1965). Cf. Ziffrin, Inc. v. United States, 318 U.S. 73, 78 (1943).

70. Because of this disposition of the case, the California Supreme Court did not reach the claims that the confession was coerced by police threats to hold his ailing wife in custody until he confessed, that there was no hearing as required by Jackson v. Denno, 378 U.S. 368 (1964), and that the trial judge gave an instruction condemned by the California Supreme Court's decision in People v. Morse, 60 Cal.2d 631, 388 P.2d 33, 36 Cal.Rptr. 201 (1964).

71. After certiorari was granted in this case, respondent moved to dismiss on the ground that there was no final judgment from which the State could appeal, since the judgment below directed that he be retried. In the event respondent was successful in obtaining an acquittal on retrial, however, under California law the State would have no appeal. Satisfied that, in these circumstances, the decision below constituted a final judgment under 28 U.S.C. § 1257(3) (1964 ed.), we denied the motion. 383 U.S. 903.
Chapter 17: The Privilege Against Self-Incrimination,
Our Rights by David J. Bodenhamer

CHAPTER 17

The Privilege against Self-Incrimination

“Y
ou have the right to remain silent.” These words are as well known as any phrase in American law. We hear them spoken on countless television dramas whenever the police make an arrest. They represent the privilege against self-incrimination, a right guaranteed by the Fifth Amendment, which states, “No person. . . shall be compelled in any criminal case to be a witness against himself.” This protection against forced confessions is essential to our conception of liberty, but the right also raises fundamental questions about how to balance individual liberty with society’s need for security, questions that are as current as today’s headlines.

The privilege against self-incrimination goes back to the fourth century, but its most dramatic early expression can be found in medieval controversies between the English king and the church. Royal courts used a system of justice that employed public accusations and jury trials. Defendants knew the charges against them, and they were tried in public by members of the community. Church courts, by contrast, favored a system in which accusations were often made in secret, and the judge was also the prosecutor. These courts did not inform defendants of the accusation against them but required that they take an oath to tell the truth and to answer all questions fully. Defendants then faced a series of questions based on the prior examination of witnesses and informants. Contradictory answers were used against the defendants in an effort to break them down and force confessions of guilt. Failure to take the oath justified torture to learn the truth. In this process, defendants could be forced to incriminate themselves. The oath used to begin the process, the oath ex officio (from Latin, meaning “by virtue of the office”), became known as a self-incriminating oath.

The two systems of justice had different goals. The church’s inquisitorial system formed the basis of European criminal justice and focused on proving the accused guilty. It was better that the innocent should suffer than the guilty escape. The opposite was true for the accusatorial system of England—it sought to protect the innocent above all else. In the words of Sir John Fortescue, a fifteenth-century chief justice, “One would much rather that twenty guilty persons should escape the punishment of death, than that one innocent person should be condemned, and suffer capitaly.”

The sixteenth and seventeenth centuries witnessed a shift in English practice. Secret proceedings and torture became mainstays of the Star Chamber, the court that tried enemies of the state. In theory, the oath ex officio and torture were extraordinary powers required to protect national security, but more often they were used against religious dissenters. One such case involved John Lilburne, a Puritan arrested for smuggling religious pamphlets into England in 1637. He refused to take the self-incriminating oath, claiming that it was “against the very law of nature, for nature is a preserver of itself. . . . But if a man takes this wick-
ed oath, he undoes and destroys himself.” Over the next three years, Lilburne was repeatedly jailed, fined, and tortured, but he became a hero to Englishmen for his defense of liberty. In response, Parliament abolished the Star Chamber in 1641, concluding that Lilburne’s sentence was “illegal, unjust, against the liberty of the subject and law of the land, and Magna Carta.”

The American colonists were well aware of this history of royal abuse when they came to the New World, and they brought with them a firm conviction that no man should be required to testify against or accuse himself. They considered this privilege part of their rights under common law. In 1641, for example, the Massachusetts Puritans included prohibitions against torture and self-incriminating oaths in their earliest law code, the Body of Liberties, even though the magistrates still sought confessions in religious trials. By the time of the Revolution, these protections were considered to be so essential to liberty that they appeared in the various state constitutions; in 1791, the privilege against self-incrimination became part of the Fifth Amendment to the U.S. Constitution.

During the nineteenth century, American courts excluded evidence from confessions that had resulted from official violence or trickery. Interrogation was acceptable, however, as was the use of deception and psychological pressure applied by friends, family, or community. The key was whether the confession was made voluntarily; if not, the evidence was considered unreliable. Courts usually accepted a confession as voluntary unless evidence demonstrated that a law officer used a clear and unmistakable threat, so law officers frequently pushed the bounds of what was acceptable. Their aim was to make defendants admit guilt and to create an efficient system of justice. A growing fear of crime and disorder from the “dangerous classes” of immigrants and urban poor added to the pressure to use whatever methods were necessary to gain a confession. The extent of lawlessness in law enforcement became apparent in the 1920s when a national commission revealed the routine use of police brutality, the so-called “third degree,” to force confessions and remove suspected criminals from the streets.

The U.S. Supreme Court during this period extended Fifth Amendment protection to civil cases in which testimony might lead to criminal prosecution, but it also rejected a universal or national privilege against self-incrimination. In *Twining v. New Jersey* (1908), the president of an investment bank enriched himself at his company’s expense. When he refused to testify on his own behalf at trial, the judge told the jury that it could draw a negative inference from his silence. New Jersey’s constitution allowed this conclusion, even though the practice violated the defendant’s Fifth Amendment privilege. The U.S. Supreme Court upheld Twining’s conviction. The protection against self-incrimination was “a wise and beneficent rule of evidence,” the justices concluded, but it was not an essential part of due process. States were free to set their own standards. New Jersey’s position, in many ways, reflected popular attitudes toward anyone who claimed the privilege. During the various congressional hearings in the 1950s to root out communism in the United States, for instance, “taking the Fifth,” shorthand for refusing to testify for fear of self-incrimination, was often seen as an indication of guilt. For many Americans, concerns for order and national security trumped the rights of individuals to remain silent.

Finally in 1964, the Court decided that the privilege against self-incrimination was an essential part of due process as protected by the Fourteenth Amendment, thereby restricting the states as well as the federal government. But how-
far did the right extend? It clearly bound legal proceedings, but did it apply to investigations and other pretrial actions as well? Two years later, it became clear that it did when the justices reviewed a conviction for rape. Their decision embroiled the Court in the most famous and bitterly criticized confession case in the history of American law.

Around midnight on March 2, 1963, an eighteen-year-old woman closed her refreshment stand at a Phoenix, Arizona, movie theater and walked home. A short distance from her house, a car pulled in front of her, blocking the sidewalk. The driver grabbed her and forced her into the back seat, tying her hands and feet, he threatened her with a sharp object and drove her into the nearby desert, where he raped her. He dumped her, hysterical and disheveled, near her house, where she lived with her mother and married sister.

Less than two weeks later, the police arrested Ernesto Arturo Miranda, a twenty-three-year-old Mexican American dockworker who lived with his girlfriend in Mesa, a Phoenix suburb. Miranda was known to the police. He had a record of six arrests and four imprisonments by the time he was eighteen. He also had a history of sexual problems: one of the arrests was for attempted rape; another was for Peeping Tom activities.

When he was brought in for questioning, Miranda was in constitutionally unprotected territory. In 1963, the rights that protected a defendant in the courtroom—the right to remain silent, the right to counsel, the right to confront witnesses, and other protections for the criminally accused—did not extend to the police station. Most people believed law officers needed wide latitude to investigate and prosecute crime. This certainly was the case in Arizona, where the state’s constitutional convention in 1910 had rejected a ban on third-degree interrogations. “Do you intend to array yourselves on the side of the criminals,” one delegate argued, “do you intend to put the State of Arizona on the line protecting criminals?” The goal of criminal justice was to protect the public, not criminals. This view was widely shared in the 1960s.

By all accounts, Miranda’s interrogation was routine. He was alone with the police, without a lawyer. No one kept a record, and memories differed about what occurred. Miranda claimed the officers promised to drop an unrelated charge of robbery if he admitted the rape; the police denied making this offer. No one used physical force or unusual psychological tactics. In the end, Miranda confessed to the rape, writing his account of the crime by hand. The entire affair took less than two hours.

The police did not force Miranda to confess, but a question remained about whether he had confessed voluntarily. After all, he was in a highly stressful en-

“No man shall be forced by Torture or confesse any Crime against himselfe nor any other unless it be in some Capitall case where he is first fullie convicted by cleare and suffitient evidence to be guilty, After which if the cause be that of nature, That it is very apparent there be other conspiratours, or confederates with him, Then he may be tortured, yet not with such Tortures as be Barbarous and inhumane.”

—Massachusetts Body of Liberties (1641)
the privilege against self-incrimination

environment—confined in a small room with harsh lighting, surrounded by armed men who wore badges of authority, and without legal assistance. He also suffered from mental illness, according to two psychiatrists who examined him later. Given these circumstances, could his confession be considered freely given and therefore reliable? If not, it could not be used at trial.

Miranda’s court-appointed attorney was unsuccessful in persuading the court to exclude the confession. He then sought to discredit the victim, claiming that she had not resisted—a circumstance that, even if true, would be irrelevant under today’s law—and that she was only trying to protect her reputation. The jury rejected these claims and found Miranda guilty of kidnapping and rape. The court sentenced him to a prison term of up to fifty-five years.

In November 1965, the U.S. Supreme Court agreed to hear his appeal. The question before the justices was straightforward: did the failure of police to inform Miranda of his rights violate his Fifth Amendment guarantee against forced confessions? With Chief Justice Earl Warren writing for the majority, the Court extended the right to an attorney and the privilege against self-incrimination to the pretrial interrogation of a suspect. The justices also ruled that, prior to questioning, a suspect must be informed of these rights by using the now-familiar formula: 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 opinion joined the Fifth Amendment’s privilege against self-incrimination with the Sixth Amendment’s guarantee of a right to counsel and, for the first time in U.S. history, applied both to the police station. Simply informing a person of his rights without also allowing the assistance of counsel would place the police at an unfair advantage, Warren wrote. The atmosphere of the interrogation room, where the suspect stood isolated and alone, carried “its own badge of intimidation.” Even if no physical brutality occurred, it was “destructive of human dignity” and violated the constitutional requirement of fairness. The accused may choose to waive the assistance of a lawyer, but the Constitution requires that he be reminded of his right to have one. “Incommunicado interrogation [questioning without benefit of counsel],” the chief justice’s opinion concluded, “is at odds with one of our Nation’s most cherished principles—that the individual may not be compelled to incriminate himself.”

Four justices disagreed vehemently with the decision. Their arguments varied, but the strongest objections centered on the fear that the new rules would hamper police unduly. “We do know that some crimes cannot be solved without confessions,” warned Justice John Marshall Harlan II, “and that the Court is taking a real risk with society’s welfare in imposing its new regime on the country.”

“Coercing the supposed state’s criminals into confessions and using such confessions so coerced from them against them in trials has been the curse of all countries. It was the chief iniquity, the crowning infamy of the Star Chamber, and the Inquisition, and other similar institutions. The Constitution recognized the evils that lay behind these practices and prohibited them in this country.”

—Mississippi Supreme Court, Fisher v. State (1926)
The result of the decision, other justices agreed, inevitably would weaken the capacity of law enforcement to convict dangerous criminals. “In some unknown number of cases,” Justice Byron White argued, “the Court’s rule will return a killer, a rapist or other criminal to the streets. . . to repeat his crime whenever it pleases him.”

The decision did not free Ernesto Miranda, who was serving a separate sentence for robbery. He won a retrial but was convicted a second time, this time without the use of his confession as evidence. Paroled in 1972, he became a minor celebrity, selling autographed cards containing preprinted Miranda warnings on the streets of downtown Phoenix. After a three-year re-imprisonment for a parole violation, he died in 1975 in a barroom brawl over a three-dollar bet, one month after winning another release. During the investigation, police questioned the two suspects who eventually were charged with the crime. Their notes revealed that the detectives had dutifully warned both men of their right to remain silent.

Police officers, prosecutors, commentators, and politicians were quick to denounce the Miranda warnings, which they believed “handcuffed” the police. National data revealed a sustained rise in crime since the 1950s, and this decision, critics charged, would worsen the problem. This response was understandable, but its fears proved to be exaggerated. Numerous studies have since demonstrated that the decision did not restrain police unduly and had little effect on their work. A 1998 study, for example, found that less than 1 percent of all criminal cases had to be dismissed because police failed to give a warning before the accused confessed. In fact, more than 90 percent of all criminal convictions today involve plea bargains, with voluntary confessions, by defendants in exchange for a reduced sentence.

