

TENTH EDITION



CRIMINAL JUSTICE IN **AMERICA**



George F. Cole | Christopher E. Smith | Christina DeJong



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CRIMINAL JUSTICE IN AMERICA

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Brief Contents

PART ONE

Crime and the Criminal Justice System

- 1** The Criminal Justice System 3
- 2** Crime and Crime Causation 49
- 3** Criminal Justice and the Rule of Law 87

PART TWO

Police

- 4** Police 119
- 5** Policing: Contemporary Issues and Challenges 157
- 6** Police and Law 191

PART THREE

Courts

- 7** Courts and Adjudication 221
- 8** Pretrial Procedures, Plea Bargaining, and the Criminal Trial 257
- 9** Punishment and Sentencing 291

PART FOUR

Corrections

- 10** Corrections 325
- 11** Incarceration and Prison Society 363
- 12** Probation and Intermediate Sanctions 401

PART FIVE

Contemporary Issues In Criminal Justice

- 13** Reentry into the Community 427
- 14** Juvenile Justice 457
- 15** Current Challenges in Criminal Justice 491

Glossary 528

References 537

Name Index 561

Subject Index 569

Contents

Preface xiii

PART ONE Crime and the Criminal Justice System

1 The Criminal Justice System 3



The Goals of Criminal Justice 5

- Doing Justice 6
- Controlling Crime 7
- Preventing Crime 7
- Advancing Goals: Evidence-Based Practices 7

Criminal Justice in a Federal System 9

- Two Justice Systems 10
- Expansion of Federal Involvement 10

Criminal Justice as a Social System 13

Characteristics of the Criminal Justice System 15

- Discretion 16
- Resource Dependence 16
- Sequential Tasks 18
- Filtering 18

Operations of Criminal Justice Agencies 20

- Police 20
- Courts 20
- Corrections 21

The Flow of Decision Making in the Criminal Justice System 21

- Steps in the Decision-Making Process 23
- The Criminal Justice Wedding Cake 25
- Crime Control versus Due Process 27

Crime and Justice in a Multicultural Society 29

Disparity and Discrimination 31

- Explaining Disparities 32

Summary 41

2 Crime and Crime Causation 49



Types of Crime 51

- Visible Crime 51
- Occupational Crime 52
- Organized Crime 52
- Transnational Crime 53
- Victimless Crimes 54
- Political Crime 55
- Cybercrime 55

How Much Crime Is There? 59

- The Uniform Crime Reports (UCR) 59
- The National Crime Victimization Surveys (NCVS) 61
- Trends in Crime 62

Crime Victimization 65

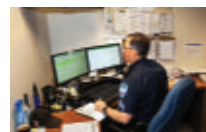
- Who Is Victimized? 65
- Acquaintances and Strangers 68
- The Impact of Crime 69
- The Experience of Victims in the Criminal Justice System 70
- The Role of Victims in Crime 73

Causes of Crime 74

- Classical and Positivist Theories 74
- Biological Explanations 75
- Psychological Explanations 76
- Sociological Explanations 77
- Life Course Theories 79
- Integrated Theories 80
- Women and Crime 81
- Assessing Theories of Criminality 82

Summary 84

3 Criminal Justice and the Rule of Law 87



Foundations of Criminal Law 88

Substantive Criminal Law 90

- Definitions and Classifications of Criminal Laws 90
- Elements of a Crime 93
- Seven Principles of Criminal Law 93
- Defenses against Criminal Charges 96
- Justification Defenses 97
- Excuse Defenses 98

Procedural Criminal Law 102

- The Bill of Rights and the Fourteenth Amendment 103
- The Fourteenth Amendment and Due Process 106
- The Due Process Revolution 106
- The Fourth Amendment: Protection against Unreasonable Searches and Seizures 107
- The Fifth Amendment: Protection against Self-Incrimination and Double Jeopardy 108
- The Sixth Amendment: The Right to Counsel and a Fair Trial 109
- The Eighth Amendment: Protection against Excessive Bail, Excessive Fines, and Cruel and Unusual Punishments 111

Constitutional Rights and Criminal Justice Professionals 114

Summary 116

PART TWO

Police

4 Police 119

The Development of Police in the United States 120

- The English Roots of the American Police 120
- Policing in the United States 121
- Homeland Security? Evidence-Based Policing? Police Reform? 126

Law Enforcement Agencies 128

- Federal Agencies 128
- State Agencies 130
- County Agencies 130
- Native American Tribal Police 131
- Municipal Agencies 131
- Special Jurisdiction Agencies 131

Who Are the Police? 132

- Recruitment 132
- The Changing Profile of the Police 134
- Training 136

The Police Subculture 139

- The Working Personality 139
- Police Morality 141
- Police Isolation 141
- Job Stress 143

Police Functions 145

- Order Maintenance 145
- Law Enforcement 146
- Service 146
- Implementing the Mandate 146

Organization of the Police 148

- Bureaucratic Elements 148
- Operational Units 149
- The Police Bureaucracy and the Criminal Justice System 150

Police Policy 152

Summary 154



5 Policing: Contemporary Issues and Challenges 157

Everyday Action of the Police 159

- Encounters between Police and Citizens 159
- Police Discretion 159

Police Abuse of Power 161

Use of Force 162

- Corruption 167



Civic Accountability 168

- Internal Affairs Units 168
- Civilian Review Boards 170
- Standards and Accreditation 171
- Civil Liability Lawsuits 171

Delivery of Police Services 173

- Police Response 173
- Productivity 174

Patrol Functions 175

- Investigation 176
- Special Operations 177

Issues in Patrolling 179

- Assignment of Patrol Personnel 179
- The Future of Patrol 182

Police and the Community 184

- Special Populations 184
- Policing in a Diverse Society 185
- Community Crime Prevention 187

Summary 188

6 Police and Law 191

Legal Limitations on Police Investigations 192

- Search and Seizure Concepts 193
- Use of Force and the Fourth Amendment 195
- The Concept of Arrest 196
- Warrants and Probable Cause 197

Warrantless Searches 198

- Special Needs beyond the Normal Purposes of Law Enforcement 199
- Stop and Frisk on the Streets 199
- Search Incident to a Lawful Arrest 201
- Exigent Circumstances 202
- Search by Consent 202
- Automobile Searches 203

Questioning Suspects 205

- Miranda Rules 206
- The Consequences of *Miranda* 209

The Exclusionary Rule 212

- The Application of the Exclusionary Rule to the States 213
- Exceptions to the Exclusionary Rule 213

Summary 217



PART THREE Courts

7 Courts and Adjudication 221



The Functions and Structure of American Courts 222

- The Functions of Courts 223
- The Structure of Courts 224

To Be a Judge 226

- Who Becomes a Judge? 226
- Functions of the Judge 227
- How to Become a Judge 230

The Prosecutorial System 233

- Politics and Prosecution 234
- The Prosecutor's Influence 235
- The Prosecutor's Roles 235
- Discretion of the Prosecutor 236
- Key Relationships of the Prosecutor 237
- Decision-Making Policies 239

The Defense Attorney: Image and Reality 241

- The Role of the Defense Attorney 241
- Realities of the Defense Attorney's Job 242
- The Environment of Criminal Practice 243
- Counsel for Indigents 244

The Courtroom: How It Functions 248

Summary 253

8 Pretrial Procedures, Plea Bargaining, and the Criminal Trial 257



From Arrest to Trial or Plea 259

Bail: Pretrial Release 261

- The Reality of the Bail System 262
- Bail Agents 265
- Setting Bail 266
- Reforming the Bail System 266

Pretrial Detention 270

Plea Bargaining 272

- Exchange Relationships in Plea Bargaining 273
- Tactics of Prosecutor and Defense 273
- Pleas without Bargaining 273
- Legal Issues in Plea Bargaining 274
- Criticisms of Plea Bargaining 274

Trial: The Exceptional Case 275

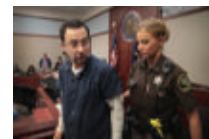
- Jury Trial 276
- The Trial Process 277
- Evaluating the Jury System 284

Appeals 285

- Habeas Corpus 285

Summary 287

9 Punishment and Sentencing 291



The Goals of Punishment 293

- Retribution — Deserved Punishment 293
- Deterrence 294
- Incapacitation 295
- Rehabilitation 296
- A New Approach to Punishment: Restorative Justice 297

Forms of the Criminal Sanction 298

- Incarceration 298
- Intermediate Sanctions 302
- Probation 303
- Death 303

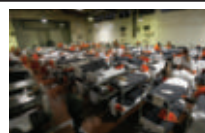
The Sentencing Process 311

- The Administrative Context of the Courts 311
- Attitudes and Values of Judges 316
- Presentence Report 317
- Sentencing Guidelines 317
- Who Gets the Harshes Punishment? 319

Summary 322

PART FOUR Corrections

10 Corrections 325



Development of Corrections 326

- Invention of the Penitentiary 327
- Reform in the United States 328
- Reformatory Movement 331
- Improving Prison Conditions for Women 332
- Rehabilitation Model 332
- Community Model 333
- Crime Control Model 333

Organization of Corrections in the United States 334

- Federal Corrections System 334

- State Corrections Systems 335

- Private Prisons 337

- Jails: Detention and Short-Term Incarceration 338

The Law of Corrections 344

- Constitutional Rights of Prisoners 344
- Law and Community Corrections 350
- Law and Correctional Personnel 351

Correctional Policy Trends 352

- Community Corrections 355
- Incarceration 355

Summary 360

11 Incarceration and Prison Society 363



The Modern Prison: Legacy of the Past 364

Goals of Incarceration 365

Prison Organization 367

Governing a Society of Captives 369

The Defects of Total Power 369

Rewards and Punishments 370

Gaining Cooperation: Exchange Relationships 371

Leadership within the Prison Population 371

The Challenge of Governing Prisons 371

Correctional Officers: The Linchpins of Management 372

The Officer's Role 372

Recruitment of Officers 372

Use of Force 374

Who Is in Prison? 375

Elderly Prisoners 375

Serious Health Issues 377

Prisoners with Mental Illness Issues 377

Long-Term Prisoners 378

The Convict World 379

Adaptive Roles 380

The Prison Economy 381

Women in Prison 383

The Subculture of Women's Prisons 384

Male versus Female Subcultures 384

Issues in the Incarceration of Women 385

Prison Programs 387

Classification of Prison Residents 388

Educational Programs 388

Vocational Education 388

Prison Industries 389

Rehabilitative Programs 389

Medical Services 389

Violence in Prison 391

Assaultive Behavior and Inmate Characteristics 392

Prisoner–Prisoner Violence 393

Prisoner–Officer Violence 395

Officer–Prisoner Violence 396

Decreasing Prison Violence 396

Summary 398

12 Probation and Intermediate Sanctions 401



Community Corrections: Assumptions 402

Probation: Correction without Incarceration 403

Origins and Evolution of Probation 404

Organization of Probation 405

Probation Services 406

Revocation and Termination of Probation 406

Assessing Probation 410

Intermediate Sanctions in the Community 413

Intermediate Sanctions Administered Primarily by the Judiciary 414

Intermediate Sanctions Administered in the Community 418

Intermediate Sanctions Administered in Institutions and the Community 421

Implementing Intermediate Sanctions 422

The Future of Community Corrections 423

Summary 424

PART FIVE Contemporary Issues in Criminal Justice

13 Reentry into the Community 427



Reentry into the Community 428

Contemporary Budget Cuts and Release into the Community 429

COVID-19 and the Dangers of Continued Incarceration 430

Institutional Reentry Preparation Programs 431

Release and Supervision 433

The Origins of Parole 433

The Development of Parole in the United States 433

Release Mechanisms 434

Expiration Release 434

Mandatory Release 434

Other Conditional Release 435

Discretionary Release 436

The Parole Board Process 436

Impact of Release Mechanisms 439

Parole Supervision in the Community 441

Community Programs following Release 443

Parole Officer: Police Officer or Social Worker? 444

The Parole Bureaucracy 445

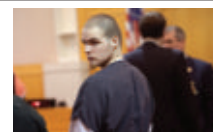
Adjustment to Life Outside Prison 445

Revocation of Parole 449

The Future of Reentry 450

Summary 453

14 Juvenile Justice 457



Youth Crime in the United States 458

The Development of Juvenile Justice 460

The Puritan Period (1646–1824) 462

The Refuge Period (1824–1899) 462

The Juvenile Court Period (1899–1960) 462

The Juvenile Rights Period (1960–1980) 463

The Crime Control Period (1980–2005) 465

The “Kids Are Different” Period (2005–Present) 465

The Juvenile Justice System 468

Age of Clients 468

Categories of Cases under Juvenile Court Jurisdiction 468

The Juvenile Justice Process 470

- Police Interface 471
- Intake Screening at the Court 473
- Pretrial Procedures 473
- Transfer (Waiver) to Adult Court 474
- Adjudication 476
- Disposition 478
- Corrections 479

Problems and Perspectives 484

Summary 488

15 Current Challenges in Criminal Justice 491



Police Reform 492

- Defund the Police? 493

Training and Practices in Policing 497

- Accountability 501

Homeland Security 503

- Preparing for Threats 503
- Homeland Security Controversies 507

Corporations and the Private Sector 508

- Private Security 508
- Private Control of Data and Social Media 511

Technological Development and Criminal Justice 512

- Policing and New Technology 512
- Databases 513

Surveillance and Identification 516

- The Challenge Posed by Technology in Criminal Justice 519

Criminal Justice and Political Polarization 520

- Rule of Law 521
- Gun Policy 523

Summary 525

Glossary 528

References 537

Name Index 561

Subject Index 569

Features



EVIDENCE-BASED PRACTICE AND POLICY

The Challenges of Evidence-Based Practice: Quality of Information and Implementation	Chapter 1	p. 8
Victim Services	Chapter 2	p. 72
Debates About Judges' Capability as Policy Makers	Chapter 3	p. 114
Police Officers and Implicit Bias	Chapter 4	p. 140
Policing and Patrol	Chapter 5	p. 183
Identification Procedures	Chapter 6	p. 210
Problem-Solving Courts	Chapter 7	p. 229
The Jury and Evidence-Based Practices	Chapter 8	p. 283
Evidence-Based Sentencing	Chapter 9	p. 312
Jails and Mental Illness	Chapter 10	p. 342
Evidence-Based Prison Practices to Reduce Recidivism	Chapter 11	p. 390
Probation and Community Corrections	Chapter 12	p. 412
Decarceration and the Future of Parole	Chapter 13	p. 451
Evidence-Based Diversion Programs	Chapter 14	p. 475
Should Police Officers Wear Individual Body Cameras?	Chapter 15	p. 499



TECHNOLOGY AND CRIMINAL JUSTICE

Anticipating the Future of Technology and Criminal Justice	Chapter 1	p. 14
Science, Technology, and Evidence of Crimes	Chapter 2	p. 57
Posting on Social Media: Distinguishing Threats from Free Expression	Chapter 3	p. 95
Ransomware: A Threat to Police Departments and Other Organizations	Chapter 4	p. 151
The Risks of Less-Lethal Weapons	Chapter 5	p. 166
Cell Phones and Government Surveillance	Chapter 6	p. 194
Coronavirus and the Courts	Chapter 7	p. 251
Technology and Pretrial Release	Chapter 8	p. 263
Recordkeeping and Accurate Timing of Release from Prison	Chapter 9	p. 301
Technology and a Drastic Reduction in the Use of Prisons	Chapter 10	p. 354
Contraband Delivered by Drones	Chapter 11	p. 382
Technology and Probation	Chapter 12	p. 407
Using GPS to Track People Convicted of Sex Crimes on Parole	Chapter 13	p. 447
Criminalizing Cyberbullying and Decriminalizing Sexting	Chapter 14	p. 486
Police Use of Facial Recognition Technology	Chapter 15	p. 514



CLOSE UP

What I Learned about Stop-and-Frisk from Watching My Black Son	Chapter 1	p. 36
Victimization of the Elderly	Chapter 2	p. 71
Criminal Intent and the Appropriateness of Punishment	Chapter 3	p. 96
Training in an Era of Controversy: De-escalation and Use of Force	Chapter 4	p. 137
De-Escalation Training and Policies: The Police Executive Research Forum's 2016 Proposed Principles on Use of Force	Chapter 5	p. 164
Good Faith, Errors, and the Shrinking of Protection for Rights	Chapter 6	p. 215
The Image of Justice	Chapter 7	p. 230

Race and the Jury	Chapter 8	p. 279
Judges and Sentencing	Chapter 9	p. 316
The Supreme Court's Decision in <i>Holt v. Hobbs</i> (2015)	Chapter 10	p. 347
One Man's Walk through Atlanta's Jungle	Chapter 11	p. 366
Survival Tips for Beginners	Chapter 11	p. 380
Private Probation	Chapter 12	p. 410
A Personal Encounter with the Parole Process in Michigan	Chapter 13	p. 438
Juveniles in Adult Correctional Facilities	Chapter 14	p. 477
Should Law Enforcement Agencies Use Drones within the United States?	Chapter 15	p. 517



CURRENT CONTROVERSIES IN CRIMINAL JUSTICE

Criticism of Justice System Officials: Improper or Useful?	Chapter 1	p. 29
Differing Conceptions of Terrorism	Chapter 2	p. 56
The Legal Meaning of the Second Amendment	Chapter 3	p. 104
The President's Task Force on 21st Century Policing	Chapter 4	p. 142
Confronting the Police "Code of Silence"	Chapter 5	p. 169
<i>Miranda</i> Rights for Terrorism Suspects	Chapter 6	p. 208
Imposing Fees on Indigent Criminal Defendants for Their Right to Legal Representation	Chapter 7	p. 245
Risk Assessment in the Bail Decision	Chapter 8	p. 268
Improperly Running a Local Justice System to Make Money for a City	Chapter 9	p. 314
Extracting Profits from Imprisoned People's Families	Chapter 10	p. 339
Arming Corrections Officers: Risks and Benefits	Chapter 11	p. 395
Asset Forfeiture and the Risk of Law Enforcement Self-Interest	Chapter 12	p. 416
The Movement to "Ban the Box"	Chapter 13	p. 446
Solitary Confinement for Juveniles	Chapter 14	p. 480
Military Equipment and American Police	Chapter 15	p. 494



THE CRIMINAL JUSTICE PROCESS

The State of Michigan versus Christopher Jones	Chapter 1	p. 43
--	-----------	-------

Cases Cited

- Adams v. Williams*, 216, 222
Addlynn Harte and Robert Harte v. Board of Commissioners of Johnson County, Kansas
Arizona v. Evans
Arizona v. Gant, 217, 229
Atkins v. Virginia, 327
Austin v. United States, 114
Bailey v. United States, 212
Barron v. Baltimore, 108
Batson v. Kentucky, 298
Baze v. Rees, 327
Beard v. Banks, 367
Bell v. Wolfish, 371
Berghuis v. Thompson, 225
Blackledge v. Allison, 288
Blakely v. Washington, 339
Board of Education v. Earls, 527
Bordenkircher v. Hayes, 292
Bostock v. Clayton County
Boykin v. Alabama, 292
Breed v. Jones, 527
Brewer v. Williams, 231
Brigham City, Utah v. Stuart, 217
Brown v. Mississippi, 223
Brown v. Plata, 371, 373, 416, 460
Bumper v. North Carolina, 218, 222
Byrd v. United States
California v. Acevedo, 221, 222
Carpenter v. United States
Carroll v. United States, 218, 222
Chandler v. Miller, 527
Chimel v. California, 216, 222
City of Indianapolis v. Edmond, 215, 222
Clark v. Arizona, 100
Commonwealth v. Russell
Coolidge v. New Hampshire, 207
Cooper v. Pate, 366, 367, 375, 376
Cupp v. Murphy, 217
Delaware v. Prouse, 215
Department of Commerce v. New York
Dickerson v. United States, 225
District Attorney's Office v. Osborne, 342
District of Columbia v. Heller, 105
Durham v. United States, 101
Elonis v. United States
Escobedo v. Illinois, 224
Florence v. Board of Chosen Freeholders, 217, 371
Florida v. J. L., 216
Florida v. Jardines, 110, 208
Florida v. Powell, 225
Ford v. Wainwright, 329
Foster v. Chatman
Friedman v. Highland Park, 105
Furman v. Georgia, 326
Gagnon v. Scarpelli, 375
Garza v. Idaho
Gass v. 52nd Judicial District, Lebanon County
Georgia v. Randolph, 218
Gideon v. Wainwright, 112, 264
Glossip v. Gross, 327, 328
Glover v. Johnson, 372
Grady v. North Carolina, 515
Graham v. Connor, 210
Graham v. Florida, 115, 526, 529, 530
Gregg v. Georgia, 326, 332
Griffin v. Wisconsin, 374
Heath v. Alabama, 111
Heien v. North Carolina, xv, 117, 219, 221
Herring v. United States, 232
Holt v. Hobbs, xvii, 368, 369
Hudson v. Palmer, 370
Illinois v. Caballes, 110
Illinois v. Gates, 212
Illinois v. Lidster, 215
Illinois v. Rodriguez, 218
Illinois v. Wardlow, 216, 222
In re Gault, 526
In re Winship, 527
J. D. B. v. North Carolina, 225
Jackson v. San Francisco, 105
Johnson v. California, 372, 373
Kahler v. Kansas
Kennedy v. Louisiana, 327
Kent v. United States, 526
Kentucky v. King, 218, 222
Kingsley v. Hendrickson, 209
Kisela v. Hughes
Knowles v. Iowa, 221, 222
Kyllo v. United States, 502, 503
Lafler v. Cooper, 112, 292
Lee v. Washington, 372
Lewis v. United States, 113
Lindh v. Warden, 368
Lockhart v. McCree, 330
Lockyer v. Andrade, 115
Loomis v. Wisconsin
Mapp v. Ohio, 230, 232
Maryland v. King, 217, 489

Maryland v. Wilson, 218, 222
Massiah v. United States, 224
McCleskey v. Kemp, 326
McDonald v. Chicago, 105, 241
McKeiver v. Pennsylvania, 527
Michigan Department of State Police v. Sitz, 215, 222
Michigan v. Long, 221
Millbrook v. United States, 375
Miller v. Alabama, 115, 526, 529, 548
Miranda v. Arizona, 223, 233, 264
Missouri v. Frye, 112, 264, 292, 307
Missouri v. Jenkins
Monell v. Department of Social Services of the City of New York, 174, 375
Morrissey v. Brewer, 374, 473
Mullenix v. Luna
New York v. Class, 221, 222
New York v. Quarles, 225
Nix v. Williams, 231, 232
North Carolina v. Alford, 292, 293
Obergefell v. Hodges
Padilla v. Kentucky, 307
Payton v. New York, 503
Pennsylvania Board of Pardons and Parole v. Scott, 374
Powell v. Alabama, 108, 264
Procunier v. Martinez, 367
R. V. v. Jones
Ricketts v. Adamson, 292
Riley v. California, xv, xviii, 206, 212, 216, 502
Robinson v. California, 94
Rodriguez v. Colorado
Rodriguez v. United States, xiv, 110, 209
Roper v. Simmons, 327, 524, 526, 528, 529, 548
Ross v. Moffitt, 112, 264
S. H. v. Reed, 543
Safford Unified School District #1 v. Redding, 527
Samson v. California, 374
Santobello v. New York, 288, 292
Schall v. Martin, 527
Scott v. Illinois, 112
Skinner v. Oklahoma, 74
South Dakota v. Opperman, 221
Strickland v. Washington, 264, 329
Tennessee v. Garner, 209, 210, 256
T. D. and O. S. v. Mickens et al., 543
Terry v. Ohio, 38, 39, 108, 111, 215, 216, 222
Timbs v. Indiana
Trop v. Dulles, 114
Turner v. Safley, 367
United States v. Bajakajian, 114
United States v. Booker, 339
United States v. Brawner, 101
United States v. Denson, 503
United States v. Drayton, 218, 222
United States v. Ford, 228
United States v. Jones, 208, 502
United States v. Leon, 231, 232
United States v. Robinson, 216, 222
United States v. Salerno and Cafero, 114, 286
Utah v. Streiff, 164
Vernonia School District v. Acton, 527
Virginia v. Moore, 217
Warden v. Hayden, 217, 222
Weeks v. United States, 229, 230
Whren v. United States, 220, 221
Wiggins v. Smith, 329
Williams v. Florida, 295
Williams v. Maryland, 227
Williams v. Pennsylvania, 328
Wilson v. Seiter, 371
Witherspoon v. Illinois, 329
Wolf v. Colorado, 230
Wolff v. McDonnell, 372
Wyoming v. Houghton, 221

Preface

Criminal Justice in America, Tenth Edition, is designed for instructors seeking a textbook that provides students a thorough introduction to the dynamics of the American system of criminal justice without overwhelming them. The text is an offspring of *The American System of Criminal Justice*, which has been used by more than half a million students over the course of its 16 editions. But much has changed in the years since the first edition of *The American System of Criminal Justice* was published. And that is exactly why we created *Criminal Justice in America*—a briefer, more applied, student-centered introduction to the American system of criminal justice. In creating this text, we did not merely drop a few chapters, combine others, and limit the graphic elements to reduce page count, however. We started from scratch. So, while *Criminal Justice in America* relies on the research and conceptual framework of the larger text, it is not overly theoretical; throughout the book, examples from today's headlines are used to link the concepts and information to real-life criminal justice situations. And while the focus of *Criminal Justice in America* is just as interdisciplinary as the comprehensive book's focus is, it is less encyclopedic and benefits from added policy controversies and legal coverage; skill-building writing exercises; and up-to-the-minute coverage of technology, terrorism, homeland security, cybercrime, evidence-based practices, and other current topics.

The Approach of This Text

Three key assumptions about the nature of American criminal justice as a discipline and the way the introductory course should be taught run throughout the book.

1. *Criminal justice involves public policies* that are developed within the political framework of the democratic process.
2. *The concept of social system is an essential tool* for explaining and analyzing the way criminal justice is administered and practiced.
3. *American values provide the foundation on which criminal justice is based.*

With concerns about terrorism and civil liberties at the forefront of the national agenda, basic American values—individual liberty, equality, fairness, and the rule of law—need to be emphasized.

This book's approach has met with a high degree of acceptance and might be called the dominant paradigm in criminal justice education. Criminal justice is interdisciplinary, with criminology, sociology, law, history, psychology, and political science contributing to the field. The three themes of public policy, social system, and American values help place the research contributions of these disciplines in a context that allows students to better understand the dynamics of criminal justice.

Organization

The Tenth Edition is organized to introduce important fundamental concepts, use those concepts in presenting the important institutional segments of the justice

system (police, courts, corrections), and then highlight important contemporary issues concerning police reform, problems of discrimination, the use of technology, and reentry from prison. The organization of the book is designed to provide comprehensive coverage of the criminal justice system that follows an appropriate sequence, stimulates student interest, and illuminates contemporary issues and problems. The 15-chapter structure of the book creates an opportunity for instructors to move at a steady pace of approximately one chapter per week in the typical length of an academic semester.

Part One of the Tenth Edition presents three chapters that introduce core concepts of the criminal justice system, describe the nature and extent of crime, and supply a framework for understanding the role of law in defining crime and protecting individuals' rights.

Three chapters on police compose Part Two. Here the Tenth Edition builds upon the core concepts in Part One to describe and examine the history, functions, and organization of policing. One chapter examines contemporary issues affecting police, including the movement for police reform and choices about patrol strategies and delivery of services. The legal issues surrounding police authority to conduct searches and question suspects are covered in a separate chapter. Part Two also examines issues concerning civic accountability and the abuse of police authority.

The focus of the chapters in Part Three is on the courts, plea bargaining, and adjudication. One chapter discusses the important roles of judges, prosecutors, and defense attorneys. Other chapters examine the bail process, plea bargaining, and trials. The final chapter in Part Three describes the sentencing process, including the forms and purposes of punishment.

Part Four concerns corrections, and includes material on corrections history and prisoners' rights. One chapter covers detailed aspects of incarceration and prison society. A separate chapter presents probation and intermediate sanctions.

Part Five covers special issues in criminal justice, and the chapter on emerging developments in reentry and parole completes the community corrections coverage introduced in the final chapter of Part Four. A separate chapter examines juvenile justice and contemporary debates about appropriate punishment and treatment for youthful lawbreakers. The final chapter highlights current challenges in criminal justice including debates over "defunding the police," mechanisms to hold police accountable for misconduct, homeland security, technology, and the impact of society's political polarization.

New to the Tenth Edition

This edition encompasses important revisions in content and presentation. Users of the Tenth Edition will find many significant changes. In particular, we have expanded our coverage of contemporary controversies, especially those driven by two powerful developments in 2020: national public protests following the killing of George Floyd by a Minneapolis police officer and the coronavirus pandemic that affected policing, courts, and corrections. Thus, the Tenth Edition gives special attention to police use of force, racial disparities and discrimination in the justice system, police reform, and public health impacts on correctional institutions. There are also now features in each chapter to highlight the impact of technology on each segment of the criminal justice system. Topically, there is new and expanded coverage of racial profiling by police, risk assessment tools for bail and sentencing, expanded use of fees, cell phone tracking, enforcement issues for coronavirus business shutdowns, and gun control legislation. Integrated into topics throughout the book are discussions of the anticipated budget reductions from diminished governmental revenues due to coronavirus shutdowns of businesses and

other employment contexts. In addition, new topics are covered in the “Close Up,” “Current Controversies in Criminal Justice,” and “Evidence-Based Practice and Policy” boxes, which focus on contemporary issues such as domestic terrorism, the police code of silence, judges’ abuse of discretion, racial bias in jury selection, mental health in jails, and police use of drones and military equipment. The remainder of this section outlines the major content changes in the book and then examines the elements in each chapter that are new to this Tenth Edition.

Enhanced Coverage

Highly Publicized, Contemporary Issues Among the most significant developments affecting the justice system are contemporary controversies that have captured the public’s attention through heavy news media coverage. Key events in 2020 included videotaped incidents of police officers’ use of force, especially white officers’ actions leading to the deaths of African American suspects. In particular, the death of George Floyd in Minneapolis set off large-scale public protests throughout the United States and in other countries around the world. Certain cities experienced accompanying civil disorder and conflict that resulted in property damage, arrests, controversial uses of force by law enforcement officers, and conflicts between protesters and counter protesters. These incidents brought into sharp focus debates about use of force, police reform, police–community relations, and discrimination in the justice system. An additional contemporary issue with powerful impacts throughout the justice system is the coronavirus pandemic. This unexpected public health crisis exposed the susceptibility of corrections institutions to infectious diseases, the impact of business shutdowns on tax revenues to fund the justice system, and controversies about whether and how to enforce stay-at-home orders and mask-wearing mandates. Both of these topics are integrated into chapters throughout the book. In addition, police reform and accountability are among the issues examined in greater depth in a new Chapter 15 entitled, “Current Challenges in Criminal Justice.” The new chapter also illuminates issues of homeland security, technological developments, including police use of body cameras and military equipment, and the difficulties posed for problem-solving in criminal justice by political polarization in contemporary American society.

Opportunities to Develop Students’ Analytical Skills A feature in each chapter entitled “You Make the Decision” places students in the role of decision makers as they analyze how they would address specific problems and situations. These scenarios include the FBI Director dealing with armed people occupying federal property, a state legislator considering new laws, and a police officer deciding whether to make a stop-and-frisk search. The decision-making challenges also focus on issues in courts and corrections, such as a prosecutor considering plea agreement options and a warden addressing problems with corrections officers’ use of force. Students analyze a given situation and arrive at their own decisions. A new feature appears later in each chapter, entitled “You Make the Decision: What to Consider,” that provides students with information about what actually happened in each real-world situation from which these scenarios are drawn. An additional decision-making feature appears at the end of each chapter as “A Question of Ethics.” These scenarios pose ethical issues based on real events concerning police officers, prosecutors, judges, and corrections officials.

Proposals for Reform of the Justice System In recent decades, the primary focus of the justice system has been on crime control and punishment. The past

few years, however, have seen a shift toward concerns about the fairness, effectiveness, and costs of policies and practices in criminal justice. The events of 2020 brought widespread recognition of problems in policing and the need for reform. As discussed in Chapter 15, dissatisfaction with racial discrimination and excessive use of force by police led to proposals to “defund the police,” although there were broad disagreements about the extent to which police funding and responsibilities could be transferred to other social service agencies. There is also continuing recognition among policy makers about the high financial costs of incarceration and the significant societal costs of failing to prepare incarcerated lawbreakers for reintegration into society. Throughout the Tenth Edition, there are examples of reform initiatives and proposals intended to increase fairness, enhance effectiveness, and alter budgetary expenditures in criminal justice. Such initiatives include increased accountability mechanisms for police, new standards and training for police use of force, proposals for police officers to wear body cameras, and the U.S. Department of Justice’s investigation of the city of Ferguson, Missouri, for using its justice system to increase revenue for its budget. Other contemporary reform issues include use of fees for services within the criminal justice system, discriminatory aspects of risk assessment tools for bail and sentencing, and technology issues concerning weapons and surveillance methods employed by law enforcement personnel.

Expanded Coverage of Technology and Cybercrime Rapidly expanding methods of cybercrime are imposing extraordinarily significant costs on governments, businesses, and individuals worldwide, including ransomware targeted at police departments and identity theft aimed at individuals. To fully understand the ramifications of this misuse of technology, each chapter contains a new “Technology and Criminal Justice” feature. Criminal justice students need to be aware of the challenges in addressing forms of criminal behavior that are continuously shifting and adapting with each technological innovation. In addition, law enforcement officials are incorporating new technologies to combat crime, including facial recognition technology and GPS monitoring of probationers and parolees. These developments also raise questions about people’s rights and privacy interests as justice system agencies use new devices for surveillance and monitoring.

Chapter-by-Chapter Changes

- **Chapter 1**, “The Criminal Justice System,” opens with a new vignette concerning the 2019 Indianapolis case of judges getting into a fight after a night of drinking, leading to one judge and two of his opposing combatants facing criminal charges. The case illustrates the steps in the criminal justice process, from police making arrests to prosecution to sentencing. The “Evidence-Based Practice and Policy” feature presents the challenges of employing experimental research to criminal justice problems and issues in implementing evidence-based policies. There is new text material about the need for research-based evidence on racial disparities in the justice system in order to avoid relying on beliefs, perceptions, and misinformation in developing corrective policies. The new “Technology and Criminal Justice” feature discusses the challenges of anticipating the implications of new technology, such as police officers’ traffic enforcement applied to self-driving cars. In “You Make the Decision: What to Consider,” students learn what actually happened in the scenario about protesters taking over federal offices at an Oregon wildlife refuge. There is new

material on implicit bias, police department culture, and profiling by proxy as contributing to discrimination and disparities in the justice system.

