The American Criminal Justice System

by

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There are three fundamental parts to the American criminal justice system: the police, the courts, and corrections. The police take the report of a crime and investigate it. Police bring before the courts information they develop in an effort to determine the guilt or innocence of the person accused. Should the defendant be convicted, corrections carries out the sentence of the court, using probation, prison, and/or parole.

Our criminal justice system is designed to protect the rights of every American. Another way of looking at our criminal justice system is that it is interested in fair play. For example, if a cop discovers kiddy porn in a man's closet, but didn't have "probable cause" to look inside that closet, the stuff can't be used to prosecute the bad guy. The evidence of the crime, the kiddy porn, is excluded from testimony because the cops didn't play fair. The whole thing is designed to protect the rights of the accused and, by extension, the rights of everyone in America.

The basic design of the criminal justice system is the same from state to state. However, each state has its own subtle ways of protecting the rights of the accused. The concepts addressed in this chapter are used across the country.

THE POLICE

The primary functions of the police are to enforce the law, prevent crime, investigate crimes, and maintain order. Crime prevention doesn't seem very exciting to most cops; they'd rather be out catching bad guys or determining who-done-what-to-whom. That's the exciting part, and that's the part most of us like to read (and write!) about. Most cops like getting involved in the action. That's what attracts them to the job. However, crime prevention is a lofty goal. Its aim is to keep people from being victimized in the first place. Of course, if cops were completely successful in crime prevention, there would be no "true crime" books. And there would be no need for the other parts of the criminal justice system.

Law enforcement, catching bad guys, is the bread and butter of crime novelists and true crime writers. It can be as simple as observing a car sliding through a stop sign and issuing a citation for the infraction. Or it can be as serious as a SWAT team assaulting a barricaded sniper in a tower. Every incident along that spectrum has its interaction between the infractor and the cop. The cop has to determine if a law was broken, what law it was, who did it, and what the appropriate action is.

One of the actions a cop takes is arrest, the seizure of a person's body.

The Fourth Amendment to the Constitution addresses such seizures:

> *The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized*

A cop must have probable cause to make an arrest. Probable cause is more than a simple belief the suspect committed the crime. The belief must be reasonable. (The concept of reasonableness permeates our system.) The cop can't just snatch a guy because he believes he's committed a crime. Probable cause is a reasonable belief that the person under arrest committed the crime. The belief must be more than a hunch or a mere suspicion. The belief is based upon any combination of the officer's own observations; witness, victim, and/or suspect statements; and evidence at the crime scene. Supreme Court Justice Douglas wrote in 1968, "The term 'probable cause' rings a bell of certainty that is not sounded by such phrases such as 'reasonable suspicion.'" However, the cop doesn't have to be convinced beyond a shadow of a doubt; that level of belief is the responsibility of the court.

An arrested suspect has rights. We all do, but they become important when a person has handcuffs ratcheted around his wrists. An officer can't search a person without probable cause. If a person is under arrest, the arrest itself becomes probable cause to search. This is called "search contemporaneous to the arrest." Before an arrest, however, a cop may only pat-down, or frisk a subject. The frisk is not a search for evidence or contraband. It is a non-intrusive, cursory examination for weapons.

The case of *Terry v Ohio* tells us that an officer can stop and frisk a person whom the officer has reasonable suspicion (remember, that's less than the certainty of probable cause) to believe that person has committed or is likely to commit a crime, and, that person may be armed.

The frisk is allowed only if the officer can articulate later in court that he was in fear for his safety. The testimony may go something like this: "I observed the subject standing at the corner of 14th and Vine, a location I know has a high incidence of drug traffic. I watched the subject engage in frequent, brief interactions with the occupants of vehicles which had stopped in traffic. I suspected the subject was engaged in drug trafficking." (This is the suspicion of criminal activity.) "Knowing that drug traffickers frequently carry weapons to protect their merchandise and money, I patted-down the subject's outer garments. My frisk revealed what felt like a pistol in the subject's front waist band."

At that point, the officer is allowed to retrieve the item he believes is a weapon, for his own safety. If carrying that hidden gun is a crime, then the officer has probable cause to arrest. Which then allows a full search. That full search may uncover drugs, or other contraband, which may lead to more charges.

