

## THE FIFTH AMENDMENT TODAY

### A. What Rights Does the Fifth Amendment Guarantee?

The Fifth Amendment guarantees a number of rights to persons accused of a crime. These rights include the following ones:

1. presentment or indictment by a grand jury
2. no double jeopardy
3. the right against self-incrimination
4. the right to due process.

### B. What Is a Presentment or Indictment by a Grand Jury?

A grand jury is a body of citizens who formally look at the evidence in the hands of a prosecutor and decide if there is enough to start or continue formal criminal proceedings against a person accused of a crime. Usually they vote to continue or discontinue proceedings. If they vote to continue, an indictment is drawn. This is a document containing charges against a person and stating the statute(s) he or she allegedly violated.

### C. What is Double Jeopardy?

The Double Jeopardy Clause, put simply, means that a person cannot be tried twice for the same charge. In other words, a person cannot be tried for a murder or a robbery, found not guilty and then tried again. However, if a person is tried and convicted, and his conviction is reversed on appeal because the trial was not fair or an error was made, he can still be tried again if there is other evidence of guilt.

Assume, for example, that a person is tried and convicted of robbery. He appeals, saying his confession, introduced against him at the trial, was beaten or coerced out of him. On appeal, the court agrees and reverses the conviction. If other evidence is then found showing that the defendant did commit the robbery, he can be tried again (because he had originally been found guilty). The prosecution, however, cannot use the coerced confession introduced in the first trial.

The double jeopardy provision of the Fifth Amendment is binding on federal courts when federal law is allegedly violated. But it is also binding on the states and in state courts. In *Benton v. Maryland* (Lesson Four, Case 1), the Supreme Court ruled that the defendant could not be tried for a second time on a larceny charge. In his first trial the defendant had been acquitted of larceny but was convicted on a burglary charge. When his burglary conviction was reversed on appeal and his case was sent back for a new trial, the Maryland state court tried him on both the burglary and larceny counts for a second time. He was convicted on both.