A BRIEF SUMMARY OF CRIMINAL PROCEDURE PROCESS AT THE UNITED STATES JUDICIAL SYSTEM

(Amerika Birleşik Devletlerinin Yargısal Sisteminde Ceza Yargılaması)

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ABSTRACT

In the United States there is a federative structure, and each state and the federal government have their own criminal justice processes, federal criminal procedure law and 50 different state jurisdictions. Criminal procedure law is studied into two parts, the pre-trial (investigatory) process and the trial (adjudicatory) process.

In this study, we will give brief information about the United States Criminal Procedure. Because of its federative structure, the U.S has 51 different criminal procedure laws, which include federal criminal procedure law and 50 different state criminal procedure laws as well. Therefore it is quite hard to understand the U.S system from many aspects. We try to make it simple and understandable by providing readers a general knowledge about the common law criminal procedure system rather than explain every detail. Although the U.S has an accusatorial common law tradition whereas our system has a structure tending toward the inquisitorial tradition as a civil law country, there are substantial amount of similarities between two judicial systems. It is generally accepted that the gap between common law and civil law has been getting closer day by day. Because of the fact that Turkish and European criminal law systems are very well known, and many studies had been focused on them we prefer to study the US system in terms of presenting a different jurisdiction.

Key Word: USA, Constition, judicial system, criminal procedure, investigatory process, adjudicatory, trial- adjudicatory process, appeal, evidence.

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ÖZ

Amerika Birleşik Devletlerinde federal bir yapı bulunmakta; her eyaletin ve federal devletin kendine ait bir ceza yargılaması sistemi bulunmaktadır. Dolayısıyla 50 eyalet ceza yargılaması ve federal ceza yargılamasından oluşmaktadır. Ceza yargılaması temelde iki ana bölümden oluşmaktadır. Yargılama öncesi aşama ve yargılama aşaması.

Bu çalışmada, Amerika Birleşik Devletleri ceza yargılaması usulü hakkında bilgi verilecektir. Federal bir yapı bulunması sebebiyle 50 eyalet ceza yargılaması ve federal ceza yargılaması olmak üzere 51 farklı ceza yargılamasından oluşan Amerika Birleşik Devletleri ceza yargılaması sisteminin anlaşılması zor olan yönleri bulunmaktadır. Genel bir bakış açısı ile yapılan bu özet çalışmada ABD ceza yargılaması sisteminin detaylarına inmekten uzak durarak okuyucu açısından sistemin kolay anlaşılır kılınması tercih edilmiştir. Bizim de dahil olduğumuz Kara Avrupası hukuk sisteminde tahkik sistemi bulunmakla birlikte, Amerika Birleşik Devletleri ceza yargılaması sistemi itham sistemini korumaktadır. Bununla birlikte, iki sistem arasında çok temel alanlarda da benzerlikler bulunmaktadır. Genellikle ifade etmek gerekirse, her iki sistem arasında gün geçtikçe yakınlaşma artmaktadır. Türk Hukuku ve Kara Avrupası ceza yargılaması sistemi zaten bilinen ve üzerinde çok çalışma yapılmış olan alanlardır. Bu sebeple farklı bir alandan bir ceza yargılaması örneği sunmak bakımından Amerika Birleşik Devletleri ceza yargılaması sistemi tercih edilmiştir.

Anahtar Kelimeler: ABD, Anayasa, yargısal sistem, ceza yargılaması, soruşturma aşaması, yargılama aşaması, temyiz, deliller.

INTRODUCTION

In this study we will give brief information about the United States Criminal Procedure. Under the federative system of government in the United States, each state and the federal government have their own criminal justice processes. The federal judiciary must comply with the constitutional prerequisites as set forth by the Bill of Rights[2], and, the States' judicial rules must comply with those Bill of Rights' provisions made applicable to the States through the Fourteenth Amendment.[3]

However, the Fourteen Amendment had not clearly solved the problem whether the entire Bill of Rights should be applied to the States or certain

2 The Bill of Rights was adopted in 1791. It was designed to restrict federal powers, and originally only applied to the federal government. In 1868, the 14th Amendment was ratified and made the Bill of Rights applicable to the states.

