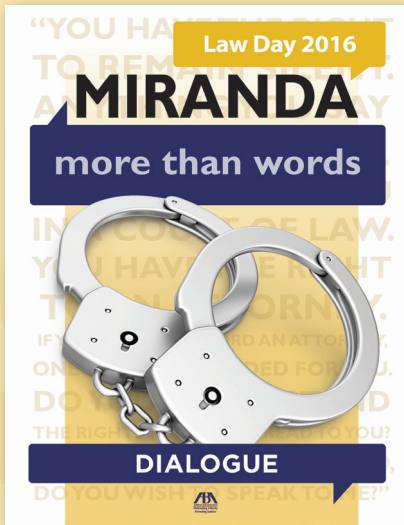


DIALOGUE ON *MIRANDA* — MORE THAN WORDS



OVERVIEW

This *Dialogue Resource Guide* is designed for use by lawyers, judges, teachers, and other community leaders to conduct discussions in the classroom and with youth and community groups.

Fifty years has passed since the announcement of the landmark U.S. Supreme Court decision, *Miranda v. Arizona*. The Miranda warning has become, as Chief Justice William Rehnquist wrote in 2000: “part of our national culture.” The familiar warning has become virtually synonymous with law enforcement and permeates popular consciousness through countless recitations in films and television shows. Yet *Miranda* is only part of the story when it comes to the procedures in place for ensuring justice. This Dialogue seeks to explore the procedural protections afforded to all of us by the U.S. Constitution, demonstrate how these rights are safeguarded by the courts, and explain why the preservation of these principles is essential to our liberty.

Part 1, *Miranda: From Principles to Practice*, discusses the principles behind the *Miranda* warning, the constitutional guarantees that it is meant to uphold, and how they are foundations of our American democracy.

Part 2, *A Fair Sentence*, engages participants in a discussion about sentencing policies. A hypothetical sentencing scenario is presented where participants are asked to apply mitigating and aggravating factors to a sentencing table to illustrate a sentencing process.

Part 3, “*Justus*,” uses a political cartoon to reflect on the debates surrounding police practices in communities across the country. The cartoon presents an opening for discussions regarding how we can protect the principles of *Miranda*.

Formats for the Dialogue may vary according to audience and available time. While three parts are included, one, two, or all three parts may be used at a given time. The three discussions are designed to complement one another and can stand independently. Step-by-step directions and discussion prompts throughout this *Dialogue Resource Guide* are intended to help facilitators engage participants in a robust conversation around the theme, *Miranda: More than Words*.

At www.lawday.org, there are additional resources for conducting the *Dialogue*. Available for download are ready-to-use PowerPoint® presentations for each of the three parts of the Dialogue, which include key graphics and text.

The ABA Dialogue Program

Miranda: More than Words is the fourteenth annual edition of the ABA *Dialogue Resource Guide*. The ABA Dialogue Program provides lawyers, judges, teachers, and other civic leaders with the resources they need to engage students and community members in discussions of fundamental American legal principles and civic traditions. Supreme Court Justice Anthony Kennedy introduced the first Dialogue program, the *Dialogue on Freedom*, in 2002. Subsequent Dialogues have addressed *Brown v. Board of Education*, the American jury, separation of powers, youth and justice, the rule of law, Lincoln and the law, law in the 21st century, the legacy of John Adams, the role of courts, voting, the legacy of Dr. Martin Luther King Jr., and the legacy of Magna Carta.

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PART 1 — MIRANDA: FROM PRINCIPLES TO PRACTICE

Participants will read the Miranda warning and compare it to an excerpt from the U.S. Supreme Court's Miranda decision. Participants will then discuss the constitutional principles that the decision, the Fifth Amendment, and the Miranda warning all share.

» Project, or share, with participants:

The *Miranda* warning

You have the right to remain silent.

Anything you say can and will be used against you in a court of law.

You have the right to talk to a lawyer and have the lawyer present with you while you are being questioned.

If you cannot afford a lawyer, one will be appointed to represent you before any questioning if you wish.

You can decide at any time to exercise these rights and not answer any questions or make any statements.

Do you understand each of these rights as I have explained to you? Having these rights in mind, do you wish to talk to us now?

? Ask participants:

Where have you heard or seen these words?

