

CRIMINAL LAW & PROCEDURE

FOR ALL CRIMES YOU NEED:

1. ACTUS REUS
2. MENS REA
 - a. Transferred intent: Homicide, battery, arson
 - b. Corporations can't have mens rea
3. CONCURRENCE
 - a. Actus Reus must occur at same time that D has mens rea.
4. CAUSATION (sometimes)
 - a. For homicide, V must die.

SPECIFIC INTENT CRIMES

Solicitation
 Attempt
 Conspiracy
 First Degree Murder
 Assault (Attempted Battery theory)
 Larceny
 Robbery
 Burglary
 Forgery
 False Pretenses
 Embezzlement

MPC INTENT STANDARDS

Purposely: With the conscious object of engaging in certain conduct or causing a certain result

Knowingly: With awareness that the conduct is of a particular nature, or knowing that the conduct will very likely cause a particular result

Recklessly: With knowledge of a substantial and unjustifiable risk that is being consciously disregarded

Criminal Negligence: Failure to be aware of a substantial and unjustifiable risk, where such failure is a substantial deviation from the standard of care.

CRIMES AGAINST THE PERSON

1. HOMICIDE
 - a. MURDER
 - i. ELEMENTS:
 1. The unlawful killing
 2. Of a human being
 3. With malice aforethought
 - ii. THE KILLING OF A HUMAN BEING WITH
 - iii. MALICE AFORETHOUGHT
 1. Intent to kill
 - a. Intentional use of a deadly weapon authorizes an inference of intent to kill.
 - b. Counts even if mercy killing
 2. Intent to commit serious bodily injury
 3. Wanton/reckless conduct (depraved heart)
 4. During the commission of an inherently dangerous felony (BARRK)
 - iv. Degrees
 1. First degree is usually premeditated.
 2. Felony murder will usually be first-degree murder.
 - b. FELONY MURDER
 - i. D must actually be found guilty of the underlying felony.
 - ii. Felony must be distinct from the killing itself (i.e. not the battery that caused the death).
 - iii. Death must have been a foreseeable result of the felony.
 - iv. Death must have been caused before the D's "immediate flight" ended.
 1. Once D reaches a place of safety – no longer felony murder.
 - v. D usually not liable when a co-felon is killed because of resistance by V or the police.

- vi. D not liable for felony murder when an innocent party is killed UNLESS the death is caused by D or his accomplice.
 - 1. Under the “proximate cause” theory, D WILL be liable if the innocent party is killed by V or police.
 - c. VOLUNTARY MANSLAUGHTER
 - i. ELEMENTS:
 - 1. Common-law murder BUT
 - 2. D was provoked.
 - ii. ADEQUATE PROVOCATION
 - 1. Will be adequate only if:
 - a. It was a provocation that would arouse **sudden and intense passion** in the mind of a reasonable person, causing him to lose control AND
 - b. D was in fact provoked AND
 - c. There was no cooling off period AND
 - d. D did not **in fact** cool off btwn the provocation and the killing.
 - iii. IMPERFECT SELF-DEFENSE
 - 1. In states recognizing this rule, it will allow murder to be reduced to voluntary manslaughter IF:
 - a. D killed in self-defense, but HE started the fight, OR
 - b. D killed in self-defense because he believed it was necessary, but that belief was unreasonable.
 - d. INVOLUNTARY MANSLAUGHTER
 - i. UNINTENTIONAL KILLING
 - 1. V was killed because D was criminally negligent (although he did not intend V’s death).
 - 2. Less “reckless” than required for depraved heart murder.
 - ii. MISDEMEANOR MANSLAUGHTER
 - 1. Killing happened while D was committing an unlawful act that doesn’t count qualify it for the felony murder rule.
 - 2. Usually must be “malum in se” not just “malum prohibitum”
2. BATTERY
- a. ELEMENTS:
 - i. An unlawful application of force
 - ii. To the person of another
 - iii. Resulting in either bodily injury OR an offensive touching.
 - b. Does not have to actually be skin-to-skin contact – anything connected to D’s person can touch anything connected to V’s person.
 - i. Example: D causes his dog to attack V)
 - c. Aggravated battery (some states):
 - i. Battery w/ a deadly weapon
 - ii. Battery resulting in serious bodily harm
 - iii. Battery of a child, woman, or cop
3. ASSAULT
- a. ELEMENTS:
 - i. THEORY 1: An attempted battery.
 - ii. THEORY 2:
 - 1. The intentional creation of
 - 2. a reasonable apprehension of
 - 3. imminent bodily harm.
 - b. Mere words are not enough to be assault.
 - i. BUT words can negate assault: “(Shaking fist) I’d punch you if you weren’t a girl.”
 - c. Aggravated assault:
 - i. With a deadly weapon
 - ii. With intent to rape or maim
4. RAPE
- a. ELEMENTS:
 - i. Sexual intercourse
 - ii. By a man