3 ABRAMSON L.W., (2013), Criminal Procedure, Quick Review Series, Second Edition, West, p. 1.

portion of the Bill of Rights should be applied to the States. Some justices interpreted the 14th Amendment, which should be applied to the entire Bill of Rights. Some justices argued that certain portion of the Bill of Rights should be applied to the States, not each of them. For instance the Sixth Amendment's right to a jury selected from residents of the state and district where the crime allegedly occurred, the Seventh Amendment, which guarantees a jury trial in civil cases involving more than some certain amount of money, and the Eight Amendment's protection against excessive fines have not been applied to the states.[4]

There have been three main approaches over this constitutional issue since the Fourteenth amendment was adopted.

(1) Fundamental Right Approach: In *Palko v. Connecticut* case, 302 U.S 319 (1937), the United States Supreme Court espoused the idea in which the Court determined that whether a violated right was fundamental or not.[5].

(2) Total Incorporation Approach: In *Adamson v. California* case, 332 U.S. 46 (1947), the Court accepted the idea that the States have to comply with the all parts of the "Bill of Rights". However, the Court did not apply this opinion for a long time.[6]

(3) Selective Incorporation Approach: Under this approach, a court must examine the entire right to decide whether it should be applicable to the States. If a court figures out that a right in question is fundamental to the American legal system, then it applies to the States.[7] In other words, a court will decide case-by-case that which portions of the Bill of Rights would be applied to the states.

Criminal procedure law is studied into two parts, the pre-trial (investigatory) process and the trial (adjudicatory) process.[8] Joshua Dressler and Alan C. Michales also define the pre-trial process as the "cops and alleged robbers" while the trial process is called as the "bail to (maybe) jail" process.[9]

The US criminal procedure law is based on the adversarial system.

4 See,https://www.legalzoom.com/articles/definition-of-selective-incorporation-what-is-selective-incorporation (visited: 2014, December 30)
5 Id., 2.
6 Id., 2.
7 Id., 3.
8 DRESSLER, J. & MICHALES, A.C, (2010), Understanding Criminal Procedure Volume 1: Investigation, Fifth Edition, LexisNexis, p. 5.
9 DRESSLER, J. & MICHALES, A.C, (2006), Understanding Criminal Procedure Volume 2: Adjudication, Fourth Edition, LexisNexis, p. 5.

"Adversarial" and "inquisitorial" terms are used to describe criminal justice systems.[10] In reality these terms have no simple or precise meaning. "Adversarial models have begun to incorporate some of the features of inquisitorial systems. At the same time, inquisitorial models have undergone significant reforms that call on elements of adversarial models".[11]

Inquisitorial system is different from adversarial (accusatorial) model interms of historical background. The inquisitorial model is known as civil law system or continental law system, and historically depends to Romano Germanic System of Law. In that system the justice is secured with the composite effort of all judicial actors: the prosecutor, the police, the defense lawyer and the court.[12] The judge plays the central role in finding the truth and all the evidence that either proves the innocence or guilt of the accused before the court.[13]

On the other hand in the adversarial system, two parties (the prosecution and the defence) have equal function and have the same responsibility on presenting evidence to the court, who represent the accuser and the accused respectively, with both sides presenting evidence that they believe to be relevant to their case,[14] In an adversarial system, the case is organized and the facts are developed by the sole initiative of the parties. In a common law trial, case is organized and the facts are developed by the sole initiative of the parties. In an adversarial system the judge has limited initiative role in the period of legal process.[15]

A. PRE-TRIAL PROCESS

1. Pre-Arrest Investigation

Pre-arrest investigation usually starts when police, based on his or her personal observations or an information given by a witness, thinks that a crime has been committed.[16] When a crime occurs, the police has to launch

10 There are two legal systems known and can be categorized as adversarial (accusatorial) system (most famous of them are Anglo-America, Britain and Australia) and the inquisitorial system(applied mostly in Europen countries). http://jthomasniu.org/class/540/Assigs/luch.pdf

11 http://www.lawcom.govt.nz/sites/default/files/adversarial_and_inquisitorial_systems_2.pdf

12 ACHARYA Madhav Prasad, "The Adversarial v. Inquisitorial Models of Justice", http://www.ksl.edu.np/cpanel/pdf/adversial.pdf

13 http://chatt.hdsb.ca/~mossutom/law/Handouts/Unit3-Handout-AdversarialandInquisitorialLegalSystems.htm

14 http://www.lawteacher.net/free-law-essays/common-law/inquisitorial-and-accusation-systems-of-trial.php

15 PARISI, Francesco, "Rent-Seeking Through Litigation: Adversarial And Inquisitorial Systems Compared", Published in International Review of Law and Economics, Vol. 22, No. 2, August 2002, p.6.

