



CRIMINAL JUSTICE

PROCEDURE

Stacy C. Moak & Ronald L. Carlson

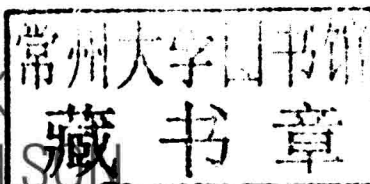
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STACY C. MOAK
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PREFACE

An inherent conflict in any system of justice is to balance the need for public safety against the rights of individuals. In the United States, our Constitution sets forth those protected rights that limit the powers of the government into our lives. Early in our country's development, the Constitution only protected citizens from unwarranted intrusion by the federal government. Through the process of incorporation, however, most of those rights are now protected from state action as well.

Citizens are entitled to an expectation of privacy in their person, papers, and effects from unwarranted government intrusion. Thus the Fourth Amendment requires that officers have a warrant before searching or seizing citizens. The warrant provides a layer of protection between the citizen and law enforcement. Although exceptions to the warrant requirement exist, which are detailed in this book, those exceptions are limited, and violations of the warrant provision can lead to evidence being excluded from trials.

Once a citizen is arrested by law enforcement, the Fifth Amendment protections from self incrimination come into play and citizens are entitled to have an attorney present to advise them in their custodial interrogations. In this case, the attorney provides an added layer of protection between the citizen and the actions of law enforcement. Cases identifying circumstances in which citizens are entitled to Fifth Amendment protections are detailed in this book.

If a citizen proceeds into the system to the point of a criminal trial, various other protections are afforded that person through the Sixth Amendment. For example, an accused is entitled to an attorney, and the state is required to provide an attorney for one who is indigent. Further, the accused is entitled to a public trial before a jury of his or her peers. In this instance, the jury serves as an added layer of protection between the citizen and the actions of the state.

This book explores constitutionally protected rights enjoyed by citizens in the United States. Cases are presented in each chapter, mostly stemming from the U.S. Supreme Court. The Supreme Court is the law of the land, thus, it applies equally to all jurisdictions within the United States. The cases provide the substance of procedural law. Students should read the cases, delve into the information, and consider both sides of the

argument in each case. Criminal Procedure is a topic that must be applied to be understood. The intent of this textbook is to provide students opportunities to apply principles outlined in the chapters through the cases that demonstrate the principles. The goal is for students to then be able to apply the principles in other situations demonstrating the same, or similar, types of conflicts.

The Eighth Edition of this text involved a significant revision, and would not have been possible without the input of several individuals. Research assistance was provided by Alesa Liles who is a PhD student at the University of Arkansas at Little Rock. Additionally, both Jeffery Walker and Craig Hemmens provided important input into the structure and layout of each chapter, as well as review and revision of the case briefs. At the publisher's level, Greg Charlson and Pam Chester provided appreciated editorial oversight.

An understanding of the roles and responsibilities of criminal procedure within the justice system is important for every citizen in the United States. This book is aimed at providing that basic understanding.

Stacy C. Moak,
Professor and Graduate Coordinator
Little Rock, Arkansas
July 2012

ONLINE INSTRUCTOR AND STUDENT RESOURCES

Thank you for selecting Anderson Publishing's *Civil Liability in Criminal Justice*. To complement the learning experience, we have provided a number of online tools to accompany this edition. Two distinct packages of interactive resources are available: one for instructors and one for students. Please consult your local sales representative with any additional questions. You may also email the Academic Sales Team at textbook@elsevier.com.

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- **PowerPoint Lecture Slides**—Reinforce key topics with focused PowerPoint slides, which provide a perfect visual outline with which to augment your lecture. Each individual book chapter has its own dedicated slideshow.
- **Lesson Plans**—Design your course around customized lesson plans. Each individual lesson plan acts as a separate syllabus containing content synopses, key terms, content synopses, directions to supplementary websites, and more open-ended critical thinking questions designed to spur class discussion. These lesson plans also delineate and connect chapter-based learning objectives to specific teaching resources, making it easy to catalogue the resources at your disposal.

