

# AMERICAN COURTS

## — AND THE JUDICIAL PROCESS —

SECOND EDITION



OXFORD  
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G. LARRY MAYS  
LAURA WOODS FIDELIE



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*This book is dedicated to the “wild bunch.”  
In order, they are Mina, Lucy, Oliver, Cooper,  
Maggie, Robert, and Knox.—GLM*

*This book is for all my students: past, present,  
and future. Thank you for making me passionate  
about what I do and for teaching me just as much  
as I have taught you.—LWF*







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# PREFACE

We had several purposes in mind when we started writing this book. First, we wanted to produce a student-friendly text that covered the essentials of the court systems in the United States without taking an encyclopedic approach that inundates students with too much information, much of which is extraneous.

Second, the court system in the United States presents a bewildering array of structures, functions, problems, and issues. Multiple actors are involved in the enterprise that we call the judicial process, and some are regular participants while others participate only occasionally. The average citizen, who may only attend court to pay a traffic ticket or who might be called for jury duty, can be perplexed at all of the activity and the use of unfamiliar legal terminology by attorneys and judges. If you have ever found yourself in this situation you are not alone. Therefore, another purpose of this text is to examine the many elements associated with courts and the judicial process, in a way that is concise and intellectually accessible.

Third, with the increasing prices of textbooks both in the United States and world-wide, it was especially important to produce a book that is affordable for students. Thanks to the editorial staff at Oxford University Press, we were able to do so.

The chapters in this book are laid out in a fashion that should take students through a logical progression of topics on courts and the judicial process. We begin with a brief overview of the legal system in the United States. This will provide an introduction to some of the terminology that appears in subsequent chapters. Concepts such as separation of powers, federalism, and adversarial justice are vital to understanding how courts operate and why. Additionally, it is valuable to consider the foundations of the legal system in this country. It is especially important to examine the historical development of law that has led to the types of cases adjudicated, as well as the courts and the judicial process we find within our contemporary legal system. Furthermore, distinctions are made between the broad areas of civil law and criminal law and their differing systems and participants. For some of you, the initial material in the book will simply provide a review, especially if you have had an introduction to criminal justice class and/or a course on criminal law. Nevertheless, having clarity on the elements of a crime, various types of defenses, and different classifications of criminal offenses is worthwhile in setting the stage to consider the nature of the business that is transacted daily in our court systems.

Second, four chapters are devoted to examining the key actors typically found in the judicial process. We begin by delving into the concept of the courtroom work group. In some ways this notion is shorthand for the judges, prosecuting attorneys, and defense attorneys that daily participate in the various courts at all levels. Examining the courtroom work group helps us understand why a system that we typically characterize as adversarial actually is quite cooperative. This notion reveals that each member of the courtroom work group is dependent upon the others to help in one of the



ultimate goals of the courts: disposing of cases. In addition to the core members of the courtroom work group, you will be introduced to other actors in this process who operate largely behind the scenes, such as court administrators and judicial clerks. These individuals and groups also are addressed individually and in detail later in the text.

After considering the courtroom work group as a complete entity, we discuss the different members of the work group, focusing on who they are and what they do. The first chapter to undertake a more comprehensive view is Chapter 4 on judges. To more fully appreciate the office of judge it is crucial to understand the different ways in which judges are chosen for office. Along with judicial selection the issues of qualifications, concern over discipline for misconduct in office, and the functions performed by judges help us realize the complexity and importance of this office and the men and women who sit on the benches of courts at the local, state, and federal levels.

Chapter 5 takes us into the world of attorneys, including the way in which lawyers are trained in the United States and something about the way the practice of law is organized and stratified in this country. Particular attention is paid to the office of prosecuting attorney at various levels and the degree of control and power they may exercise. We also consider criminal defense attorneys, especially those that represent indigent defendants. Furthermore, the role of attorneys and litigants in civil cases is discussed.

In addition to the core members of the courtroom work group, there are other participants in court cases. Chapter 6 looks at ways in which citizens can be involved in the judicial process, primarily as either jurors or witnesses. Jury service is a civic obligation, one that some people look forward to and enjoy. However, not everyone is eligible for jury service, and some that are may not be particularly enthusiastic about serving on a jury. In fact, a number of people actively try to avoid jury service. Witnesses do not have as much flexibility as potential jurors do in deciding whether to participate in a trial or not. When people who have witnessed a crime are subpoenaed to court they must report or face the possibility of being held in contempt of court and serving jail time.

The third section of the book is composed of two chapters, and one of these (Chapter 7) deals with trials and the various steps that transpire in preparing for and conducting trials. For most people a trial is the ultimate symbol of the American legal system and justice, even garnering the United States the description of being a “litigious society.” However, the reality is that relatively few criminal cases go to trial (by some estimates around 20%); most are resolved through guilty pleas, with or without overt plea bargaining. Chapter 8 addresses another function of the courts—sentencing—that may be the most time-consuming of all. Each member of the courtroom work group plays a role in sentencing, but many of the sentencing options are decided by legislative bodies rather than the courts. Particular concerns in the sentencing process revolve around the impact that personal characteristics such as race, ethnicity, and gender have on the sentences handed down by judges.

The fourth section of the book discusses three different types of courts: the courts of limited or specialized jurisdiction, the courts of general trial jurisdiction, and the appellate courts. The limited jurisdiction courts in this country are very important because they process the bulk of the civil and criminal cases that are heard annually. The limited jurisdiction courts truly are the workhorses of the judicial process, and



they labor under heavy caseloads and, too often, extremely limited resources. The general jurisdiction trial courts are responsible for trying major civil disputes along with the most serious (felony) of the criminal cases. These are the courts that typically are shown in television and movie dramas about courts. In contrast with the trial courts, appellate courts are seldom seen or heard from by the general public, and most people have only vague ideas about what they do. In fact, juries are not present in appellate courts, and the vast majority of appellate decisions are made on paper in the form of written decisions. Nevertheless, appellate courts are responsible for correcting errors that have occurred in the trial courts, and they are also responsible for interpreting the constitutionality of statutes as well as the actions of representatives of the executive branch such as governors or the president. While they handle much smaller caseloads than the trial courts, the work of appellate courts is essential to the smooth functioning of governments and of our democracy, and they add a critical level of accountability to the judiciary.

Finally, the last chapter in the book considers some of the problems that continue to plague the operations of contemporary courts. Among these problems are the financial commitments we make to running all of our courts. Additionally, the question of judicial independence (addressed initially in Chapter 4) is revisited. Some of the most public concerns relative to the courts include the use of alternative dispute resolution (ADR) mechanisms in lieu of traditional litigation, the introduction of new types of scientific evidence (such as DNA testing) in criminal cases, the variety of reasons for wrongful convictions, and the emerging concern over adjudication and the rights of terrorism suspects. These are likely to be dilemmas facing the courts for decades to come.

In the end, the goal of this book is to make each student a more informed individual. That should be the case whether you choose a career in criminal justice or some other governmental function. It should be equally true if you decide to work in the private sector. Understanding the courts and the judicial process should lead to each of you being not only more knowledgeable, but also a better citizen.

