



>Chapter 1<

# Criminal Justice Today



## >chapter outline<

- What Is Crime?
- The Criminal Justice System
- Values of the Criminal Justice System
- Criminal Justice in Action—Criminal Justice and the War against Terrorism

## >chapter objectives<

After reading this chapter, you should be able to:

- 1 Describe the two most common models of how society determines which acts are criminal.
- 2 Define crime and the different types of crime.
- 3 Outline the three levels of law enforcement.
- 4 List the essential elements of the corrections system.
- 5 Explain the difference between the formal and informal criminal justice processes.
- 6 Describe the layers of the “wedding cake” model.
- 7 Contrast the crime control and due process models.

## Last Call

**O**n the afternoon of November 22, 2003, Chris Lang received two phone calls from his girlfriend, Dru Sjodin. The first occurred as Sjodin, a twenty-two-year-old university student, was leaving



AP Photo/Pat Sullivan

Dru Sjodin disappeared on November 22, 2003, from a mall parking lot in Grand Forks, North Dakota. Her body was found five months later in a ditch near Crookston, Minnesota.

her body in a ditch one mile west of Crookston, Minnesota.

At the time this discovery was made, law enforcement agents had long given up hope of find-

ing Sjodin alive. The lack of physical evidence of her death had not stopped them, however, from aggressively pursuing her suspected assailant. Nearly a week after Sjodin's disappearance, authorities arrested Alfonso Rodriguez, Jr., on a kidnapping charge. The evidence against Rodriguez was considerable. Bloodstains on the back seat of his car matched a DNA sample taken from Sjodin's toothbrush, and investigators were able to link a knife found in his trunk with a sheath found near Sjodin's car in the mall parking lot. Furthermore, Sjodin's final cell phone call had been traced to a rest stop near Crookston, Rodriguez's hometown.

Rodriguez's criminal background provided the first clue to his possible involvement in the case. He had recently been released from prison after serving a twenty-three-year sentence for kidnap and rape. Residents of Crookston were notified of Rodriguez's return to the community because he had been designated a Level 3 sex offender—a category reserved for those convicts who show the highest likelihood to commit more sex crimes.

**> Emotions ran high** in the wake of Dru Sjodin's death. One man from Sjodin's Minnesota hometown went so far as to suggest that authorities should "start out with [Alfonso Rodriguez, Jr.'s] fingernails and pull them out one piece at a time." This statement, and a number of similar ones, was made, however, before the start of Rodriguez's 2004 trial, in which he was expected to plead innocent.

Our criminal justice system is based on the concept that persons accused of crimes are innocent until proven guilty, even when—as in the case of Rodriguez—the evidence appears overwhelming. Because of sentiments such as the one expressed above, Rodriguez’s lawyer claimed it would be impossible for his client to receive a fair trial, given that the community seemed to have prejudged his guilt. Furthermore, many observers wondered, where should the trial take place? Should it be held in North Dakota, where Sjodin was living when she disappeared, or in Minnesota, where her body was found and where she was raised? Also, what punishment should the government seek? If found guilty of murder, should Rodriguez be sentenced to death? A mere six weeks before the scheduled start of Rodriguez’s criminal trial, these crucial questions remained unanswered.

As you proceed through this textbook, you will see that few aspects of criminal justice are ever simple, even in a case that seems open and shut. In the chapters that follow, we will examine how the American criminal justice system works, as well as investigate some of the areas where it does not function as well as it should. We will also take a close look at the jobs of hundreds of thousands of Americans who work in the system—including the police on the streets, the lawyers in the courtroom, and the correctional officers in the prisons. This first chapter provides an introduction to our topic by focusing on the structure of the criminal justice system and the values that it is designed to promote.

## What Is Crime?

Before the discovery of Dru Sjodin’s body, authorities had to be content to charge Alfonso Rodriguez, Jr., with the crime of “kidnapping.” Although all signals suggested that severe violence had been done to Sjodin, the possibility remained that she was still alive. Rodriguez could not be charged with the more serious offense of “kidnapping resulting in death” until greater evidence of murder came to light. What, then, had changed on April 17, 2004, the day Dick Roue stumbled across Sjodin’s remains? In actuality, nothing—she had been dead for many months. But the legal conditions surrounding the case shifted significantly on that Saturday in April, and so did the definition of Rodriguez’s actions under the law.

Thus, we can define a *crime* as a wrong against society proclaimed by law and, if committed under certain circumstances, punishable by society.<sup>1</sup> The problem with this definition, however, is that it obscures the complex nature of societies. A society is not static—it evolves and changes, and its concept of criminality evolves and changes as well. Different societies can have vastly different ideas of what constitutes “a wrong.” In Singapore, for example, until recently the sale of chewing gum was illegal, a law that many Americans found incomprehensible.

To more fully understand the concept of crime, it will help to examine the two most common models of how society “decides” which acts are criminal: the consensus model and the conflict model.


### THE CONSENSUS MODEL

The **consensus model** assumes that as people gather together to form a society, its members will naturally come to a basic agreement with regard to shared norms and values. Those individuals whose actions deviate from the established norms and values are considered to pose a threat to the well-being of society as a whole and must be sanctioned (punished). The society passes laws to control and prevent deviant



AP Photo/Northwestern, Joe Sienkiewicz

In 2003, seventeen-year-old Kristen Cleaver was charged with first degree intentional homicide and hiding a corpse. According to officials in Oshkosh, Wisconsin, Cleaver gave birth in her bathtub, watched the child drown, and then hid the body in her bedroom closet. Why does society need to punish this kind of behavior with criminal sanctions?

 **CONCEPT BUILDER**  
Society has become less tolerant of crime, and especially of certain types of crime. Visit [www.cjinaction.com](http://www.cjinaction.com) for an interactive exploration of how such intolerance affects crime policies.

#### Consensus Model

A criminal justice model in which the majority of citizens in a society share the same values and beliefs. Criminal acts are those acts that conflict with these values and beliefs and are deemed harmful to society.



AP Photo/Ben Margot

At the Cannabis Buyers' Cooperative in Oakland, California, "bartender" Pamela Powers picks out a marijuana muffin for paraplegic Ken Estes. In the mid-1990s, voters in California approved Proposition 215, which allows those with a physician's approval to purchase marijuana for medical purposes. The U.S. Department of Justice declared Proposition 215 illegal, as it countered federal drug laws that prohibit the production and sale of marijuana. U.S. District Judge Charles Breyer agreed, ordering the closing of the Oakland Cannabis Cooperative. In response, the city kept the Cooperative open, with an official telling the federal government to "butt out." How does the debate over medical marijuana reflect the consensus model in action?

### Conflict Model

A criminal justice model in which the content of criminal law is determined by the groups that hold economic, political, and social power in a community.

beyond the purview of the state, and to consider the sale of heroin a criminal act. When a consensus does not exist as to whether a certain act falls within the parameters of acceptable behavior, a period of uncertainty ensues as society struggles to formalize its attitudes as law. (For an example of the consensus model at work, see the feature *International Cf—Doctor-Assisted Death and the Dutch.*)

### THE CONFLICT MODEL

Those who reject the consensus model do so on the ground that moral attitudes are not absolute. In large, democratic societies such as the United States, different segments of society will inevitably have different value systems and shared norms. According to the **conflict model**, these different segments—separated by social class, income, age, and race—are engaged in a constant struggle with each other for control of society. The victorious groups exercise their power by codifying their value systems into criminal laws.<sup>3</sup>

Consequently, what is criminal activity is determined by whichever group happens to be holding power at any given time. Because certain groups do not have access to political power, their interests are not served by the criminal justice system. To give one example, the penalty (five years in prison) for possession of 5 grams of crack cocaine is the same as for possession of 500 grams of powder cocaine. This 1:100 ratio has had widespread implications for inner-city African Americans, who are statistically more likely to get caught using crack cocaine than are white suburbanites, who appear to favor the illicit drug in its powdered form.<sup>4</sup>

### AN INTEGRATED DEFINITION OF CRIME

Considering both the consensus and conflict models, we can construct a definition of crime that will be useful throughout this textbook. For our purposes, crime is an action or activity that is:

- 1 Punishable under criminal law, as determined by the majority of a society or, in some cases, a powerful minority.
- 2 Considered an *offense against society as a whole* and prosecuted by public officials, not by victims and their relatives or friends.
- 3 Punishable by statutorily determined sanctions that bring about the loss of personal freedom or life.

## > Doctor-Assisted Death and the Dutch

In 2001, the Netherlands became the first nation to legalize physician-assisted suicide and euthanasia (“mercy killing”). The new law simply formalized practices that had been taking place since 1973, when this European nation’s courts decided that doctors can help terminate a patient’s life if certain conditions are met: the patient must explicitly request such an action, the request must be voluntary, and the patient’s suffering must be unbearable and without any hope of improvement. The law requires youths aged twelve to sixteen to obtain parental consent before requesting assisted suicide. From the age of sixteen, all patients have the right to discuss the matter with their doctors without obtaining their parents’ approval.