The Miranda decision did not halt voluntary confessions; it only defined proper methods of interrogation. One outcome has been increased professionalism in police practices. In response to Miranda, many departments raised standards for employment, adopted performance guidelines, and improved training and supervision. The result vindicated the view of the majority justices, first voiced by Justice Louis Brandeis in the 1920s, that hard work and respect for the law, not deception or lawbreaking, were the requirements for effective law enforcement. “Our government,” Brandeis wrote in Olmstead v. United States (1928), “teaches the whole people by its example. If the government becomes the lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.”

Miranda v. Arizona was a revolutionary decision. It extended the protection of the Bill of Rights beyond the courtroom to an important pretrial procedure, custodial interrogation. Even though numerous political campaigns have promised to overturn the decision, in fact the warnings have become part of American culture. Subsequent courts have noted exceptions to the rules—the rules do not apply to on-the-scene questioning, for example—but the justices have always reaffirmed the requirement that suspects be informed of their rights. The 1966 decision, the Court noted in a later case, “embodies a carefully crafted balance designed to protect both the defendant’s and the society’s interests.”

Today, we continue to wrestle with finding the appropriate balance between public order and individual rights. Since the terrorist attacks of September 11, 2001, the issues have taken on added significance. The Constitution, as Justice Robert Jackson reminded Americans in 1949, is not a suicide pact, but neither
are its requirements meaningless because of a threat to national security. The Fifth Amendment’s privilege against self-incrimination achieves its importance, however, not in this extreme circumstance but in the more ordinary working of our legal system. The right is necessary for our sense of justice because it helps to ensure fairness. We assume the innocence of an individual until the government proves otherwise. Government has vast power, so we balance the scales of justice by, among other things, protecting the individual from a forced confession, an involuntary admission of guilt. Without it, there can be no due process of law.

The privilege against self-incrimination is also essential to our understanding of individual liberty. As a society, we believe freedom rests upon a fundamental right to privacy and human dignity. Central to our conception of privacy is the need for men and women to be custodians of their own consciences, thoughts, feelings, and sensations. Forcing us to reveal these things, making us confess without our consent, robs us of the things that make us individuals. No one and no power has the right to take something so precious from us, and the Fifth Amendment exists to ensure that we guarantee to each citizen the dignity and self-respect that allows us all to be free.
Crafting an Opinion

After the Supreme Court hears arguments in a case, the justices meet in conference to discuss the case and take a preliminary vote. If the chief justice is in the majority, he assigns a justice who voted with the majority to draft an opinion for comment by all the justices. (If the chief is in the minority, the assignment is made by the justice with the most seniority who also voted with the majority.) The draft opinion is an opportunity for the majority justices to make their most persuasive arguments in the hope of gaining additional support. In 

Miranda v. Arizona (1966), Chief Justice Earl Warren assigned the draft opinion to himself. Justice William Brennan, who voted in conference with the majority, read the chief’s draft and sent him a twenty-one-page memo suggesting changes. On the first page of the memo, Brennan recommended an important change in wording.

Dear Chief:

I am writing out my suggestions addressed to your Miranda opinion with the thought that we might discuss them at your convenience. I feel guilty about the extent of the suggestion but this will be one of the most important opinions of our time and I know that you will want the fullest expression of my views.

I have one major suggestion. It goes to the back thrust of the approach to be taken. In your very first sentence you state that the root problem is “the role society must assume, consistent with the federal Constitution, in prosecuting individuals for crime.” I would suggest that the root issue is “the restraints society must observe, consistent with the federal Constitution, in prosecuting individuals for crime.”

In the final opinion for Miranda v. Arizona, Chief Justice Earl Warren accepted Brennan’s modification. He used his colleague’s language—“the restraints society must observe”—instead of his own less forceful and less clear phrase, “the role society must assume.”

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.
“Protecting Constitutional Rights Does Not in Any Way Prevent Law Enforcement”

Miranda v. Arizona resulted in widespread protests that the Supreme Court had exceeded its authority and had begun to legislate rules of police conduct instead of decide cases. Many critics warned that the decision would handcuff police and let criminals go free. Lost among the outrage were the voices of supporters of what came to be called the “Miranda warnings.” Senator Wayne Morse of Oregon was a strong advocate of civil liberties and endorsed the decision on the Senate floor. His following speech was recorded in the Congressional Record in 1966. Later studies of law enforcement revealed that the requirement to notify defendants of their rights did not lead to the direful results predicted by critics of the decision.

As the RECORD shows, I have argued over and over again that the guilty have exactly the same constitutional rights as the innocent. I have argued that you cannot have constitutional rights for some but not for others. I have spoken out over the years, against arrests(7,59),(999,988)(8,59),(999,988) for investigation and against third-degree tactics on the part of police departments—and they continue to exist. . . in a variety of forms. . . . One has only to read this landmark opinion. . . in Miranda against Arizona, to appreciate how sound have been the arguments throughout the years of those of us who have been opposing the denial of constitutional rights when arrested. . . .

We cannot maintain a government by law within the framework of our Constitution if we countenance what would be the effect of the minority views expressed in this case: the sanctioning of arbitrary and capricious discretion in the police. . . .

[A]s one who worked a good many years in the field of research on law-enforcement policy, and as editor in chief of a five-volume work put out by the Department of Justice when I was an assistant to the Attorney General, I wish to say that it is in times of stress that it is so important that there be no transgression on constitutional rights by the police or by the courts, or we will cease to be freemen and free-women. . . .

To these chiefs of police, prosecutors, and others who would have constitutional rights of arrested persons transgressed upon, I wish to say, as pointed out by the Chief Justice in this case, that protecting constitutional rights does not in any way prevent law enforcement on the part of an efficient police department or an efficient prosecutor’s office and recognizes their duty to stay within the framework of the Constitution.
Ever since colonial times, most Americans have believed in an old English saying: “It is better for ninety-nine guilty people to go free than for one innocent person to be punished.” In the United States, a person accused of a crime is presumed innocent until proven guilty. Thus the burden of proving the suspect guilty rests upon the government prosecutors.

The U.S. Constitution generally, and especially its Bill of Rights, protects individuals accused of crimes from wrong or unjust accusations and punishments by government officials. But the Constitution and laws made in conformity with it also authorize the federal and state governments to exercise certain powers in order to protect people from criminals intending to harm them. So Americans want their federal and state governments to be simultaneously powerful enough to protect them from criminals and sufficiently limited to prevent the government from abusing anyone, including those accused of criminal behavior.

Constitutional issues inevitably arise when the government’s efforts to prevent crime clash with the need to protect those accused of crime. The U.S. Supreme Court confronted such issues in *Miranda v. Arizona* (1966). This case arose in 1963 following the arrest of Ernesto Miranda, who was accused of kidnapping and raping a young woman near Phoenix, Arizona. The victim identified Miranda in a lineup at the police station, and the law enforcement officers questioned him intensely for two hours. No one told him that he could refuse to answer questions or seek assistance from a lawyer. Intimidated by the high-pressure tactics of the police, Ernesto Miranda confessed to the crime of which he had been accused.

Miranda was too poor to hire an attorney, so the Maricopa County Court provided a lawyer to assist him at trial. He was duly tried, and near the end of the proceedings the presiding official, Judge Yale McFate, gave instructions to the members of the jury before they departed to meet, deliberate, and decide the defendant’s guilt or innocence. The judge said he had allowed Miranda’s confession to be presented as evidence in the trial despite objections of the defendant’s attorney, who claimed that his client had been forced to admit guilt. The judge emphasized that the jury was free to decide whether Miranda’s confession had been voluntary or coerced. However, the judge’s final words of instruction raised the constitutional issue that eventually brought Miranda’s case to the Supreme Court:

The fact that a defendant was under arrest at the time he made a confession or that he was not at the time represented by counsel or that he was not told that

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**Miranda v. Arizona (1966)**

- 384 U.S. 436 (1966)
- Decided: June 13, 1966
- Vote: 5–4
- Opinion of the Court: Earl Warren
- Concurring opinion in part, dissenting in part: Tom Clark
- Dissenting opinions: John Marshall Harlan II (Potter Stewart and Byron White) and Byron White (John Marshall Harlan II and Potter Stewart)
any statement he might make could be or would be used against him, in and of themselves, will not render such a confession involuntary.

After five hours of deliberation, the jury of three women and nine men returned to the courtroom and presented their verdict: Miranda was found guilty of kidnapping and raping the victim. Judge McFate sentenced Miranda to serve twenty to thirty years in the Arizona State Prison at Florence. Miranda appealed to the Arizona Supreme Court, which upheld his conviction.

From his prison cell, Miranda petitioned the U.S. Supreme Court, which accepted his case in 1966 because it raised unresolved issues about the constitutional rights of an accused person that the Court wanted to settle. These issues had surfaced in the wake of Escobedo v. Illinois (1964), which the Court had decided nearly one year after Miranda’s trial.

The Court’s Escobedo decision expanded the Sixth Amendment right to counsel, which previously had been understood as an accused person’s right to have a lawyer at the time of trial. After Escobedo this right also covered the time of interrogation by police. But there was confusion among law enforcement officers and trial judges across the country about how to apply the Escobedo decision. Questions arose about matters such as when an attorney must be present to assist an accused person and exactly when the suspect had to be informed about his or her rights to counsel. The U.S. Supreme Court planned to use the Miranda case to respond to the confusion the Escobedo decision raised.

Miranda’s chief counselor, John Flynn, was a highly regarded criminal defense lawyer who was recruited for this case by the American Civil Liberties Union (ACLU). In his oral argument and brief presented to the Court, Flynn claimed that the police violated Miranda’s Fifth Amendment right to protection against self-incrimination. This part of the Bill of Rights says, “No person...shall be compelled in any criminal case to be a witness against himself.”

Flynn said that the police had behaved unconstitutionally because they did not inform the suspect, Miranda, of his right to remain silent, so as not to assume the risk of providing incriminating evidence to his police interrogators. Because the police gained their evidence, Miranda’s confession, unconstitutionally, Flynn argued it should be dismissed from consideration. Finally, Flynn linked the denial of Miranda’s Fifth Amendment right to protection from self-incrimination to his Sixth Amendment right to a lawyer. Flynn argued that if a lawyer had been present, then Miranda probably would not have so readily provided an incriminating confession, which was the product of subtle, if not overt, intimidation by the police.

Arizona’s lawyers argued that Miranda could have asked for a lawyer at any time during questioning. He had not done so. They also said no one had forced him to confess. His interrogators had neither harmed him physically nor threatened to do so. Because Miranda had given his confession voluntarily, the prosecution was justified in using it in court to convict him.

The Supreme Court agreed with John Flynn’s arguments for Miranda and struck down his conviction. The police in charge of Miranda’s case had violated his Fifth Amendment right to protection against self-incrimination, and, while doing this, they had neglected to make him aware of his Sixth Amendment right to a lawyer. Writing for the Court, Chief Justice Earl Warren said that Miranda raised issues that “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.” He stressed “the necessity for proce-
dures which assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself."

The chief justice provided strict and clear rules for the police to follow in future cases of this kind. From now on, said Warren’s opinion for the Court, law enforcement officers are required to inform suspects that they have the right to remain silent, that anything they say can be held against them, that they have a right to consult a lawyer, and that they may request the attorney to be present during questioning. Further, they must be told that if they cannot afford to hire an attorney, the state will provide one for them. The police must inform the suspect of these rights, the Court said, before any questioning can take place. A defendant can then voluntarily waive the rights communicated to her or him by the police. But if not, the law-enforcement officers must follow the rules exactly as prescribed by the Court. If they fail to do so, then any evidence obtained would be a product of unconstitutional violations of the Fifth and Sixth Amendments, and therefore could not be used against the suspect in a court of law.

Chief Justice Warren’s opinion emphasized that if a suspect wants to remain silent or to contact a lawyer, police interrogation must stop until the suspect is ready to talk again or a lawyer is present. And the chief justice insisted that the rules prescribed by the Court in response to this case—later known as Miranda warnings—are an “absolute prerequisite” to interrogation of an accused person. Warren argued that the U.S. system of justice is based on the idea that an individual is innocent until proved guilty. The government, he emphasized, must produce evidence against an accused person. It cannot resort to forcing suspects to prove their own guilt.

The dissent of Justice John Marshall Harlan II began with a sharp criticism: “I believe the decision of the Court represents poor constitutional law and entails harmful consequences for the country at large.” He continued in this vein, “One is entitled to feel astonished that the Constitution can be read to produce this result.” He found nothing wrong with the procedures used by the law-enforcement officers in this case. “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.”

