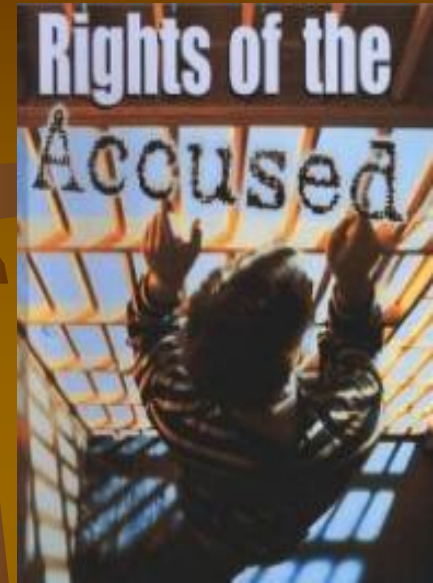


Rights of the Accused

A. Justification

1. Fear of unchecked governmental power / innocent until proven guilty
2. Suspects are citizens and thus have rights
3. Better to free a guilty person than to jail an innocent person - controversial

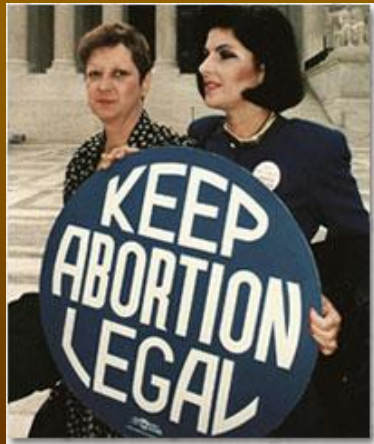


Due Process/Right to Privacy

A. Due Process: (in 5th and 14th Amendments)



B. Right to Privacy: in 1st, 4th, 5th, 9th, and 14th amendments)



D. WRIT OF HABEAS CORPUS



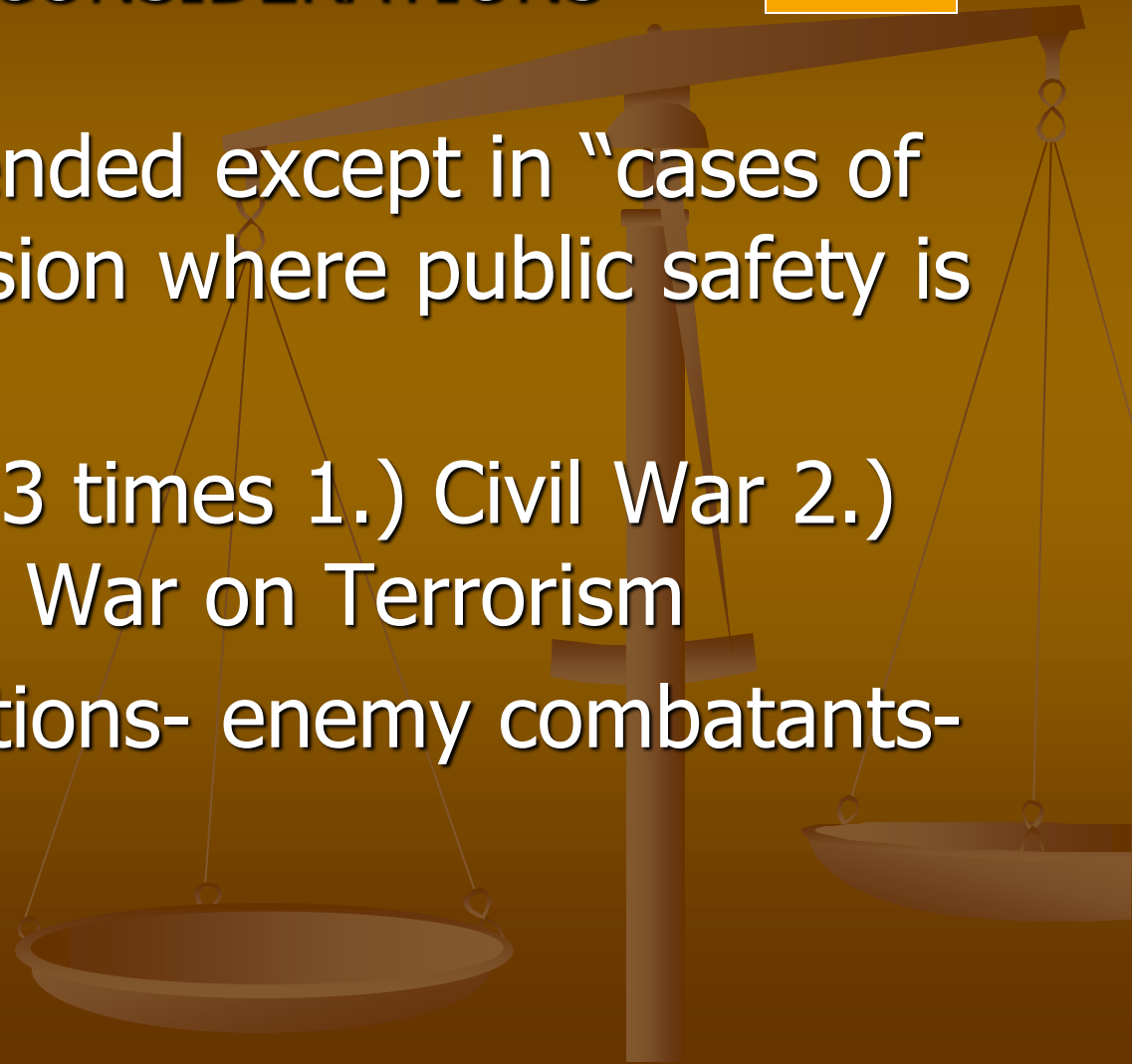
- WHAT? Prisoner must be brought before the court and cause of detainment must be justified
- WHERE? Article 1 sec. 9
- "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

