

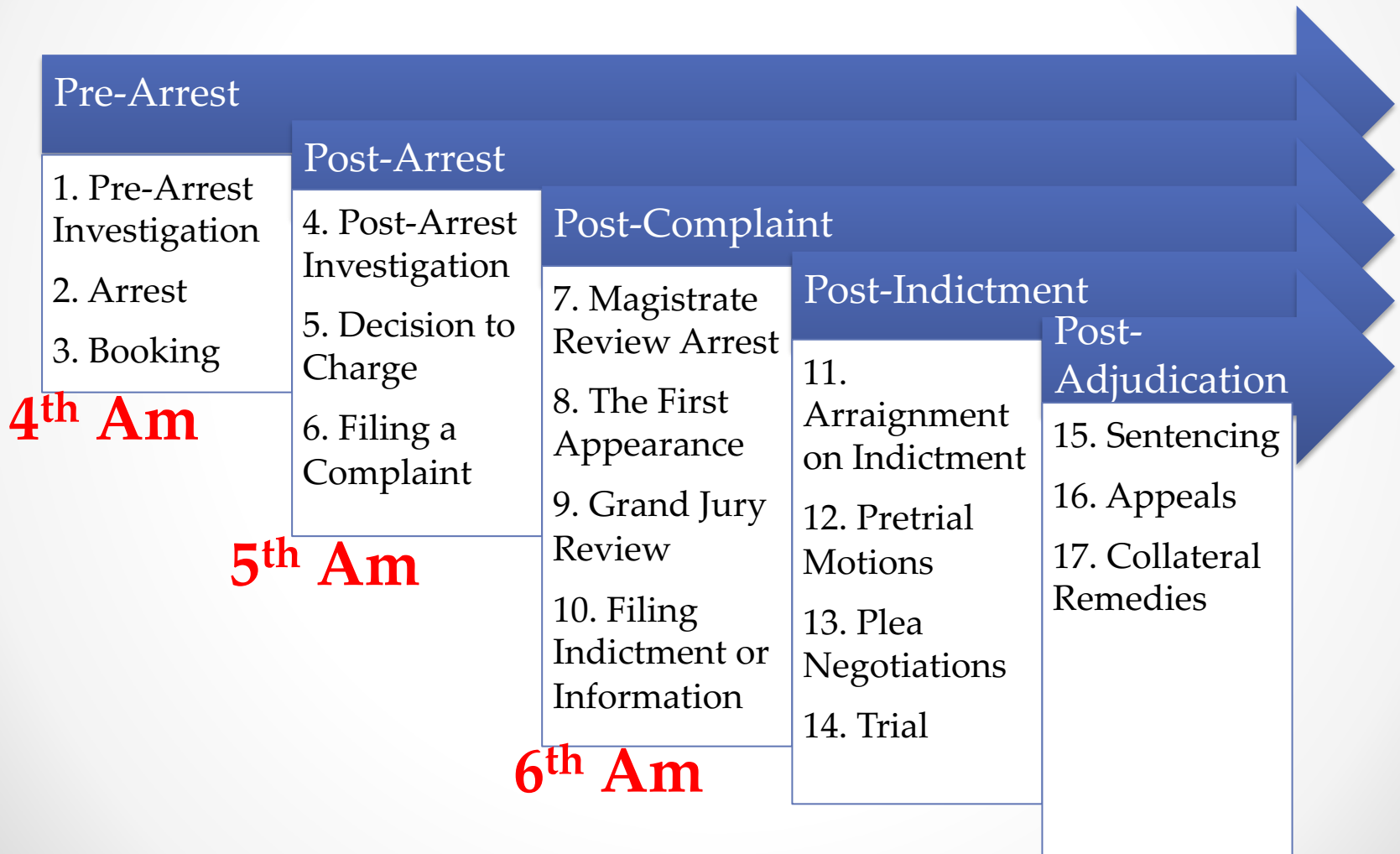
Due Process: Basics of Criminal Procedure Analysis

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Overview

- Criminal Procedure Generally
- Due Process Clause and Criminal Procedure
- Due Process Applied
- IRAC: An Overview
- Applications
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Criminal Process



Due Process Clauses

- 5th Amendment
 - “No person shall be . . . Deprived of life, liberty, or property without the due process of law”
- 14th Amendment
 - “. . . nor shall any State deprive any person of life, liberty, or property, without due process of law”
- *Mathews v. Eldridge*, 424 U.S. 319 (1976) Factors:
 - Individual interest
 - State interest
 - Procedure used balances the risk

Incorporation

- Bill of Rights provides protections against the federal government
- 14th Amendment due process clause provides protections against the states
- Fundamental Rights
 - “necessary for scheme of ordered liberty”
 - “deeply rooted in our nation’s history and tradition”
 - “fundamental fairness”