In explaining why the Netherlands accepts actions that many other countries would consider objectionable, observers point to several characteristics of Dutch society. First, doctors hold exalted positions, and their actions are rarely questioned. Not only are doctors authorized to terminate “meaningless” lives, but they are also expected to do so. Second, the country lacks a strong religious influence, which might place the question of assisted suicide in a different moral perspective. As it is, hopelessly ill patients who fail to request euthanasia are seen as adhering to outdated ethical values. Third, and most important, is the Dutch emphasis on personal autonomy; the choice to die is considered the responsibility of the individual, not of the state.

In 1998, an elderly Oregon woman whose breast cancer left her unable to breathe easily became the first American to

AP Photo/Serge Ligtnerberg



On April 10, 2000, thousands of protesters gather outside the Upper House of Parliament in The Hague, Netherlands, as Dutch government officials debate the legalization of euthanasia.

legally commit suicide with the aid of a doctor. Oregon’s Death with Dignity Act—which is modeled in many respects after the Dutch system—was upheld by a federal court ruling in 2004 that reconfirmed each state’s authority to legalize assisted suicide. To date, 171 people have ended their lives with a physician’s help in Oregon, the only state that allows such a practice.

### FOR CRITICAL ANALYSIS

*What social attitudes make it unlikely that physician-assisted suicide and euthanasia will become widely accepted in this country?*

## TYPES OF CRIME

The manner in which crimes are classified depends on their seriousness. Federal, state, and local legislation has provided for the classification and punishment of hundreds of thousands of different criminal acts, ranging from jaywalking to first degree murder. For general purposes, we can group criminal behavior into six categories: violent crime, property crime, public order crime, white-collar crime, organized crime, and high-tech crime.

**Violent Crime** Crimes against persons, or **violent crimes**, have come to dominate our perspectives on crime. There are four major categories of violent crime:

- > *Murder*, or the unlawful killing of a human being.
- > *Sexual assault*, or *rape*, which refers to coerced actions of a sexual nature against an unwilling participant.
- > *Assault and battery*, two separate acts that cover situations in which one person physically attacks another (battery) or, through threats, intentionally leads another to believe that he or she will be physically harmed (assault).
- > *Robbery*, or the taking of money, personal property, or any other article of value from a person by means of force or fear.

### Violent Crime

Crimes committed against persons, including murder, rape, assault and battery, and robbery.

### Property Crime

Crimes committed against property, including larceny/theft, burglary, and arson.

### Public Order Crime

Behavior that has been labeled criminal because it is contrary to shared social values, customs, and norms.

### White-Collar Crime

Nonviolent crimes committed by corporations and individuals to gain a personal or business advantage.

As we shall see in Chapter 3, these violent crimes are further classified by *degree*, depending on the circumstances surrounding the criminal act. These circumstances include the intent of the person committing the crime, whether a weapon was used, and (in cases other than murder) the level of pain and suffering experienced by the victim.

**Property Crime** The most common form of criminal activity is **property crime**, or those crimes in which the goal of the offender is some form of economic gain or the damaging of property. Pocket picking, shoplifting, and the stealing of any property that is not accomplished by force are covered by laws against *larceny/theft*. *Burglary* refers to the unlawful entry of a structure with the intention of committing a serious crime such as theft. *Motor vehicle theft* describes the theft or attempted theft of a motor vehicle, including all cases in which automobiles are taken by persons not having lawful access to them. The willful and malicious burning of a home, automobile, commercial building, or any other construction, known as *arson*, is also a property crime.

*arson*, is also a property crime.

**Public Order Crime** The concept of **public order crimes** is linked to the consensus model discussed earlier. Historically, societies have always outlawed activities that are considered contrary to public values and morals. Today, the most common public order crimes include public drunkenness, prostitution, gambling, and illicit drug use. These crimes are sometimes referred to as *victimless crimes* because they often harm only the offender. As we shall see throughout this textbook, however, that term is rather misleading. Public order crimes may create an environment that gives rise to property and violent crimes.

**White-Collar Crime** Crimes occur in the business world too. Business-related crimes are popularly referred to as **white-collar crimes**. The term *white-collar crime* is broadly used to describe an illegal act or series of acts committed by an individual or business entity using some nonviolent means to obtain a personal or business advantage. Figure 1.1 lists various types of white-collar crime; note that certain property crimes fall into this category when committed in a corporate context.

White-collar crime costs corporate America about \$600 billion annually.<sup>5</sup> Some observers see the relatively light penalties given to wealthy white-collar criminals—in contrast to harsher penalties for

FIGURE 1.1 White-Collar Crime

<b>Embezzlement</b>	A form of employee fraud in which an individual uses his or her position within a corporation to <i>embezzle</i> , or steal, the corporation's money, property, or other assets. <i>Pilferage</i> is a less serious form of employee fraud in which the individual steals items from the workplace.
<b>Mail and Wire Fraud</b>	This umbrella term covers all schemes to intentionally deceive in a business environment that involve the use of mail, radio, television, the Internet, or a telephone.
<b>Credit-Card and Check Fraud</b>	This form of white-collar crime involves obtaining credit-card numbers through a variety of schemes (such as stealing them from the Internet) and using the numbers for personal gain. Check fraud includes writing checks that are not covered by bank funds, forging checks, and stealing traveler's checks.
<b>Insurance Fraud</b>	Insurance fraud involves making false claims in order to collect insurance payments under false pretenses. Faking an injury in order to receive payments from a workers' compensation program, for example, is a form of insurance fraud.
<b>Securities Fraud</b>	This area covers illegal activity in the stock market. It includes stockbrokers who steal money from their clients and <i>insider trading</i> , which is the illegal trading in a stock by someone (or on behalf of someone) who has inside knowledge about the company in question.
<b>Bribery</b>	Also known as <i>influence peddling</i> , bribery occurs in the business world when somebody within a company sells influence, power, or information to a person outside the company who can benefit. A county official, for example, could give a construction company a lucrative county contract to build a new jail. In return, the construction company would give a sum of money, also known as a <i>kickback</i> , to the official.
<b>Consumer Fraud</b>	This term covers a wide variety of activities designed to defraud consumers, from selling counterfeit art to offering "free" items, such as electronic devices or vacations, that include a number of hidden charges.
<b>Tax Evasion</b>	The practice by which taxpayers underreport (or do not report) their taxable income or otherwise purposely attempt to evade a tax liability.

## > Getting Tough on White-Collar Crime

**T**he business pages of American newspapers should not read like a scandal sheet," lectured President George W. Bush to a group of Wall Street professionals. "At this moment America's greatest economic need is higher ethical standards." During the summer of 2002, it did seem as if the world of commerce was suffering from an ethical crisis. Corporate fraud involving billions of dollars had been uncovered at giant companies such as Enron, Xerox, Adelphia, and WorldCom. One in five American workers said they knew of colleagues who had lied on expense reports, stolen items from supply cabinets, accepted personal gifts from clients, or skimmed money off of cash sales. The country appeared to be suffering from an epidemic of white-collar crime, causing many to believe that we were somehow less ethical as a people than we used to be.

As we will see throughout this textbook, perception often drives legislation. In this case, the scandals of 2002 led to tough new laws to prevent and punish white-collar crimes. Under the new sentencing guidelines, the maximum punishment for wire and mail fraud, the most common white-collar crimes, increased from five to twenty years. Today, a corporate executive whose fraudulent activity causes a 50-cent drop in his company stock value faces a stiffer penalty (eleven years in prison) than a person convicted of selling forty grams of heroin (three years) or voluntary manslaughter (ten years).

When combined with a greater willingness to convict on the part of juries, white-collar wrongdoers are being subjected to much harsher punishments than would have previously been thought necessary. Fifteen years ago, Ivan Boesky was sentenced to only three years in prison for a securities fraud scheme that made him \$50 million richer. In 2004, James Olis, an executive with energy company Dynegy, was given twenty-four years for "cooking the books" in order to gain \$472,000. That same year, celebrity

REUTERS/Mike Segar/Landov



On March 4, 2004, entrepreneur Martha Stewart was convicted of conspiring with her stockbroker to obstruct an investigation into her stock sales. She was later sentenced to five months in prison for her transgression.

homemaker and businesswoman Martha Stewart was sentenced to five months in prison even though she had not, at first, done anything wrong. Instead, she was convicted of obstructing justice for lying to federal officials concerning a stock transaction. As one observer noted, "If I were someone on Wall Street, this [trend] would send a chill through my spine."

### FOR CRITICAL ANALYSIS

*Some observers have suggested that the prospect of going to prison is more of a deterrent for those who may commit white-collar crimes than those who may commit violent or property crimes. Why might this be true? Why might this not be true?*

poorer "blue-collar" (or street) criminals convicted of burglary, larceny, and the sale of illegal drugs—as supporting the conflict model of criminality. Following a series of high-profile corporate fraud cases in 2002, President George W. Bush tried to change the perception of law enforcement's "slap on the wrist" mentality toward white-collar crime by signing a bill that greatly increased the criminal penalties for a variety of types of business-related wrongdoing.<sup>6</sup> (See the feature *CJ in Focus—A Question of Ethics: Getting Tough on White-Collar Crime* above.)