- **Chapter 2, “Crime and Crime Causation,”** offers a new vignette concerning the August 2019 mass shooting in an entertainment district in Dayton, Ohio, in which 26 were shot in the short span of 32 seconds by a shooter with a military-style rifle. This criminal act is contrasted with the cases of two members of Congress sentenced to prison in 2020 for financial crimes in order to raise questions about the causes of criminal behavior. The material on political crimes adds attention to the Boston Marathon bomber and cases of CIA and Defense Intelligence Agency officials convicted of spying for China in 2019. The “Current Controversies in Criminal Justice” feature examines conflicts over governors’ stay-at-home orders during the coronavirus pandemic of 2020, including the invasion of the Michigan Capitol by gun-carrying protesters. The new “Technology and Criminal Justice” feature examines problems in crime investigations, including misconduct by crime lab personnel and lack of careful crime scene procedures. In “You Make the Decision: What to Consider,” students examine the Michigan case of a 19-year-old convicted for sexual contact with an underage teen that he met on an adults-only website. The “Close Up” feature focuses on victimization of the elderly and the “Evidence-Based Practice and Policy” feature examines victims’ services. There is also new text material on research showing that immigrants are less prone to commit crimes than native-born Americans.
- **Chapter 3, “Criminal Justice and the Rule of Law,”** presents a new chapter opener comparing cases illustrating the uncertainty of using the entrapment defense against charges of online solicitation of a minor. The defendant in Texas ended up with a 15-year prison sentence while the Florida defendant was acquitted even though their actions were very similar. There is new text material on sentencing reform to reduce prison and jail populations by using the example of Kentucky’s proposal to double the threshold amount for felony theft charges. In addition, there are new examples of self-defense claims in homicide cases and the growing use of the necessity defense by environmental activists. The new “Technology and Criminal Justice” feature examines the U.S. Supreme Court decision that overturned a conviction for making online threats based on a claim that social media expressions are like controversial rap song lyrics that release emotions rather than actually threaten people with harm. Other new Supreme Court decisions in the chapter include *Timbs v. Indiana* (2019) that incorporated the Eighth Amendment protection against excessive fines, *Kahler v. Kansas* (2020) declaring that states do not need to make the insanity defense available, and *Garza v. Idaho* (2019) in which the Court clarified the right to counsel for appeals. “Current Controversies in Criminal Justice” describes the debates about the interpretation of the Second Amendment and the protests that followed new gun control legislation in Virginia in 2020. The “Evidence-Based Practices and Policy” feature considers the capability of judges to utilize research evidence in decision making and the “Question of Ethics” problem focuses on police officers lying to suspects in order to obtain incriminating information.
- **Chapter 4, “Police,”** opens with the 2020 tragedy of a Texas police officer who was killed when struck by a vehicle while serving as a first responder to a traffic collision, thereby illustrating the broad roles of police officers and extensive potential risks of this profession. New text material discusses the benefits for police-community relations when residents have positive interactions

with police officers. There is also a discussion of the police reform movement that emerged after George Floyd's killing in Minneapolis in 2020 as well as questions about how the socialization of police may have shaped the behavior of the officers who stood by and watched the killing occur. "You Make the Decision: What to Consider" focuses on suggested reforms for use of force and police accountability that were being discussed prior to the Floyd killing due to parallel problems that gained attention in recent years in other cities. New text material examines proposals to shift aspects of the police "service" function to social workers and psychologists who are better prepared to deal with people in crisis and suffering from specific problems, such as mental health issues. The new "Technology and Criminal Justice" feature looks at ransomware attacks against police departments, hospitals, and city governments.

- **Chapter 5, "Policing: Contemporary Issues and Challenges,"** presents a new opening vignette discussing the killing of George Floyd and the attendant protests across the country focused on police reform and racial discrimination in the justice system and broader society. The example also highlights criticisms of police accountability mechanisms as Minneapolis officer Derek Chauvin, who kept his knee on Floyd's neck and caused the death, had 18 previous complaints against him, but the nature of complaints against the police and the results of police disciplinary actions are shielded from public scrutiny. New text material also examines police union and police executive backlash against proposed principles for use of force recommended by the Police Executive Research Forum. There is also attention to the role and limitations of civil liability lawsuits and qualified immunity as they relate to policy change and police accountability. "You Make the Decision: What to Consider" examines the U.S. Supreme Court's decision in *Utah v. Streiff* (2016) concerning the use of evidence obtained in a search incident to an arrest, even when the initial stop of the individual did not have a lawful basis. The new "Technology and Criminal Justice" feature examines the use and risks of less-lethal weapons, such as chemical agents, fired projectiles, and conducted energy devices, including injuries caused by these weapons in the George Floyd protests. The "Current Controversies in Criminal Justice" feature examines the killing of Laquan McDonald by a Chicago police officer and the subsequent inspector general investigation that identified 16 officers who helped to cover up the crime as a means to illuminate the police code of silence. There is also new material on officers' risks of encountering exposures to infectious diseases, including coronavirus, in their interactions with the public, especially close contacts like frisk searches and arrests. New material is included on hate crimes against Asian Americans, stereotyping of Muslims, and issues related to equal protection of the laws for people in the LGBTQ community.
- **Chapter 6, "Police and Law,"** opens with the Supreme Court decision in *Byrd v. United States* (2018) concerning the warrantless examination of the contents in a rental car's trunk based on an officer's conclusion that Fourth Amendment protections do not exist when the driver's name is not on the rental agreement. This example helps to illustrate the complex variety of situations that arise concerning the extent of police officers' authority to conduct searches. The new "Technology and Criminal Justice" feature examines cell phone tracking, including its use to stop the spread of coronavirus as well specific law enforcement situations in the United States. The "Current Controversies in Criminal Justice" feature focuses on debates about whether terrorism suspects should be granted the same constitutional rights as other criminal suspects. "You Make

the Decision: What to Consider” steers students to a Maryland appellate court decision concerning whether police officers should stop questioning a suspect who says, “I don’t want to say anything,” given that the *Miranda* right permits suspects to assert a protected entitlement to remain silent during questioning. Flawed identification procedures are examined in the “Evidence-Based Practice and Policy” feature concerning a man released from prison after serving 43 years for a crime that he did not commit. The “Close Up” feature illuminates the U.S. Supreme Court’s tolerance of errors in databases and tips by informants that lead to searches and the acquisition of evidence by police officers. The “Question of Ethics” feature asks students to evaluate whether it is proper for police to use photo-editing software to remove tattoos and scars from photos of suspects before showing those photos to witnesses and victims.

- **Chapter 7, “Courts and Adjudication,”** has a new opening vignette about the trial, mistrial, and ultimate plea and sentencing of Officer Michael Slager, convicted of shooting motorist Walter Scott in North Charleston, South Carolina, after a bystander’s video showed Slager shoot Scott in the back. The “Close Up” feature highlights cases of judges misusing their power by jailing people for being late to court and jailing lawyers for contempt of court. The topic of prosecutorial discretion includes discussion of the Jeffrey Epstein case, in which the well-connected multi-millionaire received favorable treatment and a light sentence from a plea bargain for charges of sexually abusing teenage girls. “You Make the Decision: What to Consider” focuses on a U.S. Court of Appeals decision in 2019 concerning police officers obtaining a false reading of marijuana when field testing wet green tea leaves in a family’s trash. The chapter uses the example of the #MeToo movement raising society’s awareness and public pressure on prosecutors to treat sexual assault claims more seriously. The “Current Controversies in Criminal Justice” feature examines the imposition of fees on indigent defendants seeking to benefit from their Sixth Amendment right to counsel. The new “Technology and Criminal Justice” feature illustrates the broad impact of the coronavirus pandemic as courts attempted to use remote technology to process cases. The “Question of Ethics” feature concerns the preservation of evidence and an example from 2020 of imprisoned people in Florida seeking new DNA tests that might gain them release from death row.
- **Chapter 8, “Pretrial Procedures, Plea Bargaining, and the Criminal Trial,”** uses an opening example that focused on the prosecution of Hollywood actresses Felicity Huffman and Lori Loughlin in the college admissions scandal cases of 2019 and 2020. New text material discusses the crisis of coronavirus spreading through jails with consequent risks for officers further spreading the virus to their families and released detainees spreading COVID into the community. In addition, there is a discussion of efforts to reform or abolish the bail bonds business as well as the use of lobbying and campaign contributions by those businesses to influence state legislatures. A detailed definition of “reasonable doubt” is presented from an explanation in an opinion of the Supreme Judicial Court of Massachusetts. The new “Technology and Criminal Justice” feature explores the use of GPS monitoring of pretrial detainees as an alternative to jail for people awaiting the processing of their criminal cases. “You Make the Decision: What to Consider” asks students to consider the case of an Ohio teen who was allowed to plead guilty and receive a sentence of probation and community service after giving drug-laced brownies to classmates and teachers at his high school. “Current Controversies in Criminal Justice” examines concerns about discrimination and lack of transparency in the

construction and use of risk assessment tools that weigh factors to determine bail decisions. The “Close Up” feature focuses on U.S. Supreme Court decisions concerning racial bias in jury selection and jury deliberations.

- **Chapter 9, “Punishment and Sentencing,”** begins with a comparison of recent sentences for sex abuse by former Olympics gymnastics team physician Larry Nassar and several high school teachers to highlight differences depending on jurisdiction and nature of crimes. The sentencing of actress Felicity Huffman is used to highlight potential motivations a judge may have in defining a specific sentence. New text material provides an example from sentencing reform in the 2018 First Step Act approved by Congress and President Trump. In addition, new text material presents public opinion data on support for life without parole instead of the death penalty and the Trump administration’s withdrawal of the FDA’s efforts to regulate drugs used in executions. New material updates recent developments in states that have abolished capital punishment. There is also coverage of controversies surrounding alleged discrimination in the use of risk assessment tools for sentencing as well as private companies preventing transparency in understanding the factors that are weighed in assessing risk using their programs. The new “Technology and Criminal Justice” feature concerns reliance on software to calculate release dates for imprisoned people and errors that led several states to either hold people too long or improperly release them too early. “You Make the Decision: What to Consider” illustrates conflicts of interest from the U.S. Supreme Court’s decision concerning a state appellate judge who was asked to remove himself from a case for which he had previously been involved as a prosecutor.
- **Chapter 10, “Corrections”** begins with a chapter-opening example of the problems experienced by prisons and jails as the coronavirus spread through residents and staff living in close quarters with limited preventative health measures in place. There is new material on private corrections companies’ involvement in politics by seeking to provide financial support to political candidates who endorse the use of private prisons. In recent years, this has been most clear when President Obama announced an end to the use of private prisons by the federal government and President Trump subsequently gained significant financial support from the industry by reversing that decision. “Current Controversies in Criminal Justice” highlights the profits shared by private companies with sheriff’s offices for providing phone service and visiting room snacks for which detained people’s families pay inflated prices. “Evidence-Based Practice and Policy” examines the attention to mental health in Chicago’s Cook County Jail where psychologists have been appointed to serve as jail executive directors due to the recognition of the significant mental health needs of people detained in the large facility. “You Make the Decision: What to Consider” exposes students to conflicting court decisions about whether jails can limit detainees’ mail to postcards rather than letters. The “Technology and Criminal Justice” feature discusses futuristic proposals to limit the use of prisons by relying instead on surveillance and electroshock technology to control and confine people in their homes or other less-expensive settings.
- **Chapter 11, “Incarceration and Prison Society,”** begins with a new chapter opener on the U.S. Department of Justice’s investigation into prison conditions and violence in Mississippi prisons in 2020. “You Make the Decision: What to Consider” places students in the role of Mississippi’s governor to consider options for improving prisons and to compare the new prison administrator

hired in Mississippi with an administrator hired to solve violence problems in Nebraska prisons. New text discussion in the chapter examines a Department of Justice report on years of abuse experienced by residents in New Jersey's prison for women as well as issues surrounding investigations of reported rapes in prisons. The new "Technology and Criminal Justice" feature highlights the use of drones to smuggle contraband into prisons. The "Evidence-Based Practices and Policy" feature reviews research findings on corrections programs that have shown success in addressing substance abuse, mental health issues, and cognitive-behavioral change. "Current Controversies in Criminal Justice" discusses the expanding practice of arming corrections officers with chemical sprays and electro-conduction weapons, despite a past tradition of keeping weapons from entering cellblocks for fear they would be stolen by prison residents.

- **Chapter 12, "Probation and Intermediate Sanctions"** presents a new chapter opener highlighting the probation term imposed on rap performer Meek Mill that was extended multiple times for minor violations and eventually resulted in incarceration. Publicity surrounding his situation drew renewed attention to probation revocation and raised questions about the need for reform. "You Make the Decision: What to Consider" looks at a probation case considered by the Pennsylvania Supreme Court in 2020 that illustrated the collision between use of medical marijuana and the inclusion of marijuana prohibition as part of probation conditions. New material discusses the Justice Reinvestment Initiative that works with state governments to reduce imprisonment and identify successful community alternatives to incarceration. The "Evidence-Based Practice and Policy" feature examines promising community corrections programs as alternatives to incarceration. The "Technology and Criminal Justice" feature considers technological innovations, including smartphone apps and check-in kiosks, as approaches for tracking probationers. In many places, the imposition of fees in order to utilize technology inflicts especially difficult burdens on poor people in community corrections programs, including probation.
- **Chapter 13, "Reentry into the Community"** presents a new chapter opener focused on reentry programs in Louisiana that include training in skilled trades and continued support upon return to the community. This chapter includes attention to various aspects of decarceration. A new section considers the coronavirus pandemic and efforts by corrections officials to reduce confined populations in order to limit the risks of infectious illnesses. Yet, significant health risks and other issues are associated with releasing people from close-quarters settings in which the virus has already spread rapidly. "Evidence-Based Practice and Policy" examines research-based practices for reducing prison populations while considering the issue of community safety. "Technology and Criminal Justice" illustrates Fourth Amendment issues that have arisen with the use of GPS technology to monitor sex offenders who have been released on parole. New material discusses California's Public Safety Realignment Act and its consequences as critics were concerned that crime would increase when California found ways to use jail sentences and community options as alternatives to prisons for people convicted of felonies.
- **Chapter 14, "Juvenile Justice,"** provides a new opening vignette about a 16-year-old charged with killing his grandmother and the questions that arose about whether he should be processed and punished as an adult in the criminal justice system. The "Close Up" feature examines the risks and issues with imprisoning juveniles in correctional institutions for adults. In addition, there is attention

to the “raise the age” movement that seeks to remove teens under age 18 completely from the adult justice system. “You Make the Decision” asks students to consider the case of a teen who was confined to a residential facility for failing to complete her homework and fighting with her mother. The five-month confinement took place at a time when the coronavirus was spreading through corrections and detention facilities. The “Evidence-Based Practice and Policy” feature discusses restorative justice programs, the use of civil citations instead of criminal charges, and other innovations that may steer juveniles from additional behavior that violates criminal laws. There is also new material on the “school-to-prison pipeline” and changes in approaches to addressing sexting by young people.

- **Chapter 15, “Current Challenges in Criminal Justice,”** is an entirely new chapter on contemporary problems confronting the justice system at the dawn of the twenty-first century’s third decade. The chapter begins with an examination of the heavy-handed use of force by federal law enforcement officers in Portland, Oregon, that led to injuries to people protesting George Floyd’s death, as well as to journalists covering such events. This example highlighted issues about police accountability, police use of military uniforms and technology, and federalism issues about which authorities should handle situations affecting cities and counties. There is an extensive discussion of the slogan “Defund the Police” and debates about definitions and proposals to advance that idea, including shifting law enforcement functions and resources to mental health services and social workers. There is also detailed information about criticisms of police training and practices as well as the role of police unions and the concept of qualified immunity as impediments to increased transparency and accountability. Additional sections provide new material on homeland security, private policing, and the role of private corporations in controlling people’s personal data and social media platforms. The section on technological development in criminal justices includes issues that have arisen in the use of databases and erroneous police actions based on race-related flaws in facial recognition technology. The final section, Criminal Justice and Political Polarization, focuses on emerging issues with the rule of law as local sheriffs announce their unwillingness to enforce coronavirus restrictions and new gun control laws. Gun policy is used to focus on the problem of criminal justice policy development when political divisions impede discussion of policy problems.

Study and Review Aids

To help students identify and master core concepts, *Criminal Justice in America* provides several study and review aids in each chapter:

- *Chapter outlines* preview the structure of each chapter.
- *Opening vignettes* introduce the chapter topic with a high-interest, real-life case or a discussion of a major contemporary policy issue, enhancing the book’s relevancy for today’s student.
- *Learning Objectives* highlight the chapter’s key topics and themes and serve as a road map for readers.
- *Check Points* throughout each chapter allow students to test themselves on content and get immediate feedback to help them assess their understanding of concepts as they progress through the chapter.

- End-of-chapter *Summaries* and *Questions for Review* reinforce key concepts and provide further checks on learning.
- *Key Terms and Cases* are listed at the end of each chapter; these are defined throughout the text in the margins and included in the Glossary.

Promoting Understanding

Aided by the features just described, diligent students can master the essential content of the introductory course. While such mastery is no small achievement, most instructors aim higher. They want students to complete this course with the ability to take a more thoughtful and critical approach to issues of crime and justice. *Criminal Justice in America*, Tenth Edition, provides several features that help students learn how to think about the field.

- **Stop & Analyze** This feature follows each set of Check Point critical thinking questions and asks students to concretely articulate arguments and analytical conclusions about issues relevant to the preceding section of the text.
- **Close Ups and Other Real-Life Examples** Understanding criminal justice in a purely theoretical way does not give students a balanced understanding of the field. The wealth of examples in this book shows how theory plays out in practice and what the human implications of policies and procedures are. In addition to the many illustrations in the text, the “Close Up” features in each chapter draw on newspaper articles, court decisions, first-person accounts, and other current sources.
- **A Question of Ethics: Think, Discuss, Write** In the criminal justice system, decisions must be made within the framework of law but also be consistent with the ethical norms of American society. At the end of each chapter, completely revamped boxes entitled “A Question of Ethics: Think, Discuss, Write” use actual news reports on the justice system to place students in the context of decision makers faced with a problem involving ethics. Students become aware of the many ethical dilemmas that criminal justice personnel must deal with and the types of questions they may have to answer if they assume a role in the system. Moreover, they are challenged to offer solutions that administrators might employ in using training, supervision, or other approaches to reduce behavior problems by justice system employees.
- **Evidence-Based Practice and Policy** The most significant and expanding development in criminal justice today is the effort to identify and implement policies and practices that are based on the results of high-quality research. These new boxed features throughout the book highlight the opportunities and challenges of applying evidence-based approaches to policing, courts, and corrections. Each feature challenges students to consider the impediments to implementation, as practitioners may not wish to change their customary methods or they may adhere to beliefs about effective policies that are not supported by research studies.
- **Current Controversies in Criminal Justice** This feature in each chapter highlights a contemporary issue that poses a challenge for the justice system. Topics include racial profiling, police officers’ use of lethal force, police reform proposals, and solitary confinement for juvenile offenders. Students have the opportunity to analyze the difficult questions that arise from highly debated issues

and events they have heard about through news reports. The features provide a basis for students to identify factual issues and apply analytical skills to topics that are often the focus of simplistic, ideological characterizations and debates.

