

## The 5<sup>th</sup> Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

### What does the 5<sup>th</sup> Amendment Guarantee?

1. Presentment or indictment by a grand jury
2. No double jeopardy
3. The right against self-incrimination
4. The right to due process
5. Eminent Domain

### Presentment or indictment by a grand jury

Grand Jury- a body of citizens who formally look at evidence in the hands of the prosecutor and decide if there is enough to start or continue formal proceedings.

1. Consists of 16-23 members
2. Proceedings are secret
3. Defendant only has the right against self incrimination, and no other
4. Jurors may ask defendant questions
5. Has not been nationalized by the Supreme Court

Indictment- a document containing charges against a person and stating the statute(s) he or she violated.

### Double Jeopardy

A person may not be tried twice for the same crime.

Exceptions- Violate state and federal law (robbing a bank)  
Jury fails to agree (hung jury)  
Appeals to a higher court  
First trial ruled unfair (mistrial)  
Criminal and Civil suit at the state level

### Self-incrimination

A person cannot be forced to incriminate his/herself by giving testimony that would prove his/her own guilt. (Does not include giving a hair sample, exhibiting a body part covered by clothing, etc...)

Also protects the spouse, doctor, and priest of the defendant

Miranda Warnings- *Miranda v. Arizona*

### Due Process

There are certain fundamental rights and guarantees that cannot be taken away by state and federal governments. The Supreme Court will look at individual cases and decide if the procedures were fundamentally fair.

## **Eminent Domain**

Gives the government the right to take property, but only with just compensation.

## **The 6<sup>th</sup> Amendment**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime was committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

### **What does the 6<sup>th</sup> Amendment Guarantee?**

1. a speedy trial
2. a public trial
3. a trial by an impartial jury
4. information on the nature of the charge
5. a confrontation with the witness against the accused
6. compulsory process (an order of a court direction witnesses to appear on behalf of the accused)
7. the assistance of counsel

### **Speedy Trial**

Does not mean a specific time frame, but that the accused does not have to wait a long time. The factors that determine if the right to a speedy trial include:

- the length of the delay
- the reason for the delay
- whether the defendant complained that he/she was be denied their right
- any prejudice to the defendant

### **Public Trial**

The right to a public trial belongs to the accused and no one else. On the other hand, the accused does not have the right to demand that the trial be closed to the public. If the trial is closed, the judge must give specific reasons for doing so.

### **Impartial Jury**

The jury must swear to be objective and fair in weighing the evidence. The accused also has the right to a jury of which no member has been excluded for arbitrary reasons like sex or race.

### **Confrontation**

The defendant, through his attorney, has the right to question and cross-examine those persons who testify against him.