

★ AN INTRODUCTION TO ★ POLICING E I G H T H E D I T I O N

Chapter 13

Police and the Law



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Introduction

- People think of the police in terms of the law
- The chapter provides the fact pattern behind some of the cases
- The fact pattern is considered by the courts in adjudicating a case
- By arresting people, the police take away what Americans value most highly: their freedom and their liberty
- The police must know the law and must apply it correctly

Crime in the United States

THE JUDICIAL PROCESS

- Crime
- **The Federal System**
 - 12 federal Courts of Appeals
 - 94 U.S. District Courts
- **The State System**
 - Courts established by state constitution and laws
 - Trial
 - Appellate
 - Supreme

Crime in the United States

HOW DO WE MEASURE CRIME?

- **Uniform Crime Reports (UCR)**
 - Crime Index
 - Crime Index Offenses Cleared
 - Persons Arrested
 - Law Enforcement Personnel
- **National Crime Victimization Survey (NCVS)**

Crime in the United States

HOW MUCH CRIME OCCURS IN THE UNITED STATES?

- Uniform Crime Reports (UCR)
 - Crime clock
 - Criminal victimization
 - Does not estimate for arson
- National Crime Victimization Survey
 - Based on interviews with victims

Crime in the United States

ARRESTS IN THE UNITED STATES

- For latest reporting year
 - 13.7 million arrests for all criminal infractions except traffic violations
 - 2.3 million of these arrests were for the FBI's Index of Part I crimes
 - Remaining 12.5 million arrests were for various other offenses

Crime in the United States

CRIME AND PUNISHMENT

- The elements of the crime must be proven
- Without a law, there is no crime
- Malum in se
- Malum prohibitum
- Insanity defense
- Plea bargain

Police and the U.S. Constitution

THE BILL OF RIGHTS AND THE FOURTEENTH AMENDMENT

- Constitution is a continuing, dynamic document
- The law is always changing
- U.S. criminal justice system based on Bill of Rights
- Bill of Rights extended to the states
- Due process clause

The Police and the U.S. Constitution

THE ROLE OF THE SUPREME COURT IN REGULATING THE POLICE

- Judicial review
 - Search and seizure
 - Police interrogation
- Conflicting goals
 - Rights of individuals
 - Rights of society

The Police and the U.S. Constitution

THE EXCLUSIONARY RULE

- Evidence seized in violation of the Constitution cannot be used in court
- In 1961 Supreme Court applied the rule to states
- *Weeks v. United States* (1914)
- Silver platter doctrine
- *Wolf v. Colorado* (1949)
- *Rochin v. California* (1952)
- *Mapp v. Ohio* (1961)
- Impact of the Exclusionary Role on the Police

The Police and Arrest

PROBABLE CAUSE

- Arrest is restricted by the Fifth Amendment
- Probable cause is more than reasonable suspicion
 - Necessary to conduct stop and frisks
- *Henry v. United States* (1959)
- *County of Riverside v. McLaughlin* (1991)
- *Maryland v. Pringle* (2003)

The Police and Arrest

REASONABLE AND DEADLY FORCE IN MAKING ARRESTS

- Reasonable force
 - Amount of force necessary to overcome resistance
- Escalation of force
- Rodney King incident (1991)
- *Scott v. Harris* (2007)
 - Does not violate the Fourth Amendment

The Police and Arrest

POLICE TRAFFIC STOPS

- Texas Education Agency Law Enforcement Course
 - Seven-step method recommended
- *Delaware v. Prouse* (1979)
 - Random spot checks violate Fourth Amendment
- Roadblocks
- Officer may legally order occupant out of vehicle
 - *Pennsylvania v. Mimms* (1977)

The Police and Search and Seizure

- Search and seizure
- Castle doctrine
 - “Stand-your-ground” laws
- *Kirk v. Louisiana* (2002)
- *Bond v. United States* (2000)
- *Katz v. United States* (1967)
- *Kyllo v. United States* (2001)

The Police and Search and Seizure

CANINE SNIFFS

- Not controlled by the Fourth Amendment
- Created probable cause
- Only reveals contraband
- Few legal challenges in court
 - Reliability
 - Nonintrusive



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The Warrant Requirement and the Search Warrant

