



ELEVENTH EDITION

Procedures
IN THE
JUSTICE
SYSTEM

Cliff Roberson
Harvey Wallace

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PROCEDURES IN THE JUSTICE SYSTEM

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The fourth through eighth editions have been dedicated to our colleague Gilbert Stuckey. This edition, like the tenth, is dedicated to my friend and colleague Paul Harvey Wallace. Harvey and I were fellow Marines, friends, and coauthors for sixteen years.

We coauthored ten books together. I still miss him.

—Cliff Roberson

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Preface

The judicial procedures involved in a criminal case are complex and interesting. The text, *Procedures in the Justice System*, is designed to cover the judicial procedures involved in a criminal case from arrest to conviction and sentencing. It is also designed with an appropriate amount of material that covers the key issues, yet is concise enough to allow the material to be covered in a one semester course. As noted by the numerous television shows and movies involving the issues, the path is exciting and in many cases, real life is stranger than fiction. Accordingly, the many examples used in the text to illustrate different points were all taken from actual court cases and are not works of fiction.

The eleventh edition of *Procedures in the Justice System* continues the tradition of providing the reader with a thorough understanding of our justice system from the time of arrest through the sentencing of the criminal offender. Legal rules of procedure are presented in language that is easy to understand. The high crime rate continues to be one of society's major problems not only in the United States, but also throughout the world. It is the primary responsibility of those directly connected with the justice system, such as members of law enforcement agencies, the courts, and correctional officers, to fight crime. Yet, to effectively curb crime, society needs the assistance of every law-abiding person.

By studying history, we often see the mistakes of the past and thus can make efforts not to repeat those mistakes in the future. One past mistake was the failure to recognize that the members of the justice system are a team who must work together. Yet, to work as a team, it is necessary for each member to understand his or her own responsibility as well as that of each of the other members.

This book was written for those interested in our justice system, particularly police and correctional science students. It explains the duties and responsibilities of the law enforcement agencies, courts, and correctional departments in relation to law violators from the time of accusation until completion of the sentence. Criminal justice students should, however, study more than just judicial procedures. They should have some knowledge of why we have laws and why those laws are broken, should be cognizant of the constitutional rights of an accused, and should have a better understanding of the philosophy of correctional endeavors. Thus, material on these subjects is incorporated in the text. The information in this book will help the student, as well as others, attain a more thorough knowledge of our justice system and of the role that each member must play to achieve, through teamwork, law and order for all.

Special thanks to the following reviewers for their hard work and assistance on this edition: Lisa W. Clayton, College of Southern Nevada; Brian Donnelly, Raritan Valley Community College; James D. Elshoff, Texas State University; and Theodore P. Skotnicki, Niagra County Community College. The invaluable assistance of editor Gary Bauer, editorial assistant Lynda Cramer, and Jessica Sykes, production project manager, was necessary to accomplish this extensive revision to the text.



A warm and special thanks to the supplements author Harrison Watts, Washburn University. Lastly, a special thanks to Jogender Taneja and Sanchita Massey for preparing the manuscript into a printable form.

Suggestions for improvement, corrections, and other comments are invited and may be forwarded to Cliff Roberson at cliff.roberson@washburn.edu.

▶ New to the Eleventh Edition

In addition to updating legal issues and cases, there have been numerous changes made to the tenth edition. These include:

- Two new chapters, Chapter 4, dealing with street encounters between the police and citizens, and Chapter 5, dealing with the law of interrogations, have been added.
- Discussion on the roles of prosecutors and state attorneys has been added.
- Material asking the students how they would rule on a contested issue has been added.
- Discussions on the primary duty of a prosecutor have been added.
- Discussions on the search of an arrestee have been added.
- Expanded discussion on frisking for weapons.
- Expanded discussions on self-incrimination and interrogations.
- Expanded discussions on pretrial procedures in the criminal justice system.
- Expanded discussions on trial procedures.

