

**LAW OF CONFESSIONS**

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Credit: William F. Daines (2012)

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**SEXIEST MAN ALIVE (2006)**



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**CORE CONSTITUTIONAL PROVISIONS**

- 4<sup>th</sup> Amendment: Right against Unreasonable Searches and Seizures
- 5<sup>th</sup> Amendment: Right against Self Incrimination
- 6<sup>th</sup> Amendment: Right to Counsel
- 14<sup>th</sup> Amendment: Due Process

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### 4<sup>TH</sup> AMENDMENT

- ◉ Protection from Unreasonable Searches and Seizures
  - May operate to exclude an otherwise “voluntary” and “Mirandized” confession that is taken during a period of unlawful seizure.
    - Brown v. Illinois, 95 S.Ct. 2254 (1975)
  - Factors for attenuation from arrest:
    - (1) whether confession is obtained by exploitation of illegal arrest; (2) temporal proximity of arrest and confession; (3) presence of intervening circumstances; and (4) purpose and flagrancy of official misconduct.

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### 4<sup>TH</sup> AMENDMENT

- ◉ Compared with the Fifth Amendment:
  - A person may be “seized” for purposes of the Fourth Amendment, but not be entitled to 5<sup>th</sup> Amendment Miranda Warnings because they are not “in custody.”
    - United States v. Mendenhall 1980);
    - Berkemer v. McCarty (1984).

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### 14<sup>TH</sup> AMENDMENT

- ◉ “No State shall . . . Deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

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**14<sup>TH</sup> AMENDMENT: DUE PROCESS**

- Statements which are obtained “involuntarily” are inadmissible. Dickerson v. U.S., 530 U.S. 428 (2000).
  - Voluntariness is looked at under the totality of the circumstances, including the suspect’s age, education, mental and physical condition, setting of the interrogation, duration, and manner of interrogation.

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**14<sup>TH</sup> AMENDMENT: DUE PROCESS**

- Cases dealing with “voluntariness” can be broken down into two categories of inquiries:
  - Focus on Police Methods
  - Focus on Suspect Vulnerability

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**14<sup>TH</sup> AMENDMENT: DUE PROCESS**

- Brown v. Mississippi, 297 U.S. 278 (1936): held that the due process clause of the 14<sup>th</sup> Amendment prohibited the use of a confession that was untrustworthy.
  - Defendant was subjected to physical beatings and whipped, but “not too much for a Negro; not as much as I would have done if it were left to me” in the words of the presiding deputy.
  - Cases focused on use of the “third-degree” tactics which generally were based on physical violence or threats of violence to produce confessions unworthy of belief.

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**14<sup>TH</sup> AMENDMENT: DUE PROCESS**

- Ashcraft v. Tennessee, 322 U.S. 143 (1944): held that confession obtained after 36 hours of continuous, custodial interrogation was coerced.
  - “It is inconceivable that any court of justice in the land . . . would permit prosecutors serving in relays to keep a defendant witness under continuous cross examination for thirty-six hours without rest or sleep in an effort to extract a ‘voluntary’ confession.”

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**14<sup>TH</sup> AMENDMENT: DUE PROCESS**



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**14<sup>TH</sup> AMENDMENT: DUE PROCESS**

- Watts v. Indiana, 338 U.S. 49 (1949): held that a statement produced by sustained pressure by the police, (7 days of repeated, custodial interrogation), is not admissible at trial because the police methods used to obtain it offend Due Process.

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**14<sup>TH</sup> AMENDMENT: DUE PROCESS**

- State v. Rettenberger, 984 P.2d 1009 (Utah 1999)
  - Held that a confession was involuntarily given by 18 year old (15 year old maturity) with ADHD and mental issues that made him “overly compliant”, coupled extended custodial interrogation (2 days), with police misrepresentations, false-friend technique, and minimization of seriousness of offense.
  - Two step Voluntariness inquiry: (1) whether the police conduct was objectively coercive, and (2) whether the Defendant’s will was overborne.

