



# Freedom: The Struggle for Civil Liberties Part III

Those in power need checks and restraints lest they come to identify the common good as their own tastes and desires, and their continuation in office as essential to the preservation of the nation.

William O. Douglas (1898-1980)  
US Supreme Court Justice



# Rights of the Accused

- o Five of the first ten Constitutional amendments (4-8) focus on this issue but most Americans also want to control crime as much as possible.
- o writ of *habeas corpus*
- o be informed of the nature and cause of the accusation
- o indictment of a grand jury
- o speedy and public trial by jury
- o representation by counsel
- o right to present witnesses and evidence
- o right to confront accusers



# Rights of the Accused

- o no individual shall be forced in a criminal case to be a witness against himself
- o protection from double jeopardy
- o government is forbidden from imposing excessive fines or bail, or punishments which are cruel and unusual

## Checklist of Basic Rights

✓ Presumption of innocence

✓ Meaningful written notice

✓ Opportunity to be heard

✓ Impartial tribunal

✓ Right to confront accuser

✓ Right to record hearing

✓ Right to active participation of counsel/advisor (in some states)

o no unreasonable searches and seizures

o no one shall be deprived of life, liberty or property, without due process of law



# Rights of the Accused: Politicizing the Process

- o Elections affect court interpretations of the procedural rights of the accused.
- o interfere with the ability of police to find and prosecute criminals
- o election politics and criminal justice
  - o public: government must “do something”
  - o Serious problems for citizens and criminal justice system can result from **the politicization of criminal justice**: process through which political leaders seize opportunities to use criminal justice issues to enhance their own popularity, electability or power.





# Rights of the Accused: Politicizing the Process

- o Criminal justice decision makers are selected through election or appointment. In some states, voters elect judges. In others, governors appoint them. Either way, the selection process is political.
- o Politics influences the laws that legislatures enact.
  - o One lawyer who was instrumental in rewriting national drug laws in 1986 and 1988 says severe sentencing laws came about through whim and attempts by politicians to one-up each other as drugs seized media headlines just before elections.



# Rights of the Accused: Politicizing the Process

Prosecutors are elected in most states and are heavily involved in local politics. At the national level, **US attorneys are political appointees** and tend to mesh their career ambitions to the needs of their political party. Both state and national prosecutors often use their office as a springboard for higher political office.



## Rights of the victim

- to have their allegations investigated
- to be informed of the progress of the investigation
- to be informed of their role as a witness
- to be protected from the accused
- to make a victim impact statement

## Rights of the accused

- not to be illegally searched
- to remain silent
- to apply for bail
- to have interviews recorded
- to be detained only if arrested
- not to have prior charges or convictions detailed before the verdict is given
- not to have illegally obtained evidence used against them



# Rights of the Accused: Due Process

- o **due process rights:** legal requirement that the state must respect all legal rights that are owed to a person
- o procedural guarantees provided by the 4th, 5th, 6th and 8th amendments for those accused of crimes
- o Warren Court made several provisions of the Bill of Rights dealing with the liberties of criminal defendants (those charged but not yet tried) applicable to the states through the 14th amendment.

*Due process = procedural  
fairness at every stage*

**You're  
Under  
Arrest!**

**CRIMINAL  
CHARGES**





# Rights of the Accused: Unreasonable Searches and Seizures

- o The *right of the people to be secure* in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and *no warrants shall issue, but upon probable cause*, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
- o 4th amendment: Your house cannot be searched without permission unless a search warrant, based on evidence that a crime has been committed, is issued by a court.
- o *Weeks v. US (1914)*: Court reasoned that *allowing police and prosecutors to use a tainted search would only encourage that activity.*



# Rights of the Accused: Unreasonable Searches and Seizures

- o **exclusionary rule**: legal standard that says illegally obtained evidence cannot be admitted in court
- o When an illegal action is used by police/prosecution to gain any incriminating result, all evidence whose recovery stemmed from the illegal action, known as **fruit of the poisonous tree**, can be thrown out.
- o *Mapp v. Ohio* (1961): All evidence obtained by searches and seizures in violation of the Constitution is, under the 4th amendment, inadmissible in a state court.

There are four exceptions to the exclusionary rule:

1. Inevitable discovery doctrine
2. Valid independent source
3. Harmless error
4. Good faith

- o **headlong flight**: Evasive behavior is a pertinent factor in determining reasonable suspicion to justify a stop.