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▶ Instructor Supplements

Instructor’s Manual with Test Bank. Includes content outlines for classroom discussion, teaching suggestions, and answers to selected end-of-chapter questions from the text. This also contains a Word document version of the test bank.

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KEY TERMS

Abstract goals
Court rules
Due process
Jurisdiction
Orientation goals
Pragmatic goals
Standards
Venue



1 An Introduction to the Justice System

A Constitution is not intended to embody a particular economic theory . . . It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar, or novel, and even shocking, ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States.

—OLIVER WENDELL HOLMES, JR. (1841–1935)

ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES IN HIS
DISSENTING OPINION IN *LOCHNER V. NEW YORK*, 198 U.S. 45, 76 (1905)

CHAPTER OUTLINE

Overview	Justice System
Goals of the Justice System	Court Structures
Common Law	State Court System
Modern Criminal Law	Federal Court System
What Constitutes Justice?	Venue
Rule of Law	Jurisdiction
Classification of Crimes and Punishment	Criminal Law Administration
	Summary



LEARNING OBJECTIVES

After completing this chapter, you should be able to:

- 1 Summarize the constitutional basis for criminal procedure.
- 2 Describe the concept of judicial guidance.
- 3 List the goals of the justice system. Explain that the criminal law of the various states is a written set of regulations that is largely the result of legislative action.
- 4 Describe what constitutes justice. Explain the concept of "rule of law."
- 5 Describe the classifications of crimes and punishments.
- 6 Describe the impact of the Bill of Rights on criminal procedure.
- 7 Summarize the history and legal foundations of criminal procedure.
- 8 Explain the importance of precedent.
- 9 Describe the public order (crime control) and individual rights (due process) perspectives of criminal justice and how criminal procedure balances the two.
- 10 Outline the structure of the court system, including the responsibilities and jurisdictions of each level.
- 11 Explain why venue is an important factor in criminal prosecutions.
- 12 Describe criminal law administration processes.

► Overview

Our justice system is not fixed in stone, but is ever changing and flexible.

Former Supreme Court Justice Oliver Wendell Holmes once stated that the law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics (Oliver Wendell Holmes, *The Common Law*, 1881). As we begin our review of the American justice system the approach should be that this study should be viewed not as a set of rules for memorization. The study should be viewed as a cluster of ideas, principles, and values about which reasonable people can and do disagree.

Understanding our concept of justice requires a thoughtful comprehension of the historical background, social values, moral standards, and political realities that give direction to our system.

The major issue facing our state and federal court systems is their ever-increasing case loads. Criminal courts are the heart of criminal justice system. A criminal court has three primary missions:

- To administer justice in a fair and impartial manner;
- to protect the individual rights of persons accused of crimes; and
- to provide an authority for controlling crime.

In the United States, there are two separate court systems in each state, the federal system and the state system. Generally, federal courts are involved only in matters concerning federal issues and state courts are involved in the other matters. The court systems of the federal and state governments in the United States operate on an adversarial system in that the prosecution or plaintiff is opposed by the defense with the judge and jury operating as the decision-makers.



Both the state and federal governments have enacted statutes to regulate the administration of the criminal justice system. The primary state regulatory statute is the state code of criminal procedure that regulates procedure in state courts. The primary federal statute that governs the trial of criminal cases in federal court is Title 18 of the U.S. Code. Except for constitutional issues, federal procedural rules apply only to federal criminal cases. State procedural rules apply only to state cases.

Courts are established either by the U.S. Constitution, state constitutions, or legislation. If the court is established under a constitution, it is considered as a constitutional court. Those established by a state or federal legislation are considered as legislative courts. According to Section 1, Article III, of the U.S. Constitution:

The Judicial Power of the United States shall be vested in one Supreme Court and in such inferior Courts as Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at Times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Judicial Guidance

Judicial Opinions

Judicial opinions construe the constitutionality, meaning, and effect of constitutional and statutory provisions. The court decisions included in each chapter of this text provide examples of the importance of judicial opinions in the justice system.

