



LINCOLN

BAR ASSOCIATION

Law Day 2016, Tuesday, May 3rd
MIRANDA: MORE THAN WORDS

Dear Law Day Presenter:

Thank you very much for agreeing to participate in the Lincoln Bar Association's Law Day 2016 activities planned for Tuesday, May 3, 2016, at several Lincoln area high schools. If for some reason you are unable to fulfill the presentation time slot you signed up for, please try to find a replacement and let Jeff Lapin know about the replacement presenter at jlapin@lapinlawoffices.com or 402-421-8033.

Please see the enclosed packet of materials for presentation guidance. Please be sure to print and bring these materials with you. Materials will be available on the LBA website too. The packet of materials contains:

- Law Day Volunteer Presentation Materials
 - Attachment A: PowerPoint Slides (9 pages)
 - Attachment B: Law Day Theme Materials (3 pages)
 - Attachment C: Law Day Activity (5 pages)
 - Attachment D: FAQs About *Miranda* (4 pages)
 - Attachment E: Lincoln Public School Policies Regarding School Interviews and Searches (3 pages)
- Current Presenter Schedule (4 pages)

The presentation is expected to last approximately 45-50 minutes. Overall, the presentation puts students in scenarios where their Miranda Rights may have been violated. Each scenario is designed to take the words we know from TV and movies ("You have the right to remain silent...") and make them reality; the meaning behind the words. Following each scenario, a discussion will take place on whether a custodial interrogation took place.

Before the presentation, remember to introduce yourself and describe what you do, as the students are very interested in hearing about our profession!

Please arrive at least ten (10) minutes prior to your class period to ensure that we can begin each class promptly. Your confirmed class presentation time is included in the enclosed schedule.

Law Day 2016 will kick off with a presentation to the students by the Chief Justice at 8:00 a.m. at Lincoln High School.

We appreciate your participation in this worthwhile event highlighting the role of the law. If you have any questions about the materials, please contact Kelsey Helget, 402-434-9051 or khelget@krbklaw.com.

Thank you for helping make Law Day 2016 a success!

Very truly yours,


Kelsey L. Helget
Law Day 2016 Committee Chair
Lincoln Bar Association

Enclosures

Lincoln High School is located at 2229 J Street. The main entrance is on the north side of the building. There are visitor stalls in the front of the lot on the north side of the building. Please enter the main entrance and check in with security. You will be given a name tag and escorted to your room.

Lincoln North Star High School is located at 5801 North 33rd Street. There is a separate parking area for visitors located to the north as you face the school, right in front of the building. Use the main entrance and check in at the office immediately inside the front doors. Someone at the office will direct you to the Media Center, where all presentations are being held.

Bryan Community High School is located at 300 South 48th Street. There are parking lots on the North and South side of the building. Feel free to park in either if spaces are available. Enter Door 1, which is located in the center of the building facing 48th Street and check in with the office.

Lincoln Zoo School/Science Focus Program is located at the Lincoln Zoo, 1222 S. 27th Street. Park in the Zoo parking lot and walk to the Zoo Entrance. The Zoo Administration Building is on the left. Sign in at the Administration Building.

Lincoln East High School is located at 1000 South 70th Street. Visitor parking is located on the south side of the building in front of the main entrance. Check in with security at the main entrance.

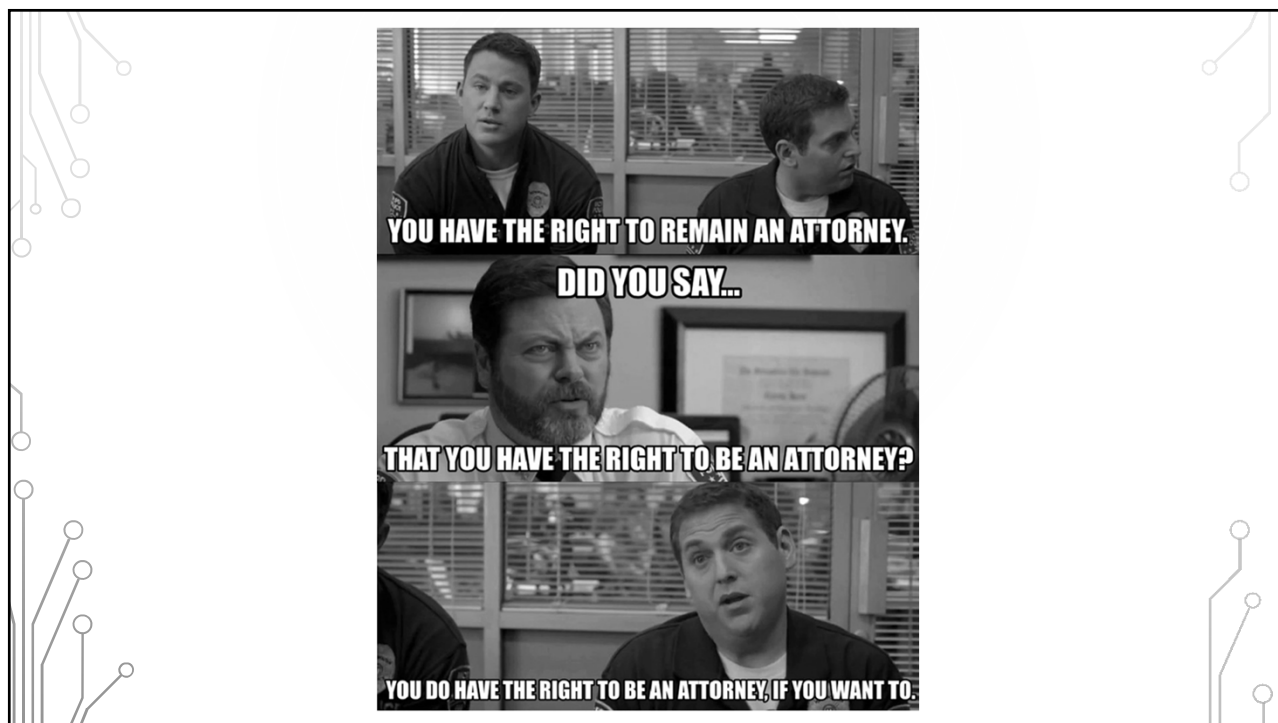
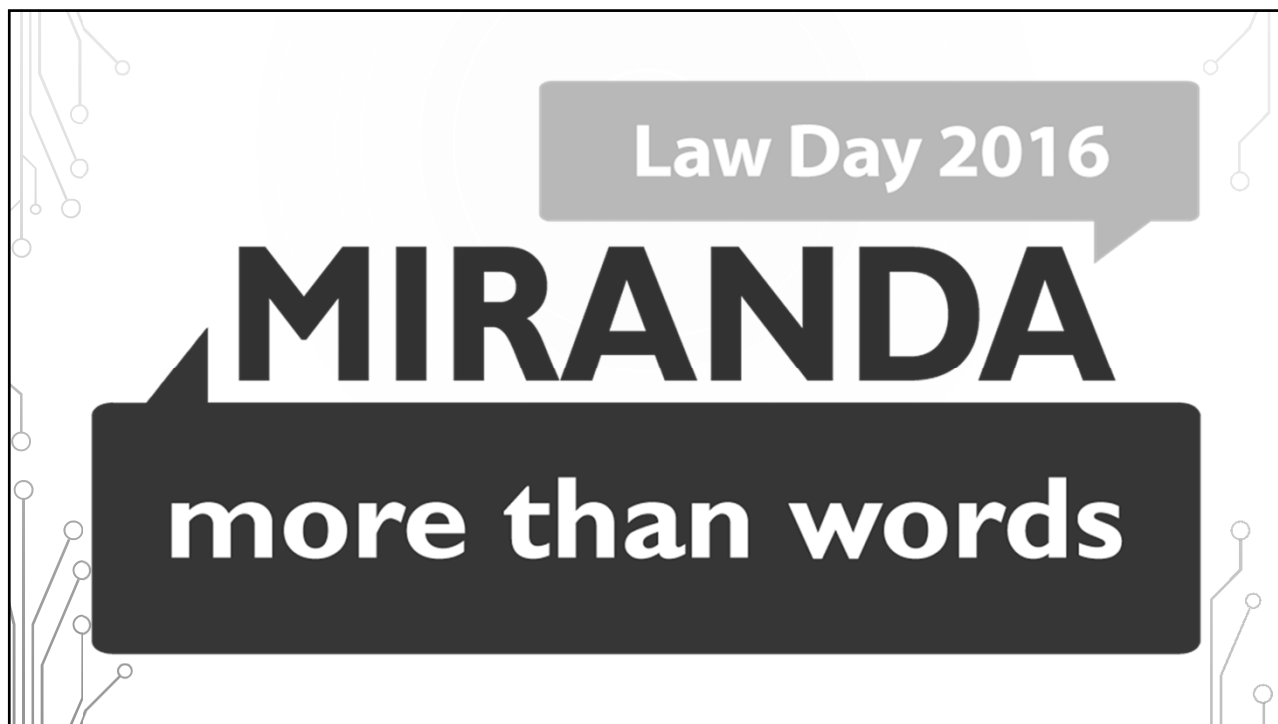
Lincoln Northeast High School is located at 2634 N. 63rd Street. Visitor parking is located on the north side of the building, facing the chain link fence outlining the football field. Go through the front doors and check in security.