**Organized Crime** White-collar crime involves the use of legal business facilities and employees to commit illegal acts. For example, a bank teller can't embezzle unless she is hired first as a legal employee of the bank. In contrast, **organized crime** describes illegal acts by illegal organizations, usually geared toward satisfying the public's demand for unlawful goods and services. Organized crime broadly implies

### Organized Crime

A conspiratorial relationship between any number of persons engaged in the market for illegal goods or services, such as illicit drugs or firearms.

See the **UCLA Online Institute for Cyberspace Law and Policy** for a wealth of information on cyber crimes. Find this Web site by clicking on *Web Links* under *Chapter Resources* at [www.cjinaction.com](http://www.cjinaction.com).

### INFOTRAC KEYWORDS

**computer crime**

For more information, use this search term with InfoTrac College Edition, your online library at [www.infotrac-college.com](http://www.infotrac-college.com)

a conspiratorial and illegal relationship between any number of persons engaged in unlawful acts. More specifically, groups engaged in organized crime employ criminal tactics such as violence, corruption, and intimidation for economic gain. The hierarchical structure of organized crime operations often mirrors that of legitimate businesses, and, like any corporation, these groups attempt to capture a sufficient percentage of any given market to make a profit. For organized crime, the traditional preferred markets are gambling, prostitution, illegal narcotics, and loan sharking (lending money at higher-than-legal rates), along with more recent ventures into counterfeiting and credit-card scams.<sup>7</sup>

**High-Tech Crime** The newest typology of crime is directly related to the increased use of computers in everyday life. The Internet, with approximately 200 million users worldwide, is the site of numerous *cyber crimes*, such as selling pornographic materials, soliciting minors, and defrauding consumers with bogus financial investments. The dependence of businesses on computer operations has left corporations vulnerable to sabotage, fraud, embezzlement, and theft of proprietary data. (See Figure 1.2 for several types of cyber crimes.)

 **ONLINE REVIEW** Go to the book's Web site for an interactive review of this section

## The Criminal Justice System

Defining which actions are to be labeled “crimes” is only the first step in safeguarding society from criminal behavior. Institutions must be created to apprehend alleged wrongdoers, determine whether these persons have indeed committed crimes, and punish those who are found guilty according to society’s wishes. These institutions combine to form the *criminal justice system*. As we begin our examination of the American criminal justice system in this introductory chapter, it is important to have an idea of its purpose.

### THE PURPOSE OF THE CRIMINAL JUSTICE SYSTEM

In 1967, the President’s Commission on Law Enforcement and Administration of Justice stated that the criminal justice system is obliged to enforce accepted standards of conduct so as to “protect individuals and the community.”<sup>8</sup> Given this general mandate, we can further separate the purpose of the modern criminal justice system into three general goals:

- 1 To control crime
- 2 To prevent crime
- 3 To provide and maintain justice

Though many observers differ on the precise methods of reaching them, the first two goals are fairly straightforward. By arresting, prosecuting, and punishing wrongdoers, the criminal justice system

**FIGURE 1.2** Types of Cyber Crime

#### Cyber Crime against Persons

- > **Obscene Material and Pornography:** The selling, posting, and distributing of obscene material such as pornography, indecent exposure, and child pornography.
- > **Cyber Stalking:** The act of using a computer and the Internet to continually attempt to contact and/or intimidate another person.
- > **Cyber Harassment:** The harassment of a person through electronic mail, on chat sites, or by printing information about the person on Web sites.

#### Cyber Crime against Property

- > **Hacking:** The act of using programming abilities with malicious intent.
- > **Cracking:** The act of using programming abilities in an attempt to gain unauthorized access to a computer or network.
- > **Piracy:** Copying and distributing software or other items belonging to someone else over the Internet.
- > **Viruses:** The creation and distribution of harmful computer programs.

#### Cyber Crime against the Government

- > **Cyber Terrorism:** The use of a computer and/or the Internet to further political goals of terrorism against a country and its citizens.

Source: Susan Brenner and Rebecca Cochran, University of Dayton School of Law at [www.cybercrimes.net](http://www.cybercrimes.net)

attempts to *control* crime. In the process, the system also hopes to *prevent* new crimes from taking place. The prevention goal is often used to justify harsh punishments for wrongdoers, which some see as deterring others from committing similar criminal acts. The third goal—of providing and maintaining justice—is more complicated, largely because *justice* is a difficult concept to define. Broadly stated, justice means that all citizens are equal before the law and that they are free from arbitrary arrest or seizure as defined by the law.<sup>9</sup> In other words, the idea of justice is linked with the idea of fairness. Above all, we want our laws and the means by which they are carried out to be fair.

Justice and fairness are subjective terms; different people may have different concepts of what is just and fair. If a woman who has been beaten by her husband retaliates by killing him, what is her just punishment? Reasonable persons could disagree, with some thinking that the homicide was justified and she should be treated leniently, and others insisting that she should not have taken the law into her own hands. Police officers, judges, prosecutors, prison administrators, and other employees of the criminal justice system must decide what is “fair.” Sometimes, their course of action is obvious; often, as we shall see, it is not.

Society places the burden of controlling crime, preventing crime, and determining fairness on those citizens who work in the three main institutions of the criminal justice system: law enforcement, courts, and corrections. In the next section, we take an introductory look at these institutions and their role in the criminal justice system as a whole.

## THE STRUCTURE OF THE CRIMINAL JUSTICE SYSTEM

To understand the structure of the criminal justice system, one must understand the concept of **federalism**, which means that government powers are shared by the national (federal) government and the states. The framers of the U.S. Constitution, fearful of tyranny and a too-powerful central government, chose the system of federalism as a compromise. The appeal of federalism was that it allowed for state powers and local traditions while establishing a strong national government capable of handling large-scale problems.

The Constitution gave the national government certain express powers, such as the power to coin money, raise an army, and regulate interstate commerce. All other powers were left to the states, including police power, which allows the states to enact whatever laws are necessary to protect the health, morals, safety, and welfare of their citizens. As the American criminal justice system has evolved, the ideals of federalism have ebbed somewhat; in particular, federal involvement has expanded significantly. Crime is still, however, for the most part a local concern, and the majority of all employees in the criminal justice system work for local government (see Figure 1.3 on the following page).

**Law Enforcement** The ideals of federalism can be clearly seen in the local, state, and federal levels of law enforcement. Though agencies from the different levels will cooperate if the need arises, they have their own organizational structures and tend to operate independently of one another. In addition to this brief introduction, each level of law enforcement will be covered in more detail in Chapters 5, 6, and 7.

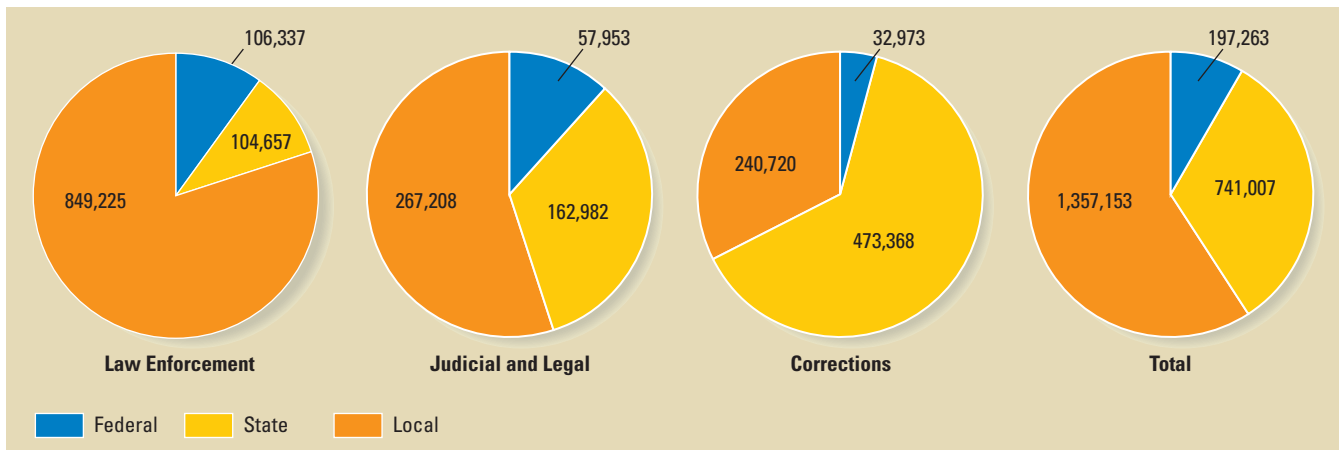
**Local Law Enforcement** On the local level, the duties of law enforcement agencies are split between counties and municipalities. The chief law enforcement

“The American people have been very clear; . . . keep the streets and the neighborhoods of America safe. The first responsibility of Government is law and order. Without it, people can never really pursue the American dream. And without it, we’re not really free.”

