

# Effective Assistance of Counsel

- The “Fifth Amendment right to counsel” when being interrogated (under Miranda) applies only to police interrogations while the suspect is in custody
- The “Sixth Amendment right to counsel” applies during trial and trial-like proceedings; including:
  - All post-indictment interrogations relating to that particular crime; this right to counsel is “offense specific,” unlike the Fifth Amendment right to counsel
  - Preliminary Hearings
  - Arraignments and Bail Hearing
  - Entering of guilty pleas and sentencing
  - Felony trials, and misdemeanor trials where actual imprisonment is imposed
  - All juvenile delinquency hearings
  - Appeals as a matter of right (at least one appeal from a criminal conviction)

# Ineffective Assistance of Counsel

- For all cases in which the right to counsel applies, the government must appoint counsel for one who cannot afford to hire counsel. (Gideon v. Wainwright)
- “Ineffective assistance of counsel” is automatic grounds for reversal of a conviction; BUT to successfully maintain an ineffective assistance claim, the defendant must show that:
  - his counsel shows unreasonable incompetence; AND
  - but for the incompetence, the result of the trial likely would have been different

# The “Confrontation” Right

The defendant has the right to “confront” his or her accuser; this means the right to:

- **be in the court room when the prosecution witnesses testify**
  - This can be forfeited by bad courtroom behavior
  - Sometimes the state interest in protecting a witness from intimidation (e.g., child molestation victim) can overcome this right (one way monitor may be allowed instead)
- **cross-examine the witness; including attempting to discredit the witness**
  - The “rape shield” laws often bite into this right

# The Right to Compulsory Process

- The defendant has a right to call witnesses in their own defense and to reasonably use the government's resources to assure the appearance of those witnesses
- The court cannot intimidate the defense witness into not testifying
- This right can be “waived” by misconduct regarding a witness, such as failing to put the witness on the witness list, etc.
- If the judge finds that, as a matter of law, the witness is not credible, the witness may be excluded

# Burden of Proof

- In all criminal proceedings (including minor ones like traffic tickets and minor zoning code violations), the prosecution must prove every element of the crime or offense beyond a reasonable doubt before the defendant can be convicted!
  - It is not entirely clear what “beyond a reasonable doubt means; but, it means much more than a mere “preponderance of the evidence” and also significantly more than “clear and convincing evidence” (both civil standards).
  - If the judge fails to adequately instruct the jury concerning the proper standards of proof in a trial it is grounds for reversal of a conviction.
- Only elements of a crime must be proven beyond a reasonable doubt.

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**QUIZ TIME!**

# What Need Not be Proven Beyond a Reasonable Doubt

- Issues related to the admissibility of evidence; such as:
  - was the police search was proper
  - was the confession coerced
  - was the defendant read his Miranda rights before he confessed; etc.
- Evidentiary issues in the trial itself, such as:
  - whether testimony is hearsay
  - whether certain character evidence is admissible
- Disproof of certain affirmative defenses, such as:
  - sanity in some jurisdictions
  - lack of entrapment
  - lack of self-defense, etc.
- Aggravated sentencing factors (e.g., hate crime motivation) only need to be proven by a preponderance of the evidence; but if the factors are used to increase the sentence beyond the statutory maximum, they must be proven beyond a reasonable doubt!

# Double Jeopardy

- A person can not be tried twice for the same crime; regardless of whether the first trial ended in conviction or acquittal.
- What is the “Same Crime”?
  - “transaction or occurrence” test (some states)
  - Blockburger test: Whether one crime includes all the elements of the other
- Jeopardy “attaches” when the jury is sworn in or when the first witness is called in a judge trial
- Does not apply if there was a mistrial, unless it was the prosecution’s fault
- Does not apply to separate sovereigns



# Post Trial Rights

- **Cruel and Unusual Punishment:**
  - Depends on the attitude of society at the time
  - Applies to disproportionate sentences as well as “cruel” punishments
  - Disallows the punishment of a status
- **The Right to Appeal:**
  - Includes one appeal from a criminal conviction “as of right”
  - Includes the right to counsel for that appeal