- **Technology and Criminal Justice** This new feature in each chapter illustrates the emergence of technology as an important tool and source of controversy in each segment of the criminal justice system. New technology can increase the ability of police officers and other officials to investigate, monitor, and control criminal suspects as well as people in various criminal justice settings involving courts and corrections. At the same time, issues arise about reliance on technology that is less accurate than assumed and clashes with constitutional rights related to the Fourth Amendment and other aspects of legal protections in criminal justice.
- **Criminal Justice: Myth & Reality** Through the examination of widely held beliefs about criminal justice, students can look critically at the actual complexity or unexpected consequences of various policies and practices. Students are encouraged to question their own assumptions and seek information before drawing conclusions.
- **You Make the Decision** Drawing from actual recent events, these new features place students in the position of a specific decision maker in the criminal justice system. Students confront difficult decisions, such as whether to undertake a stop-and-frisk search, offer a particular plea agreement to a defendant, or change policies and training to reduce excessive use of force by corrections officers. These features are designed to engage and challenge students while building their knowledge about contemporary issues and enhancing their analytical skills. After considering the scenario, students have the opportunity later in each chapter to read about what happened in each example in *You Make the Decision: What to Consider*.

Supplements

MindTap® for *Introduction to Criminal Justice* The most applied learning experience available, MindTap is dedicated to preparing students to make the kinds of reasoned decisions required as criminal justice professionals faced with real-world challenges. Available for virtually every Criminal Justice course, MindTap offers customizable content, course analytics, an e-reader, and more—all within your current learning management system. The new MindTap for *Introduction to Criminal Justice* delivers a rich array of assignments, including “Think, Decide, Act” multi-step decision-making scenarios, “Fast Facts” audiocast episode activities, chapter quizzes, as well as riveting “Mission Critical” real-life stories that apply learning while addressing the human element of criminal justice, covering topics of de-escalation, mental and emotional health, and implicit bias.

Instructor’s Manual with Lesson Plans The manual includes learning objectives, key terms, a detailed chapter outline, a chapter summary, lesson plans, discussion topics, student activities, “What If” scenarios, media tools, and sample syllabi. The learning objectives are correlated with the discussion topics, student activities, and media tools.

Downloadable Word Test Bank The enhanced test bank includes a variety of questions per chapter—a combination of multiple-choice, true/false, completion, essay, and critical thinking formats, with a full answer key. The test bank is coded

to the learning objectives that appear in the main text, and identifies where in the text (by section) the answer appears. Finally, each question in the test bank has been carefully reviewed by experienced criminal justice instructors for quality, accuracy, and content coverage so instructors can be sure they are working with an assessment and grading resource of the highest caliber.

Cengage Learning Testing Powered by Cognero, the accompanying assessment tool is a flexible, online system that allows you to:

- import, edit, and manipulate test bank content from the text's test bank or elsewhere, including your own favorite test questions.
- create ideal assessments with your choice of 15 question types (including true/false, multiple choice, opinion scale/Likert, and essay).
- create multiple test versions in an instant using drop-down menus and familiar, intuitive tools that take you through content creation and management with ease.
- deliver tests from your Learning Management System (LMS), your classroom, or wherever you want, as well as import and export content into other systems as needed.

Online PowerPoint® Lectures Helping you make your lectures more engaging while effectively reaching your visually oriented students, these handy Microsoft PowerPoint slides outline the chapters of the main text in a classroom-ready presentation. The PowerPoint slides reflect the content and organization of the new edition of the text and feature some additional examples and real-world cases for application and discussion.

A Group Effort

No one can be an expert on every aspect of the criminal justice system. Authors need help in covering new developments and ensuring that research findings are correctly interpreted. The many criminal justice students and instructors who have used previous editions of *Criminal Justice in America* have contributed abundantly to this edition. Their comments provided crucial practical feedback. Others gave us their comments personally when we lectured in criminal justice classes around the country.

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In addition, we owe our greatest debt to the late George F. Cole, the creator of the book whose passing has left a void that cannot be filled. He was our beloved leader, mentor, and guide who taught us how to draw from scholarly literature in order to present important concepts effectively to beginning criminal justice students. While we express our thanks to many people for their contributions, ultimately, the full responsibility for the book is ours alone. We hope you will benefit from it, and we welcome your comments.

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The late George F. Cole (1935–2015) was Professor Emeritus of Political Science at the University of Connecticut. A specialist in the administration of criminal justice, he published extensively on such topics as prosecution, courts, and corrections. George Cole was also co-author with Christopher Smith and Christina DeJong of *The American System of Criminal Justice*, co-author with Todd Clear and Michael Reisig of *American Corrections*, and co-author with Marc Gertz and Amy Bunker of *The Criminal Justice System: Politics and Policies*. He developed and directed the graduate corrections program at the University of Connecticut and was a Fellow at the National Institute of Justice (1988). Among his other accomplishments, he was granted two awards under the Fulbright-Hays Program to conduct criminal justice research in England and the former Yugoslavia. In 1995, he was named a Fellow of the Academy of Criminal Justice Sciences for distinguished teaching and research.



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CRIMINAL JUSTICE IN AMERICA



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1

The Criminal Justice System

LEARNING OBJECTIVES

- 1 Describe the goals of the criminal justice system.
- 2 Identify the different responsibilities of federal and state criminal justice operations.
- 3 Analyze criminal justice from a systems perspective.
- 4 Describe the main criminal justice agencies and the steps in the decision-making process for criminal cases.
- 5 Explain the criminal justice “wedding cake” concept as well as the due process and crime control models.
- 6 Name the possible causes of racial disparities in criminal justice.



National news stories often focus on horrific, frightening crimes. In 2020, for example, significant national attention focused on a mass shooting that killed six workers at a beer manufacturing plant in Milwaukee, a celebrity therapist thrown from the balcony of her Hollywood home, and a mother in Idaho charged with crimes after her children disappeared (Karimi & Chavez, 2020; Miller, 2020; Ortiz, 2020). These examples are important for examining certain kinds of crimes as well as for illuminating policy debates about gun control, domestic violence, hatred-motivated crimes, and other contemporary criminal justice issues. However, these crimes are not typical of the offenses and defendants whose cases fill the nation’s courts day after day. The bulk of cases in the criminal justice system involve thefts, drugs, drunk driving, nonfatal assaults, and other less-serious offenses. In both typical crimes and highly-publicized events, such as mass shootings, the people arrested and charged will go through the same stages in the justice system as other criminal defendants, from arrest to pretrial hearings to resolution of their cases through plea negotiations or trials.

In order to gain a realistic sense of the criminal justice system, let’s demonstrate the system’s processes through the example of a criminal event that illustrates typical case steps and outcomes. On May 1, 2019, when Indiana’s state judges gathered in Indianapolis for their annual multi-day meetings, four judges went to a strip club at 3:00 a.m. after drinking together at a bar. When they discovered that the club was closed, they walked to a nearby fast-food restaurant where two men in a passing vehicle yelled at them. One of the judges responded by directing an extended middle finger at the men, leading the vehicle to stop in the restaurant parking lot. A loud exchange of profanities and insults ensued between the occupants of the car and three of the judges. The confrontation escalated into a fight as Judge Andrew Adams kicked one of the men in the back. Judge Bradley Jacobs then pinned one man down and raised his fist in a threatening manner above the man’s head. The man on the ground pulled a handgun from his waistband and shot both judges, inflicting serious but nonfatal wounds. When the two judges were rushed to the hospital for surgery, medical workers found that their blood alcohol levels

were at 0.13 or higher, well above the state's 0.08 threshold for drunk driving if they had been operating a vehicle. The third judge involved in the conflict, Judge Sabrina Bell, who had helped to trigger the fight by extending her middle finger, later told investigating police officers that she had no memory of the event after drinking throughout the evening (Ismay, 2019).

Think about the elements that contributed to the event. Consumption of an intoxicating substance beyond the point of full rational thinking and self-control. An angry reaction. Quick resort to violence, made worse by the weapon-carrying behavior of one participant. One or more of these three elements can be found in many events that lead to criminal charges. Criminal charges obviously can stem from other behaviors, too, such as calculated decisions to steal from others. This case received publicity because it involved three judges, one of whom was eventually convicted of a crime. Yet, the identities of these participants serve as a reminder that virtually anyone can be drawn into the criminal justice system, whether through unwise decisions, being in the wrong place at the wrong time, or simply becoming the focus of police officers' suspicions as they investigate crimes. A person does not need to actually commit a crime in order to become the object of suspicion, investigation, or even arrest.

As police and prosecutors investigated the fight, they were aware that one or more of the participants might present a valid claim of self-defense. A successful claim of self-defense can defeat a criminal prosecution, so authorities sought to identify who instigated the violence or acted aggressively rather than in self-defense. Typically, state prosecutors evaluate the evidence produced by police investigations and make their own judgments about whether criminal charges should be filed. In this case, however, prosecutors initiated proceedings by relying on a body of citizens drawn from the community, called a "grand jury." Prosecutors present evidence to the grand jury and ask these citizens to decide whether criminal charges should be filed. Grand juries are always used to initiate criminal prosecutions in federal courts, and several states use the process in their courts, too.

On June 28, 2019, the grand jurors issued formal charges, called an "indictment," against Judge Adams and the two men who fought the judges, Alfredo Vazquez and Brandon Kaiser. Judge Adams was charged with seven crimes including two serious charges of battery and lesser counts of battery and disorderly conduct.

Vazquez faced a similar mix of six serious and lesser charges. Kaiser, the man with gun, was charged with fourteen crimes, eight of which were serious charges, including aggravated assault (Martin & Gibson, 2019). All three defendants faced the possibility of spending time in jail or prison. Each serious charge could generate a sentence of a year or more in prison while each lesser charge could produce up to a year in jail, fines, or supervision in the community.

After charges were filed, the three defendants each appeared in court to hear the charges read to them and to be informed of their rights, including the right to be represented by an attorney. They were also fingerprinted and photographed as part of jail procedures for processing people who have been arrested. In order to gain release from jail, Kaiser, who faced the most serious charges, had to pay 10 percent of the \$80,000 bail amount set by the judge to ensure that he would return to court for scheduled hearings. Adams and Vazquez did not face similar conditions in order to gain pretrial release because they did not face as many serious charges. However, Vazquez was warned by the judge that he would be jailed if he was arrested for any new offenses because he was on probation for a drunk driving conviction at the time of the fight (Marion County Court Records, 2020).

Defendants consult with their attorneys about the best course of action. Defendants who cannot afford to hire their own attorneys are entitled to have an attorney provided for them. Defense attorneys engage in discussions with prosecutors about the possibility of submitting a voluntary plea of guilty in exchange for reduced

charges or a less-than-maximum sentence. In early September 2019, Judge Adams entered a guilty plea to one charge of misdemeanor battery in exchange for the prosecutor dropping the other six charges and recommending that Adams serve no time in jail. The presiding judge in Indianapolis sentenced Adams to one year in jail, but suspended the sentence, meaning Adams would not serve any time if he stayed out of trouble during the next year (Associated Press, 2019). The attorney for Vazquez negotiated a similar plea agreement. In October 2019, he entered a guilty plea to one charge of misdemeanor battery in exchange for the prosecutor dropping the other charges from the fight. He was sentenced to 180 days of home confinement for violating his drunk driving probation followed by one year of probation for the battery offense (Ryckaert, 2019).

In contrast, Kaiser, who faced the prospect of many years in prison for shooting the judges, did not receive a sufficiently



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attractive plea offer in negotiations with the prosecutor. He and his attorney decided that he would go to trial in 2020 with the intent of persuading the trial jury to find him “not guilty” by reason of self-defense. His attorney planned to present evidence and arguments to support the claim that Kaiser felt compelled to shoot because he feared for his life when he was pinned to the ground by Judge Jacobs. As often happens in criminal cases, Kaiser’s case was affected by delays as his attorney sought additional time to prepare for trial. His trial date was initially set for November 2019 but was later rescheduled for January 2020. It was subsequently rescheduled again for a later date in 2020. Only a small percentage of criminal cases are decided in trials, typically when the defendant faces very serious charges and the prosecutor is unwilling to offer an attractive plea agreement.

As indicated by the foregoing discussion, the Indianapolis case illustrates key elements of the criminal justice system. As this chapter will discuss, cases are processed through a series of steps in which justice system officials make decisions about whether a case will move forward or leave the system. Police investigate cases and often decide whether to make an arrest. Prosecutors must decide whether to dismiss cases or pursue criminal charges. Prosecutors drive charging decisions, either based on their own case evaluations or through presentations of evidence to a grand jury. Judges make decisions about whether and under what conditions a defendant can be released from jail while waiting for future court hearings. Defendants may be required to pay bail money in amounts set by judges in order to gain release, just as Kaiser was compelled to do in the Indianapolis case. Defense attorneys and prosecutors negotiate resolutions to most criminal cases through the process of plea bargaining. In that process, defendants may feel great pressure to plead guilty because of the nature and number of charges that they face. In the Indianapolis case, Adams and Vazquez were able to get most of their charges dropped and avoid jail sentences by being

willing to admit their guilt to one charge after their attorneys negotiated with the prosecutor. If they had refused to plead guilty to any crimes, they would have risked potential conviction on a half dozen charges by proceeding to trial. In a small percentage of cases, defendants such as Kaiser may choose to go to trial, either because they believe they have a strong defense against the charges or because the prosecutor is unwilling to significantly reduce charges in exchange for a guilty plea.

In this chapter, we examine how American criminal justice operates as a system. Accordingly, we shall see how that system’s processes are shaped by its goals, scarce resources, individual decision makers, and other factors that can lead to divergent treatment for similar criminal cases. In cases that appear to be very similar, one defendant may be convicted and another defendant may be set free. Why do similar cases produce different results? Differences in the effectiveness of police and prosecutors in gathering evidence and in the persuasiveness of defense attorneys’ arguments can be major factors. Another factor may be the attitudes and values of the decision makers in a case. For example, prosecutors in different counties may have varying attitudes about whether to seek maximum prison terms for drug crimes or send drug users to treatment programs. Also, during trials jurors may make very close examinations of evidence or, alternatively, be swayed by their own emotional reactions to the crime or to the defendant. Differences in the treatment of suspects, defendants, and people convicted of crimes also may be related to issues of race, ethnicity, and social class, as these demographic factors interact with the criminal justice system’s processes.

Anyone in the United States, including a law-abiding college student, can be drawn into the criminal justice system in a variety of roles: victim, witness, juror, defendant. Thus, all Americans need to gain an understanding of the system, how it operates, and how it affects people’s lives.

The Goals of Criminal Justice

The criminal justice system focuses on the protection of the public both through the investigation and punishment of people who commit **crimes** and through efforts to prevent people from committing harmful acts. In a general sense, crimes are actions that violate laws defining which socially harmful behaviors will be subject to the government’s power to impose punishments, including deprivation of liberty through imprisonment.

Why does the law label some types of behavior as criminal and not others? For example, why is it a crime to use marijuana in most states when it is legal to drink alcohol, another intoxicating, addictive substance with harmful health effects? The criminal law is defined by elected representatives in state legislatures and Congress. They make choices about the behaviors that the government will punish. Some of these choices

crimes Actions that violate laws defining which socially harmful behaviors will be subject to the government’s power to impose punishments.

mala in se Offenses that are wrong by their very nature.

mala prohibita Offenses prohibited by law but not necessarily wrong in themselves.

reflect broad agreement in society that certain actions, such as rape and murder, are so harmful that they must be punished. Such crimes have traditionally been called ***mala in se***—wrong in themselves.

However, legislatures may decide that certain actions are criminal even though many people in society disagree about the harmfulness of those actions. These crimes are called ***mala prohibita***—they are crimes because they are prohibited by the government and not because they are necessarily wrong in themselves. Everyone does not agree, for example, that gambling, prostitution, and drug use should be punished.

The definition of *crimes* in criminal law is the starting point for the criminal justice system. A good way to begin our study of that system is to look at its goals. Although these goals may seem straightforward when expressed as ideas, defining what they mean in practice can be difficult.

In 1967, the U.S. President's Commission on Law Enforcement and Administration of Justice described the criminal justice system as the means that society uses to "enforce the standards of conduct necessary to protect individuals and the community" (U.S. President's Commission, 1967:7). This statement provides the basis for our discussion of the goals of the system. Although there is much debate about the purposes of criminal justice, most people agree that the system has three goals: (1) doing justice, (2) controlling crime, and (3) preventing crime.

Doing Justice

Doing justice concerns fairness and equity in the treatment of people who are drawn into the criminal justice system. In the United States, doing justice forms the basis for the rules, procedures, and institutions of the criminal justice system. Without this primary goal, little difference would exist between the U.S. system and that of authoritarian countries where people lack legal rights.

Americans want to have fair laws, and they want to investigate, judge, and punish fairly. But doing justice requires upholding the rights of individuals as well as punishing those who violate the law. People must be held accountable for their actions that harm society. In order to uphold American ideals, police, prosecutors, and judges must follow proper procedures. In addition, there must be equal treatment of people by officials in the system.

Periodically, people undertake public protests to call attention to social problems and crime in their communities. How can the interest and energy generated by such public events be translated into concrete actions to prevent crime?



