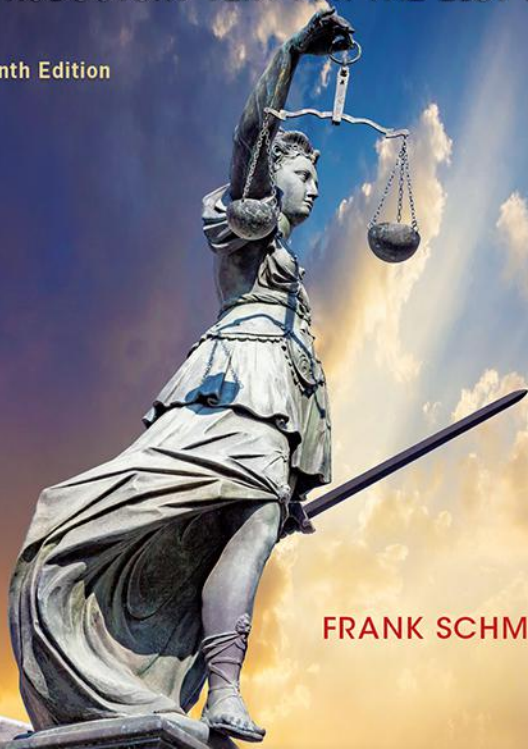


# CRIMINAL JUSTICE



AN INTRODUCTORY TEXT FOR THE 21ST CENTURY

Sixteenth Edition



FRANK SCHMALLEGER



SIXTEENTH EDITION

# Criminal Justice Today

AN INTRODUCTORY TEXT

FOR THE TWENTY-FIRST CENTURY

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This book is dedicated to my beautiful wife,  
Ellen “Willow” Szirandi Schmalleger, my true companion,  
whose wonderful, happy, and free spirit  
is a gift to all who know her.

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# New to This Edition

## Chapter-Specific Changes

### Chapter 1: What Is Criminal Justice?

- A new key term, “procedural justice,” has been added to the chapter.
- The discussion of “new era” crime has been expanded.
- Mention is now made of the criminal proceedings against Bill Cosby.
- The chapter’s statistics have been updated.
- Two new key terms, “evidence-based,” and “evidence-based practice (EBP),” have been added to the chapter.

### Chapter 2: The Crime Picture

- A new key term, “unreported crime,” has been added to the chapter.
- Updated crime statistics are found throughout the chapter.
- The discussion of underreported and unreported crime has been expanded.
- An enhanced discussion of NIBRS is now part of the chapter.
- A brief discussion of the Parkland High School shooting in Florida has been added.

### Chapter 3: The Search for Causes

- Discussion of rappers Jimmy Wopo and XXXTentacion have been added to the chapter, along with expanded coverage of Suge Night’s legal difficulties.
- A new key term, “neuroscience,” has been added to the chapter and defined.

### Chapter 4: Criminal Law

- Information on the insanity defense has been updated.
- In the list of types and levels of crimes, the word “infraction” has replaced “offense.”

### Chapter 5: Policing: History and Structure

- The boxed lists of police and private security agencies has been updated.

### Chapter 6: Policing: Purpose and Organization

- A discussion of LEEP, the online gateway that provides law enforcement agencies and other criminal justice entities with access to a wealth of beneficial resources has been added.
- A new key term, “fusion center,” has been added.

### Chapter 7: Policing: Legal Aspects

- Two new key terms, “warrantless search,” and “investigative detention,” have been added to the chapter.
- The U.S. Supreme Court’s distinction between three types of Fourth Amendment police–citizen interaction has been added: (1) consensual encounters, (2) detentions, and (3) arrest.
- The U.S. Supreme Court case of *Carpenter v. U.S.*, involving police access to cell phone records, is now discussed.
- A new U.S. Supreme Court case dealing with rental vehicles is now discussed. A graphic showing state wire-tap authorizations is a part of the discussion.

### Chapter 8: Policing: Issues and Challenges

- Police subculture is now shown to be equivalent to police occupational culture, and the discussion of police subculture has been expanded.
- The story is told about corruption among members of the Baltimore Police Department’s Gun Trace Task Force (GTTF).
- Police training standards have been updated.
- The 2018 Law Enforcement Mental Health and Wellness Act is now described.
- A 2018 article published in the *American Journal of Preventive Medicine* that found that members of the police profession are more likely to sustain nonfatal work-related injuries than members of any other occupation is now discussed.
- The proper handling of fentanyl at crime scenes is discussed.
- Statistics and line art have been updated throughout the chapter.

- The 2017 Supreme Court case of *White v. Pauly*, in which the Court established that “Qualified immunity attaches when an official’s conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known,” has been added.

## Chapter 9: The Courts: Structure and Participants

- A discussion of the trial of drug lord “El Chapo” Guzman is now a part of the chapter.

## Chapter 10: Pretrial Activities and the Criminal Trial

- The bail reform movement that is currently underway in the U.S. is discussed.
- The discussion of recidivism has been expanded and clarified.

## Chapter 11: Sentencing

- A new section, “Explanation of Indeterminate Sentencing,” has been added.
- Details of a new report from the National Council on Crime and Delinquency (NCCD) have been added.
- Proposed federal laws that would reduce sentences for many inmates are discussed.
- The concept of justice reinvestment has been moved to this chapter.
- Discussion of the death penalty has been updated to include a 2019 U.S. Supreme Court case that better defined the concept of intellectual disability.
- The idea of sentencing as a risk management strategy is discussed.
- The federal 2017 Rapid DNA Act is discussed.
- Two new key terms, “wrongful conviction” and “exoneration,” have been added and are discussed.

## Chapter 12: Probation, Parole, and Reentry

- A discussion of Meek Mill, born Robert Rihmeek Williams, has been added. Mill is the Philadelphia hip-hop recording artist who became the focal point of a justice reform movement that began in Philadelphia.

- The concept of a term of supervised release (TSR) is more clearly defined.
- Bill Cosby’s use of an ankle bracelet while awaiting the conclusion of his trial is discussed.
- Efforts made by the federal government to strengthen BOP reentry efforts are discussed.
- The 2018 federal First Step Act is discussed, as is the federal Second Chance Act.

## Chapter 13: Prisons and Jails

- A new figure, Figure 13–4, “Prison and Jail Populations in the United States,” has been added.
- Statistics have been updated throughout the chapter.
- The term “new generation jail” has been changed to “direct-supervision jails.”

## Chapter 14: Prison Life

- The list of terms known as “inmate argot” has been updated and revised.
- The data on prison sexual victimization has been updated, as has the discussion.
- The discussion of prison libraries has been updated to include digital materials.

## Chapter 15: Juvenile Justice

- The U.S. Supreme Court’s consideration of findings from the field of neuroscience is discussed in greater detail than before.
- The term “justice-involved youth” is introduced and defined.
- The change in juvenile court jurisdiction by age that has taken place in various states is described.
- A map of juvenile confinement facilities throughout the country has been added to the chapter.
- A discussion of commercial sexual exploitation of children has been added.

## Chapter 16: Drugs and Crime

- Discussion of the 2017 report of the President’s Commission on Combating Drug Addiction and the Opioid Crisis, has been added to the chapter.



- Familial DNA searching (FDS), a scientific technique used in criminal investigations to identify a suspect by comparing the suspect's DNA to the DNA of members of the suspect's biological family, is a new concept that has been added to the chapter.

## Chapter 17: Terrorism, Multinational Criminal Justice, and Global Issues

- A new chapter-opening story replaces the old one.
- Revised minimum rules for the treatment of prisoners, known as the "Nelson Mandela Rules" are discussed.
- The cybercriminal Infracore organization is described.
- The 2018 National Cyber Strategy developed by the White House is discussed.

- A revised organizational chart of the Department of Homeland Security replaces the old one.

## Chapter 18: High-Technology Crimes

- The chapter now begins with the NYPD's ground-breaking use of drones to patrol the skies above New Year's revelers in the city's Times Square.
- Federal laws relevant to human cloning and gene editing are discussed.
- A graphic illustration explaining how DNA phenotyping can be used to construct the physical appearance of an unknown individual from strands of their DNA has been added to the chapter.
- The application of the concept known as "familial DNA searching" is explained.

# Preface

Many students are attracted to the study of criminal justice because it provides a focus for the tension that exists within our society between individual rights and freedoms, on the one hand, and the need for public safety, security, and order, on the other. Recently, twenty-first-century technology in the form of social media, smartphones, and personal online videos, has combined with perceived injustices in the day-to-day operations of the criminal justice system, culminating in an explosion of demands for justice for citizens of all races and socioeconomic status—especially those whose encounters with agents of law enforcement turn violent. A social movement that began with the shooting of an unarmed black teenager in Ferguson, Missouri, in 2014, has developed into a widespread initiative that demands justice for all.

The tension between individual rights and public order is the theme around which all editions of this textbook have been built. That same theme is even more compelling today because of the important question we have all been asking in recent years: How much personal freedom are we willing to sacrifice to achieve a solid sense of individual and group security?

Although there are no easy answers to this question, this textbook guides criminal justice students in the struggle to find a satisfying balance between freedom and security. True to its origins, the 16th edition focuses on the crime picture in America and on the three traditional elements of the criminal justice system: police, courts, and corrections. This edition has been enhanced with additional “Freedom or Safety” boxes, which time and again question the viability of our freedoms in a world that has grown ever more dangerous. This edition also asks students to evaluate the strengths and weaknesses of the American justice system as it struggles to adapt to an increasingly multicultural society and to a society in which the rights of a few can threaten the safety of many—especially in the modern context of a War Against Terrorism.

It is my hope that this text will ground students in the important issues that continue to evolve from the tension between the struggle for justice and the need for safety. For it is on that bedrock that the American system of criminal justice stands, and it is on that foundation that the future of the justice system—and of this country—will be built.

**FRANK SCHMALLEGER, PH.D.**


**Distinguished Professor Emeritus,  
The University of North Carolina at Pembroke**

## Key Features Include

**Freedom OR safety? YOU decide** boxes in each chapter highlight the book’s ever-evolving theme of individual rights versus public order, a hallmark feature of this text since the first edition. In each chapter of the text, Freedom or Safety boxes build on this theme by illustrating some of the personal rights issues that challenge policymakers today. Each box includes critical-thinking questions that ask readers to ponder whether and how the criminal justice system balances individual rights and public safety.

**freedom OR safety? YOU decide**  
**Clarence Thomas Says: “Freedom Means Responsibility”**  
In 2009, U.S. Supreme Court Justice Clarence Thomas spoke to a group of high school essay contest winners in a Washington, DC, hotel ballroom. Thomas used the occasion, which was dedicated to our nation’s Bill of Rights, to point out the importance of obligations as well as rights. “Today there is much focus on our rights,” said Thomas. “Indeed, I think there is a proliferation of rights.” But then he went on to say, “I am often surprised by the virtual nobility that seems to be accorded those with grievances. Shouldn’t there at least be equal time for our Bill of Obligations and our Bill of Responsibilities?”  
Today, the challenge for the criminal justice system, it seems, is to balance individual rights and personal freedoms with social control and respect for legitimate authority. Years ago, during the height of what was then a powerful movement to win back control of our nation’s cities and to rein in skyrocketing crime rates, the New York Post sponsored a conference on crime and civil rights. The keynote speaker at that conference was New York City’s mayor, Rudolph W. Giuliani. In his speech, Giuliani identified the tension between personal freedoms and individual responsibilities as the crux of the crime problem then facing his city and the nation. We mistakenly look to government and elected officials, Giuliani said, to assume responsibility for solving the problem of crime when, instead, each individual citizen must become accountable for fixing what is wrong with our society. “We only see the oppressive side of authority . . . What we don’t see is that freedom is not a concept in which people can do anything they want, be anything they can be. Freedom is about authority. Freedom is about the willingness of every single human being to cede to lawful authority a great deal of discretion about what you do.”  
**You Decide**  
How can we, as Justice Thomas suggests, achieve a balance of rights and obligations in American society? What did Giuliani mean when he said, “What we don’t see is that freedom is not a concept in which people can do anything they want, be anything they can be”? Is it possible to balance individual rights and personal freedoms with social control and respect for legitimate authority?  
References: Adam Liptak, “Reluctant Justice Opens Up to a Group of Students,” *New York Times*, April 13, 2009, <http://www.nytimes.com/2009/04/14/us/14scot.html> (accessed October 2, 2018); and Philip Taylor, “Civil Liberties: Giuliani’s Efforts Threaten First Amendment,” *Freedom Forum Online*, <http://www.freedomforum.org>.

**CJ Careers** boxes outline the characteristics of a variety of criminal justice careers in a Q&A format, to introduce today’s pragmatic students to an assortment of potential career options and assist them in making appropriate career choices.

**CJ | CAREERS**  
**Police Officer**  


**Name.** Narcotics Agent Christian Tomas  
**Position.** QRT Agent (Quick Response Team/Narcotics) City of West Palm Beach, Florida  
**Colleges attended.** Palm Beach State College  
**Majors.** Psychology  
**Year hired.** 2007  
**Please give a brief description of your job.** As a narcotics agent, my co-workers and I target street-level drug dealers and other quality-of-life issues, to include prostitution as well as other illegal business practices. We use our own initiative to begin investigations throughout the city. We buy narcotics in an undercover capacity and work with the S.W.A.T. team by writing search warrants for them to execute.  
**What is a typical day like?** A typical day involves doing research and identifying a target. Once an investigation is complete, we move on to another. Some days are spent primarily on surveillance; while on others, we are directly involved with drug dealers.

**What qualities/characteristics are most helpful for this job?** Common sense, honesty, integrity, confidence, self-discipline, dedication, humility, composure, physical and mental toughness, tactical awareness and the ability to work with minimal, to no, supervision.  
**What is a typical starting salary?** The West Palm Beach Police Department starting salary is \$49,935 annually, with excellent benefits.  
**What is the salary potential as you move up into higher-level jobs?** An officer reaching PFC (Patrolman first Class) and MPO (Master Patrol Officer) will receive a 2 and 1/2% raise for each level attained. Promotion in rank produces significant raises over time.  
**What advice would you give someone in college beginning studies in criminal justice?** This isn’t a job for someone expecting to win all of the battles. You try as hard as you can, but you have to be prepared for some disappointments when a case doesn’t go the way you wanted it to. Get your degree, as it will help you get promoted. When choosing a department, make sure that it’s the kind of department that you are looking for. I came to West Palm Beach for the experience and to be busy. I wanted to be challenged and to do as much as I possibly could. Policing is a very rewarding career if you have the motivation and determination to succeed.

**CJ News** boxes in each chapter present case stories from the media to bring a true-to-life dimension to the study of criminal justice and allow insight into the everyday workings of the justice system.

**CJ | NEWS**  
Evidence of "Warrior Gene" May Help Explain Violence



misbehavior in childhood. The link has only been identified in men, leaving women seemingly immune from the effects of this genetic anomaly.

The media nicknamed MAOA-L the "warrior gene" after it was identified as highly prevalent in a constantly warring Maori tribe. Another study found that boys with an MAOA variation were more likely to join gangs and become some of the most violent members. Researchers now know that MAOA-L may alter the very structure of the brain. Using structural magnetic resonance imaging (MRI) scanning, a 2006 study found that men with the gene variant were much more likely to have abnormalities in an area of the brain associated with behavior than were other men. Functional MRI scanning then showed that these men had difficulty inhibiting strong emotional impulses. Lawyers for violent defendants have latched on to the growing science. In the 2009 murder trial of Bradley Waldrop, who was convicted of chopping up his wife with a machete (she survived) and shooting her female friend to death, lawyers were able to demonstrate that Waldrop had the MAOA gene variant. Although the jury convicted him of murder and of attempted murder, its members concluded that his action wasn't premeditated due to the influence that his genes had on him—spurring him the death penalty. Also in 2009, an Italian appeals court cut the sentence of a convicted murderer by one year on the grounds that he, too, had the MAOA-L gene.

Judges are warning up to genetic defenses. In a 2012 study in Science, when trial judges were given the MAOA variant as evidence in mock trials, they tended to reduce sentences by one year in comparison to cases with no such evidence. Critics, however, argue that these defendants should be held less lenient. Because their trait is baked into their DNA, such people say, they are likely to commit violence again. "Trying to absolve people of responsibility by attributing their behavior to their genes or environment is not new," wrote Ronald Bailey, author of the book *Libertarian Biology*. He urged courts to take a tough stance against defendants with a genetic predisposition to violence: "Knowing that you will be held responsible for criminal acts helps inhibit antisocial impulses that we all feel from time to time." Also, scientists want their findings to be taken with a grain of salt in the courts, arguing that science and the law have different aims. "Science is focused on understanding universal phenomena; we do this by averaging data across groups of individuals," wrote Joshua Buckholz for the NOVA series on PBS. "Law, on the other hand, only cares about specific individual people—the individual on trial." Buckholz observed that "Genetic defenses rarely affect human behavior with the kind of consistency or specificity desired and required by the law."

The argument that "my DNA made me do it" has, in fact, already been successfully used in the courts for a particular gene linked to violence. Monoamine oxidase A, known as MAOA, produces an enzyme that breaks down serotonin and other neurotransmitters in the brain that are identified with aggression. Studies have shown that a variant of the gene, known as MAOA-L, can lead to violent behavior when coupled with serious

Resources: Mark Labella, "Genetics May Provide Clue to Newtown Shooting," *Live Science*, December 28, 2012, <http://www.livescience.com/59833-newtown-shooting-dna.html>; Joshua W. Buckholz, "Neuroscience and Crime," *NOVA*, October 18, 2012, <http://www.pbs.org/video/new0204/neuroscience-and-crime.html>; and Patricia Cohen, "Genetic Basis for Crime: A New Look," *New York Times*, June 10, 2011, [http://www.nytimes.com/2011/06/10/orth/genetics-and-crime-at-institute-of-science-conference.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2011/06/10/orth/genetics-and-crime-at-institute-of-science-conference.html?pagewanted=all&_r=0)

**CJ Issues** boxes throughout the text showcase selected issues in the field of criminal justice, including topics related to multiculturalism, diversity, and technology.

**CJ | ISSUES**  
Rightful Policing



In the wake of a heated national debate about racially biased police practices, the Program in Criminal Justice Policy and Management at Harvard University's Kennedy School released a report on what it called "rightful policing." The report's author, Tracey L. Meares, noted that success in police work has traditionally been measured in two ways: (1) the extent to which the police are successful at fighting crime; and (2) the degree to which police agencies and their officers adhere to the law.

Effectiveness at crime fighting has long been used to judge the success of police activities at all levels. Around the turn of the twenty-first century, for example, police administrators—along with politicians—took credit for declining crime rates, and "success stories" featuring city and local police departments were frequently heard.

The second criteria by which the police have often been judged, fidelity to the law, rests on the notion that law enforcement officers must respect legal strictures as much as anyone else. It means that authorities should be held accountable when they violate the rights guaranteed to suspects under the Constitution and by law—including statutes that authorize police action and the internal administrative rules and regulations that agencies develop to help ensure the lawful treatment of anyone who comes into contact with the police.

As the Harvard study notes, these two traditional criteria of police effectiveness can be objectively evaluated. Measures of declining crime rates, for example, would appear to indicate the success of police work. Likewise, the relative lack of civil lawsuits brought against departments, and success at making arrests that "stick" are common indicators of effective police work.

Nonetheless, recent widespread disaffection with a number of grand jury decisions to exonerate police officers involved in the death of unarmed black suspects in a number of jurisdictions serve to show that a third way of assessing police effectiveness may be more important today than any other. Cases such as those in Ferguson, Missouri; Charleston, South Carolina; and Staten Island, New York, outraged many people who thought that the lives of the suspects could have been spared had the officers chosen to act differently. The fact that the officers who were involved in two of those incidents were not indicted meant that their actions had not strict legal requirements, but the lack of indictments brought about nationwide protests over what was seen as the unwarranted use of lethal force. Some traditional and social media were inundated with debates over the quality of American policing, with discussions focused on claimed racial discrimination. The slogan "Black lives matter" quickly became a rallying cry for protesters.

On the heels of those events, the Harvard study examined how ordinary people assess their treatment by authorities. It concluded that "there is a third way, in addition to lawfulness and effectiveness, to evaluate policing—rightful policing." The concept of rightful policing does not depend on the lawfulness of police conduct; nor does it look to statistics demonstrating efficiency at crime fighting. "Rather," as the Harvard study says, "it depends primarily on ... procedural justice or fairness of ... conduct." In other words, rightful policing is about how to achieve fairness in policing and about how to engender trust in police. The Harvard study says:

Researches: Tracey L. Meares, *Rightful Policing: New Perspectives in Policing* (Washington, DC: U.S. Department of Justice, National Institute of Justice, 2015); Tom R. Tyler and Jeffrey Ragan, "Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?", *Crim. Justice Journal of Criminal Law*, 6 (2008), pp. 231 and 262; and Tom R. Tyler & Charles Beale, "Policing and Police Legitimacy: Procedural Justice, Attitudes of the Police, and Acceptance of Police Authority," *Criminology*, Vol. 42 (2004), pp. 263 and 265.

## Instructor Supplements

The 16th edition of *Criminal Justice Today* is supported by a complete package of instructor and student resources:

**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.

**TestGen.** This computerized test generation system gives you maximum flexibility in creating and administering tests on paper, electronically, or online. It provides state-of-the-art features for viewing and editing test bank questions, dragging a selected question into a test you are creating, and printing sleek, formatted tests in a variety of layouts. Select test items from test banks included with TestGen for quick test creation, or write your own questions from scratch. TestGen's random generator provides the option to display different text or calculated number values each time questions are used.

**PowerPoint Presentations.** Our presentations offer clear, straightforward outlines and notes to use for class lectures or

study materials. Photos, illustrations, charts, and tables from the book are included in the presentations when applicable.

To access supplementary materials online, instructors need to request an instructor access code. Go to **www.pearson-highered.com/irc**, where you can register for an instructor access code. Within 48 hours after registering, you will receive a confirming email, including an instructor access code. Once you have received your code, go to the site and log on for full instructions on downloading the materials you wish to use.

## Alternate Versions

**eBooks.** This text is also available in multiple eBook formats. These are an exciting new choice for students looking to save money. As an alternative to purchasing the printed textbook, students can purchase an electronic version of the same content. With an eTextbook, students can search the text, make notes online, print out reading assignments that incorporate lecture notes, and bookmark important passages for later review. For more information, visit your favorite online eBook reseller or visit **www.mypearsonstore.com**.

# REVEL for Criminal Justice Today, Sixteenth Edition by Frank Schmalleger

Designed for how you want to teach - and how your students want to learn

**Revel** is an interactive learning environment that engages students and helps them prepare for your class. Reimagining their content, our authors integrate media and assessment throughout the narrative so students can read, explore, and practice, all at the same time. Thanks to this dynamic reading experience, students come to class prepared to discuss, apply, and learn about criminal justice — from you and from each other.

Revel seamlessly combines the full content of Pearson's best-selling criminal justice titles with multimedia learning tools. You assign the topics your students cover. Author Explanatory Videos, application exercises, survey questions, interactive CJ data maps, and short quizzes engage students and enhance their understanding of core topics as they progress through the content. Through its engaging learning experience, Revel helps students better understand course material while preparing them to meaningfully participate in class.

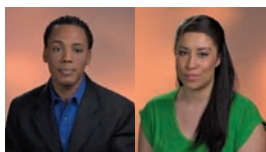
## Author Explanatory Videos

Short 2-3 minute Author Explanatory Videos, embedded in the narrative, provide students with a verbal explanation of an important topic or concept and illuminating the concept with additional examples.



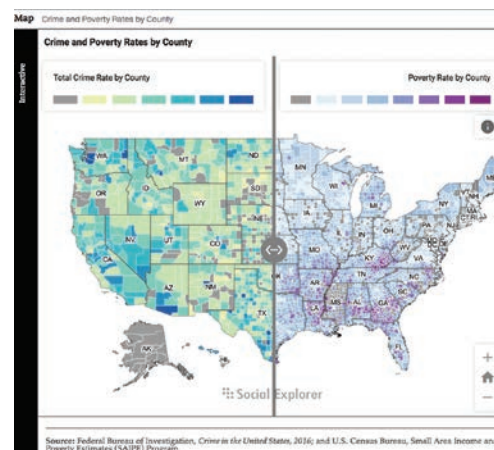
## Point/CounterPoint Videos

Instead of simply reading about criminal justice, students are empowered to think critically about key topics through Point/Counterpoint videos that explore different views on controversial issues such as the effectiveness of the fourth amendment, privacy, search and seizure, Miranda, prisoner rights, death penalty and many other topics.



## New Social Explorer Criminal Justice Data Maps

Social Explorer Maps integrated into the narrative ask students to examine crime and corrections data correlated with socioeconomic and other criminal justice data. Maps also show differences in state statutes on major issues such as marijuana legalization, the death penalty, and the distribution of hate organizations across the US.



## New Student Survey Questions

Student Survey Questions appear within the narrative asking students to respond to questions about controversial topics and important concepts. Students then see their response versus the responses of all other students who have answered the question in the form of a bar chart. We provide the instructor with a PowerPoint deck with links to each survey and map, making it easy to pull these items up in class for discussion.

**Survey** Criminal Justice and Basic Fairness

The American criminal justice system is generally fair and in most cases results in the appropriate handling and adjudication of cases.

☐ Strongly Agree

☐ Agree

☐ Neutral

☐ Disagree

☐ Strongly Disagree

PREVIOUS PAGE 1 OF 1 SUBMIT

## Track time-on-task throughout the course

The Performance Dashboard allows you to see how much time the class or individual students have spent reading a section or doing an assignment, as well as points earned per assignment. This data helps correlate study time with performance and provides a window into where students may be having difficulty with the material.

## Learning Management System Integration

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## The Revel App

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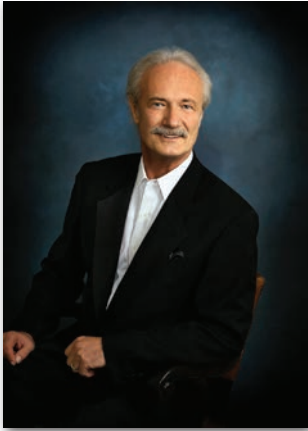
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FRANK SCHMALLEGER, PH.D.

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Frank Schmallegger, Ph.D., 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 in sociology (1974) from The Ohio State University with a special emphasis in criminology. From 1976 to 1994, he taught criminology and criminal justice courses at the University

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Schmallegger has taught in the online graduate program of the New School for Social Research, helping build the world's first electronic classrooms in support of distance learning on the Internet. As an adjunct professor with Webster University in

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Frank Schmallegger is the author of numerous articles and more than 40 books, including the widely used *Criminal Justice: A Brief Introduction* (Pearson, 2020), *Criminology Today* (Pearson, 2020), and *Criminal Law Today* (Pearson, 2016).

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

Schmallegger'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 policymaker. 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." Visit the author's website at <http://www.schmallegger.com>, and follow his Tweets @schmallegger.

**Justice is truth in action!**

—Benjamin Disraeli (1804–1881)

**Injustice anywhere is a threat to justice everywhere.**

—Martin Luther King, Jr. (1929–1968)



# THE CRIMINAL

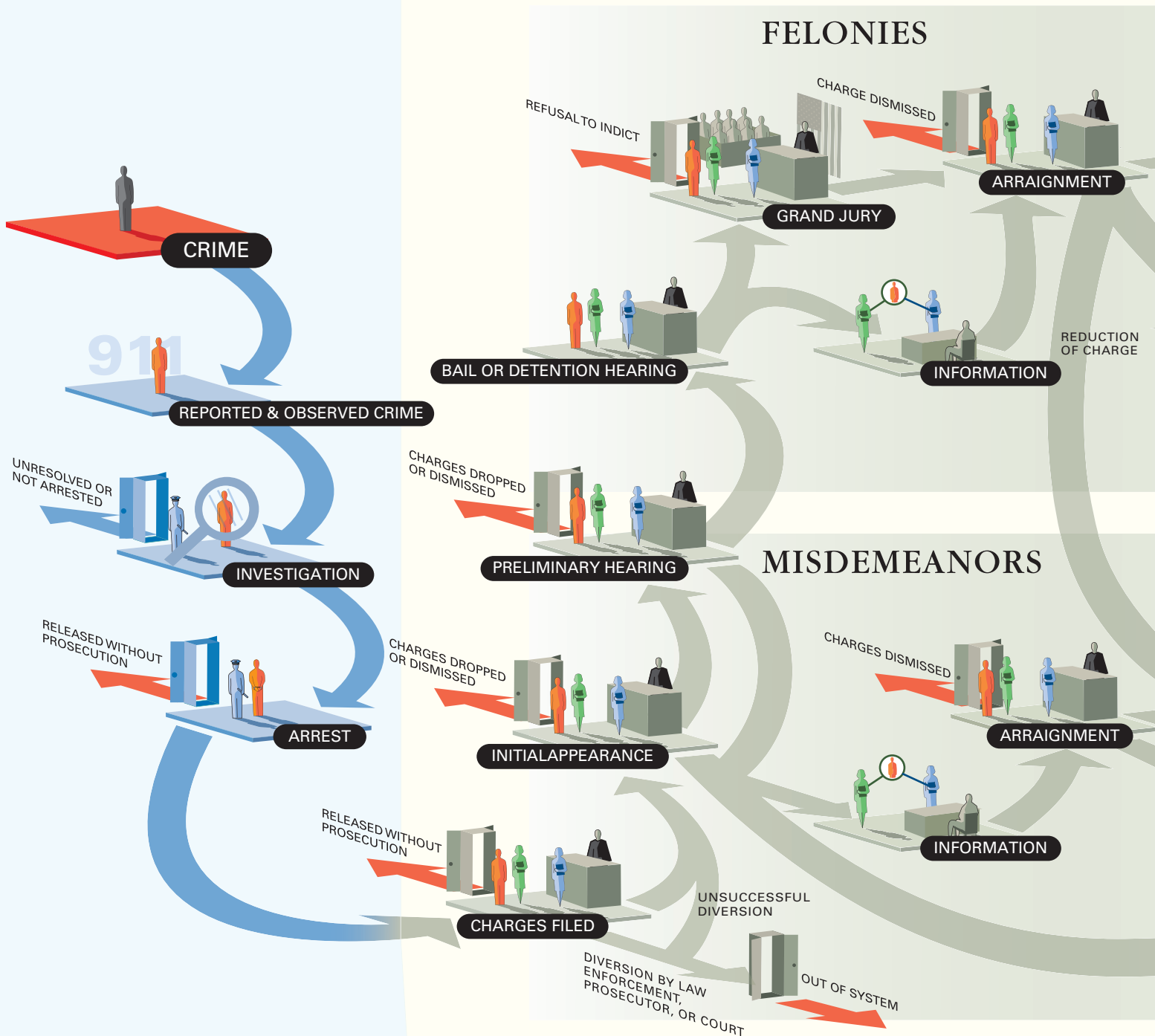
## POLICE

## COURTS

### ENTRY INTO THE SYSTEM

### PROSECUTION & PRETRIAL SERVICES

### ADJUDICATION



# JUSTICE SYSTEM

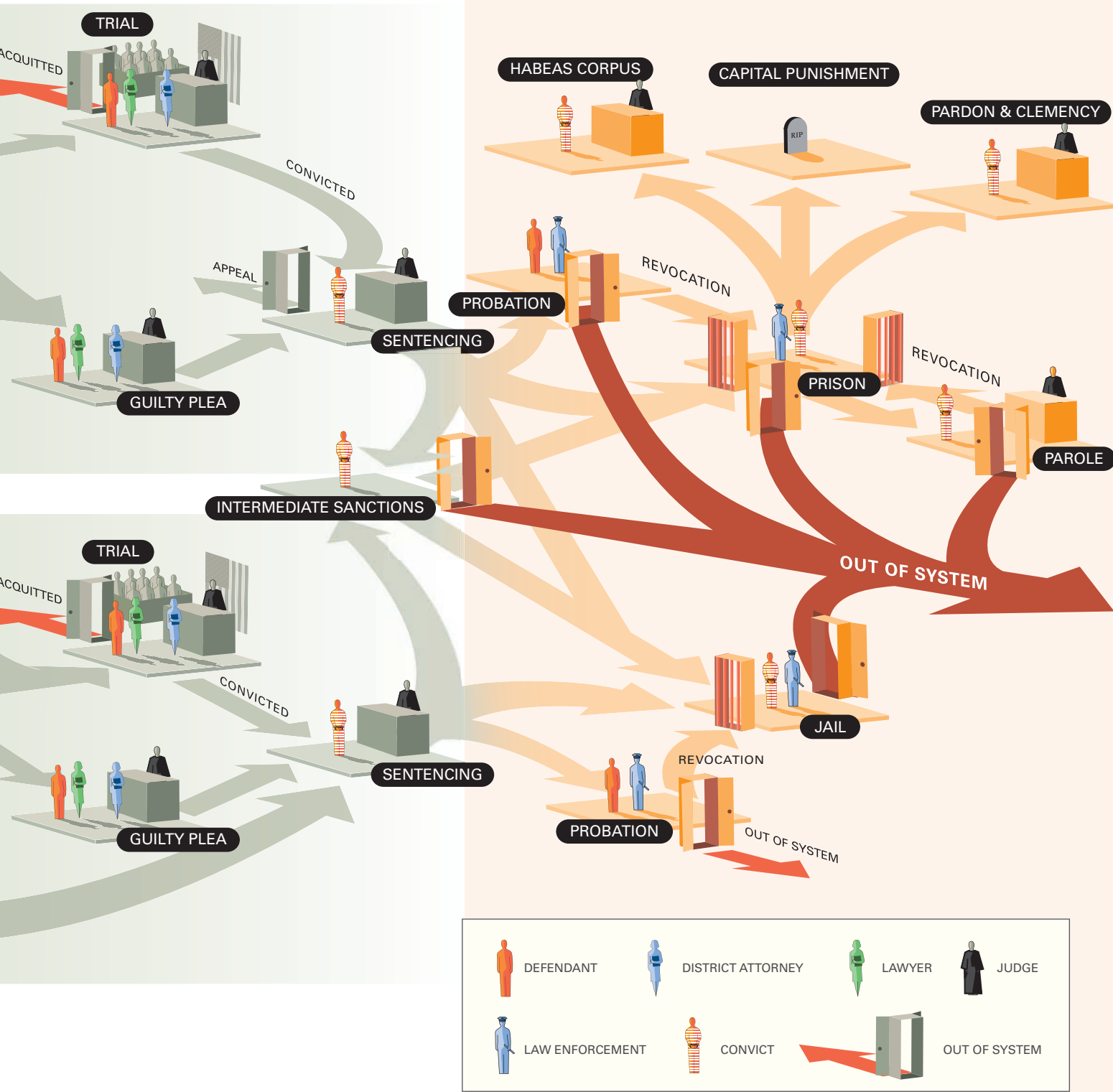
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# PART 1 CRIME IN AMERICA

## Chapter 1

What Is Criminal Justice?

## Chapter 2

The Crime Picture

## Chapter 3

The Search for Causes

## Chapter 4

Criminal Law

### INDIVIDUAL RIGHTS VERSUS PUBLIC ORDER

The accused has these common law, constitutional, statutory, and humanitarian rights:

- Justice for the individual
- Personal liberty
- Dignity as a human being
- The right to due process

Those individual rights must be effectively balanced against these community concerns:

- Social justice
- Equality before the law
- The protection of society
- Freedom from fear

**Q** How does our system of justice work toward balance?

### The Will of the People Is the Best Law

The great American statesman and orator Daniel Webster (1782–1852) once wrote, “Justice is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together.” Although Webster lived in a relatively simple time with few problems and many shared rules, justice has never been easily won. Unlike Webster’s era, society today is highly complex. It is populated by groups with a wide diversity of interests, and it faces threats and challenges unimaginable in Webster’s day. It is within this challenging context that the daily practice of American criminal justice occurs.

The criminal justice system has three central components: police, courts, and corrections. The history, the activities, and the legal environment surrounding the police are discussed in Part 2 of this book. Part 3 describes the courts, and Part 4 deals with prisons, probation, and parole. Part 5 provides a guide to the future of the justice system and describes the impact of the threat of terrorism on both society and enforcement agencies. We begin here in Part 1, however, with an overview of that grand ideal that we call *justice*, and we consider how the justice ideal relates to the everyday practice of criminal justice in the United States today. In the four chapters that make up this section, we will examine how and why laws are made. We will look at the wide array of interests that

impinge upon the justice system, and we will examine closely the dichotomy that distinguishes citizens who are primarily concerned with individual rights from those who emphasize the need for individual responsibility and social accountability—a dichotomy that has existed since our country began, but which has become especially significant today. In the pages that follow, we will see how justice can mean personal freedom and protection from the power of government to some people and greater safety and security to others. In this section, we will also lay the groundwork for the rest of the text by painting a picture of crime in America today, suggesting possible causes for it, and showing how policies for dealing with crime have evolved.

As you read about the complex tapestry that is the practice of criminal justice in America today, you will learn of a system in flux, perhaps less sure of its purpose than at any time in its history. You may also catch the sense, however, that very soon a new and reborn institution of justice may emerge from the ferment that now exists. Whatever the final outcome, it can only be hoped that *justice*, as proffered by the American system of criminal justice, will be sufficient to hold our civilization together—and to allow it to prosper in the twenty-first century and beyond.



Jonathan Bachman/REUTERS/Alamy Stock Photo

# 1 WHAT IS CRIMINAL JUSTICE?

## OUTLINE

- Introduction
- A Brief History of Crime in America
- The Theme of This Book
- Criminal Justice and Basic Fairness
- American Criminal Justice: System and Functions
- American Criminal Justice: The Process
- Due Process and Individual Rights
- Evidence-Based Practice in Criminal Justice
- Multiculturalism and Social Diversity in Criminal Justice

## LEARNING OBJECTIVES

After reading this chapter, you should be able to

- 1.1** Summarize the history of crime in America and corresponding changes in the American criminal justice system.
- 1.2** Describe the public-order (crime-control) and individual-rights (due process) perspectives of criminal justice, concluding with how the criminal justice system balances the two perspectives.
- 1.3** Explain the relationship between criminal justice and general concepts of equity and fairness.
- 1.4** Describe the American criminal justice system in terms of its three major components and their respective functions.
- 1.5** Describe the process of American criminal justice, including the stages of criminal case processing.
- 1.6** Define *due process of law*, including where the American legal system guarantees due process.
- 1.7** Describe the role of evidence-based practice in contemporary criminal justice.
- 1.8** Explain how multiculturalism and social diversity present challenges to and opportunities for the American system of criminal justice.

People expect both safety and justice and do not want to sacrifice one for the other.

CHRISTOPHER STONE, President, Open Society Foundations<sup>1</sup>



■ **crime** Conduct in violation of the criminal laws of a state, the federal government, or a local jurisdiction for which there is no legally acceptable justification or excuse.<sup>1</sup>

## Introduction

Ask anyone who has come into contact with it, and you will hear that the American criminal justice system wields a lot of power. Agencies of the justice system have the authority to arrest, to convict, and to imprison. In the most serious cases, the system even has control over who lives and who dies. For those who commit **crimes**, the “full weight and power” of the system comes crashing down on them, beginning with arrest. Yet, for all of its power, the American system of justice is a consensual system that relies upon both public acceptance and public cooperation for it to function effectively. Were citizens to lose faith in the justice process and question its legitimacy, then the day-to-day work of law enforcement officers, court personnel, and corrections officers would become insurmountably difficult—and their jobs would be impossible to perform.

Today, the criminal justice system in this country may be teetering on the edge of just such a crisis. It’s a crisis that arose quickly and spontaneously, fed initially by social media, following grand jury refusals in Missouri and New York to indict police officers in the death of two black suspects in separate incidents. The first involved Michael Brown, an 18-year-old unarmed African American man who died in hail of bullets fired by a Ferguson, Missouri, police officer after an initial confrontation between the two turned violent.<sup>2</sup> The second involved Eric Garner, another unarmed black man who died after an NYPD officer placed him in a choke hold while they struggled—apparently preventing him from being able to breathe.<sup>3</sup> Garner, a father of six, had been arrested numerous times before the fatal encounter for illegally selling cigarettes on city streets—a minor offense.

Protests followed both grand jury decisions, with demonstrators in Ferguson rioting, looting, and burning down stores over a period of days. New York City protestors emblazoned the slogan “No justice, No Peace” on placards they carried, and Missouri protestors chanted “Hands up, don’t shoot!” in the belief that Brown was surrendering to police when he was shot (the grand jury, however, concluded otherwise).

Confrontations between police and demonstrators remained largely peaceful but led to an especially surprising result. Police officers in Ferguson made no arrests during the first few nights of looting and rioting, even though arsonists and thieves were in plain sight; and NYPD officers stopped making “quality of life arrests”—or arrests for minor crimes. Soon after, arrests in New York City for minor crimes, such as traffic violations, public drinking, and urination, plummeted 94% from the year before.<sup>4</sup> Arrests for other crimes nose-dived by two-thirds. Police in New York City were reported to be making arrests “only when they have to.”<sup>5</sup> In Seattle, police chief Kathleen O’Toole made the rounds of her department’s stations telling officers that it was OK to arrest people. “If you get agitators who threaten the police or the public, you have to arrest them,” she said.<sup>6</sup> It was as though police officers in Ferguson, New York City, and elsewhere—perhaps wary of stoking more public unrest—had become afraid to enforce the law.

Attacks on the police have continued, and today the nation is significantly divided between pro-enforcement advocates and those who distrust (and even dislike) the police.

Although the anti-police movement was embraced by only a relatively small portion of the American population, it signified



Danny Hurley/Polaris/News.com

Retiring Dallas, Texas, police chief David Brown speaks during a funeral service for one of five officers killed in an ambush-style attack in 2016. The killings led to debates over the fairness of the American criminal justice system. How would *you* assess that system’s fairness?

■ **procedural fairness** The process by which procedures that feel fair to those involved are made.

■ **procedural justice** The implementation of fair and equitable procedures in the administration of justice.

distrust not only of the police, but also reflected a fundamental sense of injustice about how suspects—especially African Americans—were being treated by the entire justice system. Some saw the protests as releasing pent-up frustration that resulted from a decades-long war on drugs, during which a hugely disproportionate number of young blacks were arrested, and a get-tough-on-crime

American society is built upon a delicate balance between the demand for personal freedoms and the need for public safety.

era that resulted in dramatically overcrowded prisons throughout the country. Whatever the cause, it soon became clear that public acceptance of the justice system's authority is based significantly on the perception of

fair and equitable treatment by all of its component agencies.<sup>7</sup> The moral questioning that continues to unfold in our country shows that fairness has a wider meaning than simply ensuring just outcomes and upholding due process (issues that we will later discuss).

As we shall see throughout this text, **procedural fairness**, the process by which decisions that *feel* fair are made, is a vital component of our American justice system. When the concept of procedural fairness is applied to the criminal justice system, it is known as **procedural justice**. Procedural justice is crucial to effective criminal justice practices and helps to ensure the legitimacy of justice organizations and their acceptance by the people they serve.

Finally, it is worth noting that a recent Gallup poll found that Americans' respect for local police had jumped to its highest level since 1967. In that poll, 76% of those interviewed said that they have a "great deal" of respect for police—an increase of 12 percentage points from the year before.<sup>8</sup> Experts attributed the rise to a nationwide "reflection on what the role of police should be and the complex challenges they face."<sup>9</sup>

## A Brief History of Crime in America

What we call *criminal activity* has undoubtedly been with us since the dawn of history, and crime control has long been a primary concern of politicians and government leaders worldwide. Still, the American experience with crime during the

■ **individual rights** The rights guaranteed to all members of American society by the U.S. Constitution (especially those found in the first ten amendments to the Constitution, known as the *Bill of Rights*). These rights are particularly important to criminal defendants facing formal processing by the criminal justice system.

■ **social disorganization** A condition said to exist when a group is faced with social change, uneven development of culture, maladaptiveness, disharmony, conflict, and lack of consensus.

last half century has been especially influential in shaping the criminal justice system of today (Figure 1-1). In this country, crime waves have come and gone, including an 1850–1880 crime epidemic, which was apparently related to social upheaval caused by large-scale immigration and the Civil War.<sup>10</sup> A spurt of widespread organized criminal activity was associated with the Prohibition years of the early twentieth century. Following World War II, however, American crime rates remained relatively stable until the 1960s.

The 1960s and 1970s saw a burgeoning concern for the rights of ethnic and racial minorities, women, people with physical and mental challenges, and many other groups. The civil rights movement of the period emphasized equality of opportunity and respect for individuals, regardless of race, color, creed, gender, or personal attributes. As new laws were passed and suits filed, court involvement in the movement grew. Soon a plethora of hard-won individual rights and prerogatives, based on the U.S. Constitution, the Bill of Rights, and new federal and state legislation, were recognized and guaranteed. By the 1980s, the civil rights movement had profoundly affected all areas of social life—from education and employment to the activities of the criminal justice system.

This emphasis on **individual rights** was accompanied by a dramatic increase in reported criminal activity. Although some researchers doubted the accuracy of official accounts, reports by the Federal Bureau of Investigation (FBI) of "traditional" crimes like murder, rape, and assault increased considerably during the 1970s and into the 1980s. Many theories were advanced to explain this leap in observed criminality. Some analysts of American culture, for example, suggested that the combination of newfound freedoms and long-pent-up hostilities of the socially and economically deprived worked to produce **social disorganization**, which, in turn, increased criminality.

The American experience with crime during the last half century has been especially influential in shaping the criminal justice system of today.

By the mid-1980s, the dramatic increase in the sale and use of illicit drugs threatened the foundation of American society. Cocaine, and later laboratory-

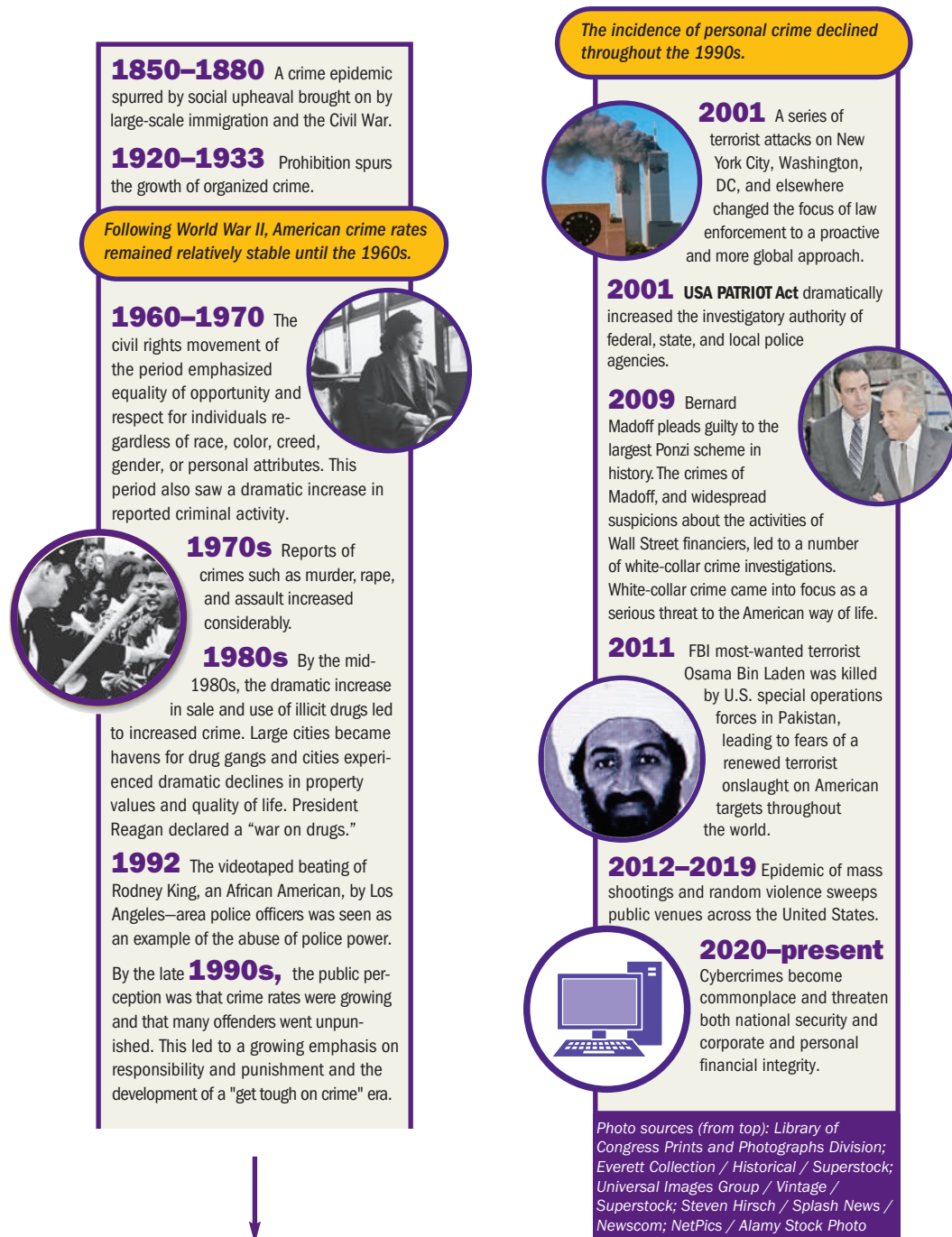
processed "crack," spread to every corner of America. Large cities became havens for drug gangs, and many inner-city areas were all but abandoned to highly armed and well-financed drug

racketeers. Cities experienced dramatic declines in property values, and residents wrestled with an eroding quality of life.

By the close of the 1980s, neighborhoods and towns were fighting for their communal lives. Huge rents had been torn in the national social fabric, and the American way of life, long taken for granted, was under the gun. Traditional values appeared in danger of going up in smoke along with the “crack” being consumed openly in some parks and resorts. Looking for a way to stem the tide of increased criminality, many took up the call for “law and order.” In response, President Ronald Reagan created

a cabinet-level “drug czar” position to coordinate the “war on drugs.” Careful thought was given at the highest levels to using the military to patrol the sea-lanes and air corridors through which many of the illegal drugs entered the country. President George H. W. Bush, who followed Reagan into office, quickly embraced and expanded the government’s anti-drug efforts.

A decade later, a few spectacular crimes that received widespread coverage in the news media fostered a sense among the American public that crime in the United States was out of hand, and that strict new measures were needed to combat it.



**FIGURE 1-1 | Milestones in Crime History**

Source: Pearson Education, Inc.





Acestock/Alamy Stock Photo

A street-corner drug deal. By the mid-1980s, the American criminal justice system had become embroiled in a war against illicit drugs, filling the nation's prisons and jails with drug dealers, traffickers, and users. Has the war been won?

One such crime was the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City by anti-government extremists. Another was the 1999 Columbine High School massacre in Colorado that left 12 students and one teacher dead.<sup>11</sup>

The public's perception that crime rates were growing, coupled with a belief that offenders frequently went unpunished or received only a judicial slap on the wrist, led to a burgeoning emphasis on responsibility and punishment. By the late 1990s, a newfound emphasis on individual accountability began to blossom among an American public fed up with crime and fearful of its own victimization.

By the late 1990s, a newfound emphasis on individual accountability began to blossom among an American public fed up with crime and fearful of its own victimization.

Growing calls for enhanced responsibility quickly began to replace the previous emphasis on individual rights.

As a juggernaut of conservative opinion made itself felt on the political scene,

Senator Phil Gramm of Texas observed that the public wants to “grab violent criminals by the throat, put them in prison [and] stop building prisons like Holiday Inns.”<sup>12</sup>

Then, in an event that changed the course of our society, public tragedy became forever joined with private victimization in our collective consciousness after a series of highly destructive and well-coordinated terrorist attacks on New York City and Washington, DC, on September 11, 2001. Those attacks resulted in the collapse and total destruction of the twin 110-story towers of the World Trade Center and a devastating explosion at the Pentagon. Thousands of people perished, and many were injured. Although law enforcement and security agencies were unable to prevent the September

11 attacks, many have since moved from a reactive to a proactive posture in the fight against terrorism—a change that is discussed in more detail in Chapter 6, “Policing: Purpose and Organization.”

The September 11 attacks also made clear that adequate law enforcement involves a global effort at controlling crime and reducing the risk of injury and loss to law-abiding people both at home and abroad. The attacks showed that criminal incidents that take place on the other side of the globe can affect those of us living in the United States, and they illustrated how the acquisition of skills needed to understand diverse cultures can help in the fight against crime and terrorism.

As Chapter 17, “Terrorism, Multinational Criminal Justice, and Global Issues,” points out, terrorism is a criminal act, and preventing terrorism and investigating terrorist incidents after they occur are highly important roles for local, state, and federal law enforcement agencies.

A different kind of offending, corporate, and white-collar crime took center stage in 2002 and 2003 as the Congress stiffened penalties for unscrupulous business executives who knowingly falsify their company's financial reports.<sup>13</sup> The changes came amidst declining stock market values, shaken investor confidence, and threats to the viability of employee pension plans in the wake of a corporate crime wave involving criminal activities that had been planned and undertaken by executives at a number of leading corporations. In an effort to restore order to American financial markets, President George W. Bush signed the Sarbanes-Oxley Act on July 30, 2002.<sup>14</sup> The law, which has been called “the single most important piece of legislation affecting corporate governance, financial disclosure, and the practice of public accounting since the US securities laws of the early 1930s,”<sup>15</sup> is intended to deter corporate fraud and to hold business executives accountable for their actions.

Today, white-collar crime continues to be a focus of federal prosecutors. In 2017, for example, Volkswagen AG pled guilty to three criminal felony counts and agreed to pay \$4.3 billion in criminal and civil penalties. The company had used software in some of its cars that was designed to falsely improve exhaust emissions tests. VW executives were accused of perpetrating a massive fraud, and the U.S. Department of Justice (USDOJ) filed a civil lawsuit asking for as much as \$18 billion in compensation from the company. In addition, a federal grand jury returned an indictment charging six VW executives and employees for their roles in the nearly 10-year-long conspiracy.<sup>16</sup>

Also, in a 2009 story that some readers will remember, investment fund manager Bernard Madoff pleaded guilty to operating a Ponzi scheme that defrauded investors out of as much as \$50 billion.<sup>17</sup> Madoff pleaded guilty to 11 felony counts, including securities fraud, mail fraud, wire fraud, money laundering, and perjury. Madoff was sentenced to serve 150 years in federal prison—three times as long as federal probation officers had recommended.<sup>18</sup> White-collar crime is discussed in more detail in Chapter 2, “The Crime Picture.”

The current era is characterized by low and declining rates of “traditional” crimes such as rape, robbery, and burglary (see



Life In Pixels/Shutterstock

Freedom Tower at the World Trade Center site in New York City. The tower opened in 2014. It stands 1,776 feet tall and will be surrounded by several other buildings. It is a memorial to the nearly 3,000 people who were killed in the terrorist attacks that demolished the Twin Towers in 2001. How did those attacks change the American justice system?

Chapter 2 for more details), but the specter of random mass shootings, a high number of inner-city murders, and novel forms of criminal activity complicates today's crime picture. In 2018, for example, many American cities reported more murders than at any time in their history. Similarly, as Chapter 2 explains in greater detail, many other types of crimes today are Internet-based or involve other forms of high-technology. Criminal perpetrators who illegally gain access to digital information (and money, including Bitcoins and other virtual currencies) through social media or Internet-based transactions are responsible for a significant level of criminal activity in the virtual world. Such crimes can have very significant impacts on people's lives. Moreover, crimes committed through the medium of cyberspace frequently remain undiscovered or are found out only with the passage of time. If we were to examine all forms of crime, we would find that crimes today have undergone a significant shift away from historical forms of offending to more innovative schemes involving computers and other digital devices.

Crimes today have undergone a significant shift away from historical forms of offending to more innovative schemes involving computers and other digital devices.

A 2018 article in the *New York Times* summarizes the situation well, saying, "the Internet's virtual super-highways have supplanted brick-and-mortar streets as the scenes for muggings, prostitution rings or commercial burglaries... A surge in the evolving crimes of the digital era, and the fact that they are not fully captured in law enforcement's reporting systems" leads to a misperception of today's true crime picture.<sup>19</sup>

Many of these "new era" crimes are discussed in Chapter 18, "High-Technology Crimes."

## The Theme of This Book

This book examines the American system of criminal justice and the agencies and processes that constitute it. It builds on a theme that is especially valuable for studying criminal justice today: *individual rights versus public order*. This theme draws on historical developments that have shaped our legal system and our understandings of crime and justice. It is one of the primary determinants of the nature of contemporary criminal justice—including criminal law, police practice, sentencing, and corrections.

A strong emphasis on individual rights rose to the forefront of American social thought during the 1960s and 1970s, a period known as the *civil rights era*. The civil rights era led to the recognition of fundamental personal rights that had previously been denied illegally to many people on the basis of race, ethnicity, gender, sexual preference, or disability. The civil rights movement soon expanded to include the rights of many other groups, including criminal suspects, parolees and probationers, trial participants, prison and jail inmates, and victims. As the emphasis on civil rights grew, new laws and court decisions broadened the rights available to many.

The treatment of criminal suspects was afforded special attention by those who argued that the purpose of any civilized society should be to secure rights and freedoms for each of its citizens—including those suspected and convicted of crimes. Rights advocates feared unnecessarily restrictive government action and viewed it as an assault on basic human dignity and individual liberty. They believed that at times it was necessary to sacrifice some degree of public safety and predictability to guarantee basic freedoms. Hence, criminal rights activists demanded a justice system that limits police powers and holds justice agencies accountable to the highest procedural standards.

During the 1960s and 1970s, the dominant philosophy in American criminal justice focused on guaranteeing the rights of criminal defendants while seeking to understand the root causes of crime and violence. The past 30 years, however, have witnessed increased interest in an ordered society, in public safety, and in the rights of crime victims. This change in attitudes was likely brought about by national frustration with the perceived inability of our society and its justice system to prevent crimes



Game Shots/Alamy Stock Photo

A scene from a computer game. Crimes today have undergone a significant change, with computer-related and high-technology offenses impacting more Americans than ever before. Is the justice system ready for these new challenges?

and to consistently hold offenders to heartfelt standards of right and wrong. Increased conservatism in the public-policy arena was given new life by the September 11, 2001, terrorist attacks and by widely publicized instances of sexual offenses targeting children. It continues to be sustained by the many stories of violent victimization, like random mass shootings, that seem to be the current mainstay of the American media.

By the start of the twenty-first century, public opinion had shifted away from seeing the criminal as an unfortunate victim

of poor social and personal circumstances who is inherently protected by fundamental human and constitutional rights to seeing him or her as a dangerous social predator who usurps the rights and privileges of law-abiding citizens. Reflecting the “get tough on crime” attitudes of recent times, many Americans demanded to know how offenders can better be held accountable for violations of the criminal law. In late 2010, for example, California state senators unanimously passed Chelsea’s Law, a bill intended to increase prison sentences and extend parole terms for offenders

who commit sex crimes against minors. The bill, named after 17-year-old Chelsea King, who was raped and murdered by a convicted sex offender earlier in 2010, was signed into law by the state’s governor soon after it passed the legislature.<sup>20</sup> Even in an era of difficult budgetary challenges, a number of states are continuing to extend prison sentences for sex offenders, restrict where released sex offenders can live, and improve public notification of the whereabouts of sex offenders.<sup>21</sup>

Although today’s financial constraints, soaring imprisonment rates, and social concerns have tempered the zeal of legislators to expand criminal punishments, the tension between individual rights and social responsibility still forms the basis for much policymaking activity in the criminal justice arena. Those who fight for individual rights continue to carry the banner of civil and criminal rights for the accused and the convicted, while public-order activists loudly proclaim the rights of the victimized and call for an increased emphasis on social responsibility and criminal punishment for convicted criminals. In keeping with these realizations, the theme of this book can be stated as follows:

There is widespread recognition in contemporary society of the need to balance (1) the freedoms and privileges of our nation’s citizens and the respect accorded the rights of individuals faced with criminal prosecution against (2) the valid interests that society has in preventing future crimes, in public safety, and in reducing the harm caused by criminal activity. While the personal freedoms guaranteed to law-abiding citizens as well as to criminal suspects by the Constitution, as interpreted by the U.S.



■ **individual-rights advocate** One who seeks to protect personal freedoms within the process of criminal justice.

■ **social order** The condition of a society characterized by social integration, consensus, smooth functioning, and lack of interpersonal and institutional conflict. Also, a lack of social disorganization.

■ **public-order advocate** One who believes that under certain circumstances involving a criminal threat to public safety, the interests of society should take precedence over individual rights.

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## freedom OR safety? YOU decide

### Clarence Thomas Says: "Freedom Means Responsibility"

In 2009, U.S. Supreme Court Justice Clarence Thomas spoke to a group of high school essay contest winners in a Washington, DC, hotel ballroom. Thomas used the occasion, which was dedicated to our nation's Bill of Rights, to point out the importance of obligations as well as rights. "Today there is much focus on our rights," said Thomas. "Indeed, I think there is a proliferation of rights." But then he went on to say, "I am often surprised by the virtual nobility that seems to be accorded those with grievances. Shouldn't there at least be equal time for our Bill of Obligations and our Bill of Responsibilities?"

Today, the challenge for the criminal justice system, it seems, is to balance individual rights and personal freedoms with social control and respect for legitimate authority. Years ago, during the height of what was then a powerful movement to win back control of our nation's cities and to rein in skyrocketing crime rates, the New York Post sponsored a conference on crime and civil rights. The keynote speaker at that conference was New York City's mayor, Rudolph W. Giuliani. In his speech, Giuliani identified the tension between personal freedoms and individual responsibilities as the crux of the

crime problem then facing his city and the nation. We mistakenly look to government and elected officials, Giuliani said, to assume responsibility for solving the problem of crime when, instead, each individual citizen must become accountable for fixing what is wrong with our society. "We only see the oppressive side of authority . . . What we don't see is that freedom is not a concept in which people can do anything they want, be anything they can be. Freedom is about authority. Freedom is about the willingness of every single human being to cede to lawful authority a great deal of discretion about what you do."

### You Decide

How can we, as Justice Thomas suggests, achieve a balance of rights and obligations in American society? What did Giuliani mean when he said, "What we don't see is that freedom is not a concept in which people can do anything they want, be anything they can be"? Is it possible to balance individual rights and personal freedoms with social control and respect for legitimate authority?

References: Adam Liptak, "Reticent Justice Opens Up to a Group of Students," *New York Times*, April 13, 2009, <http://www.nytimes.com/2009/04/14/us/14bar.html> (accessed October 2, 2018); and Philip Taylor, "Civil Libertarians: Giuliani's Efforts Threaten First Amendment," *Freedom Forum Online*, <http://www.freedomforum.org>.

Supreme Court, must be closely guarded, the urgent social needs of communities to control unacceptable behavior and to protect law-abiding citizens from harm must be recognized. Still to be adequately addressed are the needs and interests of victims and the fear of crime and personal victimization that is often prevalent in the minds of many law-abiding citizens. It is important to recognize, however, that the drama between individual rights and public safety advocates now plays out in a tenuous economic environment characterized by financial constraints and a concern with effective public policy.

Figure 1-2 represents our theme and shows that most people today who intelligently consider the criminal justice system assume one of two viewpoints. We will refer to those who seek

We seek to look at ways in which the individual-rights and public-order perspectives can be balanced to serve both sets of needs.

to protect personal freedoms and civil rights within society, and especially within the criminal justice process, as **individual-rights advocates**. Those who suggest that under certain

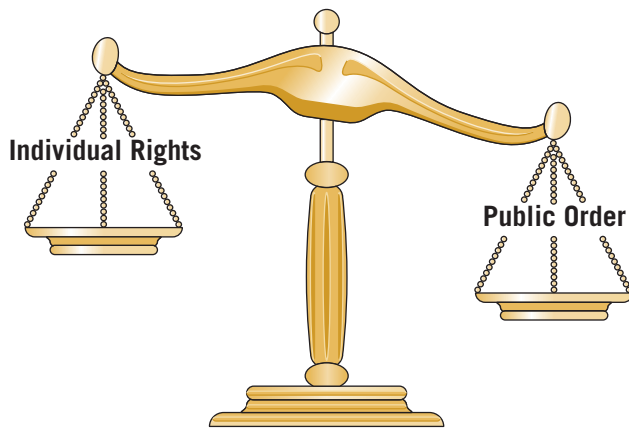
circumstances involving criminal threats to public safety, the interests of society, especially crime control and **social order**, should take precedence over individual rights will be called **public-order advocates**. Recently, retired U.S. Supreme Court Justice Sandra Day O'Connor summed up the differences between these two perspectives by asking, "At what point does the

- **justice** The principle of fairness; the ideal of moral equity.
- **social justice** An ideal that embraces all aspects of civilized life and that is linked to fundamental notions of fairness and to cultural beliefs about right and wrong.
- **civil justice** The civil law, the law of civil procedure, and the array of procedures and activities having to do with private rights and remedies sought by civil action. Civil justice cannot be separated from social justice because the justice enacted in our

nation's civil courts reflects basic American understandings of right and wrong.

■ **criminal justice** In the strictest sense, the criminal (penal) law, the law of criminal procedure, and the array of procedures and activities having to do with the enforcement of this body of law. Criminal justice cannot be separated from social justice because the justice enacted in our nation's criminal courts reflects basic American understandings of right and wrong.

■ **administration of justice** The performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.<sup>ii</sup>



**FIGURE 1-2 | The Theme of This Book**

Balancing the concern for individual rights with the need for public order through the administration of criminal justice is the theme of this book.

Source: Pearson Education, Inc.

cost to civil liberties from legislation designed to prevent terrorism [and crime] outweigh the added security that the legislation provides?”<sup>22</sup> We seek to look at ways in which the individual-rights and public-order perspectives can be balanced to serve both sets of needs. Hence, you will find our theme discussed throughout this text, and within “Freedom or Safety?” boxes.

## Criminal Justice and Basic Fairness

In a 1967 speech that Martin Luther King, Jr., made before the Southern Christian Leadership Conference, he said, “The arc of the moral universe is long; but it bends toward justice.”<sup>23</sup>

There is no denying that the word *justice* is powerful, and speaks to all Americans. The reality, however, is that *justice* is an elusive term. Although most listeners came away inspired that night, few who heard the 1967 speech knew exactly what *justice* might mean and what form it might eventually take. Even to those living within the same society, *justice* means different things.

And just as *justice* can be an ambiguous term for politicians, it is not always clear how justice can be achieved in the criminal justice system. For example, is “justice for all” a reasonable expectation of today’s—or tomorrow’s—system of criminal justice? The answer is unclear because individual interests and social needs often diverge. From the perspective of a society or an entire nation, justice can look very different than it does from the perspective of an individual or a small group of people. Because of this dilemma, we now turn our attention to the nature of justice.

British philosopher and statesman Benjamin Disraeli (1804–1881) defined **justice** as “truth in action.” A popular dictionary defines it as “the principle of moral rightness, or conformity to truth.”<sup>24</sup> **Social justice** is a concept that embraces all aspects of civilized life. It is linked to notions of fairness and to cultural beliefs about right and wrong. Questions of social justice can arise about relationships between individuals, between parties (such as corporations and agencies of government), between the rich and the poor, between the sexes, between ethnic groups and minorities—between social connections of all sorts. In the abstract, the concept of social justice embodies the highest personal and cultural ideals.

**Civil justice**, one component of social justice, concerns itself with fairness in relationships between citizens, government agencies, and businesses in private matters, such as those involving contractual obligations, business dealings, hiring, and equality of treatment. **Criminal justice**, on the other hand, refers to the aspects of social justice that concern violations of the criminal law. As mentioned earlier, community interests in the criminal justice sphere demand the apprehension and punishment of law violators. At the same time, criminal justice ideals extend to the protection of the innocent, the fair treatment of offenders, and fair play by the agencies of law enforcement, including courts and correctional institutions.

Criminal justice, ideally speaking, is “truth in action” within the process that we call the **administration of justice**. It is therefore vital to remember that justice, in the truest and most satisfying sense of the word, is the ultimate goal of criminal justice—and of the day-to-day practices and challenges that characterize the American criminal justice system.



Albin Lohr-Jones/Pacific Press/Alamy Stock Photo

Demonstrators protest a 2017 executive order by President Donald Trump that banned refugees from certain Middle Eastern countries from entering the United States for 90 days. The White House argued that the order was necessary to ensure national security; protestors claimed that it violated the spirit of a free America. How can the balance between individual rights and public safety be guaranteed?

Reality, unfortunately, typically falls short of the ideal and is severely complicated by the fact that justice seems to wear different guises when viewed from diverse vantage points. To some people, the criminal justice system and criminal justice agencies often seem biased in favor of the powerful. The laws they enforce seem to emanate more from well-financed, organized, and vocal interest groups than they do from any idealized sense of social justice. As a consequence, disenfranchised groups, those who do not feel as though they share in the political and economic power of society, are often wary of the agencies of justice, seeing them more as enemies than as benefactors.

On the other hand, justice workers, including police officers, prosecutors, judges, and corrections officials, frequently complain that their efforts to uphold the law garner unfair public criticism. The realities of law enforcement and of “doing justice,” they say, are often overlooked by critics of the system who have little experience in dealing with offenders and victims. We must recognize, practitioners often tell us, that those accused of violating the criminal law face an elaborate process built around numerous legislative, administrative, and organizational concerns. Viewed realistically, although the criminal justice process can be fine-tuned to take into consideration the interests of

ever-larger numbers of people, it rarely pleases everyone. The outcome of the criminal justice process in any particular case is a social product, and like any product that is the result of group effort, it must inevitably be a patchwork quilt of human emotions, reasoning, and concerns.

Whichever side we choose in the ongoing debate over the nature and quality of criminal justice in America, it is vital that we recognize the plethora of pragmatic issues involved in the administration of justice while also keeping a clear focus on the justice ideal.<sup>25</sup> Was justice done, for example, in the 2018 criminal trial of Bill Cosby, who was sent to prison at age 80 for indecent sexual assault? What about in the 2005 criminal trial of pop-music superstar Michael Jackson on charges of child molestation? Has justice been served in the case of Michael Brown, who supporters say was shot by police while holding his hands up? Similarly, we might ask, was justice done in the 2014 trial (and 2017 resentencing) of Oscar Pistorius, the South African Paralympic athlete known as the “Blade Runner,” who was convicted of the shooting death of his model girlfriend, Reeva Steenkamp?<sup>26</sup> Although answers to such questions may reveal a great deal about the American criminal justice system, they also have much to say about the perspectives of those who provide them.



## CJ | NEWS

## Surveillance Technology Has Been Blanketing the Nation Since 9-11



Charles Rex Arbogast/AP Images

A Chicago Police Department surveillance camera system and microphone unit positioned high above the street. This surveillance system includes a camera, high-bandwidth wireless communication, a strobe light, and a gunshot-recognition system, all in a bulletproof enclosure. The city is installing the surveillance system to spot crimes or terrorist activity. Do such units infringe on the personal freedoms of city residents?

In the book titled *1984*, written more than 70 years ago, George Orwell envisioned a totalitarian regime that created an extensive surveillance network to monitor people's every move. Today, in the wake of the terrorist attacks of September 11, 2001, America has built a surveillance network that rivals that of *1984*, but without a totalitarian regime in place.

A decade after 9-11, there were an estimated 30 million surveillance cameras in the United States, says IMS Research. U.S. law enforcement is also rapidly implementing facial recognition technology, license plate readers, and gunfire alert systems. These developments prompted Jay Stanley of the American Civil Liberties Union to warn that the nation is heading toward "a total surveillance society in which your every move, your every transaction, is duly registered and recorded by some computer." Today, some estimates put the numbers of cameras (including home security cameras, dash cams, and retail store cameras) at over 200 million, and that isn't counting police body cameras or cell phone cameras that almost all of us carry.

Most Americans, however, are not alarmed and actually welcome the trend. An ABC News/Washington Post poll showed that 71% of respondents favored increased video surveillance. In addition, courts have indicated that surveillance cameras, placed in plain view in public spaces, do not violate the Fourth Amendment, which bars governments from conducting unreasonable searches or seizures.

Technology has come a long way since surveillance cameras took small, grainy photos of two 9-11 hijackers boarding their plane at Boston's Logan Airport. Today's cameras collect and store images with many more pixels of information, making it possible to enlarge the photographs and capture previously undetected details.

In 2003, the city of Chicago began building what has become one of the most extensive surveillance systems in the United States, with 2,000 cameras operated by the police department and central monitoring over additional cameras operated by the transit system, school system, and private entities.

A recent study by the Urban Institute examining the use of surveillance cameras in three Chicago neighborhoods found they reduced crime in two of the neighborhoods. In the Humboldt Park neighborhood, for example, drug-related offenses and robberies fell by nearly 33% and violent crime declined by 20%.

Chicago has spent more than \$60 million on its video surveillance network. Although that cost was supplemented by federal Homeland Security grants, such systems have high maintenance costs and compete for scarce tax dollars with other law enforcement activities, such as patrolling. The Urban Institute, however, found that Chicago saved \$4.30 for every dollar spent on cameras in Humboldt Park.

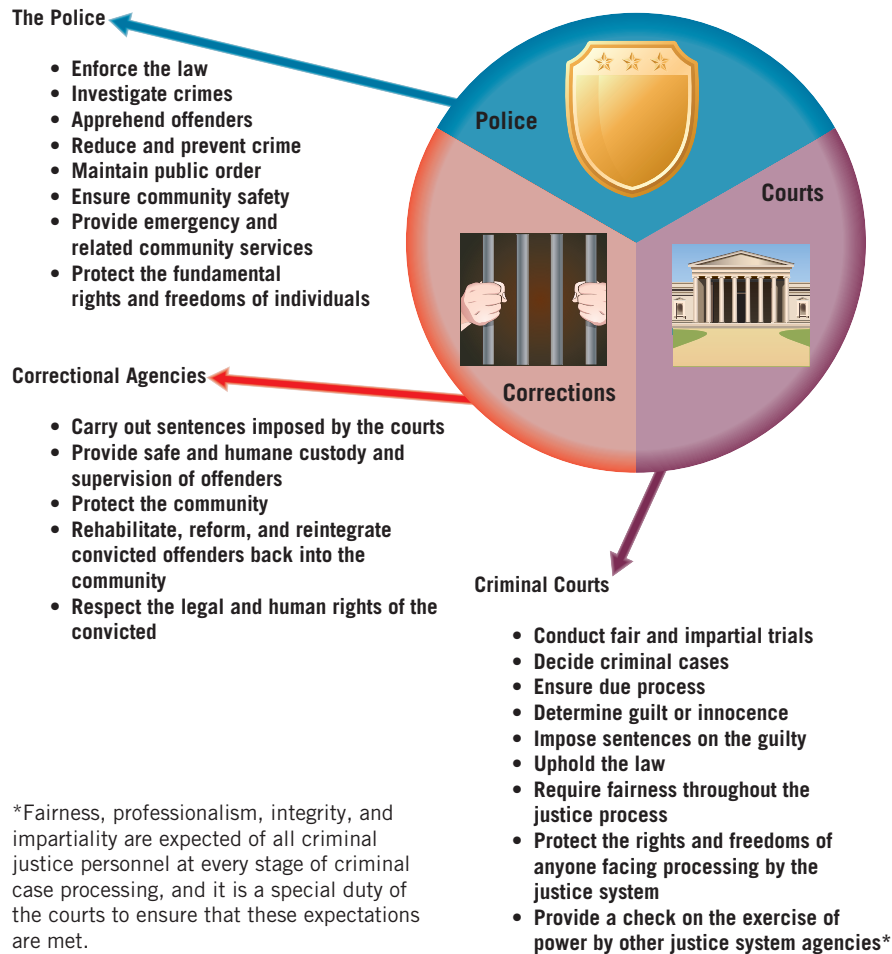
Chicago uses wireless cameras mounted on poles with a "pan-tilt-zoom" technology that allows operators to follow subjects and focus in on them. Officers can do this manually, but as images proliferate, law enforcement has been increasingly turning to video analytic software that can sort through thousands of pictures to look for a specific image. This involves use of sophisticated software that recognizes faces or specific shapes and colors. The same technology is also used for scanners that read license plates and automatically check the number through a direct feed with state car license databases.

Police departments across the country are also implementing new passive listening technology to monitor gunshots. This type of system, the best known of which is ShotSpotter™, requires installing sensors throughout the city that can triangulate sound waves and identify the location of the gunshot within five yards. The Boston Police Department spent about \$1.5 million to install gunshot detection systems and spends \$150,000 to \$175,000 in annual maintenance fees. The city of Chicago, following the recent increase in street shootings there, is expanding its existing ShotSpotter program to cover 14 square miles (up from 3 square miles) and will match information from gunshot sensors to real-time camera feeds, 911 transcripts, and arrest records. Soon, the system will be able to brighten street lights immediately after gunfire is detected.

The effectiveness of gunfire alert systems has not been independently studied. According to the manufacturer, about one-third of reports are false alarms involving backfiring cars, construction, and other urban noises. But one definite advantage is that gunshot reports arrive in one to two minutes faster than 911 calls, bringing officers to the scene more quickly. And sometimes the systems pick up gunshots that were never called in.

■ **criminal justice system** The aggregate of all operating and administrative or technical support agencies that perform criminal justice functions. The basic divisions of the operational aspects of criminal justice are law enforcement, courts, and corrections.

■ **consensus model** A criminal justice perspective that assumes that the system's components work together harmoniously to achieve the social product we call *justice*.



**FIGURE 1-3 | The Core Components of the American Criminal Justice System and Their Functions**

Source: Pearson Education, Inc.

# American Criminal Justice: System and Functions

## The Consensus Model

So far, we have described a **criminal justice system**<sup>27</sup> consisting of the component agencies of police, courts, and corrections. Each of these components can, in turn, be described in terms of its functions and purpose (Figure 1-3).

The systems perspective on criminal justice is characterized primarily by its assumption that the various parts of the justice system work together by design to achieve the wider

purpose we have been calling *justice*. Hence, the systems perspective on criminal justice generally encompasses a point of view called the **consensus model**. The consensus model assumes that each of the component parts of the criminal justice system strives toward a common goal and that the movement of cases and people through the system is smooth due to cooperation between the various components of the system.

The systems model of criminal justice is more an analytic tool than a reality, however. An analytic model, whether in the hard sciences or in the social sciences, is simply a convention chosen for its explanatory power. By explaining the actions of criminal justice officials—such as arrest, prosecution, and sentencing—as though they were systematically related, we are able to envision a fairly smooth and



■ **conflict model** A criminal justice perspective that assumes that the system's components function primarily to serve their own interests. According to this theoretical framework, justice is more a product of conflicts among agencies within the system than it is the result of cooperation among component agencies.

predictable process (which is described in more detail later in this chapter).

The systems model has been criticized for implying a greater level of organization and cooperation among the various agencies of justice than actually exists. The word *system* calls to mind a near-perfect form of social organization. People today associate the idea of a system with machine-like precision in which the problems of wasted effort, redundancy, and conflicting actions are quickly corrected. In practice, the justice system has nowhere near this level of perfection, and the systems model is admittedly an oversimplification. Conflicts among and within agencies are rife, individual actors within the system often do not share immediate goals, and the system may move in different directions depending on political currents, informal arrangements, and personal discretion.

## The Conflict Model

The **conflict model** provides another approach to the study of American criminal justice. The conflict model says that the interests of criminal justice agencies tend to make actors within the system self-serving. According to this model, the goals of individual agencies often conflict, and pressures for success, promotion, pay increases, and general accountability fragment the efforts of the system as a whole, leading to a criminal justice nonsystem.<sup>28</sup>

A classic study of clearance rates by criminologist Jerome H. Skolnick provides support for the idea of a criminal justice nonsystem.<sup>29</sup> Clearance rates are a measure of crimes solved by the

police. The more crimes the police can show they have solved, the better they look to the public they serve. Skolnick discovered an instance in which a burglar was caught red-handed during the commission of a burglary. After his arrest, the police suggested that he confess to many unsolved burglaries that they knew he had not committed. In effect they said, “Help us out, and we will try to help you out!” The burglar did confess—to more than 400 other burglaries. Following the confession, the police were satisfied because they could say they had “solved” many burglaries, and the suspect was pleased as well because the police and the prosecutor agreed to speak on his behalf before the judge.

Both models have something to tell us. Agencies of justice with a diversity of functions (police, courts, and corrections) and at all levels (federal, state, and local) are linked closely enough for the term *system* to be meaningfully applied to them. On the other hand, the very size of the criminal justice undertaking makes effective cooperation between component agencies difficult. The police, for example, have an interest in seeing offenders put behind bars. Prison officials, on the other hand, are often working with extremely overcrowded facilities. They may favor early-release programs for certain categories of offenders,

Everyone should be concerned when the goal of justice is affected, and sometimes even sacrificed, because of conflicts within the system.

such as those judged to be nonviolent. Who wins out in the long run might just be a matter of internal politics and quasi-official wrangling. Everyone should be concerned, however, when

### Investigation ►

After a crime has been discovered, evidence is gathered and follow-up investigations attempt to reconstruct the sequence of activities leading up to and including the criminal event. Efforts to identify suspects are initiated.

### Warrant ►

An arrest warrant issued by a judge provides the legal basis for an apprehension of suspects by police.

### Arrest ►

In an arrest, a person is taken into custody, limiting the arrestee's freedom. Arrest is a serious step in the process of justice. During arrest and before questioning, defendants are usually advised of their constitutional rights, or *Miranda* rights.



### Booking ►

Following arrest, suspects are booked. Booking is an administrative procedure where pictures, fingerprints, and personal information are obtained. A record of the events leading up to and including the arrest is created. In some jurisdictions, DNA evidence may be collected from arrestees.

FIGURE 1-4 | The American Criminal Justice Process

Source: Pearson Education, Inc.

the goal of justice is affected, and sometimes even sacrificed, because of conflicts within the system.

## American Criminal Justice: The Process

Whether part of a system or a nonsystem, the agencies of criminal justice must process the cases that come before them. An analysis of criminal justice case processing provides both a useful guide to this book and a “road map” to the criminal justice system itself. The figure in the front matter of this text illustrates the processing of a criminal case through the federal justice system in some detail, beginning with the investigation of reported crimes; while Figure 1–4 provides a summary of the process. The process in most state systems is similar. The sections that follow briefly describe each step in the process.

### Investigation and Arrest

The modern justice process begins with investigation. After a crime has been discovered, evidence is gathered at the scene when possible, and a follow-up investigation attempts to reconstruct the sequence of activities. Although a few offenders are arrested at the scene of the crime, most are apprehended later. In such cases, an arrest **warrant** issued by a judge provides the legal basis for an apprehension by police.

An arrest, in which a person is taken into custody, limits the arrestee’s freedom. Arrest is a serious step in the process of

■ **Warrant** In criminal proceedings, a writ issued by a judicial officer directing a law enforcement officer to perform a specified act and affording the officer protection from damages if he or she performs it.

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justice and involves a discretionary decision made by the police seeking to bring criminal sanctions to bear. Most arrests are made peacefully, but if a suspect tries to resist, a police officer may need to use force. Only about half of all people arrested are eventually convicted, and of those, only about a quarter are sentenced to a year or more in prison.

During arrest and before questioning, defendants are usually advised of their constitutional rights, as enumerated in the famous U.S. Supreme Court decision of *Miranda v. Arizona*.<sup>30</sup> Defendants are told:

**The *Miranda* decision requires only that police advise a person of his or her rights prior to questioning. An arrest without questioning does not require a warning.**

(1) “You have the right to remain silent.” (2) “Anything you say can and will be used against you in court.” (3) “You have the right to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning.” (4) “If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.” (5) “If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time and may talk with a lawyer before deciding to speak again.” (6) “Do you wish to talk or not?” and (7) “Do you want a lawyer?”<sup>31</sup>

Although popular television programs about the criminal justice system almost always show an offender being given a rights advisement at the time of arrest, the *Miranda* decision requires only that police advise a person of his or her rights prior

#### First Appearance

Within hours of arrest, suspects must be brought before a magistrate (a judicial officer) for a first (or initial) appearance. The judge will tell them of the charges against them, will advise them of their rights, and may provide the opportunity for bail.

#### Preliminary Hearing

The purpose of a preliminary hearing is to establish whether sufficient evidence exists against a person to continue the justice process. At the preliminary hearing, the hearing judge will seek to determine whether there is probable cause. The process provides the prosecutor with an opportunity to test the strength of the evidence.

#### Information or Indictment

In some states the prosecutor may seek to continue the case against a defendant by filing an information with the court. Other states require an indictment be returned by a grand jury. The grand jury hears evidence presented by the prosecutor and decides whether the case should go to trial.

#### Arraignment

At arraignment, the accused stands before a judge and hears the information or indictment against him or her. Defendants are again notified of their rights and asked to enter a plea. Pleas include not guilty, guilty, and no contest. No contest may result in a conviction but cannot be used in trial as an admission of guilt.

FIGURE 1-4 | The American Criminal Justice Process (continued)



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to questioning. An arrest without questioning does not require a warning. When an officer interrupts a crime in progress, public-safety considerations may make it reasonable for the officer to ask a few questions prior to a rights advisement. Many officers, however, feel they are on sound legal ground only by advising suspects of their rights immediately after arrest. Investigation and arrest are discussed in detail in Chapter 7, “Policing: Legal Aspects.”

## Booking

Following arrest, suspects are booked. During **booking**, which is an administrative procedure, pictures are taken, fingerprint records are made, and personal information such as address, date of birth, weight, and height is gathered. Details of the charges are recorded, and an administrative record of the arrest is created. At this time suspects are often advised of their rights again and are asked to sign a form on which each right is written. The written form generally contains a statement acknowledging the advisement of rights and attesting to the fact that the suspect understands them.

## Pretrial Activities

### First Appearance

Within hours of arrest, suspects must be brought before a magistrate (a judicial officer) for an initial appearance. The judge will tell them of the charges against them, will again advise

■ **booking** A law enforcement or correctional administrative process officially recording an entry into detention after arrest and identifying the person, the place, the time, the reason for the arrest, and the arresting authority.

■ **bail** The money or property pledged to the court or actually deposited with the court to effect the release of a person from legal custody.

■ **preliminary hearing** A proceeding before a judicial officer in which three matters must be decided: (1) whether a crime was committed, (2) whether the crime occurred within the territorial jurisdiction of the court, and (3) whether there are reasonable grounds to believe that the defendant committed the crime.

them of their rights, and may sometimes provide the opportunity for **bail**.

Most defendants are released on recognizance into their own care or the care of another or are given the chance to post a bond during their first appearance. A bond may take the form of a cash deposit or a property bond in which a house or other property serves as collateral against flight. Those who flee may be ordered to forfeit the posted cash or property. Suspects who are not afforded the opportunity for bail because their crimes are very serious or who do not have the needed financial resources are taken to jail to await the next stage in the justice process.

If a defendant doesn't have a lawyer, one will be appointed at the first appearance. To retain a court-appointed lawyer, the defendant may have to demonstrate financial hardship. The names of assigned lawyers are usually drawn off the roster of practicing defense attorneys in the county. Some jurisdictions use public defenders to represent indigent defendants.

All aspects of the first appearance, including bail bonds and possible pretrial release, are discussed in detail in Chapter 10, “Pretrial Activities and the Criminal Trial.”

### Preliminary Hearing

The primary purpose of a **preliminary hearing**, also sometimes called a *preliminary examination*, is to establish whether sufficient evidence exists against a person to continue the justice process. At the preliminary hearing, the hearing judge will seek

#### Adjudication

A criminal trial may be held, or the defendant may decide to enter a guilty plea. A criminal trial involves an adversarial process that pits the prosecution against the defense. In most trials, a jury hears the evidence and decides issues of guilt or innocence, while the judge ensures the fairness of the proceedings.

#### Sentencing

After the person has been convicted, it is typically up to the judge to determine the punishment. Prior to sentencing, a sentencing hearing is sometimes held in which attorneys for both sides can present information to influence the judge's decision.

#### Corrections

The corrections period begins following sentencing. Corrections involves a variety of sentences that can be imposed on a defendant.

#### Reentry

Not everyone who has been convicted of a crime goes to prison. Probation imposes requirements or restrictions upon offenders. Offenders are required to check in with a probation officer on a regular basis.

Similarly, after a defendant has served a portion of his or her prison term he or she may be freed on parole. Like probation, parole may come with obligations and requires the offender to check in with a parole officer.



Photo sources (from left):  
Dave King/Dorling Kindersley, Ltd.;  
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FIGURE 1-4 | (continued)

■ **probable cause** A set of facts and circumstances that would induce a reasonably intelligent and prudent person to believe that a specified person has committed a specified crime. Also, reasonable grounds to make or believe an accusation. Probable cause refers to the necessary level of belief that would allow for police seizures (arrests) of individuals and full searches of dwellings, vehicles, and possessions.

■ **information** A formal, written accusation submitted to a court by a prosecutor, alleging that a specified person has committed a specified offense.

■ **indictment** A formal, written accusation submitted to the court by a grand jury, alleging that a specified person has committed a specified offense, usually a felony.

■ **grand jury** A group of jurors who have been selected according to law and have been sworn to hear the evidence and to determine whether there is sufficient evidence to bring the accused person to trial, to investigate criminal activity generally, or to investigate the conduct of a public agency or official.

■ **arraignment** Strictly, the hearing before a court having jurisdiction in a criminal case in which the identity of the defendant is established, the defendant is informed of the charge and of his or her rights, and the defendant is required to enter a plea. Also, in some usages, any appearance in criminal court before trial.

to determine whether there is **probable cause** to believe that (1) a crime has been committed and (2) the defendant committed it. The decision is a judicial one, but the process provides the prosecutor with an opportunity to test the strength of the evidence at his or her disposal.

The preliminary hearing also allows defense counsel the chance to assess the strength of the prosecution's case. As the prosecution presents evidence, the defense is said to "discover" what it is. Hence, the preliminary hearing serves a discovery function for the defense. If the defense attorney thinks the evidence is strong, he or she may suggest that a plea bargain be arranged. All defendants, including those who are indigent, have a right to be represented by counsel at the preliminary hearing.

## Information or Indictment

In some states, the prosecutor may seek to continue the case against a defendant by filing an **information** with the court. An information, which is a formal written accusation, is filed on the basis of the outcome of the preliminary hearing.

Other states require that an **indictment** be returned by a **grand jury** before prosecution can proceed. The grand jury hears evidence from the prosecutor and decides whether the case should go to trial. In effect, the grand jury is the formal indicting authority. It determines whether probable cause exists to charge the defendant formally with the crime. Grand juries can return an indictment on less than a unanimous vote.