16 DRESSLER & MICHAELS, Investigation, 5.

the investigation by his own and has to gather information necessary to enlighten the crime.[17] This pre-arrest investigation contains such as taking the suspect in custody, witness and victim interviews, interrogations of the suspect(s), identification procedures, necessary searches, issuance of evidence subpoenas, and seeking the formal charges against the suspect(s).[18] In general, most investigations occur before an arrest warrant issued.[19]

2. Arrest

The U.S. Constitution includes many fundamental guarantees of individual liberty. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. The Fourth Amendment protects the people against unreasonable searches and seizures by requiring warrant relying on probable cause, and describing particularly the place to be searched and the persons or things to be seized. Pursuant to the Fourth Amendment, search and seizure warrants must be supported by an evidence showing that there is probable cause for the warrant to be issued. Therefore, the U.S. Supreme Court has held that every arrest warrant must be reasonable under that "probable cause" clause.[20]

Supreme Court has held that, under the Fourth Amendment, an arrest must be under a warrant if the suspect is going to be seized at his home.[21] However, there are three main important exceptions to that rule: If the suspect is in public places[22], if there is a "hot pursuit"[23], and if the arrest is occurring in "a third person's home."[24]

In order for the police to hold suspect after arrest, the complaint must be submitted to the magistrate judge.[25] The complaint is a written statement of the essential facts constituting the offense charged. With some exceptions, the complaint must be made under oath before a magistrate

17 CHEMERINSKY, E. & LEVENSON, L. L., (2013), Criminal Procedure: Investigation, Casebook Series, Second Edition, Aspen, p. 6.
18 Id., 6.
19 Id., 6.
20 Dunaway v. New York, 442 U.S. 200, (1979).
21 Payton v. New York, 445 U.S. 573, (1980); for further discussion, see: DRESSLER & MICHAELS, Investigation, 148.
22 Id.,149.
23 Id.,151 (explaining *United States v. Santana,* 427 U.S. 38 (1976), and the hot pursuit doctrine).
24 Id., 152- 153; For other exceptions, see id. 148.
25 18 U.S.C.A., FRCRP Rule 4(a).

judge[26] authorized by related laws.[27] The complaint must include the facts showing there is a probable cause to believe that an offense has been committed.[28]

3. First Appearance and Arraignment

According to the Federal Rules of Criminal Procedure (FRCRP) Rule 5 (a), defendant against whom a complaint has been issued, and therefore been arrested must be brought before the magistrate judge without unnecessary delay.[29] In *County of Riverside v. McLaughin* case, the Supreme Court held that this first appearance must take place within 48 hours after the defendant's arrest.[30] Under some jurisdictions, this stage is also called "initial arraignment" or "preliminary arraignment."[31]

During this first appearance, the defendant is reminded to seek bail and of his right to have a counsel.[32] After the suspect is arrested by the officers and brought before the court, a judge will decide the suspect's initial bail, which is a specified amount of cash that allows the defendant to be released from jail after the arrest. If the defendant appears on time for the court dates, the court refunds the bail to the defendant, but if the defendant does not appear, then the bail is kept by the court and an arrest warrant is issued.

The Eighth Amendment to the U.S. Constitution prohibits the courts to put "excessive bail"on the defendants. The Supreme Court, in *Stack v. Boyle* case, held that the judge must weight the freedom on "adequate assurance" that the accused will stand trial and submit to sentence if found guilty."[33]

4. Preliminary Hearing

Even though the U.S. Constitution does not require a preliminary hearing, most jurisdictions including the federal jurisdiction provides a preliminary hearing.[34]

26 A United States magistrate judge is a judicial officer of a federal district court. Their primary responsibility is to make decisions over the judicial issues delegated by federal district court judges. For more information, see **"The Election, Appointment, and Reappointment of United States Magistrate Judges"**, Judges Information Series No. 2, Administrative Office of the United States Courts, April 2009.
27 18 U.S.C.A., FRCRP Rule 3.
28 18 U.S.C.A., FRCRP Rule 4(a).
29 18 U.S.C.A., FRCRP Rule 5(a). Rule 5(c) includes exceptional circumstances in which the defendants need not to be brought before the judge.
30 500 U.S. 44, (1991).
31 CHEMERINSKY & LEVENSON, 7.
32 Id.7
33 342 U.S. 1, (1951).
34 CHEMERINSKY & LEVENSON, 8.

After the first appearance, the magistrate judge must schedule a preliminary hearing[35] in order to determine whether there is a "probable cause" to believe that the defendant has committed the crime.[36] The magistrate judge must hold the preliminary hearing within a reasonable time, but no later than 14 days after the initial appearance if the defendant is in custody and no later than 21 days if not in custody.[37] Even though the judge finds no "probable cause" to proceed and dismiss the charges, this does not preclude the grand jury proceeding and bar the grand jury from returning an indictment.[38]

During a preliminary hearing, both sides are given to show their evidence and debate over the charges against the defendant.

5. Grand Jury Proceedings

The Fifth Amendment to the U.S. Constitution says that a person suspected of a federal crime cannot be tried until a grand jury has determined that there is enough reason to charge the person. The U.S. Supreme Court decided that this grand jury requirement is not an incorporated right, and therefore, is not mandatory for the States.[39] The grand jury must compose of 16 to 23 jurors.[40] While the grand jury in session, the defendant is not allowed to have an attorney to defend him.[41] In a grand jury proceeding, the prosecutor submits the evidence to the grand jury and tries to pursue the jurors to proceed.[42] The grand jury may indict the defendant as long as at least 12 jurors agree.[43] If the grand jury finds that there is sufficient evidence, the jury issues an "indictment," a statement charging the defendant with the offenses and the related facts.[44]

When an indictment is issued, it must be submitted to the general trial court, and this indictment shall be used as accusatory document instead of the complaint.[45]

6. Arraignment on Indictment

When the indictment is filed, the defendant will appear for the

35 18 U.S.C.A., FRCRP Rule 6(a).
36 18 U.S.C.A., FRCRP Rule 6(e),(f).
37 18 U.S.C.A., FRCRP Rule 6(c).
38 Jaben v. United States, 381 U.S. 214, 220 (1965).
39 Beck v. Washington, 369 U.S. 541, 545 (1962) (discussing Hurtado v. California, 110 U.S. 516 (1884).
40 34 18 U.S.C.A., FRCRP Rule 7(c).
41 18 U.S.C.A., FRCRP Rule 7(d).
42 DRESSLER & MICHAELS, Investigation, 9.
43 18 U.S.C.A., FRCRP Rule 7(f).
44 DRESSLER & MICHAELS, Investigation, 9.
45 LAFAVE, W. R., ISRAEL, J., KING, N., KERR, O. (2009), Criminal Procedure, Hornbook Series, 5th Edition, West, p. 14.,

arraignment before the general trial court. At the arraignment, the defendant is asked to enter a plea of guilty or not guilty,[46] is advised of the accusations against him, and recalled to have a counsel.[47] Then, the court must assign a trial date.[48] The trial date must be consistent with the standards of "right to a speedy trial" provision of the U.S. Constitution.[49]

7. Pre-Trial Motions

18 U.S.C.A., FRCRP Rule 12 deals with the pre-trial motions. The Rule 12(b)(2) provides the motions that may be raised before trial whereas the Rule 12(b)(3) includes the objections which have to be raised before trial. Under the Rule 12(b)(2), any defense, objection, or request that the court can determine without a trial regarding the prosecution and attacks might be raised during the pre-trial motions. In general, the defense will try to (1) suppress evidence illegally obtained by the police or prosecutor; (2) change venue of the prosecution;[50] (3) seek dismissal for under the speedy trial clause or other provisions requires dismissal for other problems with the charges.[51]

8. Discovery

During the pre-trial discovery process, the prosecution and the defendant must exchange and release the evidence they have to each other.[52] Discovery process aims both to speed up the trial and also to facilitate the parties to reach an agreement through a negotiation.[53]

9. Plea Bargaining

In the U.S. even in the most serious crimes such as homicide plea bargaining take place with regard to any crime. Plea bargaining is possible to begin when the defendant has been indicted or charged.

When the defendant pleas guilty, the court must recall his rights and the consequences of the plea of guilty.[54] After the court accepts the plea of guilty, the parties participate in a discussion in which they try to agree on a particular sentence or sentence range.[55] Once they reach an agreement,

46 18 U.S.C.A., FRCRP Rule 11(a).
47 CHEMERINSKY & LEVENSON, 9.
48 Id., 9.
49 "In all criminal prosecutions, the accused shall enjoy the right to a speedy … trial…" U.S. Const. Amend. VI.
50 U.S. F.R.C.P. Rule 18, 21(a).
51 DRESSLER & MICHAELS, Investigation, 10.
52 LAFAVE, ISRAEL, KING & KERR, 15.
53 Id. , 15
54 18 U.S.C.A., FRCRP Rule 11(b) (1).
55 18 U.S.C.A., FRCRP Rule 11(c)(1).

they have to disclose the agreement in an open court.[56] However, the court has the absolute authority whether to accept the plea agreement or not.[57] The judge's responsibility before accepting the agreement is that to ensure that the defendant understands the consequences of the plea of guilty.

