

# Minnesota v. Murphy

## Learner Outcomes

### Students will:

1. Consider the meaning of the Fifth Amendment privilege against self-incrimination.
2. Understand the historical basis for “pleading the fifth” in criminal cases.
3. Learn about the development of a constitutional right through Supreme Court cases.
4. Apply the self-incrimination decisions to a related situation.

**Materials needed:** *Copies of* **BACKGROUND READING: Pleading the Fifth (optional)**  
**Student Handout: FIFTH AMENDMENT**  
**CASE SUMMARY: Minnesota v. Murphy**  
**Student Handout: CONFESSION CASES**  
**Student Handout: ARGUMENTS FOR SUPPRESSION OF CONFESSION**  
**Student Handout: ARGUMENTS AGAINST SUPPRESSION OF CONFESSION**  
**Student Handout: DECISION: MINNESOTA v. MURPHY**

**Time needed:** 2-3 class periods

**Grade level:** Grades 9-12

### Procedure:

1. Begin by asking students to discuss their understanding of “pleading the fifth.” What does it mean? Who can plead? Can a person plead the fifth in any situation? At home? In school? When stopped by the police?
2. Ask students why a person would plead the Fifth Amendment?
3. Have students read **Student Handout: FIFTH AMENDMENT**. Ask them to identify the language that gives them the power to refuse to answer questions that might incriminate them in criminal actions.
4. Explain to students that the limitations on actions by federal government employees required by the protections of the Fifth Amendment have been extended to states through the Fourteenth Amendment. (**BACKGROUND READING: Pleading the Fifth**)

**Procedure cont.**

5. Discuss what happens when the Fifth Amendment protections are violated. If an individual is entitled to a *Miranda* warning (when the person is in police custody), but is not given the warning, the confession is inadmissible. If an individual is not in a typical custody situation, but does not have a choice about answering incriminating questions, and is not informed of the right to remain silent, the confession will be inadmissible. If a person is merely being asked to volunteer information and is free to speak or remain silent without penalty, a confession given without a warning of the right to remain silent is admissible.
6. Ask students to imagine what would happen if no Fifth Amendment privilege against self-incrimination existed. Would persons be forced to confess to crimes they did not commit by threats and torture?
7. Using the information contained in the **BACKGROUND READING: Pleading the Fifth**, tell students about the development of the Fifth Amendment privilege. Using **Student Handout: CONFESSION CASES**, discuss the cases that were instrumental in the development of the right as it exists today.
8. Ask students to consider situations that are not typical custody cases (in police custody) that would warrant the availability of the right to remain silent. In what type of situations would a person feel forced to tell what he or she knows? If the reason for the Fifth Amendment privilege against self-incrimination is to prevent “coerced confessions,” in what type of situations would these confessions be obtained.
9. Explain to students that the courts look at the circumstances surrounding situations in their efforts to decide if the Fifth Amendment privilege applies (thus prohibiting the use of the confessions in criminal prosecutions.) Facts the courts consider:
  - a. Did the defendant feel free to answer or remain silent?
  - b. Did the defendant believe that there was a penalty for remaining silent?
  - c. Did the questioner believe that the defendant would feel compelled to answer and would believe that a penalty would be given for silence?
  - d. Did the questioner believe that the answers would be incriminating?
10. Have students apply their understanding of the privilege against self-incrimination to a 1984 case *Minnesota v. Murphy*. Ask students to read the **CASE SUMMARY: Minnesota v. Murphy**. Using the **Case Study Activity** provided in the introductory materials, discuss the facts and the issues.
11. Divide students into two groups. One group will represent Murphy, arguing for the privilege against self-incrimination and suppression of the confession. The second group will represent the state of Minnesota, arguing that the privilege does not apply and that the confession should be admissible.
12. Using the **Moot Court Simulation** contained in the introductory materials, argue the case to a student Supreme Court. Suggested arguments for each side are provided. (**Student Handouts: ARGUMENTS FOR/AGAINST SUPPRESSION OF CONFESSION**) In addition, students should be encouraged to develop their own arguments. (The **ARGUMENTS** include facts from the case and Supreme Court decisions from other cases.)

**Procedure cont.**

13. Review the student court's decision. Do other students agree? Share the U.S. Supreme Court decision with the students. (**Student Handout: DECISION: *Minnesota v. Murphy***)
14. Students may have specific questions concerning their right to remain silent. A criminal defense lawyer would be an excellent resource person to answer these questions. Contact the local public defender's office or the state public defender for possible guest speakers.

## Student Handout: 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, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.*

## BACKGROUND READING: Pleading the Fifth

Most criminal cases that contain confessions by the defendant must address the Fifth Amendment provision that says no person “shall be compelled in any criminal case to be a witness against himself.” A brief history of this so-called privilege against self-incrimination is necessary to understand its application to the law of confessions.

