

AMERICAN CRIMINAL
PROCEDURES

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James F. Anderson

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This book is dedicated to the efforts of everyone who toils to make justice a reality in the American criminal justice system.

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PREFACE

The purpose of this text is twofold: first, to acquaint the reader with certain individual rights due every American citizen; and second, to educate the reader on the legal aspects and processes that customarily unfold when citizens' constitutional rights are challenged. More important, the text provides the reader with the legal procedures that guide the criminal justice system in general and the actions of police officers in particular. The book devotes specific attention to the safeguards and practices that police officers must adhere to while discharging their sworn duty to uphold the U.S. and state constitutions. Essentially, the book presents a comprehensive examination of the legal aspects and procedures guaranteed to criminal offenders when they are processed through the justice system. More specifically, it lists constitutional amendments defining what rights are given defendants, along with a chronology of pertinent U.S. Supreme Court cases that provide the Court's rulings and interpretations of the rule of law as it pertains to individual rights and to rules governing law-enforcement practices.

The book is intended to be the primary text for undergraduate and graduate students enrolled in Criminal Procedures or a similarly titled college course. It is written in a concise and straightforward style and provides many examples so that students need not have prior knowledge of the subject matter. While some of the language may appear esoteric to non-criminal justice majors, it will be familiar to students who know the terminologies used by law-enforcement officers, judges, lawyers, probation and parole officers, and other agents of the justice system.

American Criminal Procedures, a text well-researched and up-to-date, is composed of nine chapters that provide readers with an understanding of the criminal justice system, the legal rights of the accused, and the procedures that follow when individual rights (or freedoms) are at issue in the system.

Chapter 1 introduces the student to the American court system. Specifically, it examines the United States dual court system, which consists of both state and federal courts. It distinguishes between the jurisdictions of both sys-

tems and demonstrates how cases are tried before state and federal courts. Moreover, it presents the laws that protect individual freedom and liberty as well as those that govern police behavior. Such laws typically include the U.S. Constitution, state constitutions, case- or judge-made law, as well as criminal law. The chapter also discusses the amendments to the Constitution-including those in the Bill of Rights-that protect the interests of the criminally accused.

Chapter 2 addresses the processes involved in the justice system. It briefly introduces the student to the operations of police, courts, and corrections. Then, more specifically, it discusses the salient experiences of a suspect-turned-defendant. In this chapter, special attention is given to pretrial activities such as the initial appearance, the preliminary hearing, the grand jury, the arraignment, and plea-bargaining procedures. The chapter also explains the processes of the trial phase as well as posttrial procedures such as sentencing. Finally, the chapter explains the appeals process and the process of filing a habeas corpus claim.

Chapter 3 introduces the reader to an essential standard-of-proof concept called probable cause-with which police officers, lawyers, and judges are intimately familiar. Probable cause is very important since it governs many aspects of policing. The chapter posits that many police procedures are contingent upon establishing this standard of proof. For example, according to the Fourth Amendment, probable cause must be established before warrants may be issued allowing legal searches and seizures and before arrests can be made. The chapter also discusses the consequences of failing to establish probable cause. More specifically, it discusses the importance of probable cause to the state's case.

Chapter 4 defines the exclusionary rule and recounts its history, beginning with case law on the federal and state levels. The chapter further establishes what is admissible and what is inadmissible under the rule and provides the guidelines to which police officers must adhere in order to use evidence obtained from an arrest to gain a lawful conviction. The chapter also examines concepts such as the fruit of the poisonous tree doctrine and the silver platter doctrine. In addition, the chapter explores the advantages and disadvantages of the exclusionary rule. It also examines the modification of the rule by exceptions and the impact of such exceptions on law-enforcement practices in particular and on the criminal justice system in general. Some exceptions to the exclusionary rule discussed in this chapter include the plain view doctrine; good faith; the inevitable discovery rule; search incidental to a lawful arrest; and the purged-taint exception. In its final section, the chapter discusses the future of the exclusionary rule.