Lincoln Southeast High School is located at 2930 South 37th Street. There should be parking spots in the front lot off 37th Street. Check in at the main office. Teacher Noa Craft will escort you to the classroom. If there are no spots in the front lot, there should be street parking in the neighborhood across the street.

Lincoln Southwest High School is located at 7001 South 14th Street (South 14th and Pine Lake Road). There is a guest parking lot to the right just as you enter the school parking area. When you enter the drive, take the very first right and then take a left into the visitors' lot. Go into the office to check in and we will have them direct you to where the presentation will take place.





LAW DAY 2016 PRESENTATION PACKET

- I. Introductions (5 minutes): Introduce yourselves and answer any questions about the practice of law. Describe Law Day. Law Day was established in 1958 by President Dwight Eisenhower to celebrate the role of law and its importance in our society. Each year the American Bar Association establishes a theme for Law Day and this year's theme is "**Miranda: More Than Words.**"
- II. Law Day Theme (10-15 minutes):
 - a. There is a PowerPoint (*see Attachment A*) you will use throughout the presentation which includes the text of the *Miranda* Warnings. The classroom should have the PowerPoint set up for you. If not, ask the teacher to prepare it.
 - b. *Miranda v. Arizona* background. *See Attachment B.*
 - c. When does *Miranda* apply? What is "custodial interrogation"? *See Attachment B.*
- III. Class Exercise (20-30 minutes): *Miranda* Right Scenarios
 - a. Scenarios will be on the PowerPoint as well, so all students can see them.
 - b. You will need one volunteer for each scenario. You will hand them an index card with that scenario on it. You will have the student read the scenario to the class.
 - c. You will have a copy of each scenario on *Attachment C*. On the attachment, you will have questions and explanations listed for each scenario.
 - d. Once the student volunteer finishes reading the scenario ask the corresponding questions listed on *Attachment C*. Use the corresponding explanations to discuss the scenario with the class.
 - e. When a scenario is completed, have another volunteer read the next scenario.
 - f. Get through as many scenarios as you can while leaving time for questions.
- IV. Discussion Topics (10-15 minutes)
 - a. For FAQ about *Miranda*, *see Attachment D.*
 - b. For Lincoln Public School Policies regarding school questions and searches, *see Attachment E.*



The Real...

MIRANDA WARNING

- 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 provided for you. 
- 5 Do you understand the rights I have just read to you?
With these rights in mind, do you wish to speak to me? 

© www.MirandaWarning.org

FACTORS TO CONSIDER

- Where did the interview take place?**
- Who is asking the questions?**
- Who initiated the discussion?**
- What was the style of the interview?**
- How long did the interview last?**
- Was any pressure applied to detain the individual?**

Miranda: more than words

SCENARIO ONE:

Last week, I was contacted by a police officer about a burglary. The officer asked if I would meet him at the police station to talk about it and I agreed. When I got to the police station, the police officer told me I was not under arrest, but that the police station thinks that I was involved in the burglary since they found my fingerprints at the scene. I later found out that this was a lie and my fingerprints were never found at the scene. However, because the police officer told me they had my fingerprints at the scene of the crime, I thought I was busted, so I confessed to the police officer that I was involved in the burglary. After telling him this and answering a few follow-up questions, I left the police station and went home. I was at the station for about a half-hour and I was never read my rights.

Miranda: more than words

FACTORS TO CONSIDER

Where did the interview take place?

Who is asking the questions?

Who initiated the discussion?

What was the style of the interview?

How long did the interview last?

Was any pressure applied to detain the individual?

Miranda: more than words

SCENARIO TWO:

Last week I was driving home from soccer practice and I was pulled over by a police officer for running a red light. I was pretty nervous because there was a bottle of liquor in the back seat of my car leftover from a party last weekend. The police officer approached the driver's side window of my car and shined a bright flashlight straight into my eyes. He then asked "Do you know why I stopped you?" I was so flustered because of the flashlight burning the retinas in my eyes, so I yelled "The bottle in the backseat isn't mine! I didn't drink any of it!" The police officer then asked me to get out of the car; he handcuffed me, and arrested me for open container and minor in possession. While I was being handcuffed, the police officer read me my Miranda rights, at which point I asked for an attorney and shut my mouth.