If an officer searches without probable cause, and finds evidence of a crime, that evidence is likely to be thrown out of court, or be excluded from testimony. (Recall the example cited at the beginning of the chapter.) This is called the exclusionary rule. The exclusionary rule comes from *Weeks v. United States.* Basically, if a cop violates a person's Constitutional rights against unreasonable search and seizure, the evidence he thus uncovers cannot be used. Everything that results from that un-Constitutional search

is tainted and excluded from the case. The evidence or information that is derived from an un-Constitutional search is sometimes referred to as the "fruit of the poisonous tree." If you use it to support your case, the case will be doomed.

If an officer is going to question a suspect while the suspect is in police custody, the cop must first advise the suspect of his rights. Most of us know these as Miranda Rights, from the precedent-setting case, *Miranda v. Arizona*. "You have the right to remain silent. If you give up that right, anything you say can be used against you in a court of law."

Miranda says a person being questioned, while in police custody, must be made aware of his Fifth Amendment right not to testify against his own interests. The Fifth Amendment says, in part:

No person shall…be compelled in any criminal case to be a witness against himself...

However, if the cop is not going to ask the suspect any questions, he is not required to read him his rights. A corollary is that a cop does not have to apprise a person of his right against self-incrimination simply when asking him questions on the street. The person must be in police custody for *Miranda* to kick in. *Miranda* also reminds a suspect that he has a right to legal representation. "If you desire an attorney and cannot afford one, the court will provide one for you."

The actual wording of Miranda warnings changes a bit from state to state, and agency to agency, depending upon the case law of that state and the experiences of that particular agency.

After arresting the bad guy, the cop takes him to jail. The suspect is processed: he is searched thoroughly by the jailers, his property is taken and inventoried and noted on a receipt. The suspect is photographed and fingerprinted for identification, and he undergoes a health screening to determine any special health needs. The health screening is important; once a person is taken into custody, that person's welfare is the responsibility of the officer or jailer who has custody.

The arrested person may be able to post a bond to get "bailed out of jail." For most minor crimes, the bond amount is usually pre-determined by the courts. A person might even be released simply by signing a piece of paper promising to appear in court, if that person qualifies. (Some of the criteria that qualifies a person for such a release include owning a home in the area, being regularly employed in the area, and having no previous history of failing to appear in court.)

THE COURTS

When a person is arrested, he has the right to have his case heard by a court. There are many levels of courts in the United States, which come under either state or Federal jurisdiction. Different courts hear different cases, depending upon the seriousness of the charge.

Essentially, there are two classes of crimes: misdemeanors and felonies. Misdemeanors are less serious crimes for which the penalty is one year or less in jail. Of course, penalties also include fines, as well. Examples of misdemeanors are: petty theft, an assault in which no serious injury occurred, or a minor case of vandalism. A felony is a more serious crime for which the

penalty can be more than a year in prison. Examples of felonies include rape, robbery, burglary, and of course, murder.

Is it jail or isn't it?
Notice that misdemeanor lock-up time is done in *jail*, while felony time is done in *prison*. Jail is the local lock-up; either the city or county controls it. It is the place less-serious criminals are incarcerated. Prisons are operated by state or federal government.
The term "penitentiary" has lost favor over the years, perhaps because so few of the residents there are truly penitent! However, the more modern term, "correctional facility" may be no more appropriate, considering how few of their residents truly correct their behavior.

Misdemeanors and felonies can be further broken down into classes or degrees. Most states have first, second, third and fourth degree misdemeanors. Some may use the term class A misdemeanor, class B misdemeanor, and so on. A first degree or class A misdemeanor is the most serious, warranting the greatest penalty. For example, in Ohio, throwing a rock through a window is a third degree misdemeanor. The maximum punishment is 60 days in jail, a $250 fine, or both. Punching somebody in the nose is a first degree misdemeanor and will get you 180 days in jail, a $1,000 fine, or both.

Felonies come in classes or degrees, too. The more serious the harm, the greater the penalty. Stealing $1,000 worth of building supplies will get you a year in prison. Slashing a person with a knife will get you three to ten years and a $20,000.00 fine. The ultimate penalty is capital punishment. It is meted out for pre-meditated murder, or murder coupled with other serious crimes, such as rape, robbery, or arson. Some states consider these capital crimes a third, and of course, highest degree of crime.

Lower-level state courts, such as justices of the peace, mayor's courts, or municipal courts, hear only misdemeanors. Felonies can be tried in county courts, sometimes referred to as common pleas courts. District, circuit, and appeals courts hear the most serious crimes in the state's jurisdiction.

They also may hear appeals from lower courts. Ultimately, appeals in state courts can be heard at the state supreme court.

