CJA Outline

- Legitimacy of system of criminal procedure depends on at least four norms:
  1. Accuracy of verdicts
  2. Fairness of the process itself
  3. Degree to which the justice system limits the power of government in relation to citizens ensnared in the criminal process; and
     a. May result in a less accurate outcome
  4. Efficiency of the process

PRETRIAL RELEASE

- Judge must determine what conditions, if any, are both necessary and sufficient to reasonably ensure the defendant’s future appearance
  - Bail or other restrictions may be necessary to assure the integrity of future proceedings in the case
  - Under *federal* Bail Reform Act, bail may be denied on the ground that it is necessary to assure the safety of the community. This may occur when the defendant is charged with:
    - Crime of violence
    - Any sentence for which maximum penalty is life imprisonment/death
    - Drug offense for which maximum sentence is 10+ years
    - Any other felony convicted by a person previously convicted of two or more of the above offenses
  - Burden of proof is on government to prove necessity of detention to assure safety by clear and convincing evidence
  - Rebuttable presumption that detention *is* necessary if defendant is charged with
    - Serious drug offense (maximum punishment 10+ years)
    - Firearms offense
    - Defendant previously committed a crime while on pretrial release from charges for which detention could be authorized
  - Court should determine:
    - Nature of offense
    - Weight of evidence against defendant
    - History and characteristics of defendant
    - Ties with community
    - Probation/parole/pretrial release at time of arrest
    - Nature and seriousness of danger to any person or community
  - Bail may also be denied upon motion by the prosecutor or the judge if there is a serious risk of:
    - Flight
    - Obstruction of justice
    - Intimidation of prospective witness or juror
- Presumption in favor of release with no financial conditions

- If judge determines conditions are required, judge should choose the least restrictive conditions possible to assure appearance/public safety

- Release Conditions could be
  - Non Financial:
    - Released on recognizance (ROR) → promise to appear
    - Supervised release
    - Third party custody release
  - Financial:
    - Bail → if defendant fails to appear, bail is subject to forfeiture
      - Eighth Amendment prohibits excessive bail
        - Bail is excessive when it is set at an amount higher than an amount reasonably calculated to adequately assure the accused will stand trial and submit to sentence if found guilty
      - Bail considerations should be made with respect to an individual defendant
        - Bail cannot be an amount designed to result in pretrial detention
  - Types of Bail:
    - Unsecured bond
    - Deposit bond
    - Full bond

- In determining conditions of release, judge considers factors related to:
  - Potential punishment for the charged offense
  - Nature and circumstances of charged offense
  - Strength of evidence
  - Arrestee’s criminal record
  - Arrestee’s likelihood of appearing in the future
    - Employment status
    - Financial status
    - Family ties
    - Length of residence in community
    - Previous record, if any, with regard to required court appearances
• Criticisms of Pre-trial Detention
  o Contrary to presumption of innocence
  o Wrong to jail person out of fear of what he might do in future
  o Cannot accurately predict future dangerousness

• Defenses of Pre-trial Detention
  o Cannot say that government never has power to detain an arrestee
    ▪ Community self defense in light of substantial preliminary proof justifies pre-trial detention
  o In the absence of pre-trial detention, judges would set bail at an amount higher than defendant could afford
    ▪ Process should be out in the open

• United States v. Salerno
  → Court held pre-trial detention provision of Bail Reform Act constitutional
  o Pretrial detention is not impermissible punishment before trial, it’s permissible regulation—preventing danger to the public is legitimate regulatory goal
    ▪ No violation of substantive due process
  • Regulatory determination:
    o Was Congress’ intent to impose punitive restriction?
    o If not, is there a rational alternative purpose for the restriction other than punishment?
    o Is the restriction excessive in relation to the alternative purpose?
  o Statute’s procedural safeguards further accuracy of the dangerousness determination
    ▪ No violation of procedural due process
  o Eighth Amendment does not require bail be available
    ▪ Ensuring integrity of judicial process is not bail’s only purpose
  o Dissent
    ▪ Violates presumption of innocence
    ▪ Turns indictment into evidence of guilt
    ▪ Consequences of excessive bail and no bail are indistinguishable
      • One should not be constitutional if the other is not

• First Appearance
  → defendant’s first opportunity to be released after he is taken to jail
  o Should occur without unnecessary delay
  o In federal court, indigent defendants are entitled to counsel at the first appearance
Community Interests in Release Decision
  o Protecting the integrity of judicial process
    ▪ Risk defendant won’t return to court
    ▪ Risk defendant will intimidate witnesses
    ▪ Risk defendant will destroy evidence
  o Risk released defendants will commit other crimes while free
  o Financial costs
    ▪ Bigger jails required if more defendants are detained
    ▪ Costs of housing inmate
  o Plea bargaining must increase if more defendants are detained

Arrestee’s Interests in Release Decision
  o Liberty
  o Preparation of trial defense
    ▪ Identify witnesses
    ▪ Search for relevant evidence
    ▪ If attorney must come to jail—probably fewer consultations
  o Financial
    ▪ Potential loss of job
  o Opportunity to demonstrate that he has reformed
    ▪ Continued employment
    ▪ Avoidance of rearrest
    ▪ Good works
  o Pretrial detainment may result in innocent arrestees agreeing to plea deals
  o Evidence suggests defendants unable to make bail are more likely to be convicted

CASE SCREENING

Prosecutorial Discretion
  • Prosecuting attorneys have nearly absolute and unreviewable power to choose whether or not to bring criminal charges, and what charges to bring. This discretion has three parts:
    1. Power not to bring charges
      o In most circumstances there are no rules requiring a prosecutor to bring charges
        ▪ This decision is usually final and not subject to reversal by anyone outside prosecutor’s office
        • Compelling prosecution could violate separation of powers doctrine
        • Prosecutors know more about cases than the court
        • Citizens probably do not have standing to contest prosecutor’s decision
          o In order to have standing, person must have personal stake in the outcome of the controversy
    2. Power to bring charges
      o Decision to bring charges is subject to some meaningful restraints
        ▪ Prosecutor must be able to establish there’s probable cause to believe the defendant committed the crime
        ▪ Subject to limited outside review
3. Power to decide *what* to charge
   - Federal prosecutors must charge the most serious offense that is consistent with the nature of the defendant’s conduct, and that is likely to result in a sustainable conviction
     - Prosecutor may bring more charges or more serious charges to pressure a defendant into pleading guilty or to give a prosecutor bargaining room in plea negotiations
     - More charges allows more evidence to be introduced
     - Charges may affect bail/release conditions
     - Charges could affect potential sentence