Miranda: more than words

FACTORS TO CONSIDER

Where did the interview take place?

Who is asking the questions?

Who initiated the discussion?

What was the style of the interview?

How long did the interview last?

Was any pressure applied to detain the individual?

Miranda: more than words

SCENARIO THREE:

My principal came to my class and brought me to a conference room in her office area. After I sat down a man and woman came into the room. The man introduced himself as an investigator with the Sheriff's department and said the lady worked for the Department of Health and Human Services. The investigator told me he was going to ask me some questions about a crime that had occurred. I was interviewed for approximately 30 minutes and I admitted to the crime. During the interview I was not told that I could leave at any time and that I could terminate the interview. No one ever advised me of my Miranda Rights.

Miranda: more than words

FACTORS TO CONSIDER

Where did the interview take place?

Who is asking the questions?

Who initiated the discussion?

What was the style of the interview?

How long did the interview last?

Was any pressure applied to detain the individual?

Miranda: more than words

SCENARIO FOUR:

My friend Sarah and I were taken from our classroom by the Vice Principal. The Vice Principal took me in an empty room and locked the door while Sarah waited in the hallway. The Resource Officer was in the room but she did not ask any questions; she just stood there. The Vice Principal told me I was being questioned because some items were stolen from the locker-room and I had been seen near the locker-room. I admitted to being in the locker-room, but I denied having any of the missing items. The Vice Principal told me she was going to search my bag. The Vice Principal found a wallet that matched the exact description of one of the missing items.

Miranda: more than words

SCENARIO FOUR: (CONT.)

Sarah and I were then taken to the office. We passed by my locker and the Vice Principal asked me to open my locker. Then the Vice Principal searched my locker. At the office, Sarah and I were placed in separate rooms. The Vice Principal continued to ask me questions about the missing items. I was never told I had the right remain silent or the right to counsel. No one told my mom that I was in the office until she came to pick me up after school.

Miranda: more than words

FACTORS TO CONSIDER

Where did the interview take place?

Who is asking the questions?

Who initiated the discussion?

What was the style of the interview?

How long did the interview last?

Was any pressure applied to detain the individual?

Miranda: more than words

SCENARIO FIVE:

Last week I was sitting in class and I saw my assistant principal and the School Resource Officer wearing his "POLICE" shirt with a gun around his belt standing at the front of the classroom. They took me out of class, brought me to the assistant principal's office, and the three of us sat in there with the door closed. Apparently a teacher had found an empty prescription bottle with my name on it on the floor of the boy's bathroom.

Miranda: more than words

SCENARIO FIVE: (CONT.)

The School Resource Officer didn't really talk, but my assistant principal said things to me like "Do you know why you are here" and "Have you seen this prescription pill bottle before?" and "You know our school's policy about bringing medication to school, right?" to which I responded "yes, I did something dumb." The Assistant Principal also told me that someone had told him that I was giving hydrocodone pills away to people at school. When my assistant principal said that, I thought I was busted, so I confessed to them that I had given out pills at school. Then the School Resource Officer told me I was going to be charged with a crime. I was never told I was free to leave or told my rights.

Miranda: more than words

FACTORS TO CONSIDER

Where did the interview take place?

Who is asking the questions?

Who initiated the discussion?

What was the style of the interview?

How long did the interview last?

Was any pressure applied to detain the individual?

Miranda: more than words

LAW DAY 2016

Thank you from the Lincoln Bar Association for
allowing us to spend time with you today celebrating
the traditions of law in our country.

Miranda: more than words

MIRANDA V ARIZONA BACKGROUND

Volunteer: This year's Law Day theme is **MIRANDA: MORE THAN WORDS**. (*Show Slide 1 from PowerPoint.*) This year is the 50th anniversary of the monumental United States Supreme Court case, *Miranda v. Arizona*.

Volunteer: What are some television shows or movies you have seen that show a person being arrested or interrogated by police? What do the officers usually say during the arrest? (*See if any student would like to try their hand at saying the Miranda Warnings. Then show Slide 2 from PowerPoint.*)

Volunteer: Here are the "Miranda Warnings." (*Show Slide 3 from PowerPoint.*) Where do you think this language comes from? (*Take responses from students.*)

Volunteer: The "Miranda Warnings" are a procedural protection to ensure individuals know, are reminded of, and understand the rights given to them under the 5th Amendment of the Constitution. The 5th Amendment provides citizens the right against self-incrimination.

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, ..."

Volunteer: "Miranda Warnings" come from the United States Supreme Court case *Miranda v. Arizona*, which was a consolidation of four different cases presenting the same legal question: whether custodial interrogation should be judged on a case-by-case basis for evidence of police coercion, or instead should require special procedural protections to ensure that confessions are voluntary.

Volunteer: In 1963, a crime was committed [*an 18-year-old woman was kidnapped and raped*] near Phoenix, Arizona. Ten days later, police arrested Miranda and took him to the local police station. Miranda was 23 years old, poor, and educated only to the ninth grade. Miranda also suffered from an "emotional illness." At the station, the victim of the crime identified Miranda, from a lineup, as her attacker, and the police moved Miranda to another room where two officers interrogated him in isolation.

Volunteer: During this interrogation, the police did not employ physical force, threats, or promises. But neither did the police advise Miranda of his right to have a lawyer present during the interrogation. Miranda at first denied his guilt. But after two hours, the police emerged with a signed written confession. This confession included a declaration that the confession "was made voluntarily, without threats or promises of immunity and 'with full knowledge of my legal rights, understanding that any statements I make may be used against me.'" Miranda's confession was admitted at his trial, and he was convicted and sentenced to prison.

Volunteer: In reviewing Miranda's conviction, the Supreme Court acknowledged that Miranda's statements were voluntary. Yet, the Court emphasized, "[t]he fact remains that in

ATTACHMENT B: *MIRANDA V. ARIZONA*

none of these cases did the officers undertake to afford appropriate safeguards at the outset of interrogation to insure that the statements were truly the product of free choice.” The four *Miranda* warnings, the Court ruled, supply these appropriate safeguards. These safeguards should, at a minimum, be guaranteed to persons who are in such a situation where they would be compelled to incriminate themselves.

