Criminal Justice: Introduction and Overview

CRIMINAL JUSTICE: THE ORIGINS OF A YOUNG DISCIPLINE
CRIMINAL JUSTICE AS A SYSTEM
MODELS OF THE CRIMINAL JUSTICE SYSTEM
STAGES OF THE CRIMINAL JUSTICE PROCESS
ENTRY INTO THE SYSTEM
PROSECUTION AND PRETRIAL SERVICES
ADJUDICATION AND SENTENCING
CORRECTIONS

DIVERSION
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THE CHALLENGE OF GLOBALIZATION
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NOTES

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—Paris Hilton arrested for cocaine possession
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—Madoff pleads guilty to Ponzi scheme
—Transgender murder, hate crime conviction a first
—Manhunt for gangster who tortured 5 year old boy for 5 months

- You cannot hide from it. There is no way of escaping it. Read about it online or in a newspaper. Watch the evening news. Listen to the radio. Criminal justice is a continuing drama with real-life players, set in small towns and large cities, disintegrating ghettos and affluent suburbs, bedrooms, and boardrooms. The actors in the drama are young and old, victims and perpetrators, strangers and loved ones. They were born here or abroad. They bleed, feel physical and emotional pain, and often die. Others live a life filled with the pain of losing a child, a parent, or a sibling; the loss of innocence; the shame of neglect or the guilt of having neglected. Many do no more than survive in a cell or a yard surrounded by razor wire and concrete walls. Some wait decades before they are put to death.

- And there are those who make their careers by tediously and often heroically policing the streets; objectively and dispassionately judging the innocent and guilty; and bravely or fearfully controlling the incarcerated. Unfortunately, there are also those who enforce our laws unfairly and with bias and who discriminate consciously or unconsciously in assessing guilt in sentencing those adjudged guilty and brutally disciplining the condemned.

- The human drama of criminal justice touches every one of us, whether we are an unfortunate victim, a chronic offender, a frightened inner-city dweller, or a rookie correctional officer.
Criminal Justice: The Origins of a Young Discipline

As we know, policy and legislation in matters of criminal justice are often the result of the publicity given to emotion-charged media reports. Such reports are more likely to promote political careers than evidenced-based crime control. While references are made to the human drama that crime creates every day, this book is about understanding the drama in terms of the social and behavioral science of criminal justice, and its implications for policy.

Criminal justice is a young but increasingly sophisticated and demanding discipline that seeks to answer difficult questions about crime and justice. Research in criminal justice is intended to reform policy, legislation, and the practice of crime control.

Before there was a special field called criminal justice, most legislation and policy rested on a foundation of hunches, folk wisdom, political expediency, media pressure, and emotion, which collectively has been called the “consensus” of the community. Today we live in an era when all of this is changing, with increasing speed. Attorneys general, state and federal legislative committees, chiefs of police, and others have begun to listen to experts on criminal justice, and more and more governmental initiatives are based on criminal justice research findings and evaluations. The field of criminal justice is increasingly influenced by an emerging evidenced-based movement in the social sciences. This movement calls for systematic reviews of criminal justice policies and programs that look for solid empirical support for what works, what doesn’t work, and what looks promising.

This development is not merely of national relevance. With globalization, advances in communications and commerce, transportation, and information technology have turned separate nations and regions into a global village in which every society is affected by every other society. Independence has been replaced by interdependence, and that has had an enormous impact on crime and the effectiveness of the criminal justice response.

There are, as yet, far too few criminal justice specialists to undertake the studies needed for the creation of effective and humane crime control measures. Nevertheless, the discipline is growing and is critically important. A generation ago there were no students majoring in criminal justice. Today there are several hundred thousand! Of course, not all of these majors are seeking or advancing their careers in the field. Many students take these courses because they cover such a wide range of issues that are of concern to all those who are interested in the problem of crime, or are committed to the idea of justice. Courses on criminal justice are interesting, compelling, and important.

So, let us begin this book with a definition of the concept of criminal justice. Criminal justice is the sum total of society’s activities to defend itself against the actions it defines as criminal. These activities reflect a broad range of social, legal, economic, political, and moral interests. Today in the United States, criminal justice functions as a system, run by professionals and increasingly assessed, evaluated, and advanced by social scientists. To be successful and effective, the criminal justice system must be perceived as having authority by the community that it serves. The perception of authority and its legitimacy require confidence in the criminal justice system. The police, courts, and correctional agencies strive for the public’s confidence (see Table 1.1).

Creating a Criminal Justice System

For centuries, everywhere in the world, criminal justice was a fragmented, chaotic process or event. Law enforcers would round up suspects for offenses, real or imagined, in violation of laws enacted for the supposed good of all the people but without any basis in the real needs of the society. Judges would adjudicate as many or as few defendants as their time, or the capacity of their courtrooms, would permit. Those convicted would then be turned over to administrators of the penal system. Sometimes these administrators would have little to do; at other times they would be swamped with convicts and would literally have to farm them out (to prison farms) or sell them as slaves on prison galleys.
<table>
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NOTE: Sample sizes vary from year to year; the data for 2009 are based on telephone interviews with a randomly selected national sample of 1,011 adults, 18 years of age and older, conducted June 14–17, 2009. The “don’t know/refused” category has been omitted; therefore percents may not sum to 100. For a discussion of public opinion survey sampling procedures, see Appendix 5.

*Response volunteered.
*Less than 0.5%.

SOURCE: Table constructed by SOURCEBOOK staff from data provided by The Gallup Organization, Inc. Reprinted by permission.
Despite various reform efforts in policing, in court administration, and especially in corrections, there was no systematic reform effort in the United States until 1929, when former Attorney General George W. Wickersham was instructed to conduct a nationwide study of prevailing conditions in the administration of justice. The findings of his commission (1929–1931), known as the Wickersham Report, were devastating: There was little justice in the criminal justice system; there was not even a system; most of those running the various agencies were untrained. Scholarship in the field was nonexistent.¹ But the Great Depression of the 1930s and the subsequent war years made it impossible to improve criminal justice. Only in the 1960s, a decade of civil disturbances on a wide spectrum of social issues, did the movement for reform again gain momentum. In part this was due to the realization by an increasing number of Americans that many of the rights and opportunities that the Constitution provided on paper were in fact not granted equally or made accessible to all citizens. It was clear, for example, that people of color continued to be oppressed and disenfranchised, and that women were not afforded the same rights and privileges as men. Citizens charged with crimes were denied the due process guarantees that the Constitution provided. The U.S. Supreme Court, under the leadership of Chief Justice Earl Warren, squarely addressed these problems and in case after case ruled that constitutional guarantees must be honored.²

In Gideon v. Wainwright (1963), for example, the Supreme Court mandated that every criminal defendant—in whatever court—is entitled to the assistance of counsel (legal advice).³ In a series of related decisions, culminating in Miranda v. Arizona (1966),⁴ the Court placed the burden on the police to warn arrestees and those in custody of their Fifth Amendment right to remain silent and their Sixth Amendment right to have counsel appointed. The cost of not advising arrestees of their rights includes having the defendant’s statements excluded from evidence at trial, including any and all evidence obtained as a result of those statements. Miranda was a rude awakening for law enforcement agencies all across the country. Overzealous and inadequately trained officers found it difficult to cope with the demands the Supreme Court imposed. Improved recruitment procedures training, standards of integrity, and professionalism were needed.

The Supreme Court also touched the field of corrections by granting prisoners rights they had not had before, thereby creating new responsibilities for correctional administrators and staff. These developments led to the need for intensive training of corrections officers.

Congress began to realize that the Supreme Court’s demands required a new type of professional, well selected and highly trained, to run the criminal justice enterprise, which needed to become an integrated system of criminal justice with component parts. The police, courts, and correctional agencies had to operate in a coordinated fashion.

President Lyndon B. Johnson realized this objective in establishing the President’s Commission on Law Enforcement and Administration of Justice (1967),⁵ and urged congressional passage of the Omnibus Crime Control and Safe Streets Act (1968),⁶ which established the federal Law Enforcement Assistance Administration (LEAA). The report of the President’s Commission clearly defined the tasks of criminal justice and in so doing identified criminal justice as an approach, a governmental aim, and—indeed—a science, leaving it to the LEAA to implement a national strategy.

The President’s Commission, with Nicholas DeBelleville Katzenbach as chair, a former attorney general, included some of the foremost scholars in law and justice who produced voluminous reports on the workings of criminal justice, often probing what works and what does not and making sound recommendations.⁷ The field and “system” of criminal justice was born.

**Criminal Justice as a System**

The term “criminal justice system” is so familiar that you have probably never questioned whether or not there is in fact a “system.” The components of a system are meant to form a unified whole. The steps and processes of a system are meant to be interdependent, and its agencies and actors are supposed to serve a common purpose. Are these truly the characteristics of the criminal justice system? Do the police, courts, and corrections operate in this way? Are their actions interactive, interdependent, and unified?
These questions have challenged criminal justice specialists for years. Some see the criminal justice system as a production process—a process where “raw materials” are screened and refined (Figure 1.1). The raw materials of the criminal justice process are the criminal suspects. Specialists from three segments of the system are actively involved in processing this raw material: police, courts, and corrections. As the raw material moves along in the production line, it changes in character. A suspect becomes an accused, an accused becomes a defendant, a defendant becomes a convicted offender, and a convicted offender becomes a probationer or inmate. Finally, in almost every case, an inmate becomes an ex-convict.

But the criminal justice “production process” differs, for example, from a typical cell phone manufacturing plant in a number of important respects. First, cell phones are assembled in a series of interconnected production lines and supervisors oversee the entire manufacturing process. Product and process quality are critical features of the production line. Unfortunately, the criminal justice process lacks the same oversight, coordination, and quality assurance. In the field of criminal justice, there is no equivalent to a top management team that is responsible for ensuring quality throughout the system.

Second, the raw material in criminal justice is human, typically reluctant to participate, and experiencing feelings of helplessness or loss of control and perhaps even anger. Because this is not the processing of the component parts that compose a cell phone, criminal justice agencies must use forms of social control (e.g., coercive processes, including physical detention) to ensure that the processing of human beings will be efficient, orderly, and ultimately just and effective.

Third, the criminal justice system must maintain legitimacy in the community. Law enforcement officers, judges, and correction officials must have credibility and standing in the community. The criminal justice process is open to public inspection, criticism, and reform. The vast majority of manufacturing facilities are closed to public scrutiny. Consumers must wait until the latest cell phone is displayed in a retail store or marketed online.