Historically in England, people were frequently called and questioned under oath even though the court had no formal accusation against the person. The oath compelled the person to produce testimony that later supplied the basis for a criminal charge. By the seventeenth century, substantial opposition had developed to this procedure, and the principle “no man shall be compelled to accuse himself” developed.

In our courts today, for confessions to be admissible, due process requires that they be voluntary. Voluntariness is assessed by looking at the totality of the circumstances surrounding the confession including the suspect’s age, education, and mental and physical condition, along with the setting, duration, and manner of police interrogation. Some official compulsion or coercion must be present to render a statement involuntary and therefore inadmissible.

This constitutional protection has not always been available to defendants. The development took many years and several key cases. Applying the Fifth Amendment to the U.S. Constitution, the Supreme Court gradually developed the protection against self-incrimination.

In *Bram v. United States*, 168 U.S. 532 (1897), the U.S. Supreme Court ruled that the “voluntariness” of a confession in federal courts had to be determined under the Fifth Amendment Self-Incrimination Clause. In 1943, the Court held that confessions were inadmissible in federal courts if obtained during a period of unnecessary delay in taking an arrested defendant to court for preliminary arraignment. However, the Fifth Amendment did not protect individuals being tried in state courts.

Reviewing for the first time a state conviction involving a confession issue, the Supreme Court held in *Brown v. Mississippi*, 297 U.S. 278 (1936), that the Fourteenth Amendment Due Process Clause governed the admissibility of confessions in state cases.

After thirty years of due process analysis in approximately forty Supreme Court cases, the Court finally incorporated the Fifth Amendment self-incrimination clause into the Fourteenth Amendment and in this way applied the Fifth Amendment to the states (*Malloy v. Hogan*), 378 U.S. 1 (1964). Only one year after applying the right to counsel to state **trials** in *Gideon v. Wainwright*, 372 U.S. 335 (1963), the Court extended the right to counsel to **custodial interrogation** in *Escobedo v. Illinois*, 378 U.S. 478 (1964). Two years later, in *Miranda v. Arizona*, 384 U.S. 436 (1966), the court moved to a self-incrimination clause analysis in custodial interrogation which placed strict limitations on police efforts to obtain confessions. Since then, most confession cases have involved *Miranda*-related issues.

Under *Miranda*, a person in custody must, before being interrogated, be clearly informed that:

1. He or she has the right to remain silent;
2. That anything he or she says can be used against him or her in court;
3. That he or she has the right to an attorney; and that
4. If he or she cannot afford an attorney, one will be appointed by the court, if desired.

If an accused indicates in any manner at any time that he or she wishes to remain silent, the interrogation must end. If an accused requests an attorney, all questioning must end until the attorney is present or the defendant initiates new communication.

### BACKGROUND READING: Pleading the Fifth cont.

An issue that is related to the initiation of new communication concerns the waiver of *Miranda* rights. In other words, did the defendant waive his or her rights when he or she later talked? To be waived, the prosecution must prove that the waiver was knowing, voluntary, and intelligent.

Any confession obtained through violation of these rules will be inadmissible in a criminal trial.

Although, *Miranda* makes it clear that in a custodial situation (for example, after being arrested), defendants have the right to be notified of their right to refuse to answer questions that might incriminate them in criminal cases (“pleading the fifth”), the right to be notified is not so clear in non-custodial situations. In these cases, the court looks for surrounding circumstances that either call for a *Miranda* warning prior to questioning or circumstances that require an individual to assert his or her right to remain silent without being reminded of Fifth Amendment protections.

### ISSUES:

1. Is it a custodial situation, giving the defendant the right to be told of his or her constitutional rights? If so, failure to notify of constitutional rights will make confessions inadmissible.

### BACKGROUND READING: Pleading the Fifth cont.

2. If it is not a custodial situation such as in *Miranda*, are there other circumstances that would indicate a right to be told of the self-incrimination protection? The Court has expanded custodial interrogation to include situations where the defendant is “deprived of his or her freedom of action in any significant way.”

3. Is the person being compelled to answer? Is the statement voluntary? What will happen if the person refuses to answer? Is there a penalty for refusing to answer? If the circumstances indicate that the person was not free to answer or keep silent-- if there is sufficient penalty for not answering the question-- failure to plead the protection of the Fifth Amendment, in absence of a warning that statements made might be used in a criminal prosecution, is not a waiver of Fifth Amendment protection and will not bar the defendant from suppressing the evidence during the trial.

4. Is the person free to answer as he or she chooses? Free to leave the scene? Is there no penalty for refusing to answer? In these cases, it is the responsibility of the individuals to assert their rights to speak or remain silent. If they choose to speak, any confession they make can be used in a criminal case. They are deemed to have waived their privilege against self-incrimination.

