

**Fifth Amendment (Right Against Self Incrimination):** The Fifth Amendment provides the right against self-incrimination. In order for statements to be admissible, the statement must be voluntary and comply with the requirements of Miranda v. Arizona. This is incorporated to the states via the 14<sup>th</sup> Amendment.

- ❖ **Voluntary:** 14<sup>th</sup> Amendment Due Process requires a confession or other incriminating statements to be voluntary. A statement is voluntary if it is the product of free will and a rational intellect. This is determined by the totality of the circumstances (hereinafter: TOC)
- ❖ **Miranda:** A defendant is entitled to certain constitutional warnings if they are subject to a custodial interrogation. Custody (not free to leave) + interrogation (police action or words that are reasonably likely to elicit an incriminating response) = warnings and waiver (voluntary [determined by a TOC – does not include intoxication or retardation], intelligent, silence not sufficient).
- ❖ **Right to Remain Silent:** Once invoked, no questioning until D resumes. Government can question about unrelated crime after delay + re-warning.
- ❖ **Counsel (5<sup>th</sup> Amendment):** Unambiguous request by suspect/defendant to have an attorney – then all questioning must cease until an attorney is provided or suspect/defendant reinitiates. Not offense specific.
  - **6<sup>th</sup> Amend Right to Counsel:** Once it attaches (during trial), confession without counsel is invalid, even if D is out on bail or in jail (offense specific – police officer can question about other crimes).
- ❖ **Defenses:** Waiver, spontaneous statement, non-custodial (traffic stops, probation interview), impeachment, informant, public safety/on scene fact-finding.
- ❖ **5<sup>th</sup> Amend:** Right against self-incrimination. Must be asserted or else waived. N/A if immunity, no possible incrimination or D waiver.

**Exclusions:** Admissibility decided solely by judge; D can testify without waiving 5<sup>th</sup> rights; P must establish admission by preponderance of evidence.

- ❖ **Remedy:** for illegal search and seizure or coerced confessions – remedy is: evidence not admissible to prove D's guilt.
- ❖ **Exceptions:** Grand Jury; civil cases; habeas corpus; parole hearings; impeachment.
- ❖ **Good Faith:** reliance on case law later challenged; statute/ordinance later declared unconstitutional; defective search warrant
  - **Negated by:** Affidavit unreasonably lacking PC; warrant defective on face; affiant lied or misled magistrate; magistrate wholly abandoned judicial role.
- ❖ **Fruit of Poisonous Tree:** Excludes all evidence obtained/derived from illegal government act.
  - **Defenses:** Inevitable discovery; independent acts of D broke chain; independent source.
- ❖ **Harmless Error:** Admission of illegal evidence non-reversible if conviction would have been the same without it. P must show beyond reasonable doubt that the admission was harmless.

#### **Right to Counsel: 6<sup>th</sup> Amendment**

- ❖ **When it applies:** Attaches at all critical stages of prosecution (once formal proceedings have begun) but offense specific.
- ❖ **Post-Charge Line up:** Right to counsel applies, but not to photo show-ups.
  - **Due Process:** Violated if identification of the D was unnecessarily suggestive and there was a substantial likelihood of misidentification (based on TOC)
    - **Defenses:** Independent source for in court ID (usually opportunity to observe at time of crime)
- ❖ **Waiver/right to defend self:** Absolute right so long as knowing and intelligent waiver and court thinks that D is competent.
- ❖ **Indigence:** Right to counsel for all felonies; first appeal by right; misdemeanor where jail actually imposed (no jail if no attorney).
- ❖ **Ineffective Assistance:** D must prove 1) unreasonably deficient performance AND 2) but for the deficiency, the result would have been different.

**Trial:** Delayed until competent; must be public (unless it would violate D's DP); judge can't have malice or financial interest.

- ❖ **Grand Jury:** Federal felony right only; no right: exclusionary rule, counsel, D to appear; cross-examination.
- ❖ **Speedy Trial (6<sup>th</sup> Amendment):** Evaluate TOC including length of delay, reason for delay, whether D asserted his right, prejudice to D.
- ❖ **Brady:** P must disclose evidence favorable to D after a specific request (evidence material to guilt and punishment), or would create reasonable doubt as to D's guilt (whether requested or not).