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High School Legal Curricula: Fifth Amendment Hypotheticals

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FIFTH AMENDMENT HYPOTHETICALS

It has been our experience that when the student is presented with only a rule of law, he is left with a vague introduction to a foreign abstraction. However, we have discovered that through the use of hypothetical examples that enable the student to apply the abstract rule to a familiar factual situation, the student's comprehension of the rule of law, as well as its application, is markedly increased. Furthermore, the use of a hypothetical provides the instructor with instant feedback as to the student's comprehension. From this, the teacher is able to adjust the pace of his lesson plans. It is recommended, therefore, that the teacher use these hypotheticals as a teaching device and not as examination questions.

Following the hypotheticals is a "Hint to Teacher." These hints are directional guides that, when closely followed, will ensure proper legal analysis of the hypotheticals. It may appear that the general rule of law is not applicable or is distorted by the fact situation. The hints are designed to clarify any confusion.

In addition, see the Teaching Methods Unit. This illustrates further methods that we found useful in the classroom.

Hypothetical 1

The police nabbed a burglar as he came through a broken window. Immediately, the suspect blurted out, "I broke in there all right, but

who tipped you off?" This confession influenced the jury when deciding the defendant's guilt.

Since the police failed to give the suspect his *Miranda* warnings, which include the right to remain silent, can the defendant appeal his conviction on the grounds that his right against self-incrimination has been violated?

HINT TO TEACHER: The Fifth Amendment forbids the use of involuntary confessions at trial. Is the above confession involuntary? From the facts, the police applied no coercion. The law calls statements such as those made by the defendant *spontaneous utterances* and such statements are usually admissible in court.

Hypothetical 2

When the police responded to a burglar alarm at Rogan's Jewelry Store, they saw several men running down the street. They apprehended one of them, Brucie Sims. The police gave Sims his *Miranda* warnings, and Sims chose to remain silent. After he was booked, he was taken to the interrogation room where the police made no attempt to elicit any information from him. However, he was informed that the Captain was anxious to know who the ringleader of the operation was and that it was unfortunate he was not cooperative since the Captain usually helped those who helped the police. If the Captain learned the identity of the leader, he might consider dropping charges against anyone who supplied the information.

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Upon hearing this good news, Sims replied, "Ok, it's a deal. I'll talk." He confessed to his part in the burglary and also gave the names and addresses of the other participants, including the leader. The Captain did not drop charges against Sims and, in fact, "threw the book at him."

At Sim's trial, his lawyer claimed that the confession was inadmissible because it was not voluntarily given. What will the judge's decision be?

HINT TO TEACHER: The Fifth Amendment forbids admission of coerced confessions into evidence. Clearly, there was no physical coercion, but was there psychological coercion? Did the police lure Sims into confessing by promising to drop charges against him provided that he "talk"?

In your analysis, remember the *Harris* case discussed in the background material. Even though statements cannot be admitted as evidence at trial when *Miranda* warnings have not been given, they can be used to impeach the defendant if he takes the stand in his own defense.

Hypothetical 3

If a person is on the streets after 2:00 a.m. in Centertown, a law permits the police to stop him and ask his name, address and present activities. The police keep on file the names of persons stopped and the location of the questioning.

Jim York was stopped and questioned and his responses were recorded at the police station. The following day, the police were summoned to a tropical fish and equipment store where the owner reported that a

burglary had occurred the previous night.

The Police Intelligence Division reported that York was stopped one block from the scene of the burglary. The police realized that York was on the streets about the time the crime occurred. They decided to question York, and, on arriving at his house, noticed tropical fish equipment in his home. Suspecting York of the burglary, the police gave him his *Miranda* warnings since he was now a suspect. York later confessed to the crime.

At his trial, York's lawyer claimed that when the police stopped York on the street, they violated his privilege against self-incrimination. Had York not given the police his address, he would not have been caught with the fish equipment.

Did stopping York on the street violate his Fifth Amendment rights?

HINT TO TEACHER: Under certain conditions, many jurisdictions have laws allowing the police to obtain identification from persons on the streets. If information is obtained pursuant to such a law, it does not violate one's right against self-incrimination. This is true even if the information obtained later links the person questioned to a crime.

Hypothetical 4

Harry Nigh was arrested for being under the influence of laughing gas. The police tape recorded Nigh's constant giggling and ordered a doctor to extract a blood sample. Nigh physically resisted the doctor's attempt to obtain a blood sample until the police strapped him down.

Even though Nigh's lawyer argued that the recording could have been obtained by tickling Nigh, the blood sample conclusively proved that

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Nigh had been under the influence of laughing gas. He was convicted.

Nigh appealed his conviction on the ground that taking a blood sample from him against his will violated his privilege against self-incrimination as much as if the police strapped him down and forced him to confess.