## NEW TO THE SECOND EDITION

We have made several changes to this edition while still preserving the spirit and form of the first edition. The most significant change was the addition of a coauthor, Laura Woods Fidelie, who brought a wealth of teaching, research, and practical experience to the revision process. In addition, the following list provides a summary of some of changes that those of you who used the first edition will note.

### GENERAL CHANGES

- We have added learning objectives at the beginning of each chapter. These should help students focus in on key concepts as well as giving them an anticipated direction for each chapter.
- We have updated all of the statistics cited in the chapters to those that are most readily available. Unfortunately, in the area of the courts (unlike police



and corrections) some statistics are not updated annually or on a regular or frequent basis. Therefore, if you find numbers that are a decade or more old know that we diligently searched for something more recent but were unable to find anything more current.

- We made every effort to update the references as well. Again, some works have not been updated in recent years and some older references are included because they should be considered “classics,” and ones that continue to be cited by individuals who do research on the courts.

#### SPECIFIC CHAPTER CHANGES

- Chapter 1—updated all of the employment data for components of the criminal justice system; added a section on venue as an element of jurisdiction
- Chapter 2—incorporated sections on precedent and stare decisis; updated the section on sentencing rationales; added further clarification on civil and criminal law; added examples of each source of law
- Chapter 3—added an explanation of plea bargaining; explained the roles of jury consultants and private/defense investigators; discussed restorative justice and community service as potential alternative sentences; clarified the role of defense attorneys and the news media
- Chapter 4—updated information on number of judges, number of cases heard, etc.; updated the description of the role of U.S. Magistrate judges
- Chapter 5—discussed how media portrayals of attorneys are not always accurate; added information on law school costs
- Chapter 6—expanded the discussion of duties of court clerks; added a new section on jury reform proposals; expanded the discussion of expert witnesses; added a new box on the insanity defense and the killing of former Navy SEAL Chris Kyle
- Chapter 7—expanded the discussion and statistics on plea bargaining; presented information on hung juries; discussed the impact of demographic factors such as race on bail decisions; added a section on the “CSI effect” in jury deliberations
- Chapter 8—discussed three strikes and mandatory sentences; addressed the issue of minorities other than blacks processed by the courts; expanded the discussion of capital punishment; added a section on alternative sentences such as restorative justice; moved the discussion of sentencing philosophies from Chapter 1 to this chapter
- Chapter 9—separated the section on juvenile courts from other specialized courts and expanded the material presented; discussed the successes of drug courts; expanded the material on mental health courts and discussed new specialized courts such as veterans’ courts
- Chapter 10—added a section on double jeopardy



- Chapter 11—added a flowchart demonstrating the routes that appeals can take; added information on the demographics of federal appellate judges
- Chapter 12—updated the information on court expenditures; discussed the impact that court decisions have on prison crowding; expanded the section on gender and race in the legal profession; additional discussion of restorative justice and alternative dispute resolution

## ANCILLARIES

In addition to these changes it is important to note the ancillary package associated with the text. First, the ancillaries were prepared by the coauthors. While this is a tedious job, we deliberately chose not to contract this task out to someone not as intimately familiar with the book. Second, we have prepared a very thorough instructor's manual with teaching suggestions, classroom exercises, and material that we did not have space to include in the text itself. The IM also includes an expansive test bank with questions in a variety of formats (multiple choice, true/false, essay) that will work with classes of different sizes and for courses offered at different levels in the curriculum. In addition, Oxford University Press will make available an extensive set of PowerPoint slides to instructors who adopt this book.







# ACKNOWLEDGMENTS

There are a number of people who have contributed significantly to the writing and publication of this book. First, Larry Mays would like to acknowledge his wife Brenda who, as always, has been extremely patient as he worked on this book (and a couple of others at the same time). Laura Fidelie would like to thank her husband Tony for his constant support and for allowing her to take advantage of his great legal mind as she worked on yet another book project. Second, several individuals were gracious enough to review the manuscript at various stages and to make many helpful and constructive suggestions. These include Lisa Kara, Blue Ridge Community College, Patrick Ibe, Albany State University, John C. Blakeman, University of Wisconsin-Stevens Point, Tricia Nelson, Mississippi College, Kizzy V. Crawford Heath, Wake Technical Community College, Brooke de Heer, Northern Arizona University, Lori Guevara, Fayetteville State University, Robert S. Fong, California State University at Bakersfield, and Lawrence L. Kelley, Elizabethtown Community and Technical College. Third, the staff at Oxford University Press deserves a great deal of thanks. I would also like to thank Steve Helba, Simon Benjamin, and Amy Gehl who worked with us on this project.

Finally, there is a legion of our former students over the past years who have lived through the trials and tribulations of studying about and doing research on the courts with us. It goes without saying that we cannot name them all, but they know who they are and they bear equal praise or blame with us for this project.

We welcome comments and questions from any of you about this book. Feel free to e-mail us at [glmays@nmsu.edu](mailto:glmays@nmsu.edu) or [laura.fidelie@mwsu.edu](mailto:laura.fidelie@mwsu.edu).







# PART ONE

## PERSPECTIVES ON THE JUDICIAL PROCESS

**QUIET  
PLEASE**

*Court in Session*







# 1

# An Overview of the American Legal System



*Photo source: lculig/Shutterstock.com*



## LEARNING OBJECTIVES

After reading this chapter you should be able to:

- Describe the matrix in which criminal justice agencies operate at different levels of government
  - Explain the three broad functions performed by the police
  - Identify and explain the various justifications for sanctioning convicted offenders
  - Define the meanings of separation of powers and federalism
  - Differentiate the various types of court jurisdictions
  - Explain the notion of adversarial justice
- 

## CHAPTER OUTLINE

- Introduction
  - The Criminal Justice System
  - Separation of Powers
  - Federalism
  - Differences in Court Jurisdictions
  - Adversarial Justice
  - Summary
  - Questions for Critical Thinking
  - Recommended Readings
  - Key Terms
  - References
  - Endnotes
- 

## INTRODUCTION

**T**he system of justice in the United States is very complex. It involves a variety of actors from the three branches of government (executive, legislative, and judicial) and from three levels of government (local, state, and federal). Quite often there is duplication of effort in administering justice and, just as frequently, there are gaps in the network of agencies that are responsible for the administration of justice. Most of this book is dedicated to the exploration of courts and the judicial process in the United States. However, in this chapter we will examine some of the other agencies



in the network of organizations that we call the criminal justice system in order to establish a framework of reference for the remainder of the book. Additionally, we discuss notions such as the separation of powers in our governmental system, the idea of federalism and the role it plays in distinguishing the jurisdiction of different courts, the various types of jurisdiction that courts typify, and the concept of adversarial justice.

Along the way—in this chapter and the chapters that follow—we discuss the operations of courts and related agencies in other nations and how those might compare with courts in the United States. We also present boxed materials that are taken from current news stories, called “In the News.”