Justice Byron White dissented even more strongly than Harlan. He wrote, “The proposition that the privilege against self-incrimination forbids in-custody interrogation without the warnings specified in the majority opinion and without a clear waiver of counsel has no significant support in the history of the privilege or in the language of the Fifth Amendment.” He predicted grim consequences from the Court’s requirement that the Miranda warnings must be issued in order to obtain evidence constitutionally from a suspect. Justice White said, “In some unknown number of cases the Court’s rule will return a killer, a rapist or other criminal to the streets and to the environment which produced him, to repeat his crime whenever it pleases him.”

Miranda, however, was not returned to the streets by the Court’s decision, as Justice White had feared. His case was remanded, or sent back, to the court of original jurisdiction for retrial without the inadmissible evidence. Nonetheless, Miranda was convicted again and sent to prison. He was paroled in 1972, but in 1976 he was knifed and killed during a barroom fight in Phoenix. After arresting a suspect in the murder of Miranda, the policemen read the Court-mandated Miranda warning to him. He exercised his right to remain silent and was released.
from custody. No one was ever charged in the murder of Ernesto Miranda.

At the time *Miranda* was decided, it was controversial. Many law enforce-
ment officials complained that the mandated use of Miranda warnings severely
interfered with their ability to gather evidence from suspects. In his success-
ful 1968 campaign for President, Richard Nixon strongly criticized the Court’s
*Miranda* decision as an unnecessary obstacle to the work of law-enforcement
officers. Nixon charged that too many federal judges were “soft” in their judg-
ments of criminals. He pledged that, if elected, he would fill any open seats on
the Supreme Court with justices who would overturn the *Miranda* decision and
other rulings that favored the rights of criminals more than the rights of their
victims and the authority of the police. And so he did, with the appointment of
Warren Burger to replace Earl Warren as chief justice in 1969. Burger had pub-
licly expressed his displeasure with the *Miranda* decision. In a 1968 meeting of
the Center for the Study of Democratic Institutions, Burger had said, “Certainly
you have heard—and judges have said—that one should not convict a man out
of his own mouth [through a confession]. The fact is that we establish respon-
sibility and liability and we convict in all the areas of civil litigation out of the
mouth of the defendant.”

During Burger’s tenure as chief justice, the Court did slightly modify the
rules established by the *Miranda* case.

In *New York v. Quarles* (1984), the Court decided that police officers could,
in order to protect themselves, question a suspect about possession of weapons
before informing her or him of the Miranda warnings. However, the Court main-
tained and even strengthened the Miranda precedent after Burger retired from
the Court in 1986.

In *Dickerson v. United States* (2000), the Court reaffirmed, by a 7–2 vote,
the Miranda rights of suspects. At issue was a 1968 federal law that held it
was not always necessary to read Miranda warnings to suspects before they
confessed voluntarily to crimes. This law was made in reaction to the *Miranda*
decision. In striking down this statute, Chief Justice William Rehnquist wrote,
“*Miranda* has become embedded in routine police practice to the point where
the warnings have become part of our national culture.” Thus, the Court struck
down the 1968 congressional statute and stressed that the police must give the
Miranda warnings to suspects or risk having their confessions excluded as evi-
dence against them.

Today, law enforcement officers throughout the United States carry cards
with the Miranda warnings printed on them, as they have done since the Su-
preme Court’s pivotal decision of 1966. These cards include four warnings that
all suspects need to know: the right to remain silent, the reminder that anything
said by the suspect can be used against her or him, the right to a lawyer, and the
reminder that a lawyer will be provided free if the suspect cannot afford to hire
one.

The *Miranda* case is a standing reminder of the ongoing tensions between
liberty and order in the United States. In our free society, there will always be
questions about the proper balance between the rights of criminal suspects and
the need for safety and security against criminals. The exact meaning and prac-
tical applications of due process rights—such as the Miranda warnings—will
continue to be debated in community forums and courts of law. Such construc-
tive controversies are vital signs of a healthy constitutional democracy.
Protecting the Rights of the Accused

John Flynn presented the oral argument for Ernesto Miranda before the Supreme Court on February 28, 1966. Flynn described Miranda’s arrest and argued that the police had subtly coerced his confession during his interrogation. Flynn emphasized Miranda’s vulnerability to manipulation. He pointed to his lack of education, minimal intelligence, and low social status as disadvantages exploited by the questioners to influence Miranda to confess to a crime. Flynn charged that people such as Miranda often do not receive justice on equal terms with the more advantaged members of society. Both Chief Justice Warren and Justice Stewart asked leading questions that prompted Flynn to provide answers that helped his client.

Warren: Mr. Flynn, you may proceed now.
Flynn: Mr. Chief Justice, may it please the Court.

This case concerns itself with the conviction of a defendant of two crimes of rape and kidnapping, the sentences on each count of twenty to thirty years to run concurrently....

Now the issue before the Court is the admission in evidence of the defendant’s confession, under the facts and circumstances of this case, over the specific objection of his trial counsel that it had been given in the absence of counsel....

The facts in the case indicate that the defendant was a twenty-three-year-old, Spanish-American extraction, that on the morning of March 13, 1963, he was arrested at his home, taken down to the police station by two officers named Young and Cooley; that at the police station he was immediately placed in a lineup. He was there identified by the prosecutrix [sic] in this case....And immediately after the interrogations, he was taken into the police confessional at approximately 11:30 A.M. and by 1:30 they had obtained from him an oral confession.

He had denied his guilt, according to the officers, at the commencement of the interrogation; by 1:30 he had confessed. I believe that the record indicates that at no time during the interrogation and prior to his confession, his oral confession, was he advised either of his right to remain silent, of his right to counsel, or of his right to consult with counsel....

The defendant was then asked to sign a confession, to which he agreed. The form handed to him to write on contained a typed statement as follows, which precedes his handwritten confession. “I, Ernesto A. Miranda, do hereby swear that I make this statement voluntarily and of my own free will, with no threats, coercion, or promises of immunity, and with full knowledge of my legal rights, understanding any statement I make may be used against me.”

The statement was read to him by the officers, and he confessed in his own handwriting. Throughout the interrogation the defendant did not request counsel at any time. In due course, the trial court appointed counsel to defend him....

The further history relating to this defendant found...that he had an eighth-grade education, and . . . a prior criminal record and that he was mentally abnormal. He was found, however, to be competent to stand trial and legally sane at the time of the commission of the alleged acts....

Stewart: What do you think is the result of the adversary process coming into being when this focusing takes place [against a particular suspect]? What follows from that? Is there then, what, a right to a lawyer?
Flynn: I think that the man at that time has the right to exercise, if he knows and under the present state of the law in Arizona, if he’s rich enough, and if he’s educated enough, to assert his Fifth Amendment right, and if he recognizes that he has a Fifth Amendment right, to request counsel. But I simply say that at that stage of the proceeding, under the facts and circumstances in Miranda of a man of limited education, of a man who certainly is mentally abnormal, who is certainly an indigent, that when that adversary process came into being that the police, at the very least, had an obligation to extend to this man not only his clear Fifth Amendment right, but to afford to him the right of counsel [provided in the Sixth Amendment]....
Stewart: I don’t mean to quibble, and I apologize, but I think it’s first important to define what those rights are—what his rights under the Constitution are at that point. He can’t be advised of his rights unless somebody knows what those rights are.

Flynn: Precisely my point. And the only person that can adequately advise a person like Ernest Miranda is a lawyer.

Stewart: And what would the lawyer advise him that his rights then were?

Flynn: That he had the right not to incriminate himself, that he had a right not to make any statement, that he had the right to be free from further questioning by the police department, that he had the right, at an ultimate time, to be represented adequately by counsel in court; and that if he was too indigent, too poor to employ counsel, that the state would furnish him counsel....

[Justice Black asked if the Constitution protected all Americans.]

Flynn: It certainly does protect the rich, the educated, and the strong—those rich enough to hire counsel, those who are educated enough to know what their rights are, and those who are strong enough to withstand police interrogation and assert those rights....In view of the interrogation and the facts and circumstances of Miranda, it simply had no application...and that’s what I am attempting to express to the Court.

Stewart: Is there any claim in this case that this confession was compelled—was involuntary?

Flynn: No, your Honor.

Stewart: None at all?

Flynn: None at all. We have raised no question that he was compelled to give this statement, in the sense that anyone forced him to do it by coercion, by threats, by promises, or compulsion of that kind.

Black: He doesn’t have to have a gun pointed at his head, does he?

White: Of course he doesn’t. So he was compelled to do it, wasn’t he, according to your theory?

Flynn: Not by gunpoint, as Mr. Justice Black has indicated. He was called upon to surrender a right that he didn’t fully realize and appreciate that he had....

Warren: I suppose, Mr. Flynn, you would say that if the police had said to this young man, “Now, you’re a nice young man, and we don’t want to hurt you, and so forth; we’re your friends and if you’ll just tell us how you committed this crime, we’ll let you go home and we won’t prosecute you,” that that would be a violation of the Fifth Amendment, and that technically speaking would not be “compelling” him to do it. It would be an inducement, wouldn’t it?

Flynn: That is correct.

Warren: I suppose you would argue that that is still within the Fifth Amendment, wouldn’t you?

Flynn: It’s an abdication of the Fifth Amendment right, simply because of the total circumstances existing at that time....

Warren: That’s what I mean.
Fifth Amendment

(1791)

WHAT IT SAYS

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 offenses 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.

WHAT IT MEANS

Rooted in English common law, the Fifth Amendment seeks to provide fair methods for trying people accused of committing a crime. To avoid giving government unchecked powers, grand jurors are selected from the general population, and their work, conducted in secret, is not hampered by rigid rules about the type of evidence that can be heard. Grand jury charges can be issued against anyone except members of the military, who are subject to courts-martial in the military justice system. In the U.S. federal courts and some state courts, grand juries are panels of twelve to twenty-three citizens who serve for a month or more. If the jurors find there is sufficient evidence against individuals accused of crimes, the grand jury will indict them, that is, charge them with a crime.

GRAPPLING WITH THE RIGHT AGAINST SELF-INCRIMINATION

In the midst of the Cold War, the U.S. House of Representatives had a Committee on Un-American Activities (HUAC) that investigated individuals and organizations who were associated with the U.S. Communist Party. In 1949, the committee called Julius Emspak, an official of the Electrical, Radio, and Machine Workers of America Union, to testify. The committee asked him 239 questions about the union and its relationship with the Communist Party. He declined to answer sixty-eight of these questions, citing "primarily the first amendment, supplemented by the fifth." A district court later held that Emspak’s statement about his rights was insufficient; he needed specifically to invoke his right against self-incrimination under the Fifth Amendment. He was found guilty of refusing to testify before a committee of Congress. Emspak appealed that decision to the Supreme Court, which closely analyzed the conditions that needed to be met in order for people to claim their right against self-incrimination and refuse to answer certain questions. The justices decided that witnesses need only state their wish to be protected under the Fifth Amendment in a way that the court could “reasonably be expected to understand.” Next the Court addressed the government’s claim that Emspak had waived his rights when he answered “no” to a question about whether he thought admitting his knowledge of certain people would lead him to a criminal prosecution and found that the release of constitutional rights cannot be inferred, and that Emspak’s “no” was not a definite release of his right against self-incrimination. The Court decided that Emspak could choose not to answer the questions that the committee asked him, reasoning that if he were to reveal his knowledge of the individuals about whom he was asked he might have uncovered evidence that could have helped prosecute him for federal crimes. Finally, the Court found fault with the House committee for not overruling Emspak’s refusal to answer certain questions and instructing him to answer during the hearing. This would have given him a choice between answering or being sentenced for refusal to testify. Accused persons must refuse to answer knowing that they are required to answer. In Emspak v. United States (1955), the Supreme Court therefore set aside his fine and prison sentence.
Once indicted, defendants stand trial before a petit (from the French word for “small”) jury of six to twelve citizens who hear the evidence and testimony to determine whether the accused are guilty or innocent.

The Fifth Amendment protects people from being put in “double jeopardy,” meaning they cannot be punished more than once for the same criminal act and that once found innocent of a crime they cannot be prosecuted again for the same crime. The double jeopardy clause reflects the idea that government should not have unlimited power to prosecute and punish criminal suspects, instead getting only one chance to make its case.