Plea must be made knowingly, intelligently, and voluntarily by the defendant. Defendant is supposet to understand what he is doing and is not being coerced in any way. In federal court, the judge preemptively must determine that (1) the defendant is competent on plea bargaining; (2) he also understands the nature and elements of the charge or charges against him, the penalties he faces, and the consequences of his plea. And then the judge determines whether the defendant understands that, by pleading guilty. Finally, the judge must be satisfied that there is a factual basis for the plea.[58]

"U.S. Supreme Court has upheld plea bargaining as an appropriate method of resolving criminal cases, describing it as an essential component of the administration of justice".[59] "In both the federal and state systems, some 90% of cases are resolved by the defendant pleading guilty rather than by going to trial, and the vast majority of these pleas are attained through plea bargaining". [60]

B. TRIAL and APPEAL PROCESS

1. Trial

After all these preliminary stages explained above, if the defendant does not plea guilty and if the court does not dismiss the case for any reason, the defendant stands trial.[61] The Sixth Amendment provides a right to trial by jury for petty cases.

The Act of the Federal Rules of Criminal Procedure (F.R.C.R.P.) outlines the procedure for conducting federal criminal trials. Regardless of jury trial or judge trial, defendants have many important rights related to trial such as right to counsel, and the right to not testify against oneself.[62]

The Sixth Amendment also provides that a criminal defendant other than petty cases has a right to a trial by an impartial jury. According the

56 18 U.S.C.A., FRCRP Rule 11(c)(2).
57 18 U.S.C.A., FRCRP Rule 11(c)(3),(4),(5).
58 MESSITTE, Peter J. "Plaea Bargaining in Various Criminal Justice Systems" http://www.law.ufl.edu/_pdf/academics/centers/cgr/11th_conference/Peter_Messitte_Plea_Bargaining.pdf
59 Bordenkircher v. Hayes, 434 U.S. 357 (1978); Santobello v. New York, 404 U.S. 257 (1971).
60 MESSITTE, Peter J. "Plaea Bargaining in Various Crimiinal Justice Systems" http://www.law.ufl.edu/_pdf/academics/centers/cgr/11th_conference/Peter_Messitte_Plea_Bargaining.pdf
61 DRESSLER & MICHAELS, 11.
62 Id.11

U.S. Supreme Court, the right to a jury is one of the fundamental rights of the defendants.[63]

The right to a jury does not apply to defendants in "petty" misdemeanour cases in which the potential jail sentence is six months or less.[64]

The Sixth Amendment to the U.S. Constitution guarantees criminal defendants the right to a speedy trial. Consequently, prosecutors cannot wait an inordinate amount of time before filing charges or proceeding with the prosecution after filing charges. To create more precise rules for ensuring a speedy trial, Congress passed the Federal Speedy Trial Act, which requires certain days of the prosecutor filing the indictment.[65]

Unless provided otherwise, the jury has 12 jurors.[66] The jury must return its verdict to the judge in an open court and this verdict must be unanimous.[67] If the jury cannot reach a decision, it constitutes a hung jury[68] and the court must declare a mistrial under the Rule 31 (b)(3).

The defendant may waive this right in writing.[69] If the defendant waives his right to a jury trial and the government consents,[70] the court must find the defendant guilty or not guilty[71] once the court approves the waives.[72]

In criminal cases, in order for the defendant to be found guilty, the prosecutor has to submit evidence proving that the defendant's guilt beyond a reasonable doubt.[73]

2. Sentencing

If the defendant is found guilty either by a judge or a jury, then, the judge will determine the sentence type and period ordinarily at a separate sentencing hearing.[74] Sentencing policies differ among the jurisdictions. For example, in some jurisdictions, the judge has a great discretion whereas in others, including the federal jurisdiction, the judge's discretion is constrained in accordance with sentencing guidelines or mandatory sentences by the law.