## THE CRIMINAL JUSTICE SYSTEM

Many of you reading this book already have taken a course entitled “Introduction to Criminal Justice” or something similar. However, the authors do not make the assumption that this is universally true. Therefore, for the benefit of those who have not had such a course, and to jog the memories of those of you who have, we provide a synopsis of the criminal justice system in the United States. Figure 1.1 illustrates the complexity of justice processes and procedures in the United States. As you can see, there are three major components of the criminal justice system (police, courts, and corrections), and each of these three components exists at three levels of government (local, state, and federal). We examine each of these components and comment on the ways in which they play a role in the judicial process.

### THE POLICE

The police play a variety of roles in the justice system and in our society. Within the criminal justice system, the police account for nearly half (47 percent) of the total justice expenditures nationwide (Kyckelhahn 2015). Fundamentally, the police supply the criminal cases that must be processed by the various courts in the United States, and often we characterize the role of police as encompassing three primary areas of responsibility: law enforcement, order maintenance, and public service.

#### Law Enforcement

**Law enforcement** is the function most often associated with the police. Law enforcement can involve actions ranging from writing traffic tickets to undertaking complex criminal investigations and making felony arrests. Any activity that involves the criminal code of a particular jurisdiction falls within the category of law enforcement. A noteworthy piece of information about the law enforcement function is that this is the aspect of policing that is most interesting and appealing to new and prospective officers, and it is what we spend a lot of our effort training new police officers to do. However, it occupies a relatively small portion of time on the job for most officers.



FIGURE 1.1 THE CRIMINAL JUSTICE MATRIX

	Police	Courts	Corrections
Federal			
State			
Local*			

\*Local agencies include those from cities, counties, townships, villages, and similar political entities.

Order Maintenance

By contrast, **order maintenance** was the primary reason many early police departments were created. For example, when British Home Secretary Sir Robert Peel established the London Metropolitan Police in 1829, much of their time was devoted to maintaining order (Thurman 2002). Peel recognized that there was much skepticism about a civilian police agency, so every effort was made to distinguish the police from the military.

For instance, while he believed that officers should wear distinctive uniforms with badges that symbolized their authority, they were to be unarmed, except with a short stick called a truncheon. Peel’s view was that officers were to use force only when “necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice, and warning is found to be insufficient to achieve police objectives” (Peel’s Principles of Law Enforcement 2015).

Even today, many state and local police officers devote a considerable amount of their on-duty hours to maintaining order. Order maintenance responsibilities include keeping the peace by controlling loud parties, providing traffic and crowd control at athletic events, and keeping a watchful eye on any location where large crowds may gather (such as state fairs, concerts, political protests, etc.). While sometimes not considered “real police work,” order maintenance is related to issues that directly affect the quality of life of most citizens (Kelling and Wilson 1982).

Public Service

The final major area of police responsibility is **public service**. In some ways this is the broadest category since the police are called on to do a significant number of things that are noncriminal in nature and which, at first glance, would not appear to be the responsibility of the police. For instance, public service might involve the proverbial “cat in the tree” call. It also may involve other types of animal control situations. Additionally, the police are called on to deal with things such as dented trash cans,



unsightly neighborhood lots, abandoned cars, and a multitude of other situations. At the most basic level, we might ask why the public calls on the police in such situations. To this question, there seem to be two readily apparent answers. First, in some ways the police are the most visible representatives of government for many people. The police are “the government.” If people do not know who to call in a particular situation, they can always call the police. The second reason the police get called in so many non-law-enforcement situations is that if you call them, they will come. They might not arrive quickly, especially if the call appears to be one that lacks urgency, but they will undoubtedly come at some point. They will come to your home, your office, your school, or wherever you tell them to meet you in order to deal with the situation at hand. These two points tend to perpetuate the public’s tendency to call the police for all kinds of problems and difficulties.

To fully appreciate what the police do in this country, it is necessary to examine the three roles that we have outlined in the context of the different levels at which the police operate. This helps us understand more fully that when we talk about “the police,” we are actually talking about a wide variety of different agencies with similar, but sometimes unique, functions.

## **LEVELS OF POLICE AGENCIES**

To completely understand the police component of the criminal justice system, we need to highlight that police agencies exist at all three levels of government. While the inclination might be to start at the top and work our way down, it makes more sense to begin with the agencies at the local level since they occupy the largest segment of the police responsibilities in the United States and account for over two-thirds of the expenditures for police services nationwide (Kyckelhahn 2015).

### **Local Police Departments**

A report compiled by the Bureau of Justice Statistics found that in 2008 there were 12,501 local police departments in the United States. These departments ranged in size from the New York City Police Department with over 36,000 officers down to some of the smallest agencies with only one or two officers. In total there were 488,873 full-time and part-time sworn officers employed in these departments, or an average agency size of about 39 officers (Reaves 2011). Table 1.1 excludes part-time sworn personnel and shows only the number of full-time state and local law enforcement employees by the type and size of agency in 2008.

### **Sheriffs' Departments**

In addition to municipal police departments, there were 3,063 sheriffs’ offices and another 638 agencies that included county constable offices in the State of Texas. The sheriffs’ offices employed 353,461 sworn personnel, and the constable/marshal agencies employed 4,031. Thus, in 2008 the total number of local law enforcement officers (excluding the special jurisdiction agencies serving colleges and universities, parks and recreation, transportation, alcohol enforcement, etc.) was 950,505.



<b>TABLE 1.1 Full-time Law Enforcement Personnel by Agency Type and Size, 2008</b>		
Type of Agency	Number of Agencies	Full-time Sworn Employees
Local police	12,501	461,063
Sheriff	3,063	182,979
State	50	60,772
Special jurisdiction	1,733	56,968
Constable/marshal	638	4,031
Agency Size	Number of Agencies	Full-time Sworn Employees
1,000 or more	83	230,759
500–999	89	60,124
250–499	237	83,851
100–249	778	115,535
50–99	1,300	89,999
Under 50*	15,498	184,978

\*Note: This includes 2,125 agencies that are listed with 0–1 officers.

Source: Reaves (2011:2).

## State Policing

We will consider state police agencies next, but it is important to note that these agencies represent the smallest segment of the overall police component. State police agencies employ only 8 percent of the state and local officer total and fewer than 10 percent of the total national police employment numbers (Kyckelhahn 2015; Reaves 2011).

At the state level, the Census of State and Local Law Enforcement Agencies identified 50 primary law enforcement agencies. They range in size from the California Highway Patrol with 7,202 sworn officers down to North Dakota with 139 officers and South Dakota with 152. In 2008 there were 60,772 sworn state police officers nationwide (Reaves 2011).

The state agencies vary in their responsibilities with some having exclusive assignments as highway patrol officers—dealing with traffic enforcement and accident investigations—on the state and interstate highways. Other state police agencies have general police powers, and they are responsible for enforcing all state law violations that they might encounter. As a practical matter, these departments often exercise their police powers in rural and remote areas that are not patrolled frequently by sheriffs' offices or municipal police departments. The names of these organizations vary from "highway patrol" to "state police" or "department of public safety." Interestingly,



while the agency name might give a clue regarding the department's overall mission (highway patrol versus general law enforcement), this is not universally true.