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**14<sup>TH</sup> AMENDMENT: DUE PROCESS**

- State v. Rettenberger, 984 P.2d 1009 (Utah 1999)
  - Factors to consider: defendant’s mental health, mental deficiency, emotional instability, education, age, familiarity with the judicial system, police conduct, the duration of interrogation, persistence of officers, police trickery, absence of family and counsel, and threats or promises made to the defendant.

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**14<sup>TH</sup> AMENDMENT: DUE PROCESS**

- **Voluntariness is broader than Miranda’s requirements.**
  - Applies regardless of “custody”
  - Applies regardless of “warnings”
    - Lego v. Twoney, (1972)
  - Compelled statements are inadmissible for any purpose.
  - A statement may be admissible under Miranda, yet inadmissible under the voluntariness analysis.

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### FIFTH AMENDMENT

◉ “No person shall . . . be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property, without due process of law . . . .”

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### THE MIRANDA REVOLUTION



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### MIRANDA V. ARIZONA (1966)

- ◉ Held: Prior to initiating custodial interrogation, a peace officer must inform the subject of the following rights:
  - Right to remain silent;
  - Anything you say can and will be used against you in court;
  - Right to an attorney present during interrogation;
  - If cannot afford an attorney, one will be appointed to represent him or her.
- ◉ Created a presumptive test for admissibility of confessions

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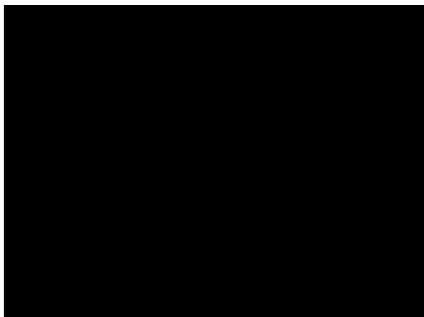
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### CUSTODY OR INTEROGATION?



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### 5<sup>TH</sup> AMENDMENT

- Duckworth v. Eagan (1989): No particular wording required by Miranda for the warnings. The inquiry is whether the warnings were reasonably conveyed to the suspect
- Florida v. Powell (2010), failure to inform suspect that he had the right to have counsel present during custodial interrogation did not reasonably convey required information.
- Dickerson v. United States (2000): Miranda is a “constitutional” command.

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### WHAT IS “CUSTODY”

- A formal arrest or restraint of freedom of movement of the degree associated with formal arrest. Berkemer v. McCarty (1984).
  - Not during traffic stops.
  - Objective test
- Thompson v. Keohane (1995): Two-prong test
  - 1) What were the circumstances surrounding the interrogation; and
  - 2) Given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave

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### MIRANDA WARNINGS

- State v. Mirquet: Required when a person is under arrest or his freedom of movement is curtailed to a degree associated with a formal arrest
- Oregon v. Mathiason: Even if the accusatory questioning takes place in a police station, the person is not necessarily in (Miranda) custody if there is no arrest or restriction on his freedom of movement and the interrogated person is free to terminate the interview and leave

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### WHAT IS "INTERROGATION"

- Express questioning or its functional equivalent and incorporates any words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response
  - Rhode Island v. Innis (1980): The test is an objective one. . . The focus is on the perceptions of a reasonable person in the suspect's position rather than the intent of the investigating officer
  - NOT Apply: (1) spontaneous statements, (2) routine booking questions, or (3) allowing, but listening to, conversation with spouse

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### KNOWING AND VOLUNTARY WAIVER

- Before officers may speak to a suspect after having given Miranda warnings, a Suspect must knowingly, voluntarily and intelligently waive his or her rights. Colorado v. Spring, 1987).
  - State bears a "heavy burden" to demonstrate waiver. Miranda v. Arizona (1966)
- Colorado v. Connelly: Waiver need only be proven by a preponderance of evidence by the State in a motion to suppress.

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### KNOWING AND VOLUNTARY WAIVER

- Court will NOT presume waiver from silence alone, but will look at totality of circumstances. Fare v. Michael C. (1979)
- Refusal to sign written waiver, but verbally consenting to interrogation is acceptable. North Carolina v. Butler (1979)
- Not required to communicate subject matter of interrogation. Colorado v. Spring (1987)
- Deception during interrogation, after knowing and voluntary waiver, is acceptable. Moran v. Burbine (1987)

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### INTERROGATION DECEPTION?



