

PART

1

CRIME IN AMERICA

Chapter 1

What Is Criminal Justice?

Chapter 2

The Crime Picture

Chapter 3

The Search for Causes

Chapter 4

Criminal Law

INDIVIDUAL RIGHTS VERSUS PUBLIC ORDER

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

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

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

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

Q How does our system of justice work toward balance?

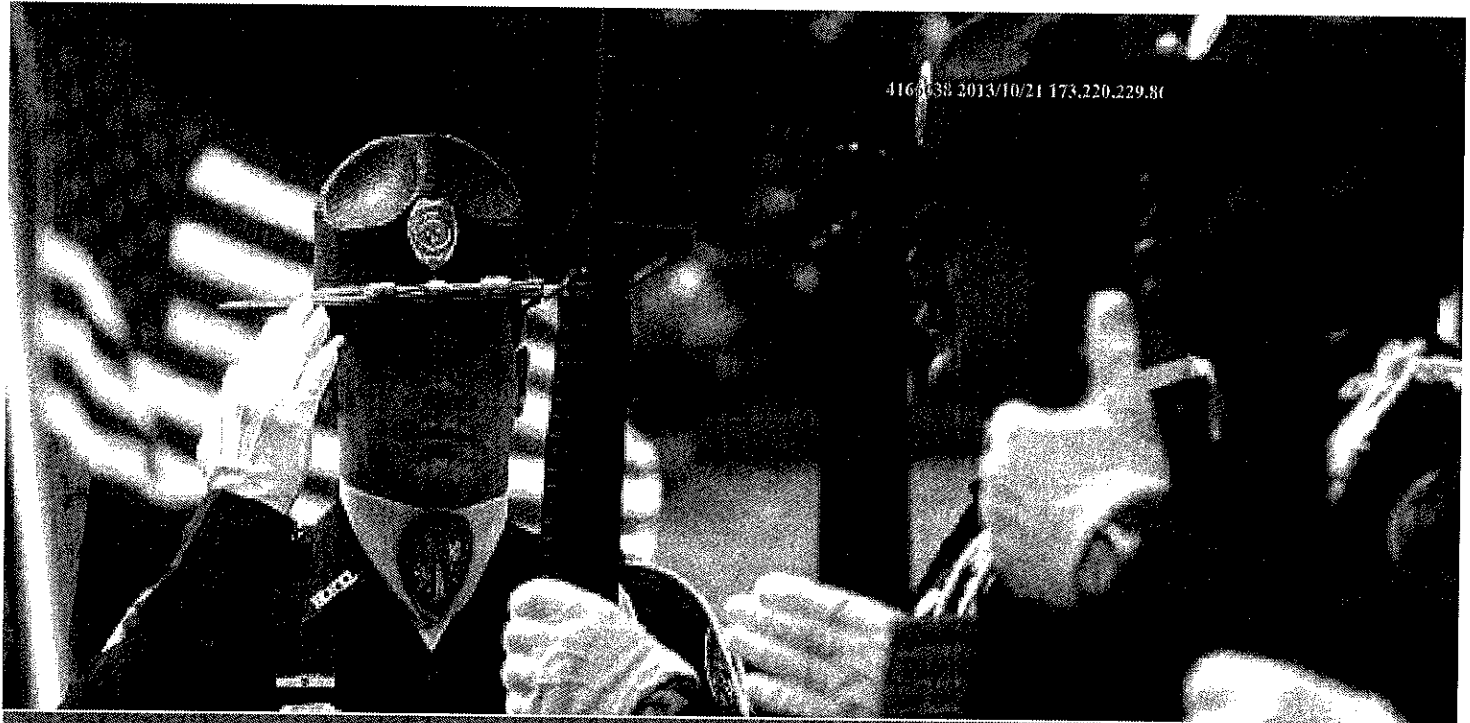
The Will of the People Is the Best Law

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

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

at the wide array of interests that impinge upon the justice system, and we will examine closely the dichotomy that distinguishes citizens who are primarily concerned with individual rights from those who emphasize the need for individual responsibility and social accountability—a dichotomy that has become especially significant in the wake of the September 11, 2001, terrorist attacks. In the pages that follow, we will see how justice can mean personal freedom and protection from the power of government to some people and greater safety and security to others. In this section, we will also lay the groundwork for the rest of the text by painting a picture of crime in America today, suggesting possible causes for it, and showing how policies for dealing with crime have evolved.

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



1

WHAT IS CRIMINAL JUSTICE?

OUTLINE

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

LEARNING OBJECTIVES

After reading this chapter, you should be able to

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

the rights guaranteed for criminal suspects, and fundamental political rights that protect all Americans from governmental abuse of power.

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The Constitution's word is the law.

FORMER SECRETARY OF STATE WARREN CHRISTOPHER

■ social order

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

■ social disorganization

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

Introduction

Five days after Hurricane Katrina made landfall near New Orleans in 2005, the *Washington Post* described the devastated metropolitan area as “a city of despair and lawlessness.”³ The *Wall Street Journal* ran headlines proclaiming that the city had “plunged into anarchy.”⁴ As the winds relented, looters ravaged stores, gunshots rang out, and armed gangs could be seen roaming the streets that hadn’t been flooded. Some looters used forklifts and construction equipment to bust through storm shutters and steel doors protecting gun shops, liquor stores, and pharmacies.⁵ The New Orleans Police Department, hamstrung by the absence of one-third of its 1,600 officers and the loss of critical communications channels and emergency equipment, struggled to keep control over its facilities. In one unflooded precinct, officers used an armored personnel carrier to survey the chaos.⁶ Officers from another precinct were forced to barricade themselves into their three-story administrative center, renaming it Fort Apache after a film in which a police station is attacked. “You have to understand,” said Juan Lopez, one of the officers who took refuge in the precinct house, “New Orleans was a violent place before the hurricane. After the hurricane, the city just let loose.”⁷

The storm set into motion a number of events that are still sending shock waves throughout American society. The physical damage done by the hurricane, estimated at billions of dollars, was made worse by the massive social disorder that followed. Thousands of displaced people left their homes—with many never expected to return. Law enforcement and assistance agencies throughout the region suffered serious disruptions in their ability to provide services. Some officers walked off the job, and citizens were left to fend for themselves until thousands of National Guard troops armed with automatic weapons arrived to restore order in the wind- and flood-ravaged area.

“Crime does more than expose the weakness in social relationships; it undermines the social order itself, by destroying the assumptions on which it is based.”

James Q. Wilson, UCLA

The Katrina disaster, which created opportunities for those bent on criminal activity, illustrated the tenuous nature of **social order**. The **social disorganization** that followed Katrina continued long after the storm and involved a myriad of criminal

offenses—including thousands of people arrested for defrauding the Federal Emergency Management Agency (FEMA), the government agency responsible for helping out after a disaster. FEMA fraud was so widespread that reports showed the number of households receiving FEMA emergency checks in four Louisiana parishes exceeded the number of households that existed there before the storm hit.⁸ Almost 360,000 households applied for FEMA’s Expedited Assistance payments in Orleans Parish alone—although the area had only 182,000 homes before Katrina. In one case that drew the attention of federal prosecutors, 33-year-old Kenneth McClain was charged with 14 counts of fraud in an elaborate conspiracy that allegedly scammed more than \$10,000 in federal relief checks. McClain, who had 27 aliases and a number of open arrest warrants when caught, lived in Texas, far from the storm’s wrath. He is accused of using stolen identities, some belonging to dead people, to file for assistance.⁹

A very different kind of criminal event thrust itself on American society and our justice system with the September 11, 2001, terrorist attacks that targeted New York City’s World Trade Center and the Pentagon. Those attacks, including one on an airliner that crashed in the Pennsylvania countryside, left nearly 3,000 people dead and caused billions of dollars in property damage. They have since been classified as the most destructive criminal activity ever to have been perpetrated on U.S. soil. The

“You’re looking now not only at a rescue operation but a gigantic crime scene.”

Newscaster, ABC Nightly News, commenting on the World Trade Center site a few days after the September 11, 2001, attacks

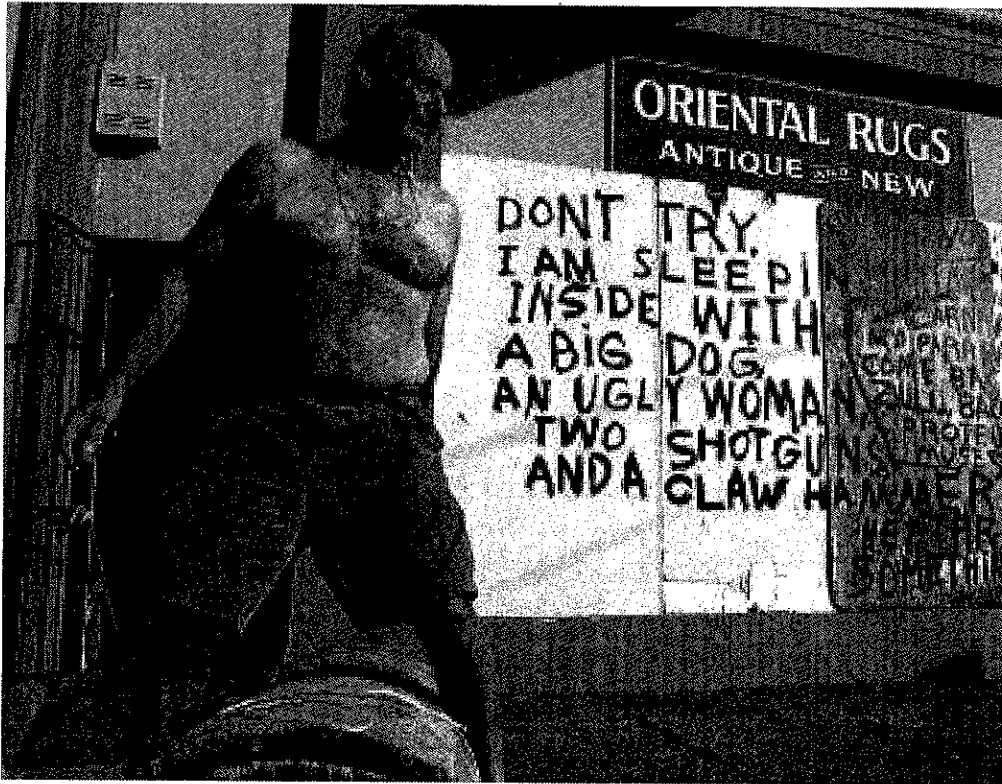
resulting “war on terrorism” changed the face of world politics and ushered in a new era in American society. Before the attacks, most Americans lived relatively secure lives, largely unfettered by fear of random personal attack. Following September 11, however, a heated debate has taken place between those wanting to enforce powerful crime-prevention and security measures and others seeking to preserve the individual rights and freedoms that have long been characteristic of American life. This issue, which has continued to feed TV talk shows and newspaper editorials nationwide, asks Americans to determine which rights, freedoms, and conveniences (if any) they are willing to sacrifice to increase personal and public safety. It also anticipates the theme on which this book is based—and which is discussed at length later in this chapter.

Regardless of your personal position in the ongoing debate between freedom and safety, it is important to recognize that

crime

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

■ Follow the author's tweets about the latest crime and justice news at <http://twitter.com/schmalleger>.



New Orleans business owner Bob Rue standing in front of his rug store in the aftermath of Hurricane Katrina. His hastily created sign warns potential looters to stay away. Some say that the central purpose of the criminal justice system is the maintenance of social order. Others say that the justice system must respect the rights of those whom it processes. Are the two perspectives mutually exclusive? Charlie Riedel/AP Wide World Photos

terrorism is a potentially horrendous **crime**. Many states and the federal government have statutes outlawing terrorism, although terrorism itself can involve many other kinds of crimes. In the case of the World Trade Center and Pentagon attacks, for example, the crimes committed included murder, kidnapping, hijacking, grand theft, felonious assault, battery, conspiracy, and arson.

A Brief History of Crime in America

What we call *criminal activity* has undoubtedly been with us since the dawn of history, and crime control has long been a primary concern of politicians and government leaders worldwide. Still, the American experience with crime during the last half century has been especially influential in shaping the criminal justice system of today (Figure 1-1). In this country, crime waves have

come and gone, including an 1850–1880 crime epidemic, which was apparently related to social upheaval caused by large-scale immigration and the Civil War.¹⁰ A spurt of widespread organized criminal activity was associated with the Prohibition years of the early twentieth century. Following World War II, however, American crime rates remained relatively stable until the 1960s.

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

■ individual rights

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

■ Follow the author's tweets about the latest crime and justice news at <http://twitter.com/schmalleger>.

life—from education and employment to the activities of the criminal justice system.

This emphasis on **individual rights** was accompanied by a dramatic increase in reported criminal activity. While some researchers doubted the accuracy of official accounts, reports by the Federal Bureau of Investigation of “traditional” crimes like murder, rape, and assault increased considerably during the 1970s

and into the 1980s. Many theories were advanced to explain this leap in observed criminality. Some analysts of American culture, for example, suggested that the combination of newfound freedoms and long-pent-up hostilities of the socially and economically deprived worked to produce social disorganization, which in turn increased criminality.

By the mid-1980s, the dramatic increase in the sale and use of illicit drugs threatened the foundation of American society. Cocaine, and later laboratory-processed “crack,” spread to every corner of America. Large cities became havens for drug gangs, and many inner-city areas were all but abandoned to highly armed

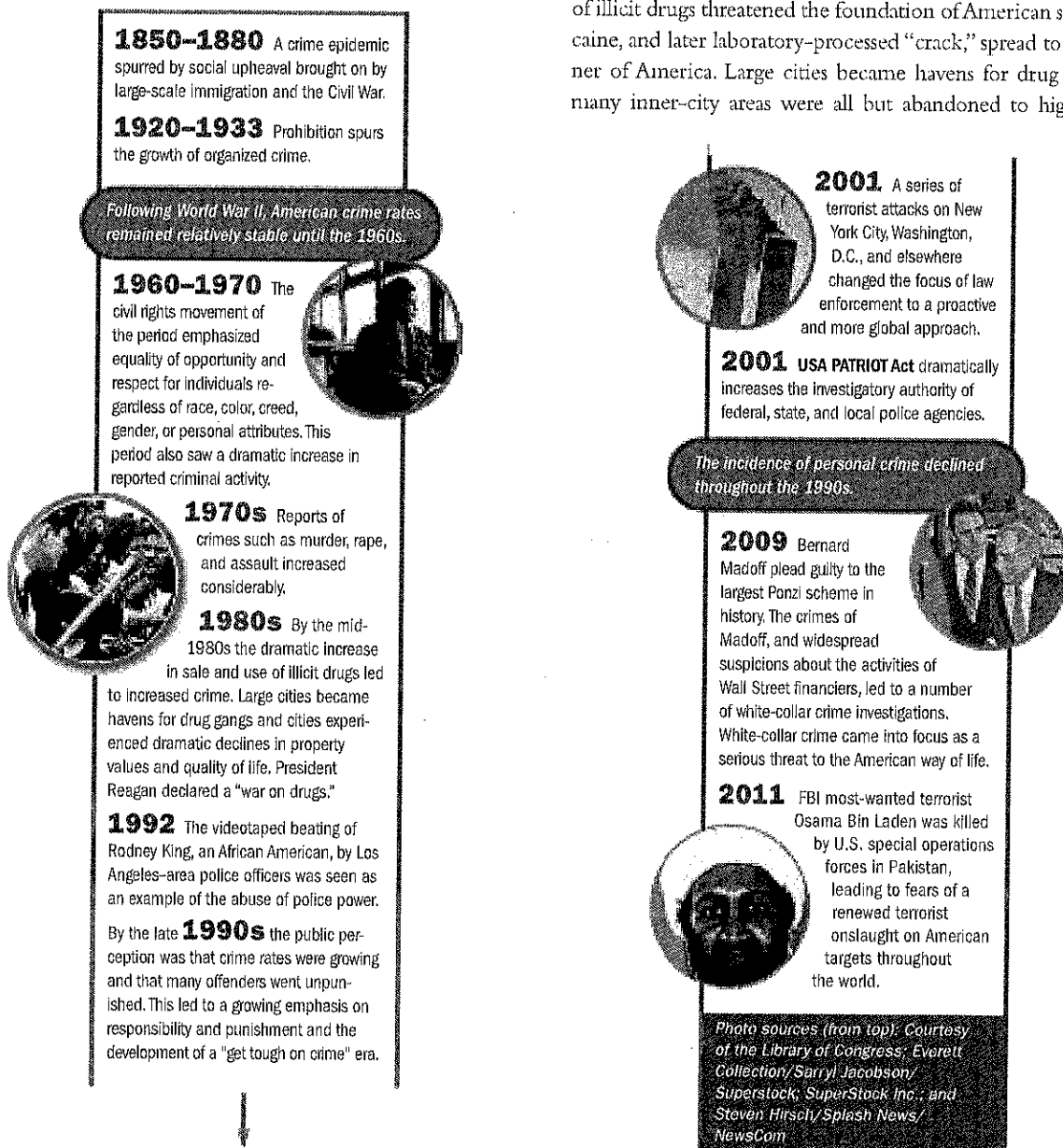
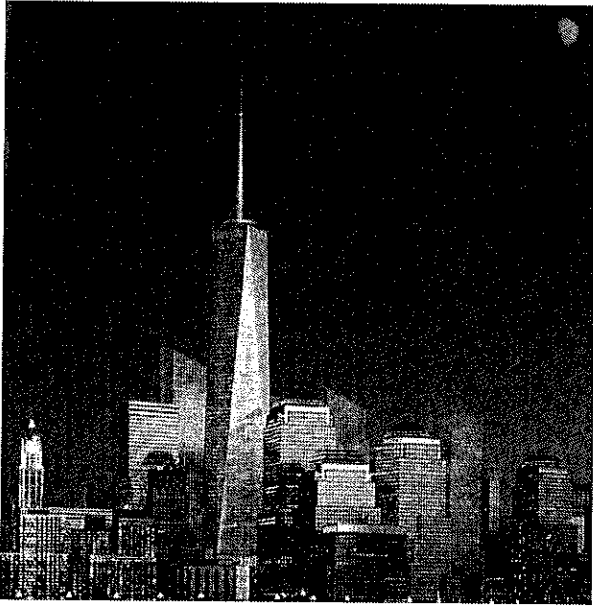