—President Bill Clinton (1994)

### Federalism

A form of government in which a written constitution provides for a division of powers between a central government and several regional governments. In the United States, the division of powers between the federal government and the fifty states is established by the Constitution.



**FIGURE 1.3 Local, State, and Federal Employees in Our Criminal Justice System**

Source: Bureau of Justice Statistics, *Justice Expenditure and Employment Extracts, 2001* (Washington, D.C.: U.S. Department of Justice, 2004), Table 4.

officer of most counties is the county sheriff. The sheriff is usually an elected post, with a two- or four-year term. In some areas, where city and county governments have merged, there is a county police force, headed by a chief of police. The bulk of local police officers—nearly 500,000—are employed by municipalities. The majority of these forces consist of fewer than ten officers, though a large city such as New York can have a police force of more than 35,000.

Local police are responsible for the “nuts and bolts” of law enforcement work. They investigate most crimes and attempt to deter crime through patrol activities. They apprehend criminals and participate in the trial proceedings, if necessary. Local police are also charged with “keeping the peace,” a broad set of duties that includes crowd and traffic control and the resolution of minor conflicts between citizens. In many areas, local police have the added obligation of providing social services such as dealing with domestic violence and child abuse.

**State Law Enforcement** Hawaii is the only state that does not have a state law enforcement agency. Generally, there are two types of state law enforcement agencies, those designated simply as “state police” and those designated as “highway patrols.” State highway patrols concern themselves mainly with infractions on public highways and freeways. Other state law enforcers include fire marshals, who investigate suspicious fires and educate the public on fire prevention, and fish, game, and watercraft wardens, who police a state’s natural resources and often oversee its firearms laws. Some states also have alcoholic beverage control officers plus agents who investigate welfare and food stamp fraud. (To see how one state deals with the challenges of law enforcement, see the feature *CJ and Technology—Weathering the Storm in Alaska*.)

**Federal Law Enforcement** The creation of new national gun, drug, and violent crime laws over the past thirty years has led to an expansion in the size and scope of the federal government’s participation in the criminal justice system. Federal agencies with police powers include the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the U.S. Secret Service, and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). In fact, almost every federal agency, including the postal and forest services, has some kind of police power. On November 25, 2002, President George W. Bush created the Department of Homeland Security, which combines the police powers of twenty-two federal agencies in order to protect the United States against **terrorism**, which can be broadly

**Terrorism**

The use or threat of violence to achieve political objectives.

## > Weathering the Storm in Alaska

**F**ew states face the law enforcement challenges found in Alaska. Covering more than 586,000 square miles, the state is filled with mountains, glaciers, millions of lakes, and thousands of rivers and has a coastline of more than 6,600 miles. Its law enforcement personnel must cope with blizzards, avalanches, and winter temperatures that average twenty degrees below zero. “Snow is a big problem,” says one officer. “When everything is white, it’s impossible to get your bearings.” Shutter releases on cameras often stop working in the cold, severely hampering efforts to photograph crime scenes. To prevent oil and transmission fluid from freezing, police vehicles must be left running, but that makes them susceptible to theft. To make things worse, nearly 30 percent of Alaska’s population lives in communities inaccessible by road or ferry, making it arduous not only to reach many locations, but also to transport suspects back to police stations.

To deal with these challenges, Alaska has the fewest law enforcement personnel of any state in the Union—around 1,200 sworn officers. As a result, many of the crime-fighting technologies that will be discussed in this textbook are crucial to police work in Alaska. Portable crime-processing kits are necessary to gather clues at remote crime scenes. Geographic information systems (GISs) allow officials to “map crime” and place resources where they are most needed. Satellite tracking and electronic monitoring permit correctional officials to supervise nonviolent criminals in their own communities, saving the cost and trouble of transporting them to, and housing them in, jails. Finally, using thermal imaging devices that measure heat, officers can “see” in the dark and through snowstorms. “If it’s thirty-eight below and a moose walks through town,” notes the

Photo courtesy of the Alaska State Troopers



*To cover a territory one-fifth the size of the continental United States, the Alaska State Troopers, pictured here, must rely on a variety of forms of transportation. Many isolated communities can be reached only by airplane or dogsled. Obviously, environment plays a large role in law enforcement on a state and local level.*

police chief of Wasilla, Alaska, “we can find the heat signature in the snow two hours later.”

### > In the Future

One of the greatest difficulties in policing large areas such as Alaska is communication. If various agencies are not able to transfer information to one another, the quality of law enforcement will inevitably suffer. Alaska is in the process of creating an integrated criminal justice information system that will connect police departments, courts, district attorneys’ offices, probation departments, and social services agencies, allowing them to exchange data no matter how geographically isolated they may be.

 For more information on hi-tech police gear and other CJ technologies, click on Crime and Technology under Book Resources at [www.cjinaction.com](http://www.cjinaction.com)

defined as the random use of staged violence at infrequent intervals to achieve political goals. The crucial law enforcement role of this new department will be examined in detail in Chapters 5 and 15.

**The Courts** The United States has a *dual court system*; that is, we have two independent judicial systems, one on the federal level and one on the state level. In practice, this translates into fifty-two different court systems: one national court system and fifty different state court systems (plus the District of Columbia). The federal system consists of district courts, circuit courts of appeals, and the United States Supreme Court. The state systems include trial courts at the local and state levels, intermediate courts of appeals, and state supreme courts.

The *criminal court* and its work group—the judge, prosecutors, and defense attorneys—are charged with the weighty responsibility of determining the innocence or guilt of criminal suspects. We will cover these important participants, their roles in the criminal trial, and the court system as a whole in Chapters 8, 9, and 10.

## > Patrick Connolly Supervisory Special Agent, FBI Coordinator, Joint Terrorism Task Force

In the course of my twenty-three years with the Federal Bureau of Investigation, I've held many jobs with many titles, with my most recent being Supervisory Special Agent and Coordinator for the Joint Terrorism Task Force. The FBI clearly has an important mission to prevent another attack like that of September 11, 2001, which is why the antiterrorism function of the Bureau is so important. However, the FBI is not alone in this mission. In fact, the Joint Terrorism Task Force includes representatives from more than thirty agencies—including federal, state, and local intelligence and law enforcement agencies.

The training of the FBI members selected for the task force is not different from the standard training. The special agents go through fifteen to sixteen weeks of training at the FBI Academy at the U.S. Marine Corps base at Quantico, Virginia. I went through the Academy early in my career but now the training has been refocused to increase the emphasis on international terrorism issues. There is also a great deal of emphasis on providing timely and relevant training on current terrorism issues to all members of the task force.

In my work with the Bureau, I've been responsible for investigations in every area of FBI jurisdiction—including terrorism, organized crime, drugs/alien smuggling, violent crime, white-collar crime, and civil rights. Most of these investigations were long term and targeted criminal enterprises. We used sophisticated investigative techniques, such as wiretaps and undercover operations. In addition, I've served as a hostage negotiator, police instructor, legal adviser, and crisis management coordinator.

I also oversaw our FBI Detainee operation at the military prison at the U.S. Naval Base at Guantanamo Bay, Cuba. There, hundreds of individuals who had been involved with the Taliban and the war in Afghanistan were detained for questioning. Working at Guantanamo made it especially clear to me how important the FBI's role was in preventing attacks in the U.S., although there has since been controversy over the appropriateness of detaining so many for so long. A key challenge in the

area of antiterrorism is to balance individual liberties with national security. This is always a fine line but I feel that the FBI in general and the Joint Terrorism Task Forces in particular have been very successful at achieving that balance.

What advice would I give a job seeker looking for a position in the FBI?

Get a college degree in any subject that interests you because the FBI is looking for individuals with expertise in a wide range of areas. For example, if you're interested in fields that range from criminal justice, biology, and psychology, to business administration, there are relevant jobs in the FBI. Also, if you're especially interested in terrorism, you can access much unclassified information to educate yourself. For example, just exploring the Web will yield much information about terrorist groups, ideologies, and tactics. Of course, it's necessary to evaluate this material carefully, and to use a variety of resources.

Most positions in the FBI now require at least a bachelor's degree and three years of full-time related experience. However, given the number of applicants for each position, you would have a better chance with a master's degree. You must also have the highest ethics not only because that's a core value, but you may end up testifying under oath at a trial.

Overall, I have found the job very fulfilling. Every day is different and the FBI is involved in important matters ranging from informing policy on a national level to vindicating victims. I retired very recently from the FBI and now teach Administration of Justice at MiraCosta College in Oceanside, California.

Courtesy of Patrick Connolly



Patrick Connolly



Go to the Careers in Criminal Justice Interactive CD for more profiles in the field of criminal justice.

**Corrections** Once the court system convicts and sentences an offender, she or he is delegated to the corrections system. Depending on the seriousness of the crime and their individual needs, offenders are placed on probation, incarcerated, or transferred to community-based corrections facilities.

> **Probation**, the most common correctional treatment, allows the offender to return to the community and remain under the supervision of an agent of the court known as a probation officer. While on probation, the offender must follow certain rules of conduct. If probationers fail to follow these rules, they may be incarcerated.

- > If the offender’s sentence includes a period of incarceration, he or she will be remanded to a corrections facility for a certain amount of time. *Jails* hold those convicted of minor crimes with relatively short sentences, as well as those awaiting trial or involved in certain court proceedings. *Prisons* house those convicted of more serious crimes with longer sentences. Generally speaking, counties and municipalities administer jails, while prisons are the domain of federal and state governments.
- > *Community-based corrections* have increased in popularity, as jails and prisons have been plagued with problems of overcrowding. Community-based correctional facilities include halfway houses, residential centers, and work-release centers; they operate on the assumption that all convicts do not need, and are not benefited by, incarceration in jail or prison.

The majority of those inmates released from incarceration are not finished with the correctional system. The most frequent type of release from a jail or prison is *parole*, in which an inmate, after serving part of his or her sentence in a correctional facility, is allowed to serve the rest of the term in the community. Like someone on probation, a parolee must conform to certain conditions of freedom, with the same consequences if these conditions are not followed. Issues of probation, incarceration, community-based corrections, and parole will be covered in Chapters 11, 12, and 13.

## THE CRIMINAL JUSTICE PROCESS

In its 1967 report, the President’s Commission on Law Enforcement and Administration of Justice asserted that the criminal justice system

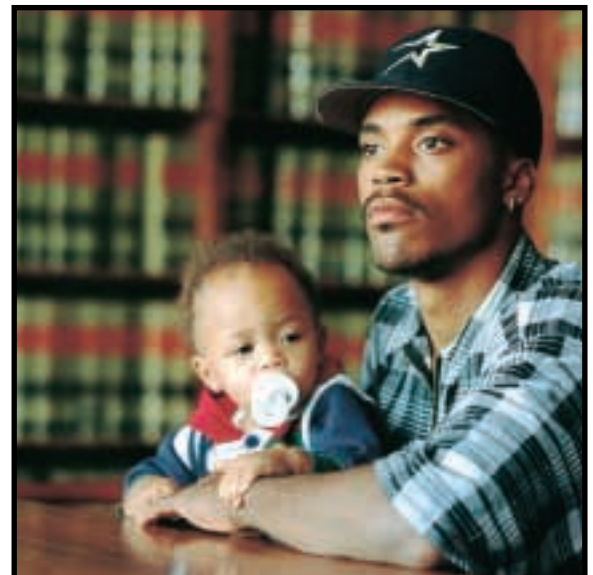
is not a hodgepodge of random actions. It is rather a continuum—an orderly progression of events—some of which, like arrest and trial, are highly visible and some of which, though of great importance, occur out of public view.<sup>10</sup>

The commission’s assertion that the criminal justice system is a “continuum” is one that many observers would challenge.<sup>11</sup> Some liken the criminal justice system to a sports team, which is the sum of an indeterminable number of decisions, relationships, conflicts, and adjustments.<sup>12</sup> Such a volatile mix is not what we generally associate with a “system.” For most, the word *system* indicates a certain degree of order and discipline. That we refer to our law enforcement agencies, courts, and correctional facilities as part of a “system” may reflect our hopes rather than reality.

Just as there is an idealized image of the criminal justice system as a smooth continuum, there also exists an idealized version of the *criminal justice process*, or the procedures through which the criminal justice system meets the expectations of society. Professor Herbert Packer, for example, compared the idealized criminal justice process to an assembly line,

down which moves an endless stream of cases, never stopping, carrying the cases to workers who stand at fixed stations and who perform on each case as it comes by the same small but essential operation that brings it one stop closer to being a finished product, or, to exchange the metaphor for the reality, a closed file.<sup>13</sup>

Although discretion is absolutely necessary in the criminal justice system, it can be abused. Several years ago, Damien “Pookie” Burris, below with his young son, spent more than five months in a Los Angeles jail for a murder he did not commit. Witnesses to the killing said the assailant was nicknamed “Pookie,” and, after several identified Burris from mug shots, he was arrested by the police. Burris claimed he was in church at the time of the murder, an alibi detectives chose not to validate. In fact, it took the discretionary intervention of a patrol officer to prove that Burris had in fact been in church and the police had arrested the wrong “Pookie.” How can criminal justice procedure be seen as a system of “checks and balances” in which discretionary errors are eventually corrected?



Patrick Downs/Los Angeles Times

As Packer himself was wont to point out, the daily operations of criminal justice are not nearly so perfect. In this textbook, the criminal justice process will be examined as the end product of literally thousands of decisions made by the police, courtroom workers, and correctional administrators. It should become clear that, in fact, the criminal justice process functions as a continuous balancing act between its formal and informal nature, both of which are discussed below.

**The Formal Criminal Justice Process** In Packer’s image of assembly-line justice, each step of the process “involves a series of routinized operations whose success is gauged primarily by their tendency to pass the case along to a successful conclusion.”<sup>14</sup> These “routinized” steps are detailed in the foldout poster in this chapter.

**The Informal Criminal Justice Process** Each step described in the foldout poster is the result of a series of decisions that must be made by those who work in the criminal justice system. This **discretion**—which can be defined as the authority to choose between and among alternative courses of action—leads to the development of the informal criminal justice process, discussed below.

**Discretionary Basics** One New York City public defender called his job “a pressure cooker.” That term could apply to the entire spectrum of the criminal justice process. Law enforcement agencies do not have the staff or money to investigate *every* crime; they must decide where to direct their restricted resources. Increasing caseloads and a limited amount of time with which to dispose of them constrict many of our nation’s courts. Overcrowding in prisons and jails affects both law enforcement agencies and the courts—there is simply not enough room for all convicts.

The criminal justice system uses discretion to alleviate these pressures. Police decide whether to arrest a suspect; prosecutors decide whether to prosecute; magistrates decide whether there is sufficient probable cause for a case to go to a jury;

judges decide on sentencing; and so on. (See Figure 1.4 for a rundown of some of the most important discretionary decisions.) Collectively, these decisions are said to produce an *informal criminal justice system* because discretion is informally exercised by the individual and is not enclosed by the rigid confines of the law. Even if prosecutors believe that a suspect is guilty, they may decide not to prosecute if the case is weak or if they know that the police erred in the investigative process. In most cases, prosecutors will not squander the scarce resource of court time on a case they might not win. Some argue that the informal process has made our criminal justice system more just. Given the immense pressure of limited resources, the argument goes, only rarely will an innocent person end up before a judge and jury.<sup>15</sup>

Of course, not all discretionary decisions are dictated by the scarcity of resources. Sometimes, discretion is based on political considerations, such as when a police administrator orders a crackdown on public order crimes because of citizen complaints. Furthermore, employees of the criminal justice system may make decisions based on their personal values or morality, which, depending on what those personal and moral values are, may make the system less just in the eyes of some observers. For

### Discretion

The ability of individuals in the criminal justice system to make operational decisions based on personal judgment instead of formal rules or official information.

**FIGURE 1.4 Discretion in the Criminal Justice System**

Criminal justice officials must make decisions every day concerning their duties. The following officials must decide whether or not to make the following decisions, or how to make them.

<b>Police</b>	<ul style="list-style-type: none"> <li>&gt; Enforce laws</li> <li>&gt; Investigate specific crimes</li> <li>&gt; Search people or buildings</li> <li>&gt; Arrest or detain people</li> </ul>
<b>Prosecutors</b>	<ul style="list-style-type: none"> <li>&gt; File charges against suspects brought to them by the police</li> <li>&gt; Drop cases</li> <li>&gt; Reduce charges</li> </ul>
<b>Judges</b>	<ul style="list-style-type: none"> <li>&gt; Set conditions for pretrial release</li> <li>&gt; Accept pleas</li> <li>&gt; Dismiss charges</li> <li>&gt; Impose sentences</li> </ul>
<b>Correctional Officials</b>	<ul style="list-style-type: none"> <li>&gt; Assign convicts to prison or jail</li> <li>&gt; Punish prisoners who misbehave</li> <li>&gt; Reward prisoners who behave well</li> </ul>

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

that reason, discretion is closely connected to questions of *ethics* in criminal justice and will be discussed in that context throughout this textbook.

**The “Wedding Cake” Model of Criminal Justice** Some believe that the prevailing informal approach to criminal justice creates a situation in which all cases are not treated equally. They point to the highly publicized O. J. Simpson trial of 1994, during which the defendant was treated differently than most double-murder suspects. To describe this effect, criminal justice researchers Lawrence M. Friedman and Robert V. Percival came up with a “**wedding cake**” model of criminal justice.<sup>16</sup> This model posits that discretion comes to bear depending on the relative importance of a particular case to the decision makers. Like any wedding cake, Friedman and Percival’s model has the smallest layer at the top and the largest at the bottom (see Figure 1.5).