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### INVOCATION OF MIRANDA RIGHTS

- Right to Silence
  - Michigan v. Mosley: When suspect invokes right to silence, officers must scrupulously honor this request and cease interrogations.
  - POLICE may initiate further interrogation if, after a significant time lapse, but during the same period of custody, the suspect is given a fresh set of warnings and waives, he may be interrogated on an unrelated crime.
    - The time period in Mosley was over two hours and involved a different set of officers

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### INVOCATION OF MIRANDA RIGHTS

- Right to an Attorney
  - Edwards v. Arizona (1981): Once a suspect invokes right to counsel, all questioning must cease until accused is provided with an attorney. Attorney must actually be present.
  - NO POLICE REINITIATION: a valid waiver of that right cannot be established by showing that he responded to further police-initiated custodial interrogation even if re-advised of rights prior to second interrogation.
    - (See Maryland v. Shatzer(2010) for limitation).

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### INVOCATION OF MIRANDA RIGHTS

- Right to an Attorney (cont'd)
  - Once an invocation is made, the defendant cannot thereafter be interrogated during the same period of custody ANY crimes without counsel present.
  - Exception: if the accused initiates further communication with police and thereafter waives his right to counsel after proper Miranda admonition. Oregon v. Bradshaw (1983).

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### FURTHER INTERROGATION AFTER INVOCATION?

- Maryland v. Shatzer (2010): for suspects released into the general population, 14 days is the appropriate period which provides ample time for the suspect to get re-acclimated to his normal life, consult with friends and counsel, and shake off any residual effects of the prior custody.
  - For suspects who are serving time in prison, a re-release back into the general prison population constitutes a break in Miranda custody
    - Officers must still wait 14 days between attempts at interrogation to create a break in Miranda Custody. Maryland v. Shatzer.

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### INVOCATIONS OF MIRANDA RIGHTS

- Generally, invocations of Miranda rights must be “unambiguous” and specific. Davis v. United States (1994).
- However, in State v. Leyva (Utah 1997), Utah Supreme Court recognized a distinction between:
  - Pre-waiver: ambiguous or equivocal references require an officer “stop and clarify” the suspect’s intentions.
  - Post-Waiver: ambiguous or equivocal references do NOT require an officer “stop and clarify” because the burden is on the suspect to be clear.

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### MIRANDA VIOLATIONS

- Oregon v. Elstad (1985): Failure to give Miranda warnings creates a presumption of compulsion and there is an irrefutable presumption that the unwarned statement shall be excluded for purposes of the prosecutor’s case-in-chief.
- Not use the invocation of rights during case

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### MIRANDA VIOLATIONS (LIMITATIONS)

- Impeachment: statements, though not admissible during the case-in-chief, may be used to impeach a Defendant’s testimony if he takes the stand at trial. Harris v. New York (1971).
  - Not for other witnesses, James v. Illinois (1990)
- Non-testimonial Fruits: Miranda’s protection against compelled self incrimination, does not apply to physical evidence discovered as a result of un-mirandized statement. United States v. Patane (2004).

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### MIRANDA VIOLATIONS (LIMITATIONS)

- **Public Safety Exception:** if custodial interrogation is prompted by concern for “public safety” then statements may be used in court. New York v. Quarles (1984).
  - Probably should be a bona-fide, ongoing emergency where death, serious bodily injury, or possibly substantial property damage is imminent.

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### INTERROGATION TACTICS



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### CUSTODIAL INTERVIEWS RULES 27A, RULES OF JUVENILE PROCEDURE

- **In custody:** must be advised of rights
  - **14 or older:** presumed capable of waiving rights without parent present
  - **Under 14:** presumed incapable of waiving rights unless parent is present (maturity issue)
    - May be overcome by a preponderance

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### ALL INTERVIEWS

#### RULE 8, RULES OF JUVENILE PROCEDURE

- ◉ **Rights of Minors in Detention:**
  - 14 years and older:
    - Minor consent + parent consent + waiver of rights
  - Under 14 years of age:
    - General rule: must have parent present
      - Except:
        - a. written permission from parent,
        - b. parent waived rights, and
        - c. minor waived rights.
  - Court may give consent if parent unavailable

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### CUSTODIAL INTERROGATION



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### SIXTH AMENDMENT

- ◉ The Sixth Amendment provides that “In all criminal prosecutions, the accused shall . . . have the Assistance of counsel for his defence.”