Were his rights violated?

HINT TO TEACHER: Is this testimonial evidence or is it physical evidence? As to his claim that the sample was taken under coercion, does Nigh have a right to object when the entire procedure was done under a doctor's supervision, and the evidence obtained was non-testimonial? Does this *shock one's conscience* and thus violate the *due process* clause? The physical treatment of the accused is important here in deciding whether there has been a *due process* violation. However, since the accused gave no testimonial evidence, there was no Fifth Amendment violation.

Hypothetical 5

Jones was arrested for suspicion of robbery. At the jail, he was ordered to appear in a line-up and to say the words, "I want all the cash," words that the robber spoke to his victim. The victim of the robbery identified Jones as the thief based on both his physical appearance and his voice.

By ordering Jones into the line-up, did the police violate his Fifth Amendment rights? By requiring Jones to give a voice sample, was he

testifying against himself?

HINT TO TEACHER: According to the information in the background material, this is not a violation of the accused's Fifth Amendment rights because line-ups and voice samples are non-testimonial in nature.

However, other rights of the accused may be violated. For example, a serious crime was committed and the victim described the felon as a black male about six feet tall, wearing sunglasses. On this description, a suspect was arrested and placed in a line-up with four whites. Everyone in the line-up was instructed to wear sunglasses. The victim identified the black suspect as the felon. Putting sunglasses on each man was merely an attempt to make the proceedings appear fair. This situation is *shocking to the conscience* and violates *due process*; it is so highly incriminating that the accused may have a right to counsel at this stage. This example points out the interrelationship between the Amendments affecting criminal procedure.

Hypothetical 6

A local department store went up in flames. The fire department determined that the cause was arson. Neither the police nor the owner had any clues as to the identity of the arsonist or knew of anyone who had a reason for setting the store ablaze. However, upon learning that two employees had recently been fired for stealing, the police reasoned that one of the ex-employees might have wanted revenge and set the store on fire.

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When questioning the former employees, were the police required to give them the *Miranda* warnings?

HINT TO TEACHER: Note that the police had no suspects in mind. They only speculated that the ex-employees had a motive for setting the fire. Therefore, this is a general inquiry into an unsolved crime and would be termed as an investigatory stage rather than an accusatory stage.

Suppose, upon questioning one of the ex-employees, the police had been told that he was visiting his mother on the night of the fire. Knowing that his mother had recently died, the police repeatedly asked him about his whereabouts on the night of the fire. Did the police violate the ex-employee's rights by not giving him the *Miranda* warnings?

HINT TO TEACHER: The investigation is no longer a general inquiry, but is focusing in on a particular suspect. Therefore, it is required that the *Miranda* warnings be given to and understood by the accused in order for the confession to be admissible in court against him.

Hypothetical 7

Slim's Bar was located in a questionable part of town with a high crime rate. The police received a report that gunshots were heard from within the bar. Responding to this report, they entered the crowded bar and commanded, "Hold it! No one leaves until we find out what happened."

Should the police inform all of Slim's patrons of their constitutional rights?

HINT TO TEACHER: While all patrons were under temporary custody and the general rule is to give the warnings to parties in custody, this is not the custody referred to in the background material. In this situation, the police are conducting a general inquiry of a reported disturbance and have not begun to focus their investigation on any particular suspect.

Hypothetical 8

A policeman was walking his beat when he came across a man standing over an outstretched body. Having no knowledge of what had occurred, the officer asked the man, "What happened?" He replied, "I killed him." Can this confession be used in court since the officer failed to give the man the *Miranda* warnings prior to eliciting the confession from him?

HINT TO TEACHER: Note that this situation brings in both the *Escobedo* rule concerning general inquiries into possible crimes and the rule concerning voluntary confessions.

In this case, the confession was purely voluntary. However, any further inquiry by the officer would require him to inform the suspect of his rights because, at that point, the investigation would turn from a general inquiry to an interrogation of a prime suspect.

Hypothetical 9

Harvey Reed was tried for possession of illegal drugs. Reed's lawyer insisted on his client's innocence, and Reed refused to take the witness stand in his own defense. At the conclusion of the trial, the

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judge instructed the jury:

Ladies and gentlemen, the fact that the defendant failed to take the stand in his own defense must not be interpreted as an indication of his guilt.

Reed was found guilty. His lawyer appealed the conviction on the grounds that the judge's instructions violated his client's Fifth Amendment rights. Will he win?

HINT TO TEACHER: Does not the mere mention of the defendant's not taking the stand constitute a "comment" sufficient in itself to violate the Fifth Amendment? From the information in the background material, it is clear that such a comment is not permissible. The case would be reversed and retried in front of a jury that had not heard the judge's prejudicial remarks.

