

Keeping Faith: Chapter 7 – Criminal Justice

The Evolution of Fourth and Fifth Amendment Jurisprudence

- With much of the twentieth century marked by abuses and discrimination in the criminal justice system, the Warren Supreme Court began to revolutionize the constitutional rights of criminal defendants in the 1960's, recognizing that the accused stand innocent before the law until proven guilty and that such proof must conform to specific constitutional limits on government power as well as the broad guarantee of due process of law. The Court's decisions afforded defendants the right to have an attorney present during custodial interrogations and lineups, to be provided an attorney if indigent, and to be protected by warrant requirements for electronic surveillance, administrative inspections, and home searches following an arrest.
- Notably, the Court replaced case-by-case inquiry into the voluntariness of confessions with a prophylactic requirement that custodial interrogations be preceded with a warning notifying the defendant of the right to remain silent and to have a lawyer present during questioning in *Miranda v. Arizona*; and the Court extended the exclusionary rules to the states, barring prosecutors from using evidence obtained through any search that violates the Fourth Amendment in *Mapp v. United States*.
- Despite conservative criticisms of tilting the criminal justice system too heavily in favor of the accused and successful efforts to appoint conservative Justices to the Court by President Nixon, the landmark criminal procedure decisions of the Warren Court, while not extended in later doctrine and in some cases weakened by exceptions, remain largely intact today.

Miranda: Faithful to the Constitution

- The *Miranda* decision is faithful to the Constitution in the way it interprets the document's text and principles to sustain their vitality as our society and institutions change over time.
- Though subjected to especially vigorous criticism, when considered by a conservative Supreme Court, *Miranda* was deemed a constitutional rule that Congress could not supersede legislatively in a 7-2 opinion written by Chief Justice Rehnquist. The opinion suggested that the legitimacy of *Miranda* did not rest simply on long usage and familiarity, but on a faithfulness to the Constitution's Fifth Amendment privilege against self-incrimination that reflects important transformations of the criminal justice system that have occurred since the Founding Era.
- On initial reading, the privilege against self-incrimination appears to be limited to the principle that no one may be compelled to testify against himself in a criminal proceeding in which he is a defendant; however, in order to properly construe the text, it is essential to understand the historical context in which the Fifth Amendment was ratified. That context, in which the Fifth Amendment served to bar *pretrial* examination by magistrates, must be deemed the equivalent of modern custodial police interrogation if the basic objective of the Fifth Amendment is to be realized.
- The specific warnings prescribed by *Miranda* have been more controversial and characterized as judicial legislation, but after decades of case-by-case assessments and a totality of the circumstances approach to the issue of compulsion in custodial interrogation, the Court in *Miranda* found a need to craft workable rules that are fully consistent with a judicial role attentive to the practical efficacy of the Constitution's protections. The *Miranda* warnings reflect the Court's attempt to develop a practical rule for the accused, the police, and the courts to ensure the efficacy of the Fifth Amendment privilege.
- Significantly, although the Court has held that *Miranda* announced a constitutional rule, in both *Miranda* and *Dickerson v. United States*, the Court has declined to hold that the *Miranda* warnings are required by the Constitution, which continues to leave open the possibility that a legislative solution,

informed by experience with evolving interrogation practices, could be at least as effective as *Miranda* warnings in protecting Fifth Amendment rights.

Katz and Mapp: Faithful to the Constitution

- In the Fourth Amendment area as well, key Warren Court decisions reflect a judicial approach that faithfully interprets the Constitution by giving practical effect to its text and principles in the face of societal change.
- *Katz v. United States* illustrates how an approach to interpretation that relies too heavily on original understandings of the reach of a constitutional principle would defy our own understanding of the Constitution as a document meant to retain not lose its significance over time. In reading the terms “search” and “seizure” to cover non-physical intrusions such as wiretapping, the Court declared in *Katz* that the Fourth amendment protects people, not places, heeding Justice Brandeis’s admonition that the Constitution must have the capacity to adapt to a changing world if its text is not to be lost in reality.
- *Mapp v. United States* reflects another judicial adaptation of the Fourth Amendment’s principles to contemporary realities. Although the Framers did not contemplate the modern inefficacy of civil remedies like trespass for wrongful searches and seizures, the amendment was plainly intended to set effective limits on law enforcement and not be reduced to a form of words. As such, the Court’s inhospitable treatment of the exclusionary rule in recent years should not continue unless it finds a more effective way to prevent or remedy unlawful searches and seizures.