Volunteer: The Supreme Court thus pivoted in *Miranda* from a rule that merely prohibits coercive police conduct to a rule that requires the police to *prevent* coercion by giving a suspect specific legal warnings. This is the significance of *Miranda*. **No longer were confessions admissible solely because the police abstained from bad behavior in securing the confession.** Now, the police must **affirmatively** warn suspects of their right to remain silent and to have a lawyer. **If the police do not give these warnings, a court will presume, solely from the lack of *Miranda* warnings, that the statement was involuntary and exclude it from trial.**

Volunteer: Why do you think the Court thought these rights are important to protect? Why does it matter if people, who are in police custody, are advised of their rights? (*Take responses from students.*)

Volunteer: Based on what you have learned so far, what do you think happens if “*Miranda* Warnings” are not given to someone who later faces a criminal trial? (*Take responses from students - looking for “their statements cannot be used at trial” or something similar.*)

Volunteer: After *Miranda*’s conviction was overturned by the Supreme Court of the United States, the State of Arizona re-tried him. At the second trial, *Miranda*’s confession was not introduced into evidence. *Miranda* was convicted again and sentenced to 20-30 years in prison.

WHEN DOES MIRANDA APPLY?

Volunteer: What circumstances do you think the *Miranda* decision applies? (*Take responses from students.*)

Volunteer: An individual subject to a custodial interrogation must be given their “*Miranda* Warnings” prior to being questioned. The *Miranda* Decision held, “the prosecution may not use statements... stemming from **custodial interrogation** of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.”

Volunteer: Ever since the *Miranda* decision, courts have tried to interpret exactly what situations constitute a “custodial interrogation.” What do you think it means? (*Take responses from students.*)

Volunteer: The Court in *Miranda* held that “by custodial interrogation, [they meant] questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.”

ATTACHMENT B: *MIRANDA V. ARIZONA*

Volunteer: What type of questioning do you think constitutes “interrogation”? (*Take responses from students.*) What if a police officer asks you what your name is or asks for your license? Is that an “interrogation”? (*Take responses from students.*)

Volunteer: Interrogation means explicit questioning or actions that are reasonably likely to elicit an incriminating response. Giving a police officer your name or your license or your address would not constitute an “incriminating response.” Not giving this basic information to a police officer might end up getting you in trouble.

Volunteer: To determine whether the *Miranda* decision applies, courts consider whether the individual was in custody and whether the individual was being interrogated. To do this, Courts consider the “totality of the circumstances” which means they look the specific facts of the case and consider whether a reasonable person would have believed he or she was free to leave the situation.

Volunteer: What are some factors you think courts might consider to determine whether the individual was in custody when the interrogation took place? (*Take responses from students.*)

Volunteer: (*Show Slide 4 from PowerPoint.*) Some factors a court may consider are: **where the interview took place** - was the individual at a police station, in their home, in their car, at school, outside in the community...

Volunteer: **Who is asking the questions** - was it a police officer, a school official...

Volunteer: **Who initiated the discussion** - was the individual approached or called over by the one asking questions, did the individual approach the police officer and start talking to him, did the individual consent to speak with the police officer...

Volunteer: **What was the style of the interview** - was the individual asked *routine* questions, was individual asked *accusatory* questions...

Volunteer: **How long did the interview last** - a few minutes, thirty minutes, an hour, a few hours, several hours...

Volunteer: **Whether any pressure was applied to detain the individual** - was the individual told they could or could not leave, was the individual in physical restraints like handcuffs, was someone blocking the exit/doorway, did the police officer(s) display weapons, was there a threatening presence of multiple police officers...

Volunteer: This is not an exhaustive list. There are many things the court may consider important, like whether there was a language barrier between the individual and the police officer.

We are going to use the factors we have discussed (see Slide 4 of the PowerPoint) in the following activity. I am going to need some volunteers to read scenarios to the class. After each scenario we will determine whether the Miranda decision applied.

NOTE: Each Scenario is on the PowerPoint followed by a slide with the factors listed again.

NOTE: Ask the student volunteer to introduce himself/herself and then read the scenario. Once the student begins reading the scenario, switch to that slide. After the student completes the scenario, thank the student and let them return to their seat before beginning the discussion. When you begin the discussion, switch to the next slide, which should list the factors to consider when determining whether there was a custodial interrogation.

SCENARIO #1 - NO CUSTODIAL INTEROGATION

Last week, I was contacted by a police officer about a burglary. The officer asked if I would meet him at the police station to talk about it and I agreed. When I got to the police station, the police officer told me I was not under arrest, but that the police station thinks that I was involved in the burglary since they found my fingerprints at the scene. I later found out that this was a lie and my fingerprints were never found at the scene. However, because the police officer told me they had my fingerprints at the scene of the crime, I thought I was busted, so I confessed to the police officer that I was involved in the burglary. After telling him this and answering a few follow-up questions, I left the police station and went home. I was at the station for about a half-hour and I was never read my rights.

RECOMMENDED QUESTIONS

- Who thinks (*student volunteer*) should have been read his/her rights?
- Who thinks (*student volunteer*) was in custody?
- What factors are present in this case?

EXPLANATIONS

- Facts taken from *Oregon v. Mathiason*, 429 U.S. 492 (1977).
 - SCOTUS found “there was no indication that the questioning took place in a context where [Mathiason’s] freedom to depart was restricted in anyway. He came voluntarily to the police stations, where he was immediately informed that he was not under arrest. At the close of a ½-hour interview, [Mathiason] did in fact leave the police station without hindrance. **It is clear from these facts that Mathiason was not in custody ‘or otherwise deprived of his freedom of action in any significant way.’**”
- This means that Mathiason’s confession could be used against him. The police did not have to read Mathiason his ‘Miranda Rights’ because he was not in custody.

NOTE: Remind students that a “custodial interrogation” is what initiates the procedure of being read ‘Miranda Rights.’

SCENARIO #2 - NO CUSTODIAL INTERROGATION

Last week I was driving home from soccer practice and I was pulled over by a police officer for running a red light. I was pretty nervous because there was a bottle of liquor in the back seat of my car leftover from a party last weekend. The police officer approached the driver’s side window of my car and shined a bright flashlight straight into my eyes. He then asked “Do you know why I stopped you?” I was so flustered because of the flashlight burning the retinas in my eyes, so I yelled “The bottle in the backseat isn’t mine! I didn’t drink any of it!” The police officer then asked me to get out of the car; he handcuffed me, and arrested me for open container and minor in possession. While I was being handcuffed, the police officer read me my Miranda rights, at which point I asked for an attorney and shut my mouth.

RECOMMENDED QUESTIONS

- Who thinks (*student volunteer*) should have been read his/her rights earlier?
- Who thinks (*student volunteer*) was being interrogated when s/he admitted to having a bottle of liquor in the car?
- Who thinks (*student volunteer*) was in custody when s/he admitted to having a bottle of liquor in the car?

EXPLANATIONS

- Scenario loosely taken from *Berkemer v. McCarty*, 425 U.S. 341 (1976).
 - Court stated, “We conclude, in short, that respondent was not taken into custody for the purposes of *Miranda* until Williams arrested him. Consequently, the statements respondent made prior to that point were admissible against him.”
- The roadside questioning of a motorist detained pursuant to a routine traffic stop does not constitute “custodial interrogation” for the purposes of the *Miranda* rule. Although an ordinary traffic stop curtails the “freedom of action” of the detained motorist and imposes some pressures on the detainee to answer questions, such pressures do not sufficiently impair the detainee's exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights.
- A traffic stop is usually brief, and the motorist expects that, while he may be given a citation, in the end, he most likely will be allowed to continue on his way. Moreover, the typical traffic stop is conducted in public, and the atmosphere surrounding it is substantially less “police dominated” than that surrounding the kinds of interrogation at issue in *Miranda* and subsequent cases in which *Miranda* has been applied.
- However, if a motorist who has been detained pursuant to a traffic stop thereafter is subjected to treatment that renders him “in custody” for practical purposes, he is entitled to the full panoply of protections prescribed by *Miranda*.

SCENARIO #3 - CUSTODIAL INTERROGATION

My principal came to my class and brought me to a conference room in her office area. After I sat down a man and woman came into the room. The man introduced himself as an investigator with the Sheriff's department and said the lady worked for the Department of Health and Human Services. The investigator told me he was going to ask me some questions about a crime that had occurred. I was interviewed for approximately 30 minutes and I admitted to the crime. During the interview I was not told that I could leave at any time and that I could terminate the interview. No one ever advised me of my Miranda Rights.

RECOMMENDED QUESTIONS

- Who thinks (*student volunteer*) should have been read his/her rights?
- Who thinks (*student volunteer*) in custody?
- If (*student volunteer*)'s case goes to court, should his/her confession be used as evidence?

EXPLANATIONS

- Facts taken from *State v. C.H. (In re C.H.)*, 277 Neb. 565 (2009).
 - Further facts include:
 - C.H.'s father did not object to the interview and he and C.H.'s stepmother expressed they were not willing to allow C.H. to return to their home following the interview.
 - Before meeting with C.H., the investigator determined he would detain C.H. and take him to the juvenile detention center at the conclusion of the interview.
 - At the conclusion of the interview, the investigator informed C.H. that he was going to be detained and taken to the juvenile detention center.
 - The Court concluded, "that someone in C.H.'s position would not believe he was at liberty to terminate the interrogation and leave. **C.H. was 'in custody' for purposes of *Miranda* protections. Since he was not advised of his *Miranda* rights, the juvenile court erred in failing to suppress his confession.**"

SCENARIO #4 - NO CUSTODIAL INTEROGATION

My friend Sarah and I were taken from our classroom by the Vice Principal. The Vice Principal took me in an empty room and locked the door while Sarah waited in the hallway. The Resource Officer was in the room but she did not ask any questions; she just stood there. The Vice Principal told me I was being questioned because some items were stolen from the locker-room and I had been seen near the locker-room. I admitted to being in the locker-room, but I denied having any of the missing items. The Vice Principal told me she was going to search my bag. The Vice Principal found a wallet that matched the exact description of one of the missing items. Sarah and I were then taken to the office. We passed by my locker and the Vice Principal asked me to open my locker. Then the Vice Principal searched my locker. At the office, Sarah and I were placed in separate rooms. The Vice Principal continued to ask me questions about the missing items. I was never told I had the right remain silent or the right to counsel. No one told my mom that I was in the office until she came to pick me up after school.

RECOMMENDED QUESTIONS

- Who thinks (*student volunteer*) should have been read his/her rights?
- Who thinks (*student volunteer*) in custody?
- Who thinks (*student volunteer*)’s parents should have been notified she was being questioned about the theft?

EXPLANATIONS

- Facts taken from *Cason v. Cook*, 810 F.2d 188, 193 (8th Cir. 1987).
 - The vice-principal had asked the police liaison officer to accompany her. The police liaison officer did not initiate the investigation or the interviews.
 - Court held that a student who was interviewed by the vice-principal, with a police liaison officer present, was not “in custody.” Therefore it was irrelevant that she had not been informed of her right to remain silent or of a right to counsel.
 - The court further said the failure to notify the student’s mother prior to the student being questioned and searched was not unlawful as the student was not in custody.
 - “We do not hold that a search of a student by a school official working in conjunction with law enforcement personnel could never rise to a constitutional violation, but only that under the record as presented to the court, no such violation occurred here.”

SCENARIO #5 - CUSTODIAL INTERROGATION

Last week I was sitting in class and I saw my assistant principal and the School Resource Officer wearing his "POLICE" shirt with a gun around his belt standing at the front of the classroom. They took me out of class, brought me to the assistant principal's office, and the three of us sat in there with the door closed. Apparently a teacher had found an empty prescription bottle with my name on it on the floor of the boy's bathroom. The School Resource Officer didn't really talk, but my assistant principal said things to me like "Do you know why you are here" and "Have you seen this prescription pill bottle before?" and "You know our school's policy about bringing medication to school, right?" to which I responded "yes, I did something dumb." The Assistant Principal also told me that someone had told him that I was giving hydrocodone pills away to people at school. When my assistant principal said that, I thought I was busted, so I confessed to them that I had given out pills at school. Then the School Resource Officer told me I was going to be charged with a crime. I was never told I was free to leave or told my rights.

EXPLANATIONS

- Facts taken from *N.C. v. Commonwealth of Kentucky*, 396 S.W.3d 852 (2013):
 - On its face it was a school discipline proceeding. The student had no reason to believe that he was facing criminal charges. The medicine he brought to school was his legal prescription, and he was aware that violated school rules. There was no indication he sold or tried to sell the pills he gave the other student. It was not until the questioning was over and the confession made that the law enforcement officer told defendant that he was placing felony criminal charges against him.
 - The Court stated, "To the extent that school safety is involved, school officials must be able to question students to avoid potential harm to that student and other students and school personnel, **but when that questioning is done in the presence of law enforcement, for the additional purpose of obtaining evidence against the student to use in placing a criminal charge, the student's personal rights must be recognized.**"
- Difference between this case and *Cason v. Cook*:
 - "The assistant principal admitted at the suppression hearing that he knew how the SRO operated in criminal investigations, since this was not their 'first go around' interrogating juveniles together. The officer also testified about what the assistant principal usually did in questioning a student in the officer's presence. Clearly, the assistant principal and the officer had a loose routine they followed for questioning students when there was suspected criminal activity."
 - "The SRO further testified that he was present throughout, and participated in the discussion. He was either wearing his uniform or a shirt that said "Sheriff's Office," and was armed with a gun."
 - "It was [the SRO's] decision to file charges against N.C. At no time did the SRO tell N.C. that he was free to leave or give him any version of the Miranda warnings, though the officer obviously understood that the hydrocodone was a scheduled narcotic, as evidenced by the charges he filed in juvenile court.

DEFINITIONS

***Miranda* Warnings Language**

Supreme Court held, “Prior to any questioning, the person must be warned [1] that he has a right to remain silent, [2] that any statement he does make may be used as evidence against him, and [3] that he has a right to the presence of an attorney, [4] 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...”

Custody

Formal arrest or the deprivation of freedom to an extent associated with formal arrest

Interrogation

Explicit questioning *or actions* that are reasonably likely to elicit an incriminating response. The police do not need to give the *Miranda* warnings before making an arrest, but the warning must be given before interrogating a person while in custody.

Incriminate

To cause (someone) to appear guilty of or responsible for something (such as a crime).
To accuse of or present proof of a crime or fault.

Self-Incrimination

Incrimination of and by oneself especially through testimony

Coercion

The practice of persuading someone to do something by using force or threats. Force or the power to use force in gaining compliance, as by a government or police force.

Affirmative

Saying or showing that the answer is “yes” rather than “no.”

QUESTIONS RECEIVED FROM SCHOOLS IN ADVANCE

Must parents be present if a minor is being questioned while in custody?

- Parents or guardians must be notified when a minor is taken into custody. N.R.S. 43-250. However, they have no right to be present during the custodial interrogation. The minor’s right against self-incrimination is personal and cannot be asserted by his or her parents (or guardians). *See In re Branden S.*
- Parents do not have to be contacted prior to questioning or a search that occurs when the minor is not in custody. *See Cason v. Cook.*

Can ‘not talking’ be held against you, even if you have that right?

- A **big** part of *Miranda* is to provide you with counsel, and to advise you that what you say could be used against you.
- You absolutely **DO NOT** have to answer questions by the police without counsel, and that itself typically cannot be held against you. A prosecutor could make charging decisions based in part on your willingness to cooperate with an investigation, but they won’t likely admit that they would do that.
- There is a specific jury instruction given regarding a defendant’s right not to testify at trial (to remain silent).
- Some cases however have upheld a police officer’s observations of a suspect’s conduct, including silence as admissible evidence, without concluding that the silence is an admission of guilt.

What if the person can’t speak English? How do the police tell a deaf person their *Miranda* rights?

- Each department has procedures to address those situations. Remember, an interpreter would need to be used for the questioning (interrogation) or interpreting a voluntarily made statement, so they would also be available for the advisement of rights.
- If there is a waiver by a defendant, there will later be a determination if that waiver and subsequent statements were valid if the State is going to use them against a Defendant. The ability of a non-English speaking Defendant to give a valid waiver could be an issue addressed later if the statements are going to be used against them.

What if you were not informed of your rights?

- A criminal defense attorney would likely advise you not to answer questions or give a statement without first speaking to a lawyer, whether you have been advised of your rights or not.
- If you’ve given a statement and were not advised of your rights, speak to your attorney about suppressing any statements you may have made.

If they have not read you your rights and you admit you did the crime what would happen?

- It depends where you are, when you said that, and other circumstances to determine if *Miranda* applies, (i.e., **were you in custody**, did you ask to have a lawyer present, were you forced to make that statement, and were you in a frame of mind to understand that you were waiving your rights?)
- It may not matter anyway if there is other evidence of the crime sufficient to convict you.

What kinds of things have an accused person said without a lawyer being present that's been used against them?

- I killed him.
- Those are my drugs.
- I stabbed her.
- I drove that stolen car.
- People often admit they have committed a crime despite their right not to do so.
- Remember, *Miranda* doesn't apply if you aren't in custody, so non-custodial statements are often used against a Defendant.

Why do they tell you that they might lighten your sentence if you talk or give information?

- They **SHOULDN'T** be doing this...
- Sometimes agreements are reached with prosecution if you agree to cooperate and provide useful information regarding that investigation, or other investigations.
- The police do **NOT** have the discretion to control what a prosecutor is going to do with the information they receive on a charge though.
- In federal crimes, your willingness to cooperate is evidence that can specifically be considered at sentencing.

When in the process can someone let a person of authority know that their *Miranda* rights are being violated?

- They can refuse to speak, request an attorney, or state that they feel their *Miranda* rights are being violated at any time.
- Their *Miranda* rights may not apply yet if they are not in a custodial interrogation however.
- If they feel that their rights had been violated, they would then want to discuss this with their attorney.

Are there any questions you are required to answer?

- You are Constitutionally protected from incriminating yourself, however, if you fail to answer basic questions, you may face a charge for failing to cooperate with an investigation, etc., or if you answer untruthfully (i.e., fake name, etc.) you may be faced with a charge for giving a false statement, felony impersonation, etc.
- If you are driving, you have agreed to provide identifying information and proof of license and insurance as part of your agreement in becoming a licensed driver and using public roadways.
- **REMEMBER** *Miranda* only applies to a **custodial** interrogation. These type of preliminary questions are likely asked prior to *Miranda* applying.

What, if anything, would disqualify you from your rights being protected?

- You **must be in custody** in order for *Miranda* to apply.
- If you go ahead and make a statement after being advised of your right to an attorney and silence, often those statements are held to have been made following a valid waiver.

What, if anything, disqualifies you from your rights – for example being suspected of being a terrorist?

- There is only one exception to *Miranda*, and that is the public safety exception. In order for it to apply, there must be a presence of a public safety concern, limited questioning, and voluntariness.
- According to the Supreme Court, the public safety exception is triggered when police officers have an objectively reasonable need to protect the police or the public from immediate danger.

How often does it happen that an officer doesn't inform someone of their rights, and as a result the accused can't be tried or convicted?

- There are not good statistics on this because there is no centralized database to track this.
- Not every failure to inform someone of their rights will result in a dismissal, especially if there is reliable evidence to secure a conviction other than a Defendant's statement.
- Sometimes Defense counsel can use the suppression of a statement to trigger a more beneficial plea agreement than previously offered which still results in a conviction too.

Is there any area of the country where the police are more likely to not be diligent about protecting an accused person's rights?

- There are certainly places where police are more diligent about protecting the rights of the accused, either by choice, or because they are facing oversight, perhaps for previous violations.
- Each officer is going to have a different philosophy regarding how broadly an accused rights reach, and where they think the line is for them to cross, this may not even be consistent in one place or another.
- *Miranda* is really a fact intensive determination and the officers may believe that they are being diligent in protecting someone's rights.

A *Miranda* warning is only required where there is a “custodial interrogation.” When school officials question students about a suspected school rule offense, a “custodial interrogation” does not take place.