The Court has limited the application of *Miranda* in situations that do not constitute “custody” in a police station. The Court narrowed *Miranda* in *Minnesota v. Murphy*, a 1984 Minnesota case.

## CASE SUMMARY: *Minnesota v. Murphy*

465 U.S. 419 (1984)

In 1974, Marshall Murphy was twice questioned by Minneapolis police concerning the rape and murder of a teenage girl. No charges were brought against Murphy. In 1980, Murphy pleaded guilty to a false imprisonment charge arising out of a separate sex-related incident and was given a suspended prison sentence and placed on probation. The terms of his probation required him to participate in a treatment program for sexual offenders, to report to his probation officer periodically, and to be truthful with the probation officer. He was given a letter setting forth the conditions of probation. The letter provided:

**“For the present you are only conditionally released. If you comply with the conditions of your probation you may expect to be discharged at the expiration of the period stated. If you fail to comply with the requirements you may be returned to Court at any time for further hearing or commitment. . . .**

**“It will be necessary for you to obey strictly the following conditions:**

**“BE TRUTHFUL to your Probation Officer in all matters.” (Emphasis in original.)**

Murphy was required to sign the letter, indicating that he had read it and understood the instructions.

Murphy met with his probation officer approximately once a month, and his probation continued without incident until July 1981 when the probation officer learned that he had stopped his treatment program. The officer wrote to Murphy, informing him that failure to set up a meeting would result in an immediate warrant for his arrest. Murphy met with his probation officer in late July. The officer agreed not to seek revocation of his probation for noncompliance because Murphy was employed and doing well in other areas.

In September, Murphy's former counselor in his treatment program informed the probation officer that during one treatment session, Murphy admitted to raping and murdering a young girl. The probation officer decided that the police should have this information. However, she did not provide the information to the police until after a meeting with Murphy.

The probation officer wrote to Murphy, asking him to meet with her to discuss a treatment plan for the remainder of his probation. She did not tell Murphy of her information concerning the rape and murder or about her intent to question him about the crimes.

### **CASE SUMMARY: *Minnesota v. Murphy* cont.**

Murphy met with the probation officer on September 28, 1981. The officer opened the meeting by telling Murphy about the information she had received from the counselor and stating her belief that Murphy needed to continue treatment. Murphy became angry about what he considered to be a breach of his confidence and stated that he “felt like calling a lawyer.” The officer told Murphy that he would have to deal with that problem outside of the office. The probation officer explained that her primary concern was the relationship between the crimes that Murphy had admitted to in treatment and the sex-related incident that led to his conviction for false imprisonment.

During the conversation, Murphy denied the false imprisonment charge but admitted to committing the rape and murder. He tried to convince the probation officer that he did not need further treatment because several extenuating circumstances explained the 1974 crime. At the end of the meeting, the officer told Murphy that she had a duty to tell the police about the murder and rape and tried to convince Murphy to turn himself in.

## Student Handout: CONFESSION CASES

### ***Brown v. Mississippi*** 297 U.S. 278 (1936)

In this case, the defendants, prior to confessing, had been hung from a tree limb and repeatedly whipped. A deputy had informed one defendant that the whipping would continue until the defendant confessed. The Supreme Court held that a state could not use a confession obtained by such violence as the basis for a conviction. Because of *Brown*, a conviction cannot be obtained through the use of a “coerced” or “involuntary” confession.

### ***Escobedo v. Illinois*** 378 U.S. 478 (1964)

Shortly after the defendant’s arrest for murder, the defendant’s lawyer arrived at the police station and asked to see the defendant. The police refused and throughout the night continued to deny the lawyer’s repeated requests. The police also ignored the defendant’s repeated requests to see his lawyer. During interrogation, the defendant denied the crime, even when confronted with a statement that a co-defendant had implicated him. When the police brought the co-defendant into the room, the defendant said “I didn’t shoot Manual, you did it.” Through this statement, the defendant showed that he knew something about the crime. Soon after, the defendant confessed to being involved in the murder. At no time, did the police warn the defendant of his right to refuse to answer questions. The Supreme Court held that the defendant needed the “guiding hand of counsel” to advise him of his rights and that the confession was unconstitutional.

### ***Miranda v. Arizona*** 384 U.S. 436 (1966)

In this case, the defendant, Ernesto Miranda, had been arrested in his home and then taken to a Phoenix police station where he was questioned by two police officers. After two hours in a separate interrogation room, he made a written confession. He was subsequently convicted of kidnapping and rape. The Court held that confessions obtained through custodial interrogation cannot be used in a trial unless the defendant was told of his right to remain silent and right to have an attorney.

## Student Handout: ARGUMENTS FOR SUPPRESSION OF CONFESSION

1. The Fifth Amendment provides that no person “shall be compelled in any criminal case to be a witness against himself.” It has long been held that this prohibition not only permits a person to refuse to testify against himself in a criminal trial in which he is a defendant, but also “privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.”