# Rights of the Accused: Unreasonable Searches and Seizures

- Courts do not automatically exclude evidence unlawfully obtained by law enforcement. Instead defense must evaluate evidence and make appropriate objections.
- *Kyllo v. US* (2001): **thermal imaging drug evidence** without a warrant is violation of 4th amendment
- **drug testing**: difficult search and seizure issue
- *Chandler v. Miller* (1997): Georgia's statute requiring that all candidates for elected state office pass a urinalysis drug test failed to show why its desire to avoid drug users in political offices should outweigh candidates' privacy interests.





# Rights of the Accused: Unreasonable Searches and Seizures

- o Over the years, the Court has interpreted the 4th amendment to allow the police to search:
  - o the person arrested
  - o things in plain view of the accused person

- o places or things that arrested person could touch or reach or are otherwise in the arrestee's immediate control

- o Court has ruled that police must knock and announce their presence before entering a home or apartment to execute a search.





# Rights of the Accused: Unreasonable Searches and Seizures

- Warren Court (1953-1969): bound the police to strict procedural requirements in the areas of investigation, arrest and interrogation
- Burger Court (1969-1986): far less willing to vindicate constitutional rights at expense of impairing state's capacity to reliably determine guilt ... contracted substantive scope of 4th and 5th amendment rights and decreased opportunities for effective judicial review of allegations that these rights were violated
- **good faith exception**: provides an exemption to the exclusionary rule



# Rights of the Accused: Unreasonable Searches and Seizures

Constitutional Post-Provision	Amendment	Extensions by Warren Court	Limitation by Warren Court
Search and seizure	4	<i>Mapp v. Ohio</i> , 1961 Improperly collected evidence cannot be introduced in court.	<i>United States v. Leon</i> 1984. But such evidence can be used if officers collected it in “good faith” belief that search was legal.
No self-incrimination	5	<i>Miranda v. Arizona</i> , 1966 Officers must tell suspects their rights before questioning.  <i>Dickerson v. U.S.</i> , 2000 <i>Miranda</i> reaffirmed.	<i>Harris v. New York</i> , 1971 But if suspects testify, evidence obtained without their “rights” can be introduced.
Impartial jury	6	<i>Sheppard v. Maxwell</i> , 1966 Establishes guidelines to protect jurors from biased news coverage.	<i>Nebraska Press Association v. Stuart</i> , 1976 But pretrial publicity does not necessarily preclude a fair trial.
Legal counsel	6	<i>Gideon v. Wainwright</i> , 1963 Poor defendants are guaranteed legal counsel.	No limitation
No double jeopardy	5	<i>Benton v. Maryland</i> , 1969 Applies to state as well as federal trials.	No limitation



# Rights of the Accused: Unreasonable Searches and Seizures

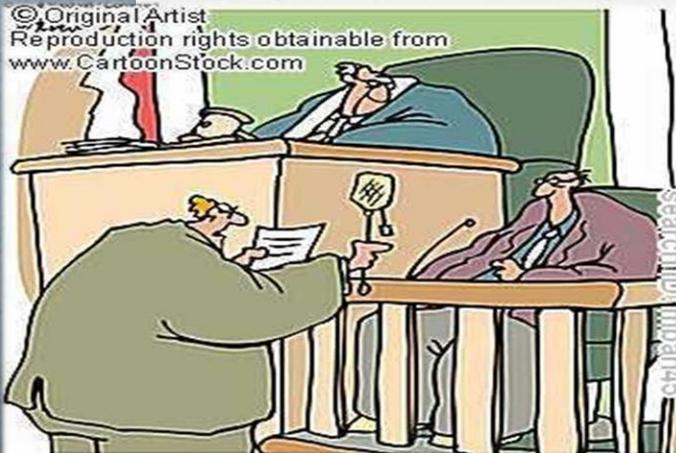
- o Rehnquist Court (1986-2005): Chief Justice Rehnquist, with very rare exceptions, consistently called for limiting the rights of individuals vis-à-vis the state.
- o *Wyoming v. Houghton* (1999): Held that so long as there is probable cause to search a stopped vehicle, all subsequent searches of its contents are legal as well. Court added that such searches are especially warranted if aimed at looking into objects or personal belongings capable of concealing items that are the object of the search.
- o *Knowles v. Iowa* (1998): Held that full-stopped car searches can only be conducted when the safety of the officers is at risk (**search incident to arrest power**).



# Rights of the Accused: Unreasonable Searches and Seizures

Roberts Court (2005-present): laying groundwork for abandoning the exclusionary rule ... fruits of illegal searches and seizures are **admissible if illegal conduct was negligent rather than flagrant** ... questions whether exclusionary rule continues to provide any benefit and strongly suggests that it has outlived its usefulness.

