

Miranda v. Arizona / Mini-Moot Court Activity

Florida v. Powell (2010)

An Overview of a Mini-Moot Court

A moot court is a simulation of an appeals court or Supreme Court hearing. The court is asked to rule on a lower court's decision. No witnesses are called, nor are the basic facts in a case disputed. Arguments are prepared and presented on a legal question (e.g., the constitutionality of a law or government action or the interpretation of a federal statute).

Activities

- 1) **Review the facts of the case:** In pairs, read the facts, issues, and constitutional provisions and precedents of *Florida v. Powell* (2010).

Useful Vocabulary:

- **Petitioner:** The person/organization/company who lost in the lower court and now appeals the lower court decision to a higher court.
- **Respondent:** The person/organization/company who won in the lower court and now argues that the lower court decision was correct.

Note: In some states, different terms may be used such as appellant and appellee.

With your partner, discuss the following questions:

- What happened in this case?
- Who are the people/organizations/companies involved?
- How did the lower court rule on this case?
- Who is the petitioner? Who is the respondent?
- What is the legal question that has to be resolved in this case?
- How might *Miranda v. Arizona* apply to this case?

- 2) **Identify the issue in this case:**

- Who was the actor(s)?
- What is the specific part of the Constitution involved?
- Who was affected by the action(s)?
- What caused the controversy?

3) **You will be assigned a role:** You will be assigned to be a petitioner, respondent, or justice for the mini-moot court. You will meet with others in the class who will play the same role to prepare.

4) **Prepare for your role in groups:**

Petitioner/respondent attorney group preparation:

Each group of students should consider:

- What does each side (party) want?
- What are the arguments in favor of and against each side?
- Which arguments are the most persuasive? Why? What counter arguments should you anticipate and how will you rebut them?
- How do the legal precedents, including *Miranda v. Arizona*, influence this case? (A precedent is a previously decided case recognized as the authority for future cases on that issue. Using precedents allows for the development of more sophisticated arguments.)
- What might be the consequences of each possible decision? To each side? To society?
- Are there any alternatives besides what each side is demanding?

Note: Your team should consider all of the facts in the summary. You may not argue the accuracy of the facts. Your arguments do not need to only be rooted in legal technicalities. Any argument that is persuasive from a philosophical, theoretical, conceptual, or practical standpoint can be made. Teams should rely on principles found or implied in the United States Constitution.

Justice/judge preparation:

You should meet with the other justices to discuss the issue involved and any case precedents. You should prepare at least five questions for each side that you need to have answered by the attorneys in order to reach a decision. The questions should not ask about the accuracy of the facts, but rather how the established facts, constitutional provisions, and precedents support each argument. Think about possible hypothetical problems to ask. How will the decision in this case affect other cases in the future?

5) **The mini-moot court:**

Move to a mini-moot triad. Each triad will have a justice, a petitioner, and a respondent.

The justice will run the mini-moot court. The justice should ask each side to present their arguments in the following order:

Initial Presentation	Petitioner	3 minutes
Initial Presentation	Respondent	3 minutes
Rebuttal	Petitioner	2 minutes
Rebuttal	Respondent	2 minutes

Each side gets three minutes for its basic argument and two minutes for rebuttal. Your teacher will be the official timekeeper of the proceedings.

The justice may ask questions at any time in an effort to clarify the arguments. Time continues to run as the justice interrupts to ask questions.

After all arguments have been presented, the justice should consider the arguments and reach a decision. Justices should write their decisions and a brief explanation of the reason they reached that decision including specific arguments and precedents.

- 6) **Handing down decisions:** Return to your original seats to listen to each justice hand down their decisions and the reasons behind them.

Your teacher will share the Court's decision in *Florida v. Powell*.

Florida v. Powell (2010)

Argued: December 7, 2009

Decided: February 23, 2010

Facts

Television shows about police have made Americans familiar with their rights when it comes to being questioned by police. Here is a typical Miranda warning used by a police department:

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to consult with an attorney before answering any questions and the right to have an attorney present during questioning.

If you can't afford a lawyer, one will be appointed for you.

These warnings aim to protect a person's right to be free from compelled self-incrimination during a custodial interrogation. However, the words used in Miranda warnings need not be the same across all police departments. Because different departments may use different wording in their warnings, the clarity of a Miranda warning to a suspect may be an issue. That was the question in *Florida v. Powell*, where the defendant claimed that the warning police gave to him did not clearly convey his right to the presence of an attorney *during* questioning, as opposed to his right to talk to a lawyer before questioning.

Kevin Powell, a former felon, was charged with unlawful possession of a firearm, arrested and taken to the Tampa Police Department. Prior to being questioned by the police, Powell was read the standard Tampa warnings form:

You have the right to remain silent. If you give up the right to remain silent, anything you say can be used against you in court. You have the right to talk to a lawyer before answering any of our questions. If you cannot afford to hire a lawyer, one will be appointed for you without cost and before any questioning. You have the right to use any of these rights at any time you want during this interview.

Unlike the majority of police department warning forms, the Tampa form does not advise individuals expressly of their right to have a lawyer present *during* questioning. Powell agreed to talk to the officers, and signed a form waiving his Miranda rights and stating that he would talk without an attorney present. Powell then made incriminating statements to the officers that were used against him at trial. He was found guilty and sentenced to 10 years in prison.