**FIGURE 1.5**  
**The Wedding Cake Model**

- 1 The “top” layer consists of a handful of “celebrity” cases that attract the most attention and publicity. Recent examples of top level cases include the criminal proceedings involving Scott Peterson, accused of murdering his pregnant wife Laci; John Muhammad, the Washington, D.C., area sniper suspect; and professional basketball player Kobe Bryant, charged with rape.
- 2 The second layer consists of “high-profile” felonies. A **felony** is a serious crime such as murder, rape, or burglary that in most states is punishable either by death or by incarceration for a period longer than one year. This layer includes crimes committed by persons with criminal records, crimes in which the victim was seriously injured, and crimes in which a weapon was used, as well as crimes in which the offender and victim were strangers. These types of felonies are considered “high profile” because they usually draw a certain amount of public attention, which places pressure on the prosecutors to bring the case to trial instead of accepting a guilty plea for a lesser sentence.
- 3 The third layer consists of “ordinary” felonies, which include less violent crimes such as burglaries and thefts or even robberies in which no weapon was used. Because of the low profile of the accused—usually a first-time offender who has had a prior relationship with his or her victim—these “ordinary” felonies often do not receive the full formal process of a trial.
- 4 Finally, the fourth layer consists of **misdemeanors**, or crimes less serious than felonies. Misdemeanors include petty offenses such as shoplifting, disturbing the peace, and violations of local ordinances; they are usually punishable by fines, probation, or short jail times. More than three-quarters of all arrests made by police are for misdemeanors.

The irony of the wedding cake model is that the cases on the top level come closest to meeting our standards of ideal criminal justice. In these celebrity trials, we get to see committed (and expensive) attorneys argue minute technicalities of the law, sometimes for days on end. The further one moves down the layers of the cake, the more informal the process becomes. Though many of the cases in the second layer are brought to trial, only rarely does this occur for the less serious felonies in the third level of the wedding cake. By the fourth level, cases are dealt with almost completely informally, and the end goal appears to be speed rather than what can be called “justice.”

Public fascination with celebrity cases obscures a truth of the informal criminal justice process: trial by jury is relatively rare (only about 3 percent of those arrested for felonies go to trial), and most cases are disposed of with an eye more

### “Wedding Cake” Model

A wedding cake-shaped model that explains why different cases receive different treatment in the criminal justice system. The cases at the “top” of the cake receive the most attention and have the greatest effect on public perception of criminal justice, while those cases at the “bottom” are disposed of quickly and virtually ignored by the media.

### Felony

A serious crime punishable by death or by imprisonment in a federal or state corrections facility for more than a year.

### Misdemeanor

Any crime that is not a felony; punishable by a fine or by confinement for up to a year.

toward convenience than ideals of justice or fairness. Consequently, the summary of the criminal justice system provided by the wedding cake model is much more realistic than the impression many Americans have obtained from the media.

 **ONLINE REVIEW** Go to the book's Web site for an interactive review of this section

## Values of the Criminal Justice System

If the general conclusion of the wedding cake model—that some defendants are treated differently than others—bothers you, then you probably question the values of the system. Just as individuals have values—a belief structure governing individual conduct—our criminal justice system can be said to have values, too. These values form the foundation for Herbert Packer's two models of the criminal justice system.

### CRIME CONTROL AND DUE PROCESS: TO PUNISH OR PROTECT?

In his landmark book, *The Limits of the Criminal Sanction*, Packer introduced two models for the American criminal justice system: the crime control model and the due process model.<sup>17</sup> The underlying value of the crime control model is that the most important function of the criminal justice process is to punish and repress criminal conduct. Though not in direct conflict with crime control, the underlying values of the due process model focus more on protecting the rights of the accused through legal constraints on police, courts, and corrections.

#### Crime Control Model

A criminal justice model that places primary emphasis on the right of society to be protected from crime and violent criminals. Crime control values emphasize speed and efficiency in the criminal justice process; the benefits of lower crime rates outweigh any possible costs to individual rights.

**The Crime Control Model** Under the **crime control model**, law enforcement must be counted on to control criminal activity. “Controlling” criminal activity is at best difficult, and probably impossible. For the crime control model to operate successfully, Packer writes, it

must produce a high rate of apprehension and conviction, and must do so in a context where the magnitudes being dealt with are very large and the resources for dealing with them are very limited.<sup>18</sup>

In other words, the system must be quick and efficient. In the ideal crime control model, any suspect who most likely did not commit a crime is quickly jettisoned from the system, while those who are transferred to the trial process are convicted as quickly as possible. It was in this context that Packer referred to the criminal justice process as an assembly line.

The crime control model also assumes that the police are in a better position than the courts to determine the guilt of arrested suspects. Therefore, not only should judges operate on a “presumption of guilt” (that is, any suspect brought before the court is more likely guilty than not), but as few restrictions as possible should be placed on police investigative and fact-gathering activities. The crime control model relies on the informality in the criminal justice system, as discussed earlier.

#### Due Process Model

A criminal justice model that places primacy on the right of the individual to be protected from the power of the government. Due process values hold that the state must prove a person's guilt within the confines of a process designed to safeguard personal liberties as enumerated in the Bill of Rights.

**The Due Process Model** Packer likened the **due process model** to an obstacle course rather than an assembly line. Rather than expediting cases through the system, as is preferable in the crime control model, the due process model strives to make it more difficult to prove guilt. It rests on the belief that it is more desirable for society that ninety-nine guilty suspects go free than that a single innocent person be condemned.<sup>19</sup>

The due process model is based on the assumption that the absolute efficiency that is the goal of the crime control model can be realized only if the power of the state is absolute. Because fairness, and not efficiency, is the ultimate goal of the due process model, it rejects the idea of a criminal justice system with unlimited powers. As a practical matter, the model also argues that human error in any process is inevitable; therefore, the criminal justice system should recognize its own fallibility and take all measures necessary to ensure that this fallibility does not impinge on the rights of citizens.

Finally, whereas the crime control model relies heavily on the police, the due process model relies just as heavily on the courts and their role in upholding the legal procedures of establishing guilt. The due process model is willing to accept that a person who is factually guilty will go free if the criminal justice system does not follow legally prescribed procedures in proving her or his culpability.<sup>20</sup> Therefore, the due process model relies on formality in the criminal justice system. *Mastering Concepts* on the next page compares and contrasts the two models.

### WHICH MODEL PREVAILS TODAY?

Though both the crime control and the due process models have always been present to a certain degree, during different time periods one has taken precedence over the other. The twentieth century saw an ebb and flow between them. The influx of immigrants and problems of urbanization in the early 1900s caused somewhat of a panic among the American upper class. Considering that most, if not all, politicians and legal theorists were members of this class, it not surprising that crime control principles prevailed during the first half of the century.

As the nation became more secure and prosperous in the 1950s and 1960s, a “due process revolution” took place. Under the leadership of Chief Justice Earl Warren, the United States Supreme Court significantly expanded the rights of the accused. Following a series of landmark cases that will be referred to throughout this textbook (some of which are featured in the timeline on the back of the foldout poster within this chapter), suspected offenders were guaranteed, among other things, that an attorney would be provided to them by the state if they could not afford one,<sup>21</sup> and that they would be notified of their right to remain silent and retain counsel on being arrested.<sup>22</sup> The 1960s also saw severe limits placed on the power of the police, as the Court required law enforcement officers to strictly follow specific guidelines on gathering evidence or risk having that evidence invalidated.<sup>23</sup>

Rising crime rates in the late 1970s and early 1980s led to increased pressure on politicians and judges to get “tough on crime.” This certainly slowed down the due process revolution and perhaps returned the principles of the crime control model to our criminal justice system. In 1984, for example, several U.S. Supreme Court cases restored to police some of the freedoms they had enjoyed in the first half of the century. Even if evidence was obtained illegally, the Court ruled, it could be admitted at trial if the police officers could prove they would have obtained the evidence legally anyway.<sup>24</sup> Furthermore, the Court created the “good faith” exception to evidence-gathering rules, which basically allowed illegally obtained evidence to be admitted if the police officers were unaware that they were acting unconstitutionally.<sup>25</sup> According to many criminal law experts, these cases resulted in the values of crime control gaining undue leverage.<sup>26</sup> (The role of the Bill of Rights in determining police power will be covered in Chapter 7.)

“What is legal is not necessarily—not even usually—about what is right, just, or ethical. It is about order. Similarly, ‘justice’ is a process that makes things work, not necessarily a result that is good or moral or ethical.”

—Charles R. Gregg, President,  
Houston Bar Association (1995)

## > Crime Control Model versus Due Process Model

### CRIME CONTROL MODEL

#### Goals of the Criminal Justice System:

- > Deter crime.
- > Protect citizens from crime.
- > Incapacitate criminals.
- > Provide quick and efficient justice.

#### Goals Can Best Be Met by:

- > Promoting discretion and limiting bureaucratic red tape in criminal justice institutions.
- > Making it easier for police to arrest criminals.
- > Reducing legal restrictions on proving guilt in a criminal trial.

#### Favored Policies

- > More police.
- > More jails and prisons.
- > Harsher penalties (including increased use of the death penalty) and longer sentences.