Conservative members of the Court really dislike the exclusionary rule and try hard to avoid excluding probative evidence of guilt that was not obtained as a result of coercion.



“Earlier you testified, and I quote: ‘I wouldn’t hurt a fly.’ And yet police found this unregistered weapon in your home, along with several dead flies.”



# Rights of the Accused: Immunity from Self-Incrimination

- o imposes number of restrictions on national government with respect to rights of persons suspected of committing a crime
- o 5th amendment protects individuals from torture and coerced confessions by saying that **persons cannot be forced to testify against themselves.**
- o provides for **indictment by a grand jury**
- o prevents national government from denying a person life, liberty or property without the **due process** of law
- o prevents the national government from **taking property without fair compensation**



# Rights of the Accused: Immunity from Self-Incrimination

Miranda v. Arizona (1966): protection against self-incrimination is available in all settings ... prosecution may not use statements from a custodial interrogation of a suspect unless certain procedural safeguards were in place (proof that suspect was aware of right to be silent, that any statement made might be used against him, that he had right to have attorney present, that he had right to have attorney appointed to him, that he might waive rights if he did so voluntarily, that if at any point he requested attorney there would be no further questioning until attorney arrived)

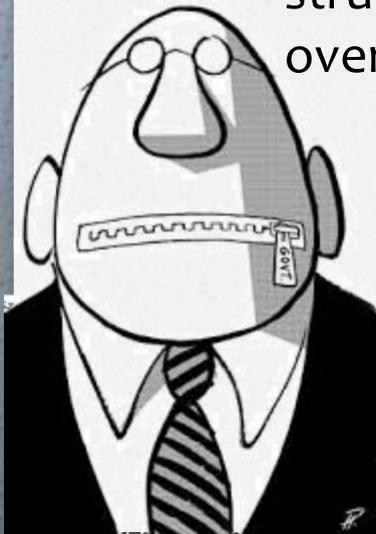
You have the right to remain silent.  
Anything either of us says or does will  
be posted on YouTube within the hour.





# Rights of the Accused: Immunity from Self-Incrimination

- Miranda warnings upheld in principle by Burger and Rehnquist Courts despite the granting of exceptions.
- *Dickerson v. US* (2000): upheld requirement that the Miranda warning be read to criminal suspects and struck down national statute that purported to overrule *Miranda v. Arizona*





# Rights of the Accused: Immunity from Self-Incrimination

## **Miranda Warning**

You have the right to remain silent and refuse to answer questions. Anything you say may be used against you in a court of law.

You have the right to consult an attorney before speaking to the police and to have an attorney present during questioning now or in the future.

If you cannot afford an attorney, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without an attorney present, you will still have the right to stop answering at any time until you talk to an attorney.

Knowing and understanding your rights as I have explained them to you, are you willing to answer my questions without an attorney present?

[Some jurisdictions require officer to ask "Do you understand?" after every sentence.]



# Rights of the Accused: Jury Trials

- o Sets out **basic requirements of procedural due process** for national courts to follow in criminal trials.
- o speedy and public trial
- o impartial jury
- o trial in state where crime was committed
- o notice of charges
- o right to confront witnesses and obtain favorable witnesses
- o right to counsel
- o *Gideon v. Wainwright* (1963): states required to provide defense attorneys to criminal defendants charged with serious offenses who cannot afford lawyers themselves



# Rights of the Accused: Jury Trials

- o provides that person accused of a crime shall enjoy right to a speedy and public trial by an impartial jury
- o Supreme Court has held that jury trials must be available if a prison sentence of six or more months is possible.
- o impartiality of jury
- o *Sheppard v. Maxwell* (1966): **safeguards put into place to ensure impartial juries** (postponement until public attention subsided, screening of jurors, instruction of jurors to consider evidence of trial, sequestration, changing of trial venue)





# Rights of the Accused: Jury Trials

- o impartiality of jury
  - o *Nebraska Press Association v. Stuart* (1976): **pre-trial publicity** - even pervasive, adverse publicity - does not inevitably lead to an unfair trial
  - o *Boston v. Kentucky* (1986): held that **racial discrimination in selection of jurors** not only deprives accused of important rights during a trial, but also is devastating to community at large because it undermines public confidence in fairness of system of justice



# Rights of the Accused: Jury Trials

- o provides defendants the right to confront witnesses against them
- o *Maryland v. Craig* (1990): held that confrontation clause of 6th amendment, which guarantees criminal defendants face-to-face meetings with witnesses against them at trial, was **not absolute** ... state's interest in protecting physical and psychological well-being of **children** could be sufficiently important to outweigh defendants' rights to face accusers in court





# Rights of the Accused: Right to Counsel

- o 6th amendment
- o *Powell v. Alabama* (1932): state capital cases
- o *Gideon v. Wainwright* (1963): state non-capital cases
  - o All citizens accused of serious crimes are constitutionally entitled to legal representation.
  - o office of **public defender**: low pay, systems and standards vary widely from state to state



# Rights of the Accused: Double Jeopardy

- o 5th amendment
- o *Benton v. Maryland* (1969): States **cannot try a person twice for the same offense** but a person can be tried in national courts even if acquitted in a state court.