Participants should recognize this as a common statement made by police officers during an arrest or at a police station. Participants may brainstorm a variety of responses that include television or films.

Allow participants to read the warning line by line to identify particular rights, including the right to remain silent, the right not to have your statements used against you in court, and the right to a lawyer.

What do you think is meant by “the right to remain silent”? Why might it be important to warn someone that anything they say can and will be used against them in court?

Discuss self-incrimination with participants, and introduce the concept, if necessary. Participants might mention certain types of statements, such as confessions, which might be used in court.

Why do you think the warning includes mention of the “right to talk to a lawyer and have the lawyer present” during police questioning?

Participants might identify ways in which lawyers could assist someone during police questioning, including protecting someone against any self-incrimination. Help students understand why a lawyer's advice could be helpful during an interrogation, including explaining the law to the accused, helping the accused understand the possible charges, and advocating for the accused.

Where do you think these words come from? Why are they recited by police?

At their core, these words have their foundation in the Bill of Rights. However, as we know them today, these words come from the Supreme Court. Introduce the students to the Miranda decision. There is a summary of the case at www.lawday.org, if needed. Explain to participants that they will be viewing an excerpt from the Miranda decision.

» Project, or share, with participants:

Excerpt from Supreme Court decision in *Miranda v. Arizona* (1966)

Our holding will be spelled out with some specificity in the pages which follow, but, briefly stated, it is this: ... 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 process that he wishes to consult with an attorney before speaking, there can be no questioning. . . .

? Ask participants:

Did you know that these rights are contained in our Bill of Rights?

Participants may identify several connections. Emphasize the connection to the Fifth and Sixth Amendments to the U.S. Constitution.

» Project, or share, with participants:

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury ... nor shall any person be ... compelled in any criminal case to be a witness against himself ...

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ... and to have the Assistance of Counsel for his defence.

? Ask participants:

Why do you think the Supreme Court thought it was important to let people know about these rights prior to police questioning?

In Miranda v. Arizona, the Court based its holding on an extensive review of actual police interrogation practices. In addition to physical abuse, the police had frequently obtained confessions through a variety of methods, many of which were codified in police manuals and texts. The Court found that “the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals.” As a result, the Court required a warning be given to individuals who were in police custody and about to be interrogated for a particular crime.

? Ask participants:

What might be a situation where a person might want to speak openly with police, without a lawyer present?

Discuss how an individual’s guilt or innocence might contribute to waiving Miranda rights and talking with police.

Do you think that having the police recite the *Miranda* warning to individuals is the most effective way to make people aware of their rights? Are there alternatives to the *Miranda* warning that could protect an individual’s rights when being questioned by police?

Allow participants to discuss this question, and possibly brainstorm other ways of making people aware of their rights. Help students brainstorm some of the possible limitations or challenges of Miranda, including when the police are dealing with a nonnative English speaker, a person with cognitive disability, or a young teen.



PART 2 — A FAIR SENTENCE

This portion of the Dialogue engages participants in a discussion about judicial decision-making and just punishments. A hypothetical sentencing scenario is presented, and participants are asked to apply mitigating and aggravating factors to a sentencing table.

Note: This portion of the Dialogue explores the sentencing phase of a trial, after a person has been found guilty of a crime. Participants will identify factors that contribute to sentencing, such as the type or severity of the crime committed or a suspect's criminal history.

Ask participants:

What factors do you think judges consider when sentencing people who have been found guilty of crimes?

Participants may identify several factors that may influence sentencing, including the severity of crime committed, criminal history, personal history, whether or not the person convicted accepts responsibility, and laws governing the sentencing process.

What types of sentences might a court issue?

Encourage participants to list a variety of sentences, including fines, community service, probation, house arrest, prison time, and, in some states, capital punishment.

Project, or distribute, to participants:

Sentencing Table, available at: www.lawday.org.

Let participants know that judges consider a variety of factors, including sentencing guidelines issued by the federal government. Explain that factors are considered and compiled, and then may be applied to the sentencing table. Explain to participants that they are looking at a sentencing table. The column down the left corresponds with classifications of crimes, with more serious crimes appearing in "Zone D." The row across the top corresponds with criminal history factors related to the person convicted of the crime, with more extensive criminal histories toward the right. The numbers on the table are months of imprisonment, presented in ranges for courts to determine more precisely. Tell participants that you will next work through a sentencing scenario, where they are judges considering factors, and applying them to the sentencing table.