- **ABA Standards:**
  - A prosecutor should not bring charges:
    - When the prosecutor knows that the charges are not supported by probable cause
  - A prosecutor should not institute, cause to be instituted or permit the continued pendency of criminal charges in the absence of sufficient admissible evidence to support a conviction
  - The prosecutor should not bring or seek charges greater in number or degree than can reasonably be supported with evidence at trial or than are necessary to fairly reflect the gravity of the offense

- **Constitutional Limits:**
  - Selective Prosecution → decision to prosecute may not be based on an unjustifiable standard such as race, religion or other arbitrary classification. Nor may it be based on the exercise of protected statutory and constitutional rights
    - Selective prosecution is difficult to prove
      - Defendant must show that the prosecutorial policy was discriminatory:
        - In its purpose
          - Evidence of purpose/intent MUST be specific to defendant’s own case
          - Court will not infer discriminatory purpose from discriminatory effects
        - In its effect
          - With respect to discrimination based on race, defendant must show that similarly situated individuals of a different race were not prosecuted.

- Threshold showing required by defendant to compel discovery regarding selective prosecution → some evidence tending to show the existence of the essential elements of the defense: discriminatory effect and intent
  - Vindictive Prosecution → prosecutor brings additional or greater charges motivated by a desire to punish defendant for doing something the law plainly allowed him to do.
    - Forbidden as a matter of due process
Presumption of vindictiveness arises if prosecutor brings a more serious charge once a trial begins (certainly after conviction has been obtained).

- Presumption may be overcome if it was impossible to bring charges originally
  - Courts are undecided whether this is the only way to overcome the presumption
- Defendant does NOT have to show actual retaliation
  - Court worries that defendant’s fear of vindictiveness may unconstitutionally deter a defendant’s exercise of his right to appeal of collaterally attack his first conviction
- Presumption is NOT applicable to exercise of pre-trial rights, e.g. right to jury trial
  - At this stage the prosecutor’s assessment of the proper extent of prosecution may not have crystallized
  - However defendant can still try and prove ACTUAL vindictiveness
- Suggests that a prosecutor should bring more serious charges sooner rather than later

Preliminary Hearing
- Preliminary hearing is held within 2 weeks of the arrestee’s initial appearance unless:
  - Defendant waives hearing
  - Hearing is mooted by grand jury indictment
  - Once an indictment is returned by a grand jury, defendant loses right to a preliminary hearing
- Fifth Amendment grants defendant the right to a grand jury
  - This right is not incorporated in the 14th Amendment (does not apply to the states)
- Trial will be held if judge finds prosecution has offered sufficient evidence that the defendant committed the crime(s) charged
  - If evidence is insufficient, prosecutor will likely re-file other and/or lesser charges
- Coleman v. Alabama: Defendant is entitled to counsel at preliminary hearing
- Usually evidence that would be inadmissible at trial is admissible at the preliminary hearing
- Provides defendant an opportunity for discovery of prosecution’s case
- Provides a defendant with testimony that can be used to impeach a witness at trial
- Allows defense attorney to preserve witness testimony
- Allows prosecutor to preserve witness testimony
- Usually faster than grand jury indictment
Grand Juries
- Indictment by grand jury is required by the Fifth Amendment
  - Indictment is issued if there is probable cause to believe defendant committed the crime charged
- Two Roles:
  - Screening Function
    - Hear evidence and decide whether to issue an indictment
    - Rights NOT afforded to defendant at grand jury proceeding:
      - No right to counsel
      - No right to testify
      - No right to be present
      - No bar on evidence grand jury may hear
      - No requirement prosecutor present exculpatory evidence
  - Investigatory Function
- Court relies on criminal trial to vindicate defendant’s rights
  - U.S. v. Mechanik—conviction makes any error before the grand jury harmless beyond a reasonable doubt
    - EXCEPTION: composition of grand jury violated equal protection clause
  - An indictment returned by the grand jury, if valid on its face, is enough to call for trial of the charge on the merits
  - If defendant discovers misconduct before trial begins and convinces judge misconduct occurred, judge can dismiss the indictment.

Pretrial Motion Practice
- Motion in Limine—requests a ruling in advance of trial on the admissibility of a particular category of evidence
  - When a defendant testifies in support of a motion to suppress evidence on 4th Amendment grounds, his testimony may not thereafter be admitted against him at trial on the issue of guilt unless he makes no objection
- Motion for change of venue
  - Defendant has right to be tried:
    i. Impartial jury of
    ii. The state and district wherein the crime shall have been committed
  - In a motion to change venue due to an impartial jury, the defendant will argue that any jury drawn from the venire will have prejudged the case
    - Jurors are impartial if they can lay aside any impression they had formed and render a verdict based on the evidence in court
    - Standard of Review—whether the setting of the trial was inherently prejudicial or the jury selection process of which the defendant complains permits an inference of actual prejudice
o Defendant’s proof typically consists of evidence about
  ▪ Quantity and nature of pretrial publicity
  ▪ Possibly public opinion surveys drawn from random samples of local population

o Federal Rule 21 gives two reasons to change venue:
  1. The defendant can allege and prove prejudice such that defendant cannot obtain a fair and impartial trial
      • Usually court considers all the evidence presented by the defendant but not before empanelling a jury
  2. Convenience of the parties

Joinder and Severance—See Chart
• Federal Rule 8 gives State permission to join offenses/defendants but does not require it
• Federal Rule 14 requires severance of offenses/defendants when prejudice exists
  o Most courts have inherent right to sever claims/defendants

OFFENSES:
• **Joinder**—inclusion of multiple offenses in a single charging instrument
  o Appropriate in 3 circumstances: If the offenses charged
    1. Are of the same or similar character
    2. Are based on the same act or transaction
    3. Are connected with or constitute parts of a common scheme or plan

  o When offenses are joined improperly there’s been a **misjoinder**
    ▪ Supreme Court has said it will not apply misjoinder retroactively unless a defendant can show prejudice

• **Severance**—defendant can move to sever offenses on the ground that trying them together is prejudicial
  o Prejudice is most likely to occur when offenses are joined because they are of the same or similar character
  o If rules of evidence would allow evidence of one crime to be admitted in a separate trial of the other crime(s), defendant will not win motion to sever