Court Rules

Court rules consist of the various standard procedures used by the courts that were developed as the result of a court's inherent supervisory power over the administration of the criminal justice system. Court rules regulate the guilt-determining process of the courts in the areas not regulated by other rules. Most students of the justice system fail to consider the importance of court rules in the trial of criminal cases.

Example of court rules that have an impact on the courts follow.

U.S. District Court (Eastern District California) Rule 5a:

(1) The trial of a defendant held in custody solely for purposes of trial on a federal charge shall commence within 90 days following the beginning of continuous custody.

► Goals of the Justice System

Most experts on the justice system agree that the most basic goal of the system is to protect society from crime. Beyond that, there is little agreement. There are several competing philosophies concerning the purposes of the justice system, each with its own specific goals. To help us understand some of the more commonly accepted goals of the justice system, the goals are classified as **orientation goals**, **pragmatic goals**, **abstract goals**, or **standards**.

Orientation Goals

Criminal justice professionals generally are oriented in one of two opposite directions—law and order or individual rights. The law and order orientation stresses the need to solve the crime problem. The individual rights orientation stresses the need to protect an individual's rights and considers this need greater than the need to punish offenders. Too great an emphasis on individual rights will restrict law enforcement and allow offenders to escape punishment. Arbitrary



police practices that may occur under the law and order orientation may infringe on human and constitutional rights. As Chief Justice Earl Warren stated in *Miranda v. Arizona*:

The quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of the criminal law. . . . All of these policies point to one overriding thought: the constitutional foundation underlying the privilege is the respect a government—state or federal—must accord the dignity and integrity of its citizens. To maintain a fair state-individual balance, the government must shoulder the entire load.

Pragmatic Goals

The pragmatic goals of the justice system include:

Preventing Crime. This goal includes providing potential criminals with conventional opportunities for success before they start a career of crime, building stronger social control units such as the family, providing guidance and counseling in our schools, and developing better environmental conditions in the neighborhoods that foster law-abiding behavior.

Diverting Offenders. This refers to the efforts to remove offenders from the system and place them in nonpunitive treatment programs. The purpose of this effort is to correct offenders without placing the stigma of a criminal conviction on them.

Deterring Crime. The justice system attempts to deter crime by making potential criminals believe that the punishments received for criminal behavior outweigh any potential benefit (i.e., crime does not pay).

Controlling Criminals. The system attempts to control the behavior of known criminals by incarcerating the more serious offenders and placing the less serious ones in community correction programs.

Rehabilitating Offenders. An objective of the system is to provide rehabilitation treatment to offenders in order to reduce the likelihood of future involvement in criminal behavior. The goal of rehabilitation was very popular in the 1960s. During the 1980s, it was discounted because of the popular belief that existing rehabilitation programs were not effective. Today, rehabilitation is not a popular objective in most states.

Abstract Goals

Abstract goals are the underlying principles upon which our justice system is based. The most common abstract goals include:

Fairness. The justice system should ensure that all persons involved in the criminal justice system are treated fairly and humanely. More specifically, socioeconomic status, ethnicity, and other factors should not determine the type of treatment or form of punishment one receives from various criminal justice agencies.

Efficiency. The system should be organized and managed in a manner to ensure maximum utilization of personnel and resources.

Effectiveness. The justice system should operate in an effective manner.

Justice. Justice is considered as the ideal goal of all governments and the disposition of a criminal matter in such a manner that the best interest of society is served. It is not measured solely by its application to the accused. Justice is the



broad concept of reward and punishment currently accepted as proper by a society. A state court judge in an early Texas case defined justice as follows:

Justice is the dictate of right, according to the common consent of mankind generally, or of that portion of mankind who may be associated in one government, or who may be governed by the same principles and morals.