3.) WHY? Prevents unjust arrests and imprisonments



■ LIMITATIONS / CONSIDERATIONS

- Cannot be suspended except in “cases of rebellion or invasion where public safety is at stake”
- Only suspended 3 times 1.) Civil War 2.) Hawaii WWII 3.) War on Terrorism
- Indefinite Detentions- enemy combatants-



BILLS OF ATTAINDER

WHAT? A law that also inflicts punishment without a court trial

- WHERE? Article 1, sec. 9 & 10
- WHY? Protects individual freedom & part of separation of powers
- LIMITATIONS?
 - None



EX POST FACTO LAWS

■ WHAT? A law that makes it a crime to do something before that law was even established

■ WHERE? Article 1, sec. 9 & 10

■ WHY? To safeguard from undue abuses

■ LIMITATIONS/CONSIDERATIONS

■ None – however retroactive laws are legal

■ 3 Strikes-and-You're-Out Laws

■ *Adam Walsh Child Protection and Safety Act of 2006.*

Mandates that Tier 3 offenders update their whereabouts every three months. Failure to register and update information is made a felony under the law. It also creates a national sex offender registry and instructs each state and territory to apply identical criteria for posting offender data on the Internet. It also gives the U.S. Attorney General the authority to apply the law retroactively

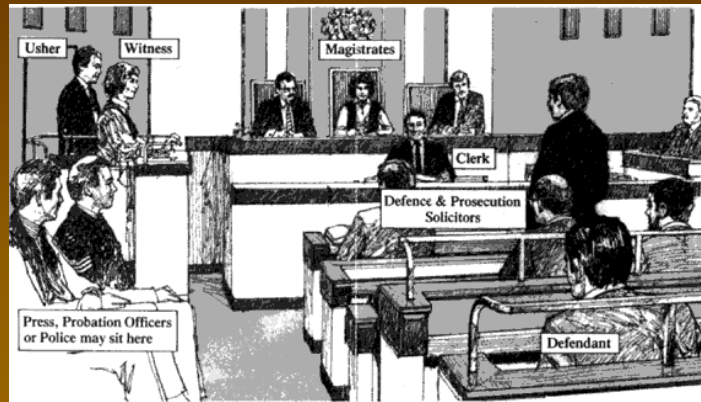


DOUBLE JEOPARDY



- WHAT? Cannot be tried for the same crime twice
- WHERE? 5th amendment
- WHY? Protects innocent from undue number of trials
- LIMITATIONS/CONSIDERATIONS:
 - appeals are not considered double jeopardy