Powell appealed his conviction, arguing that his Miranda rights were violated. He claimed that the wording of his Miranda warning on the right to counsel—"You have the right to talk to a lawyer before answering any of our questions"—was insufficient. Powell said that it suggested he could only consult with a lawyer *before* questioning and did not make clear his right to the presence of an

attorney *during* questioning. In response, the state argued that this final sentence of the warning—“You have the right to use any of these rights at any time you want during this interview”—adequately conveyed his right to the presence of counsel during questioning.

The state appellate court reversed Powell’s conviction, deciding that the Miranda warnings given were misleading. The Supreme Court of Florida agreed, determining that the Miranda warnings in question did not convey Powell’s right to a lawyer’s presence during and throughout questioning. The state appealed the Florida Supreme Court’s decision, and the U.S. Supreme Court agreed to hear the case.

Issue

Did the warnings Powell received satisfy *Miranda* by reasonably conveying his right to have a lawyer present *during* police interrogation?

Constitutional Amendment and Supreme Court Precedents

– **Fifth Amendment to the U.S. Constitution**

“No person shall be ... compelled in any criminal case to be a witness against himself; nor shall be deprived of life, liberty, or property, without due process of law ...”

This has been interpreted to mean that there is a right against compelled “self-incrimination,” or being forced to make statements used at trial to prove guilt.

– ***Miranda v. Arizona* (1966)**

In 1963, Ernesto Miranda was arrested for kidnapping and rape. After two hours of questioning by the police, Miranda confessed in writing to the crimes. Miranda appealed his conviction, arguing that his confession should have been excluded from trial because he did not have an attorney present during his interrogation. The U.S. Supreme Court ruled for Miranda. It stated that the Constitution allows individuals to talk with an attorney both before and during police questioning and that these rights must be clearly stated to the accused.

– ***Duckworth v. Eagan* (1989)**

When Jack Duckworth was arrested in 1982, he was told by the police interrogating him that he had the right to a lawyer during questioning and that a free attorney would be appointed for him if he could not pay for a lawyer himself. The warnings went on to provide that such a lawyer would be appointed “if and when [Duckworth] goes to court.” Duckworth argued that this wording suggested he did not have a right to appointed counsel during questioning, but only later, at court. The U.S. Supreme Court approved the warnings, ruling that together, they reasonably conveyed the right to have appointed counsel during questioning. The Court held that the exact language in the *Miranda* opinion does not need to be repeated by the police officer, so long as the *Miranda* rights are reasonably conveyed.

Handout I: Justice/Judge

Prepare at least five questions to ask each side (petitioner and respondent). The questions should not ask about the accuracy of the facts, but rather how the established facts, constitutional provisions, and precedents support each argument.

Call the case to order by saying, “We will hear arguments today in (case name).” After hearing arguments from both the petitioner and the respondent, decide whether you think the decision of the lower court should be upheld or overturned. Be prepared to share the reasoning behind your decision.

Case name:	
Constitutional question(s):	
Questions for petitioner:	
Questions for respondent:	

Questions for respondent (cont.):

Notes on the petitioner's argument:

Notes on the respondent's argument:

Notes on respondent's argument (cont.):

Decision:

Reasons for decision (opinion):

Consider the strengths of the arguments and how precedents should be applied. Be sure to consider the impact of your decision on other situations that may arise in the future. If there is a precedent that is directly on point (very similar to your case) and you decide NOT to follow that precedent, be prepared to explain why you are overturning an established precedent (this should only happen on rare occasions and for extremely compelling reasons).

Handout 2: Petitioner

Outline an argument for the petitioner using the established facts, constitutional provisions, and precedents. Predict what questions the justice/judge will ask. Take notes on the respondent's argument to help prepare your rebuttal.

In preparing your arguments, you should think about the following questions:

- Why is the decision of the lower court wrong?
- What decision do you want?
- What are the legal and policy arguments in favor of and against each side? (Anticipating the opposition can strengthen your argument.)
- Which arguments are the most persuasive? Why?
- What are the precedents and how do they influence this case?
- What might be the consequences of each possible decision?

Case name:	
Petitioner:	
Constitutional question(s):	
Precedents that support your argument:	

Argument for petitioner:

Possible questions from justice:

Respondent argument notes:

Rebuttal points:

Handout 3: Respondent

Outline an argument for the respondent using the established facts, constitutional provisions, and precedents. Predict what questions the justice/judge will ask. Take notes on the petitioner's argument to help prepare your rebuttal.

In preparing your arguments, you should think about the following questions:

- Why is the decision of the lower court right?
- What decision do you want?
- What are the legal and policy arguments in favor of and against each side? (Anticipating the opposition can strengthen your argument.)
- Which arguments are the most persuasive? Why?
- What are the precedents and how do they influence this case?
- What might be the consequences of each possible decision?

Case name:	
Respondent:	
Constitutional question(s):	
Precedents that support your argument:	

Argument for respondent:

Possible questions from justice:

Petitioner argument notes:

Rebuttal points: