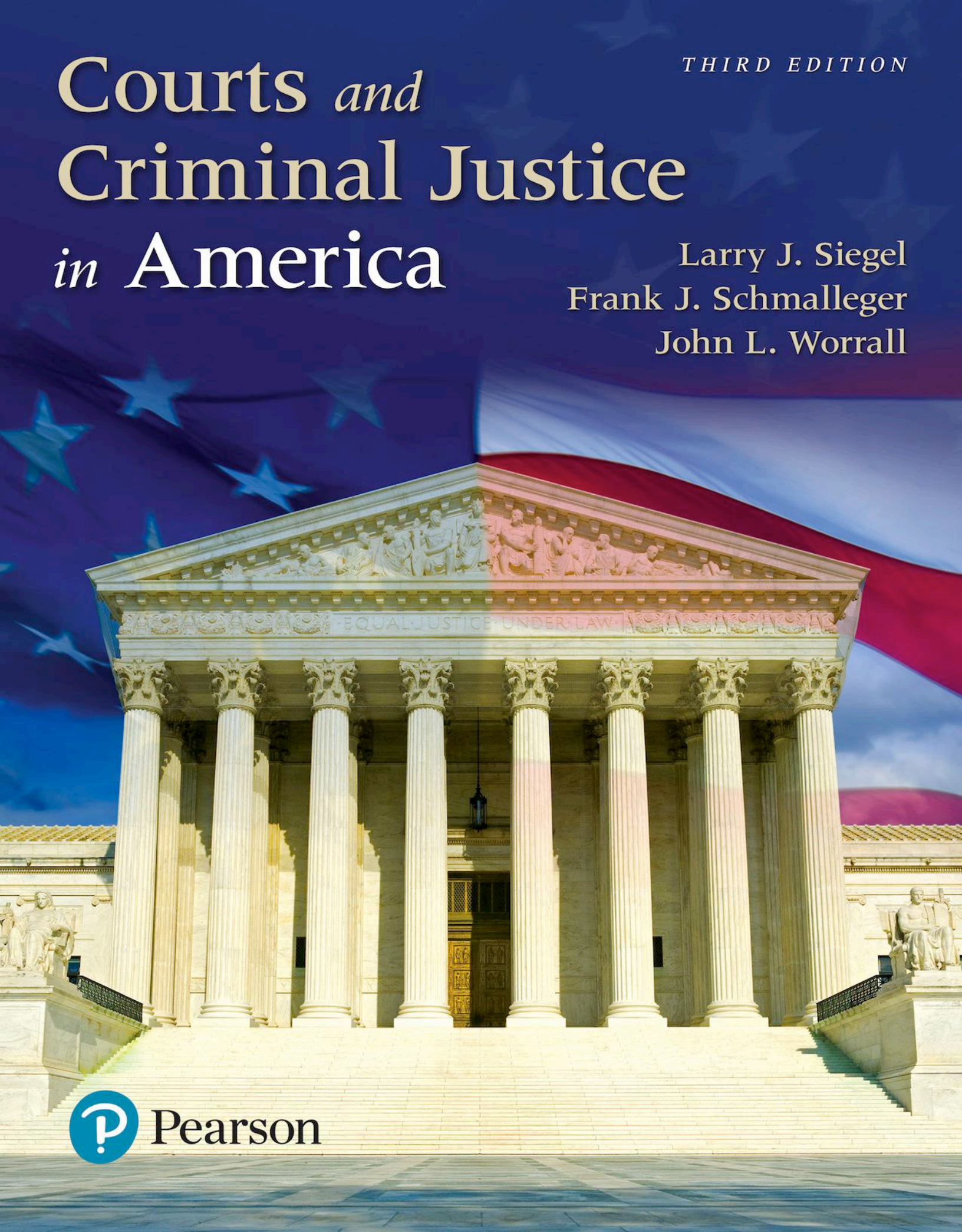
THIRD EDITION

Courts *and* Criminal Justice *in* America

Larry J. Siegel
Frank J. Schmalleger
John L. Worrall



Pearson

Courts and Criminal Justice in America

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THE CRIMINAL COURTS SYSTEM

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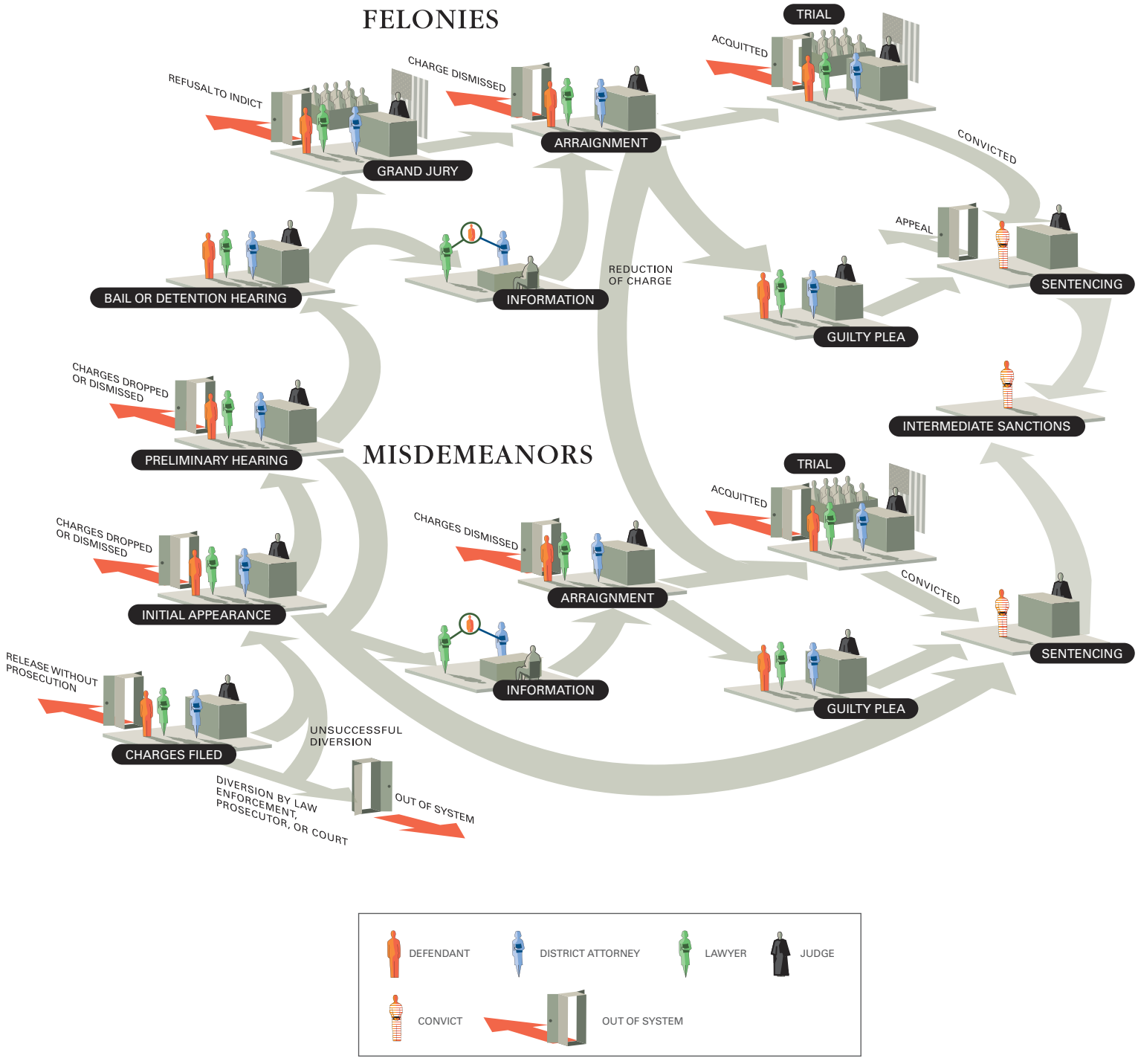

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Brief Contents

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PART V CURRENT ISSUES AND THE FUTURE OF COURTS

Preface

New to the Third Edition

The third edition has been extensively revised. We have made a number of changes throughout the text:

Chapter 1. A new chapter opening story features the surge in court cases involving police shootings and excessive force, particularly in the wake of the 2014 Michael Brown incident in Ferguson, Missouri. A new Courts in the News box features the Texas lawsuit against the federal government that attempted to block the resettlement in the Lone Star State of 6 Syrian refugees following the Paris terror attacks. The Jodi Arias Courts in the News box was updated with the latest sentencing developments. Two new "What Will You Do?" exercises appear at the end of the chapter.

Chapter 2. A new chapter opening story features the New York case of the so-called "cannibal cop." The case highlights the role of appellate review in the criminal process. A new "What Will You Do?" case at the end of the chapter features the lawsuit Oklahoma and Nebraska filed against Colorado, claiming that Colorado's marijuana legalization scheme is unconstitutional (i.e., is preempted by federal law) and causes undue harm on its neighboring states.

Chapter 3. Learning objectives were revised and the chapter was reformatted. The latest federal court caseload data are included. A "courts in the news" box features the latest developments in federal drug sentencing, including the release of some 6,000 inmates in late 2015. A new "What Will You Do?" feature examines the Supreme Court's choice not to decide on the constitutionality of a Chicago suburb's assault weapons ban.

Chapter 4. The chapter has been updated with the latest data on state court workloads. The trends section near the end of the chapter was updated with the latest developments in state courts. A new "What Will You Do?" scenario at the end of the chapter explores use of the National Center for State Courts' "CourTools" performance measures.

Chapter 5. A new chapter opening story discusses the role of implicit bias in juvenile justice decision-making. The latest juvenile court statistics (caseloads, case characteristics) are included, as are recent developments in juvenile justice. "Courts in the News" boxes from the previous edition were kept and updated. Learning objectives were revised and realigned with new chapter headings. A new "What Will You Do?" exercise features the cases of eight of the youngest murderers in history. Questions revolve around whether waiver was or should have been used.

Chapter 6. Learning objectives were revised. A new Courts in the News box features the Newark (New Jersey) Youth Court. An updated exhibit features the King County (Washington) Regional Mental Health Court. A new "What Will You Do?" exercise at the end of the chapter discusses constitutional issues relating to forced Alcoholics Anonymous participation in a drug court context.

Chapter 7. New Chapter opening photo and chapter opening story are included. The table showing judicial salaries has been updated. Data and statistics have been updated throughout.

Chapter 8. A new photo opens the chapter. Data and statistics have been updated throughout. A new "What Will You Do" scenario rounds out the chapter.

Chapter 9. Felony offense statistics have been updated.

Chapter 10. A new chapter opening story and associated photograph open the chapter. Statistics and data have been updated throughout the chapter. An added "What Will You Do" scenario rounds out the chapter.

Chapter 11. A new chapter opening story on a Bitcoin exchange scam. A Courts in the News tracks the arrest of a rapist. Postarrest detention is covered in depth. A Courts in the News feature covers the interrogation of the Boston Marathon Bomber.

Chapter 12 begins with the case of Alexander Fishenko, who pled guilty to acting as an agent of the Russian government within the United States. A new Courts in the News covers Stephen Parks and his Coal Tax Scheme to sell nonexistent refined coal tax credits through a broker to investors. Another new Courts in the News covers Linda Weston and the Basement of Horrors Case.

Chapter 13. A new Courts in the News covers the trial of Don Blankenship, former Chief Executive Officer of Massey Energy who guilty on a federal charge of conspiracy to willfully violate mine health and safety standards. There is a new section on Jury Nullification Today.

Chapter 14 begins with an opening vignette on Thomas Sanders, 57, who was sentenced to death for the murder of Lexis Roberts. A new Courts in the News reviews Life Sentences for Juveniles. A new section on Race and Sentencing looks at this controversial issue. More than 60% of the people in prison are now racial and ethnic minorities. Does this mean that sentencing is biased?

Chapter 15 begins with the story of East Haven, Ct., Police Officer Dennis Spaulding, who was sentenced to 5 years of imprisonment for violating the civil rights of members of the East Haven community. The case of *Hill* v. *US* and *Dorsey* v. *US* is now included. A Courts in the News looks at the controversial topic of wrongful

convictions while another Courts in the News entitled reduce wrongful convictions? Modernize the Trial reviews an interesting solution to this pressing problem.

Chapter 16. A new chapter opening story begins the chapter. New information on human trafficking has been added. An added "What Will You Do" scenario rounds out the chapter.

The Genesis of This Book

In 2003, a woman was raped by an armed assailant who broke into her Salisbury, Maryland, home. Though she was not able to describe her attacker, the police did obtain a sample of the perpetrator's DNA. Six years later, in 2009, Alonzo King was arrested in Wicomico County, Maryland, and charged with first- and second-degree assault for menacing a group of people with a shotgun. As part of a routine booking procedure for this serious offense, a DNA sample was taken by applying a cotton swab or filter paper—known as a buccal swab—to the inside of King's mouth. The DNA was found to match the DNA taken six years earlier from the Salisbury rape victim. King was then tried and convicted for the rape. The key evidence used in gaining the rape conviction was the DNA taken at the time he was booked in 2009; this evidence is what linked him to the earlier rape. When the DNA sample was taken, the procedure conformed to the Maryland DNA Collection Act (1994). The act originally required all convicted sex offenders to submit DNA samples but has since undergone major expansion: In 1999, it was amended to include convicted offenders of violent crimes; in 2002, it began to include all felony convictions and some misdemeanor crimes; and as of January 1, 2009, the DNA law was expanded to include individuals arrested of crimes of violence and burglaries so that DNA samples could be matched with prior crimes, increasing the likelihood of offender identification.

After his conviction, King appealed, arguing that being required to give a DNA sample without a warrant being issued violated his Fourth Amendment right to be free from illegal searches and seizures. The Maryland Court of Appeals agreed, setting aside his conviction and finding unconstitutional the portions of the act authorizing DNA collection from felony arrestees.

On appeal, the U.S. Supreme Court reversed the Maryland court. It ruled in the case of *Maryland* v. *King* that when police officers make an arrest supported by probable cause and bring the suspect to the station to be detained in custody, taking and analyzing a cheek swab of the arrestee's DNA is like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment. They reasoned that DNA testing may significantly improve both the criminal justice system and police investigative practices by making it possible to determine whether a biological tissue matches a suspect with near certainty. They found it reasonable that Maryland's act authorizes law enforcement authorities to collect DNA samples from persons charged with violent crimes, including first-degree assault. They also noted that a sample may not be added to a database before an individual is arraigned, and it must be destroyed if he or she is not convicted. Nor did the Court find that collecting a DNA overly intrusive: Taking a swab is quick and painless, requires no surgical intrusion beneath the skin, and poses no threat to the arrestee's health or safety.

To some, the *King* case represents a breakthrough that will allow law enforcement agencies to use a relatively new technology to solve crimes and put dangerous criminals behind bars. To others, it creates a slippery slope with both legal and moral ramifications: It paves the way for the construction of a national database containing personal information on every citizen. Cases such as *King*, they warn, give the federal government unlimited power to monitor private citizens and keep track of their activities.