#### View of Criminality

- > Wrongdoers are responsible for their own actions.
- > Wrongdoers have violated the social contract and can therefore be deprived of many of the rights afforded to law-abiding citizens.

#### Case in Point

- > *Ohio v. Robinette* (519 U.S. 33 [1996]), which allows police greater freedom to search the automobile of a driver stopped for speeding.

### DUE PROCESS MODEL

#### Goals of the Criminal Justice System

- > Protect the individual against the immense power of the state.
- > Rehabilitate those convicted of crimes.

#### Goals Can Best Be Met by:

- > Limiting state power by assuring the constitutional rights of the accused.
- > Providing even guilty offenders with full protection of the law, and allowing those offenders to go free if due process procedures are not followed.
- > Assuring that all accused criminals receive the same treatment from the law, regardless of class, race, gender, or sexual orientation.
- > Protecting the civil rights of prisoners.

#### Favored Policies

- > Open the criminal justice process to scrutiny by the media and public.
- > Abolish the death penalty.
- > Limit police powers to arbitrarily search, interrogate, and seize criminal suspects.
- > Limit discretion and formalize criminal justice procedures so that all suspects and convicted offenders receive the same treatment.
- > Increase funding for rehabilitation and education programs in jails and prisons.

#### View of Criminality

- > Criminal behavior can be attributed to social and biological factors.
- > Criminals can be rehabilitated and returned to the community.

#### Case in Point

- > *Mapp v. Ohio* (367 U.S. 643 [1961]), which invalidates evidence improperly gathered by the police, even if the evidence proves the suspect's guilt.

The values of the criminal justice system are reflected not only in court decisions, but also in public policy. Six weeks after the September 11, 2001, terrorist attacks, President George W. Bush signed the USA PATRIOT Act into law.<sup>27</sup> In an effort to prevent future strikes, the new law strengthens the ability of federal law enforcement agencies to investigate and incarcerate suspects; thus, it represents a dramatic shift toward the crime control model. The impact that efforts to combat terrorism have had on the criminal justice system is the subject of this chapter's *Criminal Justice in Action* feature.

 **ONLINE REVIEW** Go to the book's Web site for an interactive review of this section

## >Criminal Justice and the War against Terrorism

It would be difficult to overestimate the impact that the terrorist attacks of September 11, 2001, have had on the way many people think about fighting crime in this country. According to one official at the U.S. Department of Justice, the attacks “introduced a new era in criminal justice in this country and around the world.”<sup>28</sup> As this “new era” dawns, efforts to protect the United States against further acts of aggression have affected every major component of the criminal justice system—law enforcement, the courts, and corrections. In this *Criminal Justice in Action* feature, we will provide an overview of these changes and begin to answer the question of whether they will help the system be a more effective weapon in what has become known as the “war against terrorism.”

### Traditional Methods Rejected

To a certain extent, the criminal justice system was equipped to combat terrorism before September 11, 2001. In 1993, for example, a car bomb exploded in the basement of the World Trade Center in New York City, killing six people and injuring more than one thousand. Following an intense investigation, law enforcement agents were able to identify and apprehend the members of the fundamentalist Islamic group responsible for the act. Foreign governments provided aid in the worldwide hunt for those suspects who resided outside the country; in fact, police in Pakistan arrested Ramzi Yousef, who planned the bombing, and handed him over to U.S. authorities to stand trial in the United States. Though one suspect remains at large, the remaining perpetrators were tried, convicted, and sentenced in the U.S. District Court for the Southern District of New York.<sup>29</sup>

Theoretically, then, those responsible for hijacking the four commercial airliners and killing 2,752 in New York City, northern Virginia, and rural Pennsylvania in 2001 could have been brought to justice in a similar manner. The attacks were, indeed, criminal acts, involving premeditated murder, piracy of civilian aircraft, and destruction of private and government property.<sup>30</sup>

AP Photo/Amy Sancetta



Residents of New York City seek safety after terrorists flew a commercial airplane into the World Trade Center on September 11, 2001. The incident, along with simultaneous crashes in northern Virginia and southwest Pennsylvania, has transformed the American criminal justice system.

Furthermore, they satisfied the elements of the federal law which defines the crime of terrorism, and thus were punishable by life in prison or the death penalty.<sup>31</sup>

It was clear, however, that a traditional response to the events of September 11, 2001, would not be acceptable. Given the scope and carnage of those attacks, most of the American public saw them as an act of war as much as an act of terrorism. The federal government, under the direction of President George W. Bush, responded accordingly, launching military operations in Afghanistan in 2001 to rid that country of its Taliban leadership and in Iraq in 2003 to remove Saddam Hussein and in the

process seek out elements of al Qaeda. Both groups are recognized as supporters of international terrorism.

## Communication Breakdowns

The response in domestic law enforcement circles has been no less dramatic. Several weeks after September 11, 2001, Attorney General John Ashcroft, who as head of the Department of Justice is the “top cop” in the U.S. government, promised a “wartime reorganization and mobilization” of all federal law enforcement agents under his control.<sup>32</sup> In practical terms, this has meant that agents from the FBI and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) have spent less time on local crimes and the continuing struggle against illegal narcotics and more time on antiterrorism activities.

Such proclamations, though perhaps comforting, did not address some of the fundamental problems with our criminal justice system that may have contributed to the nation’s lack of preparedness. Given that terrorist networks are spread across the globe and consist of an ever-changing roster of “foot soldiers,” efforts to contain them rely heavily on information. Prior to September 11, 2001, information sharing within federal law enforcement agencies, among the various agencies, and between federal and local agents was, in many instances, woefully inadequate.

For example, in July 2001, an FBI agent based in Phoenix, Arizona, sent a memo to his superiors warning that Osama bin Laden—considered the mastermind behind the September 11, 2001, destruction—had begun sending operatives to flight training schools in the United States. A number of these American-trained operatives wound up piloting the planes used as weapons in the attacks, but officials at FBI headquarters in Washington, D.C., did not see the memo until after September 11.<sup>33</sup> Furthermore, although the CIA suspected in March 2000 that Khalid al-Midhar and Nawaf Alhazmi, both of whom were on the plane that crashed into the Pentagon, had ties to al Qaeda, the agency did not share this information with the FBI and other federal agencies until three weeks before the attacks. Consequently, as the CIA does not operate extensively within U.S. borders, nothing was done to limit the movements of these two men as they operated on American soil.<sup>34</sup>

## The Department of Homeland Security

In an effort to break down this “wall” blocking the free flow of crucial information among law enforcement agencies, the

Larry Downing © Reuters NewMedia Inc./CORBIS



President George W. Bush shakes hands with Secretary of Department of Homeland Security Tom Ridge, left, during a welcome ceremony for the employees of the newly formed agency in Washington on February 28, 2003.

Bush administration has carried out the largest transformation of the U.S. government since the Department of Defense was created in 1947. The centerpiece of this reorganization is the Department of Homeland Security (DHS), which began operating in the winter of 2003. The DHS, under Secretary Tom Ridge, is designed to coordinate the terrorism-fighting activities of twenty-two different federal law enforcement agencies, including the U.S. Secret Service, Coast Guard, Bureau of Citizenship and Immigration Services (previously known as the Immigration and Nationalization Service), Federal Emergency Management Agency, and segments of the FBI and CIA.<sup>35</sup> We will discuss the DHS and its impact on the criminal justice system in much greater detail in Chapter 5.

## The USA PATRIOT Act

Many law enforcement officials also believe that their antiterrorism efforts have been hindered by legal restrictions on their ability to watch, stop, and interrogate suspects. As an example, they point to Zacarias Moussaoui, who was eventually the first person indicted by the federal government in connection with the attacks on New York City and the Pentagon. Moussaoui’s suspicious behavior at a Minnesota flight school during August 2001 attracted the attention of the FBI, but the only legal violations they could find at the time were visa violations. While Moussaoui was in the custody of the U.S. immigration service, FBI agents tried to get a warrant to search the hard drive of the suspect’s computer. Legal experts at the Department of Justice, however, did not think the

agency had enough evidence to establish probable cause that Moussaoui had committed any crime, and the warrant was never obtained. Today, the U.S. government claims that information in Moussaoui's possession could have possibly included clues to the eventual terrorist attacks.<sup>36</sup>

The Bush administration and the U.S. Congress addressed these concerns by passing the controversial 342-page USA PATRIOT (Uniting and Strengthening America by Providing Appropriate Tools Required to Obstruct Terrorism) Act in 2001.<sup>37</sup> Among other measures, this legislation:

- < Creates a new crime of “domestic terrorism,” defined as acts that “appear to be intended . . . to influence the policy of a government by intimidation or coercion.”
- < Expands the definition of “engage in terrorist activity” to include not only the use of weapons but also the provision of material support by such activities as fund-raising for suspected terrorist organizations.
- < Allows for easier detention and removal of noncitizens. (About 1,200 immigrants were detained in the nation's jails without being charged with committing a crime in the months following September 11, 2001.)
- < Gives law enforcement agents greater ability to use surveillance and wiretap methods, conduct searches, track Internet use, and access private records when investigating terrorist activity.
- < Reduces the amount of suspicion law enforcement agents need before apprehending a terrorism suspect (which would have allowed the FBI to seize Moussaoui before September 11, 2001).<sup>38</sup>

We will examine the USA PATRIOT Act in more depth in Chapter 7, when we discuss the “rules” of being a police officer.