Nebraska & Eighth Circuit Case Authorities:

- *State v. Robinson*, 185 Neb. 64, 70 (1970). Defendant asserts that the admission alleged to have been made by defendant to the schoolteacher when "turning himself in" was not admissible because defendant had not been warned of his constitutional rights. The teacher had no connection with law enforcement officers but was acting solely as a private citizen. Furthermore, defendant was not then in custody. Under the circumstances, such warning was not required. See, *State v. O'Kelly*, 181 Neb. 618. See, also, *Evans v. United States*, 377 F.2d 535 (5th Cir., 1967), wherein it is stated: "The *Miranda* safeguards are applicable only in instances of 'custodial interrogation' which the Court defines as: '* * * questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.'"
- *Cason v. Cook*, 810 F.2d 188, 193 (8th Cir. 1987). Court held that a student who was interviewed by the vice-principal, with a police liaison officer present, was not "in custody." Therefore it was irrelevant that she had not been informed of her right to remain silent or of a right to counsel. The court further said the failure to notify the student's mother prior to the student being questioned and searched was not unlawful as the student was not in custody.
- *Thompson v. Carthage School District*, 87 F.3d 979, 981-982 (8th Cir. 1996). Court held the exclusionary rule of the Fourth Amendment is not applicable to schools because school officials are not "law enforcement officers." (The case did not involve *Miranda* warnings; but the not law enforcement officers holding is significant for *Miranda* purposes).

Questioning by School Resource Officers/ Police Officers: Law enforcement officers are required to give a *Miranda* warning if a “custodial interrogation” occurs.

Authorities:

- *J. D. B. v. North Carolina*, 131 S. Ct. 2394 (2011), held a child's age properly informs *Miranda*'s custody analysis. The Court stated, "it is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave."
- In *State v. C.H. (In re C.H.)*, 277 Neb. 565 (2009), for example, the Nebraska Supreme Court clearly considered a juvenile's age in determining that a *Miranda* warning was required. The Court stated: "C.H. was a 14-year-old high school freshman summoned to the principal's office and questioned by an officer from the sheriff's department regarding serious allegations of sexual assault. He was not told that he was free to leave, and we conclude that someone in C.H.'s position would not believe he was at liberty to terminate the interrogation and leave. C.H. was 'in custody' for purposes of *Miranda* protections. Since he was

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not advised of his *Miranda* rights, the juvenile court erred in failing to suppress his confession.”

A request to search is not a “search.”

Authority:

- *Maimonis v. Urbanski*, 143 Fed. Appx. 699, 702 (7th Cir. Ill. 2005).

A search may be conducted if the student has voluntarily given consent to the search.

Authority:

- *Fewless v. Bd. of Educ.*, 208 F. Supp. 2d 806 (W.D. Mich. 2002).

School officials are NOT required by law to contact parents before detaining or questioning students about a suspected school rule offense.

Authority:

- *Wofford v. Evans*, 390 F.3d 318 (4th Cir. 2004). See also *Cason v. Cook*, 810 F.2d 188, 193 (8th Cir. 1987)

Promises of Confidentiality to Students Who Report Violations

Schools have “a strong interest in protecting students who report classmate misconduct. ‘Those students may be understandably reluctant to come forward with information if they are faced with the prospect of formal cross-examination by the offending student or his attorney,’ or the unsettling prospect of ostracism or even physical reprisals at the hands of their peers.”

Given this interest, courts have allowed schools to protect students who report rule violations by not giving the student offender their name. In other cases, however, the courts have ruled that the student offender is entitled to know the names of his accusers and to cross-examine the accusers at an expulsion hearing. Generally, the safest course is to not make promises of confidentiality. Exceptions may be made where there is a real threat of harm to the students reporting the misconduct, such as where the student offender has made actual threats to harm others who report or cooperate with the investigation.

Authorities:

- *B.S. ex rel. Schneider v. Board of Sch. Trustees*, 255 F. Supp. 2d 891 (D. Ind. 2003) (citing *Caston v. Benton Public Sch.*, 2002 U.S. Dist. LEXIS 11299 (D. Ark. 2002))
- *Newsome v. Batavia Local School Dist.*, 842 F.2d 920, 925 (6th Cir. 1988)
- *Graham v. Knutzen*, 351 F. Supp. 642, 666 (D. Neb. 1972)
- *Brown v. Plainfield Cmty. Consol. Dist. 202*, 2007 U.S. Dist. LEXIS 58599 (D. Ill. 2007) (listing cases in support of the proposition that “the use of anonymous witness statements at high school expulsion hearings does not offend due process

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principles”). *See, e.g., In re Expulsion of E.J.W.*, 632 N.W.2d 775 (Minn. Ct. App. 2001) (names of witnesses to bomb threat required to be disclosed to the accused student and be subjected to cross examination).

THE REASONABLE SUSPICION STANDARD

Ordinarily, the constitutionality of student searches is reviewed under the “reasonable suspicion” standard established in *N.J. v. T.L.O.*, 465 U.S. 325 (1985). The reasonable suspicion standard involves a two-part test:

1. Action Justified at its Inception—the school official must have reasonable grounds to suspect that the search will turn up evidence that the student has violated or is violating either the law or school rules;
2. Scope Reasonably Related to Circumstances Which Justified the Inference—the search must be reasonably related in scope to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

The general rule is that a law enforcement officer must have probable cause for a search. However, when a law enforcement officer conducts a student search at the behest of school officials, or is only minimally involved in the search, the reasonable suspicion standard applies. *Shade v. City of Farmington*, 309 F.3d 1054, 1060-1061 (8th Cir. Minn. 2002).

LINCOLN HIGH SCHOOL

LINCOLN HIGH SCHOOL, 8:00 AM

2229 "J" Street

School Contact: Jeff Pierce

Opening Ceremony Presenters:

Mike Heavican, Chief Justice of the Nebraska Supreme Court

Committee Contacts:

Candice Wooster (402-840-7713): 8:00 to 10:20

TIME		LOCATION		VOLUNTEERS NEEDED
1	8:43 AM to 9:25 AM	RM 107	Cerny	Ken Smith
				Katie Kock
	8:43 AM to 9:25 AM	RM 117	Herting	Melanie Whittamore-Mantzios
2	9:31 AM to 10:13 AM	RM 102	Pierce	Scout Richters
				Sean Brennan
	9:31 AM to 10:13 AM	RM 113	Turley	Miranda Hobelman
3	10:19 AM to 11:06 AM	RM 102	Pierce	John Lenich
				Wilbert LaMont Rainey
	10:19 AM to 11:06 AM	RM 113	Turley	Sarah Newell
4	11:47 AM to 12:29 PM	RM 107	Cerny	Bren Chambers
				Steve Karcher
	11:47 AM to 12:29 PM	RM 102	Pierce	Sarah Newell
5	12:35 PM to 1:17 PM	RM 102	Pierce	Jessica Forch
				Susan Sapp
	12:35 PM to 1:17 PM	RM 113	Turley	Katie Joseph
6	1:23 PM to 2:05 PM	RM 107	Cerny	Bren Chambers or Sarah Newell
				Connie Doeschot
	1:23 PM to 2:05 PM	RM 102	Pierce	Caitlin Barnes
7	12:35 PM to 1:17 PM	RM 101	Grant-Coulson	Laurie Yardley
				Nathan Clark
	12:35 PM to 1:17 PM	RM 102	Pierce	Robert Otte
8	12:35 PM to 1:17 PM	RM 117	Herting	Jessica Forch
				Michelle Sitorius
	12:35 PM to 1:17 PM	RM 101	Grant-Coulson	Kara Ronnau
9	1:23 PM to 2:05 PM	RM 107	Cerny	Laurie Yardley
				Nathan Clark
	1:23 PM to 2:05 PM	RM 102	Pierce	Angelica McClure
10	1:23 PM to 2:05 PM	RM 102	Pierce	Linsey Camplin
				Jessica Forch
	1:23 PM to 2:05 PM	RM 113	Turley	Sallie Dietrich
11	1:23 PM to 2:05 PM	RM 113	Turley	Michael J. Elsken
				James Beckmann
	1:23 PM to 2:05 PM	RM 117	Herting	Bren Chambers

LINCOLN NORTH STAR HIGH SCHOOL

5801 North 33rd Street

School Contact: Al Bock

Committee Contact: Kelsey Helget (402-690-8358)

	TIME	LOCATION	TEACHER	PRESENTERS
1	8:00 AM to 8:40 AM	Media Center	3 Classes	Riko Bishop
				Kelsey Helget
2	8:45 AM to 9:25 AM	Media Center	2 Classes	Kelsey Helget
3	10:20 AM to 11:00 AM	Media Center	2 Classes	Kelsey Helget
4	11:05 AM to 12:00 PM	Media Center	1 Class	Corey Wasserburger
				Kelsey Helget
5	12:35 PM to 1:15 PM	Media Center	3 Classes	Kelsey Helget

BRYAN COMMUNITY HIGH SCHOOL

300 South 48th Street

School Contact: Brady Johnson

Committee Contact: Abby Osborn (308-991-8703)

	TIME	LOCATION	TEACHER	PRESENTERS
1	1:20 PM to 2:08 PM	RM 204	Johnson & Dawson	Amy Miller Brian Craig
2	2:11 PM to 2:59 PM	RM 204	Johnson & Dawson	Amy Miller Brian Craig

LINCOLN ZOO SCHOOL/SCIENCE FOCUS PROGRAM

1222 South 27th Street

School Contact: John Clark

Committee Contact: Kathryn Moore (712-635-4704)

	TIME	LOCATION	TEACHER	PRESENTERS
1	10:30 AM to 11:20 AM	Camelot Commons North	John Clark	Sophia Alvarez
				Laura Arp
				Kathryn Moore

LINCOLN EAST HIGH SCHOOL

1000 South 70th Street

School Contact: Dennis Pritchard, Susan Cassata

Committee Contact:

	TIME	LOCATION	TEACHER	PRESENTERS
1	8:00 AM to 8:40 AM	RM 007	Dennis Pritchard	Michael Koberlein Laurie Boyd Petty
2	8:45 AM to 9:25 AM	RM 007	Dennis Pritchard	Larry Albers Michelle Weber
3	12:35 PM to 1:15 PM	RM 007	Dennis Pritchard	Greg Walkin Chris Ferdico

LINCOLN NORTHEAST HIGH SCHOOL

2635 North 63rd Street

School Contact: Cheyenne Janssen, Stephanie Howell

Committee Contact: Abby Osborn (308-991-8703)

	TIME	LOCATION	TEACHER	PRESENTERS
1	8:00 AM to 8:43 AM	RM 155	Cheyenne Janssen	Rick Tast
				Chris Turner
	8:00 AM to 8:43 AM	RM 250	Stephanie Howell	Frank Daley
				Jeff Kirkpatrick
2	8:48 AM to 9:31 AM	RM 155	Cheyenne Janssen	Cheryl Zwart
	8:48 AM to 9:31 AM	RM 250	Stephanie Howell	Frank Daley
				Jeff Kirkpatrick
3	9:36 AM to 10:19 AM	RM 250	Stephanie Howell	Cheryl Zwart
				Frank Daley
4	10:24 AM to 11:07 AM	RM 155	Cheyenne Janssen	Cheryl Zwart
5	11:47 AM to 12:30 PM	RM 155	Cheyenne Janssen	Michael Koberlein
				Abby Osborn
	11:47 AM to 12:30 PM	RM 250	Stephanie Howell	Cheryl Zwart
6	12:35 PM to 1:18 PM	RM 155	Cheyenne Janssen	Cheryl Zwart
	12:35 PM to 1:18 PM	RM 250	Stephanie Howell	Abby Osborn

LINCOLN SOUTHEAST HIGH SCHOOL

2930 South 37th Street

School Contact: Noa Craft

Committee Contact: Milissa Johnson-Wiles (402-471-2925)

	TIME	LOCATION	TEACHER	PRESENTERS
1	8:00 AM to 8:50 AM	D122	Noa Craft Crim. Justice	Erin Duggan Pemberton Milissa Johnson-Wiles
2	11:07 AM to 11:57 AM	D131	Noa Craft Crim. Justice	Rod Rehm Dennis Keefe

LINCOLN SOUTHWEST HIGH SCHOOL

7001 South 14th Street

School Contact: Ted Larsen

Committee Contact: Jeff Lapin (402-730-3111)

	TIME	LOCATION	TEACHER	PRESENTERS
1	8:15 AM to 9:30 AM	A218 Forum	Bales & Zeilinger <i>Civics*</i>	Jeff Lapin
				Pat Driver
	8:15 AM to 9:15 AM	A118 Forum	Hershberger Nettleton <i>Civics/GoPo*</i>	Jonathan Urbom
				Brock Ockander
2	9:36 AM to 10:36 AM	A101	Nettleton <i>Sociology</i>	Rick Boucher
				Angela Korpas
3	11:55 AM to 12:42 PM	A101	Nettleton <i>GoPo</i>	Elizabeth Elliott
				Trent Sidders
	11:55 AM to 12:42 PM	A118 Forum	Bales & Zeilinger <i>Civics*</i>	Jeff Lapin
				Pat Driver
4	12:48 PM to 1:48 PM	A118 Forum	Hershberger & Zeilinger <i>Civics*</i>	Elizabeth Elliott
				Trent Sidders
	12:48 PM to 1:48 PM	A111	Salem <i>GoPo</i>	Jeff Lapin Susan L. Kirchmann