SPEEDY & PUBLIC TRIAL



- WHAT? A public trial must be held within 70 days after the indictment
- WHERE? 6th amendment mainly; 14th and speedy Trial Act of 1974
- WHY? Ensure that government will try a person accused of crime in reasonable amount of time
- Limitations/Considerations:
 - *Zedner v. United States* (2006)- defendant can't simply waive right to speedy trial- must have justification waiver



TRIAL BY JURY

- WHAT? Accused guaranteed a trial by an impartial jury
 - WHERE? 6th Amendment
 - WHY? Guarantees a fair trial
 - Limitations/Considerations
 - Defendant may waive right of trial by jury if judge approves
 - Bench trial – only judge decides



Right To Counsel

What? People have a right to a lawyer

Where? 6th Amendment

Why? To help guarantee a fair trial

Limitations? If person can afford one then gov't doesn't
have to provide

Considerations?

Is justice served better to those
who can afford the top notch
lawyers?

Gideon v. Wainwright



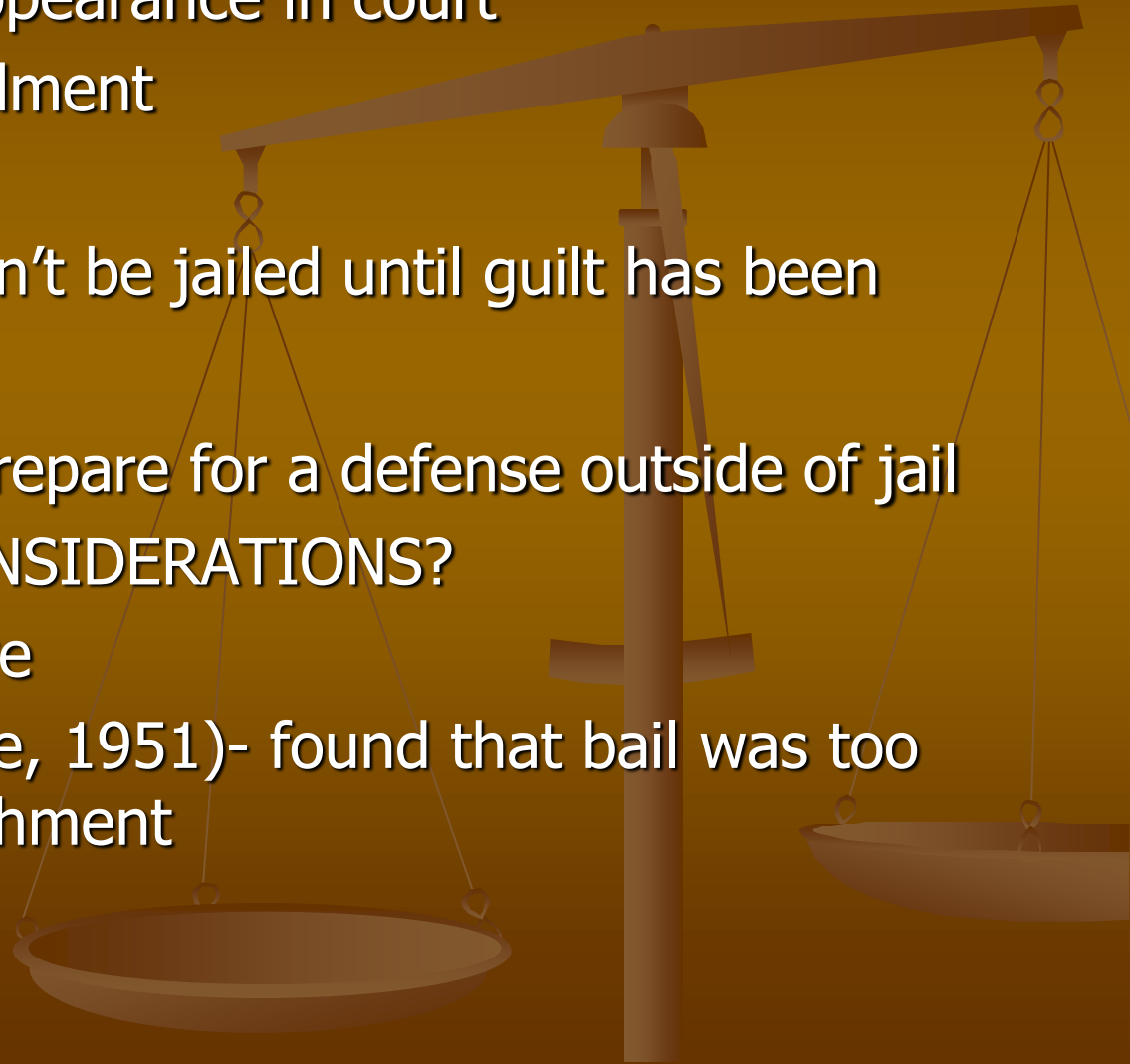
I can't defend
myself. I need
appointed
counsel.