# Rights of the Accused: *Habeas Corpus*

- o the **Great Writ**
  - o *habeas corpus* (“that you have the body”) **petition**: filed with court by person who objects to his or another's detention
  - o **writ of *habeas corpus***: judicial order that prisoner be brought before judge to determine legality of his/her imprisonment
  - o **preserves right of accused to due process of law**
  - o *Harris v. Nelson* (1969): *habeas corpus* fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action
- o Following 9/11, GW Bush attempted to place Guantanamo Bay detainees outside jurisdiction of *habeas corpus* but Court **overturned action** in *Boumediene v. Bush* (2008).



# Rights of the Accused: Plea Bargain

- o ...agreement between prosecution and defense that, for example, the accused will admit having committed a crime provided other charges are dropped and the recommended sentence is shortened
- o extensive use of plea bargain an issue



"I'm innocent. I've just never been able to pass up a good plea bargain."



# Rights of the Accused: Cruel and Unusual Punishment

- o part of the Bill of Rights that states: *Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*
- o *Furman v. Georgia* (1972): Court ended capital punishment because **imposed in an arbitrary manner**
- o *Gregg v. Georgia* (1976): reaction to rewriting of state laws on death penalty ... Death penalty statute found to be constitutional ... **not cruel and unusual as long as non-arbitrary and non-discriminatory**

## Selective Incorporation of Rights of the Accused

Supreme Court Case	Year	Constitutional Right at Issue
<i>Mapp v. Ohio</i>	1961	Unreasonable search and seizure
<i>Robinson v. California</i>	1962	Cruel and unusual punishment
<i>Gideon v. Wainwright</i>	1963	Right to counsel
<i>Malloy v. Hogan</i>	1964	Self-incrimination
<i>Pointer v. Texas</i>	1965	Right to confront witnesses
<i>Miranda v. Arizona</i>	1966	Self-incrimination
<i>Klopfer v. North Carolina</i>	1967	Speedy trial
<i>Duncan v. Louisiana</i>	1968	Jury trial in criminal cases
<i>Benton v. Maryland</i>	1968	Double jeopardy



# Rights of the Accused: Capital Punishment

- o **Rehnquist Court: at first, death penalty expedited**
- o *McCleskey* cases (1987 and 1991): since *McCleskey* could not prove purposeful discrimination which had a discriminatory effect on him existed in this particular trial, there was no constitutional violation ... Court refused to consider a 6th amendment issue the second time because *McCleskey* had not raised it previously
- o *Penry v. Lynaugh* (1989): jury was improperly instructed and should have been told it could have considered *Penry's* mental deficiencies when imposing its sentence but rejected claim that 8th amendment does not allow death sentences for retarded defendants





# Rights of the Accused: Capital Punishment

- o Rehnquist Court: at first, death penalty expedited
- o *Stanford v. Kentucky* (1989): lack of national unanimity concerning acceptability of death sentences for young offenders so decision whether to subject 17- or 16-year-olds to capital punishment must be made locally by states and cannot be categorically pronounced as cruel and unusual punishment
- o *Keeney v. Tamayo-Reyes* (1992): respondent is entitled to a national evidentiary hearing if he can show cause for his failure to develop facts in the state court proceedings and actual prejudice resulting from that failure, or if he can show a fundamental miscarriage of justice would result from failure to hold such a hearing



# Rights of the Accused: Capital Punishment

- o More recently, the public, judges and elected officials seem to be having second thoughts.
- o exonerations through DNA testing
- o concerns about executing mentally retarded
- o concerns about quality of legal defense for accused
- o Rehnquist Court reconsidered the issue.



