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

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

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

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

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

The criminal justice system has three central components: police, courts, and corrections. The history, the activities, and the legal environment surrounding the police are discussed in Part 2 of this book. Part 3 describes the courts, and Part 4 deals with prisons, probation, and parole. Part 5 provides a guide to the future of the justice system and describes the impact of the threat of terrorism on enforcement agencies. We begin here in Part 1, however, with an overview of that grand ideal that we call justice, and we consider how the justice ideal relates to the everyday practice of criminal justice in the United States today. To that end, in the four chapters that make up this section, we will examine how and why laws are made. We will look at the wide array of interests that impinge upon the justice system, and we will examine closely the dichotomy that distinguishes citizens who are primarily concerned with individual rights from those who emphasize the need for individual responsibility and social accountability—a dichotomy that has become especially significant in the wake of the September 11, 2001, terrorist attacks. In the pages that follow, we will see how justice can mean personal freedom and protection from the power of government to some people and greater safety and security to others. In this section, we will also lay the groundwork for the rest of the text by painting a picture of crime in America today, suggesting possible causes for it, and showing how policies for dealing with crime have evolved.

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

After reading this chapter, you should be able to

• Provide a brief history of crime in America.
• Identify the theme on which this textbook builds, and highlight the differences between the individual-rights and public-order perspectives.
• Explain the relationship of criminal justice to social justice and to other wider notions of equity and fairness.
• Explain the structure of the American criminal justice system in terms of its major components and the functions they serve.
• Describe the process of American criminal justice, including the stages of criminal case processing.
• Explain the meaning of due process of law, and identify where due process guarantees can be found in the American legal system.
• Describe the role of evidence-based practice in contemporary criminal justice.
• Explain how multiculturalism and diversity present special challenges to, and opportunities for, the American system of criminal justice.
Crime does more than expose the weakness in social relationships; it undermines the social order itself, by destroying the assumptions on which it is based.
—James Q. Wilson, UCLA

The Constitution is not a suicide pact.
—Former Secretary of State Warren Christopher, after terrorists destroyed the World Trade Center in New York City in 2001

INTRODUCTION

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

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

The Katrina disaster, which created opportunities for those bent on criminal activity, illustrated the tenuous nature of social order. The social disorganization that followed Katrina continued long after the storm and involved a myriad of criminal offenses—including thousands of people arrested for defrauding the Federal Emergency Management Agency (FEMA), the government agency responsible for helping out after a disaster. FEMA fraud was so widespread that reports showed the number of households receiving FEMA emergency checks in four Louisiana parishes exceeded the number of households that existed there before the storm hit. Almost 360,000 households applied for FEMA’s Expedited Assistance payments in Orleans Parish alone—although the area had only 182,000 homes before Katrina. In one case that drew the attention of federal prosecutors, 33-year-old Kenneth McClain was charged with 14 counts of fraud in an elaborate conspiracy that allegedly scammed more than $10,000 in federal relief checks. McClain, who had 27 aliases and a number of open
What Is Criminal Justice?

CHAPTER 1

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

Charlie Riedel/AP Wide World Photos

arrest warrants when caught, lived in Texas, far from the storm’s wrath. He is accused of using stolen identities, some belonging to dead people, to file for assistance.⁹

A very different kind of criminal event thrust itself on American society and our justice system with the September 11, 2001, terrorist attacks that targeted New York City’s World Trade Center and the Pentagon. Those attacks, including one on an airliner that crashed in the Pennsylvania countryside, left nearly 3,000 people dead and caused billions of dollars in property damage. They have since been classified as the most destructive criminal activity ever to have been perpetrated on U.S. soil. The resulting “war on terrorism” changed the face of world politics and ushered in a new era in American society. Before the attacks, most Americans lived relatively secure lives, largely unfeathered by fear of random personal attack. Following September 11, however, a heated debate has taken place between those wanting to enforce powerful crime-prevention and security measures and others seeking to preserve the individual rights and freedoms that have long been characteristic of American life. This issue, which has continued to feed TV talk shows and newspaper editorials nationwide, asks Americans to determine which rights, freedoms, and conveniences (if any) they are willing to sacrifice to increase personal and public safety. It also anticipates the theme on which this book is based—and which is discussed at length later in this chapter.

Regardless of your personal position in the ongoing debate between freedom and safety, it is important to recognize that terrorism is a potentially horrendous crime. Many states and the federal government have statutes outlawing terrorism, although terrorism itself can involve many other kinds of crimes. In the case of the World Trade Center and Pentagon attacks, for example, the crimes committed included murder, kidnapping, hijacking, grand theft, felonious assault, battery, conspiracy, and arson.

A BRIEF HISTORY OF CRIME IN AMERICA

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

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

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

crime
Conduct in violation of the criminal laws of a state, the federal government, or a local jurisdiction for which there is no legally acceptable justification or excuse.⁸
influential in shaping the criminal justice system of today. In this country, crime waves have come and gone, including an 1850–1880 crime epidemic, which was apparently related to social upheaval caused by large-scale immigration and the Civil War. A spurt of widespread organized criminal activity was associated with the Prohibition years of the early twentieth century. Following World War II, however, American crime rates remained relatively stable until the 1960s.