The Fifth Amendment’s right against self-incrimination protects people from being forced to reveal to the police, a judge, or any other government agents any information that might subject them to criminal prosecution. Even if a person is guilty of a crime, the Fifth Amendment demands that the prosecutors find other evidence to prove their case. If police violate the Fifth Amendment by forcing a suspect to confess, a court may prohibit the confession from being used as evidence at trial. Popularly known as the “right to remain silent,” this provision prevents evidence taken by coercive interrogation from being used in court and also means that defendants need not take the witness stand at all during their trials. Nor can the prosecution point to such silence as evidence of guilt. This right is limited to speaking, nodding, or writing. Other personal information that might be incriminating, such as blood or hair samples, DNA samples, or fingerprints, may be used as evidence, with or without the accused’s permission.

The right to due process of law protects those accused of crimes from being imprisoned without fair procedures. The due process clause applies to the federal government’s conduct. The Fourteenth Amendment, ratified in 1868, contains a due process clause that applies to the actions of state governments as well. Court decisions interpreting the Fourteenth Amendment’s due process rights generally apply to the Fifth Amendment and vice versa. Due process applies to all judicial proceedings, whether criminal or civil, that might deprive someone of “life, liberty, or property.”

The “taking clause” of the Fifth Amendment strikes a balance between private property rights and the government’s right to take property that benefits the public at large. The superior power the government can exert over private property is sometimes referred to as “eminent domain.” Government may use eminent domain, for instance, to acquire land to build a park or highway through a highly populated area, so long as it pays “just compensation” to the property owners for the loss.
The federal government seizes property from a man who owes it money. He argues that the lack of a hearing violates his Fifth Amendment right to “due process.” The Supreme Court rules in Murray’s Lessee v. Hoboken Land and Improvement Co. that different processes may be legitimate in different circumstances. To determine the constitutionality of a procedure the Court looks at whether it violates specific safeguards in the Constitution and whether similar types of proceedings had been used historically, particularly in England. In this case, because a summary method for the recovery of debts had been used in England, the procedure is constitutional in the United States.

In Dred Scott v. Sandford, the Supreme Court decides that Dred Scott, who had moved with his owners to the free state of Illinois, returned to slavery when his owners moved back to Missouri, a slave state. The Court rules that slaves are property and that therefore the Missouri Compromise, which forbids slave owners from taking their property into free states violated the owners’ Fifth Amendment rights not to have private property taken from them without just compensation. The Court further declares that slaves are not citizens of the United States entitled to the protection of the Fifth Amendment.

In United States v. White, the U.S. Supreme Court rules that a labor union under criminal investigation cannot refuse to turn over its records on the grounds of self-incrimination, explaining that the Bill of Rights was enacted to protect individuals, not organizations, from government control.

In Miranda v. Arizona, the U.S. Supreme Court rules that the right against self-incrimination is not limited to in-court testimony, but also applies when a suspect is taken into police custody for questioning. Before any questioning can begin, police must explain that the suspect has the 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 court refuses to accept as evidence any statements made after the right to remain silent has been invoked. These mandatory statements by police are known as Miranda rights and the process of informing is known as Mirandizing.
### Conviction in both federal and state court is not double jeopardy

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
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<tbody>
<tr>
<td>1922</td>
<td>A defendant who had been convicted in state court objects to having to stand trial in federal court for the same crime. In <em>United States v. Lanza</em>, the U.S. Supreme Court rules that the double jeopardy clause was not violated because the state and federal legal systems are different government “units,” and that each can determine what shall be an offense against its peace and dignity.</td>
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<td>1922</td>
<td>In <em>Ng Fung Ho v. White</em>, the U.S. Supreme Court rules that the Fifth Amendment due process clause requires the government to hold a hearing before deporting a U.S. resident who claims to be a citizen, arguing that otherwise the person is deprived of liberty, and possibly in danger of losing property and life.</td>
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<tr>
<td>1924</td>
<td>The U.S. Supreme Court considers the question of whether a debtor who testifies at his own bankruptcy hearing is allowed to refuse to answer questions that might incriminate him. In <em>McCarthy v. Arndstein</em>, the Supreme Court holds that the Fifth Amendment privilege against self-incrimination applies to defendants in civil cases, not just criminal cases, if criminal prosecution might result from the disclosure.</td>
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### Double jeopardy applies to state trials

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<tr>
<td>1969</td>
<td>At first the Bill of Rights was seen as a limitation on the federal government’s powers, not on the state government. In <em>Benton v. Maryland</em>, the U.S. Supreme Court rules that the double jeopardy clause represents a fundamental ideal of “our constitutional heritage,” and extends double jeopardy protection to defendants in state court trials. The justices also cite the Fourteenth Amendment’s prohibition on state governments limiting liberty without due process. Double jeopardy, they rule, violates the due process rights of the accused.</td>
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### Prior notice and a hearing are required

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<td>1993</td>
<td>Four years after police found drugs and drug paraphernalia in a man’s home and he pleaded guilty to drug offenses under Hawaiian law, the federal government files a request to take his house and land because it had been used to commit a federal drug offense. Following an ex parte proceeding (in which only the prosecution participates), a judge authorizes the property’s seizure without prior notice to the individual. The Supreme Court, in <em>United States v. James Daniel Good Real Property</em>, rules that the property owner was entitled to advance notice and a full hearing before the government could take his home and land.</td>
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### A death sentence imposed after retrial is not double jeopardy

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<th>Event</th>
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<td>2003</td>
<td>A defendant is convicted of first-degree murder, but the jury cannot reach a unanimous decision whether to sentence the defendant to death or to life in prison. By default, a life sentence is imposed. The defendant appeals his conviction and wins a retrial, but at the second trial the jury unanimously hands down a death sentence. In <em>Sattazahn v. Pennsylvania</em>, the U.S. Supreme Court rules that this second verdict does not violate the double jeopardy clause because the first jury’s inability to reach a unanimous verdict means that there was no official finding of the facts regarding what kind of penalty the defendant deserved. As these questions remain open at the time of the second trial, the second jury can look at the facts again.</td>
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</table>
Sixth Amendment

(1791)

WHAT IT SAYS

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 witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

THE JURY AS A CROSS SECTION OF THE COMMUNITY

In the early 1980s, Daniel Holland went on trial in Illinois for a variety of charges that stemmed from the 1980 kidnapping, rape, and robbery of a stranded motorist. On the appointed day for jury selection, the prosecution and Holland’s counsel were faced with a jury pool made up of twenty-eight whites and just two African Americans. After questioning the potential jurors, the attorneys were permitted to remove, or “strike,” a certain number of jurors. Some were to be struck “for cause,” meaning that they had expressed some bias or other sentiment that cast doubt on their ability to be fair. The attorneys were permitted to strike a smaller number for no stated reason at all, the so-called peremptory challenge. The prosecution used its peremptory challenges to strike both African American jurors. Holland’s counsel objected on the grounds that Holland, who was white, had the Sixth Amendment right to “be tried by a representative cross section of the community”—words the U.S. Supreme Court had used in its ruling in Taylor v. Louisiana (1975). Holland’s attorney argued that an all-white jury violated that right. The trial judge rejected the argument, an all-white jury was sworn in, and Holland was convicted of virtually all the charges. He was sentenced to sixty years in prison. Holland appealed the convictions. When the case of Holland v. Illinois (1990) reached the U.S. Supreme Court, the justices found no Sixth Amendment violation. The Court explained that the guarantee of a jury drawn from a “representative cross section of the community” referred only to the pool from which the jurors are picked, not the composition of the final jury itself. The guarantee was intended to ensure an impartial jury, not a diverse one.
The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances."

—Justice Joseph McKenna, majority opinion, Beavers v. Haubert (1905)
Defendants can give up the right to a jury trial
The Supreme Court reverses the conviction of the “Scottsboro Boys”
The Supreme Court rejects secret trials

1930
1932
1948

In *Patton v. United States*, the U.S. Supreme Court decides that defendants can give up their right to a jury trial, and choose to have the judge alone decide their guilt or innocence. This choice must be made with the understanding of what they are giving up (that is, it must be an “intelligent” or “knowing” choice). In the federal courts and in some state courts, the prosecution and the judge also must agree not to have a jury.

In *Scottsboro*, Alabama, nine African Americans known as the “Scottsboro Boys” have been convicted of rape and sentenced to death. The U.S. Supreme Court overturns their convictions in *Powell v. Alabama* because their attorney had been appointed on the morning of the trial and had no opportunity to investigate the case or put on a meaningful defense. In a second trial, the nine men again are convicted, despite testimony by one of the alleged victims there has been no rape. Once again the Supreme Court reverses their convictions because of the exclusion of African Americans from the jury. At a third trial, four of the men are again convicted, while a fifth pleads guilty. Charges against the other four are dropped.

The exclusion of jurors based on race is unconstitutional
Reservations about the death penalty should not bar one from a jury
The Supreme Court relaxes the requirement of a twelve-member jury

1965
1968
1970

In *Swain v. Alabama*, the U.S. Supreme Court holds that prosecutors cannot use peremptory challenges to exclude jurors of a particular race (as it had ruled earlier about ethnic groups). The Court sets rules for proving that jurors have been struck because of their race. Having few or no minority jurors is not proof enough. It is necessary to show that minority jurors in a certain community have been excluded over a series of trials or over a period of years before a constitutional violation can be found. The Court’s ruling in *J.E.B v. Alabama* (1994) extends this provision to gender as well as race.

A person who expresses reservations about the death penalty is not necessarily unfit to serve on a jury, the Supreme Court rules in *Witherspoon v. Illinois*. The Court holds that a prosecutor can “strike” a person from the jury “for cause” (that is, because of indications that the person cannot be fair) only if the potential juror cannot make an impartial decision about imposing the death penalty.

A Michigan law allows judges to hold secret grand jury proceedings. Grand jury proceedings historically have been conducted in private, but a grand jury only has the power to indict someone to stand trial. However, in this case, the grand jury goes further, deciding the defendant’s guilt, and sending him to jail. The U.S. Supreme Court in *In re Oliver*, overturns the conviction of a Michigan man who has been convicted and sentenced after such a secret hearing.

Although it is not specified in the Constitution, the Supreme Court in *Thompson v. Utah* (1898) rules that, just as in England, a jury must have twelve people when trying someone charged with a serious crime. However in *Williams v. Florida* (1970), the Supreme Court calls a twelve-member jury a “historical accident” and decides that what matters is if the jury’s size will allow it to reach a fair decision. The Court finds that it makes sense to determine the jury’s size by the seriousness of the crime.
Exclusion of ethnic groups from a jury is unconstitutional

In *Hernandez v. Texas*, the U.S. Supreme Court rules that the exclusion of Mexican Americans from a jury, through the prosecutor’s use of peremptory challenges (objections to certain potential jurors serving on a jury without any specific reason), violates the Fourteenth Amendment’s requirement that all people be treated equally.

Pretrial publicity can jeopardize the right to an impartial jury

If there has been an excessive amount of press coverage or other publicity before a defendant goes to trial, it may not be possible to find people to serve on a jury who have not prejudged the case. In *Irwin v. Dowd*, the U.S. Supreme Court rules that a criminal defendant is entitled to have a trial relocated to another community to make sure that the jury will be impartial.

The right to counsel is not dependent on the ability to pay

Since 1938 the Supreme Court has ruled that the government has to provide counsel for defendants in federal court trials who cannot afford to pay for one. But the court does not extend this right to state trials until the landmark case of *Gideon v. Wainwright*. In *Argersinger v. Hamlin* (1972) the Court extends its Gideon ruling by specifying that a defendant found guilty, whether of a misdemeanor or a felony, cannot be sentenced to jail time unless offered an attorney at trial.

Jury trials are not required for juvenile offenders

Although previous U.S. Supreme Court decisions afforded juvenile defendants many of the same constitutional protections as adults, in *McKeiver v. Pennsylvania*, the Court rules that juveniles do not have a Sixth Amendment right to a jury if tried in juvenile court.

Information in public court documents may be published

In *Cox Broadcasting Corp. v. Cohn*, the U.S. Supreme Court rules that a state cannot prevent the news media from publishing or broadcasting the name of a rape victim in a criminal case, when the name has already been included in a court document available to the public.

Presidential order permits military trials of suspected terrorists

Following the terrorist attacks on September 11, 2001, President George W. Bush signs a military order authorizing the government to detain noncitizens suspected of terrorism, and to try them before military tribunals. Civil liberties groups criticize the order, fearing that the accused might be held indefinitely without receiving a trial, and that trials could be held in secret, without the usual rules about the kind of evidence that is admissible.
Common Good

The common good (sometimes called the public good) may refer to the collective welfare of the community. It also may refer to the individual welfare of each person in the community.

A communitarian view of the common good in a democracy is equated with the collective or general welfare of the people as a whole. The well-being of the entire community is considered to be greater than the sum of its parts, and the exemplary citizen is willing to sacrifice personal interests or resources for the good of the entire community. The good of the country or the community is always placed above the personal or private interests of particular groups or individuals. From this communitarian perspective, the ultimate expression of the common good is the elevation of public or community interests above private or individual interests.