And yet you've
gotten your case
all the way to the
Supreme Court.
How ironic.



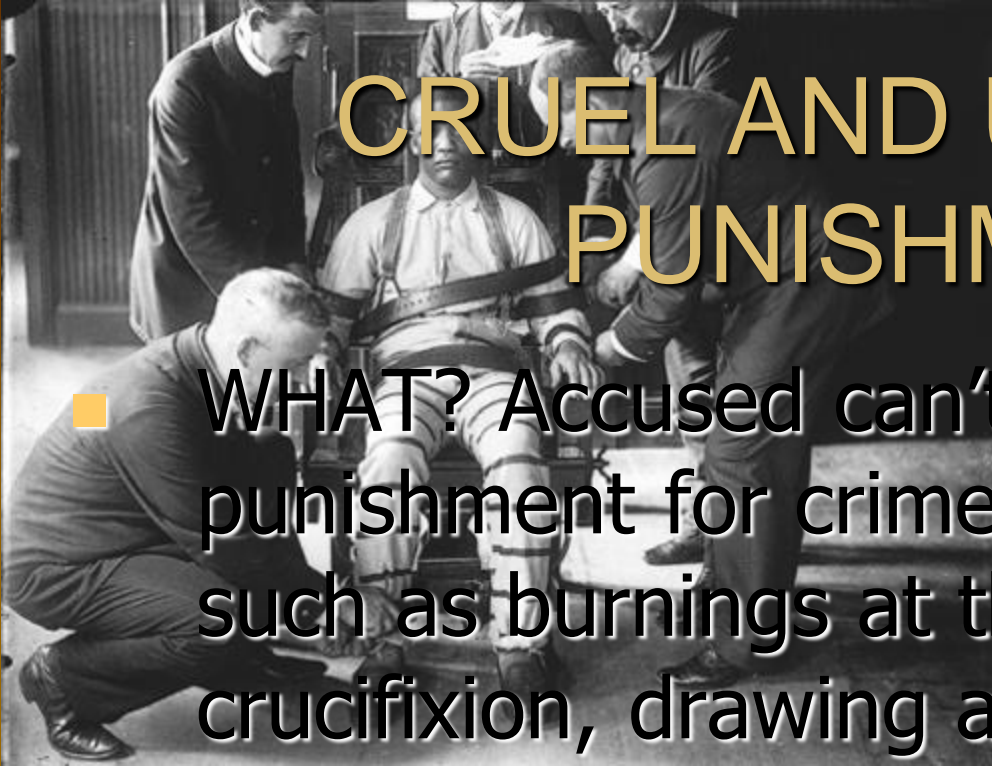
EXCESSIVE BAIL AND FINES

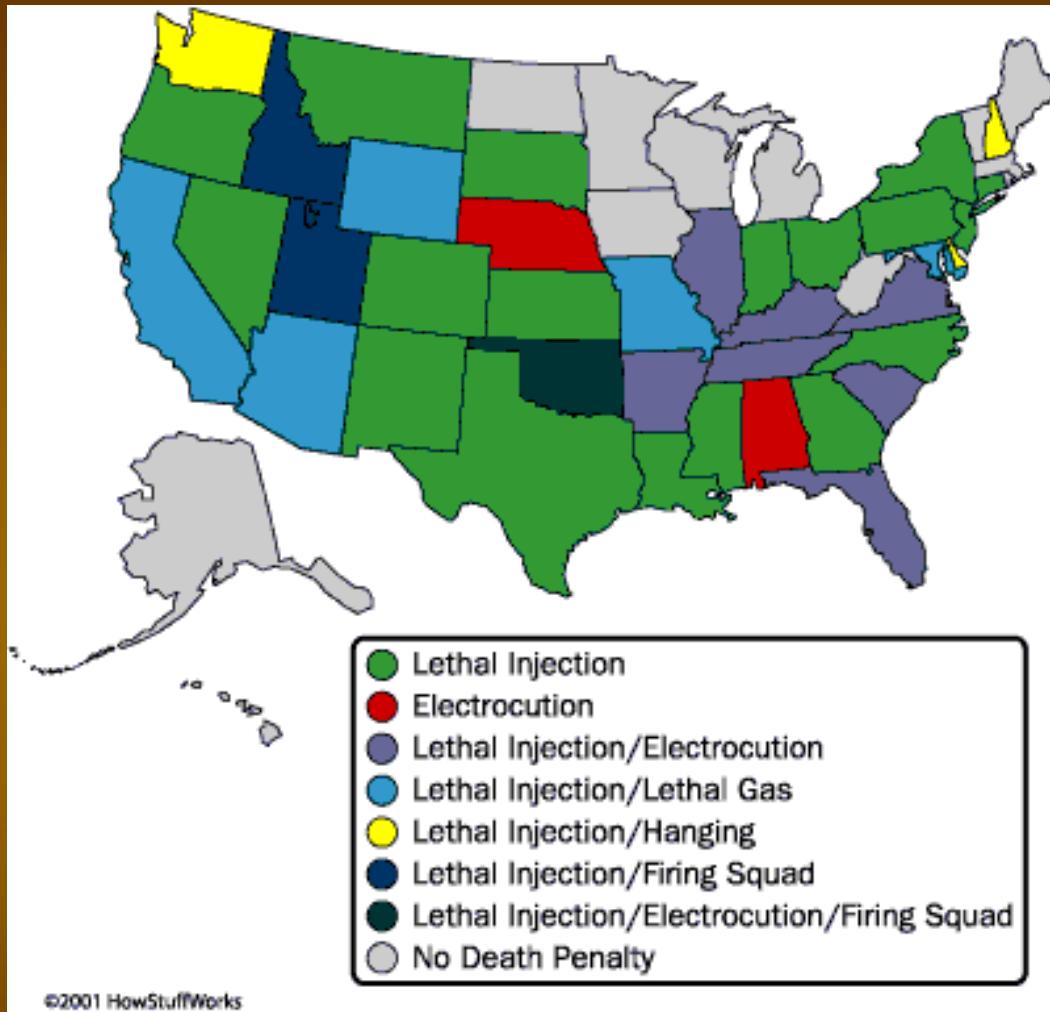
- WHAT? Accused shouldn't be fined more than what is needed to insure appearance in court
- WHERE? 8th amendment
- WHY?
 - a.) A person shouldn't be jailed until guilt has been established
 - b.) Better able to prepare for a defense outside of jail
- LIMITATIONS / CONSIDERATIONS?
 - Very subjective
 - (Stack v. Boyle, 1951)- found that bail was too high for punishment



CRUEL AND UNUSUAL PUNISHMENT

- WHAT? Accused can't receive unusual punishment for crimes (barbaric torture such as burnings at the stake, crucifixion, drawing and quartering, etc.)
 - WHERE? 8th amendment
 - WHY? Prevent unethical methods of gaining a confessions or serving punishment
- LIMITATIONS/ CONSIDERATIONS