- iii. With a woman not his wife
 - iv. Without her consent
 - b. Incapable of consent = no consent
 - c. "Slightest penetration is sufficient"
- 5. KIDNAPPING
 - a. ELEMENTS:
 - i. Some movement of the victim OR
 - ii. Concealment of the victim in a "secret" place.
 - b. Aggravated kidnapping:
 - i. For ransom
 - ii. For the purposes of committing other crimes
 - iii. Child stealing
- 6. MAYHEM
 - a. ELEMENTS:
 - i. Dismemberment or disablement
 - ii. Of a body part

CRIMES AGAINST PERSONAL PROPERTY

- 1. LARCENY
 - a. ELEMENTS:
 - i. A taking
 - ii. And carrying away
 - iii. Of tangible personal property
 - iv. From the possession of another
 - v. By trespass (includes consent obtained by fraud)
 - vi. With intent to permanently deprive that person of her interest in the property
 - vii. At the time of the taking.
 - b. Intent
 - i. The intent to permanently deprive the person of the property must exist when it is taken! Can't change mind later.
 - 1. BUT "continuing trespass": If original taking was WRONGFUL but no intent to permanently deprive, and D later changes her mind and decides to keep it, then it's still larceny.
 - a. This will not apply if original taking was NOT wrongful (i.e. D thought it was hers).
 - ii. Intent to put the property at a substantial risk of loss is enough.
 - c. Compare embezzlement: No taking from the possession of another, because the person already has possession (bailee).
 - i. Low-level employee stealing = larceny
 - ii. Upper management stealing = embezzlement
- 2. EMBEZZLEMENT
 - a. ELEMENTS:
 - i. The fraudulent
 - ii. Conversion
 - iii. Of personal property
 - iv. Of another
 - v. By one in lawful possession of that property.
 - b. An intent to defraud is required.
 - i. Not embezzlement if D believed it was hers.
 - c. If D intends to return THAT SAME EXACT property, it's not embezzlement.
 - i. BUT intent to return the same or similar property is still embezzlement (even money)
- 3. FALSE PRETENSES
 - a. ELEMENTS:
 - i. Obtaining title
 - ii. To personal property of another
 - iii. By an intentional false statement
 - iv. Of a past or existing fact
 - v. With intent to defraud the other.

- b. Compare: Larceny by trick
 - i. That's where mere possession of the property is given up – here, title is actually passed.
 - c. V must actually be deceived by the misrepresentation, and must be a major factor in V passing title to D.
- 4. RECEIVING STOLEN PROPERTY
 - a. ELEMENTS:
 - i. Receiving possession and control
 - ii. Of "stolen" personal property
 - iii. Known to have been obtained in a manner constituting a criminal offense
 - iv. By another person
 - v. With the intent to permanently deprive the owner of his interest in it.
 - b. Possession
 - i. Manual possession is not necessary.
 - ii. If the property is put in a location designated by D while she arranges to fence it, that's good enough.
 - c. "Stolen"
 - i. Property must actually be stolen when D receives it.
 - ii. CanNOT be property recovered from a robbery, then the police are using it as part of a sting operation.
 - 1. BUT if D believes it's stolen and it's not, can be convicted of attempted stolen property.
- 5. ROBBERY
 - a. ELEMENTS:
 - i. A taking
 - ii. Of personal property
 - iii. Of another
 - iv. From the other's person or presence (including his vicinity)
 - v. By force or threats
 - vi. With the intent to permanently deprive V of it.
 - b. Force or threats must be of immediate death or physical injury to the victim, a member of his family, or some person in the victim's immediate presence.
 - c. V must actually **feel** threatened (can't just give up her property b/c she feels sorry for D).
- 6. EXTORTION
 - a. Obtaining property by means of threats to do harm or expose information.
 - b. Under some statutes, crime is complete when threats are made.