When viewed individualistically, however, the common good is based on the well-being of each person in the community. In a democracy, the government is expected to establish conditions of liberty and order that enable each person to seek fulfillment and happiness on his or her own terms. The exemplary citizen respects and defends the individual rights of each person in the expectation of reciprocity from others. From the perspective of individualism, the ultimate achievement of the common good is when the rights of each person in the community are protected and enjoyed equally.

In most democracies of our world today, both the communitarian and individualistic conceptions of the common good are expressed and somehow combined. In particular countries, however, there usually is a tendency to favor one idea of the common good more than the other. In the United States, for example, the individual interest model of the common or public good tends to prevail. By contrast, in Japan and Poland for example, the collective sense of public good is dominant. In these democracies, the general good of the community, and the people as a whole, is usually considered to be more important than the interests or needs of any individual within that community.

In every democracy of our world, there is some degree of
tension—in some countries higher and in others lower—between the perceived rights and interests of individuals and the communitarian idea of a common good. In the second volume of *Democracy in America*, published in 1840, the French political philosopher Alexis de Tocqueville wrote about the necessity for citizens to blend personal and public interests in order to achieve and maintain the common good.

Tocqueville referred to this kind of citizenship as “self-interest rightly understood” because, through some reasonable voluntary contributions of time, effort, and money to the civil society and government, citizens cooperated to maintain the conditions of public safety, order, and stability needed to successfully pursue their personal interests and liberty. They recognized that their personal fulfillment could not be attained unless the general welfare of their community was strong. Tocqueville wrote, “The principle of self-interest rightly understood is not a lofty one, but it is clear and sure. . . . Each American knows when to sacrifice some of his private interests to save the rest.”

SEE ALSO Citizenship; Civil Society; Liberalism; Republicanism; Virtue, Civic
Government, Constitutional and Limited

Government is the institutional authority that rules a community of people. The primary purpose of government is to maintain order and stability so that people can live safely, productively, and happily. In a democracy, the source of a government’s authority is the people, the collective body of citizens by and for whom the government is established. The ultimate goal of government in a democracy is to protect individual rights to liberty within conditions of order and stability.

Every government exercises three main functions: making laws, executing or implementing laws, and interpreting and applying laws. These functions correspond to the legislative, executive, and judicial institutions and agencies of any government. In an authentic democracy the government is constitutional and limited. A constitution of the people, written by their representatives and approved directly or indirectly by them, restrains or harnesses the powers of government to make sure they are used only to secure the freedom and common good of the people. There are at least five means to limit the powers of government through a well-constructed constitution.

First, the constitution can limit the government by enumerating or listing its powers. The government may not assume powers that are not listed or granted to it.

Second, the legislative, executive, and judicial powers of government can be separated. Different individuals and agencies in the government have responsibility for different functions and are granted constitutional authority to check and balance the exercise of power by others in order to prevent any person or group from using its power abusively or despastically. An independent judiciary that can declare null and void an act of the government it deems contrary to the constitution is an especially important means to prevent illegal use of power by any government official. The legislature can use its powers of investigation and oversight to prevent excessive or corrupt actions by executive officials and agencies.

http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide
Justice

Justice is one of the main goals of democratic constitutions, along with the achievement of order, security, liberty, and the common good. The Preamble to the Constitution of the United States, for example, says that one purpose of the document is to “establish Justice.” And, in the 51st paper of The Federalist, James Madison proclaims, “Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.” So, what is justice? And how is it pursued in a constitutional democracy?

Since ancient times, philosophers have said that justice is achieved when everyone receives what is due to her or him. Justice is certainly achieved when persons with equal qualifications receive equal treatment from the government. For example, a government establishes justice when it equally guarantees the human rights of each person within its authority. As each person is equal in her or his membership in the human species, each one possesses the same immutable human rights, which the government is bound to protect equally.

By contrast, the government acts unjustly if it protects the human rights of some individuals under its authority while denying the same protection to others. The racial segregation laws that prevailed in some parts of the United States until the mid-1960s, for example, denied justice to African American people. America’s greatest civil rights leader, Martin Luther King Jr., said that racial segregation laws were “unjust laws” because they prevented black Americans from enjoying the same rights and opportunities as other citizens of the United States. When he opposed unjust racial segregation laws, King asserted that the worth and dignity of each person must be respected equally because each one is equally a member of the human species. Thus, any action by the government or groups of citizens that violated the worth and dignity of any person, as did the racial segregation laws, was unjust and should not be tolerated. King and his followers, therefore, protested these laws and eventually brought about their demise.
Another example of justice is *procedural justice*. It is pursued through *due process of law* to resolve conflicts between individuals or between individuals and their government. The government administers fair and impartial procedures equally to everyone under its authority in order to settle disputes among them or to prosecute persons charged with crimes against the state. For example, the 5th Amendment of the U.S. Constitution says that no person shall “be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation.” The 4th, 5th, and 6th Amendments include several guarantees of fair procedures for anyone accused of criminal behavior, including “the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.”

When procedural due process prevails, conflicts are settled in an orderly and fair manner in a court of law, according to the rule of law, and not by the arbitrary actions of people in power. This equal justice under the law regulates the interactions among private individuals and between individuals and government. Punishments, such as incarceration in prison, payment of fines, or performance of community service, may be carried out against a wrongdoer. One party harmed by another may receive compensation from the perpetrator of the grievance.

*Distributive justice*, another type of justice pursued in every constitutional democracy, pertains to the government’s enactment of laws to distribute benefits to the people under its authority. Distributive justice certainly is achieved when equals receive the same allocation of benefits. For example, public programs that provide social security or medical care to all elderly and retired persons are examples of distributive justice in a constitutional democracy. Public schools, which all children have an equal opportunity to attend, are another example.

When the government of a constitutional democracy protects individuals’ rights to liberty, order, and safety, individuals can freely use their talents to produce wealth and enjoy the results of their labor. Thus, they are able to provide for their basic human needs and to satisfy many, if not all, of their wants. But some per-
sons in every democracy are unable for various reasons to care adequately for themselves. Therefore, the government provides programs to distribute such basic benefits for disadvantaged persons as medical care, housing, food, and other necessities. These public programs for needy persons are examples of distributive justice in a constitutional democracy.

In the various democracies of our world, people debate the extent and kind of distributive justice there should be to meet adequately the social and economic needs of all the people. Should the regulatory power of government be increased greatly so that it can bring about greater social and economic equality through redistribution of resources?

Countries that provide extensive social and economic benefits through the redistribution of resources are known as social democracies or welfare states. The consequences of distributive justice in a social democracy, such as Sweden, are to diminish greatly unequal social and economic conditions and to move toward parity in general standards of living among the people. However, the achievement of this kind of social justice requires a substantial increase in the power of government to regulate the society and economy. Thus, as social and economic equality increase through government intervention in the lives of individuals, there is a decrease in personal and private rights to freedom. People in democracies throughout the world debate whether justice is generally served or denied by big public programs that extensively redistribute resources in order to equalize standards of living among the people.

SEE ALSO Equality; Liberalism; Liberty; Rule of Law; Social Democracy
Liberty

A person who has liberty is free to make choices about what to do or what to say. A primary purpose of government in the United States and other constitutional democracies is to protect and promote the liberty of individuals. The Preamble to the U.S. Constitution proclaims that a principal reason for establishing the federal government is to “secure the Blessings of Liberty to ourselves and our Posterity.” The Preamble to the 1992 Czech constitution also stresses liberty: “We, the citizens of the Czech Republic . . . in the spirit of the inviolable values of human dignity and liberty, as a homeland of equal, free, citizens . . . hereby adopt, through our freely elected representatives, the following Constitution of the Czech Republic.”

The U.S. Constitution, the Czech constitution, and the constitutions of other democracies throughout the world include guarantees for the protection of fundamental civil liberties, such as freedom of speech and press, freedom of assembly and association, freedom to vote and otherwise participate in elections of representatives in government, freedom of conscience, free exercise of religion, and freedom from unwarranted invasions of one’s home or other private spaces in society. These freedoms are called civil liberties because individuals enjoy them only within the context of civil society and constitutional government.

Civil liberty in a constitutional democracy means liberty under laws enacted by the elected representatives of the people. Rights to civil liberty are exercised, constrained, and protected by laws made through the free and fair procedures of democracy. Liberty is secured by limiting the power of government to prevent it from abusing the people’s rights. But if the government has too little power, so that law and order break down, then liberties may be lost. Neither freedom of thought nor freedom of action is secure in a lawless and disorderly society.

Ordered liberty is the desirable condition in which both public order and personal liberty are maintained. But how can liberty and authority, freedom and power, be combined and balanced so that one does not predominate over the other? This was the basic problem of constitutional government that concerned the
founders of the United States, and it has continued to challenge
Americans as democracy has evolved and expanded throughout
the history of their country. Early on, James Madison noted the
challenges of ordered liberty in a 1788 letter to Thomas Jeffers-
on: “It is a melancholy reflection that liberty should be equally
exposed to danger whether the Government has too much or
too little power; and that the line which divides these extremes
should be so inaccurately defined by experience.”

Madison noted the standing threat to liberty posed by insuffi-
cient constitutional limits on government. He also recognized
that liberty carried to the extreme, as in a riot, is equally dan-
gerous to the freedom and other rights of individuals. Constitu-
tional democracy may provide both liberty and order, but the right mix
of these two factors can be difficult to find and maintain.

There are two continuously challenging questions about lib-
erty and order that every democracy must confront and resolve.
First, at what point, and under what conditions, should the power
of government be limited in order to protect individuals’ rights
to liberty against the threat of despotism? Second, at what point,
and under what conditions, should expressions of individual
liberty be limited by law in order to maintain public order and
stability and to prevent the demise of constitutional democracy?
Every country that strives to achieve or maintain democracy must
resolve these questions about liberty and order.

SEE ALSO Constitutionalism; Democracy, Representative and
Constitutional; Liberalism; Rights
Rights

The constitution of a democracy guarantees the rights of the people. A right is a person’s justifiable claim, protected by law, to act or be treated in a certain way. For example, the constitutions of democracies throughout the world guarantee the political rights of individuals, such as the rights of free speech, press, assembly, association, and petition. These rights must be guaranteed in order for there to be free, fair, competitive, and periodic elections by the people of their representatives in government, which is a minimal condition for the existence of a democracy. If a democracy is to be maintained from one election to the next, then the political rights of parties and persons outside the government must be constitutionally protected in order for there to be authentic criticism and opposition of those in charge of the government. Thus, the losers in one election can use their political rights to gain public support and win the next election.

In addition to political rights, the constitutions of democracies throughout the world protect the rights of people accused of crimes from arbitrary or abusive treatment by the government. Individuals are guaranteed due process of law in their dealings with the government. Today, constitutional democracies protect the personal and private rights of all individuals under their authority. These rights include

- freedom of conscience or belief
- free exercise of religion
- privacy in one’s home or place of work from unwarranted or unreasonable intrusions by the government
- ownership and use of private property for personal benefit
- general freedom of expression by individuals, so long as they do not interfere with or impede unjustly the freedom or well-being of others in the community

A turning point in the history of constitutionally protected rights was the founding of the United States of America in the late 18th century. The United States was born with a Declaration
of Independence that proclaimed as a self-evident truth that every member of the human species was equal in possession of “certain unalienable rights” among which are the rights to “Life, Liberty, and the Pursuit of Happiness.”

The founders declared that the primary reason for establishing a government is “to secure these rights.” And, if governments would act legitimately to protect the rights of individuals, then they must derive “their just Powers from the Consent of the Governed.” Further, if the government established by the people fails to protect their rights and acts abusively against them, then “it is the Right of the People to alter or to abolish it, and to institute new Government” that will succeed in fulfilling its reason for existence—the protection of individual rights.

Ideas expressed in the Declaration of Independence about rights and government were derived from the writings of political philosophers of the European Enlightenment, especially those of the Englishman John Locke. Enlightenment philosophers stressed that rights belonged equally and naturally to each person because of their equal membership in the human species. According to Locke, for example, persons should not believe that the government granted their rights, or that they should be grateful to the government for them. Instead, they should expect government to protect these equally possessed rights, which existed prior to the establishment of civil society and government. Thus, the rights of individuals, based on the natural equality of human nature, were called natural rights.