FIGURE 1-1 | Milestones in Crime History



An artist's rendition of the New York City skyline as it will look once buildings envisioned by renowned architect Daniel Libeskind are constructed on the 16-acre World Trade Center site. The plan includes a soaring Freedom Tower that will stand 1,776 feet tall, several other towers, and a memorial to the nearly 3,000 people who were killed in the terrorist attacks that demolished the twin towers in 2001. How did those attacks change the American justice system?

Skidmore, Owings, & Merrill LLP/Getty Images, Inc.—GINS/Entertainment News & Sports

“The current crisis in criminal and juvenile justice is fueled by the public’s conviction that the system no longer represents an effective response to the problem of crime.”

Reinventing Probation Council

been torn in the national social fabric, and the American way of life, long taken for granted, was under the gun. Traditional values appeared in danger of going up in smoke along with the “crack” being consumed openly in some parks and resorts. Looking for a way to stem the tide of increased criminality, many took up the call for “law and order.” In response, President Ronald Reagan created a cabinet-level “drug czar” position to coordinate the “war on drugs.” Careful thought was given at the highest levels to using the military to patrol the sea-lanes and air corridors through which many of the illegal drugs entered the country. President George H. W. Bush, who followed Reagan into office, quickly embraced and expanded the government’s antidrug efforts.

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

By the close of the 1980s, neighborhoods and towns were fighting for their communal lives. Huge rents had

A decade later, a few spectacular crimes that received widespread coverage in the news media fostered a sense among the American public that crime in the United States was out of hand and that strict new measures were needed to combat it. One such crime was the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City by antigovernment extremists. Another was the 1999 Columbine High School massacre in Colorado that left 12 students and one teacher dead.¹¹

The public’s perception that crime rates were growing, coupled with a belief that offenders frequently went unpunished or received only a judicial slap on the wrist, led to a burgeoning emphasis on responsibility and punishment. By the late 1990s, a newfound emphasis on individual accountability began to blossom among an American public fed up with crime and fearful of its own victimization. Growing calls for enhanced responsibility quickly began to replace the previous emphasis on individual rights. As a juggernaut of conservative opinion made itself felt on the political scene, Senator

“If you break the law, we’re going to hold you accountable, and there will be tough consequences for your actions.”

North Carolina Governor
Jim Hunt

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

Christopher Stone,
President and Director,
Verd Institute of Justice

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

Then, in an event that changed the course of our society, public tragedy became forever joined with private victimization in our collective consciousness after a series of highly destructive and well-coordinated terrorist attacks on New York City and Washington, DC, on September 11, 2001. Those attacks resulted in the collapse and total destruction of the twin 110-story towers of the World Trade Center and a devastating explosion at the Pentagon. Thousands of people perished, and many were injured. Although law enforcement and security agencies were unable to prevent the September 11 attacks, many have since moved from a reactive to a proactive posture in the fight against terrorism—a change that is discussed in more detail in Chapter 6, “Policing: Purpose and Organization.”

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



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

Brand X Pictures/Robertstock.com/Getty Images, Inc.

acquisition of skills needed to understand diverse cultures can help in the fight against crime and terrorism.

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

A different kind of offending, corporate and white-collar crime, took center stage in 2002 and 2003 as Congress stiffened penalties for unscrupulous business executives who knowingly falsify their company's financial reports.¹³ The changes came amidst declining stock market values, shaken investor confidence, and threats to the viability of employee pension plans in the wake of a corporate crime wave involving criminal activities that had been planned and undertaken by executives at a number of leading corporations. In an effort to restore order to American financial markets, President George W. Bush signed the Sarbanes-Oxley Act on July 30, 2002.¹⁴ The law, which has been called "the single most important piece of legislation affecting corporate governance, financial disclosure and the practice of public accounting since the US securities laws of the early 1930s,"¹⁵ is intended to deter corporate fraud and to hold business executives accountable for their actions.

Today, white-collar crime continues to be a focus of federal prosecutors, and in 2011 billionaire hedge fund manager Raj Rajaratnam, 53, was found guilty by a 12-member federal jury in New York City on all 14 charges of insider trading, conspiracy, and securities fraud that the government had brought against him.¹⁶ Prosecutors said the former head of the investment firm Galleon Group personally made over \$63 million in gains on trades based on illegal possession of inside information. Similarly, in a 2009 story that most readers will remember, investment fund manager Bernard Madoff pleaded guilty to operating a Ponzi scheme that defrauded investors out of as much as \$50 billion.¹⁷ Madoff pleaded guilty to 11 felony counts, including securities fraud, mail fraud, wire fraud, money laundering, and perjury.

Madoff was sentenced to serve 150 years in federal prison—three times as long as federal probation officers had recommended.¹⁸ White-collar crime is discussed in more detail in Chapter 2, "The Crime Picture." For a detailed look at crimes that are currently in the news, visit <http://www.trutv.com/library/crime>.

The Theme of this Book

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

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

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

During the 1960s and 1970s, the dominant philosophy in American criminal justice focused on guaranteeing the rights of criminal defendants while seeking to understand the root causes of crime and violence. The past 25 years, however, have witnessed increased interest in an ordered society, in public safety, and in the rights of crime victims. This change in attitudes was likely brought about by national frustration with the perceived inability of our society and its justice system to prevent crimes and to consistently hold offenders to heartfelt standards of right and wrong. Increased conservatism in the public-policy arena was given new life by the September 11, 2001, terrorist attacks and by widely publicized instances of sexual offenses targeting children. It continues to be sustained by the many stories of violent victimization that seem to be the current mainstay of the American media.

freedom OR safety? YOU decide

Clarence Thomas Says: "Freedom Means Responsibility"

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

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

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

You Decide

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

References: Adam Liptak, "Reluctant Justice Opens Up to a Group of Students," *The New York Times*, April 13, 2009, <http://www.nytimes.com/2009/04/13/us/14bar.html> (accessed September 2, 2009); and Philip Taylor, "Civil Libertarians: Giuliani's Efforts Threaten First Amendment," *Freedom Forum Online*, <http://www.freedomforum.org> (accessed September 5, 2007).



Ponzi schemer Bernard Madoff is escorted by police and photographed by the media as he departs U.S. federal court after a hearing in New York, January 5, 2009. Madoff, whose financial crimes may have cost investors as much as \$50 billion, was sentenced to 150 years in prison in 2009. What happened to the money he stole?

Lucas Jackson/Reuters/Landov Media

Today, public perspectives have largely shifted away from seeing the criminal as an unfortunate victim of poor social and personal circumstances who is inherently protected by fundamental human and constitutional rights to seeing him or her as a dangerous social predator who usurps the rights and privileges

"I would rather be exposed to the inconveniences attending too much liberty than to those attending too small a degree of it."

Thomas Jefferson

"We must not defeat our liberties in trying to defend them."

Former National Security Adviser Anthony Lake

of law-abiding citizens. Reflecting the "get tough on crime" attitudes of today, many Americans demand to know how offenders can better be held accountable for violations of the criminal law. In 2006, for example, at least 14 governors signed laws designed to extend prison sentences for sex offenders, restrict where released sex offenders can live, and improve public notification of their whereabouts. More bills are pending as this book goes to press, including one in Louisiana that would require convicted offenders to carry bright orange driver's licenses stamped with the words *sex offender* and another in South Carolina that would make some molesters eligible for the death penalty.¹⁹

Even so, the tension between individual rights and social responsibility still forms the basis for most policy-making activity in the criminal justice arena. Those who fight for individual

■ individual-rights advocate

One who seeks to protect personal freedoms within the process of criminal justice.

■ public-order advocate

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

rights continue to carry the banner of civil and criminal rights for the accused and the convicted, while public-order activists loudly proclaim the rights of the victimized and call for an increased emphasis on social responsibility and criminal punishment for convicted criminals. In keeping with these realizations, the theme of this book can be stated as follows:

There is widespread recognition in contemporary society of the need to balance (1) the freedoms and privileges of our nation's citizens and the respect accorded the rights of individuals faced with criminal prosecution against (2) the valid interests that society has in preventing future crimes, in public safety, and in reducing the harm caused by criminal activity. While the personal freedoms guaranteed to law-abiding citizens as well as to criminal suspects by the Constitution, as interpreted by the U.S. Supreme Court, must be closely guarded, the urgent social needs of communities to control unacceptable behavior and to protect law-abiding citizens from harm must be recognized. Still to be adequately addressed are the needs and interests of victims and the fear of crime and personal victimization that is often prevalent in the minds of many law-abiding citizens.

Figure 1-2 represents our theme and shows that most people today who intelligently consider the criminal justice system assume one of two viewpoints. We will refer to those who seek to protect personal freedoms and civil rights within society, and especially within the criminal justice process, as **individual-rights advocates**. Those who suggest that under certain circumstances involving criminal threats to public safety, the interests of society (especially crime control and social order) should take precedence over individual rights will be called **public-order advocates**. Recently, retired U.S. Supreme Court Justice Sandra

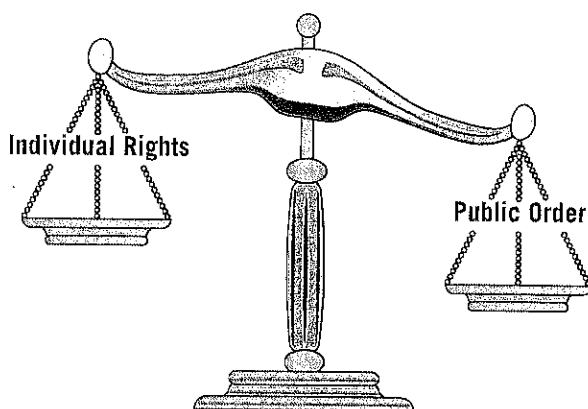


FIGURE 1-2 | The Theme of this Book

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

Day O'Connor summed up the differences between these two perspectives by asking, "At what point does the cost to civil liberties from legislation designed to prevent terrorism [and crime] outweigh the added security that that legislation provides?"²⁰ In this book, we seek to look at ways in which the individual-rights and public-order perspectives can be balanced to serve both sets of needs. Hence you will find our theme discussed throughout this text, and within "Freedom or Safety?" boxes.

Criminal Justice and Basic Fairness

On the eve of the national election in November 2008, as final votes were being counted, President-elect Barack H. Obama gave an inspiring victory speech addressed to the nation and the world. In it he said, "A new dawn of American leadership is at hand. To those who would tear this world down—we will defeat you. To those who seek peace and security—we support you. And to all those who have wondered if America's beacon still burns as bright—tonight we proved once more that the true strength of our nation comes not from the might of our arms or the scale of our wealth, but from the enduring power of our ideals: democracy, liberty, opportunity, and unyielding hope." The president concluded that night's remarks with an enduring phrase, telling listeners that "the arc of the moral universe is long, but it bends toward justice." The phrase, a favorite of the president's, had been adapted from remarks that Martin Luther King, Jr., made before the Southern Christian Leadership Conference in 1967.²¹

There is no denying that the word *justice* is powerful, and—at the time—the president's choice of words spoke to all Americans. The reality, however, is that *justice* is an elusive term. Although most listeners came away inspired that night, few who heard the president's speech knew exactly what justice might mean and what form it might eventually take. Even to those living within the same society, *justice* means different things. And just as *justice* can be an ambiguous term for politicians, it is not always clear how justice can be achieved in the criminal justice system. For example, is "justice for all" a reasonable expectation of today's—or tomorrow's—system of criminal justice? The answer is unclear because individual interests and social needs often diverge. From the perspective of a society or an entire nation, justice can look very different than it does from the perspective of an individual or a small group of people. Because of this dilemma, we now turn our attention to the nature of justice.

■ justice

The principle of fairness; the ideal of moral equity.

■ social justice

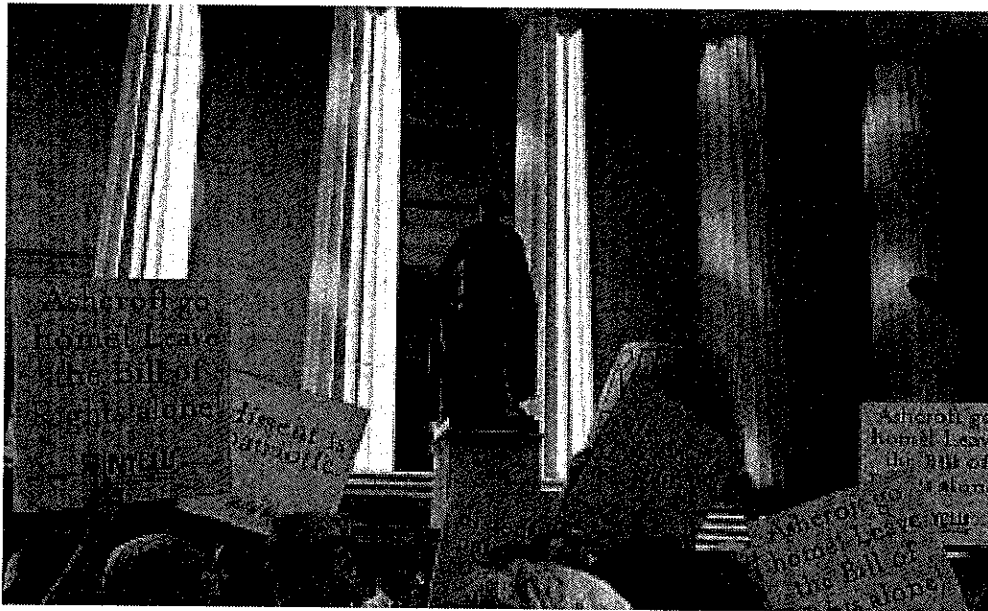
An ideal that embraces all aspects of civilized life and that is linked to fundamental notions of fairness and to cultural beliefs about right and wrong.

■ civil justice

The civil law, the law of civil procedure, and the array of procedures and activities having to do with private rights and remedies sought by civil action. Civil justice cannot be separated from social justice because the justice enacted in our nation's civil courts reflects basic American understandings of right and wrong.

■ criminal justice

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



Demonstrators gathering on the steps of New York City's Federal Hall to protest provisions of the USA PATRIOT Act. Federal Hall served as the venue for President George Washington's inauguration in 1789 and was the meeting place of the First Congress, which wrote our nation's Bill of Rights. The PATRIOT Act was passed by Congress with little debate just 45 days after the terrorist attacks of September 11, 2001. Rights advocates claim that the act unfairly restricts individual liberties. What do you think?

Scout Tufankjian/AP Wide World Photos

British philosopher and statesman Benjamin Disraeli (1804–1881) defined **justice** as “truth in action.” A popular dictionary defines it as “the principle of moral rightness, or conformity to truth.”²² **Social justice** is a concept that embraces all aspects of civilized life. It is linked to notions of fairness and to cultural beliefs about right and wrong. Questions of social justice can arise about relationships between individuals, between parties (such as corporations and agencies of government), between the rich and the poor, between the sexes, between ethnic groups and minorities—between social connections of all sorts. In the abstract, the concept of social justice embodies the highest personal and cultural ideals.