• Prosecutors typically prefer joinder
  o More efficient
    ▪ Requires only one trial—less costly
    ▪ Saves in witness time and anxiety
  o Avoid double jeopardy claim
  o Jury may
    ▪ Use evidence of one crime to infer guilt of another crime
    ▪ Use accusation of multiple offenses to infer criminal disposition
    ▪ Believe multiple mistaken charges is less likely than a single mistake
      • Cumulate the evidence to find guilt when considered separately it would not
Prosecutor has reasons not to join, as well
  o Keeping charges separate allow the prosecution a trial run and allow for improvements in a subsequent trial
  o Multiple trials may wear down a defendant if a defendant has limited resources or is detained pretrial
  o Multiple elements of multiple offenses may confuse jury
  o Jury may trade a conviction for one offense for an acquittal of another
  o Avoid juries for smaller offenses

Defense typically prefers charges be tried separately
  o Separate trials may allow defendants to present inconsistent defenses—presenting both defenses to single fact finder may undermine plausibility
  o Defendant may wish to testify to only one of the charges
  o Worried about how jury will react to multiple charges

Defendant may want charges joined
  o To avoid the personal expense of multiple trials
  o Avoid extended loss of liberty from pretrial incarceration

DEFENDANTS:
  • Joinder ➔ Under the Federal Rules two or more defendants may be joined when they are alleged:
    1. To have participated in the same act or transaction
    2. In the same series of acts or transactions, constituting an offense or offenses
      o NOTE: Each defendant must have at least one charge that is the same

  • Severance ➔ defendant must show more than ordinary prejudice to win a severance motion
    o A district court should grant a severance only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence
      ▪ Not grounds for severance:
        • Defendant might have a better chance for acquittal if tried separately
        • Other defendant has criminal record
        • Hostility or conflict of interest between defendants
        • Defendants wish to rely on different defenses
        • Evidence is admissible against one defendant but not the other

  • Prosecutors typically prefer to join defendants
    o More efficient
    o Avoids inconsistent verdicts

  • Defendants typically prefer not to be tried together:
    o Risk jury will use evidence of one defendant’s guilt against the other, even if the evidence is only admissible against one defendant
    o May be harder for innocent defendant to convince jury of his innocence
    o Inconsistent defenses between co-defendants
PREPARING FOR ADJUDICATION

Discovery
- *Brady v. Maryland*Æthe suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.

- Elements of Brady Violation:
  1. Evidence at issue must be favorable to the accused
     - Nondisclosure of evidence affecting a witness’ credibility falls within *Brady*
  2. Evidence must have been suppressed by the state
     - Suppression exists when:
       - Defendant made a specific, general or no request for the evidence
       - Evidence can be so obviously of such substantial value to the defense that elementary fairness requires disclosure even without a defense request
       - Police had evidence but the prosecution did not know about it
  3. Evidence must have been material
     - There is a presumption that withholding the evidence was NOT prejudicial
     - Two *Brady* situations:
       a) Undisclosed evidence shows that the prosecution used perjured testimony, which it knew or should have known was perjured
       - Resulting conviction must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury
       b) Defense makes a specific request, general request or no request for the suppressed evidence
       - Evidence is **material** only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.
       - A reasonable probability is a probability sufficient to undermine confidence in the outcome.

- *Brady* and Plea Bargains
  - *United States v. Ruiz*ÆConstitution does not require a prosecutor, prior to a guilty plea, to disclose exculpatory impeachment material regarding its prospective witnesses
    - *Brady* would require the prosecution to disclose this information were a trial to take place
    - Directly exculpatory material might be treated differently
• State’s Duty to Preserve Evidence
  • Arizona v. Youngblood→Failure to preserve potentially useful evidence does not constitute a denial of due process unless a defendant can show bad faith.
    ▪ Bad faith conduct demonstrates that the evidence might show the defendant’s innocence
      • Bad faith can be demonstrated by examining standard police procedures to see if police deviated from them in this case
    ▪ Bad faith required because, unlike suppressed evidence, difficult to assess whether evidence would have resulted in a different outcome. When bad faith is shown, assume evidence would have made a difference.
    ▪ Remedy = dismissal of indictment

Discovery by the Prosecution
• Prosecutors do not have a Constitutional right to discovery
• Constitutional arguments against requiring defendant to furnish discovery to prosecutor:
  • Self-Incrimination→discovery rules require defendant to furnish the state with information useful in convicting him—give State evidence it otherwise would not have
    • Self-Incrimination Claim consists of three elements:
      • Compulsion by the state
      • Self-incriminating
        o Very broad—anything that is a chain in the link that could be used to connect a defendant with the crime
      • Testimonial
  • Williams v. Florida→Court held that discovery rule mandating defendant disclosure of alibi witnesses was constitutional.
    • Defendant is free to choose whether or not to present alibi witness. Therefore mandatory disclosure of witness is not compelled within the meaning of the Fifth Amendment—pressure to call alibi witness comes from the defendant’s desire to avoid conviction, not the State.
    • Defendant would have had to disclose identity of witness at trial in order to use it. Therefore discovery rule simply accelerated the timing of the disclosure
      o Supreme Court has not addressed whether the State’s use of information the defendant decides not to present at trial is constitutional
        ▪ On one hand—not accelerating the timing anymore
        ▪ On other hand—still not compelled by rule—defendant gave it freely at the time
Due Process → requiring the defendant to provide information to the prosecution deprives the defendant of a fair trial, particularly if the prosecution is not required to make reciprocal disclosures
- In the absence of a strong showing of state interests to the contrary, discovery must be a two way street.
- Requiring the defendant to divulge her case without providing reciprocal discovery is due process violation

Speedy Trial
- Sixth Amendment guarantees the right to a speedy trial
  - When the right attaches → when a defendant is subjected to a formal charge
    - Pre-accusation delay is irrelevant
    - Pre-indictment due process violation might exist if defendant can show:
      - Substantial prejudice to defendant’s rights to a fair trial
      - Delay was intentional device to gain tactical advantage over accused
  
  - When is the right violated → Apply four factor balancing test (all four must be weighed, no one factor alone, is necessary or sufficient to find a violation):
    - The length of the delay
      - There must be some delay that is presumptively prejudicial
      - The longer the delay the more it weighs towards a finding of a violation

    - The reason for the delay
      - Different weights are to be assigned to different reasons for delay
        - Official negligence and court congestion are more neutral reasons that weigh less heavily but nonetheless count against the government
    