Most states also have one or more special jurisdiction law enforcement agencies. Many of these agencies are responsible for functions such as colleges and universities; natural resources (including parks and recreation, and fish and wildlife enforcement); transportation systems; criminal investigations; and special enforcement categories such as agricultural laws, gaming enforcement, and drug and alcohol enforcement. These 1,733 state agencies employed about 56,968 sworn personnel in 2008.

### Federal Law Enforcement

Finally, there are numerous federal law enforcement agencies dealing with a variety of specialized problems. As Table 1.2 shows, there were 120,348 sworn federal law

<b>TABLE 1.2 Full-time Federal Law Enforcement Personnel, 2008</b>	
<b>Agency</b>	<b>Full-time Sworn Employees</b>
U.S. Customs and Border Protection	36,863
Federal Bureau of Prisons	16,835
Federal Bureau of Investigation	12,760
U.S. Immigration and Customs Enforcement	12,446
U.S. Secret Service	5,213
Administrative Office of U.S. Courts	4,696
Drug Enforcement Administration	4,308
U.S. Marshals Service	3,313
Veterans Health Administration	3,128
Internal Revenue Service, Criminal Investigation	2,636
Bureau of Alcohol, Tobacco, Firearms, and Explosives	2,541
U.S. Postal Inspection Service	2,288
U.S. Capitol Police	1,637
National Park Service	1,404
Bureau of Diplomatic Security, Diplomatic Security Service	1,049
USDA Forest Service, Law Enforcement and Investigations	644
U.S. Fish and Wildlife Service, Law Enforcement Division	598

Source: Reaves (2012:2).



enforcement personnel in 2008. Some of the largest federal law enforcement agencies were:

- U.S. Customs and Border Protection (including the Border Patrol) with 36,863 sworn officers;
- Federal Bureau of Investigation with 12,760;
- U.S. Immigration and Customs Enforcement with 12,446;
- U.S. Secret Service with 5,213;
- Drug Enforcement Administration with 4,308;
- U.S. Marshals Service with 3,313;
- Bureau of Alcohol, Tobacco, Firearms, and Explosives with 2,541; and
- U.S. Postal Inspection Service with 2,288.

Unlike their state and local counterparts, federal law enforcement agencies typically have narrow jurisdictions that were defined when they were established by Congress or the president (Reaves 2012).<sup>1</sup> Over the past two decades, largely as the result of the major reorganizations following the 9/11 attacks aimed at New York City and Washington, DC, many of the federal law enforcement agencies have had their jurisdictions redefined or expanded.

As we close this section, it is important to note the roles that different police agencies play throughout the judicial process. Fundamentally, law enforcement officers at all levels are responsible for investigating crimes and making arrests. The individuals who they arrest are then brought before the courts for initial appearances, arraignments, and trials. Thus, the police function as “gatekeepers” for the court system, and they are responsible for providing the raw materials that will be processed, at least by the courts with criminal jurisdiction. After making arrests, officers serve as witnesses in the cases they have investigated and, in some jurisdictions, an officer may act as the prosecutor in misdemeanor cases.

The police are also responsible for transporting prisoners to and from the courts, and they often provide security for the courts and for courtroom personnel, such as judges. Therefore, while they are not a part of the court system themselves, the police perform essential responsibilities that assist in the smooth operations of the courts.

## THE COURTS

Obviously, given the focus of this book, much will be said about the courts. However, at this point it is useful to note that we have courts performing a number of related functions all over the country at any given time. In large cities, such as New York, the courts may operate nearly 24 hours per day. In small towns and rural locations, the courts may meet only on a periodic or sporadic basis. Whichever the case, as a society we look to the courts to protect us from criminal offenders and to resolve many of our interpersonal disputes (Calvi and Coleman 2008; Vago 2012).



## LEVELS OF COURTS

In chapters 9, 10, and 11 we will examine specialized courts and courts of limited, general trial, and appellate jurisdiction. As was the case with the police, these different types of courts operate at all three levels of government: local, state, and federal. There are many types of local courts in the United States, but the most common are municipal, magistrate, or county courts. For the most part, however, courts tend to be creations of the state, and even some “local” courts are actually state-funded and supervised tribunals. This is true for most of the magistrate and similar courts. If you look again at the matrix in Figure 1.1, the cell where “State” and “Courts” intersect represents the bulk of court activity in the United States.

As you will see throughout the remainder of the book, describing and sorting the court structure in the United States is no easy task. There are federal courts, courts for the District of Columbia, and unique state structures for each of the 50 states. Some of these courts handle a broad range of cases and issues, and others are very specialized in both their nature and functions.

## CORRECTIONS AND CRIMINAL SANCTIONS

Once criminal defendants become convicted offenders, they are the responsibility of the corrections component of the criminal justice system. After holding sentencing hearings, the courts turn these offenders over to the custody and control of correctional agencies. These agencies are responsible for probation and parole, community corrections programs such as residential treatment centers and halfway houses, and for institutional corrections such as prisons. They have a number of areas of responsibility, and the purposes most often associated with corrections include retribution (punishment), rehabilitation, deterrence (both general and specific), incapacitation, and reintegration (see Mays and Winfree 2014:4–9).<sup>2</sup> These purposes also may be considered justifications for sentencing or sanctioning on the part of the courts.

## LEVELS OF CORRECTIONS

In some ways, “local corrections” is a misnomer. Most of the incarceration that is handled locally takes place in the roughly 3,200 city and county jails in the United States (American Jail Association 2015). In most of these facilities, very little correcting of deviant behavior goes on, but given the size of the inmate population they house, jails must be examined in order to get the full picture of corrections in the United States. For example, a recent report by the Bureau of Justice Statistics shows that at mid-year 2013 local jails housed 731,208 inmates (down from the historic high of 785,533 in 2008) and they supervised another 59,441 individuals outside the jail facility (for a total of 790,649 people under jail supervision). The numbers of jail inmates confined at mid-year represent annual decreases between 1.8% and 2.4% starting in 2009 (Minton and Golinelli 2014). These numbers are one-day tallies of inmate populations and do not account for the estimated 11.7 million admissions, and a similar number of releases, that jails process every year.



To supervise these jail inmates, local governments had over 270,000 full-time correctional employees on their payrolls. This is roughly one-third of the nation's correctional personnel, and local correctional agencies are second only to the states in the number of people on the payroll (Kyckelhahn 2015).

While many jails simply house inmates who are awaiting trial or those who have been sentenced but not transferred to prisons, some jails in the United States do operate treatment programs that could be classified as corrective in nature, and there are other local detention facilities such as workhouses, penal farms, and similar institutions that exist along with the jails (Minton and Golinelli 2014). Additionally, a number of cities and counties operate their own probation departments for juveniles and/or adults, and all of these, plus other community corrections programs, can be considered local corrections.

### State Corrections

The cell in Figure 1.1 where “State” and “Corrections” intersect is where the bulk of correctional activity occurs in the United States. There are 1,320 adult state correctional facilities, and states are responsible for supervising the vast majority of probationers and parolees around the nation; most of the institutional (prison) population in the United States (85.5 percent in 2013) is housed in state facilities. In fact, two states each have more people in prison than the U.S. Bureau of Prisons houses: In 2013 Texas had 221,800 inmates and California had 218,800 compared with 215,000 held by the U.S. Bureau of Prisons. There are also 4.6 million state offenders on probation or parole, with the vast majority on probation (Glaze and Kaeble 2014).