Chapter 5 examines another concept central to conducting police work—reasonable suspicion. It argues that this level of proof is needed before an officer can conduct a stop and frisk. The chapter presents the leading cases in the area, along with other cases that have reaffirmed the courts' position on the issue. It further provides a detailed analysis of the procedures associated with a stop and frisk and indicates when a suspect is free to leave the presence of an officer who has briefly stopped and frisked the individual. The chapter also addresses the possible consequences to officers who use a legitimate stop to go on a "fishing expedition" of the suspect's personal effects. In fact, the chapter argues that police cannot haphazardly or arbitrarily stop and detain citizens without legitimate justification. However, if police officers can establish reasonable suspicion, they are legally allowed to make brief stops to ask questions and conduct a pat down of the suspect's outer garments for their own self-protection. Moreover, the chapter addresses investigatory automobile stops, automobile stops based on pretext, the use of drug-courier profiles, racial profiling, and other factors that may invalidate stops and frisks.

Chapter 6 defines a search and a seizure. It provides the legal limits involved in a search and examines two types of searches: those with warrants and those without warrants. It further focuses on the process involved in procuring a valid, or legal, search warrant. For example, it provides the procedures an officer must follow to obtain a warrant—such as filing an affidavit stating why there is probable cause that a particular person has engaged in a specific crime or why evidence can be found at a certain location. After filing the affidavit, the officer must provide sworn testimony to probable cause and seek a detached magistrate who must also find probable cause. At this point, a search warrant is issued commanding the officer either to arrest the suspect or to go to the stated location and retrieve the evidence. The chapter also discusses the legality of wiretaps as well as searches of people, houses, automobiles, and borders. In addition, it addresses searches made without warrants, especially those incidental to a lawful arrest, including consent searches.

Chapter 7 defines an arrest. It examines the leading cases that have established the point at which a person is considered under arrest and not free to leave the control of a police officer. It further distinguishes between a valid and an invalid arrest and explains the consequences of each. Through case history, the chapter presents the procedures used to make a valid arrest. It also indicates the procedures that must follow an arrest: most important, the suspect must be given the Miranda warnings to avoid self-incrimination and to safeguard his or her rights under the Fifth Amendment. In addition, the chapter connects the due process clause in the Fifth Amendment with the suspect's right to an attorney guaranteed by the Sixth Amendment. The chapter devotes

special attention to the legal consequences of false arrest and false imprisonment.

Chapter 8 presents the procedures for interrogating suspects who are in police custody-either in the field or at the station house. The chapter distinguishes between confessions and admissions. Moreover, it provides case law and a large number of court decisions establishing the guidelines which officers must follow when questioning a suspect about his or her involvement in a crime. The chapter gives special attention to and more detailed information about a suspect's rights as spelled out in *Miranda* as well as in the Fifth and Sixth Amendments. The chapter also examines the importance of the suspect's having an attorney present so that the suspect will not be coerced or deceived into making incriminating statements that can be used to gain a criminal conviction. Finally, the chapter examines voluntary and involuntary confessions and their admissibility in court.

Chapter 9 examines the types of identification procedures police often use before a trial in order to identify a suspect and connect that suspect to a crime. The chapter examines several procedures, including station-house lineups, showups, and photographic arrangements. It further examines the constitutionality of such practices and indicates critical moments in the processes when a suspect needs the assistance of an attorney representing his or her legal interests. It also addresses the use of Deoxyribonucleic Acid Tests, or DNA profiling.

ABOUT THE AUTHORS

James F. Anderson is currently a professor of Criminal Justice and chair of the Criminal Justice Department at East Carolina University. He was formerly professor of Criminal Justice and Criminology at the University of Missouri-Kansas City in the Department of Sociology, Criminal Justice, and Criminology. He was also associate professor of Police Studies at Eastern Kentucky University. Professor Anderson received his master's degree in Criminology from Alabama State University and his Ph.D. degree in Criminal Justice from Sam Houston State University. He was a Doctoral Fellow at the National Institute of Justice in Washington, D.C., where he engaged in a comparative recidivism investigation of CRIPP participants, regular probationers, and parolees in Harris County, Texas. His research interests include the areas of police liability, criminal procedure, crime and public health, criminological theory, and legal aspects of criminal justice. He is the author of several articles and five books. Chief among them are *Legal Rights of Prisoners: Cases and Comments* and *Criminological Theories: Understanding Crime in America*.

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