

CLASS 1

READING & BRIEFING

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Monday August 20, 2011

9:00 to 11:30 am

Intro to Fletcher's Teaching Style

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Pure Socratic?



Lecture?

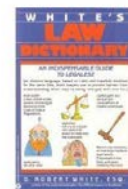


Pure Socratic

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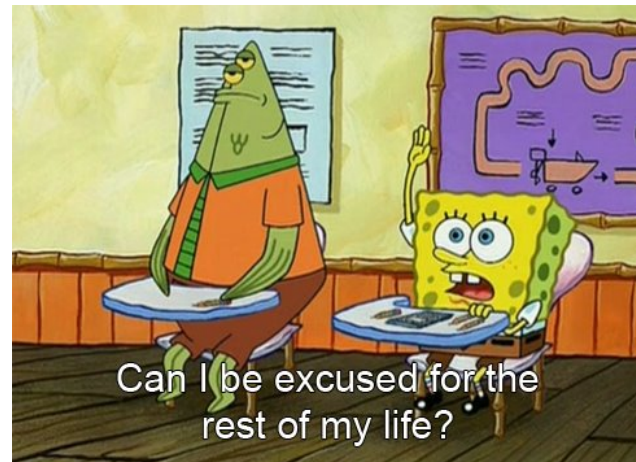
- Professor: Mr. A. What am I thinking right now?
- Student: Uh.
- Professor: Quickly now. You're wasting the other students' time and mine.
- Student: Uh.
- Professor: I'm afraid your future in the law looks bleak.

Paraphrasing from this:



Lecture

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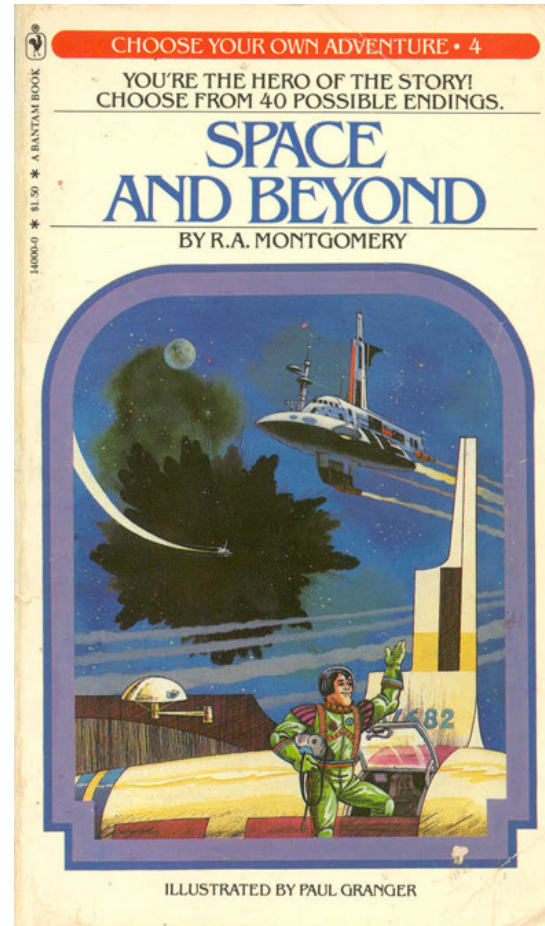


No. Choose Your Own Adventure.

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AKA, soft
socratic;

Not to be
confused with
Cover Your
Own A**



Soft Socratic (CYOA-style)

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Characteristics:

- ❑ Cold calls.
- ❑ Friendliness. Respect.
- ❑ Students lead discussion, while I try desperately to steer them toward what I want to talk about.

Exceptions:

- ❑ Student lack of preparedness.
- ❑ Student not paying attention.
- ❑ Bullying.

Q: When does most bullying happen in law school?

A: IN CLASS

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Enough about my teaching style

9

I'm always in my office. I'm a nerd. Drop by any time.

Turning to Miranda

Ernesto A. Miranda v. State of Arizona
384 U.S. 436 (1966)

Who knows the Miranda Warnings?

11

- Dude looks guilty, doesn't he?



Question Number 1

12

- What are the important facts of *Miranda v. Arizona*?

Question Number 2

13

- What is the holding in *Miranda v. Arizona*?

Question Number 3

14

- What is the reasoning justifying the holding?

15

Active Reading: Today's Skill

Don't I already know how to do this?