63 Schriro v. Summerlin, 542 U.S. 348, 358 (2004).
64 Blanton v. City of North Las Vegas, 489 U.S. 538 (1989).
65 18 U.S.C.A. § 3161.
66 18 U.S.C.A., FRCRP Rule 12(b)(1); For the exceptions, See Rule 12 (b)(2) and (3).
67 18 U.S.C.A., FRCRP Rule 31(a).
68 CHEMERINSKY & LEVENSON, 11.
69 18 U.S.C.A., FRCRP Rule 23(a)(1).
70 18 U.S.C.A., FRCRP Rule 23(a)(2).
71 18 U.S.C.A., FRCRP Rule 23(c).
72 18 U.S.C.A., FRCRP Rule 23(a)(3).
73 http://www.law.cornell.edu/wex/criminal_procedure (visited December 19, 2014).
74 CHEMERINSKY & LEVENSON, 11.

3. Appeals

"Early rulings by American state courts uniformly denied state governments the right to appeal aqquittals of criminal defendants. The US Supreme Court adopted this position in 1892, when it ruled that the federal government had no right to appeal an aqquittal".[75]

a. Direct appeals

After defendants have been convicted and sentenced at the trial court, they have the right to appeal their convictions and sentences to an appellate court unless they waived their right as a part of plea agreement.[76] Even though the right to appeal is not deemed as a constitutional right,[77] as long as the defendants are granted with that right by the jurisdictions, certain and fundamental constitutional protections such as the right to counsel apply.[78]

If the appellate court finds a structural error in the trial, the case must be reversed.[79] Some errors such as: (1) a biased judge conducted the trial; (2) violation of fundamental rights such as right to a public trial or right to counsel; (3) insufficient jury instructions.[80]

On the other hand, when the non-constitutional deficiencies occurred during the trial is found non-structural and harmless to the verdict, these errors do not require a reversal.[81] However, if the error is small but there is a strong belief that error may effect the verdict, the case must be reversed.[82]

b. Executive appeals

Article 2(2)(1) of the U.S. Constitution gives the President power to grant reprieves and pardons for some offenses against the United States. Similar to the federal law, all state jurisdictions give a right to criminal defendants to seek pardon or clemency from executive authority.[83]

c. Habeas corpus

The other type of appeal is called habeas corpus appeal or collateral

75 SCHEB, John M. Criminal Procedure, Sixth Edition, p, 285
76 NEWTON, B. E. (2011), Practical Criminal Procedure: A Constittutional Manual, Second Edition, NITA, p. 309.
77 Id., 311; Also McKane v. Duston, 153 U.S. 684, 687-688 (1894)
78 18 U.S.C.A 3731.
79 WEAVER, R. L., ABRAMSON, L.W., BURKOFF J. M. & HANCOCK, C., (2012), Principles of Criminal Procedure, Fourth Edition, West, p. 456.
80 Id., 457.
81 Id., 456.
82 Id.,456.
83 Id.,458.

appeal.[84] Article I of the U. S. Constitution states: "[T]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the Public Safety may require it." In most jurisdictions, in order to appeal under this Clause, a criminal defendant must be in custody at the time that the petition is filed.[85] Unlike the direct appeal, through "Habeas Corpus" action, limited and certain type of constitutional violations such as ineffective assistance of counsel, prosecutorial and police misconduct claims may be raised by the defendants.[86]

d.Writ of certiorary

The word of certiorary is a Latin term and the word means "to be informed of. A writ of certiorary issued by a superior to an inferior court in order that the court issuing the writ may inspect the procedings and determine whether there have been any irregularities. "A writ of certiorary (in Latin, "to make more certain") is essentially an order from the Supreme Court to a lower court requesting that the official record of a case be sent to the justices for their further review".[87] "A writ of certiorary is most commonly used to refer to the Supreme Court of the United States, which uses the writ of certiorarias a discretionary device to choose the case it wishes to hear".[88]

A litigant who has lost in a lower court ask the Supreme Court for the issuance of this writ by submitting a petition. Before the court will issue the writ a couple specific standarts must be met. Some example of these standarts include whether the case involves an important federal question, whether there have been conflicting decisions issued by the lower courts across the circuit, and whether a federal law has been declared unconstitutional. [89]

C. EVIDENCE

Substantive due process requires police to make criminal defendants aware of their rights prior to the defendant making any statements if the government intends to use those statements as evidence against the defendant. For example, law enforcement must ensure that the defendant understands the right to remain silent and the right to have an attorney present, as the Fifth and The Sixth Amendments respectively provide.

