

EQ #34

- ***EQ #34- What are the key due process rights of the accused found in the 4th, 5th, 6th 7th and 8th Amendments?***

Defendants' Rights / Rights of the Accused

- Much of the Bill of Rights (Amendments 4, 5, 6, 7, and 8) apply to defendants' rights.
- “Due Process Rights” refers to **Defendants' Rights-**
 - Police and courts are limited by the BOR
 - Failure to follow constitutional protections may invalidate a conviction.



Defendants' Rights

TABLE 4.3

The Constitution and the Stages of the Criminal Justice System

Although our criminal justice system is complex, it can be broken down into stages. The Constitution protects the rights of the accused at every stage.

STAGE	PROTECTIONS
1. Evidence gathered	"Unreasonable search and seizure" forbidden (Fourth Amendment)
2. Suspicion cast	Guarantee that "writ of habeas corpus" will not be suspended, forbidding imprisonment without evidence (Article I, Section 9)
3. Arrest made	Right to have the "assistance of counsel" (Sixth Amendment)
4. Interrogation held	Forced self-incrimination forbidden (Fifth Amendment) "Excessive bail" forbidden (Eighth Amendment)
5. Trial held	"Speedy and public trial" by an impartial jury required (Sixth Amendment) "Double jeopardy" (being tried twice for the same crime) forbidden (Fifth Amendment) Trial by jury required (Article III, Section 2) Right to confront witnesses (Sixth Amendment)
6. Punishment imposed	"Cruel and unusual punishment" forbidden (Eighth Amendment)

4th Amendment

- **Read the 4th Amendment**
- Does it protect you if you're pulled over in your car by police? How so?
- Is your protection greater in your vehicle or your home or is it the same? What do you think and why?
- What do Police need to search you, your home or effects?

4th A – No Illegal Search & Seizure

- Prohibits unreasonable searches and seizures –evidence obtained in a haphazard or random manner
- To search, police must show **Probable Cause** –evidence or strong suspicion of a crime committed.
 - Search Warrant is required for legal search; issued by a judge after compelling evidence is gathered
- **Reasonable Exceptions:**
 - Airplanes
 - Random DUI stops & Drug dogs
 - Hot pursuit (chasing a suspect)
 - Screaming in a home...



4th A- Search & Seizure

- What if police find something illegal without first obtaining a search warrant?
- What if the police have a search warrant and, during the course of their legal search, find a different illegal item?

4th A- Search & Seizure

- 4th Amendment
 - **Exclusionary Rule:** the rule that evidence, no matter how incriminating, cannot be introduced into trial if it was not constitutionally obtained



4th Amendment

- Searches and Seizures
 - *Mapp v. Ohio* (1961)
- Dolree Mapp was convicted of possessing obscene materials after an admittedly illegal police search
- **ISSUE:** May evidence obtained through a search in violation of the 4th A be admitted in a state criminal proceeding?

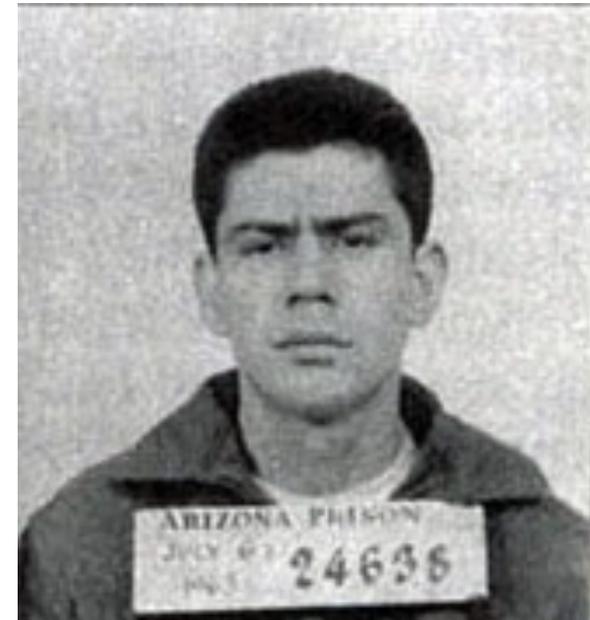


Mapp v. Ohio, 1961

- **RULING / HOLDING- SCOTUS**
incorporates the Exclusionary Rule and applies it to states.
- Materials collected from an illegal search are inadmissible in STATE trials, too.

What are the key 5th A Protections?

- **Self-Incrimination-**
Definition: When an individual accused of a crime is compelled to be a witness against himself or herself in court
- **Grand Jury-** Definition: Defendants accused of serious crimes get grand jury hearing to assess if sufficient evidence for trial.
- **Indictment-** Issued if there is enough evidence to go to trial



5th Amendment

- **Double Jeopardy-** Can't be tried twice for same crime
- **Eminent Domain-** private property can be taken by government with just compensation

5th A- *Miranda v. Arizona*, 1966

**[https://opb.pbslearningmedia.org/
resource/bf09.socst.us.const.miranda/](https://opb.pbslearningmedia.org/resource/bf09.socst.us.const.miranda/)**

5th A- *Miranda v. Arizona*, 1966

FACTS- Ernesto Miranda is arrested for kidnapping and rape. After two hours at the police station, he signs a written confession which is used at trial. Police did NOT inform him of his rights to remain silent and to an attorney.

ISSUE- Does the 5th A's protection against self-incrimination extend to police interrogation of a suspect?