Fourth, the “dropout” rate in the criminal justice system is much higher than in the manufacturing process. There are many diversion points along the line; very few of the original “raw materials” reach the end. Cell phone manufacturers would go out of business with so many products diverted from the production line!
The production line analogy has prompted some researchers to propose innovative conceptual models. Samuel Walker argues that the straight-line production analogy fails to consider that criminal cases receive differential treatment, both in the press and in the criminal justice system. He depicts criminal justice processes in the shape of a wedding cake (see Figure 1.2). At the top are the celebrated cases that receive disproportionate press coverage and public scrutiny. As we move down the layers of the cake, the seriousness of the crimes decreases, as do the penalties. At the lowest layer, misdemeanors, there is much less concern for procedural rights.

The wedding cake model is not an alternative explanation of the system. Rather, it shows that we are dealing with perhaps three distinct processes: The most refined and ideal one is found at the top of the cake (dispositions of highly visible cases); the least refined and most hurried one lies at the bottom (misdemeanor dispositions).

As you think about the production line and wedding cake models, consider one last problem: Cell phone components at different stages of assembly, ride on an automated conveyor belt and are bar-coded and quality inspected. Criminals, however, do not ride through an automated criminal justice system, guided by the artificial intelligence of the latest robotics. Rather, human beings make decisions at every stage of the criminal justice process—decisions that affect the fate of another human being. In short, the criminal justice system is not a sophisticated piece of technology; it is a human system.

Models of the Criminal Justice System

The Goals

The prevention of crime is often discussed as one of the ends or goals of the criminal justice system. When a law enforcement officer separates quarreling lovers, when a probation officer guides a client away from a bar, when a judge orders the arrest of a drug dealer, each acts to prevent crime. It is easy to conclude, then, that the criminal justice system is dedicated to preventing crime. But critics will immediately counter with statics proving that the system does a poor job of this, and that it even fosters crime in a variety of ways: by criminalizing conduct in the first place, by raising the statistics, by labeling individuals as “criminals” (thus creating criminal careers), by making inmates unfit for life in a free society, and so on. This is not the place to argue how well the system works. Nor is it the place to point to other options for the prevention of crime, like better secondary schools, equal access to economic opportunities, and a loving caretaker. Here we simply note that crime prevention is a recognized, although sometimes disputed, goal or end of the criminal justice system.

The other major goal or end is said to be justice itself. That sounds a bit like the chicken and the egg—the goal of criminal justice is justice. Yet this is what proponents argue: The criminal justice system can do no more than deliver criminal justice. The end product must be fair and deserved, and at each stage of the process justice must also be applied and delivered. (See “The Innocence Project,” 21st Century Challenge.)

The Means

Herbert Packer, in The Limits of the Criminal Sanction, has made an important contribution to identifying the methods by which criminal justice seeks to achieve its goals. He presents two approaches for the criminal justice process: the due process model and the crime control model. The due process model requires strict adherence to the Constitution. The focus is on the accused and on his or her rights. The focus is also on providing some balance to the power and authority of the state. Quite simply, due process protections under the Constitution force the state to fulfill its burden of proving its case against the accused. The crime control model focuses on the efficiency and effectiveness of the process. The criminal process exists to investigate crimes, screen suspects, detain dangerous defendants, and secure convictions of guilty parties. This should be done with speed and finality. Each agency at every stage of the process assumes the responsibility for dealing efficiently with the criminal case.
Packer describes the due process model as an obstacle course. Each stage creates barriers to the successful prosecution of an accused, whereas the crime control model resembles an assembly line. Efficiency, productivity, and reliability are its hallmarks, with constitutional rights taking second place to the desirability of processing offenders quickly and successfully.

This identification of two different approaches explains many of the differences in policymakers' views. The two models are the practical and theoretical extremes of how the process can be conducted. They neither explain the goals at the end of the criminal justice system nor pinpoint the operational ideal, which is to operate a criminal justice system under the rule of law.

Wayne R. LaFave and Jerold H. Israel identify eight goals for the ideal criminal justice system:

1. Establishing an adversarial system of adjudication. Neutral decision makers must make decisions in a forum where opponents can present interpretations of facts and law in a light most favorable to their case.

2. Establishing an accusatorial system of prosecution. In such a system the state bears the burden of proving the guilt of the accused.

3. Minimizing erroneous convictions. Protecting an accused from erroneous conviction is an important goal of the process.

4. Minimizing the burdens of accusation and litigation. The process must reduce the likelihood that innocent people will be accused of crimes.

5. Providing lay participation. The criminal justice process must not be left entirely to government officials. Lay participation can ensure objectivity and independence.

6. Respecting the dignity of the individual. The criminal process must ensure respect for privacy and autonomy, as well as freedom from physical and emotional abuse.

7. Maintaining the appearance of fairness. Ensuring fairness in the process is not enough. There must also be an appearance of justice and fairness to the participants and the public.

8. Achieving equality in the application of the process. Ensuring the just treatment of an accused is not enough. The criminal justice process must also ensure that like cases are treated alike.

**Stages of the Criminal Justice Process**

In 1967 the President's Commission on Law Enforcement and the Administration of Justice characterized the criminal justice system as an orderly process comprising five interrelated phases with four paths. Every criminal case may potentially flow through all the phases, though most do not. In the first phase, called entry into the system, citizens play an important role by bringing criminal events to the attention of the police. The police investigate the case and identify a suspect. The judiciary issues search and arrest warrants.

The second phase, prosecution and pretrial services, is dominated by prosecutors, who prepare the charges; grand juries, who indict defendants; and judges, who conduct a series of hearings, including the initial appearance of an arrested person at court and a preliminary hearing.

The third phase, adjudication, begins with an arraignment, at which the officially accused person pleads to (answers) the formal charges (indictment or information) against him or her, and ends with a judgment of guilty or not guilty. This phase is conducted by a judge, with or without a jury. The prosecutor, representing the state and people, and the defense lawyer play the most active roles.

The fourth phase consists of sentencing and sanctions. In most cases, in most states, jurors do not participate in sentencing. The judge imposes the sentence, usually after hearing a presentence investigation (PSI) report prepared by a probation officer. Prosecutors, defense lawyers, and defendants have their say, and in many states victims do as well.
What is the sequence of events in the criminal justice system?

Entry into the system

Prosecution and pretrial services

Refusal to indict

Grand jury

Information

Felonies

Information

Misdemeanors

Unsuccessful diversion

Diversion by law enforcement, prosecutor, or court

Weaved to criminal court

Formal juvenile court processing

Informal processing diversion

The Criminal Justice Process


The fifth and final phase, corrections, is in the hands of the executive branch of government. Its Department of Corrections executes the sentence imposed by the court. Even though courts defer to correction officials in matters of inmate care, custody, and control, courts require them to comply with the law.

The revised flowchart first devised by the President’s Commission shows four different paths through the system (Figure 1.3). The first path is for major crimes, or felonies (the top layers of Walker’s wedding cake); the second is for minor crimes, or misdemeanors (the bottom layer of the cake). The paths differ. Misdemeanors normally require no grand jury indictment and no trial by jury, and the sanctions imposed are jail sentences of one year or less or fines, rather than imprisonment (meaning confinement in a prison for more than a year). A third path is for petty offenses, with summary proceedings resulting in minor sanctions, usually fines. A fourth path is for juveniles. It resembles
the paths for adults in many respects, except that the proceedings are less formal and rarely include juries.

As the flowchart indicates, the traditional paths through the criminal justice system do not end at a single exit; they lead to many exits. An accused person’s path through the system is not fixed or predestined. The direction that path takes, and its end, depend on the actions of several decision makers, including the accused. Let’s see how this works.

**Entry into the System**

**Decisions by Victims**

The mere fact that a crime has taken place does not, in and of itself, activate the criminal justice system. A series of decisions—some complex, others simple—must be made to activate the machinery. For a criminal act to be known to the police, initiating the process, the act must first be perceived by an individual (the car is not in the garage where I left it). The act must then be defined or classified as one that places it within the jurisdiction of the criminal justice system.
(a theft has taken place), and it must be reported to the police. Once the police are notified, they classify it and often redefine what may have taken place (a youngsters has taken the car without parental permission) before recording the act as a crime known to the police (Figure 1.4).

Victims of criminal acts have been called the “most influential” of all the decision makers, or the “principal gatekeepers” of the entire criminal justice process. For many offenses, except for the victim’s report of the crime to the police, the system would never become involved. Early studies of the role of victim reporting reveal that approximately 95 percent of all crimes known to the police come from victim initiatives.

But surveys also reveal that victims often do not report offenses to the police (Table 1.2). Some researchers attribute this failure to the victims’ concern for their present and future safety. Others have found that feelings of self-blame and loss of personal control may inhibit reporting. One recent study has suggested that much of the nonreporting of minor victimization may be accounted for by efforts on the part of the victim to engage in self-help—that is, by ignoring it, talking it out, engaging in interpersonal violence, or receiving insurance proceeds. The literature on victim reporting is certainly clear on one issue—reasons for reporting or not reporting vary according to the crime committed. Consider why victims of rape may fail to report. Recent victimization surveys reveal that 35 percent of victims consider it a “private/personal matter,” 18 percent are of the opinion that nothing can be done because they cannot prove they have been victimized, and 16 percent fear reprisals.

**Decisions by the Police**

Once information about a possible crime has come to the attention of the police, a decision has to be made whether to investigate the case. The police cannot possibly investigate every complaint. Because of heavy caseloads in large municipalities, for example, police emphasize the investigation of major crimes. Petty larcenies are rarely investigated because of the sheer bulk of the cases and the shortage of police detectives.

**What Do You Think?**

In recent testimony before the Senate Judiciary Committee of Congress, FBI Director Robert Mueller made the case that the bureau’s domestic surveillance guidelines are not targeting suspects based on race.

But the American Civil Liberties Union disagrees. It recently filed requests to FBI field offices in 29 states and Washington, D.C., to reveal records of the bureau’s data collection on race and ethnicity.

The ACLU argues that the FBI operations guide encourages the creation of maps of ethnic-oriented businesses, lifestyle characteristics, behaviors, and cultural traditions in communities with dense ethnic populations.

The concern is that the FBI endorses the use of race-based criteria that will only lead to unconstitutional racial profiling by law enforcement.

Other factors are also on the minds of police when they decide to make an arrest or to seek an arrest warrant, or to drop an investigation entirely. They consider, for example, public ambivalence about the significance of a given criminal law, the probability that a witness will or will not cooperate, and whether an arrest is too harsh a response to a particular act. The police may choose from a series of alternatives to arrest ranging from outright release to release with a citation to release of a youngster into the custody of parents or guardians. It is worth considering that (1) not all those known to have committed a crime are arrested; (2) after arrest a “desk officer” may change the charge or go so far as to reject the arrest; and (3) investigating officers may, at any point in their investigation, consider the arrest too weak and therefore reject it.