Regardless of which position you take, the *King* case illustrates the power of the courts to define the boundaries between legitimate and illegal behavior. If the Supreme Court had ruled for King, the prosecution would have been forbidden to use his DNA at trial, and he would never have been convicted; in essence, a rapist would have been set free. But because the Court ruled that taking King's DNA was a legitimate exercise of government power, not only does his conviction stand but the ruling also gives a green light to police officers to take DNA swabs of arrestees in all subsequent cases. *King* creates a precedent that will shape law enforcement activities and trial outcomes for years to come.

We have written *Courts and Criminal Justice in America* because of cases such as King that illustrate the tremendous power the court system has to regulate citizens' lives, to shape what is acceptable and what is forbidden, and to ensure that criminal justice policy balances both rights and liberties. It is therefore important for all students to understand the structure of the courts, how they operate, and how they use their power to control behavior ranging from rape to religious freedom and from the taking of a life to the celebration of Christmas.

Approach

We take a balanced, modern, and comprehensive approach in this book. It is balanced in the sense that we present all

sides of the most controversial issues facing courts today. We firmly believe that there are two sides to every story and that while there may be a convincing argument against a particular set of practices, it is also important to consider the opposing view. For example, the case of racial disparities is taken up in Chapter 15. Many researchers have found evidence of racial discrimination in criminal justice, but to accept such claims on their face leaves much unsaid. What is meant by discrimination? Depending on how it is defined, different conclusions can be reached. We do not take sides in this book; we simply present what is known about various issues confronting the courts and let the readers draw their own conclusions.

Our approach is modern in the sense that we cover a wide range of cutting-edge topics and novel practices. For example, we dedicate an entire chapter to so-called specialized courts, such as homeless courts. We situate them within the historical development of the court system and discuss strategies to solidify their place in the American judicial landscape well into the future. As another example, we also look at the problem of wrongful convictions and DNA-based exonerations, both of which have captured plenty of headlines in recent years. From the beginning of the book to the end, you will find a wide range of topics that stir controversy and enliven discussion as they relate to the courts.

Finally, ours is arguably the most comprehensive introduction to America's courts you will find. *Courts and Criminal Justice in America* covers not only the basics about courts and the personnel who bring them to life but also the context in which they operate and the complexities of human interaction found at every level. This book is also comprehensive in that it does not presuppose any knowledge about the courts or how they operate. We begin with a basic definition of courts and discuss why it is important to have government courts. Then we delve more deeply into the constant struggle for control over the courts that takes place, the many types of courts and the cases that they adjudicate, and the myriad persons and interests that compete for the courts' attention on a daily basis. Rest assured that no stone has been left unturned.

Goals

Our goal is for each reader of *Courts and Criminal Justice in America* to understand the following:

- The importance that courts have in modern society
- Pressures that courts face and the context in which they operate
- Various types of courts that range from the all-powerful U.S. Supreme Court to limited jurisdiction courts
- Professionals who are involved at all stages of the court process (including judges, prosecutors, and defense attorneys)
- The role of victims who participate in the court process
- The role of criminal defendants who are tried in the courts
- Rights that are enjoyed by accused persons (such as the rights to counsel and a jury trial)
- The court process that goes from arrest all the way through to conviction (whether by trial or plea bargaining), sentencing, and appeal
- Reasons that not every case or person is treated the same
- The role of technology that is used in the courts today
- Alternatives to trials that are available
- Difficult issues that courts are likely to face as time goes by

Topical Coverage

Courts and Criminal Justice in America is divided into five parts. Part 1 (Chapters 1 and 2) discusses the legal foundations of America's court system and the many different efforts to control the courts from the outside. Part 2 (Chapters 3–6) presents the main types of courts, beginning with federal and state courts and then moving to juvenile and specialized courts. Part 3 (Chapters 7–10) introduces the people involved in the court process. We begin with the members of the courtroom work group: judges, prosecutors, and defense attorneys. Then we discuss the roles and rights of defendants and victims. Part 4 (Chapters 11–14) takes a close look at the court process, starting with the arrest, the initial appearance, the bail decision, the charges, and the process of discovery; we also look at plea bargaining, guilty pleas, the jury, the trial, the sentencing process, the types of appeals, and even *habeas corpus*. Finally, Part 5 (Chapters 15 and 16) examines current issues and the future of U.S. courts. Topics covered include differential treatment, wrongful convictions, technology, alternatives to courts, and both emerging problems and pressing issues that courts will continue to face.

Pedagogical Features

Courts and Criminal Justice in America includes a number of special learning features that are designed to

enhance student comprehension of key concepts and issues in the study of American courts. "Courts in the News" features contain contemporary feature stories of interest to anyone studying the courts, along with thought-provoking questions that build on each story. One box, for example, discusses federal courts that offer digital audio recordings of their proceedings online; another reviews the 2008 U.S. Supreme Court case of *District of Columbia* v. *Heller* [WJ2], in which the right to individual gun ownership was upheld; a third covers the issues involved in paying for America's courts; and another examines alternative courts and their possible future.

A second important learning feature is the "Lasting Impact" features found throughout the text that highlight the continued significance of important court cases such as *Mapp* v. *Ohio*, *Gideon* v. *Wainright*, *Terry* v. *Ohio*, *Gregg* v. *Georgia*, *In re Gault*, *Payne* v. *Tennessee*, and *Daubert* v. *Merrell Dow Pharmaceuticals*.

The "What Will You Do?" features provide scenario-based activities that bring focus to issues such as Web-based conferencing in virtual courtrooms, the notion of precedent as it applies to police decision making, and the issue of victim advocacy.

A fourth feature, "Learning Objectives," is located at the beginning of each chapter. These questions are linked to bulleted summary items that refresh students' memory about the chapter's key points. "Review Questions" at the end of each chapter relate back to the "Learning Objectives" posed at the chapter's start.

Instructor Supplements

Instructor's Manual with Test Bank. Includes content outlines for classroom discussion, teaching suggestions, and answers to selected end-of-chapter questions from the text. This also contains a Word document version of the test bank.

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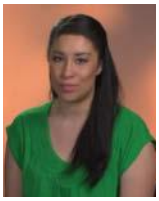

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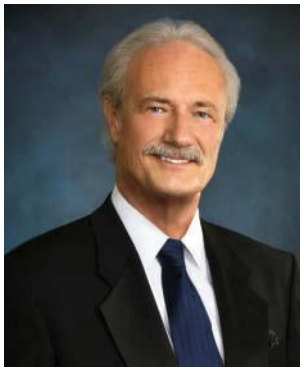
About the Authors

Larry J. Siegel was born in the Bronx and graduated from Christopher Columbus High School in 1964. After attending City College of New York in the 1960s, he pursued his interest in social forces and human behavior when, in 1968, he became a member of the first class of the newly created graduate program in criminal justice at the State University of New York at Albany. After earning his M.A. and Ph.D., Dr. Siegel began his teaching career at Northeastern University; he also has held teaching positions at the University of Nebraska, Omaha, and Saint Anselm College in New Hampshire. In 1988 he joined the faculty at the School of Criminology and Justice Studies at the University of Massachusetts, Lowell, where he now serves as a professor emeritus. Professor Siegel has published books on juvenile law, delinquency, criminology, and criminal procedure. The father of four, grandfather of three, Larry and his wife, Terry, reside in Naples, Florida, with their two cockapoos, Watson and Cody.



Frank Schmalleger is Distinguished Professor Emeritus at the University of North Carolina at Pembroke. He holds degrees from the University of Notre Dame and The Ohio State University, having earned both a master's (1970) and a doctorate (1974) in sociology (with a special emphasis in criminology) from The Ohio State University. From 1976 to 1994, Dr. Schmalleger taught criminology and criminal justice courses at the University of North Carolina at Pembroke; for the last 16 of those years, he chaired the university's Department of Sociology, Social Work, and Criminal Justice. The university named him Distinguished Professor in 1991.

Dr. Schmalleger has taught in the online graduate program of the New School for Social Research, helping to build the world's first electronic classrooms in support of distance learning through computer telecommunications. As an adjunct professor with Webster University in St. Louis, Missouri, he helped develop the university's graduate program in security administration and loss prevention and taught courses in that curriculum for more than a decade. An avid Web user and website builder, Professor Schmalleger is also the creator of a number of award-winning websites

Dr. Schmalleger is the author of numerous articles and more than 30 books, including the widely used *Criminal Justice Today* (Pearson, 2017), *Criminal Justice: A Brief Introduction* (Pearson, 2016), *Criminology Today* (Pearson, 2017), and *Criminal Law Today* (Prentice Hall, 2017).

Professor Schmalleger is the founding editor of the journal *Criminal Justice Studies.* He has also served as editor for the Prentice Hall series *Criminal Justice in the Twenty-First Century* and as imprint adviser for Greenwood Publishing Group's criminal justice reference series.

Dr. Schmalleger's philosophy of both teaching and writing can be summed up in these words: "In order to communicate knowledge, we must first catch, then hold, a person's interest—be it student, colleague, or policy maker. Our writing, our speaking, and our teaching must be relevant to the problems facing people today, and they must in some way help solve those problems." Follow the author's tweets @schmalleger.

John L. Worrall is a professor of criminology at the University of Texas at Dallas. A Seattle native, he received a B.A. (with a double major in psychology as well as law and justice) from Central Washington University in 1994. Both his M.A. (criminal justice) and Ph.D. (political science) were received from Washington State University, where he graduated in 1999. From 1999 to 2006, Professor Worrall was a member of the criminal justice faculty at California State University, San Bernardino. He moved to Texas in the fall of 2006.

Dr. Worrall has published articles and book chapters on a wide variety of topics ranging from legal issues in policing to community prosecution. He is also the author of several textbooks, including *Crime Control in America: What Works?* (3rd ed., Pearson, 2015) and *Criminal Procedure: From First Contact to Appeal* (5th ed., Pearson, 2015). He is also editor of the journal *Police Quarterly*.

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1 Legal Foundations

LEARNING OBJECTIVES

1. Explain the purpose and functions of courts and the dual court system.
2. Outline the history and development of law and the courts.
3. Summarize the guiding legal principles underlying the U.S. court system.
4. Explain the nature of disputes.

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Questions surrounding the legality of police shootings must sometimes be answered in court.

Introduction

Since the 2014 police shooting of an unarmed black teenager, Michael Brown, in Ferguson, Missouri, claims of police violence and excessive force are piling up in courts across the nation.[1] In White Bessemer, Alabama, police were sued for shooting a black man five times after responding to a noise complaint. In Sacramento, California, officers allegedly dragged a triplegic black man from his car to a police car, breaking his wrist. In Honolulu, police used Tasers in their efforts to apprehend a schizophrenic man and then shot him nine times, killing him. In Colorado, a man who tried to scare officers away with a child-size baseball bat was allegedly shot in the back. Then there was the infamous shooting of Laquan McDonald in Chicago, a video of which was released in 2015 and led to the resignation of the city's police superintendent (https://www.youtube.com/watch?v=Ow27I3yTFKc). The officer involved in that case was charged with first-degree murder. In yet another case, Philando Castile was shot in 2016 after reaching for his driver's license. He had informed a Minnesota police officer that he was licensed to carry a concealed weapon and was doing so. As of this writing, the officer had not been charged with an offense.

While these incidents may be construed as "police problems," they are also the courts' problems. Courts must decide whether lawsuits against police move forward and, if so, who prevails. Likewise, officers charged with criminal offenses face their days in court just like ordinary citizens. And because of the sensitive and high-profile nature of these cases, court proceedings take considerable time and can become a drain on courts' already limited resources. It is not uncommon for jury trials in these cases to drag out for weeks, if not months. Appeals and other legal challenges can delay closure for years, costing millions of dollars in the process.

Learning Objective 1

Explain the purpose and functions of courts and the dual court system.

Courts and Their Importance

The court represents the collective conscience of society, serving as an instrument for expressing the revulsion people feel for those who commit particularly heinous crimes. Because they are given the task of punishing wrongdoers, courts serve as an agency of social control, determining which behaviors may be acceptable and which deserve severe sanction. This role is not without ambiguity: What is fair? What is just? How can we determine who should be punished, for how long, and for what?

The courts are a critical component of American criminal justice because they determine what happens to people charged with violating the law. Courts are important beyond criminal justice, too. Disputes that arise between private parties, businesses, government officials, and the like are brought to court in order to ensure that they are heard in a neutral forum.

court

"[A]n agency or unit of the judicial branch of government, authorized or established by statute or constitution, and consisting of one or more judicial officers, which has the authority to decide upon cases, controversies in law, and disputed matters of fact brought before it."[i]

What Is a Court?

Despite the fact that courts predate other components of the justice system by thousands of years (police are a nineteenth-century creation, and corrections began in the eighteenth), coming up with a concise yet all-encompassing description of their structure and function is difficult. Even so, the U.S. Justice Department has defined a **court** as "an agency or unit of the judicial branch of government, authorized or established by statute or constitution, and consisting of one or more judicial officers, which has

the authority to decide upon cases, controversies in law, and disputed matters of fact brought before it."[2]

This definition emphasizes three distinct elements:

1. To be considered a court, it must have proper legal authority, as spelled out in constitutions or statutes.
2. Courts are generally found in the judicial as opposed to legislative and executive branches of government (there are some exceptions, as we will see in Chapter 3).
3. Courts are empowered to make decisions that are binding. The notion of "[deciding] upon cases, controversies in law, and disputed matters of fact" is known as **adjudication**, or "the process by which a court arrives at a decision regarding a case."[3]

adjudication
"[T]he process by which a court arrives at a decision regarding a case."[ii]

It is important to distinguish between civil and criminal courts, the latter being the primary focus of this book. Civil courts generally resolve disputes between private parties. Criminal courts deal with suspected law violators and thus serve as a mechanism by which society establishes and maintains social norms.

Courts in American Government

It makes sense to have courts be both authorized and limited by the statute. To do otherwise would put control over the courts in the hands of nongovernmental authorities. But why do we have government courts as opposed to private courts? This question is rarely asked, but its answer is important.

In prehistory, prior to the emergence of formal governments and during the time of tribal civilizations such as those of the Goths, Celts, and Franks, disputes were often resolved informally and privately. A person who felt that his or her privacy interests were compromised may have taken steps to confront the alleged violator and resolve the dispute with violence. Similarly, to the extent there was any need to preserve order, this was often accomplished informally.

This all changed during the rise of the Greek city-states and the Roman Empire. The shift moved law enforcement from what was essentially a private affair to a public one. As law enforcement and criminal justice moved in the public direction, formalized courts and other criminal justice institutions came into being.

We have now moved to a point in history where serious conflict is resolved with formal processes, whether that be court proceedings or a suitable alternative. Not everyone buys into the idea completely, but one of the hallmarks of modern society is a more civilized set of procedures for resolving matters of human conflict. The reason we have government courts, therefore, is to deal with conflict in a civilized manner.