Civil justice, one component of social justice, concerns itself with fairness in relationships between citizens, government agencies, and businesses in private matters, such as those involving contractual obligations, business dealings, hiring, and equality of treatment. **Criminal justice**, on the other hand, refers to the



Michael Jackson fans gathering outside the courthouse where Jackson's physician, Conrad Murray, appeared on February 8, 2010. What does the word *justice* mean to you?

AP Photo/Jason Redmond

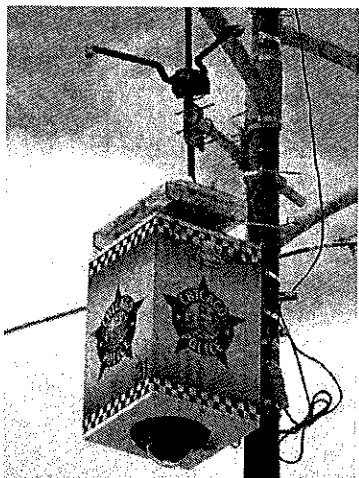
■ administration of justice

The performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.^{vi}

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CJ | NEWS

Face-Recognition Devices Will Help Combat Crime



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

Charles Rex Arbogast/AP Wide World Photos

Secrecy and anonymity are becoming relics of a bygone age. Anyone living in modern America has gotten used to the unblinking stare of security cameras found in stores, banks, office buildings, and even on street corners.

But that's yesterday's law enforcement advance. Today there's a new one: devices that recognize faces.

BI2 Technologies of Plymouth, Massachusetts, is making gadgets that will let police take photos of people on the street from a few feet away and match them against a database of known offenders, the *Wall*

Street Journal reports. They could also be used up close to scan people's irises, an even more precise form of identification.

The technology has obvious value in spotting wanted criminals who previously were able to lose themselves in crowds of humanity. Whitey Bulger, who eluded the FBI for 16 years, might have been caught on one of his regular walks along the beach in Santa Monica had local cops been able to deploy a device like this. Anyone on the lam would have to fear venturing out in public, even in disguise, lest a cop unleash his Instant Crook Finder.

The question, of course, is whether the innovation may compromise privacy, for the innocent as well as the guilty. But using a camera-like device to snap random passersby poses no apparent constitutional issue, since it doesn't involve a search or a seizure any more than video surveillance cameras do.

It merely duplicates what a police officer might do with his eyes—look at individuals in public in search of bad guys whose appearance he has memorized. Iris scans, by contrast, being more invasive and possibly requiring a stop, are more akin to taking fingerprints, which police may not do without “reasonable suspicion.”

Some police advise caution in deploying the gadgets. Bill Johnson, executive director of the National Association of Police Organizations, warned against promiscuous iris scans: “Even technically if some law says you can do it, it is not worth it—it is just not the right thing to do.” BI2 chief executive Sean Mullin told the *Journal*, “Sheriffs and law enforcement should not use this on anybody but suspected criminals.”

If some erosion of privacy looms, it will probably come as much from the availability of face-recognition software to ordinary people as from nosy police. You may not worry about the cops if you've done nothing wrong, but that weird guy checking you out on the elevated platform could be a different story.

Most Americans, however, seem willing to trade some privacy for the benefits of the digital age. Those ubiquitous surveillance cameras? Few of us even notice them. And when they provide vital evidence in an ugly crime, we're grateful they're around.

Any tool employed by police has the potential for harm, from service pistols to wiretaps. The right approach for face-recognition devices is the same as for previous advances: Put them to careful use when they are needed, but don't get carried away.

Source: From “Face-recognition devices will help combat crime,” *Chicago Tribune*, July 18, 2011 © McClatchy-Tribune Information Services. All Rights Reserved. Reprinted with permission.

aspects of social justice that concern violations of the criminal law. As mentioned earlier, community interests in the criminal justice sphere demand the apprehension and punishment of law violators. At the same time, criminal justice ideals extend to the protection of the innocent, the fair treatment of offenders, and

fair play by the agencies of law enforcement, including courts and correctional institutions.

Criminal justice, ideally speaking, is “truth in action” within the process that we call the **administration of justice**. It is therefore vital to remember that justice, in the

■ criminal justice system

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

■ consensus model

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

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

On the other hand, justice practitioners, including police officers, prosecutors, judges, and corrections officials, frequently complain that their efforts to uphold the law garner unfair public criticism. The realities of law enforcement and of “doing justice,” they say, are often overlooked by critics of the system who have little experience in dealing with offenders and victims. We must recognize, practitioners often tell us, that those accused of violating the criminal law face an elaborate process built around numerous legislative, administrative, and organizational concerns. Viewed realistically, although the criminal justice process can be fine-tuned to take into consideration the interests of ever-larger numbers of people, it rarely pleases everyone. The outcome of the criminal justice process in any particular case is a social product, and like any product that is the result of group effort, it must inevitably be a patchwork quilt of human emotions, reasoning, and concerns.

Whichever side we choose in the ongoing debate over the nature and quality of criminal justice in America, it is vital that we recognize the plethora of pragmatic issues involved in the administration of justice while also keeping a clear focus on the justice ideal.²³ Was justice done, for example, in the 2005 criminal trial of pop music superstar Michael Jackson on charges of child molestation? After Jackson's death, was the investigation of his personal physician, Conrad Murray, just? Has justice been served in the case of Casey Anthony, whom authorities say killed her young daughter (the case is discussed in more detail in Chapter 9, “The Courts: Structure and Participants”)? Similarly, we might ask, was justice done in the arrest and lengthy detention of hundreds of Muslims after September 11, 2001—even though most were later released when no evidence could be found linking them to any crime?²⁴ While answers to such questions may reveal a great deal about the American criminal justice

system, they also have much to say about the perspectives of those who provide them.

American Criminal Justice: System and Functions

The Consensus Model

So far, we have described a **criminal justice system**²⁵ consisting of the component agencies of police, courts, and corrections. Each of these components can, in turn, be described in terms of its functions and purpose (Figure 1–3).

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

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

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

■ conflict model

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

■ Follow the author's tweets about the latest crime and justice news at <http://twitter.com/schmallegger>.

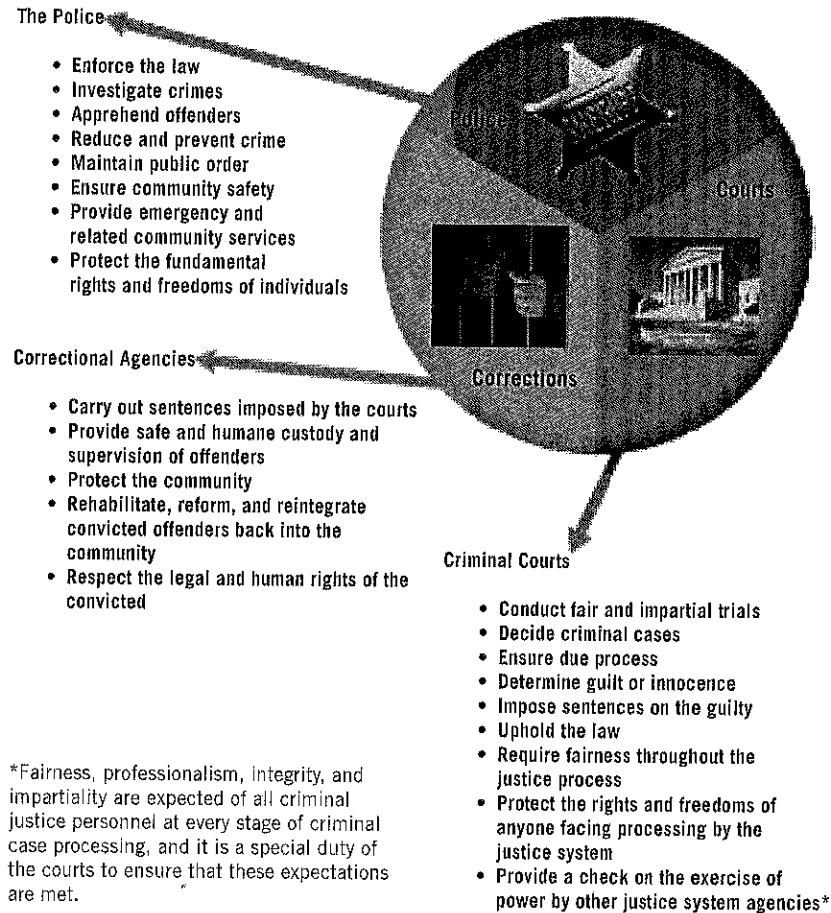


FIGURE 1-3 | The Core Components of the American Criminal Justice System and Their Functions