Federal courts include US District courts, which hear most federal cases. Virtually all federal cases are felonies. The US Court of Appeals hears appeals of cases coming from US District Courts. If the prosecution or defense seek higher appeal, they ask the US Supreme Court to hear the case. The US Supreme Court must decide whether or not it will hear the case. If it chooses not to, the lower court ruling stands. However, if the Supreme Court believes Constitutional issues are at the core of the case, then it grants *certiorari*, which means it will hear the case.

In the court room are a judge, defense attorney, and a prosecuting attorney, sometimes referred to as a district attorney. The trial judge acts as a referee in an argument. He keeps things moving along, allowing each party to have his say. The prosecutor takes the evidence from the police and presents it to the court in an effort to convince the court the bad guy did it. The defense attorney has to bring doubt upon the prosecutor's case. It is an adversarial system. The judge also makes sure the rights of the accused are protected. Listening to the evidence and arguments of the attorneys, trial judges decide what evidence and testimony will be allowed, based upon case law and court rules. (Technically, testimony *is* evidence. It's just spoken, as opposed to hard evidence, such as a finger print.)

Cases are tried before a judge, panel of judges, or a jury. Most state courts above mayor's court and justices of the piece allow the defendant to choose between having a judge or jury decide guilt or innocence. A bench trial is

There is an old saw in police circles regarding decision-making in the use of deadly force. It weighs the practicality of surviving an armed encounter against social values and political considerations. It goes, "It is better to be tried by twelve than carried by six."

one in which the judge decides guilt or innocence, as well as running the trial. Juries can have as few as six people or as many as twelve, depending upon the laws of the state in which the trial is taking place. Mostly, felony trials have twelve jurors.

To attain a conviction in criminal court, the prosecution must prove "beyond a reasonable doubt," the defendant committed the crime. This means the reasonable, average, prudent person would be convinced by the prosecutor's case that the defendant is guilty.

Burden of Proof
In civil law suits, the burden of proof is simply a preponderance of the evidence. Essentially, the plaintiff, the person who brought the case before the court, must have 51% proof the defendant committed the crime. This is much less proof than what is necessary in criminal courts. This is why O.J. Simpson, though acquitted of murder in criminal court, was found by a civil court to have caused the death of his ex-wife. The court simply needed less convincing.

CORRECTIONS

If a person is convicted of a crime, the court will pass sentence. Most statutes have penalties as part of their structure. In Ohio, a first-degree misdemeanor can be punished with jail time of up to 180 days and as much as a $1,000 fine. The judge has the discretion to establish the sentence up to those limits. Things that help the judge weigh the decision are the defendant's previous record, his ability to pay the fine (poor people go to jail, wealthy people pay fines.) and the seriousness of the harm from the crime.

It's pretty much the same for felonies, too. Felony statutes may have penalty ranges, such as three to five years for a robbery. The judge can determine how much time the convicted person must serve. Some crimes have specific penalties that must be

handed out. Many states now have laws that require a mandatory minimum term in prison if a firearm is used in the commission of the offense. That time is in addition to the time spent for the crime itself. So, an armed robbery in which a knife is used may get the defendant less time in prison than an armed robbery in which a revolver is used.

Another penalty is probation. Probation places the defendant under the supervision of the court for a set period of time. The defendant must regularly check-in with a probation officer during his probation period. The terms of probation can include paying the fine on an installment plan; repaying the victim for his losses; performing community service, such as cutting weeds along a highway; or even requiring a person to get a job.

Probation can include a suspended sentence of incarceration. For example, a person convicted of assault may be sentenced to 180 days in jail. The judge might hold off incarcerating the defendant and place him on probation. The judge could give the defendant a year to repay the victim for his lost earnings and medical bills. During that time, the defendant is on probation. If the defendant fails to complete those payments in one year, he may have to spend the 180 days in jail for probation violation. Also, if the defendant is arrested for another crime while on probation, his probation officer may sign a probation violation warrant, upon which the defendant could be arrested. When appearing before the court on the second charge, the defendant may also be convicted of probation violation and serve the suspended sentence, in addition to anything the new charge would bring.

If a person goes to prison, he may be released before the entire sentence is served. The person would be placed on parole. Parole is similar to probation in that if the

defendant violates the terms of his parole, he could be returned to prison for the remainder of his sentence.

The American criminal justice system is always changing. Court rulings, new technologies, and changing values drive its evolution. The fundamental concept of our system, though, will never change: there are rules the good guys have to play by. The rights of all Americans are precious and must be protected by the rules and actions of each part of the system.

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