Also, there have been changing conceptions throughout history about whom disputes and conflict ultimately affect. Thinking about crime specifically, there is a general consensus today that victims are not just individuals but the state as well. More than 80 years ago, in the case of *Mallery* v. *Lane*,[4] the presiding judge stated,

> The offenses are against the state. The victim of the offense is not a party to the prosecution, nor does he occupy any relation to it other than that of a witness, an interested witness [perhaps, but nonetheless,] only a witness. . . . It is not necessary for the injured party to make complaint nor is he required to give bond to prosecute. He is in no sense a relator. He cannot in any way control the prosecution and whether reluctant or not, he can be compelled like any other witness to appear and testify.[5]

dual court system
A judicial system comprising federal- and state-level judicial systems.

dual federalism
A system of government wherein the only powers of the federal government are those explicitly listed, with the rest being left to the states.

cooperative federalism
A system of government wherein some of the lines between federal and state power are blurred.

Dual Court System

Ours is a **dual court system** that separates federal and state courts. The dual court system is advantageous and desirable because it parallels federalism, a system of government where power is constitutionally divided between a central governing body (i.e., the federal government) and various constituent units (i.e., the states). Federalism requires that laws are made by the central governing authority and by the constituent units. In the United States, the federal government makes law, but federalism also gives the states power to make their own laws.

A quick glance at the U.S. Constitution reveals a system of **dual federalism**, where the only powers of the federal government are those explicitly listed, with the rest being left to the states. In reality, though, ours is more of a system of **cooperative federalism**, meaning that some of the lines between federal and state power are blurred. Article I, Section 8, of the U.S. Constitution gives the federal government the power to regulate interstate commerce, but this authority has been interpreted broadly such that the federal government can control much of what happens at the state level.

While a dual court system is desirable from a federalism standpoint, it also promotes complication and confusion. It would be neat and tidy if the federal criminal law were separate and distinct from state criminal law, but in reality both overlap. For example, certain criminal acts, such as those involving firearms, are violations of *both* federal and state criminal law. This leads to confusion over where it would be best to try offenders or whether they should be tried twice in the two different systems.

The dual court system is only part of the story. At each level, there is a distinct court hierarchy. States often have limited jurisdiction courts (such as traffic courts), trial courts, appellate courts, and supreme courts. At the federal level, there are trial courts, appellate courts, and the U.S. Supreme Court. Each trial court adjudicates different offenses. Appellate courts consider different matters depending on where they lie in the court hierarchy. Appeals from state courts can sometimes be heard in the federal courts. Higher-level courts can control the actions and decisions of lower courts but not the other way around. Despite the apparent complexity, each court has its place.

Functions of the Court System

With a definition of the courts in place and an understanding of the need for government courts, we can now think in more detail about the main functions of the courts. Four stand out: upholding the law, protecting individuals, resolving disputes, and reinforcing social norms.

1. *Upholding the law.* Not only are courts authorized by law, but they are called on to *uphold the law*. What is the law, and what is the legal basis for the courts? Throughout history, the concept of "law" has been fluid and changing. Early legal codes, the common law, modern statutes, constitutions, and the like have all built a legal foundation for the justice system (we will look at these in more detail shortly).

   Today, the criminal courts are tasked primarily with upholding criminal codes. Found at the federal and state levels, these codes identify actions that are not acceptable in contemporary society because they cause social harm. The police arrest people for violating them, prosecutors then decide which arrestees should be charged, but courts ultimately decide whether those charged with violations of the criminal law should be held to answer for their actions.

2. *Protecting individuals.* One of the hallmarks of our system of government is a concern with people's freedom and liberties. No less than the preamble to the U.S. Constitution makes this clear:

   We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the

> general Welfare, and *secure the Blessings of Liberty to ourselves and our Posterity*, do ordain and establish this Constitution for the United States of America.
>
> If individual liberties are to be preserved, then the government has to be kept in check. This is accomplished through constitutions, which spell out the rights that people enjoy and set limits on government authority. When it comes to the courts, people are also protected via other means. In the criminal justice context, the adversarial system ensures that *both sides* to a criminal case can tell their story. Also, important presumptions exist in our system of justice that ensure protection for everyone who comes before the courts.

3. *Resolving disputes.* Courts are agencies of dispute resolution. Disputes come in all varieties, but most fall into either civil or criminal categories. By way of preview, criminal disputes are those between the government and an individual accused of violating the law. The actions in question are usually those legislatures have declared harmful to society on the whole. Civil disputes, in contrast, tend to involve private interests, such as duties owed to one another.
4. *Reinforcing social norms.* Courts help reinforce social norms. Social norms consist of informal and often unspoken rules concerning standards of behavior. They are often tacit and unnoticed:

> [They are] norms that most of us are barely conscious of taking our guidance from, since they are not often supported in a surrounding discourse of general commendation and critique and are not reflected in levels of common or mutual awareness. They may include the norms that govern turn taking in conversation, the use of eyes in relation to others, the distance at which one stands in speaking to another, and a host of such unnoticed but not merely mechanical regularities.[6]
>
> Other "unnoticed" regularities include beliefs about what is and is not acceptable. Legislatures may define criminal acts in statutes, and prosecutors may charge criminal suspects, but the court's role in deciding whether someone is punished highlights its role in reinforcing social norms. The court mentioned at the beginning of this chapter could have treated Michael Vick's actions with a measure of leniency, but it did not, which sent a clear message about what types of behavior society is willing to tolerate.

Legal Basis for the Courts

Learning Objective 2
Outline the history and development of law and the courts.

Formalized government and criminal justice roughly paralleled societal growth. But before we can more fully appreciate these developments and their effects on American criminal justice, it is important to move backward in time to some of the other nations we just mentioned, for many of their approaches to dispute resolution were adopted in America.

The foundations for modern American criminal justice are several. One is religious. Judeo-Christian values had a key role in the evolution of American government and, of course, criminal justice, beginning with the Declaration of Independence:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.

There is often talk of church and state separation, but this does not mean that God was separated from government. The Declaration of Independence recognizes the "Creator" as a source of rights. Biblical morality made an indelible imprint on this nation's founding rules and laws, particularly its Constitution. John Adams once stated this:

> We have no government armed with power capable of contending with human passions unbridled by morality and religion. Avarice, ambition, revenge, or

> gallantry would break the strongest cords of our Constitution as a whale goes through a net. Our Constitution was made for a moral and religious people. It is wholly inadequate to the government of any other.[7]

Our system of justice was also shaped by ancient legal codes, going back as far as 1760 B.C. There is also a strong common law tradition in this country that owes much to our British heritage. The common law emphasizes the importance of judicial decisions, not the codified criminal law like that found in state penal codes. Still other legal bases for modern criminal justice include modern criminal codes, administrative regulations, and even constitutions.

Early Legal Codes

Code of Hammurabi
The earliest-known example of a formal written legal code.

Perhaps the earliest known example of a formal written legal code was the **Code of Hammurabi**. Also known as Hammurabi's Code and assembled by the sixth Babylonian king, Hammurabi, in 1760 B.C., the code expressed a strong "eye for an eye" philosophy. To illustrate, here is the seventh of the code's "code of laws":

> If any one buy from the son or the slave of another man, without witnesses or a contract, silver or gold, a male or female slave, an ox or a sheep, an ass or anything, or if he take it in charge, he is considered a thief and shall be put to death.[8]

Twelve Tables
The first secular (i.e., not regarded as religious) written legal code, dating from 450 B.C.[iii]

Roman law provides another example of formally codified legal principles. The so-called **Twelve Tables** (450 B.C.) were the first secular (i.e., not regarded as religious) written legal code.[9] The code was named as such because the laws were literally written onto 12 ivory tablets. The tablets were then posted so that all Romans could read them. The Twelve Tables, like Hammurabi's Code, contained a strong element of retributive justice. One of the laws, "*Si membrum rupsit, ni cum eo pacit, talio esto*," translates as follows: "If one has maimed another and does not buy his peace, let there be retaliation in kind."[10]

Despite their shortcomings and harsh character, these early legal codes are important because they signaled the emergence of formalized "law." And while it is difficult to define the term with precision, *law* generally refers to formal rules, principles, and guidelines enforced by *political authority*. This political authority is what began to take dispute resolution out of the hands of citizens and put it under control of governments. Legal codes have changed and evolved considerably over the years, but the use of political or governmental authority to enforce such codes has remained pretty constant.

Common Law and Precedent

common law
The law originating from usage and custom rather than from written statutes; also, a term that referred to the law "in common" throughout England following the Norman Conquest in medieval times.

After the Norman conquest (A.D. 1066), King William and his Norman dukes and barons moved quickly to consolidate their hold over newly won territories. One method was to take control of the preexisting legal/court system. Once they did this, the judges in their courts not only issued decisions but also wrote them down. These decisions were subsequently circulated to other judges. The result was a measure of uniformity from one court to the next. This was literally the law "in common" throughout England, and it came to be known as the **common law**.

special law
Any law of specific villages and localities that was in effect in medieval England and that was often enforced by canonical (i.e., religious) courts.

The common law can be better understood when it is contrasted with **special law**, which refers to the laws of specific villages and localities that were in effect in medieval England and that were often enforced by canonical (i.e., religious) courts. Under the reign of Henry II (1154–1189), national law was introduced but not through legislative authority as is customary today. Rather, Henry II implemented a system whereby judges from his own central court went out into the countryside

to preside over disputes. They resolved these disputes based on what they perceived as custom. The judges effectively created law, as there was no democratic law-forming process in place at the time.

As more and more judges began to record their decisions, the principles of *stare decisis* and precedent were developed. **Precedent** refers, generally, to some prior action that guides current action. In the common law context, this meant that judges' decisions were guided by earlier decisions. Precedent thus ensured continuity and predictability. If decisions changed radically from one judge to the next, from place to place, or both, the "common" law would be anything but common. It was also easier for judges to fall back on earlier decisions; otherwise, they would have to continually reinvent the wheel. ***Stare decisis***, which is Latin for "to stand by things decided," is thus the formal practice of adhering to precedent.

precedent
A legal principle that ensures that previous judicial decisions are authoritatively considered and incorporated into future cases.

stare decisis
A term that literally means "to stand by things decided." In the law, it is the formal practice of adhering to precedent.

While the common law is usually viewed as a legal concept, it also had social implications: The medieval judge was entrusted with the collective wisdom, values, and morals established by the community and was trusted to apply them to solve disputes between citizens. Even when appointed by the king, the medieval judge represented the community and applied the community's (not the king's) law, thereby maintaining its age-old customs and values.

Early colonists brought this English common law tradition to America. Today, all courts are essentially *bound* to follow earlier courts' decisions as well as decisions issued by higher courts. If a state supreme court issues a decision, all lower courts in that state will be bound to follow it; likewise, if the U.S. Supreme Court issues a decision, all courts must adhere to it. Technically, precedent is binding only on those courts within the jurisdiction (a concept we will discuss later) of the court issuing the decision, but as a courtesy some courts adhere to other courts' decisions across jurisdictional boundaries. Again, the practice promotes consistency.

There is nothing etched in stone about precedent. Times change. Often, early decisions become outdated as technologies change. It used to be, for example, that the U.S. Supreme Court defined the word *search* as basically consisting of physical trespass. These days, there is much the government can do to infringe on people's privacy without actual physical trespass; for example, wiretaps can be used at a distance, without any measure of physical trespass. The Supreme Court recognized this and effectively redefined a search, requiring a departure from earlier decisions.[11]

At the other extreme, there is no need to be concerned with courts issuing new decisions that depart from prior ones on an *ad hoc*, willy-nilly basis. Take the issue of abortion. When there is an open seat on the Supreme Court, questions of a nominee's stance on abortion routinely come up, as if the Court would promptly overturn *Roe* v. *Wade* (the Supreme Court case that legalized abortion) if the nominee were confirmed. But the Supreme Court is not going to suddenly overturn that landmark decision without a very good reason. Even if the Court were composed of a solid conservative majority, there is no reason to expect a dramatic departure from precedent. In fact, prior decisions are *rarely* overruled. The Supreme Court has recently chipped away at the legality of abortion by upholding a law banning partial birth abortions, but it has not overruled *Roe* v. *Wade*.[12]

Why Common Law? Common law emerged at a time when legal codes were in their infancy. Judges issued decisions when there were not necessarily formal statutes to criminalize certain forms of conduct. Laws need explanations, clarifications, and modifications from time to time, and were it not for common law, this would not be possible. Oliver Wendell Holmes raised a similar point in this eloquent observation:

> The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy,

> avowed or unconscious, even the prejudices which judges share with their fellow men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.[13]

Other Sources of Law

Besides early legal codes and the common law, other important sources of law include modern legal codes, administrative regulations, and constitutions. These have helped shape America's courts (not to mention the criminal justice system in general) in many ways as well.

Modern Legal Codes

Modern legal codes differ from early legal codes because they exist at different levels of government and come in several different forms. The United States Code contains federal laws, and violations of its provisions can lead to federal prosecution. States have their respective codes. Other units of government, such as counties and cities, often have their own ordinances. These legal codes exist in several varieties. States such as California list criminal offenses in more than one code. There, most crimes are spelled out in the Penal Code, but the Health and Safety Code criminalizes drug-law violations. The state has 29 separate legal codes![14]

Legal codes do not just prohibit conduct considered criminal. They also provide important rights. For example, both the states and the federal government have minimum-wage laws that provide the minimum hourly wage an employee can earn. Without such laws, there would be no right to a specific wage.[15]

administrative regulations
Rules promulgated by government agencies that have been given their authority by the executive branch or legislative branch.

Administrative Regulations

Administrative regulations are rules promulgated by government agencies that have been given their authority by the executive branch or legislative branch. Several federal cabinet-level agencies (e.g., Department of Education, Department of Labor) serve as visible examples. There are also independent agencies, such as the Environmental Protection Agency, the Internal Revenue Service (IRS), and the Securities and Exchange Commission, that have been created by Congress and that have adopted rules and regulations to fulfill their mandates. Similar entities can be found at the state and local levels. Together, the rules these agencies adopt and enforce are considered administrative regulations. They carry equal weight and importance relative to legal codes, but violations tend to be regarded as civil rather than criminal matters.

Why do we have administrative regulations and not just laws? When government agencies are created, often they are given a fairly broad mandate. To expect the executive or Congress to completely map out—in advance—these agencies' duties and their limits would be unrealistic. By giving administrative agencies the authority to set their own regulations, this eases the burden on the executive or legislative branch. It also permits the agencies to adapt and change as new laws are passed and new problems present themselves. Consider the IRS. It defines what constitutes a legitimate tax deduction because it would be impractical and overly time-consuming to have outsiders setting such rules.

Code of Federal Regulations
The group of rules and regulations adopted by U.S. federal agencies and departments.

Administrative regulations can be found in specific statutes, not unlike the legal codes we have already discussed. At the federal level, the **Code of Federal Regulations** spells out the rules and regulations adopted by federal agencies and departments. The regulations are organized into some 50 different titles, covering everything from aliens and nationality to conservation of power and water resources. While violations of administrative regulations may not be considered criminal in the traditional sense, it is

important to appreciate that this body of rules closely parallels that of federal and state criminal codes, making it clear that ours is a system of laws.

Constitutions Constitutions are perhaps the most significant source of law. Unlike penal codes, constitutions generally do not prohibit actions on the part of private citizens, and unlike administrative regulations, they tend to steer clear of specifics when it comes to the creation of specialized government agencies. Rather, constitutions generally place limits on government authority. They define, in broad terms, government structure and organization; they also spell out various rights that people enjoy, how government officials will be selected, and what roles various government branches will take on.

The **Bill of Rights**, consisting of the first ten amendments, also announces important limitations on government authority with respect to the investigation of crime. The Fourth Amendment, for example, spells out warrant requirements, and the Fifth Amendment protects people, in part, from being forced to incriminate themselves. The Eighth Amendment prohibits cruel and unusual punishment and so on. Entire books and college courses are devoted to the study of constitutional law for criminal justice (i.e., criminal procedure).

Bill of Rights
The first ten amendments to the U.S. Constitution, which place important limitations on government authority with respect to the investigation of crime.

While the federal Constitution receives the most attention due to its status as the supreme law of the United States, it is important to note that each state has its own constitution. These often mirror the federal Constitution, but they often go into much more detail. Some states use an initiative process, where every November voters can decide the fate of proposed constitutional amendments. Other states have used their constitutions to more clearly spell out what they consider prohibited actions, whereas a close read of the federal Constitution suggests that the founding fathers intended something different. In any case, constitutions work together with legal codes, administrative regulations, and the common law to provide an interesting basis for criminal justice as we know it.

State constitutions can be more restrictive than the U.S. Constitution, but no state can relax protections spelled out in the U.S. Constitution. For example, the U.S. Constitution's Fourth Amendment spells out search warrant requirements, but the Fourth Amendment is vague in terms of whether a warrant is required in all circumstances. In theory, a state could require warrants for *all* searches, but as a practical matter, most states have followed the U.S. Constitution's lead (and the Supreme Court's interpretation of it).

Role of the Courts

Courts are important to the study of criminal justice for two key reasons: adjudication and oversight. Both of these functions are critically important for the protection of public safety and the smooth operation of the system itself.

Adjudication One of the primary focuses of the courts is dispute resolution and the adjudication of complaints. In the context of criminal justice, this means most often that courts decide who is going to answer for an alleged criminal act. Without this adjudication role, police would be making arrests and prosecutors filing charges in vain. Courts perform the vital function of determining who is and is not guilty.

More than deciding matters of guilt, certain courts (namely, the appellate courts) ensure that lower courts applied the law correctly. This important set of checks ensures that judges who make mistakes and apply the law incorrectly are held accountable for their mistakes. In the extreme, a trial court judge who makes a serious legal error could see the individual charged with the crime walk free due to an appellate court decision.

Oversight Courts also provide an important oversight function in American criminal justice. Our nation's appellate courts decide matters of law (such as by interpreting ambiguous constitutional provisions) that affect how police officers do their jobs on the street. The Supreme Court's famous decision in *Tennessee* v. *Garner*[16] placed limits on the use of deadly force, something of great import to all police officers patrolling America's streets.

While courts oversee the operations of criminal justice officials, this oversight is not direct like it is in a supervisor–subordinate relationship. Rather, the courts get involved only once a particular matter comes to the attention of an appellate court and only then if the decision is publicized and made available for practitioners and other interested authorities to read and implement.

Not all decisions are published, particularly in the lower courts, so this limits the oversight function. It is generally the most serious instances of police misconduct that come to the courts' attention, but even so, thousands of decisions have been issued—and published—over the years that have altered the way criminal justice officials do their work. Police academy training now contains fairly extensive legal education, again highlighting the importance of courts in criminal justice.

Learning Objective 3

Summarize the guiding legal principles underlying the U.S. court system.

Guiding Legal Principles

Ensuring that *everyone* can come before a court, regardless of which side of a dispute they represent, is one of the hallmarks of the American justice system. A number of key guiding legal principles exist to make sure that people are adequately protected as they participate in the court process. Presumptions, like the presumption of innocence, and safeguards, like those spelled out in the U.S. Constitution, are of critical importance in a system of criminal justice. Presumptions and safeguards protect the accused, as does our adversarial system. Contrasting our adversarial system with its opposite, an *inquisitorial* system, makes it clear that protection for the accused is paramount in our system of criminal justice.

Presumptions

presumption
A fact assumed to be true under the law.

A **presumption** is a fact assumed to be true under the law. In the world of criminal evidence, there are many types of presumptions. Conclusive presumptions require that all parties agree with something assumed to be true. An example of this would be that a child born to a married couple who live together is the couple's child. It is likely that both parties to a case would agree to this presumption. In contrast to this kind of a conclusive presumption, a *rebuttable* presumption is one that could reasonably be disagreed with. Here is an example of a rebuttable presumption: "Because a letter was mailed, it was received by its intended recipient." This is rebuttable because the letter could actually be lost due to a mistake made by the post office.

presumption of innocence
The bedrock U.S. legal principle that assumes that every person charged with a crime is innocent until proven otherwise.

Every person charged with a crime is assumed, in advance, to be innocent, which is known as the **presumption of innocence**. The presumption of innocence is both a presumption of law (because it is required from the outset) and a rebuttable presumption (because the prosecutor will present evidence to show that the defendant, the person being charged with the crime, is guilty). The presumption of innocence is a bedrock legal principle. One classic court decision put it this way:

> [The presumption of innocence] is not a mere belief at the beginning of the trial that the accused is probably innocent. It is not a will-o'-the-wisp, which appears and disappears as the trial progresses. It is a legal presumption which the jurors must consider along with the evidence and the inferences arising from the evidence, when they come finally to pass upon the case. In this sense, the presumption of innocence does accompany the accused through every stage of the trial.[17]

EXHIBIT 1–1 Common Presumptions

- *Presumption of sanity.* All defendants are presumed sane; the burden falls on the defense to prove otherwise.
- *Presumption of death.* It is presumed that a person who has disappeared and is continually absent from his or her customary location (usually after seven years) is dead.
- *Presumption against suicide.* It is assumed that when a person dies, the cause is not suicide.
- *Presumption of a guilty mind following possession of the fruits of crime.* The jury can usually infer guilt if a person is caught "red-handed" with the fruits of crime.
- *Presumption of knowledge of the law.* Ignorance is not a defense to criminal liability.
- *Presumption of the regularity of official acts.* It is assumed, for example, that a proper chain of custody exists, unless the defense can show otherwise.
- *Presumption that young children cannot commit crimes.* Some states presume that children under a certain threshold age (e.g., age seven) cannot form criminal intent and thus cannot commit crime.
- *Presumption that people intend the results of their voluntary actions.* If a person voluntarily shoots another, the jury can presume the shooter intended to do so. ■

Presumptions are essential to the smooth operation of criminal justice. They serve, basically, as substitutes for evidence. Without them, every minute issue that could possibly be disputed would come up during trials. For example, it is presumed that a child born to a married couple who live together is the couple's child. Without presumptions such as these, the process would be slowed down considerably because every minor event, no matter how likely, would have to be proven in court. (Exhibit 1–1 shows popular presumptions that arise in criminal justice.)

Constitutional Rights

The presumption of innocence acts as something of a safeguard to protect the accused from instant incrimination. Constitutional rights are safeguards in the same way: They help ensure that people accused of criminal activity are not rushed to judgment and treated unfairly. Indeed, constitutional rights protect *everyone* in this country, not just suspected and accused criminals. Even noncitizens (except, perhaps, terror suspects, which is an area of ongoing dispute) enjoy the same protections as U.S. citizens. A close examination of the Constitution confirms this point; there is no mention of criminals versus law-abiding persons or citizens versus noncitizens.

As we pointed out earlier, constitutional rights can be found at both the federal and state levels. The U.S. Constitution spells out the rights we all enjoy, and these rights are not boundary-specific; they apply throughout the United States. States also have their own constitutions. The rights spelled out in a state constitution apply only to people within that state. Importantly, states can adopt more restrictive protections than spelled out in the U.S. Constitution, but they cannot adopt looser standards.

For criminal justice purposes and particularly for a study of courts, the constitutional rights of interest to us are those that can be found in the U.S. Constitution's Bill of Rights and in the Fourteenth Amendment (for two others not found in these places, see Exhibit 1–2). The Bill of Rights (as we pointed out earlier) consists of the first ten amendments to the U.S. Constitution (see Exhibit 1–3), and we will begin by discussing it. Then we will turn our attention to the Fourteenth Amendment's **due process clause**. The Fourteenth Amendment is important because the U.S. Supreme Court has used its due process clause to make various protections listed in the Bill of Rights (which is binding only on the federal government) binding on the states. This is known as **incorporation**.

due process clause
The portion of the Fourteenth Amendment that has been used by the U.S. Supreme Court to make certain protections specified in the Bill of Rights applicable to the states.

incorporation
The legal doctrine based on the due process clause of the Fourteenth Amendment that makes various protections listed in the Bill of Rights, which is binding only on the federal government, binding on the states, as well.

EXHIBIT 1–2 Other Constitutional Rights of Relevance in Criminal Procedure

ARTICLE III, SECTION 2

. . . The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Note: The right to jury trial has been significantly restricted by the Supreme Court. We look at this more closely in Chapter 13.

ARTICLE I, SECTION 9

The 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. ■

Note: Habeas corpus provides a means for prisoners to challenge the constitutionality of their confinement. We look at it more closely in Chapter 14.

EXHIBIT 1–3 Bill of Rights

AMENDMENT I

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

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

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

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.

AMENDMENT V

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 offense 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

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 witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence (sic).

(continued)

AMENDMENT VII

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 a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII

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

AMENDMENT IX

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

AMENDMENT X

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. ■

Bill of Rights The Bill of Rights contains a total of ten constitutional amendments, four of which are most relevant in the criminal justice context. They are the Fourth, Fifth, Sixth, and Eighth Amendments. An exception is the Second Amendment, which deals with the right to keep and bear arms, but it has little in the way of implications for court and criminal justice procedures.

1. *The Fourth Amendment.* The Fourth Amendment is perhaps the most well known of all the amendments. It states,

   > 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.

Several rights can be distinguished by reading the text of the Fourth Amendment. It refers to the rights of people to be free from unreasonable searches and seizures, and it provides that there are specific requirements guiding the warrant process. Warrants must be issued by a magistrate or judge, supported by probable cause, and sufficiently specific as to what is to be searched and/or seized. The courts have grappled with this amendment's seemingly innocuous language for generations. What is a person? What is a search? What is probable cause? What are the warrant requirements? We will answer some of these questions later on in the book, particularly in the section on court process.

2. *The Fifth Amendment.* The second constitutional amendment of interest to us is the Fifth Amendment. It states,

   > 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 offense 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.

This amendment is quite clear, on its face, about which rights people enjoy: Grand juries appear necessary, no one can be forced to incriminate him- or herself, people cannot be put in "double jeopardy," and people cannot be deprived of certain rights without due process. But like the Fourth Amendment, the terms in this

amendment are not abundantly clear. What does it mean to be a "witness against himself"? What exactly is "double jeopardy"? Are grand juries really required in all capital and infamous crimes? Despite these ambiguities (which, again, we will seek to clarify later in the book), it is clear that the Fifth Amendment also provides an important safeguarding function.

3. *The Sixth Amendment*. The Sixth Amendment is also of great importance. It specifies the following:

   > 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 witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Of relevance to the study of courts is the Sixth Amendment's language concerning speedy and public trials, impartial juries, confrontation, compulsory process, and especially the right to counsel. Reading between the lines, the Sixth Amendment also suggests that in addition to being public, trials should be open (not closed) proceedings. This ensures openness, which is consistent with democratic governance.

4. *The Eighth Amendment*. The Eighth Amendment is relevant to a fairly limited extent. It is limited in the sense that the other amendments we just introduced have received much more attention by the courts. In any case, the Eighth Amendment states,

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

Keeping bail to a reasonable level ensures that nondangerous individuals charged with criminal activity do not languish in jail cells needlessly until their trial dates. Likewise, the protection against cruel and unusual punishment ensures that torture, beatings, horrific forms of execution, and the like are not used.

Due Process The Fourteenth Amendment, particularly its language concerning "due process," has profound importance in criminal justice. It is a fairly long amendment, with only a small portion relevant to the handling and treatment of criminal suspects. It states, in relevant part,

> 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. [italics added]

First, note that the due process clause (the italicized part) of the Fourteenth Amendment mirrors the Fifth Amendment's due process clause. Remember, though, that the Fifth Amendment, because it is part of the Bill of Rights, is binding only on the federal government. The Fourteenth Amendment's due process clause has been used by the Supreme Court to make certain protections specified in the Bill of Rights applicable to the states. But note that not all rights spelled out in the first ten amendments have been incorporated. The Fifth Amendment's grand jury provision has not been incorporated, which is why some states rely on grand jury indictments and others do not (see Exhibit 1–4 for a full listing of unincorporated rights).

EXHIBIT 1–4 Unincorporated Rights

- The whole of the Second Amendment
- The whole of the Third Amendment
- The whole of the Seventh Amendment
- The Fifth Amendment's right to grand jury indictment
- The Eighth Amendment's prohibition against excessive bail ■

There are two types of due process the courts recognize: (1) substantive due process and (2) procedural due process. **Substantive due process** is concerned with protecting people's life, liberty, and property interests; that is, it protects "substantive rights," like the rights to possess and do certain things. **Procedural due process**, in contrast, is concerned with ensuring *fairness*.[18] One court distinguished between both types of due process in this way:

> [S]ubstantive due process prohibits the government's abuse of power or its use for the purpose of oppression, and procedural due process prohibits arbitrary and unfair deprivations of protected life, liberty, or property interests without procedural safeguards.[19]

substantive due process
The constitutional provision that is concerned with protecting people's life, liberty, and property interests.

procedural due process
The constitutional provision that is concerned with ensuring fairness.[iv]

There is no constitutional right to privacy, but substantive due process (in conjunction with other constitutional amendments, such as the Fourth) has been used to effectively "create" a constitutional right to privacy.

Adversarial System

Ours is an **adversarial justice system**, particularly when describing the courts. It is adversarial because it pits two parties against each other in pursuit of the truth. Our adversarial system is not what it is, though, because attorneys love to hate each other. Rather, **adversarialism** owes to the many protections our Constitution and laws afford people.

adversarial justice system
The functional construct of the American court system that features two competing sets of interests (the defendant's and the government's) working against each other in pursuit of the truth, from which stems the many protections our Constitution and laws afford people.

adversarialism
The element incorporated into the American judicial system by the founding fathers to promote argument, debate, and openness as a defense against oppressive government.

When criminal defendants assert their rights, this sometimes amounts to one side saying that the other is wrong, which ultimately leads to an impasse that must be resolved by a judge. If the defendant's attorney seeks suppression of key evidence that may have been obtained improperly, the prosecutor will probably disagree; after all, such evidence could form the basis of his or her case. The judge must rule to settle the matter. This is the essence of adversarialism—two competing sets of interests (the defendant's and the government's) working against each other.

Why else is ours an adversarial system? Another, more fundamental explanation lies in the founding fathers' concerns with oppressive governments. Adversarialism promotes argument, debate, and openness. With no defense attorneys and only prosecutors having any say in a defendant's case, there would be untold numbers of rights violations, rushes to judgment, and so on.

Prosecutors and Defense Attorneys: Mortal Enemies? The answer to the question this heading poses is a resounding "No." Yet by watching courtroom dramas and movies, it would be easy to think otherwise. Hollywood loves to make it look like prosecutors and defense attorneys cannot stand each other, and they are constantly springing surprise witnesses on one another, arguing with each other to the point of fighting, and so on.

While it is true that some prosecutors and defense attorneys are not the best of friends, most know each other and work together on a routine basis. Some prosecutors

were once defense attorneys and vice versa. These days, collaboration is popular, too, as prosecutors and defense attorneys are coming to realize that the traditional hard-line adversarial approach to meting out justice is not always helpful for the accused. We will come back to this notion of the opposing parties working together when we look at the courtroom work group in Chapter 2.

Opposite of Adversarialism: Inquisitorial Justice Adversarial justice can be better understood when compared to its opposite, namely, inquisitorial justice, which is characteristic of an **inquisitorial system**. There are several features of inquisitorial systems that differ from adversarial systems. First, inquisitorial systems do not provide the same protections to the accused (e.g., right to counsel). Second, inquisitorial systems place decision making in the hands of one or a very few individuals. Third, juries are often the exception in inquisitorial systems. Finally, the attorneys in inquisitorial systems are much more passive than in adversarial systems, and judges take on a more prominent role in the pursuit of truth.

inquisitorial system
A judicial system that is the philosophical opposite of the adversarial system.

Inquisitorial justice is often likened to justice from the past, such as in medieval England, and particularly at the hands of the early Christian church. For the most part, this perception is accurate, but some borderline inquisitorial systems are very much alive and well in this day and age, even in modern industrialized nations. For example, in France, the "juge d'instruction" (i.e., investigating magistrate) engages in fact-finding and performs investigations in cases of serious and complex crimes. American judges, in contrast, focus on legal matters, and in trials by jury, they never engage in fact-finding.

Until as recently as 1996, China had a full-blown inquisitorial system. Since the Chinese adopted significant reforms to their legal system, that has changed. As one researcher observed,

> [U]nder China's inquisitorial system, judges were required to engage in evidence-gathering and criminal investigations. Judges in the post-reform period, however, should be more likely to serve as impartial adjudicators who hear evidence and arguments from both sides and render a decision based solely on this information.[20]

Learning Objective 4
Explain the nature of disputes.

Types of Disputes

Another court function we identified earlier is resolving disputes. We rely on courts, not ourselves, to resolve many varieties of disputes. There are exceptions to this rule with recent advents in the area of alternative dispute resolution (see Chapter 16), but when disputes escalate to a certain level or when a true impasse is reached, the courts will more often than not get involved.

Chances are this book has been assigned for a courts class as part of a criminal justice or criminology program. In that spirit, most of our energies will be channeled toward courts of the criminal variety, but we would be remiss not to discuss civil procedures. Here is one reason why: We already mentioned the Supreme Court's landmark decision in *Tennessee* v. *Garner*,[21] where standards governing deadly force as they pertain to fleeing felons were adopted. In that case, Garner, age 15, was shot in the back by an officer who was chasing him from the scene of a residential burglary. He was killed, but his surviving family members sued, arguing that the boy's constitutional rights were violated. Specifically, they argued that the boy was seized in violation of the Fourth Amendment (i.e., the seizure was unreasonable). The case arrived at the Supreme Court via civil process; it was not a criminal case. *Garner*, along with many

other important cases, has affected law enforcement, which is why it is important to give some attention to civil procedure.

Civil Law and Procedure

The world of civil law and procedure is distinct from criminal law and procedure (see Figure 1–1 for an overview of the civil process). This was made apparent in the famous 1995 O.J. Simpson murder case. Simpson was acquitted in criminal court, but he was found liable in a subsequent wrongful death lawsuit. The first proceeding was criminal; the second was civil. Both actions were separate and independent from one another. Simpson could have been sued and never charged criminally. This could have happened if the prosecution felt, in advance, that it did not have enough evidence to convict (the standard of proof in civil proceedings is generally lower). Alternatively, he could have been charged criminally and never sued. The point is that each action, civil and criminal, had no bearing on the other.

Nature and Substance of Civil Law Contemporary criminal law is concerned with actions that are regarded as harmful to society on the whole. That is why criminal cases are often initiated by the government, such as in *State* v. *Jones*, *Commonwealth* v. *Jones*, or *People* v. *Jones*. In contrast, civil law is concerned mainly with disputes between private parties and with the duties private parties owe one another. Private parties can include individual people as well as organizations. The government occasionally gets involved as a party to a civil case as well, often in actions related to administrative law (see earlier discussion).

When an individual is held criminally liable, he or she is often punished. Appropriate sanctions range from fines to death, depending on the seriousness of the crime. In the civil context, courts seek to determine the parties' legal rights and then settle on appropriate remedies. Generally, there are two main types of remedies. One is **monetary damages**; that is, the party considered in the wrong can be ordered to pay money to the other party. In the other type of remedy, the court may order one party to perform certain acts or refrain from certain actions (the latter is known as **injunctive relief**).

monetary damages
A court-ordered payment of money by one party in a civil suit to the other party.

injunctive relief
A court order directing one party in a civil suit to perform or refrain from performing certain acts.

It is tempting to view criminal cases as occurring more frequently than civil cases, particularly in light of the press coverage that crimes tend to receive. In reality, though, the opposite is true: Civil cases far outnumber those of the criminal variety. This is not too surprising because, as one famous legal scholar put it, "Every broken agreement, every sale that leaves a dissatisfied customer, every uncollected debt, every dispute with a government agency, every libel and slander, every accidental injury, every marital breakup, and every death may give rise to a civil proceeding."[22]

Categories of Civil Law There are five important categories of civil law that are frequently resolved via civil litigation:

1. *Tort law.* **Torts** are civil wrongs recognized by law to be grounds for a lawsuit. Understood differently, **tort law** deals with conduct that leads to injuries not considered acceptable by societal standards. Nearly all personal injury claims stem from civil law. Medical malpractice lawsuits also fall in the tort category, as do many lawsuits against criminal justice officials.

tort
A civil wrong recognized by law to be grounds for a lawsuit; also, conduct that leads to injuries not considered acceptable by societal standards.

tort law
The category of civil law that involves lawsuits to resolve civil wrongs.

Using tort law to resolve disputes is increasingly popular due to large jury awards and shifting standards of proof. On the subject of shifting standards of proof, much has changed in the world of product liability. It used to be that for a manufacturer of a product to be successfully sued, it was necessary to show that the manufacturer acted

FIGURE 1–1

Stages of a Civil Lawsuit

Source: Larry J. Siegel, Frank Schmalleger and John Worrall, *Courts and Criminal Justice in America*, 9780134526690, 3e, © 2018.

COURTS IN THE NEWS

Texas Sues the United States to Block Syrian Refugees

Marjorie Kamys Cotera/Polaris/Newscom

Should states be allowed to sue the federal government over immigration policy?

Three days after terrorist attacks in Paris left 130 dead, 30 Republican governors vowed not to let the federal government resettle Syrian refugees in their respective states, citing security concerns. On December 2, 2015, Texas took the added step of suing the federal government and a refugee resettlement nonprofit, called the International Rescue Committee (IRC), to block the resettlement of six refugees. The lawsuit alleged that the federal government and the resettlement group failed to fulfill their contractual obligations to consult with and provide information to Texas officials. In relevant part, the complaint alleged the following:

> The Refugee Act of 1980 requires that the federal government "shall consult regularly (not less often than quarterly) with State and local governments and private nonprofit voluntary agencies concerning the sponsorship process and the intended distribution of refugees among the States and localities before their placement in those States and localities.". . . The Federal Defendants have breached this statutory duty of advance consultation with Texas by: 1) preventing Texas from receiving vital information to assess the security risk posed by the refugees in advance of their arrival, and 2) refusing to consult with the State in advance on placement of refugees in Texas.

Texas Attorney General Ken Paxton said in a statement, "The point of the lawsuit is not about specific refugees, it is about protecting Texans by ensuring that the federal government fulfills its obligation to properly vet the refugees and cooperate and consult with the state." Critics of the Texas lawsuit, however, claimed that the lawsuit was "ridiculous." The IRC said it "understood" Texas' decision, but it said, "Apart from swimming the Atlantic Ocean, the refugee resettlement program is the most difficult way to enter the United States." It also cautioned Texas "not to conflate terrorists with the Syrian refugees who are seeking sanctuary" in the United States.

Refugee resettlement in the United States is fully funded by the federal government. States then contract with local nonprofit resettlement agencies to allocate federal resettlement dollars. States also oversee the provision of health assistance to refugees through other federal funding programs. Nearly 250 Syrian refugees had already been settled in Texas between 2012 and the time of the lawsuit, so it wasn't the first time Texas (or other states) was involved in the intricacies of resettlement. Indeed, some have called the Lone Star State a "hotbed for refugee settlement." The state's concern, though, was that the Syrian refugee population would continue to grow as the United States prepared to take in many more refugees.

How does the U.S. government's refugee resettlement program function? Here is a short overview as described by the Office of Refugee Resettlement in the U.S. Department of Health and Human Service:

> The Departments of Homeland Security (DHS), State and Health and Human Services (HHS) work together to uphold America's humanitarian response to refugees through the U.S. Resettlement Program (USRP).

- Once the United Nations and U.S. embassies refer refugee cases for resettlement consideration, U.S. Citizenship and Immigration Services (USCIS) officers at DHS conduct individual interviews and clearances, and final determinations for admission.
- The State Department's Bureau for Population, Refugees and Migration (PRM) coordinates admissions and allocations to specific cities and resettlement agencies, in conjunction with nine national voluntary agencies that oversee a network of some 250 affiliates in 49 states plus the District of Columbia through the Reception & Placement Program. When refugees arrive at their destination, these local affiliates greet them at the airport, help them with housing and access to other resources.
- From the date of arrival, the Office of Refugee Resettlement (ORR) at HHS provides short-term cash and medical assistance to new arrivals, as well as case management services, English as a Foreign Language classes, and job readiness and employment services – all designed to facilitate refugees' successful transition in the U.S., and help them to attain self-sufficiency.

(continued)

- ORR supports additional programs to serve all eligible populations beyond the first eight months post-arrival, including micro-enterprise development, ethnic community self-help, agricultural partnerships, and services for survivors of torture.

In June of 2016, a federal judge in Dallas dismissed the Texas lawsuit. A similar lawsuit in Alabama that was pending as of this writing may suffer a similar fate. ■

DISCUSSION QUESTIONS

1. Do you agree with Texas' decision to sue the federal government in this case?
2. What steps should states be allowed to take in terms of "screening" refugees for residence?

Sources: https://static.texastribune.org/media/documents/Texas_Lawsuit_Syrian_Refugees.pdf (accessed December 3, 2015); Alexa Ura, "Texas Sues to Block Syrian Refugees," *Texas Tribune*, December 2, 2015, https://www.texastribune.org/2015/12/02/texas-sues-feds-over-syrian-refugees/ (accessed December 3, 2015); David Lee, "Texas Sues USA to Block 6 Syrian Refugees," *Courthouse News Service*, http://www.courthousenews.com/2015/12/03/texas-sues-usa-to-block-6-syrian-refugees.htm (accessed December 3, 2015); U.S. Department of Health and Human Services, Office of Refugee Resettlement, *The U.S. Refugee Resettlement Program–An Overview*, September 14, 2015, http://www.acf.hhs.gov/programs/orr/resource/the-us-refugee-resettlement-program-an-overview (accessed December 3, 2015).

with negligence. The negligence standard is increasingly being replaced by a strict liability standard.[23] **Strict liability** means that a party will be held liable regardless of culpability.

Strict liability
A standard of guilt that holds a party liable regardless of culpability.[v]

2. *Contract law.* When people enter into voluntary agreements by signing contracts, such as to purchase a home, this creates important legal obligations between both parties that are covered under **contract law**. When contracts are violated, lawsuits are often filed. Other options besides full-blown lawsuits are often available (we will look at some in this book's last chapter) and indeed required some of the time, but our concern here is with lawsuits.

contract law
The category of civil law that involves lawsuits to resolve unfilled legal obligations between parties.

Some contracts are very simple. Signing a credit card statement after buying a product or eating out in a restaurant is the same as signing a contract, agreeing to pay a specific amount. Other contracts can be described as nothing short of horrendous. Returning to the housing example, most home buyers will never see a more tedious contract in their lives; every contract provision provides a basis for liability. The authors of this book also signed a contract, and both we and our publisher were required to fulfill certain obligations.

3. *Property law.* While some consider it a subcategory of contract law, property law is distinct from contract law for a simple reason: Contracts are enforceable only insofar as the parties to the agreement are concerned, but property rights are enforceable against various unnamed parties, such as people who do not have legal right to use certain premises. **Property law** is thus significantly concerned with the acceptable uses of property, such as those uses spelled out in zoning laws: Some property is zoned commercial, some is zoned industrial, and some is zoned residential. Property law also governs property ownership, not just ownership of real property such as land but also ownership of personal property such as cash, conveyances, automobiles, and valuable items. Leases, such as apartment leases, fall under property law as well (and, of course, they are contractual).

Property law
The category of civil law that is significantly concerned with the acceptable uses of property, such as those uses spelled out in zoning laws.

4. *Law of succession.* The **law of succession** is concerned with how property is passed from one generation to the next. The law of succession can thus be understood as the law of wills. A **will** is a legal document wherein a person spells out the rights of others over his or her property following the person's death. If a person leaves behind no will (and dies intestate), the state

law of succession
The category of civil law that is concerned with how property is passed from one generation to the next.

will
A legal document wherein a person spells out the rights of others with regard to his or her property following his or her death.

will dispose of that person's property pursuant to applicable statutes. Most often, state laws require that intestate property go to the deceased person's heirs or closest relatives.

5. *Family law.* The area of **family law** is concerned with matters of marriage, divorce, child custody, and children's rights. For example, marital disputes have served as grounds for countless divorces, and once a couple who have children divorce, the courts often resolve disputes over which party gets custody of the children. Family law also spells out requirements as far as who can enter into marriage, what sort of testing (e.g., blood testing) is necessary, what license and fee requirements exist, what waiting periods are necessary, and so on. Since our focus here is on courts and criminal justice, we will effectively abandon all but tort law from here on.

family law
The category of civil law that is concerned with matters of marriage, divorce, child custody, and children's rights.

Criminal Law

Criminal law differs markedly from civil law. Acknowledging as much, this section answers several questions: What is a crime? What are the categories of crime? What are the elements of crime? What defenses are available to the accused? How does the criminal law affect the courts?

What Is a Crime? The usual image of crime conjured up in our minds is some physically harmful or sinful act. The definition of **crime** is quite different: A crime is any action that violates a statute duly enacted by the proper public authority. Legislatures typically define what is criminal. More formally, a crime is "an act committed or omitted in violation of a law forbidding or commanding it for which the possible penalties for an adult on conviction include incarceration, for which a corporation can be penalized by fine or forfeit, or for which a juvenile can be adjudged delinquent or transferred to criminal court for prosecution."[24]

crime
Any conduct in violation of the criminal laws of the federal government, a state, or a local jurisdiction for which there is no legally acceptable justification or excuse.

Crime is also an offense against society, as opposed to against an individual. Clearly, crimes have victims and therefore affect individual people, but defining crime as an act against society puts it under the purview of the criminal justice system and possibly sends a clearer message that a certain action is unacceptable by *everyone*, not just an individual.

There is also no requirement in our definition of crime that it be physically harmful or even sinful. In Washington State, for example, it is illegal to walk about in public if one has a common cold.[25] This is hardly sinful, and the odds of "hurting" someone from such actions are certainly minor. After all, a common cold is just that: common!

Importantly, the criminal law does not necessarily define all the actions that are most harmful to individuals or society. On the one hand, as new problems begin to present themselves, legislatures must scramble to keep up. Consider terrorism. No one likes to wait around for a terrorist act to prosecute the perpetrators (if they survive) for murder. It is more acceptable to *prevent* such acts and possibly deter would-be terrorists via prosecution. But how do we prosecute someone who has yet to offend?

On the other hand, some have alleged that laws are crafted in a deliberate fashion to foster control of certain individuals, maintain class divisions, and protect the wealthy. Jeffrey Reiman's popular book *The Rich Get Richer and the Poor Get Prison*[26] provides several specific examples, such as how the actions of so-called white-collar criminals are not treated as harshly as those of ordinary criminals.

felony
A serious criminal offense generally punishable by more than one year of incarceration.

misdemeanor
A less serious criminal offense generally punishable by less than one year of incarceration.

infraction
An offense that is less serious than a misdemeanor, that usually consists of a violation of a state statute or local ordinance, and that is punishable by a fine or other penalty but not by incarceration.[vi]

corpus delicti
A term that literally means "the body of crime." While this could mean the literal body of a murdered individual, it more generally refers to the objective proof (i.e., the reality) of a crime.

actus reus
A term that literally means "the criminal act." The prosecutor has to show that an accused person (as a principal offender, an accessory to the crime, or an accomplice) committed a criminal act.

mens rea
A term that literally means "a guilty mind." The prosecutor has to show that there was a degree of intent on the offender's part.

What Are the Categories of Crime? Crimes can be placed in at least three categories based on the punishments that can (but may not, if courts decide otherwise, as they often do) accompany them. **Felonies** are serious offenses generally punishable by more than one year of incarceration. These are the most serious offenses, and examples include murder, forcible rape, and armed robbery, among others. **Misdemeanors** are less serious and are generally punished with less than a year of incarceration. In fact, the vast majority of convicted misdemeanants never spend time incarcerated. Public drunkenness, social gambling (in states where it is not legally permissible), and vagrancy are common examples. Finally, **infractions** are less serious than misdemeanors and usually consist of violations of state statutes or local ordinances punishable by a fine or other penalty but not by incarceration.[27]

What Are the Elements of a Crime? One of the core elements of a crime, the first that must be in place before the government can target any individual for a criminal conviction, is known as ***corpus delicti***, Latin for "the body of crime." This could mean the literal "body" of a murdered individual, but more generally it refers to the objective proof (i.e., the reality) of a crime. Simply put, a crime must be committed in order to hold someone liable for it.

Before a person can be convicted of a crime, the prosecution must show first and foremost that the person (as a principal offender, an accessory to the crime, or an accomplice) committed a criminal act. This is known as ***actus reus***, which is Latin for "the criminal act." But a criminal act is not enough—in most cases—for a prosecutor to obtain a guilty verdict.

The prosecutor must also show a degree of intent on the offender's part, which is known as ***mens rea***. There are various types of intent, including general intent, specific intent, and negligence. General intent refers to a conscious decision on the offender's part to commit a crime, and general intent statutes do not specify what intent is necessary. Specific intent offenses, by contrast, specify the type of intent necessary for a prosecutor to secure a guilty verdict. Negligence is a failure to use reasonable care or caution. The following "Courts in the News" feature highlights the influence of *mens rea* in a famous criminal trial.

Earlier we mentioned the doctrine of strict liability. It pops up again here insofar as there are certain criminal offenses for which people can be found guilty regardless of their intent. Examples of some such offenses appear in Exhibit 1–5.

What Defenses Are Available to the Accused? It is important to have a grasp of defenses that are available to people accused of a crime. We just saw that criminal liability attaches when a person commits a criminal act with intent. But what if a person acts *without* intent? What if a person raises an argument at trial such as "I was under the influence of hallucinogens at the time of the crime and so was not responsible for my

EXHIBIT 1–5 Examples of Strict Liability Offenses

- Drunk driving
- Statutory rape
- Most traffic violations
- Illegal dumping
- Most code violations
- Failure to pay child support
- Selling of alcohol to minors ■

actions"? Or, alternatively, what if a person intends to commit what would be considered a criminal act but has an excuse for doing so? Such is the essence of criminal defenses. There are three main types of defenses:

1. *Alibi.* An **alibi** is available when the defendant (i.e., the person charged with the crime) argues that he or she was somewhere else at the time of the crime, making it impossible for him or her to commit it. There is no single alibi defense; rather, there is a litany of potential arguments that a defendant can make if he or she wishes to present a convincing case that he or she was somewhere else at the time of the crime. For this reason, we will not give alibis any more attention in this book; they come in an infinite variety of forms, so it is not possible to review them in exhaustive detail.
2. *Justification defense.* With **justification defenses**, defendants accept responsibility for the act they are charged with but argue that the act was right under the circumstances. Self-defense is an example of a justification defense (we will look at it—and others—in more detail shortly). There are two broad categories of justification defenses: those justified by necessity and those justified by consent. An example of justification by necessity is self-defense; consent is a common defense in rape cases when the defendant argues that the victim consented.
3. *Excuse defense.* With **excuse defenses**, defendants admit that what they did was wrong but claim that they were not responsible for the crime because of some condition that precluded them from forming criminal intent. Examples of excuse defenses include insanity, diminished capacity, age, duress, intoxication, and entrapment. The common thread running throughout excuse defenses is an argument on the defendant's part that he or she lacked the capacity to make an informed decision and therefore did not meet the legal requirement of *mens rea* at the time of the crime. Note that defenses such as these provide methods of avoiding (rather than dodging) criminal liability; dodging could include fleeing the country to avoid prosecution.

alibi
A type of defense against a criminal charge wherein the defendant argues that he or she was somewhere else at the time of the crime, making it impossible for him or her to have committed it.

justification defense
A type of defense against a criminal charge in which the defendant admits committing the act in question but claims that it was necessary in order to avoid some greater evil.

excuse defense
A type of defense against a criminal charge in which the defendant claims that some personal condition or circumstance at the time of the act was such that he or she should not be held accountable under the criminal law.

Most criminal defenses are considered "affirmative." Affirmative defenses are those formally raised by the defendant at trial; that is, he or she presents evidence to support an alibi, justification, or excuse. This means that the burden of proof falls on the defendant instead of the government to prove that the defense is legitimate. Additionally, some defenses are known as "perfect defenses." Perfect defenses result in acquittal; that is, the defendant goes free. But not all defenses, even if they are successful, result in the defendant going free. Some defenses are called "imperfect," which means that if the defense is successful, the defendant will be confined to some sort of facility (e.g., a mental institution) other than a prison or that the defendant's conviction will be for a less serious crime (e.g., negligent manslaughter instead of murder).

How Does the Criminal Law Affect the Courts? The criminal law is the criminal court's bread and butter. First, the criminal law makes work for the courts due to a need to sort through the complexities and contradictions in statutes. There are gradations of offenses (e.g., first-degree murder and second-degree murder), and frequently there are multiple statutes that effectively criminalize the same conduct. Judges and prosecutors must then decide what laws should be applied, how they should be applied, and what to do when inconsistencies are apparent.

Second, due to the fact that most criminal codes contain gradations of offenses, this affords opportunities for prosecutors to charge defendants with the top offense, which frequently leads to negotiations between the prosecutor and the defense attorney to

COURTS IN THE NEWS

The Jodi Arias Murder Trial

Rob Schumacher/UPI/Newscom

Jodi Arias appears in court.

Some cases make headlines around the world, and one such involved the 2008 murder of Travis Alexander in Mesa, Arizona. Soon after the murder, Jodi Arias, Alexander's ex-girlfriend, was charged with the bloody crime: Alexander had been stabbed multiple times, his throat was slit, and he suffered a gun wound to the head. In this case, the question was not who did the deed but why it was done. Did Arias have *mens rea* or the intent to kill Travis Alexander?

Alexander and Arias had met at a conference in Las Vegas in 2006 and begun a stormy long-distance romance. In 2007, they broke up but continued to see each other for sex. Eventually, Arias moved to Arizona, and the two continued their relationship. In May 2008, a .25-caliber gun was reported stolen from the home of Arias's grandparents, where Arias had been staying. Then on June 4, 2008, Arias went to Travis's home, where they engaged in sex and then took provocative photographs of each other. While there, Arias killed Alexander and then left for a trip to Utah, where she was seeing another man. When friends found Alexander's body in the shower the next day and called the police, they found Arias's hair and bloody palm print at the scene, along with time-stamped photos in a camera discovered inside Alexander's washing machine. At first, Arias denied any involvement in the crime but then changed her story, claiming that two masked intruders had attacked her and killed Alexander. Despite her protestations of innocence, prosecutors charged her with first-degree murder and filed a notice of intent to seek the death penalty. They contended that Arias had planned the attack and killed Alexander in a jealous rage. A year later, Arias changed her story about the killing, claiming self-defense. At her trial, she testified for 18 days, telling jurors that Alexander was physically and emotionally abusive. She said that he turned violent the day of his death, forcing her to fight for her life. She said that she had lied about it earlier because she had planned to commit suicide. Her defense brought forth expert witnesses who claimed that she suffered from posttraumatic stress disorder and amnesia, explaining her memory lapses and changing story. Other experts testified that she suffered from battered woman's syndrome.

In May 2013 during their closing arguments, prosecutors described Arias as a manipulative liar who had meticulously planned the savage attack. The jury bought this argument and found Arias guilty. Then began the lengthy process of deciding on an appropriate sentence. Two separate juries could not agree unanimously on the death penalty, so the decision fell on Maricopa County Superior Court Judge Sherry Stephens, who sentenced Arias to life in prison with no possibility of release.

The Arias case aptly illustrates the concept of *mens rea*. If the jury believed that Jodi Arias was a battered woman who killed an abusive boyfriend in self-defense, she would have been found not guilty. However, after weighing the evidence, the jury believed that she went to Travis Alexander's house in a jealous rage, intending to kill him, and so found her guilty of murder in the first degree. Later the same jury deadlocked at the penalty phase of the trial, failing to agree whether Jodi Arias deserved the death penalty for her crime. ■

DISCUSSION QUESTIONS

1. *Mens rea* is a mental attitude with which an individual acts, and therefore it cannot ordinarily be directly proved but must be inferred from surrounding facts and circumstances. Does this make the law too subjective and create the possibility of error?
2. A beginning driver intentionally switches lanes, knowing that he is on a busy highway, but negligently fails to check his blind spot and causes a fatal collision. Should his negligent behavior be considered *mens rea* sufficient to support a murder conviction?

Sources: Fox News, "Timeline of Key Events in the Jodi Arias Murder Case," May 8, 2013, http://www.foxnews.com/us/2013/05/08/timeline-key-events-in-jodi-arias-murder-case/#ixzz2T08FjpDU (accessed December 3, 2015); Michael Kiefer, "Jodi Arias Sentence: Natural Life, No Chance of Release," *The Republic*, April 14, 2015, http://www.usatoday.com/story/news/local/mesa/2015/04/13/jodi-arias-trial-faces-life-sentence-today-murder-travis-alexander/25608085/ (accessed December 3, 2015).

reduce the charges. On the one hand, this plea bargaining (to which we will return later) saves courts time because it is a means of avoiding trial; on the other hand, judges must "sign off" on plea agreements, so plea agreements make work for them, too. Without complex legal codes containing multiple offenses and gradations of each, this activity probably would not occur.

The typical criminal court not only adjudicates the offense but also settles on a proper sentence. Most criminal statutes specify a range of possible penalties, or at least an upper limit. Due to strong public pressures for legislatures to adopt "get-tough" anticrime legislation, this makes plenty of work for courts, as it is their responsibility for ensuring that such sentences are carried out in the spirit intended by legislative authorities. Judges have been put in a difficult position due to legislative changes, and efforts to curtail their discretion to hand down sentences have complicated matters.

Finally, the criminal law affects the courts in the postsentencing phase. If an individual is convicted of first-degree murder and appeals the conviction, due perhaps to a judge's decision to improperly admit questionable evidence, this further taxes the courts. Allegations that judges improperly applied the law are common in appeals. There are also appeals that challenge the criminal law itself, and many laws have been overturned because they violate key constitutional provisions. To illustrate, a federal judge just recently overturned an Oklahoma law that made it a criminal offense to disseminate violent video games to juveniles.[28] In support of her decision, she argued that the right to disseminate video games is a form of free speech protected under the First Amendment.

CHAPTER

SUMMARY

1. EXPLAIN THE PURPOSE AND FUNCTIONS OF COURTS AND THE DUAL COURT SYSTEM

- A court is an agency or unit of the judicial branch of government, authorized or established by statute or constitution and consisting of one or more judicial officers, that has the authority to decide cases, controversies in law, and disputed matters of fact brought before it.
- The reason we have government courts is to settle disputes in a civilized manner.
- The United States has a dual court system, consisting of state and federal courts. The dual court system owes much to federalism.
- The three main functions of courts are (1) upholding the law, (2) protecting individuals, and (3) resolving disputes.

KEY TERMS

Court, 2
adjudication, 3
dual court system, 4
dual federalism, 4
cooperative federalism, 4

REVIEW QUESTIONS

1. What is the function of courts in American society?
2. Why does the United States maintain a dual court system?

2. OUTLINE THE HISTORY AND DEVELOPMENT OF LAW AND THE COURTS

- The legal basis for the American court system lies in early legal codes, the common law, modern criminal codes, administrative regulations, and constitutions (federal and local).
- Early legal codes include the Code of Hammurabi and the Twelve Tables.
- The common law is judge-made law, and it prizes the practice of *stare decisis*, or adhering to precedent (past decisions).
- Administrative regulations are rules promulgated by government agencies that have been given their authority by the executive branch or legislative branch.
- Constitutions are found at the federal and state levels. State constitutions can be more restrictive than the U.S. Constitutions, but they cannot relax protections spelled out in the U.S. Constitution.
- Modern legal codes are found at the federal and state levels. State legal codes of interest to us are most often penal codes.
- Courts influence other criminal justice agencies and officials through adjudication and oversight.

KEY TERMS

Code of Hammurabi, 6
Twelve Tables, 6
common law, 6
special law, 6
precedent, 7
stare Decisis, 7
administrative regulations, 8
Code of Federal Regulations, 8
Bill of Rights, 9

REVIEW QUESTIONS

1. What is the legal basis for today's courts?
2. How did courts develop in Western societies?

3. SUMMARIZE THE GUIDING LEGAL PRINCIPLES UNDERLYING THE U.S. COURT SYSTEM

- People who come before the courts are protected via presumptions, constitutional rights, and the adversarial system.
- Presumptions are substitutes for evidence. The most well-known presumption in criminal justice is the presumption of innocence.
- Constitutional rights of relevance in the courts context stem mainly from the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution.
- Ours is an adversarial justice system, which is particularly reflected in the courts. Our system is adversarial because it pits two parties, the prosecution and the defense, against each other in the pursuit of justice. The opposite of an adversarial system is an inquisitorial system of justice.

