CHAPTER 11

Prosecutors, Grand Juries, and Defense Attorneys
Chapter Agenda

- Describe the prosecutor's role, prosecutorial discretion, and the issues surrounding prosecutorial misconduct.
- Explain the purpose, functions, and powers of the grand jury.
- Outline the development of the right to counsel.
Learning Objective

Describe the prosecutor's role, prosecutorial discretion, and the issues surrounding prosecutorial misconduct.
Issues Surrounding Role of Prosecutor

- The charging decision
- Restrictions on bringing charges
- Unfair and selective prosecution
- Vindictive prosecution

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Issues Surrounding Role of Prosecutor

- Prosecution disregarding legislation
- Overzealous prosecutors
- Joinder
- Charges against multiple defendants
Joinder

• A situation in which the prosecutor either:
  ▪ Brings multiple charges against the same individual in the same trial.
  ▪ Brings charges against multiple individuals in the same trial.

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Joinder

• Determining joinder
  ▪ Is joinder appropriate based on the jurisdiction in question?
  ▪ If appropriate, will it be unfairly prejudicial?
Multiple Charges against the Same Individual

- The same criminal event
  - Robbery of a convenience store and assault when fleeing the scene

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Multiple Charges against the Same Individual

- Two separate criminal acts that are tied together in some fashion
  - A convenience store robbery to obtain cash to buy and sell illegal drugs
- Two criminal acts that are the same or similar in character
Charges against Multiple Defendants

• Crimes of conspiracy
  ▪ Jury confusion
  ▪ Efficiency
Learning Objective

Explain the purpose, functions, and powers of the grand jury.
The Fifth Amendment

• "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury."
Selecting a Grand Jury

• Court or prosecutor
  ▪ Duration
    • Cannot serve longer than 18 months
  ▪ Size
    • Larger than ordinary trials

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Selecting a Grand Jury

- Court or prosecutor
  - Voting requirements
    - Varies from state to state
  - Selection of members
    - Subpoena
Grand Jury Power

- Investigative
  - Determine indictment
- Subpoenas
  - *Testificandum*
  - *Subpoenaduces tecum*

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Grand Jury Power

- Findings of contempt
  - Failure to cooperate
- Grants of immunity
  - Exchange for testimony
Learning Objective

Outline the development of the right to counsel.
Right to Counsel

- Sixth Amendment guaranteed right to counsel
- Create reasonable doubt
- Due process
- Effective assistance of counsel
- Represent client's best interest

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Right to Counsel

- *Gideon v. Wainwright*
  - Felony proceedings
- *Argersinger v. Hamlin*
  - Include misdemeanor cases

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Right to Counsel

- *U.S. v. Wade*
  - Two-prong test

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Right to Counsel

- Waiver of Right to Counsel
  - Defendants have constitutional right to represent themselves.
    - *Faretta v. California*
    - *Pro se defense*
  - Standby counsel
Ineffective Counsel

- *Strickland v. Washington*
  - Performance prong
    - Deficient performance
    - Performance prejudiced the defense

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Ineffective Counsel

- Strickland v. Washington
  - Prejudice prong
    - Errors were so serious as to deprive defendant of fair trial.
    - Unreliable trial