CRIMES AGAINST REAL PROPERTY

- 1. ARSON
 - a. Elements:
 - i. The burning
 - ii. Of a dwelling house
 - iii. Of another
 - iv. With malice.
 - b. Mere charring is sufficient, but blackening by smoke or water damage is NOT enough.
 - c. An explosion is not arson unless it causes a fire.
- 2. BURGLARY
 - a. Elements:
 - i. The breaking
 - ii. And entering
 - iii. At night
 - iv. Into the dwelling house
 - v. Of another
 - vi. With intent to commit a felony therein.
 - 1. Intent must be present at time of entry.

CRIMES AGAINST THE PUBLIC

- 1. FORGERY
 - a. ELEMENTS:
 - i. Making or altering

- ii. A writing with apparent legal significance (i.e. a contract, not a painting)
 - iii. So that it represents something it is not
 - iv. With intent to defraud
 - b. NOTE that it must be something **it is not**, not merely inaccurate:
 - i. Warehouse receipt with a wrong amount on it = not forgery
 - ii. Fake warehouse receipt = forgery
2. UTTERING A FORGED INSTRUMENT
- a. ELEMENTS:
 - i. Offering as genuine
 - ii. An instrument that may be the subject of forgery and is false
 - iii. With intent to defraud.

“HELPING” CRIMES

1. ACCOMPLICE LIABILITY

- a. Elements:
 - i. Give aid, counsel, or encouragement
 - ii. To the principal
 - iii. With the intent to encourage the crime.
 - iv. Mere *knowledge* that a crime will result is NOT enough.
- b. An accomplice is liable for the crimes he did or counseled AND any other crimes that were foreseeable/probable.
- c. If an accomplice withdraws from the crime BEFORE it becomes unstoppable, he is not liable.
 - i. Withdrawal = REPUDIATION and ATTEMPT TO NEUTRALIZE any assistance. Telling the cops or taking other action to stop the crime is also sufficient.
- d. Levels
 - i. Principal = convicted of main crime
 - ii. Accessory before the fact = convicted of main crime
 - iii. Accomplice (present at the scene) = convicted of main crime
 - iv. Accessory after the fact = separate crime of being an accessory after the fact

2. ATTEMPT

- a. Elements:
 - i. A substantial step toward an act
 - ii. Done with intent to commit a crime
 - iii. That falls short of completing the crime
- b. Must intend to do something that, if completed, would actually be a crime.
- c. Abandonment is NO defense: Crime is complete once D has INTENT and makes a SUBSTANTIAL STEP
- d. Substantial step must be more than mere preparation.
- e. Merges w/completed crime

3. CONSPIRACY

- a. Elements:
 - i. An agreement between two or more persons
 - ii. An intent to enter into the agreement
 - iii. Intent by at least two persons to achieve the objective of the agreement
 - iv. Majority of states: Overt act (mere preparation OK)
- b. Conspirators are liable for all crimes committed by co-conspirators so long as they were:
 - i. Committed in furtherance of the objectives of the conspiracy AND
 - ii. Were foreseeable
- c. Conspiracy terminates when the wrongful objective is complete.
 - i. Acts of concealment and other things happening after do not count.
- d. Withdrawal
 - i. Still liable for conspiracy, but possibly not for subsequent crimes committed in furtherance.
 - ii. Requirements for withdrawal:
 - 1. Notify all co-conspirators
 - 2. Give notice in time for members to abandon the plan
 - 3. Try to neutralize any assistance given
- e. Separate sub-conspiracies:
 - i. Chain type: All members liable for all crimes

- ii. Hub-and-spoke type: Members only liable for crimes committed in furtherance of their sub-conspiracy
 - f. NO conspiracy if person pretended to agree in order to tell the police
 - g. Agreement can be inferred from joint activity
 - h. A corporation can't conspire
 - i. Traditional view – if all persons D conspired with are acquitted, then D can't be convicted of conspiracy.
 - i. BUT if alleged conspirators are never prosecuted because they can't be found, that's different.
4. SOLICITATION
- a. Elements:
 - i. Inciting, counseling, advising, or commanding another
 - ii. To commit a crime
 - iii. With the intent that he commit the crime.
 - iv. NOTE – if solicitee agrees, it becomes a conspiracy.
 - b. Merges w/completed crime