    - The defendant’s assertion of his right, and
      - Given strong evidentiary weight
      - Failure to assert the right will make it nearly impossible for a defendant to prove that he was denied a speedy trial
        - Unless defendant has inadequate assistance of counsel claim

    - Prejudice to the defendant
      - Court looks to harms right to speedy trial protects against:
        - Oppressive pretrial incarceration
        - Minimizing anxiety and concern
        - Limiting damage to defendant’s case
          - Most serious
          - Court may presume prejudice if delay is long enough
            - More likely to occur if defendant does not know of indictment

  - What’s the remedy for a violation → dismissal of the indictment with prejudice
    - Denial of a speedy trial cannot be cured with a new trial
    - Severity of remedy leads judges to avoid finding a violation
• Defendant’s interests in a speedy trial:
  1. Long delay will impair the ability of the accused to defend himself
     o Evidence may be lost
     o Memories may fade
     o Witnesses may become difficult to locate
  2. Rapid disposition will minimize the anxiety and concern accompanying public accusation
     o Charges can affect accused’s
        ▪ Education
        ▪ Employment
        ▪ Ability to plan for the future
        ▪ Financial situation
        ▪ Personal relationships
  3. In the case of a defendant held in custody pending trial, speedy disposition minimizes undue and oppressive incarceration

• Society also has an interest in speedy trials
  o Deterrent and retributive purposes are better served by quicker resolutions
  o Government may suffer consequences of lost evidence
  o If guilty defendant is not subject to pretrial incarceration, incapacitative purpose of criminal law is frustrated
  o Lack of speedy trial:
    ▪ Enables defendants to plea bargain more effectively
    ▪ Provides defendant opportunity to commit more crimes
    ▪ Longer defendant is free, more tempted he may be to jump bail
    ▪ Could work to defendant’s advantage

PLEA BARGAINING AND GUILTY PLEAS

Guilty Pleas
• Due process requires that a guilty plea is voluntary, knowing and intelligent.
  o Voluntary
    ▪ A guilty plea is not coerced unless it was induced by:
      • Threats (or promises to discontinue improper harassment),
      • Misrepresentation (including unfulfilled or unfillable promises)
      • Promises that are by their nature improper as having no proper relationship to the prosecutor’s business

    ▪ Coercion that overbears one’s will
    ▪ Inducement that might make an innocent person plead guilty

    ▪ Voluntariness must be assessed in view of all the surrounding circumstances
- Unconstitutional inducements:
  1. Burden on defendant’s constitutional rights
  2. Induces an innocent person to plead guilty
  3. Huge sentence discrepancy (maybe)
     - Not the case in *Bordenkircher v. Hayes*
  4. Promises of leniency for third party
     - Cannot expect defendant to conduct accurate risk assessment with respect to third parties
  5. Statute that allows person to avoid death penalty by pleading guilty
     - Prosecutors *can* do this because prosecutorial inducements involve negotiation while statutory inducements do not

- Knowing/Intelligent
  - A guilty plea is invalid if the defendant is unaware of:
    a) The nature of the charges to which she is pleading
       - This includes the critical elements of the offense
          - However a description of every element of the offense is not required
          - May be appropriate to presume in most cases that defense counsel explains the nature of the offense in sufficient detail to give the accused notice of what he is being asked to admit
             - It suffices if defendant’s counsel, rather than the trial court, informs the defendant of the nature of the charges and elements of the crime
    b) The penal consequences of the plea; or
       - Defendant needs to be aware of *direct* consequences, however collateral consequences need not be made known to the defendant
          - At a minimum defendant should be informed of maximum possible sentence for crime to which he is pleading guilty
       - Failure to inform the defendant of the direct penal consequences only constitutes a due process violation if the defendant’s lack of correct information prejudiced him
    c) The nature of the rights being waived
       - *Boykin v. Alabama* \(\Rightarrow\) Defendant needs to know that he is waiving constitutional rights by pleading guilty
       - Plea CANNOT be attacked on the basis that the defendant or her counsel incorrectly assessed the legal or factual circumstances surrounding the case
Defendant should have been advised by competent counsel
- An otherwise voluntary guilty plea is not vulnerable to attack simply because later judicial decisions indicate that the plea rested on a faulty premise. It is enough that the plea was based on a competent lawyer’s advice, based on then existing law as to possible penalties.
  - The plea is vulnerable to attack if the defendant can show that she was the victim of incompetent legal representation
    - Defendant must show:
      - Counsel’s representation was constitutionally deficient
      - She was prejudiced by the deficiency

- North Carolina v. Alford → A defendant CAN plead guilty while simultaneously claiming she is innocent, provided the record contains a factual basis of guilt

- Defendant does not have an absolute right under the Constitution to have his guilty plea accepted by the court

Plea Bargaining
- Defendant does not have a right to withdraw a guilty plea after it is accepted but the judge may permit her to withdraw her plea before the sentence is imposed if the defendant can show a fair and just reason to do so

- Evidence that the defendant entered a guilty plea that was later withdrawn may not be introduced against her in any civil or criminal proceeding
  - Nor may any statements made by the defendant to the prosecutor in plea negotiations be used against the defendant

- Supreme Court has suggested that defendant must be aware of terms of bargain that he is rejecting

- We’re not as worried about prosecutorial vindictiveness with respect to plea bargains due to:
  - Negotiation
  - Mutuality of bargain

- A state may encourage a guilty plea by offering substantial benefits in return for the plea.
  - Corbitt v. New Jersey → The plea may offer the possibility or certainty not only of a lesser penalty than the sentence that could be imposed after a verdict of guilty but also of a lesser penalty than that required to be imposed after a guilty verdict by a jury.
    - Legislature may openly provide for the possibility of leniency in return for a plea

- Brady v. U.S. → Fear of receiving greater penalty may cause defendant’s guilty plea but it does not mean that the greater penalty coerced the guilty plea.
  - Guilty plea is not compelled if taken to receive lesser penalty
• Plea Bargaining Pros:
  o Allows defendant, with assistance of counsel, to determine whether the contemplated punishment arising from the guilty plea is lower than the anticipated posttrial sentence, discounted by the possibility of acquittal
  o Plea bargaining allows prosecutor to determine the foreseeable costs of a trial, the likelihood of conviction, and the probable sentencing disposition, and then use the negotiation process to fit the crime to the punishment
  o Society can more efficiently attain the objectives of criminal punishment, by ensuring that it is more promptly imposed.
    ▪ Scarce judicial and prosecutorial resources are conserved for those cases in which there is a substantial issue of the defendant’s guilt or in which there is substantial doubt that the State can sustain its burden of proof
    ▪ Makes justice system more reliable