### Federal Corrections

Finally, in 2008 the federal government employed 4,696 federal probation officers with arrest powers and firearms authority. These individuals (along with over 600 pretrial services officers) are responsible for the supervision of the nearly 21,000 probationers under the jurisdiction of the federal courts (Herberman and Bonczar 2014). There are 95 federal court districts encompassing the 50 states along with the U.S. territories, and all but 7 of these districts authorize some probation officers to carry firearms in the line of duty (Reaves 2012). Additionally, the U.S. Bureau of Prisons (USBOP) operates 115 facilities that range from minimum security prison camps to supermax (or administrative maximum) security around the country. Currently, the Bureau of Prisons supervises over 200,000 federal offenders who are incarcerated in one of the Bureau's facilities. The USBOP now employs over 39,000 people, and 16,835 serve as correctional officers of various ranks (Reaves 2012; Federal Bureau of Prisons 2015).

All the figures on employment and payroll expenditures for justice agencies demonstrate one very important point: the justice system in the United States is big business. Box 1.1 further illustrates this.





### BOX 1.1 In the News: Justice System Employment and Expenditures

The Bureau of Justice Statistics (BJS) in the U.S. Department of Justice periodically collects data on justice expenditures and employment in the United States. The most recent report was published in February 2015 for expenditures in 2012. The picture that emerges from the BJS publication is one of massive spending for operating the multiple justice systems that exist in the United States. For example, in 2012 total expenditures of police, courts, and correction services in the United States were \$265 billion. This was more than a threefold increase from the excess of \$84 billion spent in 1982. Nationwide, there are about 2.4 million people working in some justice-related function in the three components of the criminal justice system that exist at the three levels of government. Nearly half (1.18 million) work in the various law enforcement agencies, and the remainder work in corrections (about 749,418) or in judicial/legal positions (491,979). The bottom line is that justice-related services constitute a major spending commitment for all governmental entities in this country.

*Source:* Kyckelhahn (2011, 2015).

## SEPARATION OF POWERS

One of the distinguishing features of the system of government that we have in the United States is the notion of **separation of powers**. Simply put, this means that the different functions exercised by both federal and state governments—and to a lesser extent local governments—are divided among three coequal branches: legislative, executive, and judicial. At the federal level, each of these branches has its own article or section within the U.S. Constitution. Article I deals with the powers and responsibilities of the legislative branch (Congress), Article II deals with the executive (the president), and Article III addresses the judiciary (the Supreme Court and inferior federal courts). Box 1.2 contains brief excerpts from the Constitution addressing each of the three branches of government.

Among the powers that the Constitution gives Congress are the authorities to:

- establish and collect taxes
- borrow money on credit
- coin money





## BOX 1.2 The Constitution and Establishment of Three Branches of Government

### Article I, Section 1:

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

### Article II, Section 1:

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice-President, chosen for the same term, be elected. . . .

### Finally, Article III, Section 1:

The judicial Power of the United States shall be vested in one supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish.

*Source:* Constitution of the United States of America.

- provide punishment for counterfeiting
- establish post offices
- create courts inferior to the Supreme Court
- declare war
- establish and support armies
- provide for and maintain a navy
- make laws necessary for carrying out the powers that have been enumerated

## THE LEGISLATIVE BRANCH

In relationship to the operations of justice agencies in the United States, Congress is responsible for the creation of a national court system, the establishment of laws and procedures for these courts, and the funding of justice-related agencies at the national level. The same holds true for the legislative bodies in each of the 50 states. All of these are substantial powers in relation to the courts.



## THE EXECUTIVE BRANCH

The executive power of government is carried out by the president for the national government and by the governors for the states. This authority is demonstrated through the carrying out or enforcement of the laws that have been established by the legislative branch. The president also serves as commander-in-chief of the armed forces of the United States, and he directs the civilian arm of the federal government through the appointment and supervision of secretaries who oversee the various cabinet-level executive departments (such as State, Defense, Treasury, Justice, Homeland Security, etc.). The president holds the appointment power over a number of high-level government officials including U.S. marshals, U.S. attorneys, and all of the so-called Article III federal court judges (we will examine this group in greater detail in chapter 4). The nominations from the president for these positions must be approved by the U.S. Senate and, except in rare instances, the people nominated will be confirmed with little fanfare and without much controversy. Finally, the president prepares and presents a budget to Congress. Ultimately, Congress will have the final say on the budget, but the president possesses a great deal of symbolic and real power in the budget preparation process. This is the way he or she outlines and defines the priorities of his or her administration.

## THE JUDICIAL BRANCH

The judicial branch of government (and especially the U.S. Supreme Court) was labeled by Alexander Hamilton in *Federalist Paper* #78 as the “least dangerous” branch of the government. It was characterized in this manner because it was said that the courts wield neither the sword (executive authority to enforce the laws) nor the purse (legislative authority to appropriate funding). Nevertheless, since the case of *Marbury v. Madison*, 1 Cr. 137 (1803) the U.S. Supreme Court has been able to assert its authority to review the actions of state courts and both the executive and legislative branches of the state and federal governments to determine their constitutionality. This power is known as **judicial review**, and while it has been exercised cautiously it still remains a potential curb to unbridled actions by the states, the president, and Congress.

In summary, we have three coequal branches of government that exercise their own unique powers. However, because of the principle of **checks and balances**, the three branches of government must cooperate in order to achieve their individual goals. Therefore, instead of the three branches acting independently, they are quite interdependent on one another.

## FEDERALISM

The U.S. Constitution (and the various state constitutions) not only provides for three branches of government, it also recognizes that there are some functions that should be exercised by the national government and some that should be in the domain of the state governments. This separation of powers by levels of government is called **federalism**. The last amendment of the Bill of Rights (Amendment X) asserts: “The powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or to the people.” This means that the Constitution



recognizes that there are some responsibilities that are uniquely reserved for the national government (for example, the rights to coin money and declare war), but there are some functions that should be performed by the states (for instance, the creation of state laws, the provision of public education, and the maintenance of state highways).

However, it is very important to note that there are a good many gray areas where the interests of the federal government and those of the state governments intersect and overlap. There can also be jurisdictional intersections of interest between and among the states (over issues such as water rights and interstate commerce, for example). In those instances where there is potential legal conflict, one level of government (such as the federal government) may defer to the interests of another level (a state or a group of states). This “Act of accommodation or courtesy . . . [or] gesture of good will among equals” is known as **comity** (Sheppard 2012:484). Another way to define comity is the “recognition that one sovereignty allows within its territory to the legislative, executive, or judicial act of another sovereignty, having due regard to the rights of its own citizens” (*Black’s Law Dictionary* 1991:183).

An example of comity involves the prosecution of Timothy McVeigh for the bombing of the Murrah Federal Building in Oklahoma City in 1995. When the truck bomb exploded in front of the federal building, 168 people were killed. Since this act occurred in Oklahoma City, the State of Oklahoma could have taken the lead in the prosecution of McVeigh and his co-conspirators. Instead, Oklahoma deferred to the federal government to allow for prosecution related to the federal agents who were killed in the bombing. Nevertheless, Oklahoma reserved the right to try McVeigh for the other deaths and to execute him if he was convicted in the state courts. The federal government beat Oklahoma to the punch, and McVeigh was sentenced to die by a federal court jury; he was executed in June of 2001 (see Federal Bureau of Investigation 2015; Linder 2006).

## DIFFERENCES IN COURT JURISDICTIONS

The concept of **jurisdiction** is very important in understanding courts and the judicial process. At its most basic level, jurisdiction means the legal authority that a particular court has to decide or not decide a case. Sheppard (2012:1449) says that jurisdiction is “the power of a government, court, or official over a given matter, person or place.” In regard to courts, “it includes not only the authority of officials to bring a matter before a court but also the authority of courts to adjudicate an action involving a given person or matter” (1449).

While this meaning is relatively simple, the notion of jurisdiction is complex and can be divided into several subcategories. In the remainder of this section we will examine the concepts of subject matter jurisdiction, venue, limited versus general trial jurisdiction, hierarchical jurisdiction, and law versus equity. Each of these will help us gain greater understanding of the organization and operations of courts in the United States.

### SUBJECT MATTER JURISDICTION

When it comes to **subject matter jurisdiction**, the major distinction that we make in courts is between those that hear civil cases only, criminal cases only, and those that



can hear both kinds of cases. In some states, like Georgia (two counties), Tennessee, and Texas, there are courts that only hear civil cases (Malega and Cohen 2013). These types of cases are concerned with matters such as torts, breaches of contract, personal injuries resulting from accidents, and a wide range of domestic relations issues. By contrast, courts that only hear criminal cases deal with murders, robberies, burglaries, assaults, and the many other acts that are defined as crimes by the states. Over the past two decades the trend nationwide has been toward the implementation of unified court systems, with most states having eliminated courts that hear only civil or criminal matters (Malega and Cohen 2013).<sup>3</sup> Under the category of subject matter jurisdiction, other states have specialized courts that deal with a limited range of particular types of cases. Some of these types of courts are juvenile courts. Juvenile courts typically have jurisdiction over delinquency, dependency, and neglect or abuse cases, although some have even broader jurisdictions. Many states also have probate courts, which are responsible for wills, inheritances, and the disposition of estates. A number of states have family or domestic relations courts (dealing with divorces, paternity, and child support issues). Finally, in the federal system we have a whole system of courts with military jurisdiction. We address some of these in the following sections.

## VENUE

**Venue** can be thought of as the geographical jurisdiction within which a court holds legal authority. Sheppard (2012:2936) says, “Venue is the extent of the geographic location of the jurisdiction for a court. It is the place where an action arises or a place to which jurisdiction over an action is created or taken.” In simplest terms, venue is defined by where an action (such as a crime) occurred or where the action may be resolved as permitted by law. Typically, a trial for a crime such as murder will be held in the locality where the offense occurred. That is where the investigating officers and any witnesses are located.

However, there are instances where, for reasons such as pretrial publicity, the defense may want the trial moved to a more neutral location. This is called a motion for **change of venue**. For a state case, the trial could be moved to any equivalent court within the state. In contrast, for federal cases a trial could be moved to any federal trial court in the nation.

## LIMITED VERSUS GENERAL TRIAL JURISDICTION

Legislatures in several states have created **courts of limited jurisdiction** (sometimes these are called specialized jurisdiction courts). Some people refer to these as **inferior courts** because they are not authorized to handle the full range of cases. For example, some states have what are called magistrate courts, which typically are permitted to hear only misdemeanor criminal cases or small claims or minor civil disputes up to a certain dollar amount (\$5,000, for example). Often the limited jurisdiction courts do not conduct jury trials (or they have a limited number of six-person jury trials), they may not produce verbatim transcripts of proceedings, the judges may not be required to be licensed attorneys, and in some cases attorneys do not appear to represent either side. In a very real sense, these tribunals are “the people’s court” (Mansfield 1999).



In many states, the limited jurisdiction courts do have initial processing responsibilities for felony cases. The judges in these courts may conduct initial appearances where the charges are read to the accused, the bond is set, and the question of appointment of counsel is addressed. Some states also empower these courts to conduct preliminary hearings where the state must establish probable cause in order for the case to be referred to the grand jury or trial court.

By contrast, **general jurisdiction courts** are the trial courts in the United States. They exhibit all the trappings that people associate with the trial process in courts. Judges in general jurisdiction courts are required to be licensed attorneys (and many states require them to have practiced law for some specified length of time), there are court reporters who maintain verbatim transcripts of proceedings (making them “courts of record”), and jury trials are regularly scheduled. General jurisdiction courts are responsible for appeals from the limited jurisdiction courts through a process known as trial *de novo* (or a new trial, since there is no transcript on which to base an appeal). They also are the courts that hold hearings and trials related to major civil cases and for felonies on the criminal side of the docket. Later in the book we will examine each of these types of courts.

## HIERARCHICAL JURISDICTION

The courts that first hear cases—whether they are limited jurisdiction or general jurisdiction courts—are called **courts of original jurisdiction**. Sometimes they are also called courts of first instance or simply trial courts. The idea behind designations such as this is that these courts are the first ones to receive cases from the prosecutor’s office. These are the courts where trials will be conducted for both civil and criminal matters, and they handle the bulk of court business at both state and federal levels.

Distinct from the courts of original jurisdiction are the **courts of appellate jurisdiction** or, simply, the appellate courts. The courts of appellate jurisdiction are those tribunals that receive appeals from the trial courts based on errors of law. Unlike the courts of original jurisdiction where there is one judge and a jury, the appellate courts are collegial courts in that they hear cases in panels of three or more judges based on the review of trial transcripts and oral arguments by attorneys representing both sides of the case. The opinions of these appellate courts are published in a series of volumes called a *reporter*, and they are available in law libraries as well as in some public and university libraries.

The federal courts, and many state systems, have a two-tiered appellate court structure. First, there are the **courts of intermediate appellate jurisdiction**. In state court systems, these are often called the state courts of appeals, and for the federal system they are called the Courts of Appeals for the various judicial circuits. There are 11 numbered circuit courts, plus Courts of Appeals for the District of Columbia and for the Federal Circuit (U.S. Courts 2015). Thirty-nine states have intermediate appellate courts, and a few have separate intermediate appellate courts for civil and criminal matters. Most of the cases that are appealed from trial courts never make it past these first-level appellate courts.