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

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

By the mid-1980s, the dramatic increase in the sale and use of illicit drugs threatened the foundation of American society. Cocaine, and later laboratory-processed “crack,” spread to every corner of America. The country’s borders were inundated with smugglers intent on reaping quick fortunes. Large cities became havens for drug gangs, and many inner-city areas were all but abandoned to highly armed and well-financed drug racketeers. Cities experienced dramatic declines in property values, and residents wrestled with an eroding quality of life.

By the close of the 1980s, neighborhoods and towns were fighting for their communal lives. Huge rents had been torn in the national social fabric, and the American way of life, long taken for granted, was under the gun. Traditional values appeared in danger of going up in smoke along with the “crack” being consumed openly in some parks and resorts. Looking for a way to stem the tide of increased criminality, many took up the call for “law and order.” In response, President Ronald Reagan created a cabinet-level “drug czar” position to coordinate the “war on drugs.” Careful thought was given at the highest levels to using the military to patrol the sea-lanes and air corridors through which many of the illegal drugs entered the country. President George H. W. Bush, who followed Reagan into office, quickly embraced and expanded the government’s antidrug efforts.

In 1992, the videotaped beating of Rodney King, an African American motorist, at the hands of Los Angeles area police officers splashed across TV screens throughout the country and
shifted the public’s focus onto issues of police brutality and the effective management of law enforcement personnel. As the King incident seemed to show, when racial minorities came face to face with agents of the American criminal justice system, justice didn’t always result. Although initially acquitted by a California jury—which contained no African American members—two of the officers who beat King were convicted in a 1993 federal courtroom of violating his civil rights. The King incident and associated trials are described in more detail in Chapter 7.

Then, the very next year, law enforcement agencies were again criticized when agents of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Federal Bureau of Investigation (FBI) faced off with David Koresh and members of his Branch Davidian cult in Waco, Texas. The conflict began when ATF agents assaulted Koresh’s fortress-like compound, leaving four agents and six cult members dead. It ended 51 days later with the fiery deaths of Koresh and 71 of his followers, many of whom were children. The event led to a congressional investigation and charges that the ATF and the FBI had been ill prepared to deal successfully with large-scale domestic resistance and had reacted more out of alarm and frustration than wisdom. Attorney General Janet Reno refused to blame agents for misjudging Koresh’s intentions, although 11 Davidians were later acquitted of charges that they had murdered the federal agents.

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

The public’s perception that crime rates were growing, coupled with a belief that offenders frequently went unpunished or received only a judicial slap on the wrist, led to a burgeoning emphasis on responsibility and punishment. By the late 1990s, a strong shift away from the claimed misdeeds of the criminal justice system was well under way, and a newfound emphasis on individual accountability began to blossom among an American public fed up with crime and fearful of its own victimization. Growing calls for enhanced responsibility quickly began to replace the previous emphasis on individual rights. As a juggernaut of conservative opinion made itself felt on the political scene, Senator Phil Gramm of Texas observed that the public wants to “grab violent criminals by the throat, put them in prison [and] stop building prisons like Holiday Inns.”

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

The September 11 attacks also made clear that adequate law enforcement involves a global effort at controlling crime and reducing the risk of injury and loss to law-abiding people both at home and abroad. The attacks showed that criminal incidents that take place on
USA PATRIOT Act
A federal law (Public Law 107-56) enacted in response to terrorist attacks on the World Trade Center and the Pentagon on September 11, 2001. The law, officially titled the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, substantially broadened the investigative authority of law enforcement agencies throughout America and is applicable to many crimes other than terrorism. The law was slightly revised and reauthorized by Congress in 2006.

An especially important new tool in the law enforcement arsenal is the federal USA PATRIOT Act, enacted in 2001 as a legislative response to terrorism. The law, whose provisions were reauthorized by Congress with minor revisions in 2006, is officially known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (from which the acronym USA PATRIOT is derived). The law dramatically increases the investigatory authority of federal, state, and local police agencies, although sometimes only temporarily. The expanded police powers created under the legislation are not limited to investigations of terrorist activity but apply to many different criminal offenses. Terrorism is discussed in more detail in Chapter 17. As that chapter points out, terrorism is a criminal act, and preventing terrorism and investigating terrorist incidents after they occur are highly important roles for local, state, and federal law enforcement agencies.

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

White-collar crime continues to be a focus of federal prosecutors, and in 2009 investment fund manager Bernard Madoff pleaded guilty to operating a Ponzi scheme that defrauded investors out of as much as $50 billion. Madoff, who was sentenced to 150 years in prison—the maximum allowed by law—pleaded guilty to 11 felony counts, including securities fraud, mail fraud, wire fraud, money laundering, and perjury. White-collar crime is discussed in more detail in Chapter 2.

For a detailed look at crimes that have shaped the past hundred years, see Web Extra 1–1 at MyCrimeKit.com. Library Extra 1–1 at MyCrimeKit.com also describes the changing nature of crime in America.

