

5th Amendment

5th 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.

What does all that mean?

- **Due Process** (Can not be deprived of life, liberty, or property without **due process** of law)
- Right to Grand Jury
- Right to Remain Silent (Self-incrimination)
- Protection against Double Jeopardy
- Eminent Domain

Interrogations & Confessions

- Interrogate or question the accused
- **5th Amendment (Right to remain Silent)** protects against self-incrimination
 - Connection w/ 6th Amendment right to counsel
- Government bears the burden of proof
- Using threats, torture, or physical force is prohibited



Interrogations & Confessions

5 Requirements for Admissibility

1. Violation to admit an involuntary confession into evidence
 - Coerced confessions are often unreliable
2. Exclusionary Rule applied to Confessions “cat is out of the bag” to suppress confessions that are related to an illegal stop, arrest, or seizure



3. McNabb-Mallory in arraignment rule

- Period b/w arrest and arraignment is “scary”, suspect is usually w/out counsel

- Confession suppressed if law enforcement officers unnecessarily delayed taking arrestee before magistrate



4. Miranda Rights

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" '...LOVE, HONOR, CHERISH TIL DEATH DO US PART'? WAIT...
AREN'T WE ENTITLED TO OUR MIRANDA RIGHTS?"

Miranda v. Arizona 1966

Due Process of Law (Fourteenth Amendment).

- The decision reversed an Arizona court's conviction of Ernesto Miranda on kidnapping and rape charges.
- Identified in a police lineup, Miranda had been questioned, had confessed, and had signed a written statement without being told that he had a right to a lawyer; his confession was used at trial. In overturning Miranda's conviction, **Chief Justice Earl Warren held that the prosecution may not use statements made by a person in police custody unless certain minimum procedural safeguards were in place.**
- Before questioning, a person must be given what is now known as a “Miranda warning”: that you have the right to remain silent; that anything you say may be used as evidence against you; that you may request the presence of an attorney, either retained by you or appointed by the court; and that you have the right, even after beginning to answer questions, to stop answering or request an attorney.

- Can still arrest, bring to trial, but any statements can not to used against them
- Miranda received a second trial and was convicted based on evidence, not his previous confession

Miranda Rule

- 5th Amendment only applies to government officers, not private detectives or security officers

Officers need to know when it applies and what it requires

- Safeguards must be observed only when the police interrogate a **suspect who is then in police custody**
- Prior to police interrogation
- Officer must...

1. That the suspect has the right to remain silent
2. That anything he/she says can be used against them in court of law
3. That he/she has the right to presence of an attorney
4. That one will be appointed if he cannot afford one

Right to Remain Silent

- A confession is one of the most powerful pieces of evidence that can be put before a jury (interrogation and during trial)
- Also includes the privilege not to answer self-incriminating questions
- When a confession occurs under the proper protocol this it is admissible
- Confessions caused by a violation of the 4th Amendment is inadmissible, even if voluntary

When necessary?

- Only when **police interrogate a suspect who is in custody**
- Formal arrest or a restraint of the suspect's freedom of action to the degree associated w/ a formal arrest
- An Interrogation is when police ask investigative questions or engage in other words or actions they know are reasonable likely to elicit incriminating response



- Time, Place, & Manner are very important in defining custody
- Officers should consider if intimidation, vulnerability, and/or pressure is felt by the individual-if yes to any of these then the Miranda warning should be given
- Miranda warning is not required when the suspect is unaware that the interrogator is a police officer



- Traffic stops and Terry Stops do not require Miranda warning
- If during these stops events escalate then Miranda warning maybe necessary
- If you go to police station voluntarily, person confesses, the suspect was not being interrogation, therefore warnings not necessary



"You have the right to remain silent..."

- Miranda Warning maybe delayed if situation poses a threat to public safety or to the officer's safety

- The courts have made clear that police officers do not have to tell people that they can refuse to consent to a warrantless search. In other words, a **police officer does not need to read you your rights before asking you to consent to a search.** Also, despite the widespread myth to the contrary, an officer does not need to get your consent in writing. Oral consent is completely valid.
- **Many people believe that an officer must automatically read a person his or her Miranda rights as part of performing an arrest, either immediately before or immediately after an arrest is made. This is also myth.**
- The truth is that the only time an officer must read a person his or her Miranda rights is when: (1) the person has been taken into custody, and (2) the officer is about to question the person about a crime.

5. Stems from 6th Amendment right to counsel

Once formal charges filed, officers forbidden to elicit incriminating statements from the accused unless counsel is present or the accused has chosen not to be represented

- ALL FIVE do not materialize the instant a officer ask a question

Phase I: Investigative Questioning

Period of unfolding information and possibility suspect place under formal arrest or taken into custody

Phase II: Custodial Interrogation

Suspect placed under formal arrest and formal charges have been made

- Remember under 4th Amendment “free zone” incriminating statement made during voluntary investigation encounters always admissible
- Only if the police have acted “improper” will the voluntary confession is inadmissible (according to Due Process)

Factors Related to Voluntary or Not

- Pressure exerted by police (force, false promises, brutality, physical threats, etc...)
- Suspect's degree of susceptibility
 - Ability to handle stress, education, intellect, knowledge of legal system, etc...
- Conditions under which the interrogation took place
 - Location, length, intensity, food deprivation, presence of an “mean officer”