• Plea Bargaining Cons:
  o Results in undue leniency to criminals
  o Plea bargaining unduly burdens/penalizes a defendant who chooses to assert her constitutional right to a trial
  o Deal defendant receives is illusory due to prosecutorial overcharging
    ▪ Divide criminal transaction into as many offenses as they can and charge them all
    ▪ Charge the highest degree of an offense that the evidence could even remotely permit
  o Defendants are unduly influenced by their attorneys to accept plea deals
    ▪ Public and Private defenders are overburdened
    ▪ Public defenders have incentive to cooperate with prosecutors with whom they deal on a daily basis
    ▪ Lawyers do not like to be wrong—guilty plea cannot be proven wrong
  o Enhanced possibility innocent defendants will plead guilty

Broken Deals and Withdrawn Offers
• Broken deal is a due process violation
• Santobello v. New York→when a guilty plea rests in significant part on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled
  o When a defendant pleads guilty on the basis of a promise that the prosecutor subsequently breaks, the effect of the unfulfilled promise is to render the plea invalid because it was based on a false premise and was arguably not intelligently made (court has not been clear on reasoning—arguably plea is not intelligent also arguably not knowing and voluntary)
    ▪ Two proposed remedies:
      • Trial court could require specific performance of the agreement
      • Trial court could vacate defendant’s plea and permit him to plead anew to the original charge
It is not always clear when an agreement has been violated
- Courts employ contract analysis
- Defendant may want counsel to include an express provision mandating judicial construction of a plea agreement in the event that the parties dispute the meaning of a provision
  - In this case, prosecutor cannot withdraw agreement if the court determines the defendant violated it

- Party may revoke an offer, even after its acceptance, at least if there has been no detrimental reliance on the offer

- A plea bargain standing alone is without Constitutional significance. It is the guilty plea that implicates the Constitution.
  - Thus the question whether the prosecutor was negligent or otherwise culpable in first making and then withdrawing his offer is not relevant.
  - Allow defendant to change his mind, therefore must allow prosecutor to change his mind as well

**Was the Deal Broken—Framework**
**Bargain?**
- Yes ➔ Move on
- No ➔ You’re done

- Expression of opinion is NOT a promise/bargain
- Prosecutor can revoke a deal up until a defendant goes to court and pleads guilty

2. Fulfilled?
   - Yes ➔ You’re done
   - No ➔ Move on

3. Excuse for non-fulfillment?
   - Yes ➔ You’re done
   - No ➔ Move on

4. Remedy?
   - Typically specific performance—appropriate because had State fulfilled its promise, plea would be valid
     i. If defendant wishes to withdraw guilty plea and prosecutor doesn’t oppose, court generally allows it
     ii. If prosecutor opposes, the court generally does NOT allow it unless the prosecutor’s conduct was especially egregious
TRIAL PROCESS

Right to Trial by Jury

- **6th Amendment**: in all criminal prosecutions, the accused shall enjoy the right to a trial by an impartial jury.
  - Purposes Jury Serves:
    - Protection against the corrupt or overzealous prosecutor and compliant, biased or eccentric judge
    - Community participation in the administration of criminal law is critical to public confidence in the fairness of the criminal justice system.

- When does the right apply?
  - At a minimum, to any offense for which the maximum potential incarceration (not actual incarceration) is more than six months
    - However, defendant does NOT have a right to jury trial when charged with multiple petty offenses whose aggregate maximum potential sentence exceeds 6 months
    - Multiple charges does not revise the legislative judgment as to the gravity of the particular offense

  - Right to jury trial does not apply to petty crimes
    - If the maximum prison term is six months or less, the offense is presumed to be petty.
      - Presumption can be overcome by showing that additional statutory penalties are so severe that they clearly reflect a legislative determination that the offense in question is a serious one

  - To any issue, other than the defendant’s previous criminal record, that raises the maximum potential punishment the defendant may receive
    - Maximum refers to the sentence the judge may impose under the governing law without any additional factual findings
    - The right to jury does NOT apply to facts that raise the minimum sentence.

- What is the nature of the jury?
  - Size: 12 jurors is the norm but 6 is the constitutional minimum
    - Jury must be large enough to:
      - Promote group deliberation
      - Provide fair possibility for obtaining representative cross section of community
    - Federal courts require 12 jurors in all cases
o Fair cross section
  - Fair cross section comes from impartiality. Impartiality means that there is not just one point of view, there are many.
  - Defendant need NOT be a member of the excluded group because jury impartiality is a right and exclusion of any group affects this right.

o To make a prima facie case the defendant must demonstrate:
  i. That the alleged exclusion affects a distinctive group
     - Distinctive:
       - The group is defined and limited by some factor/attribute (not defined purely by point of view or attitude)
       - That a common thread or basic similarity in attitude, ideas or experience runs through the group; AND
       - That there is a community of interests among members of the group such that the group’s interests cannot be adequately represented if the group is excluded from the jury selection process.
         o Groups previously held to be distinctive:
           - Race
           - Gender
           - Ethnic background

  ii. That the representation of the group in venires is unreasonable in proportion to their number in the community, and
    - This can be proven by comparing the proportion of the group in the total population to the proportion called to serve as jurors over a significant period of time

  iii. That this underrepresentation results from systematic exclusion
    - Defendant does NOT have to show discriminatory intent, only systematic exclusion
    - Systematic exclusion can be shown by the impact of the rule, rather than simply from the face of the rule itself

  iv. Remedy: Conviction is overturned
    - Prosecutor can re-try defendant—NO double jeopardy problem

o NOTE: Defendant need NOT show prejudice

o Once defendant makes prima facie showing, state can save its selection system only by showing that a significant state interest is manifestly and primarily advanced by the problematic aspects of the selection process

o Fair cross section requirement is limited to the pool from which jurors are drawn, not the petit jury
Defendant does NOT have a Constitutional right to waive a jury trial
  o In federal court, prosecutor and judge must approve defendant’s request for bench trial
  o Why Defendant May Waive Right to Jury Trial
    ▪ Belief judge is less likely to be swayed by emotion
    ▪ Defense hinges on a technical adherence to the definition of the crime
    ▪ Bench trial is quicker and cheaper
    ▪ Judge signals he will impose lighter sentence if defendant waives jury trial right