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

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

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

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

Today, public perspectives have largely shifted away from seeing the criminal as an unfortunate victim of poor social and personal circumstances who is inherently protected by fundamental human and constitutional rights to seeing him or her as a dangerous social predator who usurps the rights and privileges of law-abiding citizens. Reflecting the “get tough on crime” attitudes of today, many Americans demand to know how offenders can better be held accountable for violations of the criminal law. In 2006, for example, at least 14 governors signed laws designed to extend prison sentences for sex offenders, restrict where released sex offenders can live, and improve public notification of their whereabouts. More bills are pending as this book goes to press, including one in Louisiana that would as the crux of the crime problem then facing his city and the nation. We mistakenly look to government and elected officials, Giuliani said, to assume responsibility for solving the problem of crime when, instead, each individual citizen must become accountable for fixing what is wrong with our society. “We only see the oppressive side of authority. . . . What we don’t see is that freedom is not a concept in which people can do anything they want, be anything they can be. Freedom is about authority. Freedom is about the willingness of every single human being to cede to lawful authority a great deal of discretion about what you do.”

YOU DECIDE

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

require convicted offenders to carry bright orange driver’s licenses stamped with the words “sex offender” and another in South Carolina that would make some molesters eligible for the death penalty.20

Even so, the tension between individual rights and social responsibility still forms the basis for most policy-making activity in the criminal justice arena. Those who fight for individual rights continue to carry the banner of civil and criminal rights for the accused and the convicted, while public-order activists loudly proclaim the rights of the victimized and call for an increased emphasis on social responsibility and criminal punishment for convicted criminals. In keeping with these realizations, the theme of this book can be stated as follows:

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

Figure 1–1 represents our theme and shows that most people today who intelligently consider the criminal justice system assume one of two viewpoints. We will refer to those who seek to protect personal freedoms and civil rights within society, and especially within the criminal justice process, as individual-rights advocates. Those who suggest that under certain circumstances involving criminal threats to public safety, the interests of society (especially crime control and social order) should take precedence over individual rights will be called public-order advocates. Recently, retired U.S. Supreme Court Justice Sandra Day O’Connor summed up the differences between these two perspectives by asking, “At what point does the cost to civil liberties from legislation designed to prevent terrorism [and crime] outweigh the added security that that legislation provides?”21 In this book, we seek to look at ways in which the individual-rights and public-order perspectives can be balanced to serve both sets of needs. Hence you will find our theme discussed throughout this text, within “Freedom or Safety?” boxes, and highlighted in many of the Web Quest materials found at MyCrimeKit.com.

**SOCIAL JUSTICE**

On the eve of the national election in November 2008, as final votes were being counted, President-elect Barack H. Obama gave an inspiring victory speech addressed to the nation and the world. In it he said, “A new dawn of American leadership is at hand. To those who would tear this world down—we will defeat you. To those who seek peace and security—we support you. And to all those who have wondered if America’s beacon still burns as bright—tonight we proved once more that the true strength of our nation comes not from the might of our arms or the scale of our wealth, but from the enduring power of our ideals: democracy, liberty, opportunity, and unyielding hope.” The president concluded that night’s remarks with an enduring phrase, telling listeners that “the arc of the moral universe is long, but it bends toward justice.” The phrase, a favorite of the president’s, had been adapted from remarks that Martin Luther King, Jr., made before the Southern Christian Leadership Conference in 1967.22

There is no denying that the word *justice* is powerful, and—at the time—the president’s choice of words spoke to all Americans. The reality, however, is that *justice* is an elusive term. Although most listeners

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

—Thomas Jefferson

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

—Former National Security Adviser Anthony Lake

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**FIGURE 1–1**

The theme of this book.

Balancing the concern for individual rights with the need for public order through the administration of criminal justice is the theme of this book.
came away inspired that night, few who heard the president’s speech knew exactly what justice might mean and what form it might eventually take. Even to those living within the same society, justice means different things. And just as justice can be an ambiguous term for politicians, it is not always clear how justice can be achieved in the criminal justice system. For example, is “justice for all” a reasonable expectation of today’s—or tomorrow’s—system of criminal justice? The answer is unclear because individual interests and social needs often diverge. From the perspective of a society or an entire nation, justice can look very different than it does from the perspective of an individual or a small group of people. Because of this dilemma, we now turn our attention to the nature of justice.

British philosopher and statesman Benjamin Disraeli (1804–1881) defined justice as “truth in action.” A popular dictionary defines it as “the principle of moral rightness, or conformity to truth.” Social justice is a concept that embraces all aspects of civilized life. It is linked to notions of fairness and to cultural beliefs about right and wrong. Questions of social justice can arise about relationships between individuals, between parties (such as corporations and agencies of government), between the rich and the poor, between the
Who Watches the Watchers?

In some cities in Europe and the United States, a person can be videotaped by surveillance cameras hundreds of times a day, and it’s safe to say that most of the time no one is actually watching.

But the advent of “intelligent video”—software that raises the alarm if something on camera appears amiss—means Big Brother will soon be able to keep a more constant watch, a prospect that is sure to heighten privacy concerns.

Combining motion detection technology with the learning capabilities of video game software, these new systems can detect people loitering, walking in circles or leaving a package.

New microphone technology can isolate the sound of a gunshot and direct the attached camera to swivel and zoom in on the source. Sensitivity may reach the point where microphones could pick out the word “explosives” spoken in a crowd. . . .

Since the attacks on the United States of September 11, 2001, sections of New York, Washington, Los Angeles, Chicago and even a few smaller U.S. towns have been blanketed with closed-circuit cameras. Privately owned cameras are also proliferating.

The encroachment on privacy in what civil libertarians call a “surveillance society” may be a price willingly paid by citizens who fear terrorism and crime.

But ever-alert software capable of maintaining a continuous “watch” on security cameras multiplies the risks of harassing innocent people, privacy experts say.