Additionally, all states have a **court of last resort**, and Oklahoma and Texas have two such courts—one for civil cases and one for criminal cases (Malega and Cohen 2013). These courts vary in their titles, but most frequently they are called the state supreme court or some variation of that title.<sup>4</sup> At the federal level, the court of last resort is the U.S. Supreme Court, which was created by Article III of the U.S. Constitution. As you will see in chapter 11, the U.S. Supreme Court is composed of eight associate justices plus the chief justice. When there is a vacancy on the Court, these individuals are nominated by the president of the United States and confirmed by the Senate. Once approved, the Supreme Court justices have lifetime tenure assuming good behavior. The Supreme Court has jurisdiction over civil and criminal matters, and it receives appeals from the federal intermediate appellate courts (the U.S. Courts of Appeals) as well as from state courts of last resort.

As should be obvious at this point, state and federal courts differ in their exact configurations, but all 51 court systems (in addition to the courts for the District of Columbia) in the United States are hierarchically arranged with lower level trial courts (one or two levels) and higher level appellate courts (one or two levels).

## LAW VERSUS EQUITY

The final element that we must consider in dealing with the issue of jurisdiction is the distinction between law and equity. Most of the focus in this book is on law, particularly on criminal law. You will see in the next chapter that there are different sources of law such as the common law, constitutions, statutes, case law (appellate court decisions), and administrative or regulatory law. However, the primary emphasis is on statutory law or those laws that are created by state and federal legislatures. As you will see, laws are a pervasive part of our justice system and of society in general. Laws of varying kinds touch all of our lives every day. However, at times the law is silent or inadequate to provide relief (and some might even say the law can be unjust), and in those cases **equity** is available. Equity is the “power in the legal system to craft special remedies in appropriate disputes . . . [or] the use of rightness, fairness, and equality to adjudicate a dispute” (Sheppard 2012:952).

Like many parts of our legal system, equity developed in England when the king would transfer certain legal responsibilities to his chancellors or assistants. In equity cases, judges had the authority to “do justice,” and as such “equity powers allow judges to take preventive action when the law would otherwise limit their decisions to monetary awards after the damage has been done” (Currier and Eimermann 2009:35) By contrast, equity can provide specific relief, such as an **injunction**. Injunctions are court orders that some action must be taken or completed; they also may require that some deed be halted. For instance, environmental groups might file for an injunction requiring that construction of a dam be halted because of the potential destruction of the natural habitat for some types of fish or other aquatic animals. Also, construction of a building or housing development might be halted by injunction if the site is found to have historical significance.

As a result of the king shifting legal responsibilities to his chancellors in England, separate chancery (equity) and law courts developed and existed side by side for about 400 years. However, in England in the late-1800s, “the two were merged, and all courts



were to apply the rules of both, with equity being dominant in case of conflict” (Calvi and Coleman 2008:31).

In the United States today, virtually all states have merged law and equity in their courts of original jurisdiction. However, the states of Delaware, Mississippi, and Tennessee still maintain separate chancery or equity courts (Malega and Cohen 2013).

## ADVERSARIAL JUSTICE

The final concept to consider in this chapter is that of **adversarial justice**. To understand the adversarial system that we have in the United States, we need to contrast our system with procedures utilized in other nations. The primary point of contrast between the Anglo-American system of law and its adversarial nature is with the countries that employ accusatory or inquisitorial systems. Many of the countries in Europe and South America have utilized accusatory justice mechanisms, although the advent of the European Union (EU) is causing a shift from this approach among some of its members. Box 1.3 demonstrates some of the differences that exist in Anglo-American law and the procedures followed by Continental European nations.



### BOX 1.3

#### Law Italian Style

The 2009 Italian trial of American college student Amanda Knox who was charged in Italy with killing her British roommate has highlighted the differences between an adversarial system of justice—such as the one we have in the United States—and an accusatory legal system like that of Italy. Although the advent of the European Union has brought Italy and most of Europe under a legal system similar to that of the United States, there are still important differences. Italy, like most of the rest of Europe, operates under a Roman/Napoleonic law (or code law) legal system in which the police, prosecutor, and judge all participate in the investigation and fact-finding processes in the early stages of investigating crimes. A system such as this places a great deal of emphasis on finding the truth early in the process, and it may result in fewer people being charged with crimes. However, in those cases where criminal charges have been filed, the likely outcome of the case is that the defendant will be convicted. Legal observers in the United States and Amanda Knox’s family expressed their dismay that she did not seem to get a fair trial and that the verdict seemed a foregone conclusion. This type of assessment is easy to reach when comparing continental European court systems with those of common law countries like the United States and England.

*Source:* Rizzo and Falconi (2009).



In the United States, we say that each civil and criminal case has two sides that stand opposed to one another. Ideally, under an adversarial model only one side can “win” and, thus, the other side must “lose.” In game theory this is called a **zero-sum game**, with one winner and one loser. The clearest manifestation of this ideal is the requirement in our legal system that the state must prove the defendant guilty, and the defendant is not required to prove anything.

In contrast to adversarial justice, countries that have traditionally employed accusatory or **inquisitional justice** bring all the government’s power to bear against the defendant, and both the judge and prosecutor are responsible for gathering information relative to the defendant’s guilt. This may result in fewer people being charged with crimes. However, for those who are charged, the court assumes that there already is sufficient evidence of the defendant’s guilt; thus, when the trial begins, the defendant must prove that he or she is not guilty, which can be a monumental task. Box 1.4 deals



#### BOX 1.4 Who Has a Criminal Justice System Like the United States?

Professors who teach crime-related courses frequently get asked: “Who has a criminal justice system like we have in the United States?” Of course, the easy answer is “no one.” Many countries have elements of their justice systems that are similar to ours, but no one has a system that exactly duplicates that of the United States. For instance, England has a decentralized policing system much like the one we have. By contrast, Ireland and many continental European countries (like France) have national police agencies.

The English legal system, which is the closest to being like ours, has a different method of training lawyers and judges (see Box 5.1 on the training of attorneys in Great Britain). Furthermore, in most European countries, judges receive their training in law school, and none are chosen by popular elections like those in the United States.

Finally, the correctional systems around the world may be the element that most closely resembles correctional systems in the United States. Most countries have substantially smaller prison populations than we do, though, and the typical prison sentences are significantly shorter than the average sentences in this country.

All of this means that when we visit foreign countries we can find justice-related functions that would be similar to those with which we are familiar. Nevertheless, each nation has its own unique justice system, and those systems are reflections of history, culture, religion, and the political regime of each nation.

*Source:* Bureau of Justice Statistics (2015).



with the issue of the similarities between the justice systems that operate in the United States and those of other nations.

## SUMMARY

To understand the complete judicial process in the United States, we must understand the organizational and political context in which the courts operate. Courts are part of the civil and criminal justice systems, and they are organized at the local, state, and federal levels. The courts interact on a regular basis with the police at various levels of government, and the courts provide the corrections system a population of convicted offenders to deal with. Additionally, the courts are the forums within which prosecuting and defense attorneys operate on a regular basis. The attorneys for the state and defense (on the criminal side) and for plaintiffs and defendants (on the civil side) operate within the courts, but they are not really a part of the court system.

In addition to the courts functioning as part of the justice system, they also represent one of the three branches of government in our political system. The federal government and the state governments all have legislative branches (represented by the U.S. Congress and by state legislatures or assemblies), executive branches (represented by the president of the United States and by state governors), and judicial branches (composed of different kinds and levels of courts).