Role of voir dire:
  o Provides a means of discovering actual or implied biases
  o Provides a firmer basis upon which the parties may exercise their peremptory challenges intelligently

Challenges
  o For Cause ➔ person is unqualified to serve or is biased to a degree that would substantially impair her ability to render an impartial verdict
    ▪ Actual bias ➔ bias demonstrated during voir dire
    ▪ Implied bias ➔ bias legally presumed to exist
    ▪ States may not make a juror’s attitude toward the death penalty the basis for an exclusion for cause unless the juror’s views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and oath
      o If juror is improperly excluded, death sentence is reversed not the guilty verdict
      o NOTE: During guilt phase a prospective juror whose opposition to capital punishment would prevent her from imposing the death penalty regardless of the evidence may properly be excluded for cause
  o A judge’s failure to honor a defendant’s request for an inquiry into racial or ethnic prejudice is a reversible error where:
    ▪ The circumstances of the case indicate that there is a reasonable possibility that racial or ethnic prejudice might have influenced the jury
      • Such a reasonable possibility exists when a defendant is accused of a violent crime and where the defendant and the victim are members of different racial or ethnic groups
  o Defendant accused of interracial capital crime is constitutionally entitled, upon request, to have prospective jurors informed of the victim’s race and questioned on the matter of racial bias
The juror is not required to be totally ignorant of the facts and issues involved in a case. It is sufficient if the juror can lay aside his impression or opinion and render a verdict on the evidence presented in court.

No juror may be excluded for cause on the basis of his membership in an organization that adheres to a particular view absent a showing the membership will impair a juror’s impartiality.

Peremptory rejection of a juror for reasons the party need not disclose

- Purposes:
  - Serve as a back up to challenges for cause—evidence was not strong enough for the judge to grant the challenge for cause
  - Provide parties with opportunity to participate in the construction of the decision making body thereby enlisting their confidence in its decision
  - Allows parties to act on stereotypes without codifying them into law

- **Batson v. Kentucky**
  - Prosecutor cannot exercise peremptory challenges solely on the basis of race

  - **Framework:**
    1. Defendant must make prima facie showing by producing evidence sufficient to permit a trial judge to draw an inference that discrimination has occurred
      - Inference may be raised based solely on evidence concerning the prosecutor’s exercise of peremptory challenges at the defendant’s trial
    2. Burden shifts to state to come forward with neutral explanation for its challenges
      - Does not demand an explanation that is persuasive or even plausible—issue is facial validity of explanation
    3. Trial court must decide whether the defendant has met his burden in light of all relevant circumstances
      - In order to determine whether the court finds the prosecutor’s proffered reasons credible, it looks at:
        1. Prosecutor’s demeanor
        2. Reasonableness or improbability of explanations
        3. Whether proffered rationale has basis in accepted trial strategy

- **Remedy:**
  - Reinstating excluded jurors
    - Seems like better remedy since excluded juror’s rights were violated
  - Starting over with new venire
• DISSENT: As long as peremptories are applied across the board to jurors of all races and nationalities their use does not violate the Equal Protection Clause.

  ▪ *Batson* violations harm defendant (along with the excluded juror) by casting doubt on the integrity of the judicial process
  ▪ If public does not trust the process it will not accept the verdict which injures the defendant

  ▪ Extensions of *Batson*
    ▪ All race based peremptory challenges, regardless of the race of the defendant or challenged juror
      □ Race based challenges violate rights of potential juror
      □ Defendant is in better position to protect juror’s interests than excluded juror
    ▪ Race based peremptories made by the defendant
      □ Defendant’s exercise of peremptory challenges constituted state action
      □ Infringes on rights of jurors and integrity of the courts
    ▪ Gender based peremptory strikes
    ▪ Civil cases

• Supreme Court has held that prosecutor’s use of peremptory challenges to exclude specific group DOES NOT violate 6th Amendment fair cross section right.
  ▪ Fair cross section applies to venire NOT jury

• Verdicts
  ▪ RULE: In state criminal trials using a 12 person jury, neither the 6th Amendment nor due process requires a unanimous verdict; a 9-3 vote for conviction is constitutionally sufficient. In state cases involving a 6 person jury, unanimity is required.
    ▪ Unanimous verdicts are REQUIRED by federal juries
    ▪ Studies have shown that juries deliberate longer when they are required to reach a unanimous verdict, rather than a “substantial majority.”
      ▪ Inconsistent verdicts are NOT unconstitutional nor otherwise unacceptable

• Jury Nullification
  ▪ Nullification—juror understands the law, however juror does not apply the law in a particular case, resulting in an acquittal
  ▪ Jurors have power to nullify a law if they feel there are justifications for doing so.
    Two factors make this possible:
    i. Nature of a verdict—typically a general verdict
    ii. Double Jeopardy
Serves as the community’s safeguard against morally unjust or socially undesirable criminal convictions

Prosecutor can seek to have a juror dismissed before or during deliberations if there is evidence that she intends to nullify the law and vote to acquit.
- Dismissal is only appropriate where the record is clear beyond a reasonable doubt that the juror was refusing to apply the law rather than being simply unpersuaded by the prosecution’s case

Jury has power to nullify but it does not have the right to nullify

- Jury misconduct that can cause deliberation to fail:
  - Jury tampering
  - External influences that lack the purposeful nature of jury tampering—typically outside sources of information about the case
  - Prejudicing the case or reaching a verdict by some means other than considering the facts of the case

Confrontation Clause
- 6th Amendment in all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him
  - Purpose
    - Ensure reliability of evidence

Confrontation Clause right includes:
- Cross examination
  - Promotes truthfulness by testing witness’ recollection, bringing out weaknesses in witness’ story
  - Subject to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation, the cross examiners has traditionally been allowed to impeach the witness
    - Exposure of a witness’ motivation in testifying is a proper and important function of the constitutionally protected right of cross examination
- Oath
  - Promotes truthfulness by threat of perjury
- Observation of demeanor by trier of fact
  - Promotes truthfulness because witness’ actions may lead jury to conclude witness is lying
- Physical Presence
  - Promotes truthfulness because it is harder to lie to a person’s face
    - Element may be excused on case by case basis where:
      - Denial of such confrontation is necessary to further an important public policy and
      - The reliability of the testimony is otherwise assured
• Inquiry
  o NOT whether the proffered out-of-court statement was reliable (focus of hearsay rules) but whether it was **testimonial**
    ▪ Testimonial at a minimum includes statements made in:
      • Grand jury testimony
      • Preliminary hearing
      • Prior trial
      • During police interrogation