“I don’t buy it. The number of false positives are going to be astronomical,” said David Holtzman, author of Privacy Lost. “It’s extremely dangerous to abrogate legitimate law enforcement authority . . . to a camera.”

In Chicago’s darkened, windowless surveillance center, [emergency operations chief Andrew] Velasquez looks forward to using new technology, which has had some success elsewhere.

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

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

sexes, between ethnic groups and minorities—between social connections of all sorts. In the abstract, the concept of social justice embodies the highest personal and cultural ideals.

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

Criminal justice, ideally speaking, is “truth in action” within the process that we call the administration of justice. It is therefore vital to remember that justice, in the truest and most satisfying sense of the word, is the ultimate goal of criminal justice—and of the day-to-day practices and challenges that characterize the American criminal justice system. Reality, unfortunately, typically falls short of the ideal and is severely complicated by the fact that justice seems to wear different guises when viewed from diverse vantage points. To some people, the criminal justice system and criminal justice agencies often seem biased in favor of the powerful. The laws they enforce seem to emanate more from well-financed, organized,
The port of Jacksonville, Florida, has dispensed with human monitoring of cameras altogether by sending alerts and live video to the personal digital assistant of the nearest officer on patrol, according to a spokesman for ObjectVideo Inc.

ObjectVideo is one of two dozen companies seeking to perfect so-called intelligent video—an industry whose sales will grow from $60 million to $400 million within five years, according to global consulting group Frost & Sullivan. . . .

“The cameras don’t replace police officers. They are in essence a force multiplier. They serve as an extra set of eyes,” Velasquez said.

The Chicago center is manned 24 hours a day by veteran police officers. A dozen screens depict a few street corners and a stadium, while others are tuned to cable news or Web sites.

They can retrieve video from thousands of cameras and their universe is expanded by private cameras owned by cooperating buildings and stores, but they can monitor only a few at a time.

Velasquez said his officers receive training on privacy and constitutional rights—for example it is illegal to look into private homes and offices—and digital recordings hold his officers accountable and prevent abuses that have occurred elsewhere.

In Britain, which has 4.2 million government security cameras, 2 million in London alone, a study showed that male surveillance workers sometimes ogled women on their screens, while others focused on minorities excessively.

But privacy experts also note another British study, from 2002, which said surveillance cameras did not lower overall crime rates and merely pushed crime elsewhere.

Velasquez disputed the conclusion that cameras don’t prevent crime, saying he constantly fields requests from residents asking for a camera to make their neighborhood safer.

He said cameras contributed to a drop in violent crime in the city of Chicago in recent years, a drop that is widely attributed to improved police work in countering gangs and street-corner drug dealing. At the same time, gang activity has surged in some Chicago suburbs.

Downtown, the cameras are less intrusive, though a pair mounted on a park fountain was removed after an outcry that they defiled the art.

Holtzman, the privacy expert, wondered where the line will be drawn if authorities opt to use the cameras to spy on suspects or to sniff out low-level crimes.

There are no legal barriers to video being subpoenaed by, for instance, a divorce lawyer seeking evidence of infidelity, he said.

“I think there’s a certain amount of freedom you want to give people that live in the city to kind of screw up a little bit,” he said.

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and vocal interest groups than they do from any idealized sense of social justice. As a consequence, disenfranchised groups, those who do not feel as though they share in the political and economic power of society, are often wary of the agencies of justice, seeing them more as enemies than as benefactors.

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

Whichever side we choose in the ongoing debate over the nature and quality of criminal justice in America, it is vital that we recognize the plethora of pragmatic issues involved in the administration of justice while also keeping a clear focus on the justice ideal. 24 Was justice done, for example, in the 2005 criminal trial of pop music superstar [blank]?
PART 1


Clearance rates are a measure of crimes solved... Hence the systems perspective on criminal justice generally encompasses a point of view called the consensus model. The consensus model assumes that each of the component parts of the criminal justice system strives toward a common goal and that the movement of cases and people through the system is smooth due to cooperation between the various components of the system.

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

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

AMERICAN CRIMINAL JUSTICE: SYSTEM AND FUNCTIONS

The Consensus Model

So far, we have described a criminal justice system consisting of the component agencies of police, courts, and corrections. Each of these components can, in turn, be described in terms of its functions and purpose (Figure 1–2).

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

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The Conflict Model

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

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

Both models have something to tell us. Agencies of justice with a diversity of functions (police, courts, and corrections) and at all levels (federal, state, and local) are linked closely enough for the term system to be meaningfully applied to them. On the other hand, the very size of the criminal justice undertaking makes effective cooperation between component agencies difficult. The police, for example, have an interest in seeing offenders put behind bars. Prison officials, on the other hand, are often working with extremely overcrowded facilities. They may favor early-release programs for certain categories of offenders, such as those judged to be nonviolent. Who wins out in the long run might just be a matter of internal politics and quasi-official wrangling. Everyone should be concerned, however, when the goal of justice is affected, and sometimes even sacrificed, because of conflicts within the system.

