

The Breakfast Club

Constitutional Minute for 13 Jun 2023

Right #19 The Right to be Informed of the Charges Against You

*“In all criminal prosecutions, the accused shall enjoy the right to ... **be informed of the nature and cause of the accusation...**”*

Those of you knowledgeable of the history of individual rights will recognize mention of the 1628 Petition of Right Parliament sent to King Charles I. Charles had been raised by his father, King James I/VI to fully believe in the divine right of kings. Parliament saw things differently, so there was immediate conflict when Charles assumed the throne in 1624 upon the death of his father.

Tensions mounted for four years until Parliament said “enough’s enough” and sent Charles the Petition. One of its demands was that “freemen be imprisoned or detained only by the law of the land or by due process of law and not by the king’s special command, *without any charge.*”¹

One of the first times the Supreme Court ruled on this clause was in the 1876 case of *United States v. Cruikshank*.²

On Sunday, April 13, 1873, an armed white Democrat militia attacked a group of black Republican freedmen, who had gathered at the courthouse in Colfax, Louisiana (thus called the “Colfax Massacre”) to protect it from an expected Democrat Party takeover of the county after a hotly contested election for Governor, which Republicans barely won. Some of the blacks were also armed. Estimates were that 100–280 of the Republicans were killed, most of them after surrendering, including 50 being held prisoner while the “militia” figured out what to do with them.

Ninety-seven militia members were arrested and charged with violating the [Enforcement Act of 1870](#). The Act had been primarily designed to allow Federal prosecution of actions by the Ku Klux Klan and other vigilante groups in the South. In the end, only eight militia members were convicted. These men appealed their conviction, and the appeal reached the Supreme Court.

While there were many issues raised by the case, including some 1st and 2nd Amendment issues, the Court ruled that the indictment delivered by the Grand Jury against the eight men had been vaguely worded and thus deficient. For this and other reasons, the defendants went free. The Enforcement Act was itself declared unconstitutional.

In 1921, the Supreme Court ([Weeds, Inc. v. United States, 255 U.S. 109 \(1921\)](#))³ reaffirmed that defendants must be made aware of the specific charges against them and that the underlying law must clearly describe what a violation of said law requires.

In other cases, the court has determined that, while there is no specific test of an indictment for adequacy, the indictment must be specific enough to enable the defendant to prepare a defense and to protect him or herself, if convicted, against a second prosecution on the same charge.⁴

Rule 7 of the Federal Rules of Criminal Procedure requires a "plain, concise and definite written statement of the essential facts constituting the offense charged." There are also state court decisions that set out the minimum information required in the initial notice of charges.

In *United States v. Carll*, [105 U.S. 611](#) (1881), the Court declared that "in an indictment ... it is not sufficient to set forth the offense in the words of the statute, unless those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished."

The Supreme Court has also decided that the right to be informed of charges also falls under the Due Process guarantee of the Fifth Amendment.⁵ The right to notice of accusation was applied to the states in 1948 via the Incorporation Doctrine.⁶

What if you've been arrested but not charged? If you have been arrested but not been "booked" (booking is the formal process of bringing charges against you) your attorney can petition the court for a Writ of Habeas Corpus, which will result in a judge examining the evidence against you and deciding whether it is sufficient to continue to hold you.

Last question: What do you do when the accused is not a person? How do you ensure he/she/it has been informed of the charges? For example, see *United States v. \$124,700 in U.S. Currency* ([2006](#)). (That is, no-kidding, an actual case citation).

For further reading:

Sorry, I could find no books to recommend on this topic. But a little more info can be found here: <https://law.justia.com/constitution/us/amendment-06/09-notice-of-accusation.html>.

Next week: Right #20: Right to Confront Witnesses (this will be more interesting)

Prepared by: Gary R. Porter, Executive Director, Constitution Leadership Initiative, Inc. for The Breakfast Club.
Contact: gary@constitutionleadership.org; 757-817-1216

¹ <https://www.worldhistory.org/article/1946/petition-of-right/>.

² <https://www.mtsu.edu/first-amendment/article/58/united-states-v-cruikshank>

³ <https://supreme.justia.com/cases/federal/us/255/109/>.

⁴ *Bartell v. United States*, 227 U.S. 427, 431 (1913).

⁵ *Lopez v. Smith*, 574 U.S. 1, 5–6 (2014).

⁶ *In re Oliver*, 333 U.S. 257 (1948).