Introduce the sentencing scenario:

Pat, age 20, robbed a house with the help of friends, Robin and Lee. Pat had planned the robbery for months, and had even bought a gun to use during the crime. During the robbery, Pat held the homeowner at gunpoint while Robin and Lee tied him to a chair. Together, Pat, Robin, and Lee stole two televisions, antique jewelry, a hoverboard, a drone, and a hunting

SENTENCING TABLE (in months of imprisonment)						
Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327
35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life

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rifle. In all, the stolen items were worth \$6,000. All of the items were later recovered by police and returned to the homeowner.

Pat was arrested, tried, and convicted of robbery. It was his first offense, and he expressed remorse during the trial. Pat's state has adopted the federal sentencing guidelines for this crime. You are the judge expected to issue Pat's sentence. What do you recommend under the sentencing guidelines?

Ensure that participants understand the scenario as presented, and explain that they will next apply sentencing guidelines to the sentencing table to determine Pat's recommended sentence range.

Continued next panel

Introduce sentencing factors:

Apply the aggravating and mitigating factors to the scenario and guide participants to the relevant rows and columns on the sentencing table as you apply each one. Explain that “aggravating” factors are those that make a crime worse or more serious, for example, the presence of a deadly weapon, while “mitigating” factors do not justify or excuse an offense, but may reduce the punishment. Examples of mitigating factors include showing remorse or a history of substance abuse.

AGGRAVATING & MITIGATING FACTORS FOR CONSIDERATION
Conviction of robbery, or “burglary of a residence” Base offense level: 17 (Zone D)
Did the offense involve more than “minimal planning”? Increase 2 rows (Level 19)
Was the total loss valued at more than \$5,000? Increase 1 row (Level 20)
Was a firearm taken during the robbery? Increase 1 row (Level 21)
Was a “dangerous weapon” used to commit the crime? Increase 2 rows (Level 23)
Was there a victim restrained during the crime? Increase 2 rows (Level 25)
Does the defendant demonstrate responsibility? Decrease 2 rows (Level 23)
Prior convictions, add 1 criminal history point for each 0 points (Category I)
Compute the sentence range 46–57 months

Ask participants:

Did anything about the sentencing process surprise you?

Participants may comment on the structure of the sentencing chart, and the formulas that are used to calculate sentences.

Do you think the sentence range that is advised is adequate given Pat’s crime? What sentence would you, as the judge, recommend within the range? Why?

The sentence for Pat’s crime ranges from 3 years and 10 months to 4 years and 9 months. Encourage participants to explain their thoughts about the sentence range, for example, how do they view the fact that Pat held the owner at gun point? What about the fact that this was his first offense?

Do you think that the factors considered in determining the sentence were appropriate? Were there other factors that should be considered?

Participants may comment on the aspects of the crime or Pat’s criminal history that were considered. Participants may also identify factors such as Pat’s home life, family status, employment status, or potential to become a career criminal, which were not considered.

Why do you think the sentencing chart was introduced?

The sentencing chart was created by the United States Sentencing Commission, which oversees federal sentencing guidelines. The Commission was established following Congress’s passage of the Sentencing Reform Act of 1984. The goals of the sentencing guidelines include standardizing sentences for certain crimes, ensuring consistency and proportionality in sentences issued by federal judges across the country, making the sentences and sentencing process more transparent, and eliminating judicial agendas.

Do the sentencing guidelines offer any flexibility to consider additional factors? To consider alternatives to prison?

There may be flexibility within the sentencing range, for example. The guidelines offer no alternatives to prison for Pat’s case, however. Allow participants to discuss whether or not they think it is appropriate, and, if not, what alternatives to prison they might recommend.

Do you think judges should be required to use guidelines like this? Why?

Encourage participants to discuss whether or not judges should be required to follow the sentencing guidelines, or if they should be advisory. Note that a 2005 U.S. Supreme Court decision, *Booker v. United States*, ruled that mandating that federal judges follow prescribed sentencing guidelines was unconstitutional. “Mandatory” sentencing guidelines became “advisory.” Explore instances where judges might find it appropriate to stray from the guidelines.