The Conflict Model

The **conflict model** provides another approach to the study of American criminal justice. The conflict model says that the interests of criminal justice agencies tend to make actors within the system self-serving. According to this model, the goals of individual agencies often conflict, and pressures for success, promotion, pay increases, and general accountability fragment the efforts of the system as a whole, leading to a criminal justice *nonsystem*.²⁶

A classic study of clearance rates by criminologist Jerome H. Skolnick provides support for the idea of a criminal justice nonsystem.²⁷ Clearance rates are a measure of crimes solved by the police. The more crimes the police can show they have solved, the better they look to the public they serve. Skolnick discovered an instance in which a burglar was caught red-handed during the commission of a burglary. After his arrest, the police suggested

that he confess to many unsolved burglaries that they knew he had not committed. In effect they said, "Help us out, and we will try to help you out!" The burglar did confess—to more than 400 other burglaries. Following the confession, the police were satisfied because they could say they had "solved" many burglaries, and the suspect was pleased as well because the police and the prosecutor agreed to speak on his behalf before the judge.

Both models have something to tell us. Agencies of justice with a diversity of functions (police, courts, and corrections) and at all levels (federal, state, and local) are linked closely enough for

"If we do not maintain Justice, Justice will not maintain us."

Francis Bacon

the term *system* to be meaningfully applied to them. On the other hand, the very size of the criminal justice undertaking makes

■ warrant

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

effective cooperation between component agencies difficult. The police, for example, have an interest in seeing offenders put behind bars. Prison officials, on the other hand, are often working with extremely overcrowded facilities. They may favor early-release programs for certain categories of offenders, such as those judged to be nonviolent. Who wins out in the long run might just be a matter of internal politics and quasi-official wrangling. Everyone should be concerned, however, when the goal of justice is affected, and sometimes even sacrificed, because of conflicts within the system.

American Criminal Justice: The Process

Whether part of a system or a nonsystem, the agencies of criminal justice must process the cases that come before them. An analysis of criminal justice case processing provides both a useful guide to this book and a “road map” to the criminal justice system itself. Figure 1–4 illustrates the processing of a criminal case through the federal justice system, beginning with the investigation of reported crimes. The process in most state systems is similar.

Investigation and Arrest

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

An arrest, in which a person is taken into custody, limits the arrestee’s freedom. Arrest is a serious step in the process of justice and involves a discretionary decision made by the police seeking to bring criminal sanctions to bear. Most arrests are made peacefully, but if a suspect tries to resist, a police officer may need to use force. Only about half of all people arrested are eventually convicted, and of those, only about a quarter are sentenced to a year or more in prison.

During arrest and before questioning, defendants are usually advised of their constitutional rights, as enumerated in the famous U.S. Supreme Court decision of *Miranda v. Arizona*.²⁸ Defendants are told:

(1) “You have the right to remain silent.” (2) “Anything you say can and will be used against you in court.” (3) “You have the right to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning.” (4) “If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.” (5) “If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time and may talk with a lawyer before deciding to speak again.” (6) “Do you wish to talk or not?” and (7) “Do you want a lawyer?”²⁹

Although popular television programs about the criminal justice system almost always show an offender being given a rights advisement at the time of arrest, the *Miranda* decision requires only that police advise a person of his or her rights prior to questioning. An arrest without questioning does not require a warning. When an officer interrupts a crime in progress, public-safety considerations may make it reasonable for the officer to ask a few questions

“Justice cannot be for one side alone, but must be for both.”

Eleanor Roosevelt

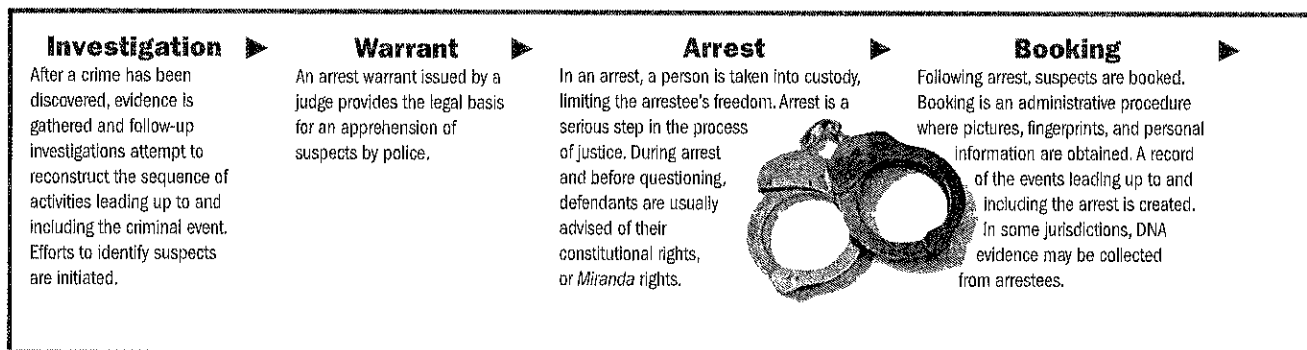


FIGURE 1-4 | The American Criminal Justice Process

■ booking

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

■ bail

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

■ preliminary hearing

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

■ probable cause

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

prior to a rights advisement. Many officers, however, feel they are on sound legal ground only by advising suspects of their rights immediately after arrest. Investigation and arrest are discussed in detail in Chapter 7, "Policing: Legal Aspects."

Booking

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

Pretrial Activities

First Appearance

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

Most defendants are released on recognizance into their own care or the care of another or are given the chance to post a bond

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

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

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

Preliminary Hearing

The primary purpose of a **preliminary hearing**, also sometimes called a *preliminary examination*, is to establish whether sufficient evidence exists against a person to continue the justice process. At the preliminary hearing, the hearing judge will seek to determine whether there is **probable cause** to believe that (1) a crime has been committed and (2) the defendant committed it. The decision is a judicial one, but the process provides

First Appearance ►

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

Preliminary Hearing ►

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

Information or Indictment ►

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

Arraignment ►

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

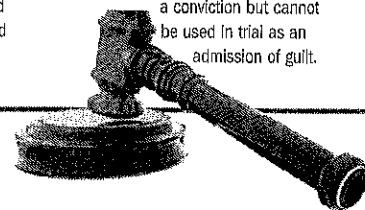


FIGURE 1-4 | (Continued)

■ information

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

■ indictment

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

■ grand jury

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

■ arraignment

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

the prosecutor with an opportunity to test the strength of the evidence at his or her disposal.

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

Information or Indictment

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

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

The grand jury system has been criticized because it is one-sided. The defense has no opportunity to present evidence; the grand jury is led only by the prosecutor, often through an appeal

to emotions or in ways that would not be permitted in a trial. At the same time, the grand jury is less bound by specific rules than a trial jury. For example, a grand jury member once told the author that a rape case had been dismissed because the man had taken the woman to dinner first. Personal ignorance and subcultural biases are far more likely to play a role in grand jury hearings than in criminal trials. In defense of the grand jury system, however, defendants who are clearly innocent will likely not be indicted. A grand jury's refusal to indict can save the system considerable time and money by preventing cases lacking in evidence from further processing by the criminal justice system.

Arraignment

The **arraignment** is "the first appearance of the defendant before the court that has the authority to conduct a trial."³⁰ At arraignment, the accused individuals stand before a judge and hear the information, or indictment, against them as it is read. Defendants are again notified of their rights and are asked to enter a plea. Acceptable pleas generally include (1) not guilty, (2) guilty, and (3) no contest (*nolo contendere*), which may result in conviction but can't be used later as an admission of guilt in civil proceedings. Civil proceedings, or private lawsuits, while not covered in detail in this book, provide an additional avenue of relief for victims or their survivors. Convicted offenders increasingly face suits brought against them by victims seeking to collect monetary damages.

Adjudication

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

Sentencing

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

Corrections

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

Reentry

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

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

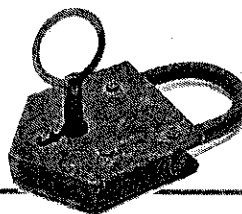


Photo sources (from left): Dave King © Dorling Kindersley; Gibson/Shutterstock; and Marc Dietrich/Shutterstock

■ trial

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

■ Follow the author's tweets about the latest crime and justice news at <http://twitter.com/schmallegger>.