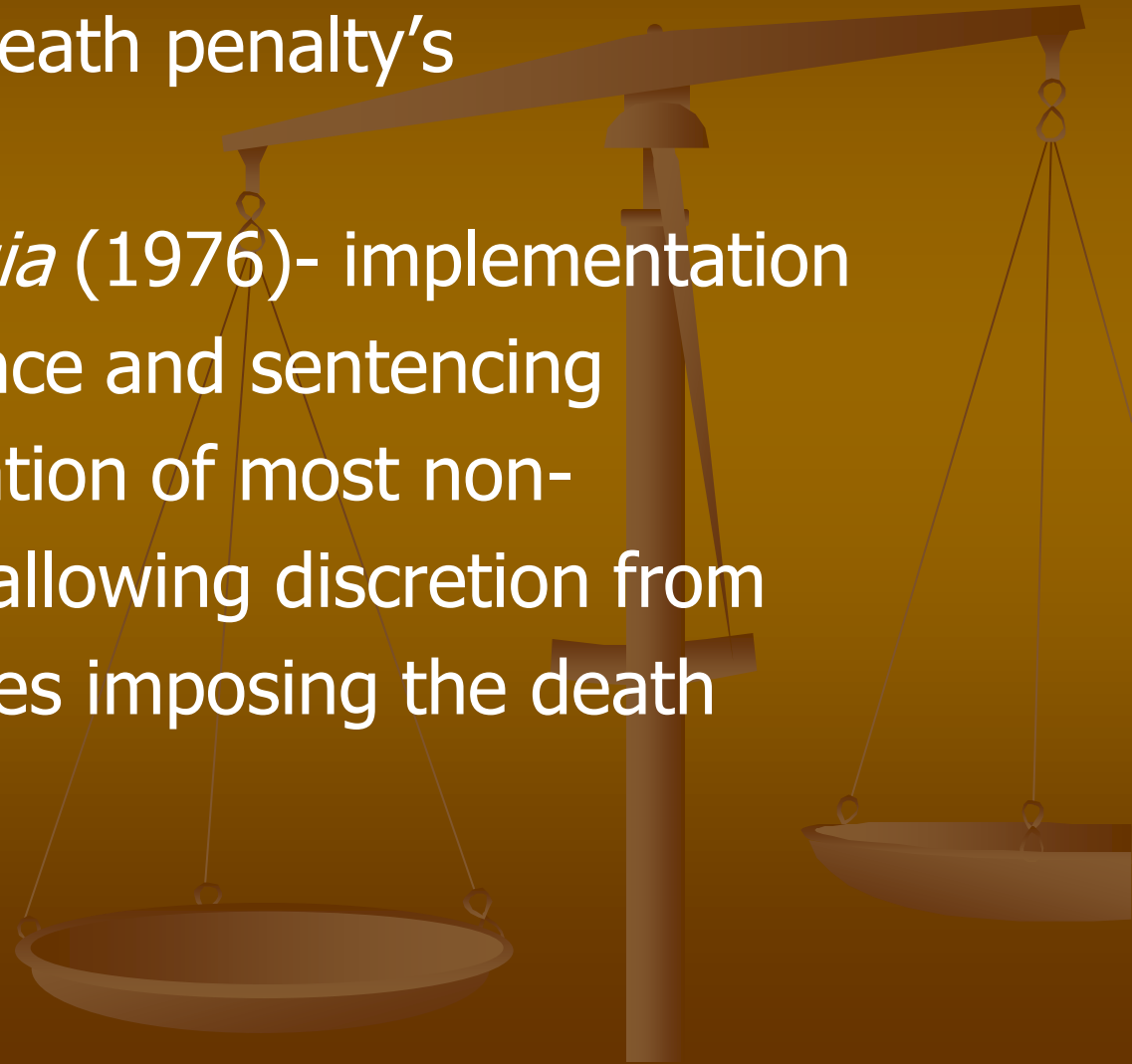


- Last Execution by Firing Squad: June 18, 2010 Ronnie Lee Gardner in Utah
- Idaho stopped death by firing squad in July, 2009

■ Death Penalty

**Furman v. Georgia (1972)*- questioned consistency in death penalty's application

**Gregg v. Georgia (1976)*- implementation of guilt-innocence and sentencing phases, elimination of most non-murder cases, allowing discretion from juries and judges imposing the death penalty



- No death penalty for mentally retarded (*Atkins v. Virginia*) ('02)
- No death penalty for those mentally insane or become insane while waiting on death row
- No death penalty for minors (*Roper v. Simmons* '05)
- Lethal injection?
- *Baze v. Rees* ('09) Kentucky's lethal injection legal



SELF-INCRIMINATION

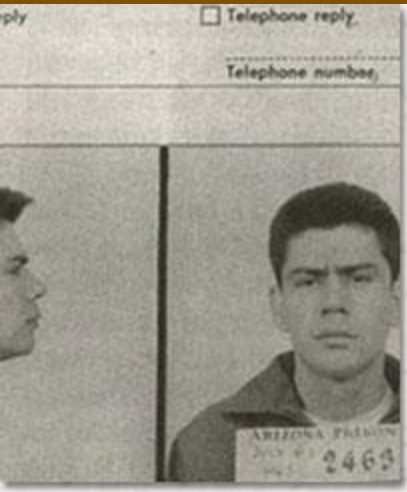


- WHAT? Cannot be forced to incriminate oneself or his or her spouse
- WHERE? 5th & 4th Amendment
- WHY? Burden of proof must be with the prosecution; innocent until proven guilty; criminal law enforcement would be more reliable if it were based on independently secured evidence rather than confessions under coercive interrogation conditions without a counsel
- LIMITATIONS
 - A personal right; can be forced to rat on somebody else
 - Doesn't protect vs. fingerprinting, being photographed, or taking blood test