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Doing justice successfully is a tall order. We can easily identify situations in which criminal justice agencies and processes fall short of this ideal. But unlike in authoritarian political systems, in which criminal justice primarily serves the interests of those in power, in a democracy, doing justice to serve the interests of the people is a key goal. By serving society's interests in fairness and justice, the American criminal justice system can gain the public support necessary for pursuing the additional goals of controlling and preventing crime.

Controlling Crime

The criminal justice system is designed to control crime by arresting, prosecuting, convicting, and punishing those who disobey the law. However, this goal must be balanced with adherence to law. Police officers and prosecutors must follow the law when investigating crimes. They cannot use unrestrained methods of their own choosing in conducting searches and questioning suspects.

In every city and town, the goal of crime control is actively pursued through the operations of each segment in the criminal justice system. Police officers investigate crimes. Prosecutors determine which suspects should be charged with crimes. Judges impose punishments. Probation officers monitor clients under their supervision. Corrections officers supervise those who are sentenced to serve terms in jails and prisons. Taking action against lawbreakers helps control crime, but the system must also attempt to prevent crimes from happening.

Preventing Crime

Crime can be prevented in various ways, including the deterrent effect of actions by police, courts, and corrections. These actions not only punish those who violate the law but also provide examples that may keep others from committing wrongful acts. For example, a speeding patrol car responding to a crime scene serves as a warning that law enforcement is at hand. Technological advances can deter crime as well, with new kinds of surveillance and searches, though sometimes at a cost to privacy and personal liberty.

Citizens do not have the authority to enforce the law. This responsibility rests in the hands of officials in the criminal justice system. Yet, citizens can and must be actively engaged in preventing crime through commonsense measures such as locking their homes and cars, installing alarm systems where appropriate, and refraining from walking alone in dangerous areas.

Advancing Goals: Evidence-Based Practices

Advancing the goals of criminal justice requires the development of specific policies to deal with a host of issues such as gun control, stalking, hate crimes, computer crime, child abuse, and global criminal organizations. Many of these issues are controversial. Policies concerning these and other issues must be hammered out in the political arenas of state legislatures and Congress. Any policy choice carries with it costs and consequences as well as potential benefits. Yet, predicting consequences of policy choices can be difficult. In addition, legislators often enact laws based on their *beliefs* about the nature of a problem and the responses that will be effective in addressing the problem. These beliefs are not necessarily based on a thorough understanding of available research on the nature of problems in criminal justice. Similarly, police chiefs, prison wardens, and others who carry out laws and policies may rely on practices to which they have become accustomed rather than explore the full range of possible effective alternatives. Decision makers' reliance on unsupported beliefs or customary practices may result in missed opportunities to develop policies and practices that advance desired goals effectively.

One emerging trend in creating policies within criminal justice is the use of **evidence-based practices**. These are practices that have proven effective in research studies. Social scientists examine many aspects of criminal justice, including the causes of crime, the effectiveness of crime control strategies, and the efficiency of police procedures, in order to discover which approaches are most useful and cost-effective. Research can also show

evidence-based practices

Policies developed through guidance from research studies that demonstrate which approaches are most useful and cost-effective for advancing desired goals.

that certain approaches are unproven or ineffective. As described by Faye Taxman and Steven Belenko (2013:3), evidence-based practices are “practices that *should* be widely used because research indicates that they positively alter human behavior.”

Legislators, police chiefs, prison wardens, and other decision makers are increasingly looking to scholars’ research for guidance about which laws and policies to develop. However, even when evidence-based procedures are available, they are not always known or followed by decision makers. Legislators and other policy-makers may resist adopting them because they conflict with their own strongly held beliefs or commitment to familiar, customary approaches. Read the “Evidence-Based Practice and Policy” feature to see an overview of issues concerning this contemporary trend.



EVIDENCE-BASED PRACTICE AND POLICY

The Challenges of Evidence-Based Practice: Quality of Information and Implementation

The movement toward the use of evidence-based practices in public policy began in the field of medicine. Most Americans are familiar with reading about the Food and Drug Administration (FDA) requiring testing of medicines before they can be prescribed by doctors. This testing involves experimental research in which newly developed medicines for treating illnesses and medical conditions must be given to research subjects with the results compared to results for other subjects who are given no medication, differing experimental dosages, or different treatments. Similarly, research is conducted by university medical centers on surgical techniques, dietary treatments, and other approaches to treatments of illnesses and conditions before those specific approaches are proven safe and effective.

Criminal justice researchers can face challenges in employing experimental methods to evaluate practices and policies. In medicine, experimental methods are often relatively straightforward: take a group of people with a particular illness or medical condition, give half of them the new medication and give half of them a “placebo”—a pill or ointment that they believe is the new medicine—and then monitor the results. By having all of the research subjects believe that they are taking the new medication being tested, the researchers can seek to avoid psychological impacts that might otherwise affect the results. If people know that they are not being given a medication, it may affect their perceptions of how they feel. By contrast, in criminal justice, if police departments and researchers want to test whether a new approach to police patrol has positive impacts on a neighborhood experiencing gang problems, there can be ethical and practical misgivings about leaving a similarly troubled neighborhood without any new resources and police initiatives in order to have a comparison area. Will there be people victimized in the “control”—untreated—neighborhood who otherwise might have been saved if both neighborhoods immediately

benefited from the new idea? There can also be issues of finding proper control areas if police want to test a new crime-control approach on a neighborhood that has unique characteristics and problems.

Similar issues exist for criminal justice researchers who want to test new practices and policies using experimental methods when focusing on individuals with drug addiction, violent behavior, or mental health issues. The experimental method requires that some people with these problems be excluded from the initial treatment in order to serve as a basis for comparison with the similarly troubled people who receive new forms of therapy, supervision, education, medication, or other resources. The excluded people in the control group may suffer continuing harms during the research study that might have been prevented if they had been included in the treatment group. Sometimes criminal justice agencies working with new approaches and ideas may be unwilling to exclude people and therefore the evaluation study of results must necessarily employ a less rigorous research method.

Additional issues can arise if researchers are not sufficiently careful in designing a study, gathering information, and monitoring results. If the individuals or neighborhoods being studied are not carefully identified and matched, there are risks that comparisons and results may not be as useful as they first appear to be. Moreover, if information is not gathered and recorded systematically, there can be errors within the data that impact the results.

Implementing New Practices

Even if studies provide evidence that a specific practice or policy is beneficial, issues can arise concerning implementation, namely the translation of that evidence into the actual decisions, actions, and programs carried out by justice system officials. Past experiences with many kinds of policy initiatives have revealed numerous potential pitfalls.

An agency may not have adequate resources, expertise, and training for carrying out evidence-based practices. Officials within an agency may cling to their customary ways of doing things. Moreover, police officers, probation officers, and others may believe that their own experiences have taught them to prefer practices and policies that are not supported by research evidence. They may be reluctant to permit researchers to tell them how to do their jobs better.

The successful development and implementation of evidence-based practices and policy depend on partnerships between criminal justice leaders—police chiefs, prosecutors, judges, mayors, and governors—and researchers who study ways to address problems more effectively. Criminal justice leaders must help to facilitate research and then be open to considering the results produced by that research, even if the results require new ways of approaching problems. In addition, those leaders must communicate their commitment to evidence-based practice and policy to the police officers, probation officers, corrections officers, and other officials who must incorporate new approaches and ideas into their everyday decisions and actions. This commitment often requires acquiring new resources,

providing new training, and introducing effective supervision to ensure that new practices and policy are given the opportunity to work well.

As we will see in the examples presented in chapters throughout this book, the success of evidence-based practices and policy requires several key elements: (1) close attention to the quality of the research; (2) a willingness to try new approaches; and (3) a commitment from leaders to provide the necessary resources, training, and supervision in order to implement evidence-based practices effectively.

Imagine that you are a police chief. A researcher is seeking your cooperation in conducting a study of whether crime will be reduced by setting up small police stations in five locations around the city instead of having all officers work out of the downtown police headquarters. Write a brief memo outlining any concerns you have about testing this idea and what changes in staffing and resources you may need to order simply to cooperate with the study. Think about such issues as potential impacts on response times for citizens' calls, supervision of officers by central administration, costs associated with managing five buildings instead of just one, and the nature of direct contacts between officers and members of the public.

CHECK POINT

1. What is the difference between *mala in se* and *mala prohibita* crimes?
Legislatures define punishable, harmful behaviors that are wrongs in themselves, such as murder (*mala in se*), and other actions that they simply choose to prohibit as too harmful to be permitted (*mala prohibita*).
2. What are the three goals of the criminal justice system?
Doing justice, controlling crime, preventing crime.
3. What is meant by “evidence-based practices”?
The development of approaches to addressing problems in criminal justice and advancing the goals of criminal justice by using research studies to guide decisions about what will work effectively.

STOP & ANALYZE

What is the role of the individual citizen in crime prevention? List two things that you do right now that contribute to crime prevention. What are two additional things that you could easily incorporate into your daily life that would also contribute to crime prevention?

Criminal Justice in a Federal System

Criminal justice, like other aspects of American government, is based on the concept of **federalism**, in which power is divided between a central (national) government and regional (state) governments. States have a great deal of authority over their own affairs, but the federal government handles matters of national concern. Because of federalism, no single level of government is solely responsible for the administration of criminal justice.

The U.S. government's structure was created in 1789 with the ratification of the U.S. Constitution. The Constitution gave the national government certain powers, including raising an army, coining money, and making treaties with foreign countries. But the states retained all other powers, including police power. No national police force with broad powers may be established in the United States.

The Constitution does not include criminal justice among the federal government's specific powers. Yet the U.S. government is involved in criminal justice in many ways. For example, the Federal Bureau of Investigation (FBI) is a national law enforcement agency.

federalism A system of government in which power is divided between a central (national) government and regional (state) governments.

Federal criminal cases are tried in U.S. district courts, which are federal courts, and there are federal prisons throughout the nation. Most criminal justice activity, however, occurs at the state level. The vast majority of crimes are defined by state laws rather than federal law. Thus, laws are enforced and lawbreakers are brought to justice mainly in the states, counties, and cities. As a result, local traditions, values, and practices shape the way criminal justice agencies operate. For example, local leaders, whether members of the city council or influential citizens, can help set law enforcement priorities by putting pressure on the police. Will the city's police officers crack down on illegal gambling? Will juvenile lawbreakers be turned over to their parents with stern warnings, or will they be sent to state institutions? The answers to these and other important questions vary from city to city.

Two Justice Systems

Both the national and the state systems of criminal justice enforce laws, try criminal cases, and punish lawbreakers, but their activities differ in scope and purpose. Although most crimes are defined by state laws, various national criminal laws have been enacted by Congress and are enforced by the FBI, the Drug Enforcement Administration, the Secret Service, and other federal agencies.

Except in the case of federal drug offenses, relatively few people break federal criminal laws compared with the large numbers who break state criminal laws. For example, only small numbers of people violate the federal laws against counterfeiting and espionage, whereas large numbers violate state laws against assault, larceny, and drunken driving. With respect to drug offenses, there are debates about whether federal or state laws should control decisions on the definitions of crimes and punishments. In particular, as marijuana increasingly becomes legal for medical and recreational use in state and local jurisdictions around the country, there are potential collisions with federal laws (Lewis, 2019). Proposals presented in Congress seek to permit states and local governments to control their own marijuana laws. Until such proposals are enacted into law, however, the federal government still retains the authority to prosecute people for selling marijuana and prevent banks from providing services to newly-legalized marijuana businesses in the states (Lovelace, 2019). Whether and how the federal government uses its law enforcement powers to override states' policy choices about marijuana and other drugs depends on the priorities of each presidential administration.

Expansion of Federal Involvement

Since the 1960s, the federal government has expanded its role in dealing with crime, a policy area that has traditionally been the responsibility of state and local governments. The report of the U.S. President's Commission on Law Enforcement and Administration of Justice (1967) emphasized the need for greater federal involvement in crime control at the local level and urged that federal grants be directed to the states to support criminal justice initiatives. Since then, Congress has allocated billions of dollars for crime control efforts and has passed legislation, national in scope, to deal with street crime, the "war on drugs," violent crime, terrorism, and juvenile delinquency.

Because many crimes span state borders, we no longer think of crime in general as being committed at a single location within a single state. For example, crime syndicates and gangs deal with drugs, pornography, and gambling on a national level. Therefore, over the course of the twentieth century, Congress expanded the powers of the FBI and other federal agencies to investigate criminal activities for which the states had formerly taken responsibility. As a national agency, the FBI can pursue criminal investigations across state borders better than any state agency can. Technology-based crimes, such as computer-fraud schemes and Internet-sourced child pornography, can also cross both state and international borders, and have spurred new national laws from Congress and enforcement actions by federal agencies (Trujillo, 2019). Moreover, federal officials have become increasingly active in pursuing arms dealers, narcotics traffickers, and terrorists who operate in other countries but whose harmful activities violate the laws of the United States. Mexican officials, for example, cooperated with American law enforcement agencies in sending the leader of a major drug trafficking operation, Joaquín "El Chapo" Guzmán, to the United States for trial (Beittel, 2019).



Federal law enforcement agencies bear special responsibility for certain crimes, such as terrorism, bank robberies, and drug dealing. Federal agencies also provide expert assistance for the investigation of crimes that rely on scientific evidence, such as arson. Also, local agencies may request assistance from federal experts. Would law enforcement nationwide be more effective if all police officers worked under a single federal agency rather than thousands of different state and local agencies?

Disputes over jurisdiction may occur when an offense violates both state and federal laws. If the FBI and local agencies do not cooperate, they might both seek to catch the same criminals; if information is not shared, one agency might miss an opportunity to make an arrest. These problems can have major implications if the agency that makes the arrest determines the court to which the case is brought. Usually, however, law enforcement officials at all levels of government seek to cooperate and coordinate their efforts.

After the September 11, 2001, attacks on the World Trade Center and the Pentagon, the FBI and other federal law enforcement agencies focused their resources and efforts on investigating and preventing terrorist threats against the United States. As a result, the role of the FBI as a law enforcement agency has changed. One month after the attacks, 4,000 of the agency's 11,500 agents were dedicating their efforts to the aftermath of September 11. The FBI has continued to increase its attention to terrorism and cybercrimes in the subsequent years of the twenty-first century and thereby diminished its involvement in aspects of traditional law enforcement. In testimony presented to Congress in February 2020, FBI Director Christopher Wray emphasized that "preventing terrorist attacks remains the FBI's top priority" while also highlighting the FBI's increasing attention to cybercrimes (Wray, 2020). In his words, "virtually every national security threat and crime problem the FBI faces is cyber-based or facilitated" (Wray, 2020).

The reorientation of the FBI's priorities is just one of many changes made in federal criminal justice agencies to address the issues of national security and terrorism. The most significant expansion of the federal government occurred with the creation of a new Department of Homeland Security (DHS) through the consolidation of border security, intelligence, and emergency-response agencies from other departments of government (see Table 1.1). Moreover, a new agency, the Transportation Security Administration (TSA), was created within DHS to assume responsibility for protecting travelers and interstate commerce by screening passengers and their luggage at airports throughout the country.

Because both state and federal systems operate in the United States, criminal justice here is highly decentralized. As Figure 1.1 shows, almost two-thirds of all criminal justice employees work for local governments. The majority of workers in all of the subunits of the system—except corrections—are tied to local government. Likewise, the costs of criminal justice are distributed among federal, state, and local governments (Hyland, 2019). When there are economic downturns that affect tax revenues and governmental budgets, criminal

TABLE 1.1 Department of Homeland Security

Congress approved legislation to create a new federal agency dedicated to protecting the United States from terrorism. The legislation merges 22 agencies and nearly 170,000 government workers.

	Agencies Moved to the Department of Homeland Security	Previous Department or Agency
Border and Transportation Security	Immigration and Naturalization Service enforcement functions Transportation Security Administration Customs Service Federal Protective Services Animal and Plant Health Inspection Service	Justice Department Transportation Department Treasury Department General Services Administration Agriculture Department
Emergency Preparedness and Response	Federal Emergency Management Agency Chemical, biological, radiological, and nuclear response units Nuclear Incident Response Teams Domestic National Preparedness Office Office of Domestic Preparedness Domestic Emergency Support Teams	previously independent agency Health and Human Services Department Energy Department FBI Justice Department drawn from several departments
Science and Technology	Civilian biodefense research program Plum Island Animal Disease Center Lawrence Livermore National Laboratory	Health and Human Services Department Agriculture Department Energy Department
Information Analysis and Infrastructure Protection	National Communications System National Infrastructure Protection Center Critical Infrastructure Assurance Office National Infrastructure Simulation and Analysis Center Federal Computer Incident Response Center	Defense Department FBI Commerce Department Energy Department General Services Administration
Secret Service	Secret Service including presidential protection units	Treasury Department
Coast Guard	Coast Guard	Transportation Department

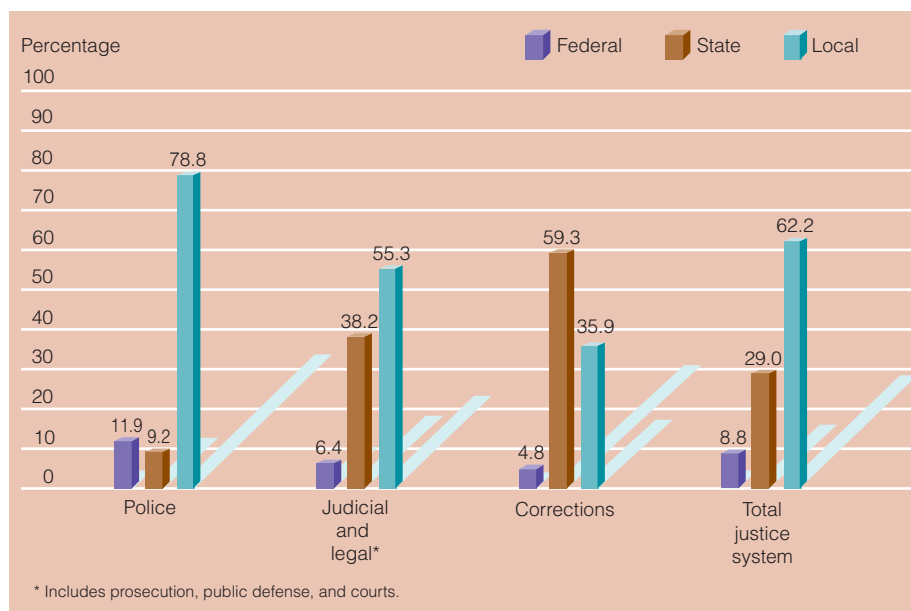
Source: "THREATS AND RESPONSES: THE REORGANIZATION PLAN; Establishing New Agency Is Expected to Take Years and Could Divert It From Mission", New York Times, November 20, 2002, p. A12

FIGURE 1.1

Percentage (Rounded) of Criminal Justice Employees at Each Level of Government

The administration of criminal justice in the United States is very much a local affair, as these employment figures show. Only in corrections do states employ a greater percentage of workers than do cities and counties.

Source: Calculated from C. Brooks, "Federal Law Enforcement Officers, 2016—Statistical Tables," *Bureau of Justice Statistics Statistical Tables*, October 2019. NCJ 251922 (www.bjs.gov); J. Duff, "Director's Message," *Annual Report 2018*, Administrative Office of the U.S. Courts (<https://www.uscourts.gov/statistics-reports/annual-report-2018>); Federal Bureau of Prisons, "About Our Agency," Federal Bureau of Prisons website, March 2020 (<https://www.bop.gov/about/agency/>); S. Hyland, *Justice Expenditure and Employment Extracts, 2016—Preliminary*. U.S. Bureau of Justice Statistics, November 7, 2019. NCJ 254126 (www.bjs.gov).



justice agencies can be affected by reductions in personnel and unfulfilled needs for new equipment. These issues can have their greatest impact at the local level, especially when there are no longer enough police officers on duty to respond quickly to citizens' calls for assistance (Hess, 2019). Changes in budgets and personnel can also occur when governmental leaders emphasize new policy priorities, such as closing prisons in order to save money by placing low-level lawbreakers on probation or in treatment programs (Bagaric & McCord, 2019).

CHECK POINT

4. What is the key feature of federalism?

A division of power between a central (national) government and regional (state) governments.

5. What powers does the national government have in the area of criminal justice?

Enforcement of federal criminal laws.

6. What factors have caused the expansion of federal laws and involvement in criminal justice?

The expansion of criminal activities across state borders; efforts to combat terrorism, cyberattacks, and international criminal activities.

STOP & ANALYZE

Is there a risk that the American system of criminal justice is too fragmented because authority is divided among three levels of government? List three problems that can arise because the United States lacks a single, specific authority to be in charge of running criminal justice agencies throughout the nation.

Criminal Justice as a Social System

To achieve the goals of criminal justice, many kinds of organizations—police, prosecutors' offices, courts, corrections—have been formed. Each has its own functions and personnel. We might assume that criminal justice is an orderly process in which a variety of professionals act on each case on behalf of society. To know the complexities involved, however, we must look beyond the formal organizational structures. In doing so, we can use the concept of a **system**: a complex whole made up of interdependent parts whose actions are directed toward goals and influenced by the environment in which they function.

Each of the subsystems of the criminal justice system—police, courts, corrections—has its own goals and needs, but they are also interdependent. When one unit changes its policies, practices, or resources, other units will be affected. An increase in the number of people arrested by the police, for example, will affect not only the judicial subsystem but also the probation and correctional subsystems. For criminal justice to achieve its goals, each part must make its own contribution but also have some contact with at least one other part of the system. An additional key element for each subsystem is the need to respond and adapt to changing conditions, problems, and resources in society. In particular, developments in technology have profound impacts on criminal justice organizations. See the "Technology and Criminal Justice" feature for an introduction to the swift-moving and unpredictable role of technology in the future of criminal justice.

Although criminal justice agencies and actors can be described as functioning as a system, this description should not be understood to imply that they always cooperate fully, operate smoothly, or achieve efficiency in undertaking their responsibilities. It is a human system, with flawed decisions, imperfect communication, and uneven distribution of resources. Yet, the various agencies and actors are connected to and dependent on each other in order to fulfill their assigned tasks.

In addition to understanding the nature of the criminal justice system and its subsystems, we also need to see how individual actors play their roles. This system is made up of a great many people doing specific jobs. Some, such as police officers and judges, are well known to the public. Others, such as bail agents and probation officers, are less well known. A key concept here is **exchange**, meaning the mutual transfer of resources among individual

system A complex whole consisting of interdependent parts whose actions are directed toward goals and are influenced by the environment in which they function.

exchange A mutual transfer of resources; a balance of benefits and deficits that flow from behavior based on decisions about the values and costs of alternative courses of action.



TECHNOLOGY AND CRIMINAL JUSTICE

Anticipating the Future of Technology and Criminal Justice

New technological developments can rapidly change the world of crime and justice. At the dawn of the twenty-first century, for example, most people did not envision the significance of issues concerning cybercrime. Hackers became more sophisticated over time, with greater capabilities for developing malicious software and stealing credit card numbers, bank accounts, trade secrets, and other valuable items. How many people anticipated that Russian hackers would be so successful in stealing e-mails and disseminating false information through social media in an effort to influence the American elections?

In the criminal justice system, technological development can be either reactive or proactive. Reaction developments arise when officials must respond to a problem that has arisen, such as increased attention to less-lethal weapons, including electronic stun devices, after controversies about the fatal use of bullets and choke-holds on out-of-control people suffering from mental illness or under the influence of drugs. Similarly, the development of chat rooms, online advertising, and dating services and increased use of online banking led to greater police attention to using computers to monitor activities and investigate crimes. On the other hand, proactive technology development and acquisition can also be driven by a need for greater efficiency and effectiveness, such as software to help judges make consistent sentencing decisions or computers in patrol cars for quicker access to information about drivers and vehicles.

Because criminal justice agencies have limited resources, it can be difficult to focus on issues that people predict may arise in the more-distant future. Profitable companies such as Microsoft, Apple, and Google possess significant resources to fund extensive research and development programs aimed at keeping them ahead of their competition and increasing their profitability in a changing world. By contrast, criminal justice officials must often wait for and rely on more-limited research funded by the government or universities as justice system organizations are not well-positioned to sponsor their own development of technology. Thus, the development of technology in criminal justice will necessarily be reactive with respect to many kinds of issues.

As criminal justice officials observe new technology being developed for the private sector, they must anticipate how this technology may affect their responsibilities within society. For example, there is significant media attention to the continued efforts to develop self-driving cars. Uber, the car service company, began testing self-driving vehicles in Pittsburgh as it looked to get ahead of its competition in developing and implementing this new technology. If self-driving vehicles eventually prove themselves to be dependable, effective, and safe, they may have significant effects on current law enforcement functions. Research analyses project a significant reduction in vehicle crashes and injuries, as well as traffic violations, if self-driving vehicles operate as intended. Such a development could eventually permit police to reduce attention to the time-consuming aspects of traffic enforcement and emergency response to collisions.

On the other hand, police officials also need to wonder how self-driving vehicles may create new demands and challenges for law enforcement. Will robbers find ways to re-program vehicle software to send vehicles crashing through the front doors of banks and jewelry stores or to ram police vehicles that seek to pursue escaping robbers? At a simpler level, will police need the capacity to override vehicle software and take control of vehicles if they need to move a parked car quickly or keep a vehicle clear of a large sinkhole in the street that the vehicle was not programmed to detect? The thought that officers could remotely take control of vehicles is disconcerting for many people. Would some officers misuse the technology to stop vehicles without justification merely because they are curious about what is being carried inside, an act that presumably would violate the Fourth Amendment right to be free from unreasonable searches and seizures?

Sources: K. Piper, "It's 2020. Where Are Our Self-Driving Cars?," *Vox*, February 28, 2020 (www.vox.com); I. Boudway, "Someday Your Self-Driving Car Will Pull Over Police," *Bloomberg News*, February 20, 2019 (www.bloomberg.com); M. Bradwell, "Uber Makes Pittsburgh Ground Zero for Driverless Cars," *Washington County (PA) ObserverReporter*, November 4, 2016 (www.observer-reporter.com); J. Hollywood, D. Woods, R. Silbergliitt, and B. Jackson, *Using Future Internet Technologies to Strengthen Criminal Justice*, Rand Corporation report, 2015 (www.rand.org); M. Libicki, "The Police Could Be Controlling Your Self-Driving Car," *The Rand Blog*, April 4, 2016 (www.rand.org); M. Hiltzik, "Is the World Ready for Driverless Cars? Are Driverless Cars Ready for the World?" *Los Angeles Times*, May 6, 2016 (www.latimes.com).

DEBATE THE ISSUE

Should police have the ability to take control of driverless cars? If this ability is available, what rules should exist for its use? Give three arguments that address these questions.

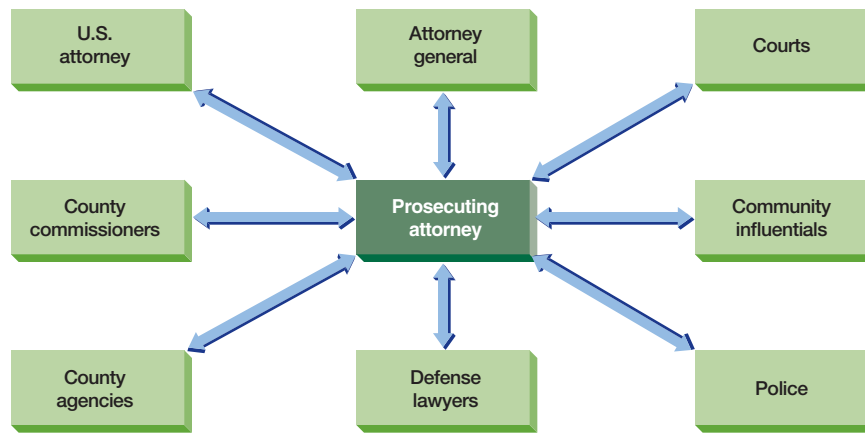


FIGURE 1.2

Exchange Relationships between Prosecutors and Others

The prosecutor's decisions are influenced by relationships with other agencies and members of the community.

actors, each of whom has goals that they cannot accomplish alone. Each needs to gain the cooperation and assistance of other individuals by helping them achieve their own goals. The concept of exchange illuminates the ways in which interactions that produce individual decisions are influenced by decision makers' assessments of costs and benefits.

Many kinds of exchange relationships exist in the criminal justice system, some more visible than others. Probably the most obvious example is the **plea bargain**, in which the defense attorney and the prosecutor reach an agreement: the defendant agrees to plead guilty in exchange for a reduction of charges or for a lighter sentence. As a result of this exchange, the prosecutor gains a quick, sure conviction; the defendant achieves a shorter sentence; and the defense attorney can move on to the next case. Thus, the cooperation underlying the exchange promotes the goals of each participant. See "A Question of Ethics" at the end of the chapter concerning the different sentences imposed in 2016 on a husband and wife in Nevada who both admitted to sexually abusing children. Consider whether prosecutors' use of discretion in plea bargaining should be guided by a concern for equal treatment of all similarly situated lawbreakers.

The concept of exchange serves as a reminder that decisions are the products of interactions among individuals and that the subsystems of the criminal justice system are tied together by the actions of individual decision makers. Figure 1.2 presents selected exchange relationships between a prosecutor and other individuals and agencies involved in the criminal justice process.

plea bargain A defendant's plea of guilty to a criminal charge with the reasonable expectation of receiving some consideration from the state for doing so, usually a reduction of the charge. The defendant's ultimate goal is a penalty lighter than the one formally warranted by the charged offense.

CHECK POINT

7. What is a system?

A complex whole made up of interdependent parts. Its actions are directed toward goals and influenced by the surrounding environment.

8. What are the subsystems of the criminal justice system?

Police, courts, corrections.

9. What is one example of an exchange relationship?

Plea bargaining.

STOP & ANALYZE

Is plea bargaining beneficial for society, or does it inappropriately permit lawbreakers to escape appropriate punishment? Give two arguments favoring each side in this debate. Which side has the stronger arguments?

Characteristics of the Criminal Justice System

The workings of the criminal justice system have four major characteristics: (1) discretion, (2) resource dependence, (3) sequential tasks, and (4) filtering.

discretion The authority to make decisions without reference to specific rules or facts, using instead one's own judgment; allows for individualization and informality in the administration of justice.

Discretion

All levels of the justice process reflect a high degree of **discretion**. This term refers to officials' freedom to act according to their own judgment and conscience (O'Neal, Tellis, & Spohn, 2015). For example, police officers decide how to handle a crime situation, prosecutors decide which charges to file, judges decide how long a sentence will be, and parole boards decide when an offender may be released from prison (see Table 1.2).

The extent of such discretion may seem odd, given that the United States is ruled by law and has created procedures to ensure that decisions are made in accordance with law. However, criminal justice is not a mechanical system in which decisions are strictly dominated by law, but a dynamic system in which actors may take many factors into account and exercise many options as they dispose of a case.

Two arguments are often made to justify discretion in the criminal justice system. First, discretion is needed because the system lacks the resources to treat every case the same way. If every violation of the law were pursued from investigation through trial, the costs would be immense. Second, many officials believe that discretion permits them to achieve greater justice than rigid rules would produce. Within policing, discretion can also be important in individual situations to restore order or to reduce the risk of violence. As you read "You Make the Decision," consider the difficult discretionary choices that senior law enforcement officials can face as they try to enforce the nation's laws while simultaneously seeking to defuse situations with great potential for violence and conflict.

Resource Dependence

Criminal justice agencies do not generate their own resources, but depend on other agencies for funding. Therefore, actors in the system must cultivate and maintain good relations



YOU MAKE THE DECISION

FBI Director

On January 2, 2016, a small group of armed individuals began occupying the office buildings at a remote federal wildlife refuge in Oregon. Their action was triggered by their opposition to the imprisonment of local ranchers who were convicted of arson for starting a fire on federal land—a fire that federal officials claimed was used to cover up evidence of poaching deer. When the convicted individuals disavowed the protesters' actions, the armed individuals shifted their focus to asserting that the federal government must return federal land to the state so that local ranchers and others could use the land more freely for grazing livestock and other activities currently regulated or prohibited by federal laws. As the FBI Director, you must decide what action to take in response to the armed occupation of the federal government's property.

One of your aides argues that the FBI should take strong action against these lawbreakers, because:

- a failure to act may encourage armed individuals elsewhere in the country to violate the law and occupy federal property with similar claims.
- a failure to act may serve to support the argument of critics who claim that law enforcement is racially biased in the United States: that officials tend to act more swiftly and strongly against African American protesters—as in the intervention of a massive force of heavily armed antiriot police when *unarmed* Black Lives Matter activists protested at the Mall of America in Minnesota—than against white protesters who are trespassing on federal lands.
- strong action does not require a direct confrontation or use of force: the FBI could cut off road access to the wildlife refuge to prevent anyone from bringing food supplies or reinforcements to the protesters, as well as cut off electricity and other utilities, while forcefully insisting that the protesters must leave immediately if they wish to avoid prosecution.

Another aide argues against any provocative actions, because:

- violence must be avoided at all costs to protect the lives of law enforcement officials as well as the occupiers; if the occupiers do not cause any violence, then it is best to just wait them out.
- prior incidents when the FBI reacted with lethal force against armed anti-government protesters barricaded at remote locations (e.g., Waco, Texas, 1993; Ruby Ridge, Idaho, 1992) led to needless loss of life and motivated antigovernment radical Timothy McVeigh to kill 168 people by bombing the Oklahoma City federal building in 1995.
- society's interests are better served by showing that the federal government can be patient and steering the news media toward publicizing the local community's opposition to the occupiers.

What will you decide to do? Provide reasons for your decision.

TABLE 1.2 Who Exercises Discretion?

Discretion is exercised by various actors throughout the criminal justice system.

These Criminal Justice Officials ...	Must Often Decide Whether or How to ...
Police	Enforce specific laws Investigate specific crimes Search people, vicinities, buildings Arrest or detain people
Prosecutors	File charges or petitions for adjudication Seek indictments Drop cases Reduce charges
Judges or Magistrates	Set bail or conditions for release Accept pleas Determine delinquency Dismiss charges Impose sentences Revoke probation
Correctional Officials	Assign to [which] type of correctional facility Award privileges Punish for infractions of rules Determine date and conditions of parole Revoke parole

Source: Bureau of Justice Statistics, *Report to the Nation on Crime and Justice*, 2nd ed. (Washington, DC: U.S. Government Printing Office, 1988), 59.



YOU MAKE THE DECISION

What to Consider

In the actual event, the FBI placed their foremost emphasis on avoiding violence. The FBI and other law enforcement officials initially permitted the occupiers to come and go as officials tried to end the standoff peacefully. Subsequently, they began to make arrests of individual protesters who left the site for supplies or meetings. Three weeks into the occupation, the leader of the protest, Ammon Bundy, was arrested when he and six other protesters drove to a meeting outside the occupied buildings. One of protesters, Robert Finicum, who was traveling with Bundy to the meeting, was killed as police sought to arrest those in the group. When police stopped Finicum's truck and ordered him to surrender, he was shot as he reached into his pocket. Police found a firearm in his pocket as well as additional weapons in his truck. When Bundy appeared in court, he publicly stated that the protest and occupation should end.

Subsequently, all but four of the occupiers voluntarily departed from the offices at the wildlife refuge ("Oregon Standoff Timeline," 2017). Two weeks later, the FBI entered the compound in armored vehicles and the remaining protesters surrendered (Zaitz, 2016).

