Defining & Interpreting Custodial Interrogation

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The Premises

• The Fourteenth Amendment:
  – “No State shall...deprive any person of life, liberty, or property without due process of law...”

• The Fifth Amendment:
  – “No person...shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law...”
Historical Context

  - Established the “voluntariness” test under the 14th Amendment.
  - Focused on the physical means of coercion.
  - Both *Spano* & *Rogers* show the Court’s focus on the psychological means of coercion.
  - Selectively incorporated the Fifth Amendment’s Self-Incrimination Clause via the Fourteenth Amendment’s Due Process Clause.
Self-Incrimination

Before the privilege of protection against self-incrimination was applied to the states, suspects subjected to custodial interrogation were faced with a trilemma:

– 1. Offer a statement against their own interest.
– 2. They could lie to police.
– 3. Or they could refuse to speak.
The Miranda Doctrine

• In 1966, in *Miranda v. Arizona*, the Court made the now well-known *Miranda* warning a clear prerequisite for custodial interrogation.
• Helped to protect the privilege against self-incrimination.
• Formed the now ubiquitous *Miranda* warning.
  • You have the right to remain silent; anything you say may be used against you in a court of law. You have the right to an attorney; if you cannot afford an attorney one will be provided for you.
The Court’s Full Definition of Custodial Interrogation

• The *Miranda* Court addressed but did not clearly define what was meant by custodial interrogation.

• It was not until 1980, in *Rhode Island v. Innis*, that the Court fully defined what constituted interrogation, i.e.,

  – When a suspect is subjected to express questioning—or any words or actions which constitute its functional equivalent—that the police should have known were reasonably likely to elicit a criminal response.
The Court’s Full Definition of Custodial Interrogation Cont.
• In 1980 the Court developed and subsequently implemented the aforementioned *Innis* test.
  – The legal process used by the Court is as follows:
    • Is the suspect in custody?
    • Has the suspect waived his constitutional right to silence or counsel?
    • Was the suspect subjected to express questioning or its functional equivalent the police should have known was reasonably likely to elicit a criminal response.
Recent Interpretation of the Fifth Amendment

• *Berghuis v. Thompkins* (2010) and ambiguous silence:
  – In 2010 the Court decided that if a suspect simply *remains silent* this does not, by any means, invoke his right to *remain silent*.
  – If you are in custody and wish to remain silent you must “unambiguously invoke” this right.
• Must speak to remain silent…
**Berghuis and Innis**

- The facts of *Berghuis* subjected to the *Innis* test produce a contrary result.
  - Was the suspect in custody? \( \rightarrow \) Yes.
  - Had the suspect waived his right to silence? \( \rightarrow \) Obviously not.
  - Was the suspect subjected to express questioning or its functional equivalent the police should have known was reasonably likely to elicit a criminal response? \( \rightarrow \) Yes.

- The suspect’s constitutional rights were violated.
- This case recently stemmed a case that defames the Fifth Amendment.

- A suspect was being questioned about a recent murder.
- He answered several questions but fell silent when asked whether a ballistics test would match his shotgun.
- At his trial the prosecuting attorney used his silence as an assumption of his guilt.
Conclusion

• The Fifth Amendment privilege against self-incrimination is paramount to procedural due process.

• Presently, the most effective way to preserve this privilege is the *Miranda* Doctrine coupled with the *Innis* test.

• Holding with the *Miranda* precedent, and properly administering the *Innis* test is the most effective way to ensure our foundational constitutional rights are not violated.