DEFENSES

1. SELF-DEFENSE
- a. Deadly force is only available IF:
 - i. She is without fault
 - ii. She is confronted w/unlawful force
 - iii. She is threatened w/imminent death or great bodily harm.
 - b. If D kills in self-defense but one of these three requirements were not met, some states allow a conviction for manslaughter instead of murder (“imperfect self-defense”).
 - c. Requirement of retreat before using deadly force:
 - i. MINORITY of states say must retreat UNLESS:
 - 1. It's in V's house
 - 2. It happens while V is making a lawful arrest
 - 3. Assailant is in the process of robbing V
 - d. Right of aggressor to use self-defense:
 - i. Can use it if the original V suddenly escalates a minor fight into deadly force OR
 - ii. If the original aggressor withdraws and TELLS V that she is withdrawing.
2. DEFENSE OF OTHERS
- a. Only requirement is that it REASONABLY APPEARED that the person being attacked would have had a right to use force to defend herself.
3. DEFENSE OF PROPERTY
- a. Only non-deadly force may be used to **prevent** the taking.
 - b. After the taking is happening, no force is permitted to get it back UNLESS V is in **hot pursuit**.
4. INSANITY
- a. M'NAUGHTEN
 - i. Mental disease or defect caused D EITHER to:
 - 1. Not know what he was doing was wrong OR
 - 2. Not understand the nature and quality of his actions
 - b. IRRESISTIBLE IMPULSE
 - i. Because of a mental illness, D was unable to control his actions or conform his conduct to the law.
 - c. MPC SUBSTANTIAL CAPACITY
 - i. D's mental disease or defect made him lack the substantial capacity to EITHER:
 - 1. Appreciate the criminality of his conduct OR
 - 2. Conform his conduct to the requirements of law.
 - d. DURHAM PRODUCT
 - i. D's crime was the product of his mental illness (crime would not have been committed but for the disease)
 - e. DIMINISHED CAPACITY (some states)
 - i. D may assert that as a result of a mental defect short of insanity, he did not have the mental state required for the crime charged.
 - ii. Some states allow only for specific intent crimes, others for general intent.
5. INTOXICATION
- a. VOLUNTARY

- i. Defense ONLY to specific intent crimes.
- b. INVOLUNTARY
 - i. Treated the same way as insanity.
- 6. ENTRAPMENT
 - a. Only available if:
 - i. The criminal design ORIGINATED w/the police AND
 - ii. D was not predisposed to commit the crime before the cops contacted him.
- 7. MISTAKE
 - a. Even an unreasonable mistake can negate a specific intent crime, if it means D lacked the intent.
 - b. Mistake of law no excuse UNLESS:
 - i. There was reasonable reliance on a statute or judicial decision OR
 - ii. D's mistake of law caused him to lack the specific intent necessary.
- 8. INFANCY
 - a. Under age 7 – no liability
 - b. 7-14 – rebuttable presumption of no mens rea
 - c. Over 14 – treated as adults
- 9. NECESSITY
 - a. Commission of the crime was necessary to avoid an imminent and greater injury to society, from an OBJECTIVE standpoint.
 - b. BUT causing the death of another person is never justified.
 - c. NOT a defense if the person **created** the situation where he had to choose the lesser of two evils.
 - d. Necessity must involve pressure from natural or physical forces.
- 10. DURESS
 - a. D only committed the crime because he reasonably believed that another person would IMMEDIATELY inflict death or great bodily harm upon him or a member of his family if he didn't commit the crime.
 - b. NEVER a defense to causing the death of another person.
- 11. CRIME PREVENTION
 - a. COPS
 - i. Can use deadly force ONLY if:
 - 1. It is necessary to prevent a felon's escape AND
 - 2. The felon presents a danger of death or serious bodily harm.
 - ii. Can use non-deadly force if:
 - 1. It reasonably appears necessary to effect an arrest.
 - b. CIVILIANS
 - i. Can use non-deadly force IF:
 - 1. A crime was in fact committed AND
 - 2. The person has reasonable grounds to believe the person actually committed the crime.
 - ii. Can use deadly force ONLY if:
 - 1. The person harmed was **actually guilty** of the crime AND
 - 2. The person threatens human life.

CRIMINAL PROCEDURE

EXCLUSIONARY RULE

Prevents the introduction of evidence obtained in violation of a D's 4th, 5th, or 6th Amendment rights.

