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The United States Criminal Justice System: A Brief Overview

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FEDERAL AND STATE JURISDICTIONS

As a federation the United States, unlike some other countries, cedes to individual states much power to decide local issues such as education (with both lower and higher education), libraries, and state roads. Perhaps the key area of jurisdiction retained by the states is criminal justice. Yet, as with other areas such as health care, highways, and taxation, there is overlapping or concurrent jurisdiction. Both the federal government in Washington and the individual state governments can oversee various aspects of the criminal justice issue.

The federal criminal justice system is administered through a court system with judges appointed for life by the President, and confirmed by the United States Senate. An appointed Attorney General and local United States Attorneys — prosecutors throughout the country in major cities — handle the day-to-day operations of the system, backed by a wide array of investigatory agencies such as the Federal Bureau of Investigation and the Drug Enforcement Agency. Crimes falling within the federal system can be national in nature such as federal income tax evasion or a violation of securities law. Federal crimes may also involve use of interstate facilities such as highways, phone or wire services. Narcotics offenses may fall into both categories as many foreign drugs are imported or exported and much drug traffic goes beyond individual states. States, however, may also seek to control narcotics offenses for such drugs may be possessed, sold, or manufactured within individual state borders.

The vast majority of crimes are committed within the state, not the federal, jurisdictions. So in major states such as California, Florida, New York, Illinois, or Texas well over 90 percent of the violent...
crimes prosecuted fall to the state prosecutors and not to federal officials. Individual states have their own prison systems, yet federal prisons also exist.

**INITIATING THE PROSECUTION**

The local prosecutor normally represents the city or the county, it is relatively rare for the trial prosecutor to be a state official in most criminal settings. The local prosecutor in a large community such as Los Angeles, Miami, New York City, Houston or Chicago is referred to by various names such as the District Attorney, County Attorney, or simply the Prosecuting Attorney. This individual normally serves in an elected capacity. She has considerable discretion as to whether to proceed with evidence obtained by police investigators and how to move forward. If the attorney decides not to prosecute, the process normally ends. Generally, victims of crime cannot appeal the decision nor can the police. In most states, if the prosecutor believes there is sufficient evidence, she can simply file a complaint against the accused. That individual is then arrested and brought before a judge to determine if enough evidence is present to hold the person over for a trial. Alternatively, the prosecutor can proceed before the Grand Jury.

The Grand Jury is made up of ordinary citizens who sit to hear presentations by the prosecution. Its principal function is to determine if there is "probable cause" to believe that the accused committed the crime charged. "Probable cause exists where the facts and circumstances within the arresting officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been committed."8 If the Grand Jury finds probable cause, it returns formal charges, an indictment, against the defendant and he is usually taken into custody.

**THE ARREST**

If the suspect is in his own home, in order to take him into custody an arrest warrant must be issued by an independent judge based upon probable cause.9 If the suspect is in a public place or not in his own home, no warrant is needed. The warrant requirement is based upon the "search and seizure language" found in the Fourth Amendment to the United States Constitution,10 made to apply against the states in 1961 by virtue of the Due Process Clause of the Fourteenth Amendment.11

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10U.S. Const. amend. IV.

The judges who make the determinations with regard to warrants are typically selected throughout the United States in one of three ways:

(1) appointed by the state executive, the governor, for a fixed term such as eight to ten years
(2) elected by running against a field of contenders
(3) retained by the citizens in an election in which the voters simply affirm a term renewal.

INTERROGATION

Police officers may interrogate the suspect and are given wide latitude in such actions. Three major limitations exist. The first falls within the Due Process language of the Fourth Amendment to the United States Constitution.12 Police officers may not use techniques which are "shocking to the conscience"13 such as engaging in violence against the suspect or communicating misinformation about the criminal justice process.14 The Due Process Clause is not usually applied, however, to misinformation which goes beyond the process such as officers lying about the quality or quantity of evidence they have assembled against the suspect.15

One of the major features of the American criminal justice system is the heavy reliance placed on the Privilege against Self Incrimination, found in the Fifth Amendment to the United States Constitution.16 This privilege has been construed to mean that individuals cannot be required to testify or present evidence,17 cannot be compelled to cooperate with officials, and cannot be forced to speak with police officers. In a major ruling of the United States Supreme Court, it was further held that if the suspect is in custody and being interrogated, statements made by him cannot be used to prove his guilt unless four warnings are given to the suspect and he voluntarily waives his rights. These warnings, the "Miranda warnings" indicate that the suspect has the right to remain silent, anything he says can and will

12"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, . . . but upon probable cause. . . ." U.S. Const. amend. IV.


16"No person shall . . . be compelled in any criminal case to be witness against himself. . . ." U.S. Const. amend. V.

be used against him at trial, he has the right to have an attorney present during questioning, and the
government will provide him with an attorney at no cost if he cannot afford one.18

The final restriction on interrogation techniques relates to the right to counsel. While most often
the right to counsel is associated with the representation of the suspect at a trial or at another critical stage
such as a preliminary hearing or post-trial sentencing hearing, it has an application in the interrogation
area as well. If the suspect has been formally charged with a crime, interrogation may not proceed
without counsel being present, whether in a formal setting, or in an informal setting in which questioning
is conducted by an undercover agent.19