Ruling/Holding-

- Police must inform suspects of 6th and other Fifth Amendment protections **upon arrest.**
- Provides protection from coerced confessions and entrapments

Monday 3/11

- 6th & 8th Amendments
- Right to Privacy
- Review
- Case Brief check off points today
- Ch 4 HW due today (keep if you want for studying)
- Graphic Org work
- Heads-Up- Ch 4 review and Quiz tomorrow; start Ch 5 Civil Rights

Warm-Up

- Name the amendment and significance for each case below...
 1. Lemon v. Kurtzman
 2. Miller v. California
 3. Near v. Minnesota
 4. Wisconsin v Yoder
 5. Tinker v Des Moines
 6. Schenck v. US
 7. Mapp v. Ohio
 8. What clause of which amendment has incorporated these rights?

What does the 6th A Protect? Rights at Trial

- Read the text of the 6th Amendment-
- “In all criminal prosecutions, the accused shall enjoy the **right to a speedy and public trial**, by **an impartial jury** of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and **to be informed of the nature and cause of the accusation**; to be **confronted with the witnesses against him**; to have compulsory **process for obtaining witnesses in his favor**, and to have the **Assistance of Counsel** for his defence.”

6th Amendment Protections

- The 6th A lists rights and protections at trial
- Right to a speedy trial
- Right to a jury of peers
- Be informed of charges
- Right to confront witnesses against and request witnesses for
- Right to an attorney

6th Amendment- Rights at Trial

Plea Bargain

- Many cases don't reach trial.
- What is a **plea bargain**?
- **Plea bargaining**: A deal between the prosecution and defense for a defendant to plead guilty to a lesser crime; saves prosecution time and risk of losing; ensures defendant reduced prison time.
- **90 % of cases end here** and do NOT go to trial

6th A- Rights at Trial Juries

- **Right to a Jury of Peers**
 - **All serious crimes use juries**, though it's the defendant's choice.
 - **Jury decides guilt or not**
 - **Juries generally consist of 12 people**, but unanimity is not always needed to convict (state criminal case)
 - **Fed juries use 12 (and require unanimous conviction)** for criminal cases)
 - States may be less than 12 people

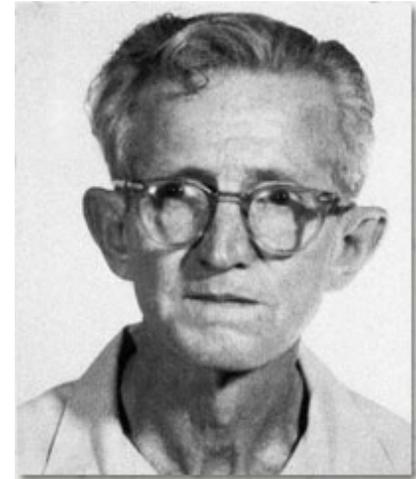
Habeas Corpus & Speedy Trial

- 6th A- guarantees **habeas corpus**- the right to be brought before a judge and informed of accusations against defendant.
- The Sixth Amendment also guarantees a “**speedy and public**” trial. No clear definition of “speedy;” trials can take months to years.
- After September 11th, game changed for accused terrorists. Many detained and not charged nor put on trial. SCOTUS- US gov’t **MUST** allow 6th A protections even to foreign nationals accused of terrorism.

6th Amendment

Gideon v. Wainwright, 1963

- The Right to Counsel / Attorney-
- Considered one of the most basic rights at trial.
- The state must provide lawyers in criminal felony cases (Sixth Amendment).
- Established in
 - *Gideon v. Wainwright* (1963)
 - <https://opb.pbslearningmedia.org/resource/bf09.socst.us.const.gideon/gideon-v-wainwright/>



Defendants' Rights

8th Amendment

- **Protection from Cruel and Unusual Punishment**

- The 8th A forbids cruel and unusual punishment.
- Most key cases involving the 8th A are about the constitutionality of the death penalty



In Attalla, Alabama, one hour outside Birmingham, a local judge, Kenneth Robertson, has handed out more than 20 public-shaming sentences in lieu of fines or jail time to Wal-Mart shoplifters. This is Lisa King Fithian, who stole a pet playpen and a lava lamp, valued at \$26.97:

4 Corners-What do you think?

- The death penalty is cruel and unusual punishment under all circumstances and **should NOT be allowed** as a legal punishment in the U.S.

Strongly Agree

Agree

Disagree

Strongly Disagree

The Death Penalty

- How should SCOTUS decide if and when taking a life for a crime is “cruel and unusual punishment?”



- Are there circumstances when it should NOT be allowed?
- Are there times when the death penalty is appropriate? When/why?

8th A- No Cruel & Unusual Punishment

- SCOTUS temporarily banned the death penalty because it was given arbitrarily (*Furman v. Georgia*, 1972)
- States rewrote laws and it was challenged again.
- *Gregg v. Georgia*, 1976- SCOTUS- The death penalty is NOT cruel and unusual when it is used as “an extreme sanction, suitable to the most extreme crimes.”

8th A- *McCleskey v. Kemp*, 1987

- SCOTUS upheld the constitutionality of the death penalty against charges it was unfair because **minority defendants were more likely to receive the death penalty than were white defendants.**

What limits has SCOTUS placed on the death penalty?

- SCOTUS' limits on Death Penalty-
 - **No execution of mentally ill & mentally disabled; those under 18; rapists (where no murder occurs);**
 - Prosecution must show aggravating circumstances that make crime more violent
 - Defense attorneys must zealously represent the defendant against the death penalty.

Activity- BOR Graphic Org

- Amendment
- Right (list all in each Amendment)
- Cases associated with each right