

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 8: The New Deal/Great Society Era—Criminal Justice

---

Alan Dershowitz, **The Rules of the Justice Game** (1982)<sup>1</sup>

---

*Alan Dershowitz is a professor at Harvard Law School, a leading criminal defense attorney, and a prominent media figure. His book, The Best Defense, chronicles the differences between the constitutional decisions handed down by the Warren Court that he taught in the classroom and his experiences in actual practice. Do such decisions as Mapp v. Ohio (1961) (exclusionary rule) or Miranda v. Arizona (1965) (Miranda warnings) have any influence on police practices if Dershowitz is right? What other constitutional safeguards might be necessary to secure basic constitutional rights?*

. . . I have discerned a series of “rules” that seem—in practice—to govern the justice game in America today. Most of the participants in the criminal justice system understand them. Although these rules never appear in print, they seem to control the realities of the process. Like all rules, they are necessarily stated in oversimplified terms. But they tell an important part of how the system operates in practice. Here are some of the key rules of the justice game:

Rule I: Almost all criminal defendants are, in fact, guilty.

Rule II: All criminal defense lawyers, prosecutors and judges understand and believe Rule I.

Rule III: It is easier to convict guilty defendants by violating the Constitution than by complying with it, and in some cases it is impossible to convict guilty defendants without violating the Constitution.

Rule IV: Almost all police lie about whether they violated the Constitution in order to convict guilty defendants.

Rule V: All prosecutors, judges, and defense attorneys are aware of Rule IV.

Rule VI: Many prosecutors implicitly encourage police to lie about whether they violated the Constitution in order to convict guilty defendants.

Rule VII: All judges are aware of Rule VI.

Rule VIII: Most trial judges pretend to believe police officers who they know are lying.

Rule IX: All appellate judges are aware of Rule VIII, yet many pretend to believe the trial judges who pretend to believe the lying police officers.

---

<sup>1</sup> Alan M. Dershowitz, *The Best Defense* (New York: Random House, 1982), xxi–xxii. We gratefully acknowledge Random House for permission to reprint.

Rule X: Most judges disbelieve defendants about whether their constitutional rights have been violated, even if they are telling the truth.

Rule XI: Most judges and prosecutors would not knowingly convict a defendant who they believe to be innocent of the crime charged (or a closely related crime).

Rule XII: Rule XI does not apply to members of organized crime, drug dealers, career criminals, or potential informers.

Rule XIII: Nobody really wants justice.



OXFORD  
UNIVERSITY PRESS