A criminal defendant in a Tampa, Florida, courtroom conferring with his attorney and a Spanish language interpreter. Everyone facing criminal prosecution in the United States is guaranteed a constitutional right to due process, meaning that defendants must be afforded a fair opportunity to participate in every stage of criminal proceedings. Should due process rights extend to all offenders—even accused terrorists?

s70/ZUMA Press/Newscom

The Federal Rules of Criminal Procedure specify that “arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be given a copy of the indictment or information before he is called upon to plead.”³¹

“Everywhere across the nation, we are more concerned with ensuring that criminal activity does not repeat itself, rather than keeping criminal activity from occurring in the first place.”

Tony Fabelo, Executive Director, Texas Criminal Justice Policy Council

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

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

Adjudication

Under the Sixth Amendment to the U.S. Constitution, every criminal defendant has a right to a **trial** by jury. The U.S. Supreme Court, however, has held that petty offenses are not covered by the Sixth Amendment guarantee and that the seriousness of a case is determined by the way in which “society regards the offense.” For the most part, “offenses for which the maximum period of incarceration is six months or less are presumptively petty.”³² In *Blanton v. City of North Las Vegas* (1989), the Court held that “a defendant can overcome this presumption and become entitled to a jury trial, only by showing that . . . additional penalties [such as fines and community service] viewed together with the maximum prison term, are so severe that the legislature clearly determined that the offense is a serious one.”³³ The *Blanton* decision was further reinforced in the case of *U.S. v. Nachtigal* (1993).³⁴

In most jurisdictions, many criminal cases never come to trial. The majority are “pleaded out”; that is, they are dispensed of as the result of a bargained plea, or they are dismissed for one of a variety of reasons. Studies have found that as many as 82% of all sentences are imposed in criminal cases because of guilty pleas rather than trials.³⁵

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

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

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

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

■ consecutive sentence

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

■ concurrent sentence

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

“While the federal government occasionally may make a great advance in the direction of civil liberties, they can also make a very disastrous reversal.”

Supreme Court Justice
Robert H. Jackson

“Criminal justice cannot be achieved in the absence of social justice.”

American Friends
Service Committee

a prison term, or some combination of these. Defendants will often be ordered to pay the costs of the court or of their own defense if they are able.

“The criminal justice system is composed of a sprawling bureaucracy with many separate agencies that are largely autonomous and independent.”

Gary LaFree, Ph.D.
University of New Mexico

background, and criminal history. This report helps the judge make an appropriate sentencing decision.

Judges traditionally have had considerable discretion in sentencing, although new state and federal laws now place limits on judicial discretion in some cases, requiring that a sentence “presumed” by law be imposed. Judges still retain enormous discretion, however, in specifying whether sentences on multiple

the judge declares a mistrial. The defendant may be tried again when a new jury is impaneled.

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

Sentencing

Once a person has been convicted, it becomes the responsibility of the judge to impose some form of punishment. The sentence may take the form of supervised probation in the community, a fine,

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

charges are to run consecutively or concurrently. Offenders found guilty of more than one charge may be ordered to serve one sentence after another is completed, called a **consecutive sentence**, or may be told that their sentences will run at the same time, which is called a **concurrent sentence**.

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

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

Corrections

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

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

Reentry

Not everyone who is convicted of a crime and sentenced ends up in prison. Some offenders are ordered to prison only to have their sentences suspended and a probationary term imposed. They may also be ordered to perform community-service activities as a condition of their probation. During the term of probation, these offenders are required to submit to supervision by a probation officer and to meet other conditions set by the court. Failure to do so results in revocation of probation and imposition of the original prison sentence.

■ due process

A right guaranteed by the Fifth, Sixth, and Fourteenth Amendments of the U.S. Constitution and generally understood, in legal contexts, to mean the due course of legal proceedings according to the rules and forms established for the protection of individual rights. In criminal proceedings, due process of law

is generally understood to include the following basic elements: a law creating and defining the offense, an impartial tribunal having jurisdictional authority over the case, accusation in proper form, notice and opportunity to defend, trial according to established procedure, and discharge from all restraints or obligations unless convicted.

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

Chapter 11, "Sentencing," and Chapter 12, "Probation, Parole, and Community Corrections," deal with the practice of probation and parole and with the issues surrounding reentry. Learn more about the criminal justice process at <http://www.justicestudies.com/pubs/perspectives.pdf>. For a critical look at the justice system, visit <http://www.360degrees.org>.

Due Process and Individual Rights

The U.S. Constitution requires that criminal justice case processing be conducted with fairness and equity; this requirement is referred to as **due process**. Simply put, *due process* means procedural fairness.³⁶ It recognizes the individual rights of criminal defendants facing prosecution by a state or the federal government. Under the due process standard, rights violations may become the basis for the dismissal of evidence or of criminal charges, especially at the appellate level. Table 1-1 outlines the basic rights to which defendants in criminal proceedings are generally entitled.

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

The courts, and specifically the U.S. Supreme Court, have interpreted and clarified the guarantees of the Bill of Rights. The due process standard was set in the 1960s by the Warren Court (1953–1969), following a number of far-reaching Supreme Court decisions that affected criminal procedure. Led by Chief Justice Earl Warren, the Warren Court is remembered for its concern with protecting the innocent against the massive power of the state in criminal proceedings.³⁷ As a result of its tireless efforts to institutionalize the Bill of Rights, the daily practice of modern American criminal justice is now set squarely upon the due process standard.

TABLE 1-1 | Individual Rights Guaranteed by the Bill of Rights^a

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

^aAs interpreted by the U.S. Supreme Court.

The Role of the Courts in Defining Rights

Although the Constitution deals with many issues, what we have been calling *rights* are open to interpretation. Many modern rights, although written into the Constitution, would not exist in practice were it not for the fact that the U.S. Supreme Court decided, at some point in history, to recognize them in cases brought before it. In the well-known case of *Gideon v. Wainwright* (1963),³⁸ for example, the Supreme Court embraced the Sixth Amendment guarantee of a right to a lawyer for all criminal defendants and mandated that states provide lawyers for defendants who are unable to pay for them. Before *Gideon* (which is discussed in detail in Chapter 9, "The Courts: Structure and

"Liberty is the perfection of civil society, but still authority must be acknowledged essential to its very existence."

David Hume

Participants"), court-appointed attorneys for defendants unable to afford their own counsel were practically unknown, except in capital cases and in some federal courts. After the *Gideon*

■ crime-control model

A criminal justice perspective that emphasizes the efficient arrest and conviction of criminal offenders.

■ due process model

A criminal justice perspective that emphasizes individual rights at all stages of justice system processing.

■ social control

The use of sanctions and rewards within a group to influence and shape the behavior of individual members of that group. Social control is a primary concern of social groups and communities, and it is their interest in the exercise of social control that leads to the creation of both criminal and civil statutes.

decision, court-appointed counsel became commonplace, and measures were instituted in jurisdictions across the nation to select attorneys fairly for indigent defendants. It is important to note, however, that while the Sixth Amendment specifically says, among other things, that “in all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence,” it does not say, in so many words, that the state is required to provide counsel. It is the U.S. Supreme Court, interpreting the Constitution, that has said that.

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

“African-American men comprise less than 6% of the U.S. population and almost one-half of its criminal prisoners.”

Bureau of Justice Statistics

scope of applicability accorded to constitutional guarantees.

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

a careful and informed consideration of the facts of each individual case. Under the due process model, police are required to recognize the rights of suspects during arrest, questioning, and handling. Similarly, prosecutors and judges must recognize constitutional and other guarantees during trial and the presentation of evidence.

The dual goals of crime control and due process are often assumed to be opposing goals. Indeed, some critics of American criminal justice argue that the practice of justice is too often concerned with crime control at the expense of due process. Other analysts of the American scene maintain that our type of justice coddles offenders and does too little to protect the innocent. While it is impossible to avoid ideological conflicts like these, it is also realistic to think of the American system of justice as representative of *crime control through due process*—that is, as a system of **social control** that is fair to those whom it processes. This model of *law enforcement infused with the recognition of individual rights* provides a workable conceptual framework for understanding the American system of criminal justice.