Due Process in Criminal Procedure

- *Rochin v. California*, 342 U.S. 165 (1952).
 - Forced entry into home, observed swallow pills, forced stomach pump
 - Conduct violated due process clause
 - “This is conduct that **shocks the conscience.**”
 - “Due process of the law . . . convictions cannot be brought about by methods that **offend ‘a sense of justice.’**”
 - “. . . Offend the community’s sense of **fair play and decency . . .**”
- *Schmerber v. California*, 384 U.S. 757 (1966).
 - Forced blood draw did not violate
 - “did not offend the sense of justice we spoke of in *Rochin*”
- Protects against state conduct which, under the totality of the circumstances, shocks the conscience
 - “only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience” *County of Sacramento v. Lewis*, 523 U.S. 833 (1998).

Due Process Test

- Standard applied
 - Totality of circumstances
 - Consider all factors of individual and situation
- Test specific to content
 - In this area of criminal procedure
 - What is shocking to the conscience
 - How are the individual interests in fundamental fairness balanced against the state interest in solving the crime?
 - Who bears the burden of the risk?

Due Process and Eyewitness Identification

- Test suggestive line-up:
 - Under totality of the circumstances
 - Was the ID procedure so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable harm
- *Stovall v. Denno*, 388 U.S. 293 (1967)
 - Stabbing victim in hospital for major surgery and unsure of outcome
 - 7 police, handcuffed to suspect
 - Totality of circumstances identification did not violate due process
 - Line up imperative given victim condition
 - Only person available to exonerate suspect
 - Could not go to jail

Due Process and Eyewitness Identification Admissibility

- Test for admissibility of Eyewitness ID
 - Totality of circumstances
 - Whether, despite the suggestive procedure (under *Stovall*), the id is reliable
- *Manson v. Brathwaite*, 432 U.S. 98 (1977)
 - Undercover officer bought heroin through apartment doorway
 - Gave description to detective moments later
 - Detective placed a photo of suspect on officer desk
 - Officer ID photo as seller
 - Court found identification admissible based on totality of circumstances
 - **Factors for reliability:**
 - **Opportunity to view**
 - **Degree of attention**
 - **Accuracy of description**
 - **Witness certainty**
 - **Time between crime and confrontation**

Due Process and Confessions

- Voluntariness Test:
 - Under the totality of the circumstances
 - Tactics that “break the will” of the suspect/witness
- 3 Goals/Values
 - Doubtful reliability because of the police methods
 - *Brown v. Mississippi*, 297 U.S. 278 (1936)
 - Offensive methods, even if reliable
 - *Ashcroft v. Tennessee*, 322 U.S. 143 (1944)
 - Involuntary in fact (i.e. drugged)
 - *Connelly v. Colorado*, 479 U.S. 157 (1986)
 - *Miller v. Fenton*, 796 F.2d 598 (3d Cir. 1986)

Reflecting on Criticisms

- Invite trial judges to apply subjective preferences
- Provide less protection
- Outcomes vary widely
- Thoughts?

Introduction to Basic Legal Analysis

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IRAC

- *Issue*: Statement of the legal issue being considered
- *Rule*: Statement of the relevant rule of law
- *Analysis*: Application of the relevant rule of law to the facts of the case
- *Conclusion*: A summary conclusion of the case

Application 1: Eyewitness Identification

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Facts

- Wendy Witness called 911 and told them she saw an African-American man breaking into cars outside her apartment
- Officer Olson responded. Olson heard a metal bat hitting the ground and then saw Daniel Defendant standing between two cars holding two stereo amps in his hands.
- Olson asked Defendant where the amps came from and Defendant said he found them on the ground.
- Olson had Defendant stay with another officer and went inside to speak with Witness

Facts

- Witness told Olson that Witness had seen a tall, African-American man remove a large box from the car with smashed windows.
- When Olson asked for a more specific description, Witness pointed out the window and said it was the man (Defendant) standing next to a police officer
- One month later, Olson gave Witness a photo lineup which included Defendant, but Witness did not identify Defendant as the perpetrator in the lineup

Legal Analysis: Issue

- Did Witness's identification of Defendant in the parking lot violate Defendant's Due Process rights?
 - Show up v. lineup
 - Exclusion of Evidence

Legal Analysis: Rules

- Show-up v. Lineup
 - The totality of the circumstances must be examined where a defendant claims that his right to DP has been violated because of the manner in which he was forced to confront a witness (***Stovall v. Denno***, 1967)