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### SIXTH AMENDMENT

- Specifically delineates a right to counsel and has implications in confession law which are often far different from those of the Fifth Amendment
- The prosecutor must be able to distinguish the differences, particularly when advising police!

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### SIXTH AMENDMENT

- Compared to Miranda
  - Custody is not relevant to a determination of when the Sixth Amendment right to counsel “attaches”
  - The Sixth Amendment right to counsel is “offense specific,” contrary to the Fifth Amendment.

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### SIXTH AMENDMENT: REQUIREMENTS

- Kirby v. Illinois (1972): The right to counsel attaches at or after the time that adversary judicial proceedings have been initiated, whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.
  - Thus, no 6<sup>th</sup> Amendment claims until adversarial proceedings have begun.
- Messiah v. United States (1964): violations occur when police “deliberately elicit” an incriminating statement from the accused.

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### SIXTH AMENDMENT: REQUIREMENTS

- “Offense Specific” means invocations only apply to the particular offense where adversarial proceedings have been initiated.
  - Blockburger Test: two crimes are considered different offenses if each requires proof of an additional element that the other crime does not require. Texas v. Cobb (2001).
  - Compared to Miranda, where invocations apply to all offenses and interrogation must cease.

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### SIXTH AMENDMENT: INVOCATION

- Invocation of the right to counsel must unambiguously request counsel
- Michigan v. Jackson: Has been a bright line decision which held that “if police initiate interrogation after a defendant’s assertion, at an arraignment or similar proceeding, of his right to counsel, any waiver of the defendant’s right to counsel for that police-initiated interrogation is invalid.” BUT

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### SIXTH AMENDMENT: REINITIATION OF INTERROGATION

- Montejo v. Louisiana (2009):
  - Overruled Jackson.
  - Once the adversary judicial process has been initiated, Sixth Amendment right to counsel may be waived by the defendant, so long as relinquishment of the right is voluntary, knowing, and intelligent;
  - The defendant may waive the right whether or not he is already represented by counsel;
  - And when a defendant is read his Miranda rights and agrees to waive those rights, that is typically sufficient.

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### SIXTH AMENDMENT VIOLATIONS

- Brewer v. Williams (1977) held that violations of the Sixth Amendment right to counsel would require the suppression of all illegally obtained evidence.
- Court was prepared to exclude William's statements, action leading police to the victim's body, and any physical evidence discovered as a result of these actions.
- Compare with Miranda, where only the *testimonial* evidence would be excluded.

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### JAILHOUSE INFORMANTS

- **Fifth Amendment/Miranda:**
  - Concern for "police dominated atmosphere" absent when undercover agent placed in suspect's cell where he speaks believing the agent is a fellow inmate. Illinois v. Perkins (1990)
- **Sixth Amendment:**
  - words which agents deliberately elicited from him by listening to conversations set up by agents with a co-conspirator, post-indictment, after the accused had hired a lawyer and after he had been released from custody, violate the 6<sup>th</sup> Amendment. Messiah v. United States (1964)
  - The "silent informant" is okay. United States v. Henry (1980)

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### ANDY GRIFFITH KNOWS THE 6<sup>TH</sup> AMENDMENT



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**COMING SOON TO A RULEBOOK  
NEAR YOU!**

- Utah Rule of Evidence 616 (proposed 01/21/2015)
- Would require recording for any questioning during “custodial interrogation.”
  - Custodial interrogation may be defined more broadly than Miranda requires
  - Requires a “place of detention” such as police vehicle, building, or jail.
- Rule in addition to other legal requirements
- Numerous exceptions exist (swallow rule)
  - Requires a hearing to determine admissibility under an exception.

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