This Declaration of Independence, based on this natural rights philosophy, explained to the world that Americans severed their legal relationship with the United Kingdom because the mother country had violated the rights of the people in her North American colonies. As a result, the Americans declared they would independently form their own free government to protect their natural rights. In 1787, the Americans framed a constitution to “secure the Blessings of Liberty” and fulfill the primary purpose of any good government as expressed in the Declaration of Independence, the protection of natural rights, and they ratified this Constitution in 1788.
In 1789, the U.S. Congress proposed constitutional amendments to express explicitly the rights of individuals that the government was bound to secure; in 1791, the requisite number of states ratified 10 of these amendments, which became part of the U.S. Constitution. Thus, the American Bill of Rights was born. Since then, the American Bill of Rights has been an example and inspiration to people throughout the world who wish to enjoy liberty and equality in a constitutional democracy.

Following the tragedies of World War II, which involved gross abuses by some governments and their armies—Nazi Germany and imperial Japan, for example—against millions of individuals and peoples of the world, there was a worldwide movement in favor of the idea of human rights. The United Nations, an organization of the world’s nation-states established after World War II in order to promote international peace and justice, became a leader in the promotion of human rights throughout the world. In 1948, this international body issued the United Nations Universal Declaration of Human Rights, which is a statement of the rights every human being should have in order to achieve a minimally acceptable quality of life.

Its first article says, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.” Article 2 continues, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The remainder of the document details the human rights that ideally should be enjoyed by each person in the world.

Since 1948, the United Nations has issued several other documents on human rights, such as the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights. The UN documents are statements of ideals about human rights intended to guide the actions of the world’s nation-states, but the United Nations cannot enforce them in the way that a sovereign nation-state can compel
obedience to laws within its territory. Thus, practical protection for human rights is possible today only through the governmental institutions of the world’s independent nation-states. The quality of the protection of human rights varies significantly from country to country. It depends upon what the nation’s constitution says about rights and the capacity of the government to enforce the rights guaranteed in its constitution.

There is general international agreement that there are two basic categories of human rights. First, there are rights pertaining to what should not be done to any human being. Second, there are rights pertaining to what should be done for every human being. The first category of human rights involves constitutional guarantees that prohibit the government from depriving people of some political or personal rights. For example, the government cannot constitutionally take away someone’s right to participate freely and independently in an election or to freely practice a particular religion. The second category of human rights requires positive action by the government to provide someone with a social or economic right that otherwise would not be available to her or him. Thus, the government may be expected to provide opportunities for individuals to go to school or to receive healthcare benefits.

The constitutions of many democracies specify certain social and economic rights that the government is expected to provide. In other democracies, for example the United States, programs that provide social and economic rights or entitlements, such as social security benefits for elderly persons and medical care for indigent persons, are established through legislation that is permitted but not required by the constitution.

SEE ALSO Equality; Justice; Liberalism; Liberty; Social Democracy
National Civics and Government Standards
*National Standards for Civics and Government* (1994) Center for Civic Education

- Grades 5-8
- Grades 9-12

Common Core State Standards
*English Language Arts & Literacy in History/Social Studies, Science and Technical Subjects*
Source: [http://www.corestandards.org/assets/CCSSI_ELA%20Standards.pdf](http://www.corestandards.org/assets/CCSSI_ELA%20Standards.pdf)

Grades 6-12 Literacy in History/Social Studies, Science and Technical Subjects
(Reading for Literacy in History/Social Studies and Writing)

- Grades 6-8
- Grades 10-11
- Grades 11-12
## Grades 5-8 Content Standards Alignment

The following chart shows a more granular alignment at the standards level.

<table>
<thead>
<tr>
<th>National Standards for Civics and Government Gr. 5-8</th>
<th>Lesson: Your Right to Remain Silent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Specific Content Standards</strong></td>
<td><strong>Understandings Reinforced by the Lesson</strong></td>
</tr>
<tr>
<td><strong>I.A.1. Defining civic life, politics, and government.</strong> Students should be able to explain the meaning of the terms civic life, politics, and government.</td>
<td>The government includes those responsible for enforcing the laws and managing disputes about the law. Its authority ultimately comes from the people through the laws that are made.</td>
</tr>
<tr>
<td><strong>I.A.2. Necessity and purposes of government.</strong> Students should be able to evaluate, take, and defend positions on why government is necessary and the purposes government should serve.</td>
<td>The Supreme Court is part of the federal government, is responsible for interpreting the Constitution, evaluating the constitutionality of laws, and the peaceful resolution of legal disputes. The purpose of government is to protect individual rights and promote the common good—two competing purposes.</td>
</tr>
<tr>
<td><strong>I.B.1. Limited and unlimited governments.</strong> Students should be able to describe the essential characteristics of limited and unlimited governments.</td>
<td>Federal and state law enforcement officials have limited powers and cannot act arbitrarily. The actions of overzealous police officers focused on catching the criminal are now controlled by because of Miranda.</td>
</tr>
<tr>
<td><strong>I.B.2. The rule of law.</strong> Students should be able to explain the importance of the rule of law for the protection of individual rights and the common good.</td>
<td>Adherence to the rule of law by all parties makes it possible to resolve legal disputes peacefully through the judicial process. Court decisions help ensure that the law is interpreted consistently and applied fairly for the protection of individual rights and the common good. The rule of law restricts the actions of both private citizens and the government in order to protect rights of individuals and promote the common good.</td>
</tr>
<tr>
<td><strong>I.C.2. Purposes and uses of constitutions.</strong> Students should be able to explain the various purposes constitutions serve.</td>
<td>The U.S. Constitution defines the relationship of the federal government to the people and places limits on its power in order to protect individual rights and promote the common good. It also gives certain powers and responsibilities to the states. It is the Constitution that defines the judicial branch of government and gives it the power to interpret the laws and resolve disputes. As the supreme law of the land, the U.S. Constitution protects individual rights and promotes the common good.</td>
</tr>
</tbody>
</table>
## National Standards for Civics and Government

### Lesson: Your Right to Remain Silent

<table>
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<tr>
<th>Specific Content Standards</th>
<th>Understanding Reinforced by the Lesson</th>
</tr>
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<tr>
<td><strong>II.A.1. The American idea of constitutional government.</strong> Students should be able to explain the essential ideas of American constitutional government.</td>
<td>The People are the ultimate source of the power in American constitutional government. The Bill of Rights was added to the Constitution to limit the power of the federal government and make it responsible for protecting certain rights. The Fifth Amendment gives us protections against self-incrimination.</td>
</tr>
<tr>
<td><strong>II.B.1. 1. Distinctive characteristics of American society.</strong> Students should be able to identify and explain the importance of historical experience and geographic, social, and economic factors that have helped to shape American society.</td>
<td>The tyranny and abuse of power experienced by the colonists led directly to our Fifth Amendment protection against self-incrimination.</td>
</tr>
<tr>
<td><strong>II.C.1. American identity.</strong> Students should be able to explain the importance of shared political values and principles to American society.</td>
<td>The U.S. Constitution identifies basic values and principles that are American distinctives. These include respect for the law, protection of individual rights, and justice under the law. The Fifth Amendment is part of the Bill of Rights and describes a right that is central to the concept of liberty—the right to be protected against self-incrimination.</td>
</tr>
<tr>
<td><strong>II.D.1. Fundamental values and principles.</strong> Students should be able to explain the meaning and importance of the fundamental values and principles of American constitutional democracy.</td>
<td>Values fundamental to American civic life: - individual rights - liberty - common good - justice Principles fundamental to American constitutional democracy: - rule of law - federalism - individual rights - separated and shared powers</td>
</tr>
<tr>
<td><strong>II.D. 2. Conflicts among values and principles in American political and social life.</strong> Students should be able to evaluate, take, and defend positions on issues in which fundamental values and principles are in conflict.</td>
<td>Fifth Amendment conflicts are inevitable in a changing society because they involve individual rights and the common good.</td>
</tr>
<tr>
<td><strong>II.D.3. Disparities between ideals and reality in American political and social life</strong> Students should be able to evaluate, take, and defend positions on issues concerning ways and means to reduce disparities between American ideals and realities.</td>
<td>Individual liberty, justice, concern for the common good and respect for the rights of others are central to Fifth Amendment rights.</td>
</tr>
<tr>
<td>National Standards for Civics and Government Gr. 5-8</td>
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</tr>
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<tr>
<td><strong>III.A.1. Distributing, sharing, and limiting powers of the national government.</strong> Students should be able to explain how the powers of the national government are distributed, shared, and limited.</td>
<td>The Supreme Court has the power to overrule decisions made by lower courts. Law enforcement is the responsibility of the executive branch of government at the federal and state level.</td>
</tr>
<tr>
<td><strong>III.A.2. Sharing of powers between the national and state governments.</strong> Students should be able to explain how and why powers are distributed and shared between national and state governments in the federal system.</td>
<td>State and local law enforcement are largely responsible for handling most criminal matters.</td>
</tr>
<tr>
<td><strong>III.A.4. Sharing of powers between the national and state governments.</strong> Students should be able to explain how and why powers are distributed and shared between national and state governments in the federal system.</td>
<td>Most crime is handled by local police and state courts. Through the process of incorporation, the Fifth Amendment has also been applied to the states so the responsibility for protecting this right is shared.</td>
</tr>
<tr>
<td><strong>III.C.2. Organization and responsibilities of state and local governments.</strong> Students should be able to describe the organization and major responsibilities of state and local governments.</td>
<td>Law enforcement is a major responsibility of state and local governments.</td>
</tr>
<tr>
<td><strong>III.E.1. The place of law in American society.</strong> Students should be able to explain the importance of law in the American constitutional system.</td>
<td>The courts make decisions based on the rule of law. These decisions are made to protect individual rights and promote the common good. The rule of law establishes boundaries of acceptable behavior and places limits on those in law enforcement and the people. When both the government and the people respect the rule of law, a system of ordered liberty is possible that protects the basic rights of citizens.</td>
</tr>
<tr>
<td><strong>III.E.2. Criteria for evaluating rules and laws.</strong> Students should be able to explain and apply criteria useful in evaluating rules and laws.</td>
<td>The warnings given by the Supreme Court are examples of good rules because they meet these criteria: well designed to achieve their purposes, understandable and clearly written, possible to follow, fair, and designed to protect individual rights. Some might claim they are weak because they do not promote the common good.</td>
</tr>
<tr>
<td><strong>III.E.3. Judicial protection of the rights of individuals.</strong> Students should be able to evaluate, take, and defend positions on current issues regarding judicial protection of individual rights.</td>
<td>The Constitution ensures judicial fairness and protection of individual rights. Supreme Court decisions related to the Fifth Amendment help define how those protections are enforced in society.</td>
</tr>
</tbody>
</table>
### National Standards for Civics and Government

**Lesson: Your Right to Remain Silent**

<table>
<thead>
<tr>
<th>Specific Content Standards</th>
<th>Understandings Reinforced by the Lesson</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>III.F.4. Associations and groups</strong>&lt;br&gt;Students should be able to explain how interest groups, unions, and professional organizations provide opportunities for citizens to participate in the political process.</td>
<td>Miranda was able to progress through the criminal justice system because he had legal representation from the American Civil Liberties Union of Arizona.</td>
</tr>
<tr>
<td><strong>V.B.1. Personal rights.</strong> Students should be able to evaluate, take, and defend positions on issues involving personal rights.</td>
<td>In our system of government, there is a constant struggle between protecting our Fifth Amendment privilege against self-incrimination and protecting society. A vigilant and informed citizenry that participates in the judicial system is needed to protect and secure our rights. Personal rights include&lt;br&gt;• privacy&lt;br&gt;• right to due process of law and equal protection of the law&lt;br&gt;Debates over who gets the right to remain silent are particularly timely in an age of global terrorism.</td>
</tr>
<tr>
<td><strong>V.B.4. Scope and limits of rights.</strong> Students should be able to evaluate, take, and defend positions on issues regarding the proper scope and limits of rights.</td>
<td>The scope and limit of rights are very much involved in deciding Fifth Amendment cases, particularly when national security or public safety issues are involved. Since the decision in 1966, the Supreme Court has granted a public safety exception.</td>
</tr>
<tr>
<td><strong>V.C.2. Civic responsibilities.</strong> Students should be able to evaluate, take, and defend positions on the importance of civic responsibilities to the individual and society.</td>
<td>Civic responsibilities associated with being an American citizen:&lt;br&gt;• obeying the law&lt;br&gt;• being informed&lt;br&gt;• monitoring the way government behaves&lt;br&gt;• taking appropriate actions when wronged by the government&lt;br&gt;There is a direct connection between the way people behave in a society, the laws that are made, and the way the Constitution is interpreted and applied. Civic participation is required to determine the right balance of justice that the people want and expect at any given time.</td>
</tr>
<tr>
<td><strong>V.D.1. Dispositions that enhance citizen effectiveness and promote the healthy functioning of American constitutional democracy.</strong> Students should be able to evaluate, take, and defend positions on the importance of certain dispositions or traits of character to themselves and American constitutional democracy.</td>
<td>Traits that enhance citizen effectiveness and support a well-functioning constitutional democracy:&lt;br&gt;• respect for the rights of other individuals&lt;br&gt;• respect for law&lt;br&gt;• courage&lt;br&gt;• civility&lt;br&gt;• honesty&lt;br&gt;• open mindedness&lt;br&gt;• critical mindedness&lt;br&gt;• persistence&lt;br&gt;• negotiation and compromise&lt;br&gt;• patriotism</td>
</tr>
<tr>
<td>National Standards for Civics and Government Gr. 5-8</td>
<td>Lesson: Your Right to Remain Silent</td>
</tr>
<tr>
<td>----------------------------------------------------</td>
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</tr>
<tr>
<td><strong>V.E.3. Forms of political participation.</strong> Students should be able to describe the means by which Americans can monitor and influence politics and government.</td>
<td>Those who are knowledgeable citizens and seek to “fight” for the protection of individual rights through the courts ultimately end up protecting the rights of others.</td>
</tr>
<tr>
<td><strong>V.E.5. Knowledge and participation.</strong> Students should be able to explain the importance of knowledge to competent and responsible participation in American democracy.</td>
<td>A constitutional democracy relies on its citizens to keep the power of the government in check. The Supreme Court does not seek cases to decide; it only hears those that come through the appeal process. Participation in the criminal justice system is essential for finding the line between liberty and security in a changing society.</td>
</tr>
</tbody>
</table>
Grades 9-12 Content Standards Alignment
The following chart shows a more granular alignment at the standards level.