The grand jury system has been criticized because it is one-sided. The defense has no opportunity to present evidence; the grand jury is led only by the prosecutor, often through an appeal to emotions or in ways that would not be permitted in a trial. At the same time, the grand jury is less bound by specific rules than a trial jury. For example, a grand jury member once told the author that a rape case had been dismissed because the man had taken the woman to dinner first. Personal ignorance and subcultural biases are far more likely to play a role in grand jury hearings than in criminal trials. In defense of the grand jury system, however, defendants who are clearly innocent will likely

not be indicted. A grand jury's refusal to indict can save the system considerable time and money by preventing cases lacking in evidence from further processing by the criminal justice system.

## Arraignment

The **arraignment** is "the first appearance of the defendant before the court that has the authority to conduct a trial."<sup>32</sup> At arraignment, the accused individuals stand before a judge and hear the information, or indictment, against them as it is read. Defendants are again notified of their rights and are asked to enter a plea. Acceptable pleas generally include (1) not guilty, (2) guilty, and (3) no contest (*nolo contendere*), which may result in conviction but can't be used later as an admission of guilt in civil proceedings. Civil proceedings, or private lawsuits, while not covered in detail in this book, provide an additional avenue



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Canadian singer Justin Bieber's mugshot. Bieber was arrested in Miami Beach, Florida, on January 23, 2014, and charged with speeding in a yellow Lamborghini, driving with an expired license, and driving under the influence of alcohol, marijuana, and prescription drugs. At the time of his arrest, Bieber was 19 years old. The justice process starts when a crime has been committed and a perpetrator arrested. What are the three main components of the justice system?



■ **trial** In criminal proceedings, the examination in court of the issues of fact and relevant law in a case for the purpose of convicting or acquitting the defendant.

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of relief for victims or their survivors. Convicted offenders increasingly face suits brought against them by victims seeking to collect monetary damages.

The Federal Rules of Criminal Procedure specify that “arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be given a copy of the indictment or information before he is called upon to plead.”<sup>33</sup>

Guilty pleas are not always accepted by the judge. If the judge believes a guilty plea is made under duress or is due to a lack of knowledge on the part of the defendant, the plea will be rejected and a plea of “not guilty” will be substituted for it. Sometimes defendants “stand mute”—that is, they refuse to speak or to enter a plea of any kind. In that case, the judge will enter a plea of “not guilty” on their behalf.

The arraignment process is discussed in detail in Chapter 10, “Pretrial Activities and the Criminal Trial.”

## Adjudication

Under the Sixth Amendment to the U.S. Constitution, every criminal defendant has a right to a **trial** by jury. The U.S. Supreme Court, however, has held that petty offenses are not covered by the Sixth Amendment guarantee and that the seriousness of a case is determined by the way in which “society regards the offense.” For the most part, “offenses for which the maximum period of incarceration is six months or less are presumptively petty.”<sup>34</sup> In *Blanton v. City of North Las Vegas* (1989), the Court held that “a defendant can overcome this presumption and become entitled to a jury trial, only by showing that . . . additional penalties [such as fines and community service] viewed together with the maximum prison term, are so severe that the legislature clearly determined that the offense is a serious one.”<sup>35</sup> The *Blanton* decision was further reinforced in the case of *U.S. v. Nachtigal* (1993).<sup>36</sup>

In most jurisdictions, many criminal cases never come to trial. Most are “pleaded out”; that is, they are dispensed of as the result of a bargained plea, or they are dismissed for one of a variety of reasons. Studies have found that as many as 82% of all sentences are imposed in criminal cases because of guilty pleas rather than trials.<sup>37</sup>

In cases that do come to trial, the procedures governing the submission of evidence are tightly controlled by procedural law and precedent. *Procedural law* specifies the type of evidence that may be submitted, the credentials of those allowed to represent the state or the defendant, and what a jury is allowed to hear.

*Precedent* refers to understandings built up through common usage and also to decisions rendered by courts in previous cases. Precedent in the courtroom, for example, requires that lawyers request permission from the judge before approaching a witness. It can also mean that excessively gruesome items of evidence may not be used or must be altered in some way so that their factual value is not lost in the strong emotional reactions they may create.

Some states allow trials for less serious offenses to occur before a judge if defendants waive their right to a trial by jury. This is called a *bench trial*. Other states require a jury trial for all serious criminal offenses.

Everyone facing criminal prosecution in the United States is guaranteed a constitutional right to due process, meaning that defendants must be afforded a fair opportunity to participate in every stage of criminal proceedings.

Trials are expensive and time consuming. They pit defense attorneys against prosecutors. Regulated conflict is the rule, and jurors are required to decide the facts and apply the law as the judge explains it to them. In some cases, however, a jury may be unable to decide. Such a jury is said to be *deadlocked*, and the judge declares a mistrial. The defendant may be tried again when a new jury is impaneled.

The criminal trial and its participants are described fully in Chapter 9, “The Courts: Structure and Participants,” and Chapter 10, “Pretrial Activities and the Criminal Trial.”

## Sentencing

Once a person has been convicted, it becomes the responsibility of the judge to impose some form of punishment. The sentence may take the form of supervised probation in the community, a fine, a prison term, or some combination of these. Defendants will often be ordered to pay the costs of the court or of their own defense if they are able.

Prior to sentencing, a sentencing hearing may be held in which lawyers on both sides present information concerning the defendant. The judge may also ask a probation or parole officer to compile a presentence report, which contains information on the defendant’s family and business situation, emotional state, social background, and criminal history. This report helps the judge make an appropriate sentencing decision.

Judges traditionally have had considerable discretion in sentencing, although new state and federal laws now place limits on judicial discretion in some cases, requiring that a sentence

■ **consecutive sentence** One of two or more sentences imposed at the same time, after conviction for more than one offense, and served in sequence with the other sentence. Also, a new sentence for a new conviction, imposed upon a person already under sentence for a previous offense, which is added to the previous sentence, thus increasing the maximum time the offender may be confined or under supervision.

■ **concurrent sentence** One of two or more sentences imposed at the same time, after conviction for more than one offense, and served at the same time. Also, a new sentence for a new conviction, imposed upon a person already under sentence for a previous offense, served at the same time as the previous sentence.

■ **due process** A right guaranteed by the Fourth, Fifth, Sixth, and Fourteenth Amendments of the U.S. Constitution and generally understood, in legal contexts, to mean the due course of legal proceedings according to the rules and forms established for the protection of individual rights. In criminal proceedings, due process of law is generally understood to include the following basic elements: a law creating and defining the offense, an impartial tribunal having jurisdictional authority over the case, accusation in proper form, notice and opportunity to defend, trial according to established procedure, and discharge from all restraints or obligations unless convicted.

“presumed” by law be imposed. Judges still retain enormous discretion, however, in specifying whether sentences on multiple charges are to run consecutively or concurrently. Offenders found guilty of more than one charge may be ordered to serve one sentence after another is completed, called a **consecutive sentence**, or may be told that their sentences will run at the same time, which is called a **concurrent sentence**.

Many convictions are appealed. The appeals process can be complex and can involve both state and federal judiciaries. An appeal is based on the defendant’s claim that rules of procedure were not followed properly at some earlier stage in the justice process or that the defendant was denied the rights guaranteed by the U.S. Constitution.

Chapter 11, “Sentencing,” outlines modern sentencing practices and describes the many modern alternatives to imprisonment.

## Corrections

Once an offender has been sentenced, the corrections stage begins. Some offenders are sentenced to prison, where they “do time” for their crimes. Once in the correctional system, they are classified according to local procedures and are assigned to confinement facilities and treatment programs. Newer prisons today bear little resemblance to the massive bastions of the past, which isolated offenders from society behind huge stone walls. Many modern prisons, however, still suffer from a “lock psychosis” (a preoccupation with security) among top- and mid-level administrators as well as a lack of significant rehabilitation programs.

Chapter 13, “Prisons and Jails,” discusses the philosophy behind prisons and sketches their historical development. Chapter 14, “Prison Life,” portrays life on the inside and delineates the social structures that develop in response to the pains of imprisonment.

## Reentry

Not everyone who is convicted of a crime and sentenced ends up in prison. Some offenders are ordered to prison only to have their sentences suspended and a probationary term imposed. They may also be ordered to perform community-service

activities as a condition of their probation. During the term of probation, these offenders are required to submit to supervision by a probation officer and to meet other conditions set by the court. Failure to do so results in revocation of probation and imposition of the original prison sentence.

Offenders who have served a portion of their prison sentences may be freed on parole. They are supervised by a parole officer and assisted in their readjustment to society. As in the case of probation, failure to meet the conditions of parole may result in revocation of parole and a return to prison.

Chapter 12, “Probation, Parole, and Reentry,” deals with the practice of probation and parole and with the issues surrounding reentry. Learn more about the criminal justice process at <https://www.justicestudies.com/pubs/perspectives.pdf>.

## Due Process and Individual Rights

The U.S. Constitution requires that criminal justice case processing be conducted with fairness and equity; this requirement is referred to as **due process**. Simply put, *due process* means procedural fairness.<sup>38</sup> It recognizes the individual rights of criminal defendants facing prosecution by a state or the federal government. Under the due process standard, rights violations may become the basis for the dismissal of evidence or of criminal charges, especially at the appellate level. Table 1-1 outlines the basic rights to which defendants in criminal proceedings are generally entitled.

Due process underlies the first ten amendments to the Constitution, which are collectively known as the *Bill of Rights*. Due process is supported by the Fourth, Fifth, Sixth, and Fourteenth Amendments, and is *itself* guaranteed in the Fifth, which reads, “No person shall be . . . deprived of life, liberty, or property, without due process of law.”<sup>39</sup> The Fourteenth Amendment makes due process binding on the states—that is, it requires individual states to respect the due process rights of U.S. citizens who come under their jurisdiction.

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**TABLE 1-1 | Individual Rights Guaranteed by the Bill of Rights<sup>a</sup>**

A right to be assumed innocent until proven guilty
A right against unreasonable searches of person and place of residence
A right against arrest without probable cause
A right against unreasonable seizure of personal property
A right against self-incrimination
A right to fair questioning by the police
A right to protection from physical harm throughout the justice process
A right to an attorney
A right to trial by jury
A right to know the charges
A right to cross-examine prosecution witnesses
A right to speak and present witnesses
A right not to be tried twice for the same crime
A right against cruel or unusual punishment
A right to due process
A right to a speedy trial
A right to assistance of counsel in criminal proceedings
A right against excessive bail
A right against excessive fines
A right to be treated the same as others, regardless of race, sex, religious preference, and other personal attributes

<sup>a</sup>As interpreted by the U.S. Supreme Court.

The courts, and specifically the U.S. Supreme Court, have interpreted and clarified the guarantees of the Bill of Rights. The due process standard was set in the 1960s by the Warren Court (1953–1969), following a number of far-reaching Supreme Court decisions that affected criminal procedure. Led by Chief Justice Earl Warren, the Warren Court is remembered for its concern with protecting the innocent against the massive power of the state in criminal proceedings.<sup>40</sup> As a result of its tireless efforts to institutionalize the Bill of Rights, the daily practice of modern American criminal justice is now set squarely upon the due process standard.

## The Role of the Courts in Defining Rights

Although the Constitution deals with many issues, what we have been calling *rights* are open to interpretation. Many modern rights, although written into the Constitution, would not

exist in practice were it not for the fact that the U.S. Supreme Court decided, at some point in history, to recognize them in cases brought before it. In the well-known case of *Gideon v. Wainwright* (1963),<sup>41</sup> for example, the Supreme Court embraced the Sixth Amendment guarantee of a right to a lawyer for all criminal defendants and mandated that states provide lawyers for defendants who are unable to pay for them. Before *Gideon* (which is discussed in detail in Chapter 9, “The Courts: Structure and Participants”), court-appointed attorneys for defendants unable to afford their own counsel were practically unknown, except in capital cases and in some federal courts. After the *Gideon* decision, court-appointed counsel became commonplace, and measures were instituted in jurisdictions

**The U.S. Supreme Court is very powerful, and its decisions often have far-reaching consequences.**

across the nation to select attorneys fairly for indigent defendants. It is important to note, however, that although the Sixth Amendment specifically says, among other things, that “in all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense,”<sup>42</sup> it does not say, in so many words, that the state is *required* to provide counsel. It is the U.S. Supreme Court, interpreting the Constitution, that has said that.

The U.S. Supreme Court is very powerful, and its decisions often have far-reaching consequences. The decisions rendered by the justices in cases like *Gideon* become, in effect, the law of the land. For all practical purposes, such decisions often carry as much weight as legislative action. For this reason, we speak of “judge-made law” (rather than legislated law) in describing judicial precedents that affect the process of justice.

Rights that have been recognized by court decisions are subject to continual refinement, and although the process of change is usually very slow, new interpretations may broaden or narrow the scope of applicability accorded to constitutional guarantees.

## The Ultimate Goal: Crime Control through Due Process

Two primary goals were identified in our discussion of this book's theme: (1) the need to enforce the law and to maintain public order and (2) the need to protect individuals from injustice, especially at the hands of the criminal justice system. The first of these principles values the efficient arrest and conviction of criminal