Evidence-Based Practice in Criminal Justice

In 2011, John H. Laub, the director of the National Institute of Justice (NIJ), called for the creation of a “culture of science and research within the institute.” What that means, said Laub, “is embracing empirical data, embracing transparency and also embracing a critical perspective.” Science, Laub continued, challenges conventional wisdom and has the ability to evaluate programs and strategies to show what works in the area of criminal justice. NIJ, said Laub, should be thought of “as a science agency.” You can view Laub’s comments online at <http://nij.ncjrs.gov/multimedia/video-laub1.htm>.

Only a year earlier, in June 2010, Assistant Attorney General Laurie O. Robinson announced a new initiative at the Office of Justice Programs (OJP), an arm of the U.S. Department of Justice that funds implementation of state-of-the-art practices in criminal justice agencies across the country.⁴⁰ The initiative, which Robinson said was intended to help “criminal and juvenile justice professionals expand their base of scientific knowledge and transform research into practice,” is known as the Evidence Integration Initiative (E2I). E2I is an ongoing, OJP-wide effort to integrate science and research

The Ultimate Goal: Crime Control through Due Process

Two primary goals were identified in our discussion of this book’s theme: (1) the need to enforce the law and to maintain public order and (2) the need to protect individuals from injustice, especially at the hands of the criminal justice system. The first of these principles values the efficient arrest and conviction of criminal offenders. It is often referred to as the **crime-control model** of justice. The crime-control model was first brought to the attention of the academic community in Stanford University law professor Herbert Packer’s cogent analysis of the state of criminal justice in the late 1960s.³⁹ For that reason, it is sometimes referred to as *Packer’s crime-control model*.

The second principle is called the **due process model** because of its emphasis on individual rights. Due process is intended to ensure that innocent people are not convicted of crimes; it is a fundamental part of American criminal justice. It requires

CJ | CAREERS

Careers in Criminal Justice

Throughout this book, you will find a number of “CJ Career” boxes showcasing individuals currently working in the justice field. Those boxes highlight job opportunities within various kinds of criminal justice agencies, and provide brief interviews with people employed in the field. A list of some of the many kinds of criminal justice career opportunities available today is provided in this table.

Arson/fire investigator	Police dispatcher
Bailiff	Police officer
Bounty hunter	Police sniper
Computer forensic technician	Private detective
Correctional officer	Private investigator
Correctional treatment specialist	Private security manager
Court clerk	Probation officer
Court reporter	Railroad police officer
Crime laboratory analyst	Sheriff
Crime prevention specialist	Social worker
Crime scene investigator	State trooper
Crime scene technician	Substance abuse counselor
Criminal investigator	Surveillance officer
Criminalist	SWAT team member
Criminologist	Transit Authority police officer
Criminology researcher/research associate	U.S. Air Force Office of Special Investigations (OSI) special agent
Deputy sheriff	U.S. air marshal
Electronic crime scene investigator	U.S. Army criminal investigator (CID)
Federal Bureau of Investigation (FBI) forensic accountant	U.S. Army military police officer
Federal Bureau of Investigation (FBI) special agent	U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) special agent
Federal Protective Service (FPS) officer	U.S. Bureau of Indian Affairs (BIA) correctional officer
Fish and game warden	U.S. Bureau of Indian Affairs (BIA) drug enforcement special agent
Forensic nurse	U.S. Bureau of Indian Affairs (BIA) investigator
Forensic psychologist	U.S. Bureau of Indian Affairs (BIA) police officer
Forensic science technician	U.S. Bureau of Reclamation Security, Safety, and Law Enforcement officer
Fraud investigator	U.S. Coast Guard (USCG) compliance officer
Gaming surveillance officer	U.S. Coast Guard (USCG) sea marshal
Highway patrol officer	U.S. Customs and Border Protection (CBP) special agent
Information security manager	U.S. Department of Agriculture (USDA) compliance officer
Judge	U.S. Department of Agriculture (USDA) criminal investigator
Juvenile probation officer	U.S. Department of Agriculture (USDA) investigative attorney
K-9 officer	U.S. Department of State Civilian Response Corps team member
Lawyer/attorney	U.S. Department of State diplomatic security officer
Legal clerk	U.S. Department of Veterans Affairs (VA) police officer
Loss prevention specialist (retail)	U.S. Drug Enforcement Administration (DEA) special agent
Magistrate	U.S. Fish and Wildlife Service, Division of Refuge Law Enforcement officer
Motorcycle officer	U.S. Immigration and Customs Enforcement (ICE) special agent
National Security Agency (NSA) police officer	U.S. Internal Revenue Service (IRS) special agent
Native American tribal police officer	U.S. Marine Corps criminal investigator
Nuclear security officer	U.S. Marine Corps military police officer
Paralegal	U.S. marshal
Park ranger	U.S. Navy criminal investigator (NCIS)
Parole officer	U.S. Navy law enforcement officer
Penologist	U.S. Navy security officer
Police detective	U.S. Secret Service special agent
	U.S. Secret Service uniformed division officer
	U.S. Transportation Security Administration (TSA) screener
	United States Park Police officer
	University/college campus police officer

evidence-based practice

Crime-fighting strategies that have been scientifically tested and are based on social science research.

criminology

The scientific study of the causes and prevention of crime and the rehabilitation and punishment of offenders.

throughout the agency and the work it sponsors. “Most importantly,” Robinson said, “we are working to move evidence into practice by funding evidence-based programs.”

As the word is used here, *evidence* does not refer to evidence of a crime but means, instead, findings that are supported by studies. Hence, **evidence-based practice** refers to crime-fighting strategies that have been scientifically tested and are based on social science research. Scientific research has become a major element in the increasing professionalization of criminal justice, both as a career field and as a field of study. As Robinson recognized, there is a strong call today within criminal justice policy-making circles for the application of evidence-based practices throughout the justice field.

In an initiative that strongly supports evidence-based practice, the National Institute of Justice⁴¹ unveiled a new website, <http://crimesolutions.gov>, in 2011 to help researchers and citizens assess the effectiveness of state and local anticrime initiatives. Federal officials described the site as a “single, credible, online resource to inform practitioners and policymakers about what works in criminal justice, juvenile justice, and crime victim services.” Based on experts’ assessment of the evidence and studies, programs included on crimesolutions.gov are rated as either “Effective”, “Promising”, or “No Effects”.



Assistant U.S. Attorney General Laurie O. Robinson. In 2010, Robinson announced creation of the Evidence Integration Initiative (E2I) at the Office of Justice Programs within the U.S. Department of Justice. What are evidence-based practices?

As Chapter 5, “Policing: History and Structure,” of this text points out, evidence-based practices can be expected to play an expanded role in policymaking and in the administration of criminal justice in the years to come. For additional insight into some of the issues facing criminal justice policymakers today, visit the Smart on Crime Coalition at <http://www.besmartoncrime.org> and read the Coalition’s 2011 recommendations to Congress and the president.

The Start of Academic Criminal Justice

The study of criminal justice as an academic discipline began in this country in the late 1920s, when August Vollmer (1876–1955), the former police chief of the Los Angeles Police Department (LAPD), persuaded the University of California to offer courses on the subject.⁴² Vollmer was joined by his former student Orlando W. Wilson (1900–1972) and by William H. Parker (who later served as chief of the LAPD from 1950 to 1966) in calling for increased professionalism in police work through better training.⁴³ Largely as a result of Vollmer’s influence, early criminal justice education was practice oriented; it was a kind of extension of on-the-job training for working practitioners. Hence, in the early days of the discipline, criminal justice students were primarily focused on the application of general management principles to the administration of police agencies. Criminal justice came to be seen as a practical field of study concerned largely with issues of organizational effectiveness.

By the 1960s, however, police training came to be augmented by criminal justice education⁴⁴ as students of criminal justice began to apply the techniques of social scientific research—many of them borrowed from sister disciplines like **criminology**, sociology, psychology, and political science—to the study of all aspects of the justice system. Scientific research into the operation of the criminal justice system was encouraged by the 1967 President’s Commission on Law Enforcement and Administration of Justice, which influenced passage of the Safe Streets and Crime Control Act of 1968. The Safe Streets Act led to the creation of the National Institute of Law Enforcement and Criminal Justice, which later became the National Institute of Justice (NIJ). As a central part of its mission, NIJ continues to support research in the criminal justice field through substantial funding for scientific explorations into all aspects of the discipline, and it funnels much of the \$3 billion spent annually by the U.S. Department of Justice to local communities to help fight crime. Now, almost 100 years after its beginnings as a field of study, criminal justice