<table>
<thead>
<tr>
<th>National Standards for Civics and Government Gr. 9-12</th>
<th>Lesson: Your Right to Remain Silent</th>
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</thead>
<tbody>
<tr>
<td>I.A.1. Defining civic life, politics, and government. Students should be able to explain the meaning of the terms civic life, politics, and government.</td>
<td>Interpreting laws and resolving legal disputes are the responsibilities of the judicial branch of government. Government is responsible for managing conflicts in society. Through its decisions, the Supreme Court directs behavior in a society.</td>
</tr>
<tr>
<td>I.A.3. The purposes of politics and government. Students should be able to evaluate, take, and defend positions on competing ideas regarding the purposes of politics and government and their implications for the individual and society.</td>
<td>Conflicts under the Fifth Amendment often involve competing ideas related to promoting individual security, protecting individual rights, providing for national security, and promoting the common good. Our system of government is responsible for protecting society and protecting the right to privacy, responsibilities that are often at odds with one another.</td>
</tr>
<tr>
<td>I.B.1. Limited and unlimited governments. Students should be able to explain the essential characteristics of limited and unlimited governments.</td>
<td>Federal and state government officials, including law enforcement, have limited powers and cannot behave any way they want to. The actions of overzealous police officers focused on catching the criminal are now controlled by because of Miranda.</td>
</tr>
<tr>
<td>I.B.2. The rule of law. Students should be able to evaluate, take, and defend positions on the importance of the rule of law and on the sources, purposes, and functions of law.</td>
<td>Adherence to the rule of law by all parties makes it possible to resolve legal disputes peacefully through the judicial process. The rule of law restricts the actions of both private citizens and the government in order to protect rights of individuals and promote the common good.</td>
</tr>
<tr>
<td>I.C.2. Purposes and uses of constitutions. Students should be able to explain the various purposes served by constitutions.</td>
<td>The U.S. Constitution defines the relationship of the federal government to the people and places limits on its power in order to protect individual rights and promote the common good. It also gives certain powers and responsibilities to the states.</td>
</tr>
<tr>
<td>II.A.1. The American idea of constitutional government. Students should be able to explain the central ideas of American constitutional government and their history.</td>
<td>The Bill of Rights was added to the Constitution to hold the federal government responsible for protecting certain rights. A government of limited powers is a central idea of American constitutional government.</td>
</tr>
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<td>Specific Content Standards</td>
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<td>-------------------------------------------------------------------------------------------</td>
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<tr>
<td>II.A.2. How American constitutional government has shaped the character of American society. Students should be able to explain the extent to which Americans have internalized the values and principles of the Constitution and attempted to make its ideals realities.</td>
<td>The incorporation of the Fifth Amendment to the states through the Fourteenth Amendment helped make our Fifth Amendment rights real and improved both law enforcement and legal procedures.</td>
</tr>
<tr>
<td>II.B.3. The role of organized groups in political life. Students should be able to evaluate, take, and defend positions on the contemporary role of organized groups in American social and political life.</td>
<td>The American Civil Liberties Union (ACLU) submitted a brief to support the claim that Ernesto Miranda was owed his Fifth Amendment rights in the interrogation room.</td>
</tr>
<tr>
<td>II.C.1. American national identity and political culture. Students should be able to explain the importance of shared political and civic beliefs and values to the maintenance of constitutional democracy in an increasingly diverse American society.</td>
<td>The U.S. Constitution identifies basic values and principles that are American distinctives. These include respect for the law, protection of individual rights, and justice under the law. The Fifth Amendment is part of the Bill of Rights and describes a right that is central to the concept of liberty—the right to be protected against self-incrimination.</td>
</tr>
<tr>
<td>II.D.3. Fundamental values and principles. Students should be able to evaluate, take, and defend positions on what the fundamental values and principles of American political life are and their importance to the maintenance of constitutional democracy.</td>
<td>Values fundamental to American civic life: * individual rights  * liberty  * common good  * justice  Principles fundamental to American constitutional democracy:  * rule of law  * federalism  * individual rights  * separated and shared powers</td>
</tr>
<tr>
<td>II.D.4. Conflicts among values and principles in American political and social life. Students should be able to evaluate, take, and defend positions on issues in which fundamental values and principles may be in conflict.</td>
<td>Fifth Amendment conflicts are inevitable in a changing society when issues of liberty and security are at stake.</td>
</tr>
<tr>
<td>III.A.1. Distributing governmental power and preventing its abuse. Students should be able to explain how the United States Constitution grants and distributes power to national and state government and how it seeks to prevent the abuse of power.</td>
<td>The Constitution defines the power and limits of the federal government. It also gives powers to the states. Over time Supreme Court interpretations of the Fourteenth Amendment have applied certain rights to the states as well.</td>
</tr>
<tr>
<td>III.A.2 The American federal system. Students should be able to evaluate, take, and defend positions on issues regarding the distribution of powers and responsibilities within the federal system.</td>
<td>Our system of government makes it possible for citizens to hold their governments accountable for protecting individual rights, even citizens who are convicted criminals like Ernesto Miranda</td>
</tr>
</tbody>
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### National Standards for Civics and Government

#### Lesson: Your Right to Remain Silent

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<td><strong>III.B.1. The institutions of the national government.</strong> Students should be able to evaluate, take, and defend positions on issues regarding the purposes, organization, and functions of the institutions of the national government.</td>
<td>The Supreme Court is part of the judicial branch of the federal government. Law enforcement is the responsibility of the executive branch.</td>
</tr>
<tr>
<td><strong>III.C.3. Major responsibilities of state and local governments.</strong> Students should be able to identify the major responsibilities of their state and local governments and evaluate how well they are being fulfilled.</td>
<td>Law enforcement is a major responsibility of state and local governments.</td>
</tr>
</tbody>
</table>
| **III.D.1. The place of law in American society.** Students should be able to evaluate, take, and defend positions on the role and importance of law in the American political system. | Courts make decisions based on the rule of law in order to protect the rights of citizens and promote the common good.  
The rule of law establishes boundaries of acceptable behavior and places limits on those in law enforcement and the people.  
Individual’s rights to life, liberty, and property are protected by the trial and appellate levels of the judicial process and by criminal law. |
| **III.D.1. Judicial protection of the rights of individuals.** Students should be able to evaluate, take, and defend positions on current issues regarding the judicial protection of individual rights. | The Constitution ensures judicial fairness and protection of individual rights. Supreme Court decision related to the Fifth Amendment in *Miranda* helped define how those protections are implemented in society. |
| **III.F.5. Associations and groups**  
Students should be able to explain how interest groups, unions, and professional organizations provide opportunities for citizens to participate in the political process. | Miranda was able to progress through the criminal justice system because he had legal representation from the American Civil Liberties Union of Arizona. |
| **V.B.1. Personal rights.** Students should be able to evaluate, take, and defend positions on issues regarding personal rights. | The right to remain silent is a personal right based on the Fifth Amendment in the Bill of Rights.  
Other personal rights include  
  - privacy  
  - right to due process of law and equal protection of the law |
| **V.B.5. Scope and limits of rights.** Students should be able to evaluate, take, and defend positions on issues regarding the proper scope and limits of rights. | The scope and limit of rights are very much involved in deciding Fifth Amendment cases, particularly when national security or public safety issues are involved. Since the decision in 1966, the Supreme Court has granted a public safety exception. |
### National Standards for Civics and Government

#### Lesson: Your Right to Remain Silent

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| **V.C.2. Civic responsibilities.** Students should be able to evaluate, take, and defend positions on the importance of civic responsibilities to the individual and society. | Civic responsibilities associated with being an American citizen:  
- obeying the law  
- being informed  
- monitoring the way government behaves  
- taking appropriate actions when wronged by the government  

There is a direct connection between the way people behave in a society, the laws that are made, and the way the Constitution is interpreted and applied. Civic participation is required to determine the right balance of justice that the people want and expect at any given time. |
| **V.D.4. Dispositions that facilitate thoughtful and effective participation in public affairs.** Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that facilitate thoughtful and effective participation in public affairs. | Traits that facilitate thoughtful and effective participation in public affairs include  
- respect for the rights of other individuals  
- respect for law  
- courage  
- tolerance of ambiguity  
- civility  
- honesty  
- open mindedness  
- critical mindedness |
| **V.E.1. The relationship between politics and the attainment of individual and public goals.** Students should be able to evaluate, take, and defend positions on the relationship between politics and the attainment of individual and public goals | Participation in the judicial process is not only a way to resolve current disputes, but also a way to affect our way of life in the future by bringing justice to the people by way of the Constitution. |
| **V.E.3. Forms of political participation.** Students should be able to evaluate, take, and defend positions about the means that citizens should use to monitor and influence the formation and implementation of public policy. | Those who are knowledgeable citizens and seek to “fight” for the protection of individual rights through the courts, ultimately end up protecting the rights of others. |
| **V.E.5. Knowledge and participation.** Students should be able to explain the importance of knowledge to competent and responsible participation in American democracy. | A constitutional democracy relies on its citizens to keep the power of the government in check. The Supreme Court does not seek cases to decide, it only hears those that come through the appeal process. Participation in the criminal justice system is essential for finding the line between liberty and security in a changing society. |
# Common Core State Standards
Lesson: Your Right to Remain Silent

Document: *English Language Arts & Literacy in History/Social Studies, Science and Technical Subjects*
http://www.corestandards.org/ELA-Literacy

<table>
<thead>
<tr>
<th>Reading in History/Social Studies 6-8</th>
<th>Lesson: Your Right to Remain Silent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Key Ideas and Details</strong></td>
<td><strong>Support from the Lesson</strong></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.1 Cite specific textual evidence to support analysis of primary and secondary sources.</td>
<td>Students provide quotes from textual sources to support their responses.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.2 Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.</td>
<td>Students read primary and secondary sources to gather information and discover main ideas and concepts.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.3 Identify key steps in a text’s description of a process related to history/social studies (e.g., how a bill becomes law, how interest rates are raised or lowered).</td>
<td>Description of processes include: U.S. Court System and path of a case to the Supreme Court, sequence of steps for Mirandizing a suspect.</td>
</tr>
<tr>
<td><strong>Craft and Structure</strong></td>
<td></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.4 Determine the meaning of words and phrases as they are used in a text, including vocabulary specific to domains related to history/social studies.</td>
<td>Vocabulary lists are provided for review and study, and words and phrases are defined at point of use. Understanding of specific legal terms is required.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.6 Identify aspects of a text that reveal an author’s point of view or purpose (e.g., loaded language, inclusion or avoidance of particular facts).</td>
<td>The Supreme Court opinion is analyzed for structure, content, purpose, arguments and reasoning.</td>
</tr>
<tr>
<td><strong>Integration of Knowledge and Ideas</strong></td>
<td></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.7 Integrate visual information (e.g., in charts, graphs, photographs, videos, or maps) with other information in print and digital texts.</td>
<td>Students synthesize information from print and online sources (e.g., videos, articles, books, excerpts).</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.8 Distinguish among fact, opinion, and reasoned judgment in a text.</td>
<td>Students identify the facts of the case and read reasoned judgments given in the majority opinion and the opinions of dissenting justices.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.9 Analyze the relationship between a primary and secondary source on the same topic.</td>
<td>Students read what the Constitution says and what it means.</td>
</tr>
<tr>
<td><strong>Range of Reading and Level of Text Complexity</strong></td>
<td>Students will engage informational text that includes material appropriate for this grade band. (See text exemplars in Appendix B of the ELA standards.)</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.10 By the end of grade 8, read and comprehend history/social studies texts in the grades 6–8 text complexity band independently and proficiently.</td>
<td></td>
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</tbody>
</table>