- 1. FRUIT OF THE POISONOUS TREE
 - a. All evidence obtained as a result of excluded evidence is also excluded, EXCEPT:
 - i. If it was obtained from an independent source.
 - ii. There was an intervening act of free will by D.
 - 1. Example: D was illegally interrogated but then comes back to the station after leaving, and confesses.
 - iii. Inevitable discovery
 - 1. Cops can show they would have found the evidence anyway.
 - iv. Where it is being used in grand jury or civil proceedings.
 - v. Where police were acting in good faith on a facially valid search warrant UNLESS:
 - 1. It was so defective they should have realized it,
 - 2. It was so lacking in probable cause it could not reasonably be relied on,
 - 3. The affiant lied to or misled the magistrate,

- 4. The magistrate has “wholly abandoned his judicial role”
- vi. It is being used to impeach D’s credibility when he is taking the stand at trial.
 - 1. This includes:
 - a. A voluntary confession that violated Miranda
 - b. Evidence obtained from an illegal search
 - 2. Goes in for impeachment ONLY not as substantive evidence.
- b. NOTE: D cannot have a witness’ in-court identification excluded on the ground that it is fruit of an unlawful detention.
- 2. HARMLESS OR REVERSIBLE ERROR
 - a. If illegally evidence is admitted, the conviction still won’t be overturned on appeal if the gov’t can show BEYOND a reasonable doubt that the error was harmless.
 - b. NOTE denial of a right to counsel *at trial* is never harmless.

4TH AMENDMENT

UNREASONABLE SEARCH & SEIZURE

- 1. PHYSICAL ARRESTS/STOPS
 - a. ARREST - PROBABLE CAUSE REQUIRED
 - i. An arrest must be based on probable cause
 - ii. Probable cause = Trustworthy facts or knowledge sufficient for a reasonable person to believe D has committed, or is committing, a crime.
 - iii. A warrant is never required for arresting a person *in a public place!*
 - b. BRIEF DETENTIONS – LOWER STANDARD
 - i. Stops
 - 1. A stop is permitted w/o a warrant if P has:
 - a. A reasonable suspicion of criminal activity,
 - b. Supported by articulable facts (not just a ‘hunch’).
 - 2. The stop can be no longer than necessary to conduct a limited investigation to try and verify the suspicion.
 - 3. May request D give his name, and may arrest him for not complying.
 - ii. Frisks
 - 1. A frisk is then permitted if P has:
 - a. A reasonable suspicion
 - b. That D is armed and dangerous.
 - iii. Stopping cars on the road
 - 1. P must have a reasonable suspicion to believe the law has been violated OR
 - 2. There are special law enforcement needs involved.
 - a. These include roadblocks that:
 - i. Stop cars on the basis of some neutral, articulable standard (every car) AND
 - ii. Are designed to serve purposes closely related to driving (i.e. testing for drunk drivers, NOT to search for illegal drugs).
 - 3. After lawfully stopping, P may order occupants out, and frisk them if he thinks they have weapons.
 - 4. Cops may stop a car if they really think they committed a traffic violation, even if they secretly just want to check out a suspicious driver!
- 2. SEARCH & SEIZURE
 - a. GOVERNMENTAL CONDUCT
 - i. Only acts by the gov’t count here. No problem if private party seizes your stuff.
 - b. REASONABLE EXPECTATION OF PRIVACY
 - i. Unless D has a reasonable expectation of privacy in the property/area searched, then he does not get 4th amendment protection.
 - ii. Whether someone has an expectation of privacy is based on the totality of the circumstances.
 - iii. You will ALWAYS Have an EofP if:
 - 1. You owned or had a right to possession of the premises searched,
 - 2. The place searched was in fact your home, even if you did not have the legal right to be there (homeless),

