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This packet is normally a part of a lesson package that includes a corresponding video. See the back page for a special offer for purchasing this video and other videos that correlate to the Introduction to Law & Justice curriculum.

Making Your Case Stick: Part II

Detention, Arrest, and The Miranda

Series III Video 4

Training Guide and Overview
Test Questions and Answers

OBJECTIVES

BLOCK: _____

INSTRUCTOR: _____ **TIME ALLOCATED:** _____

DATE PREPARED: _____ **PREPARED BY:** ALERT

SYNOPSIS: Through lecture, class discussion, the showing of the ALERT instructional video, field training sessions, and the administration of the accompanying test, the training officer or instructor will be able to offer this course in Making Your Case Stick: Part II--Detention, Arrest, and the Miranda.

OBJECTIVES:

1. to understand four Constitutional Problems, "Roadblocks." that can block the trial use of a defendant's prior incriminating statements: Fourth Amendment, Miranda, Voluntariness, and Right to Counsel.
2. to learn three categories of encounters: voluntary contacts, investigative detention, arrests.
3. to recognize when the Miranda rule applies and does not apply.
4. to know how to document the Miranda Warnings and interview to strengthen your case in court.
5. to define spontaneous or voluntary utterances.
6. to discuss the liability concerns of detention, arrests, and the Miranda.

"Making Your Case Stick: Part II--Detention, Arrest, and the Miranda"
Series III Video 4
Training Guide

INTRODUCTION

SHOW VIDEO

I. Four Constitutional Problems, "Roadblocks," can block the trial use of a defendant's prior incriminating statements:

A. Fourth Amendment Problems:

1. to be admissible, an incriminating statement **must not** be the product of an unreasonable search or seizure.
2. arrests and detentions are "seizures" of persons and, like seizures of ordinary evidence, must be reasonable.
3. to be reasonable, **arrests** must be justified by "**probable cause**,"
4. to be reasonable, **investigative detentions** must be justified by "**reasonable suspicion**."
5. an incriminating statement is usually suppressed if it occurs while a defendant is arrested or detained without the required level of factual justification.

**GIVE
EXAMPLES**

B. Miranda Problems

1. the **Miranda rule** requires that if a person in police custody is to be interrogated by police, he first must be informed of his rights to remain silent and to assistance of counsel, and **must choose voluntarily** to give up those rights.
2. this procedural rule protects the defendant's Fifth Amendment privilege against compelled self-incrimination.
3. in a custodial arrest, a defendant will not be found to have waived his rights unless after first being specifically advised of them, he voluntarily and intelligently relinquishes them.

C. Voluntariness Problems

1. the Fifth Amendment's self-incrimination clause requires that, in a criminal case, no person be compelled to be a witness against himself.
2. highly coercive police practices in the interrogation setting also violate the "due process" clause of the Fourteenth Amendment because they are contrary to Supreme Court's notion of "fundamental fairness."

EXAMPLE

Trial use of a confession which was extracted by physical coercion (a beating) is "unfair" and a violation of the **Fourteenth Amendment.**

3. to be admissible at trial, an incriminating statement must be a product of the free and rational choice of the defendant: it must be voluntary.

D. Right to Counsel Problems

1. One right to counsel emerges from the *Miranda* decision: that right is a part of the **Fifth Amendment** right to remain silent and is designed to help protect a person subject to in-custody interrogation from being compelled to incriminate himself. the Fifth Amendment right attaches any time there is police interrogation of a person who is in arrest custody.
2. the **Sixth Amendment** right to counsel, though it does not attaches until formal charging occurs, protects the defendant even in many non-custodial settings and can impose different waiver requirements.

c. subject has not submitted to a show of authority by police

1. tone of voice and use of commands
2. handcuffs
3. number of officers present
4. time of interview
5. place of interview

B. Investigative Detentions

1. requires reasonable suspicion, not probable cause
2. a traffic stop is an investigative detention, not an arrest
3. "would a reasonable person feel free to leave?"
4. **characteristics of an investigative detention from an arrest:**

a. brevity:

- 1) should not exceed ten (10) to fifteen (15) minutes unless probable cause to arrest occurs in the meantime.
- 2) in some cases, a detention of 40-45 minutes can be lawful.

b. no voluntary movement of the suspect

- 1) movement of short distances for safety and security
- 2) movement of subject to a private area within only a few minutes without articulation of security or safety could be deemed an arrest

c. no excessive force:

excessive force is any force which is unreasonable or unnecessary under the circumstances

- 1) reasonable force may be used to effect an investigative detention without converting into an arrest

EXAMPLE

Terry v. Ohio
(1968)

the original "stop and frisk" case, the Court approved a seizure of a person on less than probable cause. the officer grabbed Terry and spun him around before proceeding with frisk.

- 2) in lower court decisions, use of reasonable force in investigative stops has been approved up to and including stops conducted at gunpoint. Thus, even the show of deadly force does not necessarily convert a detention into an arrest.
- 3) handcuffing and/or placing the suspect in a police car, in some states and situations, may be appropriate actions in some investigative detentions where necessary to assure officer safety, or the security of the detainee.

C. Arrests

1. an arrest requires probable cause to believe that the subject has committed a crime.
2. any seizure of a person which goes beyond the limits of an investigative detention is an arrest.
3. an arrest occurs when:
 - a. a reasonable person would not feel to leave; and
 - b. this condition persists for more than the time limits for an investigative detention; or
 - c. there is involuntary movement of the subject a significant distance (or even a short distance, if unexplained in terms of safety and security requirements); or
 - d. there is force used by the police which is in excess of the amount reasonably required for a detention.

EXAMPLE

"Picking up" a person for questioning and transporting him or her involuntarily is an arrest and is an unlawful seizure, unless probable cause is present.

**GIVE
OTHER
EXAMPLES**

III. The Miranda

- A. The rule applies **only** when a person is interrogated **while in police custody**.

Miranda v. Arizona (1966)

EXAMPLE

A suspect who is not in custody can be intensely interrogated at length without Miranda warning, even where investigation has focused on him as a suspect.

- B. An Investigative Detention is brief and usually conducted in public, rather than a police station or jail, and is not an arrest, so giving the Miranda is unnecessary.
- C. If the suspect comes to or remains at the interrogation site (police station) **voluntarily**, there is no Miranda custody.
- D. "Focus of suspicion" is not the test for the warning requirement. **Custody**, not focus, determines whether a person subject to interrogation is entitled to Miranda warnings.
- E. The Test for Miranda custody is objective: Would a **reasonable** person feel that he was subjected to the restraints associated with a formal arrest?" How the **particular** subject might have felt is irrelevant.

**GIVE
EXAMPLES:**

**CLASS
DISCUSSION**

F. Miranda warnings must be given to all individuals prior to custodial interrogation, whether the offense investigated be a felony or misdemeanor traffic offense.

*McCarty v.
Herdman,*
716 F.2D
361,363 (1983)

G. When Miranda Warnings are required, then you must give the following warnings:

1. You have the right to remain silent
2. Anything you say can and will be used against you in a court of law.
3. You have the right to an attorney.
4. If you cannot afford an attorney, one will be appointed for you.

H. If you want to interview the subject, that is, ask guilt-seeking questions, then the subject must waive his or her Miranda rights.

I. To establish a waiver, you must also give two additional warnings:

1. Do you understand what I have told you?
2. Do you wish to make a statement?

J. The subject should be voluntarily submitting to the interview, and the subject can revoke their participation in the interview at any time and invoke their Miranda rights.

K. If at anytime the suspect wants to talk to an attorney, then the interview process must stop immediately.

L. You can document the Miranda warnings and interview with the following:

1. signed waiver
2. audio tape
3. videotape

M. Spontaneous Utterances, Voluntarily Utterances, do not need Miranda Warnings as long as the officer does not direct the interview with guilt-seeking questions, because this instance it is not interrogation--only the suspect talks.

ALERT would like to thank the following individuals for their assistance in putting this video and training together: Randy Means and Bob Thomas, for their research and writing, from **The Law of Interrogation: The Law of Policing in America**; Jim Vermeersch, Attorney at Law; Larry Ruebling; Tim Braun, Prosecuting Attorney for St. Charles County, Missouri; Mark Henke, Chief Investigator, for St. Charles County Office of the Prosecuting Attorney.

CONCLUSION

What you have learned:

ALERT has provided information in a training guide for Making Your Case Stick: Part II--Detention, Arrest, and The Miranda.

We have defined in detail the objectives, lesson plans, evaluations, records, attendance policies, and documentation, and the importance of each of these. Your packet should contain examples of each.

These materials should not supersede departmental policy, and ALERT is not, under any circumstances, dictating that policy.

Instructors, trainers, and law enforcement personnel must consult their own department legal counsel on specifics of the law in their area.

You have permission to makes copies of the written material for your training courses only.

"Making Your Case Stick: Part II--Detention, Arrest, and The Miranda"
Series III Video 4
Test Questions

1. Placing a suspect in handcuffs and in the backseat of a police car for an hour or more would probably be seen as
 - a. voluntary contact
 - b. investigative detention
 - c. arrest
 - d. none of the above

2. The Investigative Detention requires *probable cause*.

True False

3. Any seizure of a person which goes beyond the limits of an investigative detention is an _____.

4. A suspect in the back of your police car voluntarily utters that he committed a robbery across town. What do you do?
 - a. You stop him and read him his Miranda Warnings.
 - b. You let the suspect keep talking, not interrupt, and not direct with questions
 - c. You stop and put the person under arrest.

5. Moving a suspect a long distance from a scene without articulation of why (for security or safety reasons) could suggest that that person is in custody, under arrest.

True False

6. Name the most important factors of when the Miranda rule applies.

_____ + _____

7. Five officers surrounding a suspect in a bedroom could be an example of _____.

Detention, Arrest, and the Miranda 2
Test Questions

8. Can a suspect waive their Miranda rights and then change their mind at any time in an interview?

Yes

No

9. The _____ Stop is a detention that uses reasonable force to effect an Investigative Detention without converting into an arrest.

10. Miranda Warnings must be given to all individuals prior to custodial interrogation, whether the offense investigated be a felony or misdemeanor traffic offense.

True

False

"Making Your Case Stick: Part II--Detention, Arrest, and The Miranda"

Series III Video 4

Test Answers

1. c. arrest
 2. False--reasonable suspicion
 3. arrest
 4. b.
 5. True
 6. custody (or arrest) + interrogation (asking guilt-seeking questions)
 7. show of authority
 8. yes
 9. Terry
 10. True
-

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