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<thead>
<tr>
<th>Writing 6-8</th>
<th>Lesson: Your Right to Remain Silent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Text Types and Purposes</strong></td>
<td><strong>Support from the Lesson</strong></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.WHST.6-8.1 Write arguments focused on discipline-specific content.</td>
<td>Questions and issues are presented that require written responses.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.WHST.6-8.2 Write informative/explanatory texts, including the narration of historical events, scientific procedures/ experiments, or technical processes.</td>
<td>Students create a narrative for the background story in <em>Miranda</em>, write paragraphs to convey information, and explain criminal procedures and processes related to <em>Miranda</em>.</td>
</tr>
</tbody>
</table>
### Production and Distribution of Writing

<table>
<thead>
<tr>
<th>Standards</th>
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</tr>
</thead>
<tbody>
<tr>
<td>CCSS.ELA-Literacy.WHST.6-8.4</td>
<td>Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience. Students have different writing tasks and write for different purposes. These include writing to explain, describe, outline, convey personal opinion, answer to questions, report, reflect, analyze text and structure, and interpret.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.WHST.6-8.6</td>
<td>Use technology, including the Internet, to produce and publish writing and present the relationships between information and ideas clearly and efficiently. Students use the search and highlighting capabilities of appropriate software to make connections between the Miranda warnings and the opinion and to assist with research and text analysis tasks.</td>
</tr>
</tbody>
</table>

### Research to Build and Present Knowledge

<table>
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<tbody>
<tr>
<td>CCSS.ELA-Literacy.WHST.6-8.7</td>
<td>Conduct short research projects to answer a question (including a self-generated question), drawing on several sources and generating additional related, focused questions that allow for multiple avenues of exploration. Extension activities provide prompts for short research projects, including debates.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.WHST.6-8.8</td>
<td>Gather relevant information from multiple print and digital sources, using search terms effectively; assess the credibility and accuracy of each source; and quote or paraphrase the data and conclusions of others while avoiding plagiarism and following a standard format for citation. Students conduct word searches in the opinion to read context and gather significant quotes. Students also check the credibility of advice by a speaker in the video by searching the Internet to report the individual’s credentials and cite the source.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.WHST.6-8.9</td>
<td>Draw evidence from informational texts to support analysis, reflection, and research. Students use information from text to support their answers to questions and use as evidence when giving reasons for a position.</td>
</tr>
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</table>

### Range of Writing

<table>
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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>CCSS.ELA-Literacy.WHST.6-8.10</td>
<td>Write routinely over extended time frames (time for reflection and revision) and shorter time frames (a single sitting or a day or two) for a range of discipline-specific tasks, purposes, and audiences. Students write for a variety of purposes (e.g., to explain, describe, outline, answer questions, report, reflect).</td>
</tr>
</tbody>
</table>

### Reading in History/Social Studies 9-10

<table>
<thead>
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<th>Standards</th>
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</tr>
</thead>
<tbody>
<tr>
<td>CCSS.ELA-Literacy.RH.9-10.1</td>
<td>Cite specific textual evidence to support analysis of primary and secondary sources, attending to such features as the date and origin of the information. Students provide quotes from primary and secondary textual sources to support their responses.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.9-10.2</td>
<td>Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop over the course of the text. Students consult majority and minority opinions and reference materials to gather information and discover main ideas and concepts.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.9-10.3</td>
<td>Analyze in detail a series of events described in a text; determine whether earlier events caused later ones or simply preceded them. Processes covered include the path of a case to the Supreme Court and the sequence of steps for Mirandizing a suspect.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.9-10.4</td>
<td>Determine the meaning of words and phrases as they are used in a text, including vocabulary describing political, social, or economic aspects of history/social science. Vocabulary lists are provided for review and study. Certain words and phrases are defined at point of use. Understanding of specific legal terms is required.</td>
</tr>
<tr>
<td>Common Core State Standards</td>
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<td><strong>Lesson:</strong> Your Right to Remain Silent</td>
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<tr>
<td><strong>Integration of Knowledge and Ideas</strong></td>
<td></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.9-10.6 Compare the point of view of two or more authors for how they treat the same or similar topics, including which details they include and emphasize in their respective accounts.</td>
<td>Students review minority and majority opinions.</td>
</tr>
<tr>
<td><strong>Range of Reading and Level of Text Complexity</strong></td>
<td></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.9-10.9 Compare and contrast treatments of the same topic in several primary and secondary sources.</td>
<td>Students consider arguments in both the majority and minority opinions.</td>
</tr>
<tr>
<td><strong>Writing 9-10</strong></td>
<td></td>
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<td><strong>Text Types and Purposes</strong></td>
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<td>CCSS.ELA-Literacy.WHST.9-10.1 Write arguments focused on discipline-specific content.</td>
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<td>Questions and issues are presented that require written responses.</td>
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<td>CCSS.ELA-Literacy.WHST.9-10.2 Write informative/explanatory texts, including the narration of historical events, scientific procedures/ experiments, or technical processes.</td>
<td></td>
</tr>
<tr>
<td>Students create a narrative for the background story in <em>Miranda</em>, write paragraphs to convey information, and explain criminal procedures and processes related to <em>Miranda</em>.</td>
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<td><strong>Production and Distribution of Writing</strong></td>
<td></td>
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<tr>
<td>CCSS.ELA-Literacy.WHST.9-10.4 Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.</td>
<td></td>
</tr>
<tr>
<td>Students have different writing tasks and write for different purposes. These include writing to explain, describe, outline, convey personal opinion, answer to questions, report, reflect, analyze text and structure, and interpret.</td>
<td></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.WHST.9-10.6 Use technology, including the Internet, to produce, publish, and update individual or shared writing products, taking advantage of technology’s capacity to link to other information and to display information flexibly and dynamically.</td>
<td></td>
</tr>
<tr>
<td>Links to Internet sources are included throughout the lesson. Electronic versions of resources are included to facilitate study.</td>
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</tr>
<tr>
<td><strong>Research to Build and Present Knowledge</strong></td>
<td></td>
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<td>CCSS.ELA-Literacy.WHST.9-10.7 Conduct short as well as more sustained research projects to answer a question (including a self-generated question) or solve a problem; narrow or broaden the inquiry when appropriate; synthesize multiple sources on the subject, demonstrating understanding of the subject under investigation.</td>
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<tr>
<td>Extension activities provide prompts for short research projects, including debates.</td>
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</tr>
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<td>CCSS.ELA-Literacy.WHST.9-10.8 Gather relevant information from multiple authoritative print and digital sources, using advanced searches effectively; assess the usefulness of each source in answering the research question; integrate information into the text selectively to maintain the flow of ideas, avoiding plagiarism and following a standard format for citation.</td>
<td></td>
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<td>Students conduct word searches in the opinion to read context and gather significant quotes. Students also check the credibility of advice by a speaker in the video by searching the Internet to report the individual’s credentials and cite the source.</td>
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<tr>
<td>CCSS.ELA-Literacy.WHST.9-10.9 Draw evidence from informational texts to support analysis, reflection, and research.</td>
<td></td>
</tr>
<tr>
<td>Students use information from informational texts to support answers to questions and support their opinions.</td>
<td></td>
</tr>
</tbody>
</table>
**Common Core State Standards**

**Lesson: Your Right to Remain Silent**

<table>
<thead>
<tr>
<th>Range of Writing</th>
</tr>
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<tbody>
<tr>
<td>CCSS.ELA-Literacy.WHST.9-10.10 Write routinely over extended time frames (time for reflection and revision) and shorter time frames (a single sitting or a day or two) for a range of discipline-specific tasks, purposes, and audiences.</td>
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<tr>
<th>Reading in History/Social Studies 11-12</th>
<th>Lesson: Your Right to Remain Silent</th>
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<tbody>
<tr>
<td><strong>Key Ideas and Details</strong></td>
<td><strong>Support from the Lesson</strong></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.11-12.1 Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.</td>
<td>Students provide quotes from textual primary and secondary sources to support their responses.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.11-12.2 Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.</td>
<td>Students read primary and secondary sources to gather information and discover main ideas and concepts.</td>
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</tbody>
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<tr>
<th>Craft and Structure</th>
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<tbody>
<tr>
<td>CCSS.ELA-Literacy.RH.11-12.4 Determine the meaning of words and phrases as they are used in a text, including analyzing how an author uses and refines the meaning of a key term over the course of a text (e.g., how Madison defines faction in Federalist No. 10).</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.11-12.5 Analyze in detail how a complex primary source is structured, including how key sentences, paragraphs, and larger portions of the text contribute to the whole.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.11-12.6 Evaluate authors’ differing points of view on the same historical event or issue by assessing the authors’ claims, reasoning, and evidence.</td>
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<tr>
<th>Integration of Knowledge and Ideas</th>
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<tr>
<td>CCSS.ELA-Literacy.RH.11-12.7 Integrate and evaluate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, as well as in words) in order to address a question or solve a problem.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.11-12.8 Evaluate an author’s premises, claims, and evidence by corroborating or challenging them with other information.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.11-12.9 Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.</td>
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<tr>
<th>Range of Reading and Level of Text Complexity</th>
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<tbody>
<tr>
<td>CCSS.ELA-Literacy.RH.11-12.10 By the end of grade 12, read and comprehend history/social studies texts in the grades 11–CCR text complexity band independently and proficiently.</td>
</tr>
</tbody>
</table>

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<tr>
<th>Writing 11-12</th>
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<tr>
<td><strong>Text Types and Purposes</strong></td>
<td><strong>Support from the Lesson</strong></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.WHST.11-12.1 Write arguments focused on discipline-specific content.</td>
<td>Questions and issues are presented that require written responses.</td>
</tr>
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## Common Core State Standards
Lesson: Your Right to Remain Silent

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<tr>
<th>CCSS.ELA-Literacy.WHST.11-12.2 Write informative/explanatory texts, including the narration of historical events, scientific procedures/experiments, or technical processes.</th>
<th>Students create a narrative for the background story in <em>Miranda</em>, write paragraphs to convey information, and explain criminal procedures and processes related to <em>Miranda</em>.</th>
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<td><strong>Production and Distribution of Writing</strong></td>
<td><strong>Research to Build and Present Knowledge</strong></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.WHST.11-12.4 Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.</td>
<td>Students have different writing tasks and write for different purposes. These include writing to explain, describe, outline, convey personal opinion, answer to questions, report, reflect, analyze text and structure, and interpret.</td>
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<td>CCSS.ELA-Literacy.WHST.11-12.7 Conduct short as well as more sustained research projects to answer a question (including a self-generated question) or solve a problem; narrow or broaden the inquiry when appropriate; synthesize multiple sources on the subject, demonstrating understanding of the subject under investigation.</td>
<td>Extension activities provide prompts for short research projects, including debates.</td>
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<td>CCSS.ELA-Literacy.WHST.11-12.8 Gather relevant information from multiple authoritative print and digital sources, using advanced searches effectively; assess the strengths and limitations of each source in terms of the specific task, purpose, and audience; integrate information into the text selectively to maintain the flow of ideas, avoiding plagiarism and overreliance on any one source and following a standard format for citation.</td>
<td>Students conduct word searches in the opinion to read context and gather significant quotes. They also check the credibility of advice by a speaker in the video by searching the Internet to report the individual’s credentials and cite the source.</td>
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<td>CCSS.ELA-Literacy.WHST.11-12.9 Draw evidence from informational texts to support analysis, reflection, and research.</td>
<td>Students use information from text to support their answers to questions and use as evidence when giving reasons for a position.</td>
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<td><strong>Range of Writing</strong></td>
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<td>CCSS.ELA-Literacy.WHST.11-12.10 Write routinely over extended time frames (time for reflection and revision) and shorter time frames (a single sitting or a day or two) for a range of discipline-specific tasks, purposes, and audiences.</td>
<td>Students write for a variety of purposes (e.g., to explain, describe, outline, answer questions, report, reflect).</td>
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