84 NEWTON, 329.
85 Maleng v. Cook, 490 U.S. 489 (1989).
86 NEWTON, 333.
87 SALOKAR, R. M., (1994), Solicitor General, The Politics of Law, Temple University Press p, 23
88 WRIGHT, S,Jr., (2008), You Are Being Betrayed By The US Government, Bloomington-Indiana, p 129
89 SALOKAR, R.M., (1994), Solicitor General, The Politics of Law, Temple University Press,p, 23

The defendant must knowingly, intelligently, and voluntarily waive those rights in order for the government to use any statements as evidence against the defendant.[90]

"In a criminal trial the defendant is presumed to be innocent[91] and it is for the prosecution to prove the quilt. The burden of proof never shifts from the prosecution to the defendant. Both the burden of production and the burden of persuasion rest on the prosecution. Every essential element of the crime charged must be proved by the government beyond reasonable doubt in order to convict and punish a defendant for the crime charged".[92] [8]

1. Search and Seizure

Fourth Amendment to the United States Constitution reads:

"The right of the people to be 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."

Law enforcement officers must abide by the confines of the The Fourth Amendment, which prohibits the government from performing unreasonable searches and seizures. Courts ordinarily suppress evidence obtained during an unreasonable search or seizure and offered against the accused.[93]

In order to avoid illegally searching or seizing the property of a suspect, law enforcement personnel typically obtain search warrants. To obtain a search warrant, law enforcement officers must show probable cause, must support the showing by oath or affirmation, and must describe in particularity the place they will search and the items they will seize. A judge can find probable cause only be examining the totality of the circumstances. Exceptions to the warrant requirement exist, however. These exceptions are searches around the border; a search following a lawful arrest; a "stop-and-frisk" arrest; where the seized items are visible apparently; car searches; where the private individual makes the search; and under exigent circumstances, where the officer has probable cause for

90 Miranda v. Arizona, 384 U.S. 436 (1966).

91 Taylor v. Kentucky, 436 U.S. 478 (1978).

92 GARDNER, T & ANDERSON, T., (2012), Criminal Evidence: Principles and Cases, 8th Edition, Published by Cengage Learning, p, 78

93 Mapp v. Ohio, 367 U.S. 643 (1961).

a search to find a crime or evidence relating to a crime.[94]

2. Exclusionary Rule

The exclusionary rule deals with the unconstitutional behaviors of the police or other law enforcement officers while they are getting evidence against the defendant. Basically, the rule says that no unlawful evidence can be used at the trial against the defendant.[95] Under the federal jurisdictions, this rule was established in 1914 in *Weeks v. United States* case.[96] According to the Supreme Court, without the exclusionary rule, the constitutional protection would have no meaning.[97]

The exclusionary rule applies when the law enforcement officers intentionally or recklessly violated the legal limit or when the government's policies systematically violates the constitutional limits whereas this rule does not apply to violations occurred in a good faith or negligent manners.[98]

The Supreme Court, in *Rakas v. Illıonis, 439 U.S. 128 (1978)*, held that only the persons whose Fourth Amendment rights has been violated have right to raise the exclusionary rule.[99] However, the Supreme Court has accepted some exceptions to the exclusionary rule. For example; if the illegal evidence has obtained through an independent source,[100] or through an inevitable discovery,[101] or if there is not a sufficent casual connection between the unlawfully obtained evidence and the actions of the police.[102]

3. The Privilege Against Self- Incrimination

The Fifth Amendment to the United States Constitution states that "[n]o person… shall be compelled in any criminal case to be a witness against himself…." Even though this privilege applies in both civil and criminal proceedings, the most significant problems occur during the police interrogation proceedings in criminal cases.[103]

There are three basic elements of this privilege: Only persons may invoke the privilege against self-incrimination. The Supreme Court stated

94 CHEMERINSKY & LEVENSON, 139-140.
95 DRESSLER & MICHAELS, Investigation, 347.
96 232 U.S. 383 (1914).
97 Silverthorne Lumber Co. V. United States, 251 U.S. 385, 392 (1920)
98 CHEMERINSKY & LEVENSON, 387-88 (explaining the Herring v. United States, U.S. 135 (2009)).
99 Id., 402.
100 Murray v. United States, 487 U.S. 533 (1988).
101 Nix v. Williams, 476 U.S. 431 (1984).
102 CHEMERINSKY & LEVENSON, 430; Also see Brown v. Illıonis, 422 U.S. 590 (1975).
103 DRESSLER & MICHAELS, Investigation, 421.