*Lefkowitz v. Turley*

2. Murphy was required by the court to answer the questions of his probation officer truthfully. Failure to answer truthfully could result in the revocation of his probation.

3. “If an officer of a State asks a person a question under circumstances that deprive him of a 'free choice' to admit, to deny, or to refuse to answer, and he answers the question without attempting to assert his privilege against self-incrimination, his response will be deemed to have been 'compelled' and will be inadmissible as evidence against him.”

*Garner v. United States*

4. “The State will be found to have deprived the person of such 'free choice' if it threatens him with a substantial sanction if he refuses to respond.”

*Lefkowitz v. Turley*

5. “If a threatened person decides to talk instead of asserting his privilege, the State cannot use his admissions against him in a subsequent criminal prosecution.”

*Garrity v. New Jersey*

6. “If a State presents a person with the choice of incriminating himself or suffering a penalty, and he nevertheless refuses to respond, the State cannot constitutionally make good on its threat to penalize him.”

*Sanitation Men v. Commissioner of Sanitation*

7. A reasonable person would interpret the language “be truthful . . . in all matters” as a command to answer honestly all questions presented including questions that might result in incriminating answers.

8. The threat of revocation of probation for failure to answer truthfully was enough of a penalty to make any confession involuntary and therefore inadmissible without a warning of the privilege against self-incrimination.

9. Murphy was provided with a set of official instructions that a reasonable man would have interpreted to require him, upon threat of revocation of his probation, to answer truthfully all questions asked by his probation officer. Probation revocation surely constitutes a “substantial sanction.”

## Student Handout: ARGUMENTS AGAINST SUPPRESSION OF CONFESSION

1. The duty to answer truthfully is not the same as a requirement to answer. A reasonable person would choose not to answer the incriminating question. Failure to make the choice to remain silent makes any response admissible.
2. Murphy was not “in custody” and therefore not entitled to a warning about the privilege against self-incrimination. The meeting with the probation officer was not in a locked room, and Murphy could have left at any time.
3. Murphy was not compelled to answer the questions asked by the probation officer. He was required to speak truthfully if he spoke but there was no requirement that he answer all questions.
4. A general obligation to appear and answer questions truthfully does not convert otherwise voluntary statements into compelled ones. For example, witnesses testifying in a trial take an oath to answer truthfully. They are not informed of their privilege against self-incrimination before they give their testimony. If they are asked a question that asks for an answer that will incriminate them in criminal action, it is their responsibility to claim the Fifth Amendment privilege.
5. “The Fifth Amendment speaks of compulsion. It does not preclude a witness from testifying voluntarily in matters which may incriminate him. If, therefore, he desires the protection of the privilege, he must claim it or he will not be considered to have been ‘compelled’ within the meaning of the Amendment.”  
*United States v. Monica*
6. A witness under compulsion to make disclosures must assert the privilege in a timely manner. Rather than answer the incriminating questions, the witness must assert the privilege against self-incrimination. A well-known exception to this general rule addresses the problem of confessions obtained from suspects in police custody.
7. Murphy was not under arrest, and he was free to leave at the end of the meeting. A different question would be presented if he had been interviewed by his probation officer while being held in police custody or by the police themselves in a custodial setting.
8. Custodial settings contain “inherently compelling pressures which work to undermine the individual’s will to resist and to compel him to speak when he would not otherwise do so freely.”  
*Miranda v. Arizona*
9. Murphy’s meeting with his probation officer was less intimidating than a custodial setting. The interview was arranged by appointment at a mutually convenient time. Murphy was free to leave at any time. His confession was not coerced.
10. There is no proof that refusal to answer the questions would have resulted in the revocation of Murphy’s probation. There is no clear substantial sanction for refusing to answer the incriminating questions.

## Student Handout: **DECISION: MINNESOTA v. MURPHY**

The U.S. Supreme Court reversed the decision of the Minnesota Supreme Court, stating that the Fifth Amendment did not prohibit the introduction into evidence of Murphy's admissions to the probation officer. The decision was based on the following points:

1. The general obligation to appear before his probation officer did not by itself convert Murphy's voluntary statements into compelled ones.
2. If a person is confronted with questions that, if answered, will incriminate him or her in a criminal action, that person **generally** has a responsibility to assert the Fifth Amendment. If he or she chooses to answer the question rather than plead the fifth, the choice is considered to be voluntary.
3. Murphy was not "in custody" for purposes of receiving *Miranda* protection because there was no formal arrest or restraint on freedom of movement.
4. Murphy was not deterred from claiming the privilege against self-incrimination by a reasonably perceived threat of revocation of his probation. There was no proof that failure to answer the questions would have resulted in revocation of his probation.