Legal Texts Are Different

16

- ▣ Special language
- ▣ Goals of author(s)
- ▣ Goals of reader



Read with Flexibility

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- Do not be constrained by normal rules for reading narrative texts:
 - ▣ **Preview** the opinion to gain an overview
 - ▣ **Reread analytically**
 - **Plan to read at least twice**
 - **Brief the case on your second reading**
 - ▣ **Underline** key language or points
 - ▣ **Think aloud**
 - ▣ **Synthesize** – merge facts, rule and rationale
 - ▣ Engage in a continuous **dialogue** with the reading

Be A Critic

18

- ▣ Evaluate: State **why** you agree or disagree with the court's holding or rationale
- ▣ Contextualize: Consider **how** it compares to other decisions
- ▣ Anticipate: Anticipate **what** its effects will be

A Law Student's Goals

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- Know basic aspects of case or other reading
- Understand conclusion and reasoning
 - ▣ Have an argument ready about both
- Think about relationship to what you've already considered
- Foresee possible effects and applications

Active Reading (see G&S at 63-80)

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□ Read with a **PURPOSE**

▣ Orient yourself

- Identify why you are reading document
 - Why should we care about *Miranda v. Arizona*?
- Identify how the document satisfies the purpose
 - How does *Miranda v. Arizona* satisfy the purpose?

Active Reading

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- Read with a PURPOSE
- **Ask (and answer) QUESTIONS**
 - ▣ What question does the document claim to answer?
 - Some confessions should not be used as evidence
 - ▣ What questions does it fail to address?
 - What confessions should be excluded?
 - ▣ What questions are raised by the answer?
 - Perhaps negative impact on law enforcement?

Active Reading

22

- Read with a PURPOSE
- Ask (and answer) QUESTIONS
- **Distinguish IMPORTANT from IRRELEVANT**
 - ▣ What is necessary to the court's answers?
 - Legally significant facts, etc..
 - ▣ What else might be important to the analysis?
 - ▣ What seems extraneous?

Let's Play “*Relevant or Irrelevant*”!!

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Round 1: *Miranda* vs. *Arizona*



“Defendant’s first name was Ernesto”

24

- ✓ Clearly relevant
- ✓ Possibly relevant
- ✓ Not relevant

**“Defendant was placed under arrest
before he was interrogated”**

25

- ✓ Clearly relevant
- ✓ Possibly relevant
- ✓ Not relevant

“Defendant was taken to a private interrogation room by police”

26

- ✓ Clearly relevant
- ✓ Possibly relevant
- ✓ Not relevant

“Defendant was charged with kidnapping and rape”

27

- ✓ Clearly relevant
- ✓ Possibly relevant
- ✓ Not relevant

“Defendant was questioned for 2 hours by police officers”

28

- ✓ Clearly relevant
- ✓ Possibly relevant
- ✓ Not relevant

“Defendant was not told that he had a right to an attorney”

29

- ✓ Clearly relevant
- ✓ Possibly relevant
- ✓ Not relevant

Active Reading

30

- Read with a PURPOSE
- Ask (and answer) QUESTIONS
- Distinguish IMPORTANT from IRRELEVANT
- **Anticipate WHAT**
 - ▣ What do you mean by your answers?
 - ▣ What does the court (or other legal authority) mean?

Active Reading

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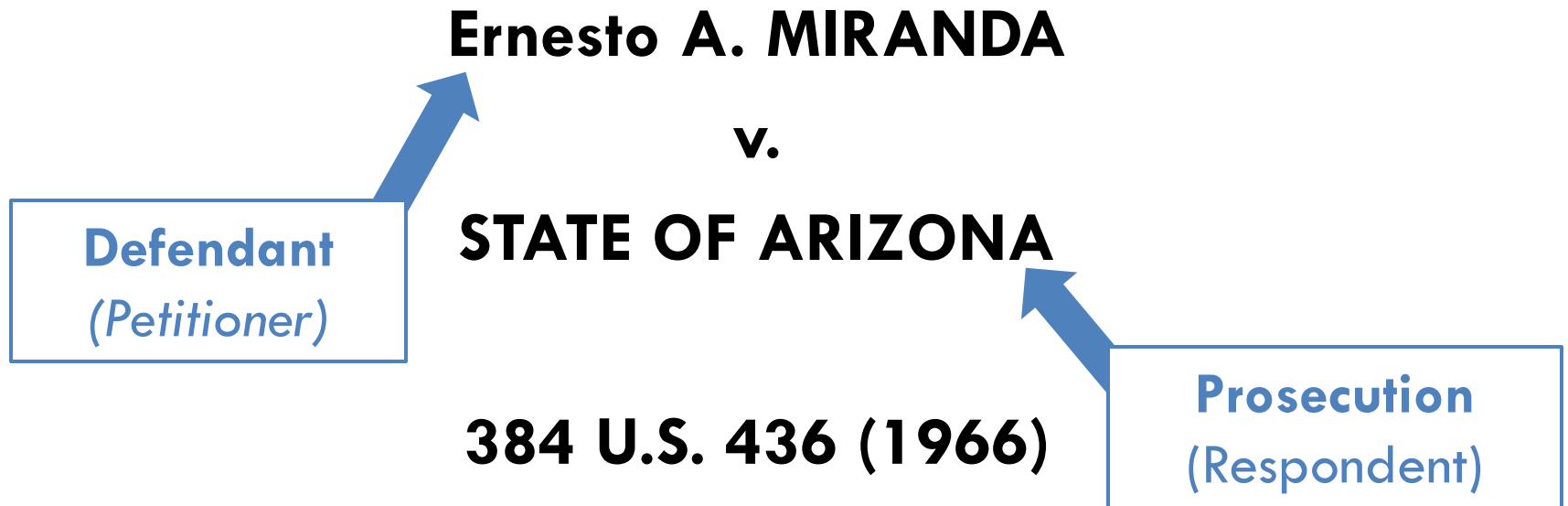
- Read with a PURPOSE
- Ask (and answer) QUESTIONS
- Distinguish IMPORTANT from IRRELEVANT
- Anticipate WHAT
- **Anticipate WHY**
 - ▣ Why did you answer the way that you did?

Returning to Miranda

Ernesto A. Miranda v. State of Arizona
384 U.S. 436 (1966)

Deconstructing the case heading

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What court decided this case?

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Ernesto A. MIRANDA

v.

STATE OF ARIZONA

384 U.S. 436 (1966)

The year in which the court issued the opinion appears after the page numbers.

The number before “U.S.” identifies the volume of the reporter in which the case is printed.

Just a system, like Dewey Decimal

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- Federal cases

- ▣ 446 U.S. 291 (1966)
- ▣ 342 F.2d 684 (9th Cir. 1965)
- ▣ 839 F.Supp. 861 (N.D. Ga. 1993)

When a reporter publishes opinions from more than one court, the court is identified next to the year.

- State cases

- ▣ 401 P.2d 721 (Ariz. 1965)

- Other sources also follow set patterns:

- ▣ Federal statutes (the United States Code)
 - 36 U.S.C. § 301 (1998)
- ▣ State statutes
 - Tenn. Code Ann. § 15-2-112 (2007)
- ▣ Federal regulations
 - 14 C.F.R. § 1217.106 (2009)

Nothing tricky here. Just a way of marking what is where—online and in the library.

Back to Miranda

36

- Who wrote the opinion for the Court?

Supreme Court of the United States

Ernesto A. MIRANDA, Petitioner,

v.

STATE OF ARIZONA

384 U.S. 436 (1966)



Mr. Chief Justice WARREN delivered the opinion of the Court.

The cases before us raise questions which go to the roots of our concepts . . .

Did he write for a unanimous court?

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. . . 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.

Dissenting opinions by Justice Clark and Justice Harlan, whom Justice Stewart and Justice White join, are omitted.



What facts do we know?

38

Just Mr.
Miranda's
case?

We dealt with certain phases of this problem recently in Escobedo v. State of Illinois, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977 (1964). There, as in the four cases before us, . . .

Page 1

What do
they have
in common?

. . . . 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.

Page 2

What is the issue in the case?

39

What
Constitutional
Amendment
might be at
issue here?

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.

Page 1-2

What Part of the Constitution is at Issue?

40

□ **Fourth Amendment**

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

□ **Fifth Amendment**

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

□ **Sixth Amendment**

In all criminal prosecutions, the accused shall . . . have the assistance of counsel for his defense.

Which one?

41

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.

Page 1

What does the Court decide?

42

What does it
mean to be
“in custody”?

What is
interrogation?

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.

Page 7

Next, Perkins

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ILLINOIS, Petitioner

v.

Lloyd PERKINS.

496 U.S. 292 (1990)

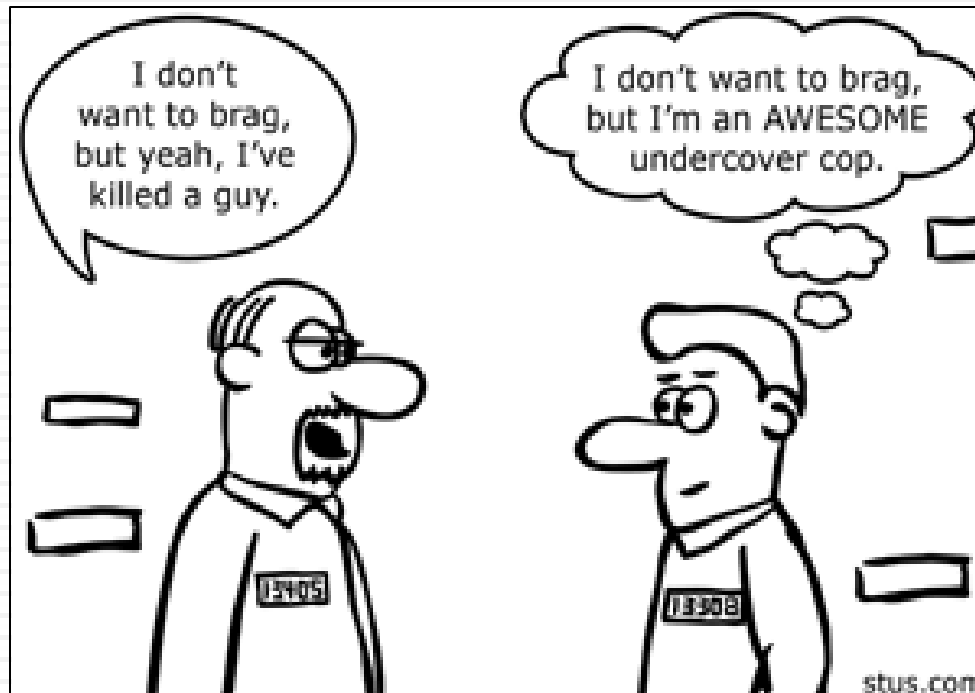
Justice [KENNEDY](#) delivered the opinion of the Court.

An undercover government agent was placed in the cell of respondent Perkins, who was incarcerated on charges unrelated to the subject of the agent's investigation. Respondent made statements that implicated him in the crime that the agent sought to solve. Respondent claims that the statements should be inadmissible because he had not been given *Miranda* warnings by the agent.

Let's Play "Relevant or Irrelevant"!!

44

Round 2: *Illinois v. Perkins*



“At the time of the ‘confession,’
Perkins was incarcerated in jail”

45

- ✓ Clearly relevant
- ✓ Possibly relevant
- ✓ Not relevant

“Donald Charlton was serving
a sentence for burglary”

46

- ✓ Clearly relevant
- ✓ Possibly relevant
- ✓ Not relevant

“The police were acting on a tip from Charlton when they devised the plan for Parisi to pose as a convict”

47

- ✓ Clearly relevant
- ✓ Possibly relevant
- ✓ Not relevant

“Cellblock at jail consisted of 12 cells that opened into a common room”

48

- ✓ Clearly relevant
- ✓ Possibly relevant
- ✓ Not relevant

“Parisi asked Perkins if he had ever ‘done’ anybody”

49

- ✓ Clearly relevant
- ✓ Possibly relevant
- ✓ Not relevant

“Parisi worked under cover
and used an alias”

50

- ✓ Clearly relevant
- ✓ Possibly relevant
- ✓ Not relevant

“Parisi did not give Perkins *Miranda* warnings before the conversations”

51

- ✓ Clearly relevant
- ✓ Possibly relevant
- ✓ Not relevant

“At the time of the confession, Perkins was being held as he awaited trial for an unrelated aggravated battery charge”

52

- ✓ Clearly relevant
- ✓ Possibly relevant
- ✓ Not relevant

“Parisi and Charlton were both clothed in jail garb”

53

- ✓ Clearly relevant
- ✓ Possibly relevant
- ✓ Not relevant

Rhode Island v. Innis (1980)

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Introductions