If we do not maintain Justice, Justice will not maintain us.
—Francis Bacon

**AMERICAN CRIMINAL JUSTICE: THE PROCESS**

Whether part of a system or a nonsystem, the agencies of criminal justice must process the cases that come before them. An analysis of criminal justice case processing provides both a useful guide to this book and a “road map” to the criminal justice system itself. The figure in the front of this book illustrates the processing of a criminal case through the federal justice system, beginning with the investigation of reported crimes. The process in most state systems is similar. See Web Extra 1–2 at MyCrimeKit.com for more information about the process shown in the figure.
Investigation and Arrest

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

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

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

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

Although popular television programs about the criminal justice system almost always show an offender being given a rights advisement at the time of arrest, the *Miranda* decision requires only that police advise a person of his or her rights prior to questioning. An arrest without questioning does not require a warning. When an officer interrupts a crime in progress, public-safety considerations may make it reasonable for the officer to ask a few questions prior to a rights advisement. Many officers, however, feel they are on sound legal ground only by advising suspects of their rights immediately after arrest. Investigation and arrest are discussed in detail in Chapter 7, “Policing: Legal Aspects.”

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

Pretrial Activities

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

Most defendants are released on recognizance into their own care or the care of another or are given the chance to post a bond during their first appearance. A bond may take the form of a cash deposit or a property bond in which a house or other property serves as collateral against flight. Those who flee may be ordered to forfeit the posted cash or property. Suspects who are not afforded the opportunity for bail because their crimes are very serious or who do not have the needed financial resources are taken to jail to await the next stage in the justice process.
If a defendant doesn’t have a lawyer, one will be appointed at the first appearance. To retain a court-appointed lawyer, the defendant may have to demonstrate financial hardship. The names of assigned lawyers are usually drawn off the roster of practicing defense attorneys in the county. Some jurisdictions use public defenders to represent indigent defendants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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*What Is Criminal Justice? CHAPTER 1* 19
A criminal defendant at a preliminary hearing. Everyone facing criminal prosecution in the United States is guaranteed a constitutional right to due process, meaning that defendants must be afforded a fair opportunity to participate in every stage of criminal proceedings. Should due process rights extend to all offenders—even accused terrorists?

**Adjudication**

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

The arraignment process is discussed in detail in Chapter 10, “Pretrial Activities and the Criminal Trial.”
evidence that may be submitted, the credentials of those allowed to represent the state or the defendant, and what a jury is allowed to hear.

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

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

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

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

### Sentencing

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

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

Judges traditionally have had considerable discretion in sentencing, although new state and federal laws now place limits on judicial discretion in some cases, requiring that a sentence “presumed” by law be imposed. Judges still retain enormous discretion, however, in specifying whether sentences on multiple charges are to run consecutively or concurrently. Offenders found guilty of more than one charge may be ordered to serve one sentence after another is completed, called a *consecutive sentence*, or may be told that their sentences will run at the same time, which is called a *concurrent sentence*.

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

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

### Corrections

Once an offender has been sentenced, the corrections stage begins. Some offenders are sentenced to prison, where they “do time” for their crimes. Once in the correctional system, they are classified according to local procedures and are assigned to confinement facilities and treatment programs. Newer prisons today bear little resemblance to the massive bastions of the past, which isolated offenders from society behind huge stone walls. Many modern prisons, however, still suffer from a “lock psychosis” (a preoccupation with security) among top- and mid-level administrators as well as a lack of significant rehabilitation programs.
Chapter 13, “Prisons and Jails,” discusses the philosophy behind prisons and sketches their historical development. Chapter 14, “Prison Life,” portrays life on the inside and delineates the social structures that develop in response to the pains of imprisonment.

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

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

Chapter 11, “Sentencing,” and Chapter 12, “Probation, Parole, and Community Corrections,” deal with the practice of probation and parole and with the issues surrounding it. Learn more about the criminal justice process at **Library Extra 1–2** at MyCrimeKit.com. For a critical look at the justice system, visit **Web Extra 1–3** at MyCrimeKit.com.

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**DUE PROCESS AND INDIVIDUAL RIGHTS**

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

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

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

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**The Role of the Courts in Defining Rights**

Although the Constitution deals with many issues, what we have been calling **rights** are open to interpretation. Many modern rights, although written into the Constitution, would not exist in practice were it not for the fact that the U.S. Supreme Court decided, at some point in history, to recognize them in cases brought before it. In the well-known case of **Gideon v. Wainwright** (1963), for example, the Supreme Court embraced the Sixth Amendment guarantee of a right to a lawyer for all criminal defendants and mandated that states provide lawyers for defendants who are unable to pay for them. Before **Gideon** (which is discussed in detail in Chapter 9), court-appointed attorneys for defendants unable to afford
African-American men comprise less than 6% of the U.S. population and almost one-half of its criminal prisoners.

—Bureau of Justice Statistics

TABLE 1–1  Individual Rights Guaranteed by the Bill of Rights

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

*As interpreted by the U.S. Supreme Court.

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

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

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

The Ultimate Goal: Crime Control through Due Process

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

The second principle is called the due process model because of its emphasis on individual rights. Due process is intended to ensure that innocent people are not convicted of crimes; it is a fundamental part of American criminal justice. It requires a careful and informed consideration of the facts of each individual case. Under the due process model, police are required to recognize the rights of suspects during arrest, questioning, and handling. Similarly, prosecutors and judges must recognize constitutional and other guarantees during trial and the presentation of evidence.

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

You will encounter a number of “CJ Futures” boxes in this book. These boxes illustrate a subtheme of your textbook: the future of crime and justice, including social issues and changing technology.