Visit www.lawday.org to download Dialogue handouts and PowerPoint® presentations.

PART 3 — “JUSTUS”

Participants analyze a political cartoon to engage in a discussion about police practices in communities across the country.

Refer participants to the cartoon:

Allow participants to look at, and study, the cartoon. Encourage participants to describe the things that they see in the picture.



How does this depiction of law enforcement compare with images or stories that you have seen highlighted in the media? Do you think this is a fair depiction of law enforcement?

Participants may list several recent news stories involving police and citizens from across the country, as well as their own perceptions.

What do you think the cartoonist is trying to say in this cartoon? Do you agree with the cartoonist's message?

Encourage participants to discuss the messages that they think the cartoonist is trying to convey. Participants may suggest that the cartoonist sees certain police practices as unjust, or a violation of certain rights.

The cartoonist titled the image “Justus.” Why do you think he selected that title?

Participants may share a variety of reactions to the cartoon's title. In some ways, “Justus” may be split into “just us,” suggesting that we, as a community, might be the ones to correct any problems that are presented.

What are some of the ways that we as a society can address some of the issues being highlighted in this cartoon?

Allow participants to generate a broader discussion about the relationship between law enforcement and citizens in their community.

Ask participants:

What do you think is happening in the cartoon?

Participants may identify a person running from the police officer, and the police officer standing armed with a gun.

Who is the woman in the cartoon supposed to represent? How do we know?

Lady Justice, the Roman goddess of Justice, who is a personification of the moral force in judicial systems. Her attributes are a blindfold, a balance, and a sword. She is a common symbol in U.S. courtrooms, or for the rule of law.

Why do you think the cartoonist includes such a large tree silhouette in the center of the cartoon?

Participants may offer a variety of suggestions, including that the scene evokes real-life scenarios in the media, that the tree obscures actions that may be taking place behind it, or that the tree emphasizes the visual divide between the work of law enforcement and the pursuit of justice on two separate sides of the image.

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HOW TO DO A DIALOGUE IN THE CLASSROOM OR COMMUNITY

If you are a lawyer, judge, or other leader interested in conducting a Dialogue on *Miranda: More than Words* at a school in your community, follow these steps to help ensure a meaningful experience, for the participants and you.

A note to teachers or community group leaders: If you are initiating the program, please review these steps with legal professionals whom you have asked to conduct a Dialogue.

Step 1. Identify a school or community group. Contact a school where your or your friends' children are students, a school in your neighborhood, or a school where you know members of the teaching staff. You might also contact community groups, for youth and adults, such as the YMCA, Girl Scouts, Kiwanis Club, or League of Women Voters. Friends and co-workers might also recommend a school or community group that would like to participate in the Dialogue program.

Step 2. Set up an appointment for your visit. Contact the school principal, department head (social studies, history, government, or civics), teacher, or community group leader. Explain the program to them and offer them a copy of the *Dialogue Resource Guide*. Ask if they would be willing to schedule a date and time to conduct the Dialogue. They should set aside somewhere between 45 and 90 minutes.

Step 3. Discuss your visit with the teacher or community group leader. Discuss the ages and experiences

of the participants. Determine what part of the Dialogue you would like to focus on and provide the teacher with a copy of the *Dialogue Resource Guide*, focusing on the parts you wish to discuss. In addition, consult with the teacher or community leader about additional background materials that might help participants. Request that name tags or tent cards be printed with the participants' names. Request equipment you will need (e.g., LCD projector, screen, flip chart, or microphones).

Step 4. Prepare participants for your visit. Ask the teacher or community leader to distribute any materials or assign any background readings you want participants to discuss, at least one day before your visit.

Step 5. Prepare and review. Know your subject. Review the *Dialogue Resource Guide* beforehand and think of additional follow-up questions that may help participants explore the issues raised. Using the step-by-step directions and questions in the *Guide*, map out where you would like the discussion to go, but be prepared to respond to participants' questions and provide background information, if needed. As appropriate, personalize the topic by referring to your own experiences or issues in your community.

Step 6. Follow up after the Dialogue. Write a thank-you note to the teacher or community leader. Make yourself available to answer questions participants may raise following the Dialogue on *Miranda: More than Words*.



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