PRETRIAL HEARINGS

If the defendant has not been charged by the Grand Jury, she has a right to have a judge
determine, within a reasonable period of time, whether there exists enough evidence to hold her over for
a trial. This adversary hearing, with lawyers on both sides presenting evidence and arguments, is
generally referred to as a preliminary hearing or examination. If no probable cause is found by the
judge, the case is dismissed, though it can be refilled. If cause is found, the defendant is formally charged
and can be held for a trial which is to be conducted within a relatively short period of time.20 If the
suspect is held over for trial, there is normally a right to have bail or bond set in most cases. The
standard is whether there is reason to believe that if the suspect is not held in custody he will show up
for future judicial proceedings.21

Prior to the trial, counsel for the defense may make a host of motions which may effect whether
the defendant can be brought to trial. Counsel may move to dismiss the charges for lack of jurisdiction;
the argument here is that the charged crime was not committed in the particular county, state or
country.22 The charges may be thrown out for a violation of the statute of limitations, since most crimes
have a specific time period in which charges can be brought.23 The lawyer may also move to dismiss
for the government’s failure to file proper charging papers such that not all elements of the crime are set
forth in the papers, or that more than one charge is leveled against the defendant in each count.

20U.S. Const., amend. VI.
22U.S. Const., amend. VI.
The principal pre-trial motions, however, concern the suppression of evidence. If the defense is successful in moving to suppress evidence, the judge will order that evidence to be excluded and if the evidence is essential to the prosecution, the entire case may be dismissed. The most common motions to suppress evidence are found under the search and seizure provision,24 the privilege against self incrimination,25 and the right to counsel.26

THE RIGHT TO A JURY TRIAL

In most states there are specific statutes present which govern the right to a jury trial. Under some, the defendant has a right to a twelve person jury in all criminal cases.27 In others, the right is limited to a smaller number of jurors,28 and still others the right to a jury trial is restricted only to more serious criminal cases.29 Most states require that the jurors reach a unanimous decision as to each charge against the defendant. Other states are less restrictive and permit verdicts based upon a large majority of jurors.30

The United States Constitution has been interpreted to impose certain requirements for jury trials which must be followed by the individual states. A jury is required if the defendant is subject to more than six months imprisonment.31 No less than six jurors can sit in a criminal case and while unanimous verdicts are generally not required, if six jurors are present then unanimity is required.32 The defendant is entitled to have a jury made up of his peers; individuals serving on the jury must be from the same region, but not necessarily the same age, gender, income level, or race.33 Neither the prosecution nor

24U.S. Const., amend. VI.

25U.S. Const., amend. V.

26U.S. Const., amend. VI.


the defense can, however, discriminate against potential jurors and eliminate citizens from the jury pool on the basis of race or gender.\textsuperscript{34}

**RIGHT TO AN ATTORNEY**

Under the Sixth Amendment right to counsel, the defendant is entitled to a lawyer in all cases in which imprisonment is imposed. The judge cannot sentence the defendant to any term of imprisonment unless an attorney was offered to the individual. The right to an attorney applies at the trial stage and at all critical stages. Prior to trial this would include guilty plea negotiations — a major area of disposition in the United States with well over half the criminal prosecutions being disposed of through such a process\textsuperscript{35} — the preliminary examination, and various pre-trial motions. After the trial, the defendant is entitled to a lawyer at the sentencing proceeding\textsuperscript{36} and at most appeals.\textsuperscript{37} The defendant’s rights in this area may also include two other important features. The first is the right to have the entire criminal proceeding brought to a conclusion within a relatively short period of time. The right to a speedy trial is found in the Sixth Amendment to the United States Constitution. While there is no fixed limit on the time period, the courts will consider the amount of time involved and the prejudicial impact on the defendant in determining whether such a constitutional right has been violated.\textsuperscript{38} The right to counsel also encompasses other expert assistance if necessary for a fair trial. For instance, the United States Supreme Court has held that the defendant has a right to her own mental health professional to assist her defense in a case in which a serious insanity claim was being offered.\textsuperscript{39}

**APPEALS**

Virtually all state and federal criminal defendants, upon conviction in the United States, have the right to at least one automatic appeal of a conviction, normally before a court referred to as the state court of appeals.\textsuperscript{40} Thereafter, except with certain homicide cases,\textsuperscript{41} appeals normally are not


\textsuperscript{36}Mempa v. Ray, 389 U.S. 128 (1967).


\textsuperscript{40}Bureau of National Affairs, *State and Federal Courts, Judges, and Clerks* (comp. by Miller and King, 1995).
automatic or of right, but are left to the discretion of the courts. State Supreme Courts, and the United States Supreme Court, thus have criminal dockets which are almost entirely discretionary.

Only the defendant can appeal a conviction. If she is convicted, she may raise questions of law — though not of fact — to be considered by the court on appeal. The government cannot appeal an acquittal, however, for such an action would violate the principle against double jeopardy.42

HABEAS CORPUS

After all appeals are final, the criminal case against the defendant is over. He may then be able to challenge his imprisonment in state court, and ultimately in federal court, by proceeding with a civil action against the person who is holding him, either the governor, the attorney general, or the head of the Department of Corrections. The habeas corpus challenge would be on one of two grounds. The first is that the conditions of confinement themselves are improper as a result of overcrowding, unhealthy living situations, or dangerous conditions. The second is that the underlying conviction was unconstitutionally obtained so that the defendant should never have been sent into custody in the first place. If the court concludes that the constitutional claim is correct, it may order, as a remedy, the release of the individual.

Habeas corpus actions in federal courts are quite common based upon state convictions.43 In order for the criminal defendant — now the civil plaintiff — to proceed in a habeas action he must demonstrate that the issue raised involves a federal or constitutional right,44 the issue was not previously litigated in federal courts,45 and all state remedies were exhausted.46

42U.S. Const., amend. V.