KEY TERMS

presumption, 10
presumption of innocence, 10
due process clause, 11
incorporation, 11
substantive due process, 15
procedural due process, 15
adversarial justice system, 15
adversarialism, 15
inquisitorial system, 16

REVIEW QUESTIONS

1. What purposes do presumptions serve?
2. What is the difference between our adversarial system of justice and the inquisitorial systems of justice that have sometimes been used in the past?

4. EXPLAIN THE NATURE OF DISPUTES

- Courts adjudicate both civil disputes and criminal cases. In general, criminal cases involve charges against an individual brought by a government official (i.e., a prosecutor). Civil cases involve disputes between private parties or sometimes between a government entity and a private party.
- Categories of civil law include torts, contracts, property law, the law of succession, and family law.
- A crime is any action that violates a statute duly enacted by the proper public authority.
- Crimes can be categorized by the penalties that attach or by the type of conduct involved. Felonies, misdemeanors, and infractions differ in terms of the penalties that can attach to each.
- The doctrine of *corpus delicti* requires that a crime must be committed in order to hold someone liable for it.
- Elements of a crime include *actus reus* (the criminal act) and *mens rea* (the intent).
- Criminal defenses come in three varieties: (1) alibis, (2) justifications, and (3) excuses.

KEY TERMS

monetary damages, 17
injunctive relief, 17
tort, 17
tort law, 17
strict liability, 20
contract law, 20
property law, 20
law of succession, 20
will, 20
family law, 21
crime, 21
felony, 22
misdemeanor, 22
infraction, 22
***corpus delicti*, 22**
***actus reus*, 22**
***mens rea*, 22**
alibi, 23
justification defense, 23
excuse defense, 23

REVIEW QUESTIONS

1. How does civil law differ from criminal law?
2. What are the main categories of civil law?
3. Explain the defenses to criminal liability.

WHAT WILL YOU DO?

Modern Legal Codes

In 2014, the Fresno County (California) Board of Supervisors adopted an ordinance criminalizing the cultivation of medical marijuana within unincorporated areas of the county. Medical marijuana is legal under California law, however. Here are pertinent facts from the case (*Kirby* v. *County of Fresno*, 2015 Cal. App. LEXIS 1073 [2015]):

> The County of Fresno (County) adopted an ordinance that banned marijuana dispensaries, cultivation and storage of medical marijuana in all its zoning districts. It

classified violations of the ordinance as both public nuisances and misdemeanors. It also limited the use of medical marijuana to qualified medical marijuana patients at their personal residences only.

Plaintiff Diana Kirby sued to invalidate the ordinance. She alleged the ordinance created an unconstitutional conflict with the right to cultivate, possess and use medical marijuana provided by the Compassionate Use Act (CUA) (Health & Saf. Code, § 11362.5) and the Medical Marijuana Program (MMP) (§ 11362.7 et seq.) and, more specifically, deprived her of the right to cultivate medical marijuana at her residence for her personal use. Kirby also alleged the ordinance's criminalization of cultivation and storage conflicted with subdivision (e) of section 11362.71, which expressly states that certain persons shall not be "subject to arrest for possession . . . or cultivation of medical marijuana in an amount established pursuant to [the MMP]."

[The County argued that Kirby] had failed to state a cause of action because its ordinance did not conflict with the narrowly drawn statutes. The trial court agreed and sustained . . . Kirby appealed, contending her pleading identified three ways the ordinance conflicted with state law, each of which was sufficient to state a cause of action on the legal theory that all or part of the ordinance was preempted by state law.

California's constitution provides that an ordinance "in conflict with" a state statute is void. Moreover, California's Medical Marijuana Program "prohibits a local law enforcement agency or officer from refusing to accept an identification card as protection against arrest for the possession, transportation, delivery, or cultivation of specified amounts of medical marijuana . . ." Kirby sued, arguing that the county ordinance was at odds with California's medical marijuana scheme. As an appellate court judge, how would you decide?

The Bill of Rights

You are a Supreme Court justice presented with the following set of facts. Did the officers use excessive force in violation of the Fourth Amendment? Defend your answer.

Near midnight on July 18, 2004, Lieutenant Joseph Forthman of the West Memphis, Arkansas, Police Department pulled over a white Honda Accord because the car had only one operating headlight. Donald Rickard was the driver of the Accord, and Kelly Allen was in the passenger seat. Forthman noticed an indentation, "roughly the size of a head or a basketball" in the windshield of the car. . . . He asked Rickard if he had been drinking, and Rickard responded that he had not. Because Rickard failed to produce his driver's license upon request and appeared nervous, Forthman asked him to step out of the car. Rather than comply with Forthman's request, Rickard sped away.

Forthman gave chase and was soon joined by five other police cruisers driven by Sergeant Vance Plumhoff and Officers Jimmy Evans, Lance Ellis, Troy Galtelli, and John Gardner. The officers pursued Rickard east on Interstate 40 toward Memphis, Tennessee. While on I–40, they attempted to stop Rickard using a "rolling roadblock," but they were unsuccessful. . . . Rickard and the officers passed more than two dozen vehicles [at speeds of over 100 miles per hour].

Rickard eventually exited I–40 in Memphis, and shortly afterward he made "a quick right turn," causing "contact [to] occu[r]" between his car and Evans' cruiser. As a result of that contact, Rickard's car spun out into a parking lot and collided with Plumhoff's cruiser. Now in danger of being cornered, Rickard put his car into reverse "in an attempt to escape." As he did so, Evans and Plumhoff got out of their cruisers and approached Rickard's car, and Evans, gun in hand, pounded on the passenger-side window. At that point, Rickard's car "made contact with" yet another police cruiser. Rickard's tires started spinning, and his car "was rocking back and forth," indicating that Rickard was using the accelerator even though his bumper was flush against a police cruiser. At that point, Plumhoff fired three shots into Rickard's car. Rickard then "reversed in a 180 degree arc" and "maneuvered onto" another street, forcing Ellis to "step to his right to avoid the vehicle." As Rickard continued "fleeing down" that street, Gardner and Galtelli fired 12 shots toward Rickard's car, bringing the total number of shots fired during this incident to 15. Rickard then lost control of the car and crashed into a building. Rickard and Allen both died from some combination of gunshot wounds and injuries suffered in the crash that ended the chase (*Plumhoff* v. *Rickard*, No. 12-1117 [2014]).

NOTES

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2 Who Controls the Courts?

LEARNING OBJECTIVES

1. Summarize the ways legislatures exert control over the courts.
2. Summarize the ways the executive branch of the government exerts control over the courts.
3. Describe the hierarchical structure of the courts.
4. Summarize the various other ways in which control is exerted over the courts.

Introduction

Gilberto Valle, a New York City police officer, had no prior criminal record and there was no evidence he ever harmed anyone. He was, however, an active member of an Internet sex fetish community called the "Dark Fetish Network" (DFN). He regularly communicated with individuals around the world who he knew only by their screen names, such as "Moody Blues" and "Aly Kahn." He communicated with these individuals via e-mail and in chat rooms late in the evening or in the early morning hours after his work shifts. Much of his activity centered on the women he knew, including his wife, her colleagues, and some of their acquaintances. He talked openly about his desire to kidnap, torture, cook (yes, cook), rape, murder, and cannibalize these women (after his case became public, Valle was branded "the cannibal cop"[1]).

Valle's wife, Kathleen Mangan, became concerned about his late-night Internet activity. She installed spyware on the computer Valle used, which tracked websites searched, and even took screen shots at regular intervals. Mangan soon found graphic e-mails and messages describing Valle's desire to harm her and other women. She quickly confronted federal authorities, and Valle was subsequently arrested and charged with conspiracy to kidnap several women who were the subjects of his DFN chats. He was also charged under the Computer Fraud and Abuse Act (CFAA) with illegal use of a police computer database to look up contact and other personal information for some of the women he was allegedly going to kidnap.

A jury convicted Valle on both counts. Valle then moved for a judgment of acquittal, which he was permitted to do under New York law. The judge agreed with him on the conspiracy charge but not on the CFAA charge. The case then went to the U.S. Court of Appeals for the Second Circuit, which reversed Valle's conviction on the latter charge.[2] The CFAA imposes criminal penalties for one who "intentionally accesses a computer without authorization or exceeds authorized access and thereby obtains information . . . from any department or agency of the United States." Valle was

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Officer Gilberto Valle appears outside court in New York City.

authorized to access the database in question for work purposes but not for his personal use. Nevertheless, he argued he did not "exceed authorized access" and that his non–law enforcement purpose for running the search was irrelevant. The Second Circuit agreed with him. Do you?

Learning Objective 1
Summarize the ways legislatures exert control over the courts.

Legislative Control

Legislatures exert control over the courts through various means. Article III of the U.S. Constitution gives Congress the power to create courts. With this comes the authority to define courts' jurisdiction. When courts are created, Congress also authorizes a specified number of judgeships, sets judicial salaries, and enacts rules that the courts must follow. Similar arrangements are found at the state level.

direct control
The ability of legislative bodies to directly control the courts through the power to create them, to set the rules they must follow, and to limit their jurisdiction.[i]

indirect control
The ability of legislative bodies to indirectly control the courts through the power to confirm judicial appointees and to set the budget for the judiciary.

We call this type of authority **direct control** because it is constitutionally authorized, but the legislative branch can exert **indirect control** over the courts by confirming judicial appointees and setting the judiciary's budget. Together, the direct and indirect controls that the legislative branch can exert over the courts put it at the top of the proverbial "food chain." We begin with a detailed look at jurisdiction, and then we look closer at court creation, rule setting, confirmations, and budgeting.

Jurisdiction

jurisdiction
The power of a court to resolve a dispute.

Jurisdiction refers to the power of a court to resolve a dispute. It is defined more formally as "the territory, subject matter, or persons over which lawful authority may be exercised by a court or other justice agency, as determined by statute or constitution."[3] As we already mentioned, the U.S. Constitution's third article spells out the judicial power of the United States. Congress has gone on to create several other federal courts; states have done the same. Part of this court creation process involves setting courts' jurisdictional boundaries. There are several types of jurisdiction, and they are covered in the following sections.

geographical jurisdiction
The organization of courts in distinct geographic regions.

Geographical Jurisdiction

Geographical jurisdiction refers to the organization of courts in distinct geographic regions. California courts hear only California cases, Maryland courts hear only Maryland cases, and so on. Within each state, courts have their own geographic boundaries, and often they are organized by counties. At the federal level, there are federal districts and appellate districts. Federal districts can take up whole states, or there can be more than one federal district in a single highly populous state. In contrast, the appellate districts overlap several states.

subject matter jurisdiction
The type of case that individual courts can adjudicate.

hierarchical jurisdiction
The courts' distinct functions and responsibilities at different levels within a single (state or federal) judiciary.

original jurisdiction
"[T]he lawful authority of a court to hear or act upon a case from its beginning and to pass judgment on the law and the facts."[ii]

Subject Matter Jurisdiction

Subject matter jurisdiction is concerned with what types of cases individual courts can adjudicate. Some courts have limited subject matter jurisdiction because they hear only specific types of cases, such as gun cases, drug cases, and domestic-violence cases. Higher-level courts, like state supreme courts or the U.S. Supreme Court, hear mostly appeals, so they actually have jurisdiction over many different types of disputes.

Hierarchical Jurisdiction

Hierarchical jurisdiction is concerned with the courts' distinct functions and responsibilities at different levels within a single (state or federal) judiciary. Hierarchical jurisdiction can be further subdivided into two types. **Original jurisdiction** is "the lawful authority of a court to hear or act upon a case from

its beginning and to pass judgment on the law and the facts."[4] **Appellate jurisdiction** is "the lawful authority of a court to review a decision made by a lower court; the lawful authority of a court to hear an appeal from a judgment of a lower court."[5]

appellate jurisdiction
"[T]he lawful authority of a court to review a decision made by a lower court; the lawful authority of a court to hear an appeal from a judgment of a lower court."[iii]

The typical lower-level trial court has original jurisdiction to try specific cases, such as those arising out of violations of distinct penal code provisions. In contrast, higher-level courts, like state appellate courts, the federal appellate courts, and supreme courts (including the U.S. Supreme Court), have very limited original jurisdiction and rarely try offenses or resolve disputes between parties. Their jurisdiction is mostly of the appellate variety, meaning that they hear only appeals arising out of the lower courts. Such appeals most often challenge legal decisions made by lower-court judges.

Federal Jurisdiction Jurisdiction further varies between the federal and state courts. In general, the federal courts have jurisdiction over federal matters, and the state courts have jurisdiction over state matters. Exceptions exist when the U.S. Supreme Court has original jurisdiction over certain cases arising from the states.

Both the Constitution and various federal statutes spell out precisely what kinds of cases the federal courts can hear.[6] There are various types of federal court jurisdiction, but one that is most important in the criminal justice context is the **federal question jurisdiction**, which refers to the authority of federal courts to hear cases touching on the Constitution or other federal laws. Cases falling within these categories are said to raise "federal questions." Recall from Chapter 1 that we briefly referenced the Supreme Court's decision in *Tennessee* v. *Garner*.[7] Surviving family members of a 15-year-old who was shot by a police officer sought relief via a lawsuit, invoking a federal statute and arguing that the boy's right to be free from unreasonable searches and seizures was violated. This case ultimately went to the Supreme Court because it raised a federal question: Is it a violation of federal law (the Fourth Amendment in particular) to shoot an unarmed fleeing felon, and, based on that, can a lawsuit be brought to federal court?

federal question jurisdiction
One of three main types of federal court jurisdiction that refers to the authority of federal courts to hear cases touching on the U.S. Constitution or other federal laws.

What about criminal cases that involve violations of federal law? On the one hand, criminal cases involving violations of federal law fall under the original jurisdiction (see earlier discussion in this chapter) of the U.S. district courts; on the other hand, violations of federal law are akin to "federal questions," which brings federal question jurisdiction into play. Federal question jurisdiction can come into play at the appellate level as well. Assume, for example, that a district court trial judge admits evidence against a defendant that was obtained in a questionable fashion. If the defendant is convicted, he or she may appeal and allege a constitutional rights violation, in which case the appeal would fall under federal question jurisdiction.

Diversity Jurisdiction **Diversity jurisdiction** refers to the authority of certain federal courts to hear cases where the parties are from different states. The term *diversity* is used specifically in this context to refer to the fact that both parties have different, or "diverse," state citizenship. Giving the federal courts jurisdiction in such cases is sensible because it provides a neutral forum in which to resolve disputes arising out of more than one place. It could be construed as unfair to have a dispute between citizens of two states resolved in one of the states where a party resides.

diversity jurisdiction
One of three main types of federal court jurisdiction. This refers to the authority of federal courts to hear cases where the parties are from different states.