A major source of information about the impact of technology on the criminal justice system is the National Law Enforcement and Corrections Technology Center (NLECTC). This network of regional centers and specialty offices located across the country offers no-cost assistance to help law enforcement and corrections agencies implement current and emerging technologies. The system is composed of a national center located in Rockville, Maryland, and five regional centers in Rome, New York; Charleston, South Carolina; Denver, Colorado; El Segundo, California; and Anchorage, Alaska.

The NLECTC system also includes the Border Research and Technology Center in San Diego, California; the Office of Law Enforcement Standards in Gaithersburg, Maryland; the Office of Law Enforcement Technology Commercialization in Wheeling, West Virginia; and the Rural Law Enforcement Technology Center in Hazard, Kentucky.

NLECTC is supported by the National Institute of Justice, an arm of the U.S. Department of Justice. It is overseen by the Office of Science and Technology within NIJ.

David G. Boyd, director of NIJ’s Office of Science and Technology, is convinced of the important role that technology will continue to play in the fight against crime. According to Boyd, “The technological revolution that has swept society as a whole in recent years has also affected the criminal justice system. Some technologies that not long ago seemed advanced—vests that can stop bullets and electronic monitoring of probationers—today seem commonplace. But the revolution continues apace, with ever more spectacular advances now being made, or in the testing stages, or on the drawing board.”

NLECTC provides a wealth of online information for anyone interested in technology assessment as applied to criminal justice. The agency’s free newsletter, TechBeat, is published four times each year, both on paper and in electronic format. To request a subscription, e-mail asknlectc@nlectc.org. You can visit NLECTC on the Web via Web Extra 1–4 at MyCrimeKit.com. Once there, you will be able to search the site’s Virtual Library, which offers hundreds of publications on topics ranging from Biological, Chemical, and Radiological Defense to Transportation Infrastructure Security.


EVIDENCE-BASED PRACTICE IN CRIMINAL JUSTICE

The study of criminal justice as an academic discipline began in this country in the late 1920s, when August Vollmer (1876–1955), the former police chief of the Los Angeles Police Department (LAPD), persuaded the University of California to offer courses on the subject. Vollmer was joined by his former student Orlando W. Wilson (1900–1972) and by William H. Parker (who later served as chief of the LAPD from 1950 to 1966) in calling for increased professionalism in police work through better training.

Largely as a result of Vollmer’s influence, early criminal justice education was practice oriented; it was a kind of extension of on-the-job training for working practitioners. Hence in the early days of the discipline, criminal justice students were primarily taught to apply general management principles to the administration of police agencies. Criminal justice came to be seen as a practical field of study concerned largely with issues of organizational effectiveness.

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

Scientific research has become a major element in the increasing professionalization of criminal justice, both as a career field and as a field of study. As you will learn in Chapter 5, there is a strong call today within criminal justice policy-making circles for the application of evidence-based practices in the justice field. As the word is used here, evidence does not refer to evidence of a crime but means, instead, findings that are supported by studies. Hence evidence-based practice refers to crime-fighting strategies that have been scientifically tested and are based on social science research.

In 2009, in an initiative that strongly supports evidence-based practice, Senators Jim Webb and Arlen Specter brought a draft version of the National Criminal Justice Commission Act of 2009 before the U.S. Congress for approval. The goal of the proposed legislation was to create a blue-ribbon commission charged with conducting an 18-month, top-to-bottom review of the nation’s entire criminal justice system. In the words of the proposed legislation, the commission would “institute the use of policies and practices proven effective throughout the spectrum of criminal behavior.” As Chapter 5 points out, evidence-based practices can be expected to play an expanded role in policy making and in the administration of criminal justice in the years to come.

MULTICULTURALISM AND DIVERSITY IN CRIMINAL JUSTICE

In 2007, polygamist Warren Steed Jeffs, a leader of the Fundamentalist Church of Jesus Christ of Latter-day Saints (FLDS), an offshoot of the mainstream Mormon church, was convicted of conspiring to rape a child and of being an accessory to child rape for performing a marriage involving a 14-year-old girl and her 19-year-old cousin. Jeffs, who was on the FBI’s Ten Most Wanted list, was sentenced on November 20, 2007, to two consecutive sentences of five years to life in prison by Utah Fifth District Court Judge James Shumate.

The Church of Jesus Christ of Latter-day Saints brought plural marriage to Utah in the early nineteenth century, but the state legislature banned the practice more than 100 years ago. Today, the church officially excommunicates polygamists, although members of the FLDS practice polygamy as a central tenet of their religion. Some estimate the number of polygamists living in Utah and Arizona today at over 30,000. The existence of such alternative family lifestyles is just one indicator that the United States is a multicultural and diverse society.

Multiculturalism describes a society that is home to a multitude of different cultures, each with its own set of norms, values, and routine behaviors. While American society today is truly a multicultural society, composed of a wide variety of racial and ethnic heritages, diverse religions, incongruous values, disparate traditions, and distinct languages, multiculturalism in America is not new. For thousands of years before Europeans arrived in the Western Hemisphere, tribal nations of Native Americans each spoke their own language, were bound to customs that differed significantly from one another, and practiced a wide range of religions. European immigration, which began in earnest in the seventeenth

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

Multiculturalism
The existence within one society of diverse groups that maintain unique cultural identities while frequently accepting and participating in the larger society’s legal and political systems. Multiculturalism is often used in conjunction with the term diversity to identify many distinctions of social significance.
century, led to greater diversity still. Successive waves of immigrants, along with the slave trade of the early and mid-nineteenth century, brought a diversity of values, beliefs, and patterns of behavior to American shores that frequently conflicted with prevailing cultures. Differences in languages and traditions fed the American melting pot of the late nineteenth and early twentieth centuries and made effective communication between groups difficult.