**Legal Standards**

What legal criteria determine when and whether a suspect can be brought into the criminal justice system? When may the system do something to or about a suspect? As we will see in later chapters, the Constitution, as interpreted by the Supreme Court, provides some of these criteria.
## Table 1.2 Estimated Percent Distribution of Reasons for Reporting Personal and Property Victimization to Police By Type of Crime, United States, 2007 *

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<td></td>
<td>Crimes of Violence</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total&lt;sup&gt;a&lt;/sup&gt;</td>
<td>Total&lt;sup&gt;b&lt;/sup&gt;</td>
</tr>
<tr>
<td>Number of reasons for reporting victimizations&lt;sup&gt;d&lt;/sup&gt;</td>
<td>2,269,600</td>
<td>2,145,290</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Total</td>
<td>26.6</td>
<td>27.5</td>
</tr>
<tr>
<td>Stop or prevent this incident</td>
<td>2.7</td>
<td>2.8</td>
</tr>
<tr>
<td>Needed help due to injury</td>
<td>4.7</td>
<td>3.5</td>
</tr>
<tr>
<td>To recover property</td>
<td>0.2&lt;sup&gt;c&lt;/sup&gt;</td>
<td>0.3&lt;sup&gt;c&lt;/sup&gt;</td>
</tr>
<tr>
<td>To collect insurance</td>
<td>18.4</td>
<td>19.1</td>
</tr>
<tr>
<td>To prevent further crimes by offender against anyone</td>
<td>8.4</td>
<td>8.3</td>
</tr>
<tr>
<td>To punish offender</td>
<td>7.5</td>
<td>8.0</td>
</tr>
<tr>
<td>To catch or find offender</td>
<td>6.1</td>
<td>6.1</td>
</tr>
<tr>
<td>To improve police surveillance</td>
<td>3.6</td>
<td>3.7</td>
</tr>
<tr>
<td>Duty to notify police</td>
<td>4.0</td>
<td>3.5</td>
</tr>
<tr>
<td>Because it was a crime</td>
<td>13.7</td>
<td>13.2</td>
</tr>
<tr>
<td>Some other reason</td>
<td>3.3</td>
<td>3.4</td>
</tr>
<tr>
<td>Not available</td>
<td>0.7&lt;sup&gt;c&lt;/sup&gt;</td>
<td>0.6&lt;sup&gt;c&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

*Note: The National Crime Victimization Survey (NCVS) is conducted annually for the U.S. Department of Justice, Bureau of Justice Statistics by the U.S. Census Bureau. These estimates are based on data derived from a continuous survey of a representative sample of housing units in the United States. For the 2007 survey, approximately 73,650 residents in 41,000 households were interviewed; each household was interviewed twice during the year. Response rates were 92% of eligible housing units and 86% of eligible individuals interviewed households. In 2007, the total U.S. population age 12 and older was 250,344,670. The total number of households in the United States in 2007 was 114,509,539. The NCVS is based on interviews with victims and therefore cannot measure murder.

Users should note that the 2007 NCVS estimates are comparable to 2005 and previous years but not to 2006 estimates due to changes in methodology implemented for the 2006 NCVS. For survey methodology and definitions of terms, see Appendix D.

<sup>a</sup>Detail may not add to total because of rounding.

<sup>b</sup>Includes crimes of violence and purse snatching/pocket picking not listed separately.

<sup>c</sup>Includes rape and sexual assault not listed separately.

<sup>d</sup>Some respondents may have cited more than one reason for reporting victimizations to the police.

<sup>e</sup>Estimate is based on 10 or fewer sample cases.


The Constitution states that no one may be "seized" (taken into the criminal justice process) except on a warrant issued on the basis of probable cause of having committed a crime. For almost two centuries, the probable cause requirement was deemed to establish the point at which potential guilt is clear enough to take a person into custody. Ideally this determination is made by a judge or magistrate on the basis of the testimony of witnesses (including the police), delivered under oath, that a given suspect has committed a given crime. In practice, the probable cause decision is frequently made by a law enforcement officer at the scene of the crime. The Supreme Court has ruled that the police have probable cause to take a suspect into custody when "the facts and circumstances within their knowledge and of which they [have] reasonable trustworthy information are sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offence."17

This definition relies on vague terms such as "reasonable trustworthy information" and "prudent man." Nevertheless, arrests made without probable cause or without a warrant that has been issued on sworn testimony before a judge and based on a determination of probable cause are considered unreasonable seizures of the person and in violation of the Fourth Amendment. Evidence taken in the course of an illegal arrest may be ruled inadmissible and barred from use at a trial.
The practice of finding inadmissible evidence that is illegally obtained is called the **exclusionary rule**. This is a judicially created rule of law designed to deter the police from engaging in illegal practices and to keep the courts from condoning such conduct. The Supreme Court ruled in 1969, in *Mapp v. Ohio*, that all state courts in the country must apply the exclusionary rule as a matter of constitutional law. The ruling has been hailed by civil libertarians, who view it as a necessary safeguard against police misconduct, and strongly attacked by conservatives, who argue that now an arbitrary measure “handcuffs” the police.

These two positions illustrate the fundamental issues present in a Fourth Amendment analysis—that is, the need for effective law enforcement versus the need to protect individual rights and liberties. Conservatives call for unhampered law enforcement and liberals ask for the protection of rights. Research, as we will see in later chapters, suggests that law enforcement has not been seriously hindered by the exclusionary rule.

Recent Supreme Court decisions have strengthened police powers. Faced with mounting public concern over street crime in the 1960s, the Supreme Court was under pressure to legitimize prudent police action for the purpose of preventing a specific crime about to be committed, even when an officer had no probable cause to make an arrest. In 1968, the Supreme Court acknowledged the propriety of police intervention when evidence against a suspect falls short of probable cause. If a police officer has **reasonable suspicion** that a person might be engaged in the commission of a crime, the officer is authorized to stop the person, ask questions, and frisk him or her to make sure that the suspect is not armed and dangerous.

### The Right to Counsel

Assume that a police officer or a magistrate has made the decision to arrest a suspect, and a suspect has in fact been arrested. What happens now?

Immediately after the arrest, when the person is in custody, the arresting officer has the duty to recite the **Miranda warning**, which explains the rights of an arrestee. The Miranda warning derives from one of the Supreme Court’s most important rulings, which lay down the standards of procedural fairness mandated by the Fourth, Fifth, and Sixth Amendments to the Constitution. If the warning is not given, a judge may exclude from evidence presented at trial any incriminating statement the arrestee may have made, as well as any evidence that resulted from it. Once the suspect has been taken into custody, the processing of the event and the offender begins with booking, the taking of fingerprints and mug shots (identifying photographs), the filling out of forms, and detention in a holding pen.

In the case of *Gideon v. Wainwright* (1963), the Supreme Court laid down the rule that every person charged with a crime that may lead to incarceration has the right to an attorney and that the state must pay for that service if the defendant cannot afford to do so. This case, which involved an indigent Florida defendant, established the universal right to free defense counsel for the poor. It has been implemented nationwide by the provision of assigned counsel, public defenders, contract counsel, or legal aid attorney. As we will see in later chapters, however, these defense lawyers, under tremendous caseload pressures, often suggest plea bargains. So their decisions, too, have a considerable impact on the direction and outcome of the process.

### Prosecution and Pretrial Services

During the prosecution and pretrial services phase, prosecutors and judges make the decisions. Far fewer persons go through this phase than enter the system. Many arrested persons have already been diverted out of the system by this stage; others will be diverted at this stage, when charges are dropped or cases dismissed. Charges may be dropped for many reasons. Perhaps the evidence is not strong enough to support probable cause. Perhaps the arrested person is a juvenile who should be dealt with by the juvenile justice system or a mentally disturbed person who requires hospitalization. Perhaps the judge believes that justice is best served by compassion.
The Judicial Decision to Release

An arrested person must promptly be taken before a magistrate, a judge at the lowest level of the judicial hierarchy, who makes a determination that probable cause exists. The magistrate will use a standard of probable cause that is a bit tougher than that of the police officers. For one thing, the magistrate has more time to view the evidence, to reflect, and then to decide than the police officer had at the scene of the crime. The magistrate must also repeat the Miranda warning and then decide whether to release the defendant on bail or on percentage bail (the defendant deposits with the court only a certain percentage of the bail that has been set); to release on recognizance or ROR (no bail is required on condition that the defendant appears for trial and remains law-abiding in the meantime); to release the defendant into someone’s custody; or to detain the defendant in jail pending further proceedings.

In making the decision to release, judges or magistrates are strongly influenced by prosecutors’ views as to whether a given defendant is a safe risk for release. In most states, release criteria have been enacted into law. Historically, however, the only criterion for release on bail has been whether the defendant can be relied on to be present for the next court appearance. In practice, judges tend to rely on such factors as the gravity of the charge and the probability that the defendant may commit a crime or harass victims if released. The District of Columbia and a few other jurisdictions permit “preventive detention” when there is a high probability that the defendant may commit a crime if released. Despite the difficulty of predicting human behavior, the Supreme Court has ruled that it is constitutional to deny bail to a person who is considered dangerous.

The Preliminary Hearing

The next step in the process in many states is the preliminary hearing, a preview of the trial that takes place in court before a judge. At this hearing, the prosecution must produce enough evidence to convince the judge that the case should proceed to trial or to the grand jury. In many jurisdictions the preliminary hearing is officially considered another probable cause hearing, but what emerges is more than probable cause. In this proceeding, conducted with some of the rights given the accused at trials—such as the cross-examination of witnesses and the introduction of evidence under stringent rules—enough evidence must be produced to bind the defendant over to the grand jury; in other words, to constitute reasonable inference of guilt or reasonable grounds to believe the defendant is guilty. In the preliminary hearing, in which the defense need not present any evidence, the defendant (and the defense attorney) have the advantage of finding out how the prosecution is developing its case. The defense attorney’s decision—whether to enter a plea or to engage in plea negotiations—depends very much on what happens during the preliminary hearing.

The Decision to Charge and to Indict

No matter what the result of the preliminary hearing, the decision to charge the defendant with a crime rests with the prosecutor. Even in states where a grand jury must determine whether a defendant is to be indicted for a felony, it is the prosecutor who decides in the first place whether to place a case before the grand jury. The prosecutor also decides what evidence to present to the grand jury and how to present it.

The grand jury is one of the oldest institutions of the Anglo-American criminal justice system. It has been abolished in the United Kingdom, but in most American states it has been retained for serious (felony) cases to screen the prosecution’s evidence, in secret hearings, and decide whether the defendant should be formally charged with a crime.

Federal grand juries are composed of sixteen to twenty-three citizens, and an indictment in the federal criminal process requires the concurrence of at least twelve grand jurors. State rules are similar. The indictment must rest on evidence indicating a prima facie case against the defendant. A prima facie case exists when there seems to be sufficient evidence to convict the defendant. The case may still be defeated by evidence at trial that raises preliminary hearing
Preview of a trial held in court before a judge, in which the prosecution must produce sufficient evidence for the case to proceed to trial.

grand jury
Panel of sixteen to twenty-three citizens who screen the prosecution's evidence, in secret hearings, to decide whether someone should be formally charged with a crime.

prima facie case
Case in which there is evidence that would warrant the conviction of the defendant unless otherwise contradicted; a case that meets evidentiary requirements for grand jury indictment.
THOMAS J. NESTEL, III,
CHIEF OF POLICE,
UPPER MORELAND
TOWNSHIP (PA)

Introduction
When Islamic extremists attacked America on September 11, 2001, I was a captain with the Philadelphia Police Department. As the commanding officer of the 25th District, I was responsible for managing more than 200 police officers who patrolled the section of Philadelphia suffering from the most murders, violent crime, and drug-related offenses. In this particular area of the city, a day did not pass without someone being victimized by a violent criminal. The Philadelphia Police Department was a formidable force when stacked up against the criminal element. The attacks on the World Trade Center and the Pentagon prompted a review of the department's ability to thwart terrorism as well as it suppressed street crime.

Philadelphia in the Post 9/11 Period
The changes that occurred within this major metropolitan police department over the next six years were nothing short of phenomenal. Detectives were dedicated to joint terrorism task forces with federal law enforcement entities; the entire system of intelligence gathering was overhauled; hundreds of officers were trained and issued specialized emergency response equipment; SWAT teams prepared for countering multiple simultaneous assaults; bomb disposal technicians trained in high threat locations such as Israel and Columbia; information sharing portals were established with local, state, and federal agencies; carbines and shotguns were obtained for deployment with patrol officers; and the historically self-sufficient and isolated Philadelphia Police Department initiated regional terrorism prevention and preparation programs. The department extended its focus beyond the geographical boundaries of the city.

Suburban Policing in the Post 9/11 Period
While the Philadelphia Police Department engaged in a period of enlightenment and encouraged a regional response to preventing and responding to terrorist acts, the gaggle of suburban police and fire departments continued operating as fiefdoms. The Commonwealth of Pennsylvania boasts more than 1,100 police departments and many more fire departments. The majority of police departments in the state have fewer than 20 sworn members. Fire company coverage is even more intense. There is a half-square mile jurisdiction with two fire companies. Another one-square-mile jurisdiction has a fire company with five apparatus. A seven-square-mile jurisdiction is protected by five separate fire companies. The many police and fire departments each have their own leadership, administrative element, facilities, equipment, and political influences.

As the big cities finally began to practice inclusion with their smaller suburban partners, the multiple jurisdictions surrounding Philadelphia took baby steps toward establishing a true force multiplier status in the terrorism prevention and response. The control of Homeland Security funds assisted in pushing departments in the direction of functioning as a powerful single unit. The initial funding stream was swift and enabled departments to purchase equipment and provide for training. After some high profile examples of inappropriate spending, the Homeland Security funding process changed and each state became responsible for the expenditures of the federal monies. To streamline the distribution of the funds, the Commonwealth of Pennsylvania established regional workgroups to manage the evaluation and approval of purchase requests.

The regional workgroups encouraged police departments to build cohesive bonds between
jurisdictions to qualify for funding. The bonds began to form by way of regional Special Weapons and Tactics (SWAT) teams and Major Incident Response Teams (MIRT). The natural progression of regionalizing specialized police elements provided hope that further collaboration would occur between the many police departments surrounding Philadelphia. Unfortunately, close working relationships and the sharing of information continues to lag among the many smaller departments in Pennsylvania.

Success in terrorism prevention demands that law enforcement participates in the unbridled sharing of information and resources. Additionally, homeland security experts assert that an all-hazards approach will be the most successful strategy to disrupt the flow of money and supplies to terrorist elements. For instance, enforcement efforts directed at credit card fraud or illegal narcotics distribution may net arrests of potential terrorists or support elements of terrorist groups. In Philadelphia, arrest information is shared between patrol districts and is available to the surrounding jurisdictions. The suburban departments do not share data on reported crime nor are they likely to engage in collaborative investigation of criminal events.

The average police chief for a suburban police department is responsible for preventing and solving crime in his/her own jurisdiction. The fact that crime has risen dramatically in a neighboring municipality would elicit no response from the unaffected chief if his department, nor would the affected chief request assistance from other departments. While in Philadelphia and other major cities the Comstat model highlights reported crime, no such forum or medium exists for reporting crime in the suburbs.

The simple act of responding to 9-1-1 calls is muddied by the feudom mentality existing in the suburbs surrounding the major cities. A business on a street which serves as the geographical border between jurisdictions could have a robbery in progress that would receive yes response only from the jurisdiction in which the business technically resides. Officers from the adjoining jurisdiction would not respond to the robbery report unless the other department formally requested help. Presently, requesting assistance from a neighboring department is considered an indication that the department is unable to provide the basic level of service to its taxpayers. Since some chiefs believe that their departments possess the best trained and most capable police officers in the area, requesting neighboring resources could possibly expose their residents to substandard law enforcement. Another factor in the unwillingness of suburban police departments to collaborate in daily policing operations is the ever-present concern that consolidation of departments will minimize the need for as many chiefs. Institutional arrogance and a strong sense of self-preservation may severely interfere with effective and efficient suburban policing.

The Future for Suburban Policing and Terrorism Prevention

Luckily, suburban areas tend not to be target-rich environments for terrorists determined to attack America. The regions with the most likely infrastructure risks have dramatically improved their intelligence gathering, attack prevention, response proficiency, and recovery processes. Large cities became successful at sharing information and collaborating on terrorism prevention due to the practice received by engaging in crime control. The methods and processes used to address crime are easily applied to terrorism prevention and response. Since the crime rates tend to be low in suburban areas, it is likely that improvement on sharing and collaborating will occur as a result of other reasons. The most likely reason will be control of funding distributions based on the need to display regional training and response plans. Another contributing reason that improvement will occur hinges on the decrease in staffing levels within the suburban departments. Since spikes in crime and potential terrorist activity require the assignment of additional resources, agencies already operating at minimum staffing will need the assistance of other departments.

The age of cloistered police operations has ended. Progress is being made in the blurring of geographical boundaries and collaboration between individual departments. Eventually, policing will have solid two-way paths for information sharing and resource deployment regardless of the department's location. Urban and suburban law enforcement agencies will continue to learn from each other and adopt the best practices model for management of personnel and deployment of counter-terrorism forces.
NIGHT COURT—GATEWAY TO THE CRIMINAL JUSTICE SYSTEM

What do film director Quentin Tarantino, a children’s services supervisor, actor Daniel Baldwin, the chef at a famed New York restaurant, Ke Chanthy, an air-quality inspector, ex-football player Mark Gastineau, and the mother of an eleven-year-old girl who sold sex to pimps have in common? All were arraigned recently in Manhattan Criminal Court on charges ranging from endangering the welfare of a child (the children’s services supervisor) to grand larceny (the flamboyant celebrity chef). Federal law requires that all those arrested in New York City must appear before a Manhattan Criminal Court judge within 24 hours to be “arraigned.”

Manhattan Criminal Court is one of the most elaborate criminal justice systems in the world—a system that processes tens of thousands of defendants each year with resources that have been called no more than scarce and courtroom conditions that often approach squalor. The court is like a dingy convenience store, open 24 hours a day, 365 days a year, serving the poor and rich alike with consistently slow and often mediocre service.

All those arrested in Manhattan are promptly arraigned; some are then released due to insufficient evidence to support the crime charged. Others are placed on bail or released on their own recognizance, and, finally, the poor, the disabled, and those charged with the most serious of all crimes are sent to Rikers Island (a jail/detention facility) to await their next court appearance.

In recent years, the two arraignment parts of Manhattan Criminal Court have become a favorite place to take a date, as well as a popular vacation destination for German, Dutch, and Spanish tourists who grow tired of the Statue of Liberty, Central Park, the Empire State Building, or visiting the site where the “Twin Towers” used to be. Surprising as it may be, the court is listed in Frommer’s “Guide to New York” as a free attraction worth seeing. Buses full of foreign tourists arrive on Friday and Saturday evenings for a sneak peak at this unique style of American justice, a style made popular by the hit NBC sitcom Night Court. This is no coincidence. The night sessions of Manhattan Criminal Court bear the same name. Veteran court clerks take pride in the fact that NBC based this highly rated show on its arrangement part.

Wide-eyed tourists to Night Court sit among prostitutes, drug dealers, witnesses, relatives, and victims. Some stare at the poor that line the pews of the courtroom. A few visitors doze off in a deep sleep, while many watch the arrangement judge dispense justice, case after case, in intervals that rarely exceed five minutes. Bailiffs, clerks, legal aid lawyers, assistant district attorneys, defendants, and株們 move around the

reasonable doubt or constitutes a legal excuse. Since that is a strong requirement, most indicted defendants are inclined to make a plea bargain at this point. And most of those convicted of a felony go to prison. In 2006, state courts convicted over 1,132,290 adults of a felony. Sixty-nine percent were sentenced to some form of incarceration (jail or prison).}

What Do You Think?

The ACLU conceives of itself as a guardian of our nation’s liberty, ensuring that the courts, legislatures, and communities “defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country.” To what extent do the following positions taken by the ACLU address this mission?

Capital Punishment

The ACLU Capital Punishment Project is fighting for the end of the death penalty by supporting moratorium and repeal movements through public education and advocacy. We are engaged in systemic reform of the death penalty process and case-specific litigation highlighting some of its fundamental flaws.

Drug Law Reform

The ACLU Drug Law Reform Project’s goal is to end punitive drug policies that cause the widespread violation of constitutional and human rights, as well as unprecedented levels of incarceration.
The court is like a busy convenience store, open 24 hours a day.

Bustling in a furious pace. With acoustics that might sound, even the most experienced of lawyers find it difficult if not impossible to follow the proceedings seated in the back of the courtroom.

In the tunnel of these two courtrooms, tourists, young couples out for a romantic evening, members of the press, and veteran court watchers are offered only two guarantees. First, those with even the slightest sensitivity will leave surprised if not shocked by the sheer number of criminal cases in a city that today appears as safe as it was thirty years ago. By the end of any one eight-hour session in Night Court, as many as 200 defendants will either go back on the streets of New York City or take the long bus ride to Rikers Island with new dates for a hearing or trial.

Second, even the most hardened New Yorkers will walk away from Night Court with the feeling that "there but for the grace of God go I." This gateway to New York City's court and correctional system is nothing less than a frightening example of an overloaded and outdated criminal justice production line. Overworked and underpaid judges pass judgment on pimps, drug dealers, arsonists, and wife beaters without expression or emotion. Belatedly, legal aid lawyers are often introduced to their indigent clients several minutes before beginning their efforts at zealous representation in open court. The better judgment of assistant district attorneys is frequently held hostage to a historically overcrowded correctional system that due to court order, can afford to warehouse only the most serious of offenders.

Foreign visitors armed with travel guides to this fine city will always seek bailupating evening entertainment. To some, this real-life crime drama is better than a prime time network sitcom. Fortunately, many see Night Court for what it really is.

Questions for Discussion
1. How different is the gateway to the criminal justice system in your hometown or city?
2. Do you believe that prosecutors in New York generally consider the problems of its overcrowded court and correctional systems in deciding how aggressively to pursue a criminal case?

Free Speech

Freedom of speech is protected in the First Amendment of the Bill of Rights and is guaranteed to all Americans. Since 1920, the ACLU has worked to preserve our freedom of speech.

Immigrants’ Rights

The Constitution guarantees the fundamental rights and civil liberties of every person in this country. Upholding the rights of the politically disenfranchised is vital; when the government has the power to deny legal rights and due process to one group of people, it puts all our rights in danger.

National Security

Illegal government spying, indefinite detention without charge or trial and government-sponsored torture programs after 9/11 transcended the bounds of law and our most treasured values in the name of national security. There has never been a more urgent need to restore individual freedoms, due process rights, and our system of checks and balances.

Prisoners’ Rights

The ACLU's National Prison Project is dedicated to ensuring that our nation's prisons, jails, juvenile facilities, and immigration detention centers comply with the Constitution, federal law, and international human rights principles, and to addressing the crisis of over-incarceration in the U.S. Since 1972, the Project has fought unconstitutional conditions of confinement through public education, advocacy, and successful litigation on behalf of more than 100,000 men, women, and children.
As soon as the grand jury has indicted, or the prosecutor has made a decision to charge the defendant and has informed defense counsel accordingly, the stage is set for plea bargaining. This process is part of the Anglo-American system, under which a trial always proceeds in accordance with the prosecution’s charge and the defendant’s response to it: a plea of not guilty.

**Plea Bargaining**

Every criminal defendant exercises some power over the way his or her case is to be conducted. A defendant who pleads guilty admits all the facts alleged in the accusation, whether it is an *indictment* or an *information*, and all the legal implications of those facts. He or she admits to being guilty as charged, and no trial is needed. A defendant who pleads not guilty denies all the facts and their legal implications and forces the government (the prosecutor) to prove guilt in a criminal trial.

The idea arose centuries ago that both prosecution and defense could benefit if both sides were to agree on a plea that would save the government the expense of a trial and the defendant the risk of severe punishment if he or she were found guilty. By the mid-twentieth century it had become common practice in the United States for prosecutors and defense attorneys to discuss the charges against criminal defendants and to agree on a reduced or modified plea that would spare the state the cost of a trial and guarantee the defendant a sentence more lenient than the original charge warranted.

At first such plea negotiations were quite secret and officially denied. In fact, when accepting a plea, the judge would always inquire whether the plea was freely made, and the defendant would always answer yes, when in fact the plea represented a bargain reached by the defendant and the prosecutor together.

The practice of plea bargaining is widespread today. Nevertheless, the process of plea bargaining invites injustices. Defendants who are legally not guilty, for example, may feel inclined to accept a plea bargain in the face of strong evidence. Other defendants may plead guilty to a lesser charge even though the evidence was obtained in violation of constitutional guarantees. In some cases, by “overcharging” (charging murder instead of manslaughter, for example), a prosecutor may coerce a defendant into pleading guilty to the lower charge, in effect forcing him or her to relinquish the right to a jury trial. Of course, if no plea bargain is agreed upon, the case will be set for trial.

**Adjudication and Sentencing**

Defendants may choose to be tried by a judge (a bench trial) or by a jury (consisting usually of twelve citizens, but as few as six in some states for lesser offenses). In a jury trial the judge rules on matters of law, instructs the jurors about relevant legal questions and definitions, and tells them how to apply the law to the facts of the case.

A defendant may prefer a jury trial or a bench trial for any number of reasons. When a defense is based largely on the application and interpretation of technical legal propositions, a judge is likely to be the preferable choice. If the defense appeals more to sympathy and emotion, a jury is likely to be the better choice.

If a defendant has not been diverted out of the system, has pleaded guilty, or, after a plea of not guilty, has been tried and convicted, the next step in the process is the imposition of a sentence. In some states, with respect to some crimes, the statute leaves the sentencing judge
no choice: A mandatory sentence is imposed by law. But in most states judges still have some choice. The judge must decide whether to place the defendant on probation and, if so, on what type of probation; whether to impose a sentence of incarceration and for what length of time; whether to impose a minimum or maximum term (or both) or to leave the sentence open-ended (indeterminate) within statutory limits; whether to impose a fine and how much; whether to order compensation for the victims; whether to impose court costs; and so on.

In making sentencing decisions, judges consider the offenders’ personal characteristics, their past, their problems, and their needs. The principal guidance and advice come from probation departments. These are part of the court system, and they operate under the court’s supervision. To help the court find the most appropriate sentencing decision, the probation department supplies the judge with a presentence investigation report on every convicted offender.

To avoid bias, which could result in different sentences for more or less similar offenses and offenders, policymakers and researchers have developed **sentencing guidelines**. These guidelines assign specific values to the important sentencing criteria—principally, the seriousness of the offense and, possibly, the existence of a prior record and other factors. Such guidelines, used in both state and federal trial courts, are meant to assist judges in selecting the length and type of punishment warranted by the crime.

**Corrections**

The correctional sector of the criminal justice system is composed of institutions with different objectives, degrees of security, and treatment programs. In making its placement decision, the correctional staff takes into consideration such factors as security requirements, the availability of treatment and rehabilitation programs, and organizational needs. All inmates are placed into categories for the purposes of placement. In some institutions, given overcrowded conditions, placement is a function of availability. In others, factors such as offense severity and psychopathology are considered.

Let us look now at what sentencing options are available to the court and what correctional implications the court’s judgment may have.

**Community Decisions**

If the offense is not serious and the offender is a good candidate for reform, the judge may decide on a **community** sentence. The judge may place the convicted offender on **probation**, the release of a prison-bound offender into the community, usually with specified conditions (e.g., that the convict must not commit another offense, must not leave the county without permission, must make payments to the victim, or must attend meetings of Alcoholics Anonymous, and so on).

More recently, states have experimented with a variety of additional options, called **alternative sanctions**. These options include placement in restitution programs, intensive supervision programs (ISPs), shock incarceration, and regimented discipline programs (RDPs), which are also called boot camps.

**Institutional Decisions**

Suppose the court has decided a defendant’s crime is too serious to allow for a sentence to be served in the community. In that case, an institutional sentence will be imposed. But while the judge may express his or her preferences, it is now entirely up to the executive department of government, the Department of Corrections, to decide on the placement of the convicted offender.

These decisions may be very difficult and have far-reaching consequences, yet they are often made with little information beyond that contained in the presentence report. Classifications of security level or status, for example, may have to be made primarily on the basis of the offense of which the person stands convicted. Predicting the success of educational programs, vocational training, or any other treatment program is also difficult. It is often easier to place inmates in the jobs that keep an institution running. For example,
inmates may do clerical and classification work, or they may work in the library, the infirmary, the laundry, or the kitchen. But even these placement decisions require considering other factors, especially safety. A host of objective classification measures have been devised that offer some hope for increasing the predictive validity of inmate classification.

Release and Parole Decisions

One of the most important decisions in the entire criminal justice process is when to release an inmate from an institution. There are two types of release from the correctional system. One is release at the expiration of a sentence. Correctional administrators have little choice in this case, although the expiration point depends to some degree on administrative decisions. In the course of disciplinary proceedings, for example, correctional administrators must decide whether an inmate will lose “good-time” benefits because of violations of the institution’s rules. Good-time benefits, which have the effect of reducing prison sentence lengths, are given to inmates for institutional behavior that conforms to rules and regulations. An inmate who violates the rules loses the benefit of the early release that comes with good behavior. Today, release decisions are further complicated by policy decisions made at higher governmental levels or by judges, who frequently order prisoners released to make space for new ones in an effort to relieve prison overcrowding.

The second way an inmate may be released is through parole. In its original and ideal form, parole was a benefit bestowed on a prisoner for good behavior in prison and a promise of good conduct after discharge. Success on parole was to be achieved with the aid of a parole officer. As parole officers’ caseloads increased in the 1960s, however, that ideal faded, until today parole is simply an early release from prison, based on the decision of a parole board. Parole boards make these decisions with very little information. Conduct within the institution, however, has been demonstrated to relate to behavior outside. Some progress has been made in the development of devices to predict success on parole. Nevertheless, the decision remains difficult. The federal system and a growing number of states have abolished parole, and others are using it with steadily declining frequency. (Several special forms of parole, such as intensive supervision parole with and without electronic monitoring, are discussed in subsequent chapters.)

Diversion

Throughout the criminal justice process, the number of persons within the system steadily decreases. This decrease is usually reported as the attrition, or mortality rate.

As we have seen, there are three reasons for the enormous amount of diversion from the system at various stages. First, decision makers may, for a variety of reasons, deem a case inappropriate for further processing. If they did not do this, the system would become clogged, dispositions would be unreasonably delayed, and the flow would stop. Moreover, this exercise of discretion keeps an already punitive system from becoming overly punitive. Prosecutorial discretion and type of offense charged are often related. Second, in many situations decision makers have no choice but to dismiss a case. At each stage of the process the authorities must meet a legal standard of proof. When that standard is not met, the case leaves the criminal justice process. These standards become progressively stricter as the case (and the person) proceeds through the various stages. And third, many cases are simply lost, for example, by failure of the accused to appear on a selected court date.

Now that we have discussed the criminal justice process for adult offenders, we shall describe the processes designed for juveniles and for violators of international law.

The Challenge of Juvenile Justice

Approaches to Juvenile Delinquency

How are we to react to children who commit acts that we call criminal when committed by adults?
The American public and its politicians are confused as to what to do about juvenile delinquency, and especially juvenile violence: Should we get tough, or ever tougher, or should we seek to nurture and guard the nation's youngest, to socialize them to become productive citizens?

There is a historical reason for this confusion. Two thousand years ago, the Romans developed conflicting approaches, and we have used both ever since. One of these approaches is punitive: Children above age seven are potentially subject to criminal liability if their actions show that they were aware of the wrongfulness of their action.

The greatest of English legal scholars, Sir William Blackstone (1723–1780), suggested in his 1758 lectures that if a child of tender years had killed another, evidence that he hid the body might be sufficient to prove he understood the wrongfulness of his action. By age seven, children are socialized enough to attend school. But children below age fourteen may still not be held accountable for their actions if they lack the maturity to realize the wrongfulness of their conduct.

The other ancient root is that of concern for children. It was expressed by the legal concept of *pars pro patriae* (parent of the country) which to the Romans meant that the emperor, and in medieval times the monarch, could exercise *patra potestas* (parental power) *in loco parentis* (in the place of a parent deemed unable or unworthy) over children in trouble or in danger of becoming wayward. The power of the monarch was eventually transferred to the state, as represented by the juvenile court judge. We find its traces in the concepts used today in juvenile court proceedings.

*In re Gault: A Landmark Case*

There has been a see-saw battle between these two approaches—the punitive and the caring—ever since. The caring approach gained the upper hand in 1899, when the first American juvenile court was established in Chicago. This approach found adherents all over the world. The switch back to the punitive approach occurred in the 1960s when, faced with
rising juvenile crime rates, there was a swing toward a get-tough approach. The spark that fueled the switch was the case of Gerry Gault.

Gerald Francis Gault, then aged fifteen, was accused of having made obscene phone calls. (He never admitted the charge, nor was it ever proven.) The sheriff—a police officer—arrested Gault. The same officer, now acting as a jailer, kept him in custody. The same officer, now acting as a prosecutor, presented charges against Gault in juvenile court. Gault’s family was never properly notified. There was no witness against him, yet the juvenile court ordered him to be confined in a juvenile correctional facility for six years. (An adult could have been punished for this offense, if proven, by a fine of $5 to $50 and a two-month jail term.)

Everything seemed to have gone wrong in the Gault case. A single official had acted as police officer, social worker, prosecutor, and jailer. Having been refused the constitutional right to be confronted by a witness, to receive counsel, to be given notice of the charges, and to be protected against self-incrimination, and having been committed to a multiyear detention sentence (in lieu of perhaps a warning or a fine), the conclusion was inescapable that a young man was being confined for a crime that was never proven, properly or otherwise.

When the case finally reached the U.S. Supreme Court, the Court decided that juveniles in juvenile court must be accorded the same constitutional rights available to adults charged with crime. These rights include:

- The right to receive adequate and timely notice of the charges.
- The right to counsel.
- The right to be confronted by and to examine witnesses.
- The privilege against self-incrimination.32

The Supreme Court’s decision sent mixed signals. Juvenile court judges were worried that this might mean the end of the benevolent/paternalistic approach to dealing with delinquents. For the politicians, the Gault decision raised another issue: If we are to give juvenile offenders the same rights and privileges as adult offenders, why don’t we hold them to the same responsibilities and duties? Thus began the effort to adjust juvenile court proceedings to the standards of adult criminal proceedings, and the parallel effort to subject more and more juveniles to adult criminal processes.

**Treating Juveniles as Adults**

The first step was an initiative by the Institute of Judicial Administration at New York University and the American Bar Association calling for juvenile proceedings to be based on the seriousness of the offense committed.33

The states responded with four strategies.34

1. Lowering the age at which juveniles are subject to adult criminal liability to as low as ten years
2. Reducing the upper age at which juveniles are subject to original juvenile court jurisdiction to as low as fifteen years of age
3. Excluding certain serious offenses from the jurisdiction of juvenile courts altogether
4. Investing prosecutors with the power to direct file juveniles for trial in adult criminal courts (mostly for serious offenses)

In many states, prosecutors are empowered to bring charges against juveniles directly in criminal court, bypassing the juvenile justice system altogether. The net effect has been an erosion of juvenile court jurisdiction and the transfer of more and more juvenile offenders into the already overburdened adult criminal justice system. How far down on the age ladder should we go? Not so long ago, in Chicago, two young boys, seven and eight years old, stood charged with having murdered an eleven-year-old girl by striking her with a rock, suffocating her with her underwear, molesting her, and then dragging her body into nearby underbrush. They then stole her bicycle.35 At their arraignments they occupied themselves with drawing crayon pictures of houses and hearts, oblivious to their situation, their attorneys and prosecutors, the court, the trial, life and death. As it turned out, the two little boys are probably innocent of the crimes.
### Table 1.3
Estimated Percent Distribution of U.S. Resident Population and Persons Arrested for All Offenses By Age Group, United States, 2008

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Estimated U.S. Resident Population</th>
<th>Persons Arrested</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percent</td>
</tr>
<tr>
<td>Total</td>
<td>304,059,724</td>
<td>100.0%</td>
</tr>
<tr>
<td>14 years and younger</td>
<td>61,125,728</td>
<td>20.1%</td>
</tr>
<tr>
<td>15 to 19 years</td>
<td>21,514,358</td>
<td>7.1%</td>
</tr>
<tr>
<td>20 to 24 years</td>
<td>21,058,581</td>
<td>6.9%</td>
</tr>
<tr>
<td>25 to 29 years</td>
<td>21,333,743</td>
<td>7.0%</td>
</tr>
<tr>
<td>30 to 34 years</td>
<td>19,597,822</td>
<td>6.4%</td>
</tr>
<tr>
<td>35 to 39 years</td>
<td>20,993,781</td>
<td>6.9%</td>
</tr>
<tr>
<td>40 to 44 years</td>
<td>21,507,349</td>
<td>7.1%</td>
</tr>
<tr>
<td>45 to 49 years</td>
<td>22,879,874</td>
<td>7.5%</td>
</tr>
<tr>
<td>50 to 64 years</td>
<td>21,492,191</td>
<td>7.1%</td>
</tr>
<tr>
<td>65 years and older</td>
<td>18,583,445</td>
<td>6.1%</td>
</tr>
<tr>
<td>60 to 64 years</td>
<td>15,102,736</td>
<td>5.0%</td>
</tr>
<tr>
<td>65 years and older</td>
<td>38,869,716</td>
<td>12.8%</td>
</tr>
</tbody>
</table>

**NOTE:** These data were compiled by the Federal Bureau of Investigation through the Uniform Crime Reporting (UCR) Program. On a monthly basis, law enforcement agencies report the number of offenses that become known to them in the following crime categories: murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. Arrest statistics are compiled as part of this monthly data collection effort. Participating law enforcement agencies are instructed to count one arrest each time a person is taken into custody, notified, or cited for criminal infractions other than traffic violations. Annual arrest figures do not measure the number of individuals taken into custody because one person may be arrested several times during the year for the same type of offense or for different offenses. A juvenile is counted as a person arrested when he/she commits an act that would be a criminal offense if committed by an adult. This table presents data from all law enforcement agencies submitting complete reports for 12 months in 2008 (Source, Table 38, Data Declaration). Because of rounding, percents may not add to 100.


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For which they had been arraigned. Their "confessions" had been the result of suggestive police interrogation, and their innocence was corroborated by semen stains on the victim's underwear, which could not possibly have come from a seven- or eight-year-old. Subsequent investigation indicated that the two boys may well have thrown stones at their little victim, but that it was a sex deviant who committed a sexual crime on the body of the little girl.

The magnitude of juvenile delinquency and crime is revealed in Table 1.3. In 2008, law enforcement agencies made over 2.6 million arrests of persons under age twenty. So a significant percentage of those arrested continue to travel the road of juvenile justice, albeit a road paved with due process guarantees.

### Changing the Juvenile Justice Process

The steps in the juvenile process (Figure 1.5) are comparable to those of criminal proceedings, though there are some differences in terminology and function:

- While in criminal cases the process normally starts with an arrest, juveniles are actually “taken into custody.”
- Booking procedures for juveniles are called “intakes.”
- In criminal proceedings, charges are filed to start the process. Juvenile proceedings start with a petition.
- Adults charged with a crime may be bailed or jailed; juveniles are normally released into the custody of their parents before an adjudicatory hearing.
- Adults charged with a crime face a trial; juveniles face an adjudicatory hearing.
- Adults may be found guilty of crimes charged; juveniles may be determined to be delinquent.
FIGURE 1.5  The Juvenile Justice Process


There are many divergent calls to change the processes by which juveniles charged with crime are dealt with. Some want the juvenile court to be replaced by either a family court or the placement of all juvenile offenders under adult criminal court jurisdiction. Initiatives to abolish the juvenile court system do not hold much promise. Adult criminal courts are notoriously inept at dealing with juvenile offenders, especially the very young.

The statistical evidence indicates that juvenile violent crime peaked in 1993 and has been declining ever since. While the arrest rates for other offenses with which juveniles are charged have shown divergent patterns, the overall juvenile share of violent crime has been decreasing since 1994—more than seven years in a row (Figure 1.6). And there is no evidence that system changes had anything to do with it. But even if they had, many experts believe there is something wrong with the systems we have developed for dealing with juvenile offenders. Children are not simply young adults, and the transformation of an infant into an adult is a complicated process. The challenge for the future, as far as juvenile justice is concerned, is to take this transformational process into account, adjust our procedures accordingly, and develop separate yet integrated approaches for preventing juvenile delinquency on the one hand, and dealing with juvenile offenders on the other. This calls for an open-minded approach that must rely on research in psychology and child development. In all probability, a new approach will emerge, with the following ingredients:

- not to prematurely interrupt childhood;
- not to throw children into the adult world of criminal justice;
- not to subject children to punishment in the adult sense of this term; but rather,
- to protect and promote childhood;
- to discourage detrimental (adult) values from intruding on childhood;
- to respond to youthful deviance in a graduated manner that respects crucial developmental differences as a child matures from infancy, to prepubescence, to pubescence, to young adulthood, to maturity.
The Challenge of Globalization

On December 21, 1988, Pan Am flight 103, en route from Frankfurt, Germany, to New York, filled with Americans on their way home to celebrate the holidays, exploded in mid-air. The debris fell on Lockerbie, Scotland. There were 270 casualties in passengers, crew, and people on the ground. From the outset it was clear that this was no accident. But it took investigators three years to assemble evidence sufficient to satisfy an American grand jury that a crime, or crimes, had been committed.

The dimensions of this case were broad and the details complex: An American airliner, en route from Frankfurt, Germany, explodes over a Scottish (United Kingdom) town. Of those killed, 189 were Americans and the others had a multitude of nationalities, including of course British (those on the ground). Since the impact of the crime was in Scotland, the Scottish police force was the principal agency for investigation. U.S. federal law enforcement agencies joined their Scottish colleagues. But American officers cannot just descend on Scotland. They have no “jurisdiction,” no power or authority, there. Such cooperation requires agreement, either preexisting or specially achieved.

The joint Scottish–U.S. investigation quickly spread all over the world. Leads to Iranian-backed Syrian terrorist groups led nowhere. But searches on the ground in Lockerbie revealed fragments of a bomb timer. Photographs obtained in Senegal (Africa) led investigators to intact bomb timers in Togo (Africa). These, it turned out, had been manufactured in Switzerland. Some of them had been sold to Libyans. Further investigation established that the bomb (and its timer) had been placed in a shirt (the fragments of which were found at Lockerbie) that had been purchased in Malta (Mediterranean island nation) by the station agent of the Libyan airlines.

An indictment for murder and conspiracy (193 counts) was issued on Friday, November 15, 1991, against three Libyans—after investigators had conducted 14,000 interviews and extended their investigation to fifty countries (about 25 percent of the world’s countries).

The Libyan government was requested to surrender those indicted to the United States for trial. Despite backing of the American request by the United Nations Security Council, the Libyan government refused and was placed on an embargo: Libya became a political and economic outlaw. Under this pressure Libya finally agreed to surrender the indictees for trial by a special international tribunal, composed of Scottish judges, sitting in
The U.N. General Assembly has recently passed a resolution to establish a special session on the $\text{...}$

**Figure 1.6**

**Juvenile Arrest Rates for Violent Crimes and Property Crimes**

- **Arrests per 100,000 juveniles**
- **Violent Crime Index**
- **Property Crime Index**

- **Legend**:
  - Increase 9% between 2000 and 2008
  - Year and is down 5% since 2006

The juvenile violent crime arrest rate fell for the second consecutive

**The Universe of Crime and Justice**
Globalization

Indeed, one of the greatest challenges to criminal justice in this century is posed by globalization. What is globalization? Look at it this way: When people lived primarily in villages (some of us still do) daily life centered on the village—food growing, handicrafts, trade, social life, and, indeed, policing. When villages grew into towns and into large metropolitan areas, these new large settlements defined most aspects of life—including the task of keeping the peace. States and nations then combined many smaller communities, and they became the boundaries of social life, economic life, and law enforcement and criminal justice. Development did not stop there: Over the last several decades, we have witnessed the expansion of commerce, the arts and entertainment, travel and communications, and disease control and crime control to the entire globe. With the click of the mouse you can communicate with people in Peru and Poland, India and Italy, or anyplace in the world. What once was a ten-month journey from San Francisco to Tokyo now takes ten hours by jetliner or less than ten seconds in cyberspace.

Globalization has seemed to come out of nowhere. No one person, or group of persons, has designed or directs it, and there is no director general of the Internet. Yet all nations and their citizens have become globally interdependent. Export and import figures demonstrate how globalization has taken place. In 1950 the United States exported $10 billion worth of goods and services; in 2009 it exported over $1 trillion worth of goods and services. The world has become a single huge marketplace.

Globalization has brought many advantages. Satellite TV lets us witness events thousands of miles away. Commerce now functions in a global market in which our manufacturers compete against—or make alliances with—their counterparts all over the world. The car you drive may be a Chrysler product, yet Chrysler is owned by the Daimler-Benz (Mercedes) company of Germany. And your American car may have from 30 percent to 60 percent of its parts made elsewhere in the world. The car may have been built in Japan or Korea in the first place. Currency traders transfer more than a trillion dollars daily in any of the world’s currencies.

Yet globalization also has its negative aspects. Diseases that once were local can now become global epidemics, as the HIV virus has demonstrated. The global linkage of economies also means that when the U.S. suffers an economic recession, companies around the world will also suffer the consequences. Jetliners that carry legitimate travelers can, with equal ease, carry terrorists from anywhere to everywhere. Electronic transfers convey not only the proceeds of legitimate business transactions, but also those derived from the drug trade, bribery, and corruption. The Internet is used equally by legitimate communicators and by scoundrels and con artists or industrial spies.

The negative aspects of globalization are posing incredible challenges to criminal justice systems. Local law enforcement could deal easily with the crime problems of the village. But the crime problems of the global village are far beyond the capacity of even national justice systems. And there are many costs to policing across borders. Consider how countries differ with respect to fundamental protections and safeguards against surveillance by law enforcement. (See Figure 1.7.) This is but one example of the complexity of international or transnational law enforcement.

Transnational Crimes

Since the mid-1970s it has become clear that much of local crime is affected by forces abroad and beyond our local control. The gun with which a local robbery is committed may have come from Italy or China; the heroin or cocaine being traded likely comes from places such as the Golden Triangle and the Golden Crescent in Asia, or the Andean mountains of South America.

In addition to the types of local crime being affected by activities abroad, there is a category of criminal activity that by its nature transcends national boundaries. The crimes in this category are called transnational crimes. Transnational criminality, it is important to note, is not a legal term. Rather, it is a criminological concept, used to describe broad groupings of criminal activities, each of which may contain a variety of different crimes,
centering on a common theme. By now, eighteen distinct groups of transnational crimes have been recognized:

1. Money laundering
2. Illicit drug trafficking
3. Corruption and bribery of public officials, party officials, and elected representatives as defined in national legislation
4. Infiltration of legal business
5. Fraudulent bankruptcy
6. Insurance fraud
7. Computer crime
8. Theft of intellectual property
9. Illicit traffic in arms
10. Terrorist activities
11. Aircraft hijacking
12. Sea piracy
13. Land hijacking
14. Trafficking in persons
15. Trade in human body parts
16. Theft of art and cultural objects
17. Environmental crime
18. Other offenses committed by organized criminal groups

Since transnational crime is not a legal concept, national agencies do not collect statistics. Moreover, it would be difficult to assess statistics for transnational crime, since it affects so many different countries simultaneously. Our knowledge about its extent often comes from industry sources, for example from the insurance industry (insurance fraud), the Software Publishers Association (theft of intellectual property), or private maritime industry groups (sea piracy). Nearly all transnational crime is also organized crime, committed by global alliances of criminals. (We shall continue this discussion in Chapter 2.)

How can local or even national law enforcement agencies deal with this massive, intricate web of transnational crime? The answers are by no means identical for all forms of transnational crime. For example, it may be possible for U.S. law enforcement officers to curb the transport of stolen motor vehicles by tighter customs inspections at seaports and border crossings. But while the United States may succeed in controlling this criminal activity by conventional means, the same does not hold true for Europe. There the flow of stolen motor vehicles goes from western to eastern Europe, and there are few border controls.

Conventional law enforcement measures have proved relatively ineffective in stemming the flow of illicit drugs around the world. Even a diversified approach aimed at curbing consumption at home, limiting production overseas, and providing for interception in between, has had only modest success. Many countries have made bilateral or multilateral arrangements to assist each other in controlling the production and export and import of narcotic drugs. Drug Enforcement Administration agents have been posted at American embassies overseas to cooperate with their local counterparts. FBI agents have liaison offices around the world. Most countries have ratified various United Nations narcotics control conventions. But still the drugs flow from country to country in vast amounts.

As for terrorist activities, while some terrorists operate locally or nationally (the abortion clinic bombers, the self-styled militias, or the so-called Unabomber in the United States), much terrorist activity remains transnational. There may not be a global command structure, yet regional organizations have cooperated to act interregionally. The problem threatens global security.

Most of the transnational terrorist organizations have been identified, and transnational terrorist acts have been chronicled for some time. Global, regional, and intergovernmental initiatives to deal with terrorism are in place. These include extradition treaties with other governments, providing for the transfer of all indicted persons to the requesting country; the stationing of law enforcement officers overseas; the exchange of information and evidence; and other forms of cooperation, including the network of the International Criminal Police Organization (Interpol). But there are limits to extradition. By their own law, some countries will not extradite if:

- The offense charged is political in nature.
- The requested person is a national of the requested country.
- The requesting country has capital punishment.
- There is no standing extradition agreement.

Some countries (notably the United States) have resorted to unilateral measures to resolve transnational crime problems, especially terrorism. U.S. agents have repeatedly kidnapped...
ENTRY INTO THE SYSTEM

Proof of crime: reported, investigated, and arrested. Charges dropped or dismissed.

PROSECUTION AND SERVICES

An international or transnational crime is committed and reported to local, national, or international authorities (e.g., U.N. Security Council). Investigation by national authorities, with mutual international assistance (e.g., Interpol). Arrest by national authorities (no global police exists as yet). Extradition requests and hearings.

The permanent International Criminal Court’s prosecutor prepares the case for the Court’s Pre-Trial Chamber. That chamber acts like a grand jury and reads the case for trial upon indictment, having previously issued a formal warrant of arrest. The Chamber may order release on bail.

FIGURE 1.8
The Path of the International Criminal Justice System

NOTE: The proceedings before the ad hoc international criminal courts are similar to those before the ICC, but somewhat simple. The prosecutor also fulfills the grand jury function in both the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda. Other so-called international criminal courts vary widely as to their procedures, and have so their procedures, and have far less international participation (e.g., the tribunal for Cambodia and that for Sierra Leone).


international crimes
Crimes, established largely by conventions, violative of international law including but not limited to crimes against the peace and security of humankind.

convention
International agreement by which many nations commit themselves to common, legally binding obligations.

treaty
An agreement, usually among two sovereign states, binding them to abide by common standards and to enforce them.

jurisdiction
Power of a sovereign state to make and enforce its own laws. Also, the power granted to a court to adjudicate matters in dispute within its competence and territory.

wanted criminals abroad and conducted military strikes against suspected terrorist sites overseas. But such actions run the risk of being in violation of international law and the law of the country where the activities are carried out.

To help resolve the problems, a number of transnational crime categories have been elevated to the level of international crimes, thus providing access to measures and sanctions specifically applicable to international crimes.

International Crimes

International crimes are crimes legally defined by international conventions and treaties. Apart from defining such crimes, these international agreements also provide for the exercise of jurisdiction; in other words, they specify which country has the right or duty to try international offenders, who has the right or duty to surrender them to whom for trial, and what measures of cooperation must be extended among nations that sign such agreements. By now there are twenty-five categories of international crimes:

1. Aggression
2. Genocide
3. Crimes against humanity
4. War crimes
5. Crimes against the United Nations and associated personnel
6. Unlawful possession and/or use of weapons
7. Theft of nuclear materials
8. Mercenarism
9. Apartheid
10. Slavery
11. Torture
12. Unlawful human experimentation
13. Piracy
14. Aircraft hijacking
15. Unlawful acts against maritime navigation
16. Unlawful acts against internationally protected persons
17. Taking of civilian hostages
18. Unlawful use of the mail
19. Unlawful traffic in drugs
20. Destruction/theft of national treasures
21. Unlawful acts against the environment
22. International traffic in obscene materials
23. Falsification and counterfeiting
24. Unlawful interference with international submarine cables
25. Bribery of foreign public officials

Some of these crimes are ancient. Piracy, for example, has been an international crime for about 2,500 years, although it is now defined in a modern treaty, the Law of the Sea Treaty. Some international crimes are a century old (counterfeiting, cutting of submarine cables); some were created (from customary law precedents) for the trial of the war criminals at Nuremberg (1945–1946); still others have been created under the auspices of the United Nations in more recent years.

Ideally, the International Criminal Court (Figure 1.8) should have the power to try all persons charged with any international crime. Yet, for the most part, nations have retained the power to try those international criminals they have apprehended. However, the example of the trial of the major Nazi war criminals at Nuremberg in 1945–1946 demonstrated that an international criminal court, composed of judges and prosecutors from many countries, and with defendants from yet another country, can work, and can provide justice.

The United Nations has established two international criminal courts for trials involving war crimes committed in the 1990s in the former Yugoslavia (which includes Kosovo

1. Aggression
   Use of armed force by a state against the sovereignty or territory of another state, inconsistent with the Charter of the United Nations; an international crime.

2. Genocide
   International crime defined by convention (1948) and consisting of specific acts of violence committed with intent to destroy, in whole or in part, a national, ethnic, racial, cultural, or religious group.

3. International Criminal Court
   Established by the United Nations, ad hoc (temporary) criminal courts created to try defendants accused of crimes under international law. A permanent International Criminal Court was agreed upon in 1998.
crimes against humanity
Consist of murder, extermination, enslavement, deportation, and other inhumane acts done against any civilian population, or persecution on political, racial, or religious grounds, when such acts are done or such persecutions are carried out in execution of, or in connection with, any act of aggression or any war crime.

province, where massive ethnic cleansing was reported in 1999) and in Rwanda. The crimes in question involve genocide (destroying a national, ethnic, racial or religious group, in whole or in part), crimes against humanity (including systematic or mass violations of human rights), aggression, and war crimes.

Pessimists predicted that these courts would fail, because those indicted could not be apprehended. The opposite was the case with respect to Rwanda, however, where thousands were detained pending trial on charges of genocide committed against the Hutu minority. As of Fall 2011, more than 153 defendants have been indicted and asked to appear before the International Criminal Tribunal for the former Yugoslavia, a court established in 1993 following significant violations of international humanitarian law committed in the territory of the former Yugoslavia. The most notable defendant is former Serbian and Yugoslav President Slobodan Milosevic.

The international community of scholars in international criminal law has long advocated the creation of a permanent international criminal court. After many decades of pressure, the governments of most countries have decided to establish such a permanent international criminal court. The Statute on the International Criminal Court was passed in Rome on July 17, 1998. The court has its seat in The Hague, the Netherlands, with judges drawn from countries that sign the agreement. The judges have been selected based on equitable representation of gender, legal systems, and cultural areas. The statute grants this permanent international criminal court jurisdiction over the major international crimes, including genocide, crimes against humanity, and war crimes.

The governments of some 104 countries signed the statute. Those that have not signed include China, Iraq, Libya, Qatar, and Israel. The United States, which feared that U.S. military personnel engaged in international peacekeeping operations as well as government personnel and contractors might be subjected to the international court’s jurisdiction, signed in 2000.

The world has taken a mighty step forward on the route to protecting itself against criminals who threaten the peace and security of all people. On the basis of experience with the temporary international tribunals for the former Yugoslavia and Rwanda, it is expected that this new world level of jurisdiction for exceptionally grave crimes will be successful. By now the vast majority of the world’s governments have ratified the statute.

Looking Ahead: A Preview of This Book

This chapter has surveyed criminal justice as a discipline, a science, a profession, a career, a challenge, and a means of dealing with the crime problems that face the United States as well as the world in the twenty-first century.

Chapter 2 provides the student with fundamental information on crime and offenders: the rates of crime, the types of crime, and the characteristics of offenders.

Chapter 3 explains why some people commit crime.

Chapter 4 provides an introduction to the law by which we define people as criminals and the procedures by which we do so.

While the four chapters in Part 1 impart basic, fundamental knowledge, in Part 2 we enter into an examination of the work of the component parts of the criminal justice system. Thus, we shall examine the history and organization of the police (the largest employer in criminal justice). We then turn to an analysis of police functions, which have undergone rapid developments in the past decade.

“The police” can be understood only if we closely examine the professional culture in which police officers function. Above all, law enforcement activities are subject to the rule of law, as laid down by legislators and constantly interpreted and reinterpreted by the courts, especially the United States Supreme Court. As we shall see, the courts, too, function within, and thus reflect, the moral consensus and standards of the community. It should come as no surprise, therefore, that in some eras the courts favor individual rights (the due process or civil libertarian ideals), while at other times they favor crime control. Actually, we shall question whether these two different approaches should be in conflict with one another (Chapter 8), especially in this new millennium.
In Part 3 we shall discuss the work and role of the courts in our system. In Chapter 9 we review the history of the courts and the traditions that have had an impact on their role both today and in the future. More specifically, in Chapters 10 and 11, we describe the functions of lawyers and judges in prosecuting, defending, and adjudicating criminal cases. We shall detect many deficiencies and shortcomings that surely will require improvement in this new century, yet there are also promising developments.

Part 3 concludes with a discussion of the complex problems of sentencing those convicted of crime—including the sentence of capital punishment (Chapter 12). No issue in criminal justice has experienced as many dramatic changes during the past quarter century as that of sentencing, and in all likelihood judicial sentencing will undergo additional dramatic changes in the twenty-first century. But which way should we move?

The chapter on sentencing also serves as a bridge to Part 4 of the book, on corrections, for the simple reason that corrections must deal with all those sentenced by the judiciary. Once again, we shall introduce the subject by looking at the historical background of our current practices (Chapter 14). This is followed by a detailed analysis of institutional corrections, including prisons and jails and their vast populations (Chapter 14). Were it not for the expansion of noninstitutional alternatives (community corrections), our incarcerated population would be far larger than it is. This topic is our focus in Chapter 15. While community corrections started in the nineteenth century (probation and parole), new approaches of community corrections have been developed only over the last quarter century. Their use will predictably expand in the twenty-first century.

Throughout the book we have asked ourselves several questions: What have we done wrong in the past? What must we do better in the future? In short, what are the challenges of our discipline? We have identified problems and suggested remedies to be forged.

1. How should the criminal justice system handle crimes committed by children? The past record is dismal!
2. How can better services be provided for the victims of crime? After some promising starts, we seem to have reached a stalemate. Does the answer lie in restorative justice, by which offenders are sentenced to repair the damage, the harm, they have caused?
3. The biggest question of all is how do we cope with crime that is no longer just local but has become global, just as everything else has become global: the economy, financial services, electronic communication and information, mass transport, and entertainment? How can we do so if all of our past training of criminal justice officials has emphasized local—or national—levels?

We believe that with this book we are taking you on an exciting voyage, full of puzzles, full of surprises, full of hope, full of potential, yet often reflecting human tragedy. By the end of studying Criminal Justice: An Introduction, you will understand criminal justice as a human system, striving to be a humane system.

**Review**

In this introductory chapter we have demonstrated that, for all too long, crime control decisions have been based on guesses and emotions. They were frequently based on outrage created by the media and exploited by politicians in election agendas. We then related the history of the various reform efforts. Ultimately driven by the U.S. Supreme Court's imposition of high standards for law enforcement, the legislative and executive branches of government, in the 1960s, started programs, including LEAA and LEEP, which promoted education and research in criminal justice, led to the recognition that criminal justice is, or should function as, a system, and encouraged the development of a new discipline: criminal justice. This discipline has evolved into a profession and a science, drawing on the experiences and research methods of many other social and behavioral sciences.

We concluded this chapter with a discussion of two major challenges facing the criminal justice system in
the twenty-first century. First there is the challenge of juvenile justice. We have yet to resolve the conflict between a caring and a punitive approach, both of which are deeply rooted in history. Over the last decade, juvenile justice has become more punitive—at least as far as legislation is concerned. This increased punitiveness appears to be motivated by political and emotional considerations. Scientific evidence does not support it. We concluded the chapter with the increasing problems posed by globalization, which currently affects all aspects of life, including crime. Local criminal justice systems and officials are ill-equipped to deal with criminal activities reaching around the globe. We are witnessing the emergence of global approaches to dealing with globalized crime problems.

Thinking Critically about Criminal Justice

1. Who played the greatest role in creating our new discipline, profession, and science of criminal justice: The courts? Congress? The administration? The universities? Explain your answer.
2. Why was criminal justice not regarded as a “system” in the past and why is it now regarded as such?
3. Do you think that every college student should study criminal justice, even if he or she is not interested in a criminal justice career? Why?
4. Should capital punishment be imposed on persons as young as eleven years who are charged with homicide? List the arguments for and against this proposition.
5. It has been argued that the United States does not need the International Criminal Court, nor any convention against transnational crime, as it is strong enough to protect its own interest. Argue for and against this proposition.

Violence on the part of juvenile street gangs continues to be a significant problem. What countermeasures have been taken by federal law enforcement? See: http://www.fbi.gov/archives/congress/gang/gang.htm.

The United States Department of State has long been active in fighting transnational crime. What kinds of initiatives are currently embraced? For a discussion of a range of initiatives from alien smuggling to the training of Bosnian Police, see: http://www.ncjrs.org/intericj.htm.

In recent years the tactic of mass rape during war has come to light. Read about victims of rape during war in the context of history and reflect on why this tactic is still used to victimize women and children. See: http://condor.depaul.edu/-rotenbe/aear/aear13_1/Olujic.html.

What kinds of employment opportunities in the field of juvenile justice exist in the private sector versus the state and federal government? See the juvenile justice job bank: http://www.fsu.edu/~crimdo/jjclearjnjhse/jjboard.html.

Notes

7. The task force reports covered the following subjects: the police, courts, corrections, juvenile delinquency and youth crime, organized crime, science and technology, assessment of crime, narcotics and drugs, and drunkenness. In addition there were research studies and related consultant papers.
12. Ibid., p. 22.
15. Ibid., Chapter 2.
16. Ibid., Chapter 3.
20. Miranda v. Arizona, 384 U.S. 436 (1966). Miranda warnings are not always recited at the time of arrest and may, depending on the jurisdiction, be recited when the suspect is booked or prior to any custodial interrogation.
21. But there is an exception to this rule: When public safety is at risk, the warning may be postponed. See New York v. Quarles, 467 U.S. 649 (1984).
34. Geoffrey A. Butts and Adele V. Harrell, Delinquents or Criminals: Policy Options for Young Offenders (Washington, DC: The Urban Institute, 1998), pp. 5, 6.
42. As it turns out, “catch-all” group 18 currently consists mainly of a lively trade in stolen motor vehicles, from West to East and North to South. (Note: The categories have been rearranged. See A/CONF.169/15/Add. 1, 4 April 1995.)