

Miranda Warnings

Facilitator Guide

Session Overview

Introduction & Learning Objectives	05m
Discussion – When is the ‘Right’ Time to Advise?	05m
Lecture – Brief Miranda Story Overview	05m
Discussion - Custody & Interview/Interrogation	10m
Discussion - What Triggers Miranda?	10m
Discussion – Waivers	15m
Break	10m
Lecture – Rules for Children and Waivers	10m
Lecture – Reinitiating Questioning/Conversation	15m
Investigative Techniques	10m
Lecture – WA CCR 3.1	10m
Ethical Considerations	05m
End of Session / Break	10m

Total Session Time: 2 hours

Main Topics of Session:

- *Miranda Case Overview*
- *Why are Miranda Warnings Needed*
- *Miranda Triggers*
 - *Custody vs. Not*
 - *Interview vs. Interr.*
- *How to Advise the Suspect*
- *Waivers Must be Made...*
- *Reinitiating Questioning After Suspect Invokes Rights*
- *WA Criminal Court Rule 3.1*
- *Children and Waivers*

Facilitators Needed: 1(CP)

Location: Classroom

Materials Needed:

- *PowerPoint – Miranda Warnings*
- *FG Supp – ANSWER KEY – Miranda Questionnaire from Study Session*

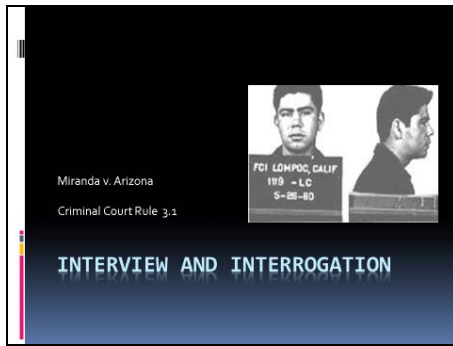
Students Should Already Have:

- *Miranda Pocket Card*
- **[THUMB DRIVE]**
- *HANDOUT – The Bill of Rights*
- *HANDOUT - After Suspect Invokes Rights*
- *Study Session – Miranda Questionnaire*



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Learning Objectives:

- Explain which US Constitutional Amendments the Miranda Warnings are derived from.
- Explain which portion of the Washington State Constitution further solidifies those same rights.
- Recognize which situations trigger the need for Miranda Warnings.
- Compare and contrast custody from non-custody.
- Compare and contrast interview/admin questions from interrogation questions.
- As discussed in class, properly advise a suspect of Miranda Rights.
- Follow the proper procedures for reinitiating questioning or conversation with a suspect who has invoked his/her rights.
- Give examples of Miranda waivers that would be *invalid* and explain why.
- Provide examples of when CCR 3.1 would be sufficient.
- Summarize the rules for children and Miranda waivers.

Fifth Amendment:

"...nor shall (he) be compelled in any criminal case to be a witness against himself."

Sixth Amendment:

"...and have the Assistance of Counsel for his defense."

Article 1, Sec. 9 of the WA Constitution:

"No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense."



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SAY TO CLASS

Imagine that you respond to a report of sounds of a male and female adult arguing loudly in their apartment. When you and you partner arrive, an adult female answers the door with a bloody lip. You can see an adult male in the living room who also has a bloody lip. What would happen if you immediately advised both subjects of their Miranda warnings?

In all likelihood, they would both refuse to answer your questions.

So when is the 'right' time to advise a person of those Miranda warnings?

When is the 'right' time to advise of Miranda?



NOTE TO FACILITATOR

Ask each student to *individually* write down on a piece of paper the 'right' time to advise the subjects in this hypothetical DV scenario of their Miranda rights. Give them a few minutes of silence to think about it and write down their answer. Have them keep that piece of paper for later in the Session.

Miranda v. Arizona

- As a result of the Miranda decision, the U.S. Supreme Court recognized that custodial interrogations are *inherently coercive*.
 - *Custody* refers to formal arrest or restraint to the degree of formal arrest (defacto).
 - *Interrogation* refers to any words or actions that the officer could infer to elicit an incriminating response.