Twenty-six people involved in the occupation were charged with various federal crimes. Through the plea bargaining process, most of the defendants entered guilty pleas to the charge of conspiracy and thereby had other charges dropped. The remaining defendants declined to plead guilty and went to trial. In one trial, a jury acquitted seven leaders of the occupation on a variety of charges. The jurors did not agree with the government's assertion that these defendants had engaged in the criminal acts for which they were charged. In a second trial, the remaining four defendants were convicted by a different jury.

Two were convicted of conspiracy and two were convicted of misusing government property (Associated Press, 2017).

Did the FBI make the right decisions? Ending the occupation was a long, expensive process that resulted in one death. On the other hand, would there have been greater loss of life if the FBI acted quickly and aggressively when the occupation first began? The protesters had weapons and therefore risks of harm, including harm to law enforcement officers, loomed large. As indicated by this event, criminal justice officials face difficult decisions with uncertainty about the ultimate consequences. Careful efforts to deescalate conflicts through patient negotiations may prove fruitful as long as those who are the focus of police attention are not threatening imminent harm to hostages or other members of the public.



CRIMINAL JUSTICE

Myth&Reality

COMMON BELIEF: The American criminal justice system is obviously not tough enough on people convicted of crimes, because so many of them go free and so few of them end up in prison.

REALITY

- The filtering of people out of the justice system does not mean that the American system is not tough on people convicted of crimes.
- In fact, the United States incarcerates more people and keeps them locked up for longer periods than do comparable democracies.
- The biggest challenge for police is gathering enough evidence to identify a suspect and justify making an arrest. This difficulty accounts for the largest gap between reported crimes and prosecutions.
- After a suspect is arrested, filtering occurs for a variety of reasons. Officials need proper evidence to prove guilt in order to move forward with cases. Sometimes the wrong person is arrested and further investigation leads to a release.
- The system also has limited resources. There are only so many police officers to investigate cases, prosecutors to prepare cases, courtrooms to process cases, and cells to hold detainees in jail and convicted people in prison.
- Thus, discretionary decisions must inevitably be made to use the system's limited resources to the greatest effect. Therefore, prosecutors focus their sustained attention on the most serious cases and consider ways to use plea bargaining in order to speed the processing of lesser cases and people accused of a first offense.
- When prosecutors have sufficient evidence and therefore move forward with a prosecution, they achieve very high conviction rates.

with those who allocate resources—that is, political decision makers such as legislators, mayors, and city council members. Some police departments gain revenue through traffic fines and property forfeitures, but these sources cannot sustain their budgets.

Because budget decisions are made by elected officials who seek to please the public, criminal justice officials must also maintain a positive image and good relations with voters. If the police have strong public support, for example, the mayor will be reluctant to reduce the law enforcement budget. Criminal justice officials also seek positive coverage from the news media. Because the media often provide a crucial link between government agencies and the public, criminal justice officials may announce notable achievements while trying to limit publicity about controversial cases and decisions. In the second decade of the twenty-first century, resource issues have become especially difficult and important for criminal justice officials because of widespread and deep budget cuts in many cities, counties, and states (Gest, 2013).

Sequential Tasks

Decisions in the criminal justice system are made in a specific sequence. The police must arrest a person before the case is passed to the prosecutor to determine if charges should be brought. The prosecutor's decisions influence the nature of the court's workload. The accumulated decisions of police, prosecutors, and courts determine the number of convicted people sent to corrections agencies. The sequential nature of the system is key to the exchange relationships among the justice system's decision makers, who depend on one another to

achieve their goals. In other words, the system is highly interdependent partially because it is sequential.

Filtering

filtering process A screening operation; a process by which criminal justice officials screen out some cases while advancing others to the next level of decision making.

We can see the criminal justice system as a **filtering process**. At each stage, some defendants are sent on to the next stage while others are either released or processed under changed conditions. As shown in Figure 1.3, people who have been arrested may be filtered out of the system at various points. Note that relatively few suspects are arrested in light of the number of crimes committed, and a portion of the arrestees will be released without being prosecuted or convicted.

Some go free because the police decide that a crime has not been committed or that the evidence is not sound. Or, in drug-related cases, the prosecutor may decide that justice would be better served by sending the suspect to a substance-abuse treatment clinic than by imposing imprisonment. Many defendants will plead guilty and receive lesser punishments. Judges may dismiss charges against other defendants, and juries may acquit a few more. Most of the people who are actually prosecuted for serious charges will be convicted, however. Thus, the criminal justice system is often described as a funnel—only a portion of the cases that enter the system result in conviction and punishment. Some people look at how few people end up in prison and conclude that the system is not tough enough on people convicted of crimes. Consider this idea as you read the “Criminal Justice: Myth & Reality” feature.

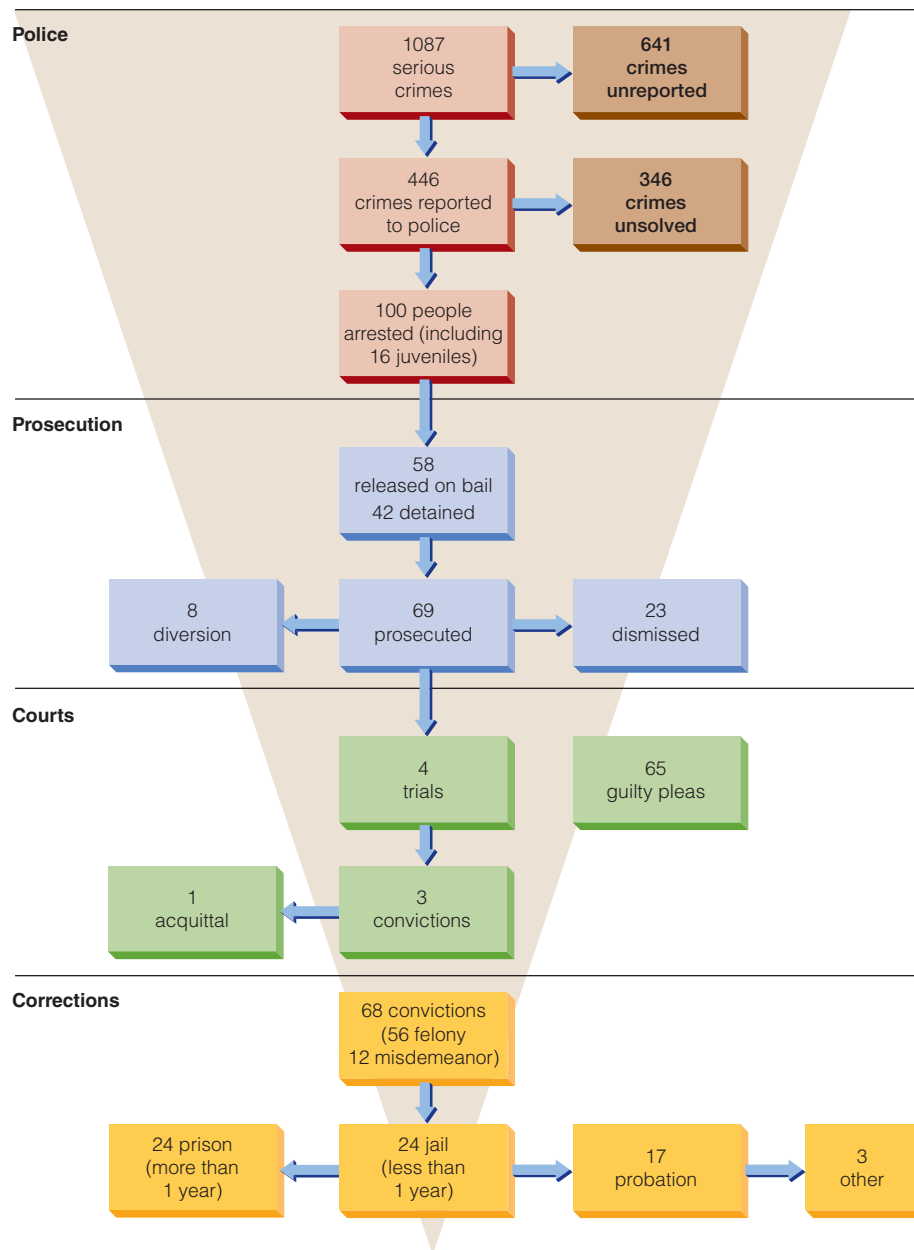


FIGURE 1.3

Criminal Justice as a Filtering Process

Decisions at each point in the system result in some cases being dropped while others are passed to the next point. Are you surprised by the small portion of cases that remain?

Sources: Estimates calculated from Thomas H. Cohen and Tracey Kyckelhahn, "Felony Defendants in Large Urban Counties, 2006," Bureau of Justice Statistics Bulletin, May 2010, Figure 1; FBI, *Crime in the United States, 2009* [Uniform Crime Reports], Tables 25 and 28; Jennifer L. Truman and Michael R. Rand, "Criminal Victimization, 2009," Bureau of Justice Statistics Bulletin, October 2010, Tables 1 and 11.

To summarize, the criminal justice system is composed of a set of interdependent parts (subsystems). This system has four key attributes: (1) discretion, (2) resource dependence, (3) sequential tasks, and (4) filtering. Using this framework, we look next at the operations of criminal justice agencies, and then examine the flow of cases through the system.

CHECK POINT

10. What are the major characteristics of the criminal justice system?

Discretion, resource dependence, sequential tasks, filtering.

STOP & ANALYZE

What is the most surprising aspect of Figure 1.3? Describe two aspects of the information presented in the figure that differ from your assumptions about the criminal justice system.

Operations of Criminal Justice Agencies

The criminal justice system consists of organizations at the federal, state, and local levels of government that each have specific responsibilities. With more than 2.2 million employees, these organizations need significant funding from taxpayers for their operations, equipment, and training (Hyland, 2019). Here we review the main parts of the criminal justice system and their functions.

Police

We usually think of the police as being on the “front line” in controlling crime. The term *police*, however, does not refer to a single agency or type of agency, but to many agencies at each level of government. The complexity of the criminal justice system can be seen in the large number of organizations engaged in law enforcement. According to a recent national survey, there are 15,322 law enforcement agencies in the United States that employ a total of 701,273 sworn officers with the authority to make arrests (Hyland, 2018). Within this total are 50 state agencies employing 91,097 sworn officers and more than 80 federal agencies that employ 132,110 sworn officers (Brooks, 2019; Hyland, 2018). The remaining agencies are found in counties, cities, and towns, reflecting the fact that local governments dominate the police function.

Police agencies have four major duties:

1. *Keeping the peace.* This broad and important mandate involves the protection of rights and persons in situations ranging from street-corner brawls to domestic quarrels.
2. *Apprehending violators and combating crime.* This is the task the public most often associates with police work, although it accounts for only a small portion of police time and resources.
3. *Preventing crime.* By educating the public about the threat of crime and by reducing the number of situations in which crimes are likely to be committed, the police can lower the rate of crime.
4. *Providing social services.* Police officers recover stolen property, direct traffic, give emergency medical aid, help people who have locked themselves out of their homes, and provide other social services.

Courts

dual court system A system consisting of a separate judicial system for each state in addition to a national system. Each case is tried in a court of the same jurisdiction as that of the law or laws broken.

The United States has a **dual court system** that consists of a separate judicial system for each state in addition to a national system. Each system has its own series of courts; the U.S. Supreme Court is responsible for correcting certain errors made in all other court systems. Although the Supreme Court can review cases from both the state and federal courts, it will hear only cases involving federal law or constitutional rights. State supreme courts are the final authority for cases that solely concern issues of state law.

With a dual court system, laws may be interpreted differently in various states despite being worded similarly. To some extent, these variations in interpretation reflect different social and political conditions. The dominant values of citizens and judges often differ from one region to another. Differences in interpretation may also be due to attempts by state courts to solve similar problems by different means. For example, before the Supreme Court ruled that evidence obtained by the police in illegal ways should usually be excluded at trials, some states had already established rules barring the use of such evidence in their own courts.

adjudication The process of determining whether the defendant is guilty.

Courts are responsible for **adjudication**—determining whether or not a defendant is guilty. In so doing, they must use fair procedures that will produce just, reliable decisions. Courts must also impose sentences that are appropriate to the behavior being punished. For example, in some cases involving drugs or juveniles, people may be sent to specialized courts that focus on those types of cases.

Corrections

On any given day, approximately 6.6 million American adults (1 of every 38) are under the supervision of state and federal corrections systems (Kaeble & Cowhig, 2018). There is no “typical” correctional agency or official. Instead, a variety of agencies and programs are provided by private and public organizations—including federal, state, and local governments—and carried out in many different community and closed settings.

The average citizen may equate corrections with being locked away in barred cells in prisons and jails. Prisons are state and federal institutions for serving years behind bars while jails are typically local facilities for short sentences and detention prior to trial. In reality, less than 30 percent of people under correctional supervision are in prisons or jails. Most people convicted of crimes are supervised in the community.

Probation and parole have long been important aspects of corrections, as have community-based halfway houses, work release programs, and supervised activities. Probation and parole are sentences served while living at home and maintaining employment, but also meeting regularly with supervising officers. In addition, probationers and parolees must fulfill requirements for drug testing, curfews, and counseling. In the case of parole, the community portion of the sentence begins after a period spent in prison. People convicted of lesser offenses can be sentenced directly to probation. Both nonprofit private organizations and for-profit businesses enter contracts with governments to manage correctional programs ranging from privately-owned prisons to counseling programs for probationers.

The police, courts, and corrections are the main agencies of criminal justice. Each is a part, or subsystem, of the criminal justice system. Each is linked to the other two subsystems, and the actions of each affect the others. These effects can be seen as we examine the flow of decision making within the criminal justice system.

CHECK POINT

11. What are the four main duties of police?

Keeping the peace, apprehending violators and combating crime, preventing crime, providing social services.

12. What is a dual court system?

A separate judicial system for each state in addition to a national system.

13. What are the major types of correctional facilities and programs?

Prisons, jails, probation, parole, community-based drug treatment, and counseling.

STOP & ANALYZE

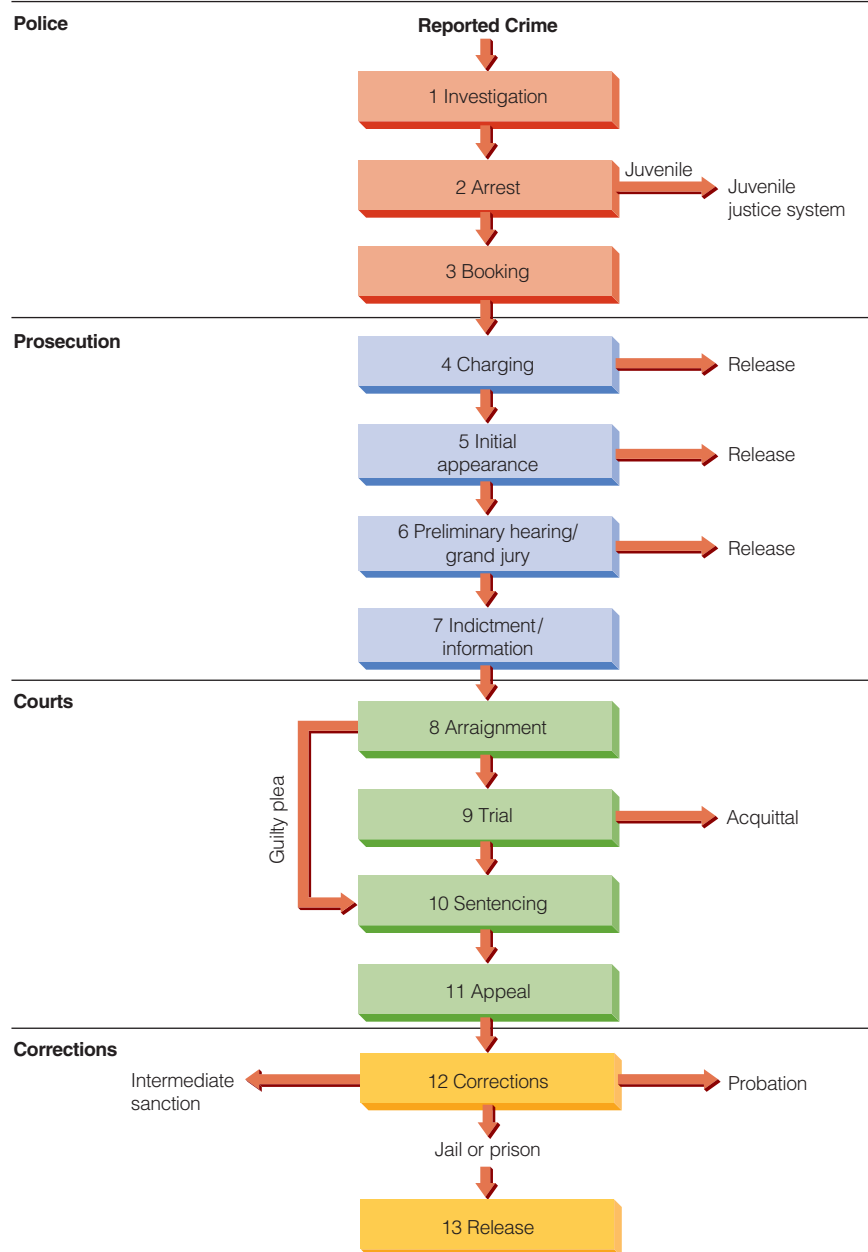
What kinds of problems can arise from having state and federal law enforcement agencies and courts operating in the same city? For example, how would you make sure that federal agencies and local agencies cooperate in investigating and prosecuting drug crimes?