Standards

Organizations such as the American Bar Association and the American Correctional Association have developed detailed goals to improve the justice system. These goals are called standards. For the most part, standards are designed to protect individual rights and promote the efficiency of the justice process. (Note: Standards are goals, not binding rules.) Selected standards on criminal justice are as follows:

AMERICAN BAR ASSOCIATION STANDARDS RELATING TO PROSECUTION FUNCTION

1.4 Duty to Improve the Law

It is an important function of the prosecutor to seek to reform and improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to his or her attention, he or she should stimulate efforts for remedial action.

2.7 Relations with the Police

- a. The prosecutor should provide legal advice to the police concerning police functions and duties in criminal matters.
- b. The prosecutor should cooperate with police in providing the services of his or her staff to aid in training police in the performance of their function in accordance with the law.

National Advisory Commission on Criminal Justice Standards and Goals

4.11 Priority Case Scheduling

Cases should be given priority for trial where one or more of the following factors are present:

- a. The defendant is in pretrial custody;
- b. The defendant constitutes a significant threat of violent injury to others;
- c. The defendant is a recidivist;
- d. The defendant is a professional criminal;
- e. The defendant is a public official.

6.5 Further Review

After a reviewing court has affirmed a trial court conviction and sentence, or after the expiration of a fair opportunity for a defendant to obtain a review with the aid of counsel, the conviction and the sentence generally should be final and not subject to further review in any state or federal court. Further review should be available only in unusual circumstances.

► Justice System Structure and Process

We refer to the justice system as a system as if it were a formal system. It would be more accurate to refer to it as a nonsystem. The term system refers only to the interrelationship among all those agencies concerned with the prevention of crime in society. The systems approach to criminal justice sees a change in one part of the system affecting change in all the others. It implies that a closely-knit, coordinated structure of organizations exists among the various components of the system.

The justice system, however, is not a close-knit, coordinated structure of organizations. It is actually three separate elements: police, courts, and correction institutions. Each operates almost independently of the others. In many cases, the goal



orientations of the various elements within a local jurisdiction are in conflict with each other concerning the main functions of the criminal justice system. Thus, the system can best be described as fragmented or divided. Accordingly, the criminal justice system is a group of agencies organized around various functions that each agency is assigned.

Evolution of Criminal Procedure

Our system of criminal justice is based on English common law. The colonists brought English traditions and concepts with them when they settled in our country. Except for a few modifications, English common law became the common law of the colonies. During and shortly after the American Revolution, there was hostility toward the English in the colonies. The hostility extended to the common law system of law as well. Most of the newly founded states enacted new codes and statutes defining criminal acts and establishing criminal procedures. The codes and statutes, however, were based on common law concepts. Included was the English concept of justice on which our system is based. To this foundation, a bit of Spanish and French influence was added as the system was developed and changed to meet the requirements of our growing nation.

Foundational Concepts in Criminal Procedure

As an introduction to the study of criminal procedure, the foundational concepts in criminal procedure listed below should be considered. These concepts will be explained in the text and are listed here to create an awareness of their existence.

- The guarantees of the Bill of Rights in the U.S. Constitution apply directly only to the federal government.
- The Due Process Clause of the Fourteenth Amendment by selective incorporation applies most of the rights contained in the Bill of Rights to the states.
- State constitutions may provide rights to citizens in addition to those provided for in the U.S. Constitution, but may not restrict the rights granted by the U.S. Constitution.
- The two basic questions regarding the burden of proof in criminal proceedings are:
 - (1) Who has the burden of proving an issue? and (2) What is the magnitude of the burden? The magnitude may be (1) proof beyond a reasonable doubt, (2) clear and convincing evidence, or (3) preponderance of evidence. On issues relating to the guilt of a defendant, the burden is proof beyond a reasonable doubt and that burden rests on the prosecutor or state.
- Charges in a criminal trial must first be formalized either by an indictment returned by a grand jury or by information prepared by a prosecutor.
- Prior to trial, both the prosecution and the defense may submit pretrial motions, and both have discovery rights imposed on them.
- Our system of criminal procedure is based on the adversarial process.