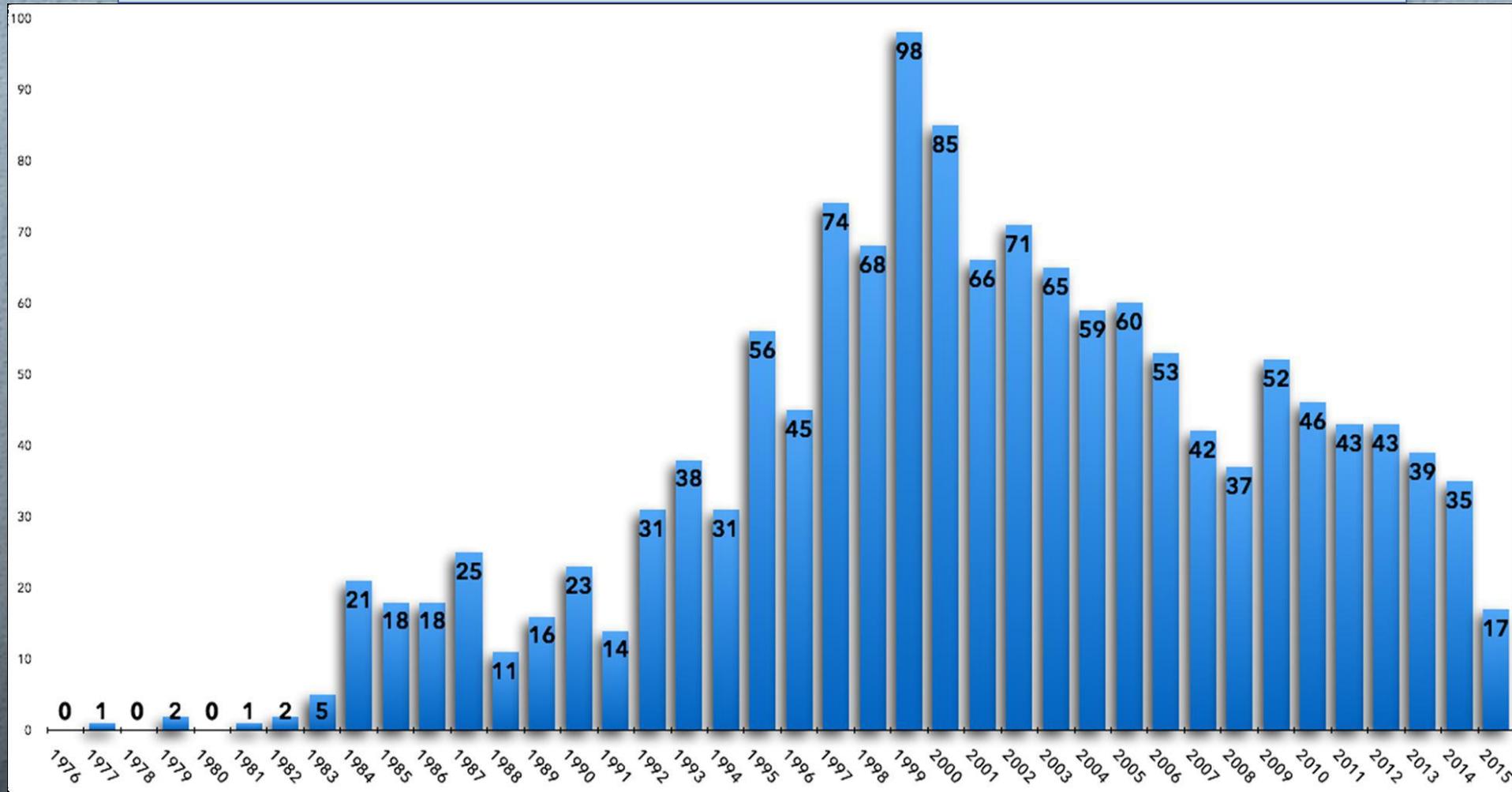


# Rights of the Accused: Capital Punishment

- o Rehnquist Court reconsidered the issue.
- o *Atkins v. Virginia* (2002): executing people with intellectual disabilities violates 8th amendment's ban on cruel and unusual punishments but states can define who has intellectual disability (12 years later in *Hall v. Florida* Court narrowed discretion under which states can designate an individual convicted of murder as too intellectually incapacitated to be executed.)
- o *Ring v. Arizona* (2002): allowing sentencing judge, without jury, to find aggravating circumstance necessary for imposition of death penalty violates right to jury trial under 6th amendment



# Rights of the Accused: US Executions by Year, 1976-2015





# Rights of the Accused: Capital Punishment Worldwide

- o The US and Japan are the only two rich democracies that use capital punishment.
- o 120 countries have either banned capital punishment or not used it in over ten years.
- o 76 countries use capital punishment, including China, Iran, Kuwait and Saudi Arabia.





# continued in Freedom: The Struggle for Civil Liberties Part IV