SELF-INCRIMINATION

■ EXTENSIONS

- Miranda Rights – police must inform accused of their rights to a lawyer and 5th amendment rights of self incrimination- (*Miranda v. Arizona* 1966);
 - Mentally retarded man accused of rape was not notified of his rights before questioning – released



Considerations:

- Officers after 14 days of original Miranda warning, can question suspect if suspect agrees yet didn't agree during the 1st warning (*c*2010)
- Modified- Suspect has to ask to remain silent for the Miranda protections to work (*Berghuis v. Thompkins* 2010)

"you have the right to talk to a lawyer before answering any of our questions" and that "[y]ou have the right to use any of these rights at any time you want during this interview."

- Police can "as lib" with Miranda warning and it doesn't have to be an specific reading *Florida v. Powell* (2010)

4th AMENDMENT (PART I)

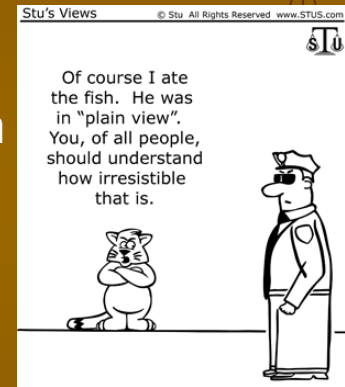
- 1.) WHAT? Guarantee that police have no general right to search for evidence or obtain either evidence or persons w/ out warrant –must have probable cause: extended to areas where person has reasonable expectation of privacy; person not area is important; PEOPLE HAVE A REASONABLE EXPECTATION OF PRIVACY
- 2.) WHERE? 4th amendment
- 3.) WHY? Prevent blanket search warrants with which British customs officials invaded private homes for smuggled goods



4th Amend. Contin..

4.) LIMITATIONS / CONSIDERATIONS

- a. Evidence in plain view (Horton v. California 1990)
- b. Warrantless search of garbage bags – not considered private
- c. Can arrest a person without a warrant (probable cause vs. reasonable suspicion)
- d. Automobiles – no warrant needed since it's considered a movable crime scene (Carroll v. US)
- e. Pre- 1991 police need warrant to search areas of car
- g. police cannot use "heat sensors"
- h. Student rules: *Three Cases Katz, Greenwood, New Jersey*
 - a.) Katz v. United States: *Conversation?* December 18, 1967 Does this decision extend to students?
 - i.) cell phones?, hallway conversation?
 - b.) NJ vs. TLO
 - i.) What about a blanket locker search?





c.) *Veronica v. Acton*: Drug tests- okay without warrant- considered reasonable response to drug problem. Case involved being kicked off football team for failing to sign drug testing permission



d.) Other activities? *Board of Education v Earls* students CAN be given drug tests if they participate in any extra curricular activity including chess club

e.) Internet?

f.) NSA

EXCLUSIONARY RULE (4th AMEND. PART II)

1. WHAT? Illegally seized evidence can not be used in court; warrants must be used in searches
2. WHERE? 4th Amend. – No unreasonable search and seizures
3. WHY? Forces police to gather evidence properly
4. LIMITATIONS / CONSIDERATIONS
 - a. “Inevitable discovery” evidence obtained without a search warrant can be used if it would have been inevitably or ultimately found by lawful means
 - b. “Good faith exception” “Honest mistakes” – police searched wrong apartment but found drugs anyway (Maryland v. Garison, 1987)
 - c Drug tests- okay without warrant- considered reasonable response to drug problem



“Those who can give up essential liberty to obtain temporary safety, deserve neither liberty nor safety.”- Benjamin Franklin 1775

O.

USA PATRIOT ACT (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism)-

- Roving wiretaps
- Sneak and Peek searches
- Searches of:
 - library records
 - credit card records
 - computer

Controversy