For the Student

Students can access all the resources below by simply following this link: <http://www.elsevierdirect.com/v2/companion.jsp?ISBN=9781455730483>.

- **Self-Assessment Question Bank**—Enhance review and study sessions with the help of this online self-quizzing asset. Each question is presented in an interactive format that allows for immediate feedback.
- **Case Studies**—Apply what is on the page to the world beyond with the help of topic-specific case studies, each designed to turn theory into practice and followed by three interactive scenario-based questions that allow for immediate feedback.

SELECTED PROVISIONS OF THE UNITED STATES CONSTITUTION

Amendment I [1791]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II [1791]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III [1791]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV [1791]

The right of the people to secure in their persons, houses, papers, and effects, against unreasonable searches 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.

Amendment V [1791]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to

be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI [1791]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII [1791]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII [1791]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX [1791]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X [1791]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XIII [1865]

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV [1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of the article.

CASE CITATION GUIDE

The following list provides an explanation of case citations used in *Criminal Justice Procedure*, Sixth Edition, for readers who may be unfamiliar with how court decisions are cited.

U.S.	United States Reports. Published by the United States government, this is the official source of United States Supreme Court decisions. It reports only United States Supreme Court decisions.
S. Ct.	Supreme Court Reporter. Published by Thomson/West, this publication reports United States Supreme Court decisions.
L. Ed./L. Ed. 2d	United States Reports, Lawyers' Edition, First Series/Second Series. Published by LexisNexis, this publication reports United States Supreme Court decisions.
F.2d/F.3d	Federal Reports, Second Series/Third Series. Published by Thomson/West, it reports decisions of the Federal Courts of Appeals.
F. Supp.	Federal Supplement. Published by Thomson/West, this reports decisions of the Federal District Courts.

SAMPLE CASE CITATIONS

Gideon v. Wainwright, 372 U.S. 335 (1963). This case is located in volume 372 of the United States Reports, beginning on page 335. It was decided in 1963.

Gideon v. Wainwright, 83 S. Ct. 792 (1963). *Gideon v. Wainwright* is published in volume 83 of the Supreme Court Reporter, beginning on page 792.

Gideon v. Wainwright, 9 L. Ed. 2d 799 (1963). *Gideon v. Wainwright* is also published in volume 9 of Supreme Court Reports, Lawyers' Edition, Second Series, beginning on page 799.

Phillips v. Perry, 106 F3d 1420 (9th Cir. 1997). This case is located in volume 106 of Federal Reports, Third Series, beginning on page 1420. It was decided by the Ninth Circuit Court of Appeals in 1997.

Galen v. County of Los Angeles, 322 F Supp. 2d 1045 (C.D. Cal. 2004). This case is located in volume 322 of *Federal Supplement*, beginning on page 1045. It was decided in 2004 by the Federal District Court for the Central District of California.

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AN OVERVIEW OF CRIMINAL JUSTICE IN AMERICA

The Role of Criminal Procedure in the Criminal Justice Process

CHAPTER OUTLINE

- 1.1 Introduction
- 1.2 Goals of Criminal Procedure
- 1.3 Sources of Criminal Procedural Laws
- 1.4 Adversary System of Justice
- 1.5 Steps in the Criminal Justice Process
- 1.6 Briefing a Case
- 1.7 Summary

KEY TERMS

Adversary theory of justice	Double jeopardy
Appeal	Evidence
Arraignment	Exclusionary rule
Arrest	Federalism
Arrest warrant	Felony
Booking	Grand jury
Charge	Habeas corpus
Closing argument	Hearings
Common law	Indictment
Conviction	Information
Cross examination	Investigation
Custodial interrogation	Jury
Custody	Jury instructions
Defendant	Motion
Diversion	Plea