Two famous quotes from U.S. Supreme Court Justice Oliver Wendell Holmes should be noted:

- “Whatever disagreement there may be as to the scope of the phrase ‘due process of law,’ there can be no doubt that it embraces the fundamental conception of a fair trial, with opportunity to be heard.”¹
- “The life of the law has not been logic, it has been experience.”²



▶ Common Law

Much of the basic criminal law of this country originated from the common law of England. Originally, the common law of England was nothing more than a set of unwritten regulations and customs that acted as guidelines in settling disputes, determining the inheritance of property, and dealing with persons who committed misdeeds of a serious antisocial nature. As time passed, court decisions were made a part of the common law. Thereafter, the common law was further enlarged by legislative enactments and was brought to this country by the colonists to act as guidelines for conduct.

▶ Modern Criminal Law

Today, the criminal law of the various states is a written set of regulations that is largely the result of legislative action. These regulations are recorded in some official record within the states and are often referred to as the penal code. Criminal laws vary somewhat among the states. In some states, there is no reliance upon the common law to determine what is right and wrong. The statutes spell out specifically the act that is made a crime and the punishment that may be inflicted for the commission of such an act. For example, the law may state that manslaughter is the unlawful killing of a human being without malice. This definition will be followed by a statement that one convicted of manslaughter may be imprisoned for a period not to exceed four years. The statutes of other states provide that manslaughter is punishable by imprisonment not to exceed a prescribed number of years. But these latter statutes do not define what act constitutes manslaughter. The courts must then look to the common law to determine the interpretation of manslaughter.

▶ What Constitutes Justice?

The concept of “justice” is commonly used but seldom defined. It is a concept that relates to our ideas about morality or what is right and what is wrong. Most individuals associate the concept with our concepts of fairness, equality, and goodness. We expect justice in both our private lives and in our public ones. One text defines justice as upholding what is just, especially fair treatment and due reward in accordance with honor, standards, or law.

[Source: Jeffery A. Jenkins (2011), *The American Courts: A Procedural Approach*. Boston: Jones and Bartlett, p. 4.]

It is via our laws that we most often reflect our concept of justice. As noted in the below excerpt from the Preamble to the U.S. Constitution, we place a high premium on the concept of justice.

Preamble to the U.S. Constitution:

We the people of the United States, in Order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

There are no bright line rules as to what constitutes “justice.” It is a subjective concept and has different meanings in different situations. We rely on our court systems to make decisions that implement our concept of justice. Whether justice is served in a case depends upon the facts of the case, the law involved in the case,



the behavior of the person being judged, as well as the behavior of the persons doing the judging. In summary, justice is a multifaceted concept.

▶ Rule of Law

It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the use of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by law, and by the law alone; a man may with us be punished for a breach of law, but he can be punished for nothing else.

[Source: A.V. Dicey, *The Law of the Constitution*, London: Macmillan (8th ed. 1915, p. 60)]

The “Rule of Law” refers to the concept that all individuals and institutions will abide by the laws and no one is above the law. In other words, we all have a duty to obey the law. This duty applies to everyone, including the president, or in Great Britain, even to the Queen. By choosing to become a part of a society, we agree to abide by the society’s rules and laws. In addition, it refers to the concept that no one may be punished for conduct unless there is a law that forbids that conduct.

▶ Classification of Crimes and Punishment

In our present form of jurisprudence, not only do we tell people what a criminal act is, but we also tell them the punishment they may be subjected to if they commit the act. The following definition is generally found in the statutes of the states: A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it and to which is annexed, upon conviction, one or more of several punishments. The basic forms of punishment are death, imprisonment, fines, removal from office, or disqualification to hold and enjoy any office of honor, trust, or profit. We have classified criminal laws in accordance with their seriousness to society and have stated the punishment that could be inflicted upon conviction. Earlier in our history, we classified criminal laws as treason, felonies, and misdemeanors. Most states eliminated treason as a category of crime and listed it merely as another felony violation. Thus, two classifications remained: felonies and misdemeanors. However, in recent years, many states have added a third and a fourth classification, an infraction and a state jail felony. An infraction is a minor crime less serious than a misdemeanor. A state jail felony is a crime that has some aspects of a felony and some of a misdemeanor. In severity, it is classified as between a felony and misdemeanor.

