

CRIMINAL RIGHTS CASES - 5th AMENDMENT RIGHT TO REMAIN SILENT

High School level

Grade	Strand	Standard	Code	Benchmark
9	Citizenship and Government	Rights and Responsibilities	9.1.3.3	Explain the scope and limits of rights of the accused pretrial under the Fourth and Fifth Amendments.

Core Concept: Why is the right to remain silent important?

Preliminary Activities:

- Use the following link to read the case summary in *Miranda v. Arizona* (1966):
<https://www.uscourts.gov/educational-resources/educational-activities/facts-and-case-summary-miranda-v-arizona>
- Review a typical Miranda warning here:
<https://www.uscourts.gov/sites/default/files/mirandawarningfinal.pdf>
- Read the text of the Fifth Amendment to the United States Constitution here:
<https://constitution.congress.gov/constitution/amendment-5/>

Discussion Questions

1. What clause in the Fifth Amendment does the *Miranda* decision address?
2. What are *Miranda* rights? What rights are included in a *Miranda* warning?
3. Why does it matter if people in police custody are advised of their rights? What concerns were the *Miranda* warning designed to prevent?
4. What happens if *Miranda* warnings are not given to someone who later faces a criminal trial?
5. Do *Miranda* warnings protect the innocent or the guilty?
6. Why should our justice system protect someone who is guilty?
7. Do you think *Miranda* warnings affect how the police question a suspect? If yes, how so?
8. Do you think *Miranda* warnings make a difference in whether a person decides to talk to police or remain silent? Why or why not?

9. A Miranda warning typically includes a question asking whether the person understands the rights that were read to them. Can you think of situations where the person answers “yes” but does not really understand their rights? What if the person is a juvenile? A non-native English speaker? Hearing impaired or cognitively impaired?
10. If you were given a Miranda warning, would you exercise your right to remain silent or would you answer the officer’s questions? Explain your decision.

Taking it Further: When is a Person in Custody?

Law enforcement officers only need to give a Miranda warning if a person has been taken into custody or otherwise deprived of their freedom of action in any significant way. If a person is not in custody, officers do not need to give them a Miranda warning before asking questions.

The test for deciding whether someone is in custody is whether a reasonable person in the suspect’s position would think they were free to leave when the police are talking to them. If a reasonable person would not feel free to leave, they are in custody.

Access this link to review a sample of real case scenarios showing how courts analyze whether a person is in custody: <https://www.uscourts.gov/educational-resources/educational-activities/related-circuit-court-cases-miranda-v-arizona>

After you have reviewed the case summaries, answer the following questions:

- What factors have many of the courts looked at in determining whether a person is "in custody" for purposes of giving a Miranda warning?
- Are these factors the only ones? What other factors should a court consider?
- What should be a court's ultimate consideration?
- Is there consistency in the court's determinations regarding when a person is in custody and when he is not?
- Should a court take into account factors specific to a particular suspect? Why or why not?