2 Prongs Must be Present:

- Custody
- Interrogation



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Miranda v. Arizona

- The *purpose* of these warnings are to protect the suspect's rights
 - 5th amendment - right to silence
 - 6th amendment - right to counsel
- The *rationale* of these warnings is to remind the detainee of his / her basic protections.

Interview vs. Interrogation

<p>Interview:</p> <ul style="list-style-type: none"> ▪ Non-accusatory ▪ A conversation ▪ Gathering info. ▪ Beginning stages of investigation ▪ Low time factor ▪ Usually out of custody 	<p>Interrogation:</p> <ul style="list-style-type: none"> ▪ Accusatory ▪ Investigator dominates ▪ Guilt should be reasonably certain ▪ Evidence is insinuated ▪ No time limit ▪ Usually in custody
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IMPORTANT POINT

Think of Miranda as a line in the sand. You are *here*, and it's way over *there*... You want to get close to that line without going over. If you throw out the Miranda warnings too early, you can hinder your own investigation. If you cross that line and fail to advise the suspect of Miranda, then you also damage your investigation and violate the person's rights.

The goal is to use questioning techniques to work up to that line in the sand WITHOUT going over - or if you do need to go over, then you need to advise Miranda BEFORE continuing.

Miranda is like a line in the sand.



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Miranda v. Arizona

- Any advisement of rights involves a three step process:
 - *read the detainee the Miranda warnings,*
 - *secure an understanding of the rights,*
 - *obtain a waiver of the rights.*
- Reading of the Miranda rights
 - *read from the card or department form*
 - *Do not rely on your memory!*

Miranda v. Arizona

- Securing an understanding of the rights.
 - You must ask the question, "Do you understand the rights that I have read you?"
 - You need to elicit a declarative response, don't rely on the head-nod.
 - What do we do if the detainee does not understand the rights?

Miranda v. Arizona

- Obtaining a waiver of the rights.
 - A waiver of these rights must be obtained **prior** to the initiation of custodial questioning.
- All waivers **must** satisfy a 3-prong test.
 - The waiver was made *knowingly,*
 - The waiver was made *intelligently,*
 - The waiver was made *voluntarily.*



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- The state carries the burden of showing that the detainee's waiver met this test by clear and convincing evidence.
 - How do we do that?
- Waivers can be obtained in 2 fashions.
 - actual -
 - implied -



IMPORTANT POINT

Waivers can be either actual or implied.

Waivers must be proven in court by clear and convincing evidence.

- Actual or Implied
- Clear & Convincing Evidence

Miranda v. Arizona

- Who may invoke or waive their rights?
 - The detainee ultimately possesses the rights.
 - An attorney can not overrule the detainee's decisions.



BREAK



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SAY TO CLASS

RCW 13.40.140 is the law that governs children and waivers of their rights. This law is in the Criminal Law Student Resource Guide book.

Waiver of Rights – RCW 13.40.140[9]&[10]

Waiver of rights by a juvenile must be made intelligently. Juveniles under the age of 12 shall have a parent, guardian or custodian give any waiver and offer any objection.

Miranda and Children

- A child under the age of 12 years of age cannot waive his or her *Miranda Rights*.
- See RCW 13.40.140(10). The child's parent, guardian, or custodian must waive the child's *Miranda Rights* in order for a confession to be admissible.

Miranda and Children

- If both parents are present, get a waiver from both parents.
- If the parents waive the child's *Miranda Rights*, but the child does not wish to speak to the officer, any confession will probably be ruled inadmissible.

Miranda and Children

- For older children, the presence of the child's parents and whether the child's parents concurred in the waiver of the child's *Miranda Rights* are factors to be considered in the "totality of the circumstances."
- *Dutil v. State*, 93 Wn.2d 84, 93, 606 P.2d 269 (1980).
- Waiver may be in writing or oral. *State v. Rupe*, 101 Wn.2d 664, 678, 683



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5th Amendment Initiation Restrictions

Right to Silence:

Michigan v. Mosley (1975) held that contact with a continuous custody suspect was ok where contact was by other officers investigating different crime 2 hours after the assertion.