With the felony being the most serious crime, the violator is subjected to the most severe punishment either by death, imprisonment in a state prison, or a sentence of more than one year. The misdemeanor, being a less serious threat to the existence of a society, carries a lesser punishment, the most severe of which is usually not more than a year in jail. The infraction is the least serious crime, carrying a fine or probation but, in most states, no imprisonment.

The procedure by which one accused of a crime is brought to trial and punished is known as a criminal action, and the one prosecuted is known as the defendant or accused. Criminal actions are commenced with the filing of a formal written document with the appropriate court. In some states, there is no requirement to file a formal written document in cases involving infractions.

The charging document is referred to as an accusatory pleading. In most felony prosecutions, the document will be an indictment or an information. In misdemeanor prosecutions, the accusatory pleading is generally a complaint. When a criminal law is broken, it is done against society as a whole, so that the prosecutive



action is brought in the name of the people; thus, the action is generally entitled “People versus [the defendant],” “State versus [the defendant],” or “Commonwealth versus [the defendant],” stating the defendant’s name.

Frequently used classification of offenses are based on three broad categories:

- Based on the gravity of the offense and corresponding punishment—felonies, misdemeanors, and infractions/violations;
- based on the degree of evilness—*mala in se* or *mala prohibita* offenses; and
- based on the subject matter—offenses against the state, habitation, person, and so on.

▶ Justice System

When examining the criminal justice system, we will discover many technical rules and procedures that must be followed. These rules and procedures are the result of a long evolutionary process. The process is interesting, particularly the development of the right of an accused to a trial by jury. Trial by jury, for example, is regarded by many as one of the greatest achievements of our justice system.

When considering trial by jury, we immediately visualize a comfortable courtroom with a judge sitting behind a desk on a raised platform and presiding over the trial proceedings in a dignified and formal manner. We see the jury sitting in the jury box listening to the testimony of witnesses who have some knowledge about the facts of the case and the prosecuting attorney presenting evidence in an effort to prove the defendant guilty beyond a reasonable doubt. We also tend to see the defense attorney as an Eleanor in *The Practice*. We may also picture the defendant conferring with the attorney throughout the trial. At the conclusion of the trial, we visualize the jury deliberating on the evidence that has been presented and returning a verdict of guilt or innocence. The actual practice may, however, be quite different.

Guilt or innocence has not always been decided by a jury trial. In fact, the jury system as we know it today is of comparatively recent origin, coming into existence at the start of the eighteenth century. The early history of efforts to determine guilt or innocence of an accused was primarily based on calls upon the supernatural or for signs from God.

As we trace the development of trial by jury, we focus primarily on England, from where most of our judicial system came. Many blank spots are encountered in tracing the history of a jury trial because of the lack of records. But it is known that the Christian church played an important role in the development of much of the law and procedure of early England. Most of the early records available for study of the beginnings of the judicial system were prepared by the clergy and are largely incomplete. These records were not compiled as a history of the time but were merely a documentation of certain customs and events of the era.

Development of Trial by Jury

As early as the ninth century, Frankish kings on the European continent would summon, through a public officer, the most trustworthy people of a community. These people were then placed under oath to answer truthfully all questions directed at them during sessions with the king. These sessions, which were called inquests, did not necessarily arise out of criminal activity or litigation, but were often merely fact-finding meetings in which the king could gather information about the community. During the inquest, the king might ask the following kinds of questions: What were the rights of the king in their particular community? Who were the landowners, and how much land did they own? What were the customs of