The face of multiculturalism in America today is quite different than it was in the past, due largely to relatively high birthrates among some minority populations and the huge but relatively recent immigration of Spanish-speaking people from Mexico, Cuba, Central America, and South America. Part of that influx consists of substantial numbers of undocumented immigrants who have entered the country illegally and who, because of experiences in their home countries, may have a special fear of police authority and a general distrust for the law. Such fears make members of this group hesitant to report being victimized, and their undocumented status makes them easy prey for illegal scams like extortion, blackmail, and documentation crimes. Learn more about immigration and crime via Library Extra 1–3 at MyCrimeKit.com.

Diversity characterizes both immigrant and U.S.-born individuals. Census Bureau statistics show that people identifying themselves as white account for 71% of the U.S. population—a percentage that has been dropping steadily for at least the past 40 years. People of Hispanic origin constitute approximately 12% of the population and are the fastest-growing group in the country. Individuals identifying themselves as African American make up another 12% of the population, and people of Asian and Pacific Island origin make up almost 4% of the total. Native Americans, including American Indians, Eskimos, and Aleuts, account for slightly less than 1% of all Americans. Statistics like these, however, are only estimates, and their interpretation is complicated by the fact that surveyed individuals may be of mixed race. Nonetheless, it is clear that American society today is ethnically and racially quite diverse.

Race and ethnicity are only buzzwords that people use when they talk about multiculturalism. After all, neither race nor ethnicity determines a person’s values, attitudes, or behavior. Just as there is no uniquely identifiable “white culture” in American society, it is a mistake to think that all African Americans share the same values or that everyone of Hispanic descent honors the same traditions or even speaks Spanish.

Multiculturalism, as the term is used today, is but one form of diversity. Taken together, these two concepts—multiculturalism and diversity—encompass many distinctions of...
It is commonly assumed that these three components—law enforcement (police, sheriffs, marshals), the judicial process (judges, prosecutors, defense lawyers), and corrections (prison officials, probation, and parole officers)—add up to a “system” of criminal justice. A system implies some unity of purpose and organized interrelationship among component parts. In the typical American city and state, and under federal jurisdiction as well, no such relationship exists. There is, instead, a reasonably well-defined criminal process, a continuum through which each accused offender may pass: from the hands of the police, to the jurisdiction of the courts, behind the walls of a prison, then back onto the street.

—National Commission on the Causes and Prevention of Violence

social significance. The broad brush of contemporary multiculturalism and social diversity draws attention to variety along racial, ethnic, subcultural, generational, faith, economic, and gender lines. Lifestyle diversity is also important. The fact that influential elements of the wider society are less accepting of some lifestyles than others doesn’t mean that such lifestyles aren’t recognized from the viewpoint of multiculturalism. It simply means that at least for now, some lifestyles are accorded less official acceptability than others. As a result, certain lifestyle choices, even within a multicultural society that generally respects and encourages diversity, may still be criminalized, as in the case of polygamy.

Multiculturalism and diversity will be discussed in various chapters throughout this textbook. For now, it is sufficient to recognize that the diverse values, perspectives, and behaviors characteristic of various groups within our society have a significant impact on the justice system. Whether it is the confusion that arises from a police officer’s commands to a non-English-speaking suspect, the need for interpreters in the courtroom, a deep-seated distrust of the police in some minority communities, a lack of willingness among some immigrants to report crime, the underrepresentation of women in criminal justice agencies, or some people’s irrational suspicions of Arab Americans following the September 11 terrorist attacks, diversity and multiculturalism present special challenges to the everyday practice of criminal justice in America. Finally, as we shall see, the demands and expectations placed on justice agencies in multicultural societies involve a dilemma that is closely associated with the theme of this text: how to protect the rights of individuals to self-expression while ensuring social control and the safety and security of the public.

summary

- The American experience with crime during the last half century has been especially influential in shaping the criminal justice system of today. Although crime waves have come and gone, some events during the past century stand out as especially significant, including a spurt of widespread organized criminal activity associated with the Prohibition years of the early twentieth century; the substantial increase in “traditional” crimes during the 1960s and 1970s; the threat to the American way of life represented by illicit drugs around the same time; and the terrorist attacks of September 11, 2001.

- The theme of this book is one of individual rights versus public order. As this chapter points out, the personal freedoms guaranteed to law-abiding citizens as well as to criminal suspects by the Constitution must be closely guarded. At the same time, the urgent social needs of communities for controlling unacceptable behavior and protecting law-abiding citizens from harm must be recognized. This theme is represented by two opposing groups: individual-rights advocates and public-order advocates. The fundamental challenge facing the practice of American criminal justice is in achieving efficient enforcement of the laws while simultaneously recognizing and supporting the legal rights of suspects and the legitimate personal differences and prerogatives of individuals.