Politically, the courts also are influenced by the concept of federalism. Federalism says that the different levels of government—especially state and national—have unique roles and responsibilities. Each level should be able to exercise its own duties without interference from other levels of government. Likewise, each level of government should carry out its responsibilities without intervening in the affairs of other levels of government. However, there is inevitably some overlap and duplication of jurisdiction, and at times one level of government will defer to another; this is the notion of comity.

It is also essential to comprehend the definition of jurisdiction and the way that various forms of jurisdiction will influence the manner in which courts discharge their duties. For instance, some states organize their courts around different types of subject matter; some states have unified civil and criminal courts; while others have separate courts for each type of case. A number of states also have specialized juvenile courts, as well as courts for domestic relations, or family courts, and probate matters.

Most states also have courts of limited jurisdiction, and some states have more than one type of these courts. These tribunals are sometimes called magistrate courts, but they have a variety of titles, including municipal courts and justice of the peace courts. In most instances, the limited jurisdiction courts process minor civil matters and criminal cases involving misdemeanors. They also serve as the legal forum for initial appearances and preliminary hearings in felony cases. Above the courts of limited jurisdiction are the courts of general trial jurisdiction. These courts are responsible for trials in cases of major civil disputes (typically over \$5,000 or \$10,000) and for criminal cases involving felonies. General trial courts represent the pinnacle of procedural formality in our justice system.



Furthermore, all 51 court systems in the United States are organized as hierarchies. Every system has trial courts (one or two levels) and appellate courts (again, one or two levels). The trial courts, or courts of original jurisdiction, are responsible for initially hearing and deciding the issues in dispute. Once they have disposed of a case—whether it is civil or criminal—unresolved issues can be taken to the appellate courts if there is an assertion of an error of law. Relatively few cases are appealed each year, but some of them make it to the state courts of last resort, or to the ultimate court of last resort: the U.S. Supreme Court. As we note at many junctures throughout this book, each state has its own unique court structure. Some are similar but virtually all have distinctive features.

Finally, the idea of adversarial justice is at the core of how the courts are structured and how they operate. Each case has two distinct sides, and the interests of each side stand in opposition to the other. As can be seen in the next chapter (as well as in some of the other chapters in the book), however, the textbook notion of an adversarial process and the reality of the interactions among the courtroom participants are sometimes substantially different. In other words, frequently the law in the books does not look the same as the law in action.

## QUESTIONS FOR CRITICAL THINKING

1. In the chapter you were presented with a diagram of the criminal justice system called the “criminal justice matrix.” When you look at this matrix, what do you learn about the inherent efficiency or inefficiency of criminal justice operations in the United States?
2. At what level of government do we find most police resources and activities? Why is this the case? What about for the courts and corrections? Explain.
3. The Founding Fathers created three coequal branches of government for our nation. What are the three branches of government? Are they really coequal? Why or why not?
4. What types of cases might arise in both the federal and state courts? Give examples of the types of cases that might cause a conflict in jurisdiction between the two systems.
5. What is meant by the notion of comity, and how does it operate in our nation’s court systems?
6. Some people have described the courts, and particularly the federal courts, as inherently undemocratic. If this is true, what does this mean in terms of the practice of judicial review? Is this the most undemocratic action that can be taken by the courts?
7. Based on the notion of federalism, do federal courts and state courts exist one on top of the other or side by side? Explain your answer.
8. More than likely, your state court system has a website. If so, check out the information contained on the website, especially for a description of the number



and types of courts in your state. How many levels are there in your state court system? How many levels of original jurisdiction courts? How many levels of appellate courts?

- 9. Find a dictionary of criminal justice or legal terms and look up the concept of “equity.” How would you define equity to another student? How important is the concept of equity in our legal system?
- 10. In which system—adversarial or accusatory—would you rather stand accused of a crime? Why? Explain.

RECOMMENDED READINGS

Calvi, James V., and Susan Coleman (2008). *American Law and Legal Systems*, 6th ed. Upper Saddle River, NJ: Pearson/Prentice Hall. This book, written largely from a political science perspective, presents a very useful overview of the nature and history of law, and how the legal system in the United States developed. The authors provide separate chapters on constitutional law, criminal law, administrative law, environmental law, torts, contracts, property, and family law. While the focus of the book is not specifically on the courts, it provides a broad background for understanding the context in which the courts operate.

Currier, Katherine A., and Thomas E. Eimermann (2009). *The Study of Law: A Critical Thinking Approach*, 2nd ed. New York: Wolters Kluwer Law & Business. This book provides students with an overview of the ways in which to go about studying law. It deals with a number of types of law (primarily civil law), but it provides a chapter on the structure of the court system in the United States and another on constitutional law where students should find very helpful references.

Melone, Albert P., and Allan Karnes (2008). *The American Legal System*, 2nd ed. Lanham, MD: Rowman & Littlefield. The authors of this book have compiled what easily could be characterized as an encyclopedic treatment of the development and nature of the legal system in the United States. They not only provide a very thorough treatment of the historical evolution of our legal system, but they also provide comprehensive chapters on alternative dispute resolution, tort law, property, family law, contracts, and governmental regulation of businesses. In some ways, while it is a textbook, it should be considered a reference work.

Vago, Steven (2012). *Law & Society*, 10th ed. Upper Saddle River, NJ: Pearson/Prentice Hall. Vago’s book takes a sociological look at understanding the way law operates in our society. He focuses on the theoretical perspectives of how law has developed and the purposes law serves. Perhaps two of the most useful (and interesting to students) chapters in the book are the ones examining the legal profession (what it means to be a lawyer), and how to go about doing research on law and society.

KEY TERMS

adversarial justice	courts of intermediate	federalism
change of venue	appellate jurisdiction	general jurisdiction courts
checks and balances	courts of limited	inferior courts
comity	jurisdiction	injunction
court of last resort	courts of original	inquisitional justice
courts of appellate	jurisdiction	judicial review
jurisdiction	equity	jurisdiction



law enforcement	separation of powers	venue
order maintenance	subject matter jurisdiction	zero-sum game
public service		

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## ENDNOTES

- <sup>1</sup>Every federal law enforcement agency maintains a home page on the Internet. You can check their websites to find a brief history of the agency and the particular laws for which each is responsible.
- <sup>2</sup>Others include concepts such as restitution and restoration among the responsibilities that correctional agencies also may have.
- <sup>3</sup>Malega and Cohen (2013:4) say, “The movement towards unification in some state courts has reduced the number of LJC [limited jurisdiction courts] judges. The percentage of trial court judges serving LJs, compared to GJCs [general jurisdiction courts], declined by 12 percentage points from 1980 to 2011. While only a few states meet the definition of a fully unified court system, many states exemplify elements of it.”
- <sup>4</sup>Only Maryland (Court of Appeals) and New York (Court of Appeals) use a designation other than supreme court, or some variation on that title, for their courts of last resort. In both Oklahoma and Texas the Supreme Court only hears appeals in civil matters and the Court of Criminal Appeals is the court of last resort for criminal cases. These two states have what some have called a two-headed court of last resort.