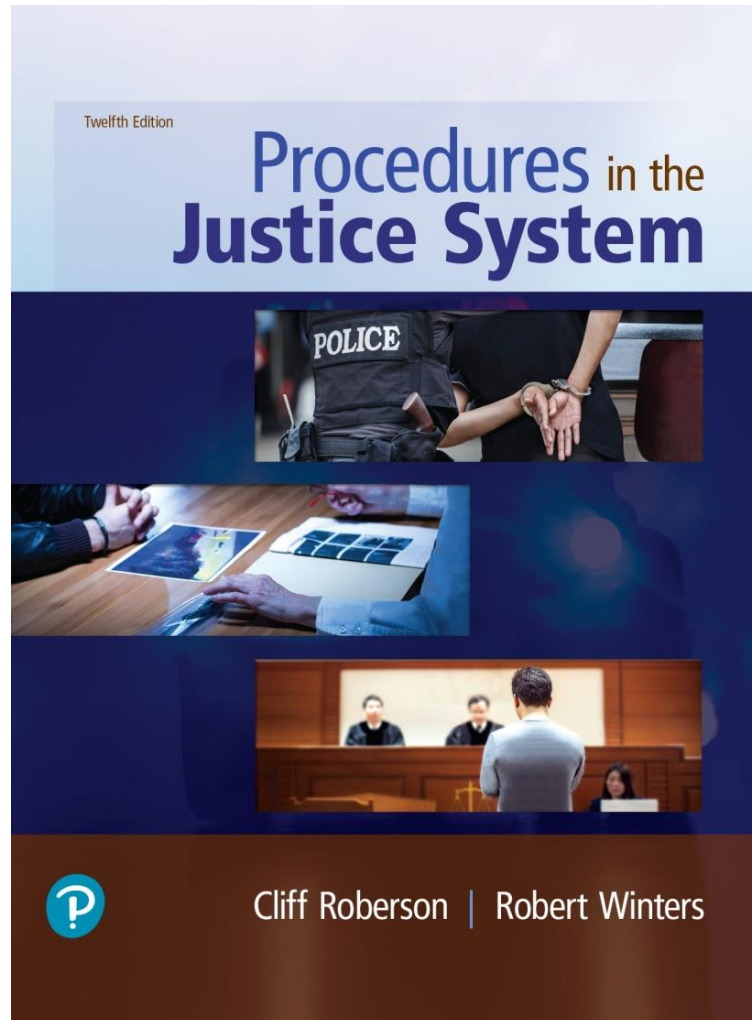


Procedures in the Justice System

Twelfth Edition



Chapter 5

Privilege Against Compulsory
Self-Incrimination

Introduction (1 of 3)

- Should a defendant be compelled to testify in a criminal case?
- Privilege against compulsory self-incrimination is found in the Fifth Amendment.
- The **Fifth Amendment** of the U.S. Constitution states that no person “shall be compelled in any criminal case to be a witness against himself.”

Introduction (2 of 3)

- Four parts
 1. The compulsion to testify must be by the government.
 2. The compulsion to testify is prohibited only if it forces a person to be a witness against him or herself.

Introduction (3 of 3)

- Four parts
 3. The privilege protects the person from being a witness against himself or herself for criminal cases only.
 4. Only testimonial self-incrimination is protected from compulsion.

When the Privilege Applies

- Testimonial evidence
 - Evidence is not protected by the privilege unless the evidence is testimonial in nature.
- One test for whether the statement is testimonial is whether it is capable of being true or false.

Handwriting Exemplars

- Tim McVeigh's handwriting exemplars were not considered testimonial in nature.
- Documents
 - *Boyd v. United States*
 - *Fisher v. United States*
 - *California v. Byers*
- Agents of business entities
 - *Braswell v. United States*
 - *Curcio v. United States*

Agents of Business Entities

- Cases
 - *Braswell v. United States*
- Providing per *Curcio v. United States*, oral information at the scene of an accident does not infringe on one's Fifth Amendment privilege against self-incrimination.

Proceedings in Which the Privilege Applies

- The privilege against self-incrimination applies only to criminal cases.
- Cases
 - *United States v. Conte*
 - *Lefkowitz v. Turley*

Procedural Aspects of Privilege

- Failure to assert the privilege results in it being lost.
- *Lesko v. Lehman*

Voluntariness Test

- Before a confession or admission of an accused may be entered into evidence, it must meet the test of voluntariness.
 - *Brown v. Mississippi*
 - *Spano v. New York*
 - *Arizona v. Fulminate*
 - *Colorado v. Connelly*
- Not all police tricks will invalidate a confession (police may lie about fingerprints).

Due Process Test

- Two types of due process violations
 - Substantive
 - Procedural
- There is no bright line as to what constitutes a violation of the due process test.
- The due process requirement applies to confessions that are considered involuntary.

Using Psychological Advantages in Interrogation

- Limitations on interrogation
 - Confessions taken after lengthy interrogations during incommunicado detention have been considered involuntary.
 - *Beckwith v. United States*
 - *Bram v. United States*

Miranda (1 of 3)

- *Miranda v. Arizona*
- A custodial interrogation is inherently coercive.

The Miranda Warning

- You have the right to remain silent.
- Anything you say can and will be used against you in court.
- You have a right to consult with a lawyer and to have the lawyer present during any questioning.
- If you cannot afford an attorney, one will be appointed for you.

Miranda (2 of 3)

- A twofold purpose in establishing the Miranda rule
 1. To ensure that the suspect was “adequately and effectively” advised of his or her rights
 2. To ensure that the “exercise of those rights” were “fully honored” by the police

Miranda (3 of 3)

- When Miranda applies
 - Miranda warnings are required when an in-custody suspect is interrogated.
 - A person is deprived of his or her freedom of action in any significant way.
- Exceptions to Miranda
 - Public safety
 - *New York v. Quarles*
 - Covert interrogations
 - *Illinois v. Perkins*

Right to Counsel During Interrogations

- Sixth Amendment rights to counsel during interrogations
- *Massiah v. United States*
- The Miranda requirements attach when conducting custodial interrogation, and the Sixth Amendment right to counsel attaches when adversarial proceedings begin.

Waiver of Rights under Miranda

- The burden is on the government to establish an intentional relinquishment or abandonment of a known right or privilege.
- To determine if a waiver is voluntary, the courts use the voluntariness test.

Case Law

- *Salinas v. Texas*
- *Howes v. Fields*

Summary (1 of 2)

- Individuals have a Fifth Amendment protection against incriminating themselves.
- Defendants are not compelled to testify in a criminal court trial.

Summary (2 of 2)

- There are restrictions on what may be used as evidence rules testimonial in nature.
- The police must advise suspects of a crime of their Miranda rights prior to interrogation.

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