The Flow of Decision Making in the Criminal Justice System

The processing of cases in the criminal justice system involves a series of decisions by police officers, prosecutors, judges, probation officers, wardens, and parole board members. At each stage in the process, they decide whether a case will move on to the next stage or be dropped from the system. Although the flowchart shown in Figure 1.4 appears streamlined, with cases entering at the top and moving swiftly toward the bottom, the actual route taken may be quite long and may involve many detours. At each step, officials have the discretion to decide what happens next. As a result, many cases are filtered out of the system, others are sent to the next decision maker, and still others are dealt with informally.

FIGURE 1.4

The Flow of Decision Making in the Criminal Justice System Each agency is responsible for a part of the decision-making process. Thus the police, prosecution, courts, and corrections are bound together through a series of exchange relationships.



Moreover, the flowchart does not show the influences of social relations or of the political environment. In 2006, a retired FBI agent was charged with providing inside information to organized-crime figures so that informants could be murdered. It was then discovered that 30 years earlier, this agent had been caught illegally selling unlicensed handguns to undercover agents of the U.S. Bureau of Alcohol, Tobacco, and Firearms. If this FBI agent had been prosecuted for the handgun sales, his career in the FBI would have been over and he would never have achieved the high-level position that later allegedly allowed him to assist mobsters. However, according to one former federal prosecutor involved in the handgun case in 1976, a high official in the U.S. Justice Department used his discretion to drop the gun charges. According to the former prosecutor, the high official “expressed no other reason not to prosecute the guy except the guy was a cop—and he didn’t want to embarrass the [FBI]” (Feuer, 2006). The flowchart does not take into account that someone in authority might exercise discretion unfairly in favor of certain people, such as those with wealth or political connections.

Thus, it is important to recognize that political influence, personal relationships, and specific circumstances may affect how officials' decisions shape the paths and outcomes of individual cases. In the next section, as we follow the 13 steps of the criminal justice process, bear in mind that the formal procedures do not hold in every case. Discretion, political pressure, and other factors can alter the outcome.

Steps in the Decision-Making Process

The criminal justice system consists of 13 steps that cover the stages of law enforcement, adjudication, and corrections. The system could be compared to a kind of assembly line, one where decisions are made about defendants. As these steps are described, recall the concepts discussed earlier: system, exchange, discretion, sequential tasks, and filtering. Be aware that the terms used for different stages in the process may differ from state to state and that the sequence of the steps differs in some parts of the country. In general, the flow of decision making follows this pattern:

1. **Investigation.** The process begins when the police believe that a crime has been committed. At this point, an investigation is begun. The police typically depend on a member of the community to report the offense. Except for traffic and public-order offenses, it is unusual for the police to observe illegal behavior themselves. Most crimes have already been committed and the lawbreakers have left the scene before the police arrive, placing the police at a disadvantage in quickly finding and arresting the perpetrators of the crime.
2. **Arrest.** If the police find enough evidence showing that a specific person has committed a crime, an arrest may be made. An **arrest** involves physically taking a person into custody pending a court proceeding. This action not only restricts the suspect's freedom but also is the first step toward prosecution.

Under some conditions, arrests may be made on the basis of a **warrant**—a court order issued by a judge authorizing police officers to take certain actions, such as arresting suspects or searching premises. In practice, most arrests are made without warrants. In some states, police officers may issue a summon or citation that orders a person to appear in court on a certain date. This avoids the need to hold the suspect physically until decisions are made about the case.

3. **Booking.** After an arrest, the suspect is usually transported to a police station for booking, in which a record is made of the arrest. When booked, the suspect may be fingerprinted, photographed, questioned, and placed in a lineup to be identified by the victim or witnesses. Before being questioned, all suspects in custody must also be warned that they have the right to counsel, that they may remain silent, and that any statement they make may be used against them later. Bail may be set so that the suspect learns what amount of money must be paid or what other conditions must be met to gain release from custody until the case is processed.
4. **Charging.** Prosecuting attorneys are the key link between the police and the courts. They must consider the facts of the case and decide whether there is reasonable cause to believe that an offense was committed and that the suspect committed the offense. The decision to charge is crucial because it sets in motion the adjudication of the case.
5. **Initial appearance.** Within a reasonable time after arrest, the suspect must be brought before a judge. At this point, suspects are given formal notice of the charge(s) for which they are being held, advised of their rights, and, if approved by the judge, given a chance to post bail. At this stage, the judge decides whether there is enough evidence to hold the suspect for further criminal processing. If enough evidence has not been produced, the judge will dismiss the case. The purpose of bail is to permit the accused to be released while awaiting trial and to ensure that the accused will show up in court at the appointed time. Bail requires the accused to provide or arrange a surety (or pledge), usually in the form of money or a bond. The amount of bail is based mainly on the judge's view of the seriousness of the crime and the defendant's prior criminal record. Suspects may also be released on their own recognizance (also known as ROR, "release on own recognizance")—a promise to appear in court at

arrest The physical taking of a person into custody on the grounds that there is reason to believe that the individual has committed a criminal offense. Police are limited to using only reasonable physical force in making an arrest. The purpose of the arrest is to hold the accused for a court proceeding.

warrant A court order authorizing police officers to take certain actions—for example, to arrest suspects or to search premises.

information A document charging an individual with a specific crime. It is prepared by a prosecuting attorney and presented to a court at a preliminary hearing.

indictment A document returned by a grand jury as a “true bill” charging an individual with a specific crime on the basis of a determination of probable cause as presented by a prosecuting attorney.

a later date without the posting of bail. In a few cases, bail may be denied and the accused held because the accused is viewed as a threat to the community.

6. *Preliminary hearing/grand jury.* After suspects have been arrested, booked, and brought to court to be informed of the charges against them and advised of their rights, a decision must be made as to whether there is enough evidence to proceed. The preliminary hearing, used in about half the states, allows a judge to decide whether there is probable cause to believe that a crime has been committed and that the accused person committed it. If the judge does not find probable cause, the case is dismissed. If there is enough evidence, the accused is bound over for arraignment on an **information**—a document charging a person with a specific crime.

In the federal system and in some states, the prosecutor appears before a grand jury, which decides whether there is enough evidence to file an **indictment**, a formal action charging the suspect with a specific crime. The preliminary hearing and grand jury are designed to decide whether there are grounds for prosecution and thereby prevent hasty or biased prosecutions.

7. *Indictment/information.* If the preliminary hearing leads to an information or the grand jury vote leads to an indictment, the prosecutor prepares the formal charging document and presents it to the court.
8. *Arraignment.* The accused person appears in court to hear the indictment or information read by a judge and to enter a plea. Accused persons may plead guilty or not guilty or, in some states, stand mute. If the accused pleads guilty, the judge asks questions of the accused in open court in order to make sure the plea is made voluntarily and the person has full knowledge of the consequences. When a guilty plea is accepted as “knowing” and voluntary, there is no need for a trial—the judge imposes a sentence, either immediately, for a very minor offense or later, at a scheduled sentencing hearing, for a serious offense.

Plea bargaining may take place at any time in the criminal justice process, but it is likely to be completed just before or soon after arraignment. Very few criminal cases proceed to trial. Most move from the entry of the guilty plea to the sentencing phase.

9. *Trial.* For the small percentage of defendants who plead not guilty, the right to a trial by an impartial jury is guaranteed by the Sixth Amendment if any of the charges are serious enough to warrant incarceration for more than six months. In many jurisdictions, lesser charges do not entail the right to a jury trial. Most trials are bench trials; that is, they are conducted by a judge without a jury. Because the defendant pleads guilty in most criminal cases, typically fewer than 10 percent of cases go to trial, and only about half of those are heard by juries. For example, only 2 percent of the 80,000 defendants in federal criminal cases went through trials in 2018, with even lower percentages in many states, such as California, Texas, and Pennsylvania (Gramlich, 2019b). Whether a criminal trial is held before a judge alone or before a judge and jury, the procedures are similar and are set out by laws and U.S. Supreme Court rulings defining procedures and rules for evidence. A defendant shall be found guilty only if the evidence proves “beyond a reasonable doubt” that the individual committed the offense.
10. *Sentencing.* Judges are responsible for imposing sentences. The intent is to make the sentence suitable to the offender and to the offense within the limits set by the law. The judge typically has authority to make judgments about the appropriate punishment within the guidelines set by the legislature for a particular crime. Among the judge’s options are a suspended sentence, probation, imprisonment, or other sanctions such as fines and community service.
11. *Appeal.* Defendants who are found guilty may appeal convictions to a higher court. An appeal may be based on the claim that the trial court failed to follow the proper procedures or that constitutional rights were violated by the actions of police, prosecutors, defense attorneys, or judges. The number of appeals is small compared with the total number of convictions; further, in about 80 percent of appeals, trial judges and other officials are ruled to have acted properly. Even defendants who win appeals do not necessarily go free. Normally, the defendant is given a second trial, which may result in an acquittal, a second conviction, or a plea bargain to lesser charges.

12. *Corrections.* The court's sentence is carried out by the correctional subsystem. Probation, intermediate sanctions, such as fines and community service, and incarceration are the corrections most often imposed. Probation allows convicted people to serve their sentences in the community under supervision. Youths, people convicted of a first offense, and those who committed minor offenses are most likely to be sentenced to probation rather than incarceration. The conditions of probation may require the convicted individuals to observe certain rules—to be employed, maintain an orderly life, or attend school—and to report to their supervising officer from time to time. If these requirements are not met, the judge may revoke the probation and impose a prison sentence.

Many new types of sanctions have been used in recent years. These intermediate sanctions are more restrictive than probation but less restrictive than incarceration. They include fines, intensive supervision probation, boot camp, home confinement, and community service.

Prisons exist to separate people convicted of crimes from the rest of society. Among those sentenced to incarceration, those convicted of misdemeanors typically serve short sentences in city or county jails, whereas people convicted of felonies serve terms of one year or longer in state or federal prisons. Isolation from the community is one of the most painful aspects of incarceration. Not only are letters and visits limited, but supervision and censorship are ever present. Moreover, in order to maintain security, prison and jail officials make frequent unannounced searches and impose restrictive rules.

13. *Release.* Release may not occur until the convicted person has served the full sentence imposed by the court, but most people are returned to the community earlier under the supervision of a parole officer. Parole continues for the duration of the sentence or for a period specified by law—unless it is revoked and the parolee returned to prison because the release conditions were not met or the person on parole is arrested for another crime.

To see the criminal justice process in action, read “The Criminal Justice Process” feature at the end of this chapter, which tells the story of Christopher Jones, who was arrested, charged, and convicted of serious crimes arising from the police investigation of a series of robberies.

The Criminal Justice Wedding Cake

Although the flowchart shown in Figure 1.4 is helpful, recall that not all cases are processed in identical fashion. The processes applied to a given case, as well as its outcome, are shaped by many factors, including the importance of the case to decision makers, the seriousness of the charge, and the defendant's resources.

Some cases are highly visible, either because of the notoriety of the defendant or the victim or because of the shocking nature of the crime. At the other extreme are “run-of-the-mill cases” involving minor charges and no media attention.

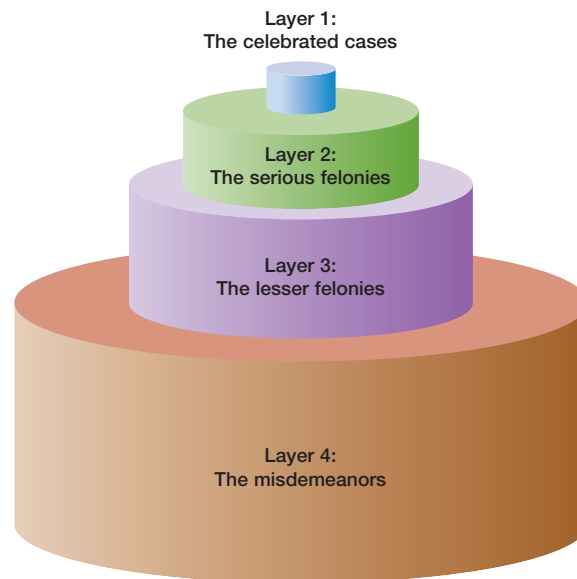
As shown in Figure 1.5, the criminal justice process can be compared to a wedding cake in the sense that the layers illustrate how cases receive different treatment in the justice process.

Layer 1 of the “cake” consists of “celebrated” cases that are highly unusual, receive much public attention, result in a jury trial, and often drag on through many appeals. These cases embody the ideal of an adversarial system of justice in which each side actively fights against the other, either because the defendant faces a stiff sentence or because the defendant has the financial resources to pay for a strong defense. Not all cases in Layer 1 receive national attention, however. From time to time, local crimes, especially cases of murder and rape, are treated in this way. Because movies and television shows typically portray criminal cases decided in jury trials, many Americans do not realize that only a tiny percentage of cases lead to trials.

FIGURE 1.5

The Criminal Justice Wedding Cake This figure shows that different cases are treated in different ways. Only a very few cases are played out as “high drama”; most are handled through plea bargaining and dismissals.

Source: Drawn from Samuel Walker, *Sense and Nonsense about Crime and Drugs*, 4th ed. (Belmont, CA: Wadsworth, 1998), 30–37.



In 2020, millionaire movie producer Harvey Weinstein was convicted of criminal sexual conduct and rape in New York based on accusations and testimony from actresses and movie production staff. The seven-week trial had all of the earmarks of a Layer 1 case as a wealthy defendant refused to plead guilty and took his case to trial. Such cases embody the ideal of the due process model with attorneys for each side battling in front of the jury. Should society devote enough resources to the justice system to make it possible for all defendants—rich or poor—to have Layer 1, adversarial trials?



felonies Serious crimes carrying a penalty of death or of incarceration for more than one year.

Layer 2 consists of especially serious **felonies** such as violent crimes committed by persons with long criminal records. Police and prosecutors speak of serious felonies as “heavy” cases that should result in “tough” sentences. Thus, prosecutors are often unwilling to offer attractive deals that reduce charges or sentences in exchange for guilty pleas. Given the certainty of very long prison terms upon conviction, defendants in such cases have little reason to plead guilty and the defense attorney must prepare for trial.

Layer 3 also consists of felonies, but the crimes and the accused individuals are seen by prosecutors as less serious and threatening than those in Layer 2. Therefore, prosecutors are more willing to engage in plea bargaining. The offenses may be the same as those in some Layer 2 cases, but the offender may have no prior record. Prosecutors may also treat crimes against acquaintances as less serious than crimes against strangers. The main goal of criminal justice officials is to dispose of such cases quickly while still ensuring that

the individual receives punishment. For this reason, these cases are filtered out of the court system, typically through plea bargaining.

Layer 4 is made up of **misdemeanors**. About 90 percent of all cases fall into this category. They concern such offenses as public drunkenness, shoplifting, prostitution, disturbing the peace, and traffic violations. These cases are handled by overburdened lower courts, where speed is essential. Prosecutors use their discretion to reduce charges or recommend probation in order to encourage defendants to plead guilty quickly. Typically, processes are less formal and guilty pleas result in fines, probation, or short jail sentences.

The wedding cake model is a useful way of viewing the criminal justice system. Cases are not treated in identical fashion. The time and attention devoted to cases depend on both the severity of the crime and the defendant's resources. Most defendants are not positioned to fight charges through every available step in the process. In addition, it often makes sense for defendants to accept a favorable plea agreement that reduces charges or sentence recommendations rather than risk a more severe sentence by going to trial.

Crime Control versus Due Process

Models are simplified representations that illustrate important aspects of a system. As we saw in discussing the wedding cake model, they permit generalized statements and comparisons even though no one model necessarily portrays precisely the complex reality of specific situations. We now look at two more models to expand our picture of how the criminal justice system really operates.

In one of the most important contributions to systematic thought about the administration of justice, Herbert Packer (1968) described two competing models of the administration of criminal justice: the **crime control model** and the **due process model**. These are opposing ways of looking at the goals and procedures of the criminal justice system. The crime control model is much like an assembly line, whereas the due process model is like an obstacle course.

In reality, no one official or agency functions according to one model or the other. Elements of both models are found throughout the system. However, the two models reveal key tensions within the criminal justice process, as well as the gap between how the system is often described and the way most cases are actually processed. Table 1.3 presents the major elements of each model.

Crime Control: Order as a Value The crime control model assumes that every effort must be made to repress crime. It emphasizes efficiency and the capacity to catch, try, convict, and punish a high proportion of people facing criminal charges. It also stresses speed and finality. This model places the goal of controlling crime uppermost, putting less emphasis on protecting individuals' rights. As Packer points out, in order to achieve liberty for all citizens, the crime control model calls for efficiency in screening suspects, determining guilt, and applying sanctions to the convicted. Because crimes continuously harm society and justice system agencies have limited resources to apprehend and process suspects, speed and finality are priorities. All of these elements depend on informality, uniformity, and few challenges by defense attorneys or defendants.

In this model, police and prosecutors make early decisions about the likelihood that the suspect will be found guilty. If a case is unlikely to end in conviction, the prosecutor may drop the charges. At each stage, from arrest to preliminary hearing, arraignment, and trial, established procedures are used to determine whether the accused should be passed on to the next stage. Instead of stressing the combative aspects of the courtroom, this model promotes bargaining between the state and the accused. Nearly all cases are disposed of through such bargaining, and they typically end with the defendant pleading guilty. Packer's description of this model as an assembly-line process conveys the idea of quick, efficient decisions by actors at fixed stations that turn out the intended product—guilty pleas and closed cases.

misdemeanors Offenses less serious than felonies and usually punishable by incarceration of no more than one year in jail, or by probation or intermediate sanctions.

crime control model A model of the criminal justice system that assumes freedom for the public to live without fear is so important that every effort must be made to repress crime; it emphasizes efficiency, speed, finality, and the capacity to apprehend, try, convict, and dispose of a high proportion of people facing criminal charges.

due process model A model of the criminal justice system that assumes freedom for individuals who are wrongly accused and risk unjust punishment is so important that every effort must be made to ensure that criminal justice decisions are based on reliable information; it emphasizes the adversarial process, the rights of defendants, and formal decision-making procedures.