- It is up to the Prosecutor, state or federal government to prove that the defendant confessed on his/her free will
- Lego v. Twomey –argued that the government should be required to prove this “beyond a reasonable doubt”
 - **Court adopted a “preponderance of the evidence” government must establish that it is more probable than not that the defendant confessed of his/her free will

Escobedo v. Illinois 1960

Facts of the Case

- Danny Escobedo was arrested and taken to a police station for questioning. Over several hours, the police refused his repeated requests to see his lawyer. Escobedo's lawyer sought unsuccessfully to consult with his client. **Escobedo subsequently confessed to murder.**

Conclusion

- Yes. Justice Goldberg, in his majority opinion, spoke for the first time of "an absolute right to remain silent." **Escobedo had not been adequately informed of his constitutional right to remain silent** rather than to be forced to incriminate himself. The case has lost authority as precedent as the arguments in police interrogation and confession cases have shifted from the Sixth Amendment to the Fifth Amendment, emphasizing whether the appropriate warnings have been given and given correctly, and whether the right to remain silent has been waived.

- Even after voluntary confession is inadmissible as evidence if it is obtained after request for attorney has been denied
- Violation of the 6th Amendment

Double Jeopardy

- Text of the Fifth Amendment suggests that the protection against double jeopardy extends only to proceedings threatening "life or limb."
- Nevertheless, the Supreme Court has established that the right against double jeopardy is not limited to capital crimes or corporeal punishment but extends to all felonies, misdemeanors, and juvenile delinquency adjudications, regardless of the punishments they prescribe.



Double Jeopardy

- Prohibits the gov't from twice prosecuting or punishing a criminal defendant for the same offense
- Based on society's judgment that if you stood trial once, you should not have to go through the legal, emotional, and financial aspects twice
- The defense of double jeopardy also prevents the state from retrying a person for the same crime after he has been acquitted.
- Nor can the state voluntarily dismiss a case after trial has begun in order to start over.

- If a person robs a bank, he cannot twice be convicted of robbery for the same offense.
- Nor can he be convicted of two different crimes based upon the same conduct unless the two crimes are defined so as to prohibit conduct of significantly different kinds.
- Thus, a man cannot be convicted of both murder and manslaughter for the same killing, but he can be convicted of both murder and robbery if the murder arose out of the robbery.

Example

- **joyriding** (taking or operating a vehicle without the owner's consent) and **auto theft** (joyriding with the intent permanently to deprive the owner of possession) **constitute "the same statutory offense" within the meaning of the Double Jeopardy Clause**, it erroneously concluded that **petitioner could be convicted of both crimes** because the charges against him had focused on different parts of the 9-day interval between petitioner's taking of the car and his apprehension. There was still **only one offense under Ohio law**, and the specification of different dates in the two charges against petitioner cannot alter the fact that **he was twice placed in jeopardy for the same offense in violation of the Fifth and Fourteenth Amendments**

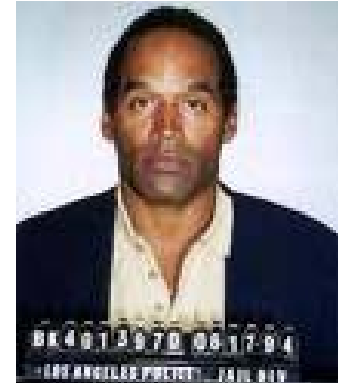
Breed v. Jones

- Juvenile defendant, Gary age 17 was adjudicated in court but later transferred to adult court for prosecution
- Gary appealed his adult court conviction claiming he had been “in jeopardy”
- Supreme Court agreed

Ashe v. Swenson 1970

- six men were playing poker, three or four men broke in and robbed them using a shotgun and some pistols. The robbers then fled
- First trial the witnesses were unable to definitely identify the robbers. (acquittal) During the second trial the state refined its case and the witnesses were able to identify the Ashe as one of the robbers
- YES, violation of Double Jeopardy
- State could not present the same or different identification evidence in a second prosecution in hope that a different jury might find that evidence more convincing. By refining the presentation of evidence in light of event of the first jury, the prosecution did what the constitution forbids.

- If acquitted in criminal court, you may still find yourself in civil court
- O. J. (Orenthal James) Simpson over the death of Nicole Brown Simpson and Ronald Lyle Goldman illustrate these various objectives.
- 1995, The state of California prosecuted Simpson for the murders of his former wife and her friend. Despite Simpson's acquittal in criminal court, the families of the two victims filed three civil suits against him.
- The criminal proceedings had been instituted to punish Simpson, incarcerate him, and deter others from similar behavior. The civil suits were designed in part to make the victims' families whole by compensating them with money damages for the losses they suffered.
- 1997 judgment against Simpson for their wrongful deaths was awarded in civil court by a jury, but to date he has paid little of the \$33.5 million judgment





Timothy McVeigh



- Oklahoma City Bomber 1985
- Could have been tried for murder in both state and federal court b/c both sovereign entities have murder laws
- However, he was only tried in Federal Ct



Eminent Domain

- Government can seize private property for public use (and does)
- Compensate you a “fair” value
- Burlington's Flint Hills Manor last spring after the city of Burlington spent \$5 million to purchase 50 lower-income rental properties, relocate the tenants and then level the neighborhood for a strip mall. The mall was expected to more than triple the area's tax income, but that hope has faded in the past month as the Minnesota developer pulled out of the project