- Although justice may be an elusive concept, it is important to recognize that criminal justice is tied closely to notions of social justice, including personal and cultural beliefs about equity and fairness. As a goal to be achieved, criminal justice refers to those aspects of social justice that concern violations of the criminal law. While community interests in the administration of criminal justice demand the apprehension and punishment of law violators, criminal justice ideals extend to the protection of the innocent, the fair treatment of offenders, and fair play by justice administration agencies.

- In this chapter, we described the process of American criminal justice as a system with three major components—police, courts, and corrections—all of which can be
described as working together toward a common goal. We warned, however, that a systems viewpoint is useful primarily for the simplification that it provides. A more realistic approach to understanding criminal justice may be the nonsystem approach. As a nonsystem, the criminal justice process is depicted as a fragmented activity in which individuals and agencies within the process have interests and goals that at times coincide but often conflict.

- The stages of criminal case processing include investigation and arrest, booking, a first appearance in court, the defendant’s preliminary hearing, the return of an indictment by the grand jury or the filing of an information by the prosecutor, arraignment of the defendant before the court, adjudication or trial, sentencing, and corrections. As a field of study, corrections includes jails, probation, imprisonment, and parole.
- The principle of due process, which underlies the first ten amendments to the U.S. Constitution, is central to American criminal justice. Due process (also called due process of law) means procedural fairness and requires that criminal case processing be conducted with fairness and equity. The ultimate goal of the criminal justice system in America is achieving crime control through due process.
- The study of criminal justice as an academic discipline began in this country in the late 1920s and is well established today. Scientific research has become a major element in the increasing professionalization of criminal justice, and there is an increasingly strong call for the application of evidence-based practices in the justice field. Evidence-based practices are crime-fighting strategies that have been scientifically tested and that are based on social science research.
- American society today is a multicultural society, composed of a wide variety of racial and ethnic heritages, diverse religions, incongruous values, disparate traditions, and distinct languages. Multiculturalism complicates the practice of American criminal justice since there is rarely universal agreement in our society about what is right or wrong or about what constitutes “justice.” As such, multiculturalism represents both challenges and opportunities for today’s justice practitioners.

### key terms

- administration of justice, 14
- arraignment, 19
- bail, 18
- booking, 18
- civil justice, 14
- concurrent sentence, 21
- conflict model, 16
- consecutive sentence, 21
- consensus model, 16
- crime, 7
- crime-control model, 23
- criminal justice, 14
- criminal justice system, 16
- criminology, 24
- due process, 22
- due process model, 23
- evidence-based practice, 25
- grand jury, 19
- indictment, 19
- individual rights, 8
- individual-rights advocate, 12
- information, 19
- justice, 13
- multiculturalism, 26
- preliminary hearing, 18
- probable cause, 19
- public-order advocate, 12
- social control, 23
- social justice, 13
- trial, 19
- USA PATRIOT Act, 10
- warrant, 17

### questions for review

1. Describe the American experience with crime during the last half century. What noteworthy criminal incidents or activities can you identify during that time, and what social and economic conditions might have produced them?

2. What is the theme of this book? According to that theme, what are the differences between the individual-rights perspective and the public-order perspective?

3. What is justice? What aspects of justice does this chapter discuss? How does criminal justice relate to social justice and to other wider notions of equity and fairness?

4. What are the main components of the criminal justice system? How do they interrelate? How might they conflict?

5. List the stages of case processing that characterize the American system of criminal justice, and describe each stage.
6. What is meant by *due process of law*? Where in the American legal system are guarantees of due process found?

7. What is the role of research in criminal justice? What is evidence-based practice? How can research influence crime-control policy?

8. What is multiculturalism? What is social diversity? What impact do multiculturalism and diversity have on the practice of criminal justice in contemporary American society?

### questions for reflection

1. Reiterate the theme of this textbook. How might this book’s theme facilitate the study of criminal justice?

2. Why is public order necessary? Do we have enough public order or too little? How can we tell? What might a large, complex society like ours be like without laws and without a system of criminal justice? Would you want to live in such a society? Why or why not?

3. What must we, as individuals, sacrifice to facilitate public order? Do we ever give up too much in the interest of public order? If so, when?

4. This chapter describes two models of the criminal justice system. What are they, and how do they differ? Which model do you think is more useful? Which is more accurate? Why?

**Discuss your answers to these questions and other issues on the CJ Today e-mail discussion list (join the list at MyCrimeKit.com).**
Go to MyCrimeKit.com to explore the following study tools and resources specific to this chapter:

- Chapter Quiz and More Practice: dozens of multiple-choice and true-false questions
- Flashcards: 32 flashcards to test your knowledge of the chapter’s key terms
- Web Quest: introduction to using the Criminal Justice Today Companion website
- Assignments: real-world essay questions about current issues, e-homework, opinion-based essay questions, and chapter projects for research and analysis

Go to Chapter 1 of Criminal Justice Interactive to use the following resources and study tools:

- Learning Modules: Criminal Justice Goals, Criminal Justice Process, and Due Process versus Crime Control
- Myths and Issues Videos: Myth versus Reality: Crime Has Been Steadily Increasing
  Issue 1: Is the Criminal Justice System Really a System?
  Issue 2: Crime Control versus Due Process
- Simulation: The Criminal Justice Funnel. Explore the first four stages of the criminal justice system, and discover some of the reasons offenders are excluded or removed from the system at each stage.

Endnotes for this chapter can be found online at MyCrimeKit.com