    ▪ Statements are testimonial when the circumstances objectively indicate that there is no ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution
      • Formality of police interrogation strengthens the statement’s testimonial aspect

    ▪ Statements are non-testimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation in to enable police to meet/resolve an ongoing emergency rather than simply to learn what had happened in the past

  o **RULE:** Testimonial statements from a witness who did not appear at trial are not admissible UNLESS the witness is unavailable to testify and the defendant had a prior opportunity for cross examination

**Framework:**
1. Is there an out of court statement?
   a. Yes → Move on
   b. No → No Confrontation Clause Problem
2. Is the statement testimonial?
   a. Yes → Move on
   b. No → apply rules of evidence
3. Is the witness unavailable?
   a. Yes → No Confrontation Clause violation
   b. No → Confrontation Clause violation
4. Did the defendant have a prior opportunity to cross examine?
   a. Yes → No Confrontation Clause violation
   b. No → Confrontation Clause violation

**Bruton Rule**
• Facially incriminating confession of a non-testifying co-defendant cannot be introduced at joint trial
  o Co-defendant’s confession cannot be introduced even if defendant’s own confession is admitted against him and corroborates the co-defendant’s confession (*Cruz v. New York*)
Confessions that make no reference to the nonconfessing defendant’s existence and which are incriminating to the nonconfessing defendant only in combination with other evidence are not barred (*Richardson v. Marsh*)
  - However statement cannot be used against defendant who did not make it

Confessions that use the word “deleted” or some similar formulation in lieu of the other defendant’s name ARE barred
  - Jury could make inference immediately without any other evidence in mind

- Why can’t co-defendant’s statements be used?
  - Mandatory presumption that jury could not follow limiting instruction to ignore the statement with respect to the other co-defendant

**Right to Compulsory Process**
- 6th Amendment grants the accused the right to have compulsory process for obtaining witnesses in his favor
  - Right is construed broadly

Sanctions imposed for discovery violations could run afoul of an accused’s right to present witnesses in his own defense
- *Taylor v. Illinois*\(\Rightarrow\) Defendant’s right to offer testimony of a witness is not absolute
  - Sanction precluding witness testimony was justified because violation was:
    - Willful
      - This alone could justify the sanction because 11th hour evidence is presumed to be perjured
    - Designed to gain a tactical advantage
    - Testimony was presumptively perjured
      - This alone would probably not justify the sanction because it would arguably deprive the defendant of his right to a jury trial

- When a rule/sanction is used to exclude defendant’s evidence, court should ask:
  - What purpose does the rule serve by excluding the evidence?
    - Is this interest valid?
    - Is the rule serving the interest?
  - How important is the evidence to the defendant’s case

**Defendant’s Right to Testify**
- *Griffin v. California*\(\Rightarrow\) Fifth Amendment forbids either comment by the prosecution on the accused’s silence or instructions by the court that such silence is evidence of guilt.
  - To do so would be a penalty for exercising a constitutional privilege—it cuts down on the privilege by making the assertion costly.
Why a defendant may choose not to testify:
  o Prior convictions are often admissible to impeach the credibility of the testifying but (generally) not a defendant who does not testify
  o Constitutional exclusionary rules relax to impeach defendant’s credibility when the defendant testifies
  o Requires defendant to waive his 5th Amendment privilege

Defendant is entitled to an instruction informing jurors that they may draw no adverse inferences from his failure to testify.
  o Fifth Amendment is NOT violated if the instruction is given over the defendant’s objection.

Federal judges may not draw adverse inferences about the facts of the offense from a defendant’s silence at a sentencing hearing

SENTENCING
  • Indeterminate Sentencing ➔ judge’s role is to use his accumulated experience, judgment and hopefully wisdom to determine what punishment is appropriate for the offense and the offender

  • Elements of a crime must be proved by the State beyond a reasonable doubt
  • Williams v. New York ➔ procedural rights are less at sentencing than at trial
    o Constitutional rights that do not apply at sentencing:
      ▪ Burden of proof beyond a reasonable doubt
      ▪ Confrontation
      ▪ Double Jeopardy

  • Apprendi v. New Jersey ➔ Any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proven beyond a reasonable doubt.
    o The statutory maximum for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant—maximum judge may impose without any additional findings
      ▪ 6th and 14th Amendments require every element of the crime be found beyond a reasonable doubt by a jury
    o EXCEPTION: Fact of defendant’s prior conviction
    o Harris v. United States ➔ Apprendi does NOT apply to facts that raise the minimum sentence a defendant can receive
      ▪ Sentence imposed is authorized by the jury’s verdict

  • United States v. Booker ➔ Federal Sentencing Guidelines are unconstitutional
    o Remedy: guidelines are advisory rather than mandatory.
      ▪ Appellate review: reasonableness in light of the Guidelines and the purposes of sentencing set out in federal law
• Judges still perform fact finding function:
  o Mandatory minimum
  o Mitigating facts
  o Indeterminate sentencing
  o Prior convictions
  o Defendant waives Apprendi rights

• Policy Considerations
  o Determinate Sentencing
    ▪ Pro:
      • More uniform sentencing
    ▪ Con:
      • Charges determine sentences—prosecutors have tremendous power
  o Indeterminate Sentencing
    ▪ Pro:
      • May be rational reasons for disparity
    ▪ Cons:
      • Disparate sentencing
        o Depending on region
        o Depending on race
  o Juries deciding sentences
    ▪ Pro:
      • More representative of community

Judicial Vindictiveness
• Original Rule: *North Carolina v. Pearce* → judge may not impose a more severe sentence upon a defendant after a new trial unless the reasons for doing so appear on the record and are based upon objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding.

• Current Rule: If there is a reasonable likelihood that an increase in sentence was the result of vindictiveness, a presumption of judicial vindictiveness applies.
  o When presumption does NOT apply:
    ▪ Second sentence is imposed by a different sentencer than was involved in the first trial
      • Judge rather than jury
      • Appellate court rather than trial court
      • Different juries
    ▪ Original sentence was imposed after guilty plea and second sentence was imposed after trial

• Presumption may be rebutted on the basis of any objective information that justifies an increase in the sentence, including information relating to a defendant’s conduct that occurred before the original sentencing proceeding
DOUBLE JEOPARDY

- 5th Amendment: No person shall be subject for the same offense to be twice put in jeopardy of life or limb.