3. You were an overnight guest of the owner of the place searched (incl. Hotel).
- iv. There is no ReofP in things held out to the public.
 1. This includes account records held by a bank.
- c. WITH A WARRANT
 - i. WARRANT REQUIREMENTS
 1. The warrant must be:
 - a. Issued by a neutral and detached magistrate
 - b. On a showing of probable cause
 - c. Which is reasonably precise with respect to:
 - i. The place to be searched
 - ii. The items to be seized
 2. A warrant will be held invalid if:
 - a. A false statement was included in the affidavit by the affiant, AND
 - b. The affiant *intentionally or recklessly* lied in the statement, AND
 - c. The false statement was material to the finding of probable cause.
 - d. BUT if P relied in good faith on the warrant, the evidence is still admissible!
 - ii. SCOPE OF WARRANT
 1. If it's not reasonably precise as to place to be searched and stuff to be seized, the warrant is unconstitutional and invalid.
 2. Police may NOT search 3d parties found on the premises, not named in the warrant.
 3. BUT police can seize any contraband or fruits/instrumentalities of crime they find, even if it's not in the warrant.
 - iii. PROPER EXECUTION
 1. Only POLICE not private citizens can execute a warrant.
 2. upon arrival police must:
 - a. Knock
 - b. Announce their purpose
 - c. Wait a reasonable time for admittance.
 - d. BUT if Ps believe announcing would be dangerous, futile, or inhibit the investigation, they can just go in.
- d. WITHOUT A WARRANT
 - i. INCIDENT TO LAWFUL ARREST
 1. P may search:
 - a. The D himself
 - b. Any areas into which he might reach to obtain weapons or destroy evidence (wingspan).
 - i. This includes entire passenger compartment of car but not trunk.
 2. Search must be *contemporaneous in time and place* with the arrest.
 3. If D is brought into the station, Ps may make an inventory search of his belongings AND his impounded vehicle.
 4. If arrest not lawful, search not lawful either.
 - ii. AUTOMOBILE
 1. This is where:
 - a. P has probable cause
 - b. To believe the car contains
 - c. Fruits, instrumentalities, or evidence of a crime.
 2. Ps may search the whole vehicle AND any container that might reasonably contain the item for which they had probable cause to search.
 - a. So if searching for illegal immigrants, can't look inside small tupperware container.
 - b. This includes packages belonging to a passenger.
 3. If the search is valid, Ps may tow the car to the station and search it later.
 - iii. PLAIN VIEW
 1. Ps may make a warrantless seizure if:
 - a. They are legitimately on the premises,
 - b. Discover evidence, fruits or instrumentalities of a crime, or contraband,
 - c. Which is seen in plain view,

- d. And it is immediately apparent that the item is evidence, contraband, or the fruit/instrumentality of a crime.
- 2. If Ps have a warrant to search for a gun in a home, and open a drawer where a gun could be, and see drugs, that would be a legitimate plain view seizure.
 - a. Key is they are only entering and looking in places they have a right to look.
- iv. CONSENT
 - 1. Consent must be voluntary and intelligent.
 - 2. Knowledge of the right to withhold consent is not required.
 - 3. Person consenting must have a right to enter the premises.
 - a. Example: Homeowner maybe can't consent to au pair's room where it has a separate, locked door.
 - 4. Scope of the search may be limited to to the scope of the consent – but includes all areas where a reasonable person would think it extends.
 - 5. One joint owner can consent, even if property of another joint owner is seized.
- v. STOP & FRISK
 - 1. Person stopped on an articulable and reasonable suspicion can be searched via:
 - a. A patdown of outer clothing
 - b. UNLESS the P has specific info suggesting a weapon is hidden somewhere else.
 - 2. During frisking P can seize anything that, based on its “plain feel,” could be a weapon or contraband.
- vi. EXIGENT CIRCUMSTANCES
 - 1. Ps in “hot pursuit” of a fleeing felon can make a warrantless search and seizure, and may even follow him into a private home.
 - 2. Ps can seize “evanescent evidence” likely to disappear before a warrant is obtained.
 - 3. These things may also justify warrantless searches:
 - a. Contaminated food or drugs
 - b. Children in trouble
 - c. Burning fires
- e. PERSONS OR PLACES SEARCHED
 - i. PUBLIC SCHOOLS
 - ii. PROBATIONER
 - iii. BORDER SEARCHES
 - 1. The 4th Amendment does NOT apply to border searches.
 - 2. Also, aliens searched abroad by U.S. officials have no 4th Amendment rights.
 - iv. WIRETAPPING
 - 1. Always requires a warrant.
 - 2. Valid wiretapping warrant requires:
 - a. Probable cause
 - b. Names of persons to be involved in the conversation
 - c. A particular description of the conversation to be overheard
 - d. A time limit that is relatively short
 - e. A termination of the wiretap once the desired info has been obtained
 - f. A report to the court afterward showing what conversations were intercepted.
 - v. BODY SEARCHES

5TH AMENDMENT

COMPULSORY SELF-INCRIMINATION

DOUBLE JEOPARDY

1. INCRIMINATING STATEMENTS

- a. Privilege against self-incrimination protects compelled testimonial evidence
 - i. Anytime a person is asked a question where his response might furnish a link in the chain of evidence needed to prosecute him, he can refuse to answer.
 - ii. MUST be claimed in a civil proceeding to prevent it from being waived in a later criminal proceeding.
 - iii. Does not apply to physical evidence (i.e. being forced to give a hair sample).
 - iv. CanNOT claim if there is NO possibility of incrimination (i.e. statute of limitations has run).
- b. MIRANDA