that, in *Hale v. Henkel* case, entities and such corporations may not resort this privilege.[104] The privilege may only be invoked when what is sought is testimonial rather than physical evidence, and, therefore, this privilege does not preclude the defendant from submitting physical evidence.[105] The privilege against self-incrimination protects persons from being compelled to testify against himself. If there is no compulsion during the testimony, even though it is incriminating, the privilege cannot be invoked.[106]

CONCLUSION

The world would be a cruel place to live in if there was no justice and laws that embody justice. Governments that entitled unlimited capacity, police states, uncontrolled authorities that endowed with unlimited power, criminal organizations would take place very cruelly if there were no justice. Therefore, justice plays an imperative role in human life. Criminal law and criminal procedural law have similar importance in order to reach justice in any society.

In general, we can argue that criminal law and criminal procedural law are two key factors to analyse perception of justice in America, and crime is lower compare to similar European Countries. In the US, the criminal procedure is composed of the pre-trial, trial and appeal processes. Each step has its own procedure. The procedure is as important as substantive law. It is clearly seen that the judge rejects an indictment because of lack of or/and violation of procedural law even if they though there were a crime committed. Main source of criminal procedure law is the Constitution. The Supreme Court has been interpreting the Constitution, and creating law on this issue. The Congress is also main source to enact legislations.

The rules of procedure are important not only for judges and prosecutors but the police as well. It is very vell the fact that police plays an essential role in criminal system. It is their duty to maintain law and order in the society. Therefore it is also important for them to follow criminal procedure law. Criminal investigation, indictment and judicial decision have to follow procedural rules.

Although the U.S has accusatorial common law tradition whereas our system has a structure tending toward the inquisitorial tradition as a civil law country, there are substantial amount of similarities between two judicial systems. We can say that the gap between common law and civil law has been getting closer day by day.

104 201 U.S. 43 (1906).
105 CHEMERINSKY & LEVENSON, 633 (discussing *Schmerber v. California* 384 U.S 757 (1966)).
106 Id., 637.

US criminal law is accusatorial. In this concept, the government focuses on proving its claim that accused criminal suspect had committed to the accused crime based on analogy of beyond reasonable doubt. Therefore law enforcement needs to consider very narrowly and carefully whether a crime had been committed before indicting suspects. Because of this precise approach, the rate of conviction is very high roughly %97. A criminal investigation usually starts with personal observations of law enforcement or information given by a witness, thinks that a crime has been committed. The police have to prove using evidence that the suspect is a criminal. The investigation may include process such as taking the suspect into custody and asking questing concerning the alleged crime, initiating important searches, and seizures. Law enforcement fulfills its duty complying with the Constitution, which has prohibited illegal investigation. However there are situation where the police conduct illegal investigation that make the suspect a criminal illegally. The Fourth Amendment prohibits unreasonable searches and seizures. Every arrest warrant must be reasonable based on analogy of "probable cause" clause.

Plea Bargaining is one of the different processes we do not have in our criminal law. This is the last process of the pre-trial procedure in US Criminal Law. It is the step where the judges make the final decision that determines whether the case will continue to the next level or whether the court will dismiss the session. At this point, the judges have information they need to prove the suspect plea situation. Therefore, at this stage the judge can decide the case and charges according to the information they have gathered. However, the 14th Amendment has given the defendant the right to decline the judgment the court might accuse them. It is therefore, at this point where the defendant's plea guilty or not guilty. When the defendant pleads guilty, the judges will dismiss the case. However, before dismissing the case the judges must make the defendant aware of the charges they will serve for the crimes they committed. It is important for the judges to pass the charges and sentence information. Defendants are willing to plea bargain in most cases, where the prosecutors have strong evidence to prove their cases. It is also very cost beneficial for the government to encourage prosecutor offices to apply it.

The sixth amendment also provides the defendant with the right to a speedy trial. Speedy trail involves case where the court speeds up the case. The speedy trial is not only important from the defendant but also for the court as it provides an opportunity to end the trial process the views of the defendant. Therefore it is seen very effective and efficient mechanism facilitating judicial process. Plea Bargaining and speedy trial have been

using very effectively in order to reduce caseload in the judiciary. It makes judiciary very fast and effective.

Another important right the constitution passes to the defendant is the right to neutral trial by the jury. In this process, the defendant will try to convince the jury that there are not guilty as the prosecutor claims. These different process such as plea bargaining, speedy trial are one of the very good example for us to analyse whether they are fit our judicial system.

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