Legal Analysis: Rules

- Exclusion of Evidence
 - Court must look at reliability of an identification when a defendant claims his right to DP has been violated because of the manner of witness confrontation (**Manson v. Brathwaite**, 1977)
 - Reliability Factors (**Neil v. Biggers**, 1972)
 - Opportunity for witness to view the defendant
 - The witness' degree of attention
 - The accuracy of the witness' prior description of the criminal
 - Witness' level of certainty with identification
 - Time between crime and identification

Legal Analysis: Analysis

- Show Up v. Lineup
 - Totality of the circumstances
- Evidence Exclusion
 - Need to look at reliability under **Biggers** criteria

Legal Analysis: Conclusion

- DPC does not require courts to prescreen eyewitness evidence for reliability when police did not create suggestive circumstances that tainted identification





7'0"

7'0"

6'5"

6'5"

6'0"

6'0"

5'5"

5'5"

5'0"

5'0"

4'5"

4'5"

4'0"

4'0"

3'5"

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Application 2: Confessions

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Facts

- A Mayan biker has been shot and killed. Detectives Benson and Stabler, working with ATF Agent June Stahl, have some evidence to suggest Clay, leader of the rival motorcycle gang SAMCRO, is the perpetrator, but not enough evidence to meet the probable cause requirement to have a judge issue a warrant for the suspect's arrest. They need a confession to close the case. Det. Stabler asks Clay to come to the station to answer questions on a different matter – the pending case against a different (still living) Mayan biker, resulting from an assault on “Tig” Trager, a member of SAMCRO.

Facts

- Clay, who has been previously diagnosed with Narcissistic Personality Disorder by Dr. Wong, agreed to come answer questions, believing he could outwit any advances by the police. His wife, Gemma, however, was immediately alarmed that he was speaking with police and sent the family attorney to the police station. The family attorney was truthfully told Clay was answering questions voluntarily regarding the assault on his comrade, Tig, but the underlying intention to get Clay to reveal his role in the Mayan murder was not disclosed to the attorney.

Facts

- Detectives Munch and Tutuola told the attorney that since Clay had not asked for an attorney and was free to leave, they would not interrupt the interview, but the attorney was welcome to wait, in case anything changed. The attorney left the police station. Meanwhile, Benson and Stabler, aware of Clay's diagnosed Narcissistic Personality Disorder, began to bait him, playing on his pride, SAMCRO affiliation, and toxic perception of violent strength as masculinity.

Facts

- As the Law & Order: SVU theme music swelled amidst intense staring, Detectives Benson and Stabler successfully tricked Clay into yelling that he shot the victim in retaliation for the violence against Tig while Captain Cragen watched beaming from the other side of the two-way mirror. Clay is Mirandized and placed under arrest for the murder of the Mayan biker. The next day, the defense attorney makes a pre-trial motion asking for the confession to be excluded as fruit of the poisonous tree. How should the judge rule?

Legal Analysis: Issue

- Did the SVU detectives violate Clay's due process rights while trying to get him to confess? Should the confession be excluded?
 - Deception of Clay – police intentions and attorney presence?
 - Deception of attorney?
 - Attorney presence?
 - In custody?
 - NPD diagnosis?
 - Appropriate remedy?

Legal Analysis: Rules

- Brown v. Mississippi, 297 U.S. 278 (1936)
 - Three black men tried for the murder of a white man
 - Only evidence presented in the one day trial is the confessions of the three defendants
 - Prosecution witnesses freely admitted the confessions were procured while the defendants were being “brutally whipped”
 - One was also hung by the neck from a tree
 - Jury convicted and the defendants were sentenced to hang
 - Mississippi Supreme Court upheld the convictions
 - SCOTUS unanimously voted to overturn the convictions, holding that a confession compelled by violence is inadmissible

Legal Analysis: Rules

- 5th amendment right against self-incrimination
 - Miranda (1966)
 - Mathiason (1977)
 - Innis (1980)
 - Quarles (1984)
 - Moseley (1975)
 - Moran (1986)
- 6th amendment
 - Massiah (1964)
 - Escobedo (1964)

Legal Analysis: Analysis

- Deception of Clay – police intentions and attorney presence?
 - Supports a finding of no violation – Mathiason, Moseley, Moran
- Deception of attorney?
 - Supports a finding of no violation – Moran
- Attorney presence?
 - Supports finding a violation – Escobedo
- In custody?
 - Supports a finding of no violation – Miranda, Mathiason
- NPD diagnosis?
 - Supports a finding of no violation – Innis, Mirando
- Appropriate remedy?
 - Will not be applied, but likely be the exclusionary rule

Legal Analysis: Conclusion

Looking at the totality of the circumstances,
the state conduct did not “shock the conscience”

Admissible:
Clay's going to prison