- i. Custodial interrogation
 - 1. Triggered when person is:
 - a. In custody AND
 - b. Accused of a crime AND
 - c. Is about to be interrogated.
 - 2. D is in custody when he has a reasonable belief that he could not leave.
 - 3. Interrogation = any words or conduct by Ps that they should know would *likely elicit a response* from D.
- ii. Warning
 - 1. Must be given prior to interrogation, and must tell D:
 - a. He has the right to remain silent,
 - b. Anything can and will be used against you in court,
 - c. He has the right to the presence of an attorney,
 - d. And if he cannot afford an attorney, one will be provided for him.
 - 2. If D decides to remain silence, police may NOT badger him, and must scrupulously honor the right.
 - a. BUT the Supreme Court has allowed later questioning on an UNRELATED crime.
 - 3. If D *unambiguously* asserts that he wants a lawyer, all questioning must cease until the lawyer gets here.
 - a. Ps can't wait until lawyer talks to D, leaves, and then start questioning him again.
- iii. Waiver
 - 1. Must be knowing, voluntary, and intelligent.
- iv. Terminate
 - 1. D can terminate the interrogation at any time by re-invoking his Miranda rights.
- c. Voluntary confessions obtained w/o Miranda warnings CAN be used to impeach D's testimony if he takes the stand – but do NOT come in as substantive evidence.
- d. At trial, P may NOT comment on D's decision to remain silent.
- 2. DOUBLE JEOPARDY
 - a. When it attaches:
 - i. Jury trial – on the empaneling and swearing of the jury
 - ii. Bench trial – when the first witness is sworn
 - b. Exceptions
 - i. Hung Jury
 - ii. Mistrial
 - iii. When there was manifest necessity to abort the original trial
 - iv. When the first trial ended at D's behest, on some ground not constituting acquittal on the merits
 - v. When the first trial ended b/c D made a plea bargain, then breached it.
 - c. Same Offense or lesser included, unless new evidence
 - i. Does NOT apply if at least one additional element must be proven.
 - ii. Cannot do a subsequent trial for a lesser included offense.
 - d. Does not apply to separate sovereigns
 - i. One state and another state can both try D for the same crime
 - ii. State gov't and fed gov't can both try D for the same crime
 - iii. State gov't and LOCAL gov't can't both try D.
 - e. Does not bar appeals by P IF an appeal would not require a retrial.