- Search warrant
- Exigent circumstances
- *Aguilar v. Texas* (1964) & *Spinelli v. United States* (1969)
- *Illinois v. Gates* (1983)
- *Michigan v. Summers* (1981)
- *Muehler v. Mena* (2005)
- *Los Angeles County, California v. Rettele* (2007)
- *United States v. Banks* (2003)

The Warrant Requirement and the Search Warrant

EXCEPTIONS TO THE WARRANT REQUIREMENT

- Incident to Lawful Arrest
- Field Interrogations (Stop and Frisk)
 - Terry stop
- Exigent Circumstances
- Consent Searches
- Plain View
 - Plain view evidence
 - Crime scene
- Abandoned Property



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The Warrant Requirement and the Search Warrant

EXCEPTIONS TO THE WARRANT REQUIREMENT (continued)

- Inventory
- Open Fields
- The Automobile Exception
- Border Searches
- Good Faith
- Suspicionless Search of a Parolee
- Searches by Private Persons

The Police and Custodial Interrogation

THE PATH TO *MIRANDA*

- Custodial interrogations
- End of the Third Degree
 - Remaining silent
- The Prompt Arraignment Rule
- Entry of Lawyers into the Station House

The Police and Custodial Interrogation

THE *MIRANDA* RULING

- *Miranda v. Arizona* (1966)
- *Miranda* rule (or *Miranda* warnings)
 - Applies to all custodial interrogations
 - Must ensure voluntary waiver of rights
 - May not start a new line of unrelated questions

The Police and Custodial Interrogation

THE EROSION OF *MIRANDA*

- Large number of cases brought to the Court
 - Challenges
 - Questions
- Certain exceptions to the *Miranda* rule
 - Post-*Miranda* cases have weakened the rule

The Police and Custodial Interrogation

THE EROSION OF *MIRANDA* (continued)

- *Harris v. New York* (1971)
- *Michigan v. Mosley* (1975)
- *Brewer v. Williams* (1977)
- *Rhode Island v. Innis* (1980)
- *New York v. Quarles* (1984)
- *Oregon v. Elstad* (1985)
- *Moran v. Burbine* (1986)
- *Illinois v. Perkins* (1990)

The Police and Custodial Interrogation

THE EROSION OF MIRANDA (continued)

- *Pennsylvania v. Muniz* (1990)
- *Arizona v. Fulminante* (1991)
- *Minnick v. Mississippi* (1991)
- *McNeil v. Wisconsin* (1991)
- *Withrow v. Williams* (1993)
- *Davis v. United States* (1994)
- *Stansbury v. California* (1994)

The Police and Custodial Interrogation

THE *DICKERSON* RULING AND BEYOND

- *Dickerson v. United States* (2000)
 - Supreme Court ruled that *Miranda* was a constitutional decision
 - Cannot be overruled by Congress
- *Miranda* rule in *Texas v. Cobb* (2001)
 - Offense specific
- *Missouri v. Seibert* (2004)
 - Two-tier interrogation technique

The Police and Custodial Interrogation

SURREPTITIOUS RECORDING OF SUSPECTS' CONVERSATIONS

- Must be done properly
 - Constitutional challenges
 - Statutory challenges
- Listening post or passive listener role
- Must not be assured of privacy

Police Eyewitness Identification Procedures

LINEUPS, SHOWUPS, AND PHOTO ARRAYS

- Lineup
 - Similar physical characteristics
- Showup
 - Back to the scene of the crime
- Photo array
 - Photos of the suspect

Police Eyewitness Identification Procedures

LINEUPS, SHOWUPS, AND PHOTO ARRAYS (*continued*)

- *United States v. Wade*
- *Kirby v. Illinois*
- *Stoval v. Denno*
- *United States v. Ash*

Police Eyewitness Identification Procedures

OTHER IDENTIFICATION PROCEDURES

- *Schmerber v. California & Winston v. Lee*
 - Medical procedures
- *United States v. Dionisio*
 - Voice exemplars
- *United States v. Mara*
 - Handwriting exemplars
- Eyewitness Identification

Summary

- Two major methods are used to measure crime in the United States.
- The United States is a nation governed by law.
- The U.S. Constitution is a continuing, dynamic document constantly being reviewed by the U.S. Supreme Court.
- U.S. criminal justice system is based on the Bill of Rights.
- Most of the arrests made by the average police officer do not involve a warrant.
- Police searches are governed by the Fourth Amendment.