Based on lower court decisions since, maybe even same officer on same crime may re-contact if initial assertion of right to silence was fully respected, reasonable time has passed, and full re-Mirandizing occurs before any questioning.

5th Amendment Initiation Restrictions

For right to silence, a meaningful break in custody (at least a few hours), probably lifts bar to initiating contact for either custodial or non-custodial interrogation.

6th Amendment Initiation Restrictions

Right to Counsel:

Edwards (1981), Roberson (1988), and Minnick (1990) in combination hold officers may not initiate contact with continuous custody suspect on any prior crime where suspect asserted right to counsel during custodial interrogation.



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6th Amendment Initiation Restrictions

For right to attorney, under the Maryland v. Shatzer decision, a 14-day rule governs the "break in custody" exception to the initiation bar.

- A break in custody of 14 days or more lifts the bar to resumed custodial interrogation by law enforcement.
- The 14-day break-in-custody rule applies to a person who has remained in jail or prison continuously after having asserted right to counsel, but only after the suspect has been convicted and sentenced.
- Break in custody probably allows officer to contact suspect and request a non-custodial, voluntary conversation before 14 days have passed if officer waits a reasonable period (at least a few hours) prior to re-contact

5TH and 6TH Amendment Initiation Restrictions

As to both right-to-silence & right-to-counsel rules:

- Consultation with counsel does not lift bar.
- Bar exists regardless of whether officer knows of prior invocation by continuous custody suspect.
- Right cannot be anticipatorily invoked outside of custodial interrogation setting.
- Initiation of contact by continuous custody suspect lifts bar.
- New crimes committed after the invocation may or may not be covered, but common sense suggests that new crimes are not covered by the initiation-of-contact bar.

Investigation Techniques

- Remember both custody and interrogation must exist to trigger a need for miranda warnings
- Consider using *non-custodial* opportunities

Does an accusatory conversation with a suspect by phone trigger Miranda?



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IMPORTANT POINT

The answer is "NO" because there is no custody component when the conversation is by phone therefore Miranda is not required.

Miranda NOT
required for phone
interviews



DISCUSSION - Interview Considerations

Some things to consider when interviewing suspects who are not in custody in Department interview rooms:

- Are they free to leave?
- Is the door open or closed?
- Is the suspect positioned in such a way that he/she would not feel able to leave? (i.e. officer between them and the door)

QTC: What other types of situations might make a person feel like they are not free to leave?

QTC: What if the suspect is in custody and makes incriminating statements PRIOR to questioning?

Unless the police are asking questions designed to illicit incriminating responses, then Miranda does NOT apply.



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Criminal Court Rule 3.1

- Washington State guarantees all persons arrested the *right to legal counsel* as soon as possible after arrest.
 - The police maintain the responsibility of providing the resources necessary for contact.
 - Access must be timely upon request.

Criminal Court Rule 3.1

- The trigger for advisement of CcR 3.1 is **arrest**, there **need not** be an **interrogation**.
- CcR 3.1 need not be administered if the Miranda warnings are applied in lieu of.
 - Caution should be taken to ensure the advisement of either as soon as possible after the arrest occurs.

WA Courts & Miranda

To date, our Washington appellate courts have not identified "independent grounds" in our Washington constitution on Miranda issues (this is in sharp contrast to our Washington Supreme Court's multiple "independent grounds" rulings on search-and-seizure issues).

Therefore, federal agency interpretations of Miranda rulings by the Shatzer opinion that distinguished, as follows, the case factually from the U.S. Supreme Court decisions that collectively gave us the initiation-of-contact rule.



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Ethics and Miranda

- What are some of the ethical considerations an officer may want to consider when dealing with a person and their Miranda rights?
 - U.S. Constitution, our fundamental rights.



IMPORTANT POINT

Our state constitution solidifies these rights even more. In other words, it is even stronger than the US constitution with regard to these rights!



NOTE TO FACILITATOR

Spend a moment and have students refer back to their written answer for the 'right' time to advise Miranda for the DV scenario. Ask them how they would adjust their answer after applying this new information.



BREAK/END OF SESSION