6th AMENDMENT

SPEEDY TRIAL

PUBLIC TRIAL

TRIAL BY JURY

RIGHT TO CONFRONT WITNESSES

ASSISTANCE OF COUNSEL

- 1. RIGHT TO COUNSEL
 - a. AFTER ARREST

- i. The 6th Amend. Only provides a right to counsel once *judicial proceedings begin* – so there’s no 6th amend. right to counsel when you get arrested. That comes as part of the 5th Amend Miranda rights.
 - b. RIGHT AT POST CHARGE-LINEUP OR SHOW-UP
 - i. If this is violated, the witness can still make an in-court identification if it’s from an independent source (i.e., a chance to see D at the time of the crime).
 - ii. BUT no right to counsel at photo Ids
 - iii. Also no right when fingerprints or handwriting samples are taken
 - c. CRITICAL STAGES OF A PROSECUTION
 - i. Right to counsel comes in at all critical stages of prosecution, which include:
 - 1. Preliminary hearings to determine probable cause to prosecute
 - 2. Arraignment
 - 3. Post-charge lineups
 - 4. Guilty plea and sentencing
 - 5. Misdemeanor trials when imprisonment *is actually imposed*
 - 6. Felony trials
 - 7. Overnight recesses during trial
 - 8. Appeals as a matter of right.
 - d. WAIVER & RIGHT TO DEFEND ONESELF
 - i. Waiver must be knowing and intelligent
 - ii. Doesn’t matter if he’s incapable of representing himself competently
 - e. EFFECTIVE ASSISTANCE OF COUNSEL
 - i. Effective assistance is generally presumed.
 - ii. Counsel is ineffective if D can prove:
 - 1. Deficient performance by counsel,
 - 2. Which would have led to a DIFFERENT RESULT in the proceeding if performance was not deficient.
 - 3. D must point out **specific** deficiencies she is claiming.
 - iii. If D can show
2. RIGHT TO A SPEEDY TRIAL
- a. Whether a trial is “speedy” is evaluated by a totality of the circumstances, including:
 - i. Length of delay
 - ii. Reason for delay,
 - iii. Prejudice to D
 - b. This right attaches once D has been arrested OR charged.
 - i. SO if D is walking around free while prosecution gathers evidence to arrest him, that’s not a speedy trial issue.
3. RIGHT TO A JURY TRIAL
- a. SERIOUS OFFENSES > 6 MOS.
 - i. Minor offenses with max term of 6 mos. or less don’t require a jury.
 - ii. For criminal contempt proceedings, cumulative penalties totalling more than 6 months triggers the right to a jury trial.
 - b. NUMBER & SELECTION OF JURORS
 - i. Must be at least 6.
 - ii. A unanimous verdict isn’t necessarily needed, but if there’s only 6 jurors, they must be unanimous. 9-3 is probably the limit for 12 jurors.
 - iii. D does not have the right to proportional representation of the community on HIS particular jury.
 - 1. Can only show violation of jury trial right if there is underrepresentation of a distinct and numerical group in the community.
 - iv. D can challenge peremptory strikes based on race or gender in this way:
 - 1. Show facts or circumstances that raise an inference that exclusion was based on race or gender.
 - 2. Then P must come forward with a race-neutral explanation for the strike.
 - 3. Then judge decides if P is sincere.
 - v. D is entitled to questioning potential jurors about racism if race is bound up in the case, or he is accused of an interracial CAPITAL crime.
 - c. DEATH PENALTY – SELECTING JURORS

- i. If the jury is to decide whether D should get a death sentence, D must be allowed to ask whether potential jurors would *automatically* give the death penalty on a guilty verdict.
 - 1. These jurors would not be able to perform their duty by considering mitigating factors.
 - 4. RIGHT TO CONFRONT WITNESSES
 - a. OBSERVE WITNESS DEMEANOR AND OPPORTUNITY TO CROSS-X
 - b. RIGHT NOT ABSOLUTE
 - i. DISRUPTIVE DEFENDANT
 - ii. CO-DEFENDANT'S CONFESSION
 - 1. If both are being tried together, and one has given a confession that implicates the other, the right of confrontation prohibits its use at trial UNLESS:
 - a. All portions relating to the other D can be eliminated AND
 - b. The confessing D takes the stand and subjects himself to cross-X AND
 - c. The confession of the non-testifying co-D is being used to rebut the D's claim that his was obtained coercively.
5. GUILTY PLEAS
 - a. These implicate the 6th Amendment because what they really are are waivers of a jury trial.
 - b. At a guilty plea ceremony, the judge must tell D Personally:
 - i. Of the nature of the charge he is pleading guilty to,
 - ii. The maximum possible penalty and any mandatory minimum,
 - iii. That D has a right not to plead guilty,
 - iv. That by pleading guilt D waives his right to a trial.
 - c. A record must be taken of the giving of the guilty plea, and the record must indicate that the plea was voluntary and intelligent.

8TH AMENDMENT

CRUEL & UNUSUAL PUNISHMENT

- 1. PUNISHMENT PROPORTIONATE TO OFFENSE
 - a. A punishment that is grossly disproportionate to the seriousness of the crime charged violates the 8th Amend.
 - b. The death penalty for rape of an adult woman has been found to violate this standard.
- 2. DEATH PENALTY
 - a. Not inherently violative of 8th Amendment
 - b. Jury must be allowed to consider mitigating circumstances
 - c. Can be imposed for felony murder IF:
 - i. D participated in a major way AND
 - ii. Acted w/reckless indifference
 - d. Jury can consider effect on victim's family
 - e. Cannot be imposed on:
 - i. Retarded
 - ii. Minors (when crime committed)
- 3. STATUS CRIMES
 - a. A law that makes it a crime to have a given "status" (i.e. not an act) violates the 8th Amendment.

14TH AMENDMENT

DUE PROCESS

- 1. SHOCKS THE CONSCIENCE
 - a. A method of obtaining evidence that "shocks the conscience" violates Due Process.
 - i. Example: Requiring surgery to remove a bullet.
- 2. IDENTIFICATIONS
 - a. Identifications that are unnecessarily suggestive and where there is a substantial likelihood of misidentification violate due process.