- Double Jeopardy Values:
  - Avoidance of embarrassment, expense, ordeal, anxiety and security for the defendant
  - Risk that government will convict an innocent person by wearing him down with superior resources
    - Prosecutor can use first trial as dry run for second
  - Defendant’s interest in having his trial completed by a particular tribunal
  - Preserve the finality of judgments

- When is a person in jeopardy?
  - Jury Trial: jury is sworn
  - Bench Trial: first witness is sworn

- 3 Double Jeopardy Protections:
  1. A second prosecution for the same offense after acquittal
  2. A second prosecution for the same offense after conviction
  3. Multiple punishments for the same offense

Conviction

- The government may not re-prosecute a defendant for the same offense if he does not appeal his conviction or if his appeal is unsuccessful.
  - The government is barred from re-prosecuting a previously convicted defendant if an appellate court reverses the conviction on the sole ground that the evidence presented at the trial was insufficient to sustain the guilty verdict.
    - The reversal is in effect a determination that the government’s case against the defendant was so lacking that the trial court should have entered a judgment of acquittal, rather than submitting the case to the jury.

- A criminal conviction can simultaneously result in an applied acquittal of a greater offense.
  - Defendant cannot be re-prosecuted for the greater offense of which he was implicitly acquitted

- A jury determination that a defendant should be sentenced to life imprisonment rather than death is an acquittal to the verdict of death.
  - Double jeopardy prohibits imposition of the death penalty at the re-trial of the defendant when the jury rejected the death penalty at the first trial
Multiple Prosecutions of the Same Offense

- Two Components:
  - Unit of prosecution
    - Requires a court to define carefully the scope of the proscribed conduct and the purpose of the statutory offense and lay the defendant’s conduct over that definition to see how many units have occurred
      - Was there an end to some conduct and an initiation of separate conduct?
      - Are the individual acts prohibited, or the course of action which they constitute?
    - Rule of Lenity: courts should not convict a defendant of more offenses (more units) than the legislature authorized. Whenever doubt exists about the number of convictions authorized, courts should resolve these doubts in favor of lenity.
  - Definition
    - *Blockburger v. United States*: two statutory provisions constitute separate offenses if each requires proof of a fact which the other does not.
      - Lesser included offense is the “same” offense under *Blockburger*
        - Whether the greater offense or lesser offense is prosecuted first is constitutionally immaterial
    - *Harris v. Oklahoma*: if the definition of crime X involves as an element the commission of another crime, and if crime Y is the crime to be used to satisfy that element of crime X, then crime X and crime Y are the same offense for double jeopardy purposes.
      - e.g. felony murder where the underlying felony is robbery and robbery are the same offense under *Harris*
    - EXCEPTION: The State is unable to proceed on the more serious charge at the outset because the additional facts necessary to sustain the charge have not occurred or have not been discovered despite the exercise of due diligence

Multiple Punishments for the Same Offense

- *Missouri v. Hunter*: imposition of cumulative punishment for two crimes that constitute the same offense under *Blockburger* is not in itself a violation of the Double Jeopardy Clause.
  - Multiple punishments as part of a single prosecution may be imposed where the legislature specifically authorizes cumulative punishment under two statutes.
  - Courts presume that legislature intended to apply the *Blockburger* rule unless a contrary intent is expressed—once this intent is expressed, the presumption is dispelled
Mistrial
- Goldwasser’s Rule: Double Jeopardy Clause gives the accused the right to proceed to verdict with the first impaneled jury (because the ordeal is underway) until:
  - Such time as a court, in the exercise of its sound discretion and giving due consideration to the accused’s double jeopardy rights, determines that there is manifest necessity for a mistrial.
  - HOWEVER, if what creates the supposed need for the mistrial is manipulable error (something the prosecutor could inject into the proceeding anytime the prosecution is taking a beating) then the concern for the accused’s double jeopardy interest take priority

- Double jeopardy bars retrial when a defendant moves for a mistrial or consents to one being granted if the prosecutor or the judge intended to provoke or goad the mistrial motion.

- Mistrial based on hung jury has no double jeopardy consequences

Acquittal
- A defendant who is acquitted of an offense may not be prosecuted again for the same offense.
  - Prohibition applies whether acquittal is result of:
    - Not guilty verdict by jury or judge
    - Implied acquittal by judge or jury
    - Ruling by the judge, whatever label he attaches to it, that represents a resolution in the defendant’s favor of some or all of the factual elements of the offense charged
      - Prohibition applies even if the verdict of ruling is based upon an egregiously erroneous foundation

- An acquittal of an offense does NOT preclude its use to enhance a sentence under the Federal Sentencing Guidelines

- A sentence of a particular length does NOT acquit a longer sentence that might be imposed in a second trial following appeal
  - The slate has been wiped clean by reversal of the first conviction
Collateral Estoppel

- *Ashe v. Swenson* ➔ When an issue of ultimate fact has once been determined by a valid and final judgment, the issue cannot again be litigated between the same parties in any future lawsuit.
  - Collateral estoppel can only be invoked if:
    - A rational jury could not have grounded its verdict on any basis other than the claim that the defendant seeks to foreclose from further consideration
    - If the defendant provides multiple exculpatory claims, the jury’s general verdict of acquittal is too ambiguous to justify the use of collateral estoppel
    - The issue in question has been adjudicated to a valid and final judgment
    - Collateral estoppel does NOT apply if the first prosecution is concluded by a guilty plea

Dual Sovereignty

- Prosecutions under laws of separate sovereigns are prosecutions of different offenses
  - Federal and state can prosecute defendant for same conduct
    - DOJ Petite Policy ➔ precludes a federal prosecution following a state prosecution based on the same act or transaction unless there is a substantial federal interest demonstrably unvindicated by the prior prosecution
  - Different states can prosecute defendant for same conduct
    - City is not an independent sovereign for purposes of the Double Jeopardy Clause—it is considered a subordinate instrumentality of the state in which it is located

Relevant Constitutional Rights

5th Amendment
- Grand Jury
- Double Jeopardy
- Self-Incrimination
- Due Process

6th Amendment
- Speedy Trial
- Jury Trial
  - Venue
- Confrontation Clause
- Compulsory Process
- Counsel

8th Amendment
- No Excessive Bail

14th Amendment
- Equal Protection