Diversity jurisdiction cases must involve disputed amounts of more than $75,000. Diversity jurisdiction also extends to disputes between U.S. citizens and foreign citizens and/or companies. If a Texas company sued a Mexican company, this would fall under the federal courts' diversity jurisdiction.[8]

supplemental jurisdiction
One of three main types of federal court jurisdiction that refers to the right of some federal courts to hear a case for which they would not ordinarily have original jurisdiction[iv]; also called *ancillary jurisdiction* or *pendent jurisdiction.*

Supplemental Jurisdiction Some federal courts also enjoy what is known as **supplemental jurisdiction** (also called *ancillary* or *pendent jurisdiction*), or the right to hear a case for which it would not ordinarily have original jurisdiction.[9] Supplemental jurisdiction is also called ancillary jurisdiction or pendent jurisdiction.

State Jurisdiction State court jurisdiction is considerably more straightforward when compared to federal court jurisdiction. State courts have either original or appellate jurisdiction and do not have authority to decide matters involving federal questions, diversity issues, or supplemental matters (as in the case of supplemental jurisdiction).

State courts exercise original jurisdiction over various disputes. Most often, these are criminal cases or civil lawsuits. State trial courts have original jurisdiction over criminal cases involving violations of state law, and they also have original jurisdiction over civil lawsuits that do not involve federal questions. In contrast, state appellate courts have appellate jurisdiction.

State courts are similar to federal courts when it comes to geographical or subject matter jurisdiction and are divided along specific geographic boundaries; for example, most state trial courts are found at the county level. Likewise, state courts (like the federal courts) have distinct subject matter jurisdiction. The lowest state courts have limited jurisdiction over specific matters, such as traffic violations.

Types of Direct Controls

Jurisdiction is not the only example of direct control of the judiciary by the legislature. Legislative bodies can further exert direct control over the courts through creating them, setting the rules they must follow, and limiting their jurisdiction.[10]

Creating Courts Article III of the U.S. Constitution gives Congress the authority to create courts as it sees fit. New courts have appeared throughout history, others have been eliminated, and still others have had their names and jurisdictions changed. Legislatures perform the same functions at the state level as well.

Legislatures also maintain authority to decide personnel issues. At the federal level, Congress defines the number of judgeships, thereby determining how many judges will be available to settle disputes in the federal courts. Congress also sets judicial pay. Article III bars Congress from reducing judicial salaries, but the ability to set the initial salaries is still important.

The influence of Congress on judicial salaries was recently made apparent in a report by the **American Bar Association (ABA)**, a group that accredits U.S. law schools, and the Federal Bar Association; the report observed that "the current salaries of Federal judges have reached such levels of inadequacy that they threaten to impair the quality and independence of the Third Branch."[11]

Setting the Rules Legislatures also have rule-making authority. At the federal level, Congress has the authority to set the rules of practice, procedure, and evidence in the federal courts. It has delegated this responsibility to the Judicial Conference of the United States (see Chapter 3 for more detail on the Judicial Conference), but it retains the right to modify or reject proposed rule changes. The **Rules Enabling Act of 1934**[12] spells the arrangements out in more detail. A summary of the federal rule-making process can be seen in Table 2–1.

Rules Enabling Act of 1934
The U.S. federal legislation that gave Congress the authority to set the rules of practice, procedure, and evidence in the federal courts.[v]

There are five sets of rules that dictate the procedures to be followed in federal court cases. The Federal Rules of Civil Procedure govern the processing of civil cases,[13] and

TABLE 2–1 Federal Courts' Rule-Setting Procedures

Summary of Procedures	
Action	**Date**
Step 1	
There is a suggestion for a change in the rules (submitted in writing to the secretary).	At any time.
It is referred by the secretary to the appropriate advisory committee.	Promptly after receipt.
It is considered by the advisory committee.	Normally at the next committee meeting.
If approved, the advisory committee seeks authority from the Standing Committee to circulate to bench and bar for comment.	Normally at the same meeting or the next committee meeting.
Step 2	
There is a public comment period.	For six months.
There are public hearings.	During the public comment period.
Step 3	
The advisory committee considers the amendment afresh in light of public comments and testimony at the hearings.	About one or two months after the close of the public comment period.
The advisory committee approves the amendment in final form and transmits it to the Standing Committee.	About one or two months after the close of the public comment period.
Step 4	
The Standing Committee approves the amendment, with or without revisions, and recommends approval by the Judicial Conference.	Normally at its June meeting.
Step 5	
The Judicial Conference approves the amendment and transmits it to the Supreme Court.	Normally at its September session.
Step 6	
The Supreme Court prescribes the amendment.	By May 1.
Step 7	
Congress has a statutory time period in which to enact the legislation, reject it, modify it, or defer the amendment.	By December 1.
Absent congressional action, the amendment becomes law.	December 1.

Source: Summary of Procedures from Overview for the Bench, Bar, and Public, United States Courts.

the Federal Rules of Criminal Procedure do the same for criminal cases.[14] The federal appellate courts follow the Federal Rules of Appellate Procedure, but bankruptcy cases have their own set of rules, found in the Federal Rules of Bankruptcy Procedure. Finally, the Federal Rules of Evidence govern the admissibility of evidence in federal cases (e.g., when hearsay is admissible, what evidence is deemed relevant, what forms of scientific evidence are admissible). All federal courts must follow these standard rules, but many have developed their own "local rules" to help them deal with local issues and problems. But like the relationship between states' constitutions and the federal Constitution, the local rules cannot supersede or contradict the federal rules. Local rules often involve simple twists to ensure that a court's day-to-day operations flow smoothly; for example, a local rule may govern which type of paper a claim must be submitted on. The federal rules' intent is to ensure uniformity and consistency in the federal courts.

Limiting Their Jurisdiction Congressional efforts to tinker with court jurisdiction have become so prevalent in recent years that a term has been assigned to the practice: *court-stripping*. Also called jurisdiction stripping,[15] **court-stripping** has been defined as "the attempt to take jurisdiction away from courts to review matters."[16] Attempts to limit court jurisdiction have most often come in the form of legislative proposals by members of Congress (or state legislators) as a means of voicing their displeasure with controversial court decisions.

court-stripping
"[T]he attempt to take jurisdiction away from courts to review matters"[vi]; also called *jurisdiction stripping*.[vii]

Two examples of court-stripping are the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)[17] and the Immigration Reform and Immigrant Responsibility

Act of 1996 (IRIRA).[18] AEDPA states, in part, "Notwithstanding any other provision of law, no court shall have jurisdiction to review any final order of removal against any alien who is removable by reason of having committed a criminal offense."[19] Note how the "no court shall have jurisdiction" language strips courts of their authority. Likewise, the IRIRA contains provisions for summary deportation of illegal aliens seeking political asylum, at border checkpoints, with no judicial review, and it was upheld in a Supreme Court ruling.

Indirect Controls

Legislatures also exert indirect control over the courts through two important indirect channels: confirmations and budgeting. At the federal level, the Senate must confirm judicial appointees by a simple majority, a process that has become intensely political in recent years. Congress also sets the budget for the federal judiciary as well as the salaries of individual judges.

Confirmations The Senate ultimately decides who becomes a federal judge, even though the president nominates potential judges to serve on the federal bench. The Senate has taken a hands-on approach to this important role because since 1789 more than 34 Supreme Court nominees (out of about 150) were not confirmed, suggesting that the Senate can indeed control who gets on the bench when there is sufficient support to do so.[20]

One of the more contentious debates of a judicial nominee involved President Reagan's nomination of Robert Bork to serve as associate justice on the Supreme Court. When Bork was nominated in 1987, Senator Ted Kennedy promptly reacted by stating, "Robert Bork's America is a land in which women would be forced into back-alley abortions, blacks would sit at segregated lunch counters, rogue police could break down citizens' doors in midnight raids, schoolchildren could not be taught about evolution, writers and artists could be censored at the whim of government."[21] Bork's nomination was defeated; now when a nomination is blocked, it is often described as being "borked."

A number of observers have expressed frustration with the politicized nature of the confirmation process these days. According to legal expert Ryan Becker, partisan division has entered the confirmation process with a vengeance.[22] It is not uncommon for judicial nominees to wait months for their confirmations.

Budgeting Congress sets the budget and thus appropriates money for the judicial branch to operate. While the judiciary's budget is a pittance compared to what it costs to run other government programs (such as the military), it is still possible to exert substantial control of the courts through this "power of the purse." Similar observations can be traced all the way back to 1788, when in the *Federalist No. 79* Hamilton argued that "we can never hope to see realized in practice the complete separation of the judicial from the legislative power, in any system, which leaves the former dependent for pecuniary resources on the occasional grants of the latter."[23]

The federal judiciary is funded by Congress following a back-and-forth process: The Committee on the Budget of the Judicial Conference of the United States presents a budget to Congress, defending its various funding proposals; Congress then responds, usually with a somewhat reduced budget. This is fairly typical of the budgeting process for other federal agencies.

Much the same process plays out at the state level, and it can be political there as well.[24] A recent survey of court administrators and other personnel involved in court budgeting revealed just this.[25]

COURTS IN THE NEWS

Tan Yong and Li Yan: Domestic Violence and the Chinese Court System

Zhou Wenjie Xinhua/AP Images.

Chinese courts are controlled by political doctrine and must toe the party line. In the United States, courts are designed to be objective and nonpolitical institutions. Do you believe they have met the standard?

Before they married, Tan Yong admitted to Li Yan that he had beaten his three previous wives. He promised to change, but he did not; soon after the wedding, Mr. Tan began abusing his wife. He stubbed out cigarettes on her face and legs. He would take her hair and hit her head against the wall. He locked her on the balcony for hours in the winter. The abuse went on for more than a year. Finally, Ms. Li could take no more and killed him during an argument. After killing her husband, she cut him up and boiled some of the body parts. She was convicted of murder and sentenced to death, but in April 2015, her death sentence was suspended. She will still serve life in prison unless her sentence is reduced at some point in the future.

Those who support her cause believe that she lost control because of the battering. However, the court did not initially take the abuse into account when determining her sentence. Lawyers, deputies to the National People's Congress, and Amnesty International appealed to Chinese authorities not to execute Ms. Li. It seems they succeeded to some degree.

Women's jails are filled with women who have injured or killed abusive husbands; they account for 60 percent of inmates in one jail in Anshan, Liaoning province, and 80 percent of women serving heavy sentences in a jail in Fuzhou, Fujian province. In a study by Xing Hongmei of China Women's University, of 121 female inmates in a Sichuan jail who were serving time for attacking or killing abusive partners, 71 were originally sentenced to life in prison or to death (sometimes commuted, delayed, or overturned on appeal), and 28 more were sentenced to at least 10 years. This means more than 80 percent received the heaviest possible sentences for murder or bodily harm. While Li's sentence was severe, she is not alone. While exact statistics of the death penalty in China are unavailable (as they are considered a state secret), it is estimated that thousands of executions take place on an annual basis—which is more than the rest of the world combined.

The harsh treatment meted out by Chinese courts stands in contrast to China's position as a global superpower. Not too long ago, a member of China's nine-man Politburo Standing Committee clearly stated the government's opposition to independent courts in an address published in a state-run magazine. Mr. Luo Gan, citing the need to protect against threats to national security, called on Chinese legal departments at all levels to adhere to the "correct" political stance—which he defined as "where the party stands"—in dispensing justice in Chinese courts.

Luo's address served to warn officials throughout China's legal system that the democratic concept of independent courts will not be tolerated. Instead, courts are expected to toe the line set by the country's Communist Party leadership, thus ensuring the party's continued control.

Many people—even the Chinese themselves—admit that politics plays a central role in the administration of courts in China. As this news box shows, even high-ranking Chinese officials believe that such control is necessary for the effective administration of justice. Western-style democracies, however, often espouse the ideal of an independent judiciary. ■

DISCUSSION QUESTIONS

1. What are the likely consequences of political control over the courts, as appears to be the case in China?
2. What agencies or groups influence courts under the American style of government?
3. Does politics play a role in the operation of American courts?
4. Should American courts operate more independently? If so, how?

Sources: Gilles Sabrie, "China, in Suspending Woman's Death Sentence, Acknowledges Domestic Abuse," *New York Times*, April 24, 2015, http://www.nytimes.com/2015/04/25/world/asia/china-suspends-death-sentence-for-li-yan.html?_r=0 (accessed December 9, 2015); Didi Kirsten Tatlow, "Chinese Courts Turn a Blind Eye to Abuse," *New York Times*, January 29, 2013, http://www.nytimes.com/2013/01/30/world/asia/chinese-courts-turn-a-blind-eye-to-abuse.html?_r=0&pagewanted=print (accessed December 9, 2015); Joseph Kahn, "Chinese Official Warns against Independence of Courts," *New York Times*, February 3, 2007, http://www.nytimes.com/2007/02/03/world/asia/03china.html?_r=2 (accessed December 9, 2015).

How would legislatures influence court decisions? Nearly 30 percent of the survey respondents claimed that elected legislators either directly or indirectly threatened the courts with budget reductions as a means of protesting unfavorable decisions, and almost 20 percent of the survey respondents claimed that their legislatures *had* reduced courts' budgets in response to such decisions. As for pressures to raise revenues, the researchers found that courts have been pressured to increase court fees and monetary sanctions, such as fines and forfeitures. They noted that "pressuring courts to raise more money creates the potential for biasing court decisions; for example, judges might be inclined to impose the maximum fine in all cases in order to increase funding."[26]

Learning Objective 2

Summarize the ways the executive branch of the government exerts control over the courts.

executive control
A measure of control over the courts exercised through the executive's power to appoint judges to the bench and the daily presence of the prosecutors—each of whom is a member of the executive branch—who work in the courts.

Executive Control

Our system of government ensures that the executive branch has a measure of control over the courts. At the federal level, **executive control** is applied through the appointment process. The executive branch also has a significant presence in the courts: Whether at the state or the federal level, prosecutors, who are members of the executive branch, work in the courts on a daily basis. The executive branch also asserts its control—or at least its autonomy—by ignoring or modifying certain court decisions.

Executive Appointment Process for the Judiciary

The president is given authority, via the Constitution, to appoint federal judges, but given how many federal judgeships there are, it is unrealistic for the president to be heavily involved in all the nominations. Particularly for vacancies in the lower courts, the president will routinely consult with senators and other elected officials in an effort to identify qualified candidates. Deference is often given to senators when there is a vacancy in their states. The president also consults with the ABA, an issue we discuss later in this chapter.

Executive Presence in the Courts

The executive branch's influence on the federal courts can also be observed in the activities of the Department of Justice, an executive agency that is responsible for prosecuting individuals who violate federal laws, and for representing the government in civil cases executive employees, particularly the U.S. attorneys and their subordinates, routinely interact with the federal courts and argue cases before them. Second, other executive agencies either work in or work closely with the courts. For example, the U.S. Marshals Service provides security for federal courthouses and judges. Finally, some other federal agencies routinely adjudicate disputes arising from administrative law in the federal courts.

Reshaping the Judiciary?

Shortly after Franklin Roosevelt was elected to the presidency in 1936, he unleashed a proposal called the Judiciary Reorganization Bill of 1937. In it, he called for presidential authority to appoint an additional Supreme Court justice to the U.S. Supreme Court for every sitting justice who was over 70½ years of age, up to a maximum of six new justices. Roosevelt's intentions were to "stack" the Supreme Court such that it would uphold important New Deal measures. His plan eventually failed when it was