## Questions Remain

Other segments of the criminal justice system have also been affected by the war on terrorism. In 2001, President Bush created special tribunals to try suspected terrorists.<sup>39</sup> These military courts would operate without many of the procedural and other protections that are provided to defendants in the regular court system. The U.S. military has also created a new prison for those suspected of having ties to the Taliban or al Qaeda at its naval base at Guantanamo Bay, Cuba. As of July 2004, more than seven hundred people were detained at the base.

How successful have these efforts been in protecting the American public from terrorist attacks? The Bush

administration can point to several achievements. The Buffalo Joint Terrorism Task Force, which included agents from the Customs Service, the Federal Drug Enforcement Administration, the FBI, and local police, was instrumental in the arrest and conviction of the “Lackawanna Six” for providing material aid to terrorism. The group consisted of six Americans with Yemeni backgrounds who took part in exercises at a training camp operated by Osama bin Laden in Al Farooq, Afghanistan. In the summer of 2003, Iyman Faris—a truck driver from Columbus, Ohio—confessed his involvement in an al Qaeda plot to destroy the Brooklyn Bridge, a case that Attorney General Ashcroft said “highlights the very real threat that still exists here at home.”<sup>40</sup>

Many observers have been quite critical of the Bush administration's moves, however, saying that the political and legislative actions go too far in limiting freedoms long cherished by Americans. U.S. District Judge Gladys Kessler summed up the challenges facing the criminal justice system when she acknowledged that the “first priority” of the government is to protect its citizens, while at the same time noting that it should “operate within the statutory and constitutional constraints which distinguish a democracy from a dictatorship.”<sup>41</sup> The tension between security and civil liberties will receive a great deal of attention in this textbook, culminating with an explicit exploration of the subject in Chapter 15.

## MAKING SENSE OF THE CRIMINAL JUSTICE SYSTEM'S ROLE IN THE WAR ON TERRORISM

- 1 Do you feel an overhaul of the criminal justice system was required after the terrorist attacks on September 11, 2001? What arguments might be made to the effect that the existing laws were sufficient to bring those who carried out the attacks to justice?
- 2 Why might various federal law enforcement agencies such as the FBI, CIA, and ATF not automatically share information concerning terrorists with each other?
- 3 Do you think that those who “materially aid” terrorist activities—for example, by participating in a training camp in Afghanistan or plotting to blow up a major bridge—should receive the same punishment as those who actually carry out terrorist attacks? In what ways would making the punishments equal deter terrorism in the United States? What problems arise when you punish someone for a crime that has not yet been committed?

## Chapter Summary

### STORIES FROM THE STREET

Go to the *Stories from the Street* feature at [www.cjinaction.com](http://www.cjinaction.com) to hear Larry Gaines tell insightful stories related to this chapter and his experiences in the field.

- 1 Describe the two most common models of how society determines which acts are criminal.** The consensus model argues that the majority of citizens will agree on which activities should be outlawed and punished as crimes; it rests on the assumption that a diverse group of people can have similar morals. In contrast, the conflict model argues that in a diverse society, the dominant groups exercise power by codifying their value systems into criminal laws.
- 2 Define crime and the different types of crime.** Crime is any action punishable under criminal statutes and is considered an offense against society. Therefore, alleged criminals are prosecuted by the state rather than by victims. Crimes are punishable by sanctions that bring about a loss of personal freedom or, in some cases, fines. There are six groups of crimes: (a) violent crimes—murder, rape, assault, battery, robbery; (b) property crimes—pocket picking, shoplifting, larceny/ theft, burglary, and arson; (c) public order crimes—public drunkenness, prostitution, gambling, and illicit drug use; (d) white-collar crime—fraud and embezzlement; (e) organized crime—crime undertaken by a number of persons who operate their activities much as legal businesses do; and (f) high-tech crime—sabotage, fraud, embezzlement, and theft of proprietary data from computer systems as well as cyber crimes, such as selling child pornography over the Internet.
- 3 Outline the three levels of law enforcement.** Because we have a federal system of government, law enforcement occurs at the (a) federal and the (b) state levels and within the states at (c) local levels. Because crime is mostly a local con-

cern, most employees in the criminal justice system work for local governments. Agencies at the federal level include the FBI, the DEA, and the U.S. Secret Service, among others.

- 4 List the essential elements of the corrections system.** Criminal offenders are placed on probation, incarcerated in a jail or prison, transferred to community-based corrections facilities, or released on parole.
- 5 Explain the difference between the formal and informal criminal justice processes.** The formal criminal justice process involves procedures such as booking, setting bail, and the like. For every step in the formal process, though, someone has discretion, and such discretion leads to an informal process. Even when prosecutors believe that a suspect is guilty, they have the discretion not to prosecute, for example.
- 6 Describe the layers of the “wedding cake” model.** The top layer consists of celebrity cases, which are most highly publicized; the second layer involves high-profile felonies, such as rape and murder; the third layer consists of property crimes such as larcenies and burglaries; the fourth layer consists of misdemeanors.
- 7 Contrast the crime control and due process models.** The crime control model assumes that the criminal justice system is designed to protect the public from criminals; thus, its most important function is to punish and repress criminal conduct. The due process model presumes that the accused are innocent and provides them with the most complete safeguards, usually within the court system.

### Key Terms

conflict model	6	felony	17	violent crime	7
consensus model	5	misdemeanor	17	“wedding cake”	
crime control model	18	organized crime	9	model	17
discretion	16	property crime	8	white-collar crime	8
due process model	18	public order crime	8		
federalism	11	terrorism	12		

- 1 How is it possible to have a consensus about what should or should not be illegal in a country with several hundred million adults from all races, religions, and walks of life?
- 2 Why are criminals prosecuted by the state, through its public officials, rather than by the victims themselves?
- 3 Why are public order crimes sometimes referred to as victimless crimes?
- 4 At what political level is most law enforcement carried out? Relate your answer to the concept of federalism.
- 5 Assume that all of the officials involved in the criminal justice process were deprived of most of the discretion they now have. What might some of the results be?

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Go to [www.cjinaction.com](http://www.cjinaction.com) for a wealth of online resources. Explore the *Internet Activities* and *Class Projects* under *Chapter Resources*. Check out the *Web Links* to access the Web sites mentioned in the text, as well as many others. You can also access recent perspectives by clicking on *CJ in the News* and *Terrorism Update* under *Course Resources*. If you’d like some mentoring, click on *Board of Mentors* under *Book Resources*.

For additional information, explore InfoTrac College Edition, your online library that offers complete full-length articles from thousands of scholarly and popular publications. Click on *InfoTrac College Edition* under *Chapter Resources* at [www.cjinaction.com](http://www.cjinaction.com) for a list of key words and InfoTrac exercises. Use the passcode that came with your book.

Hesalroad, Mary, *Law Enforcement Career Starter*, 2d ed., New York: Learning-Express, 2001. This paperback “how-to” guide provides a detailed look at the best way to get the law enforcement job that interests you. It offers helpful explanations of various careers in the criminal justice system, along with practical suggestions concerning the educational opportunities, internships, and work-study programs

that can be the first step to a career in criminal justice.

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## Questions for Critical Analysis

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crime stories of 2002. The collection focuses not only on criminals, but also on victims and their families and, in some cases, the wider sociological implications

of the criminal act. Included are pieces on Webcam pornography, the murder of *Wall Street Journal* reporter Daniel Pearl, and the clues to be found in rotting corpses.

## Notes

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## Chapter One Appendix

### HOW TO READ CASE CITATIONS AND FIND COURT DECISIONS

Many important court cases are discussed throughout this book. Every time a court case is mentioned, you will be able to check its citation using the endnotes on the final pages of the chapter. Court decisions are recorded and published on paper and on the Internet. When a court case is mentioned, the notation that is used to refer to, or to cite, the case denotes where the published decision can be found.

State courts of appeals decisions are usually published in two places, the state reports of that particular state and the more widely used *National Reporter System* published by West Group. Some states no longer publish their own reports. The *National Reporter System* divides the states into the following geographic areas: Atlantic (A. or A.2d), South Western (S.W., S.W.2d, or S.W.3d), North Eastern (N.E. or N.E.2d), North Western (N.W. or N.W.2d), Southern (So. or So.2d), and Pacific (P., P.2d, or P.3d). The 2d and 3d in these abbreviations refer to the *Second Series* and *Third Series*, respectively.

Federal trial court decisions are published unofficially in West's *Federal Supplement* (F.Supp. or F.Supp.2d), and opinions from the circuit courts of appeals are reported unofficially in West's *Federal Reporter* (F., F.2d, or F.3d). Opinions from the United States Supreme Court are reported in the *United States Reports* (U.S.), the *Lawyers' Edition of the Supreme Court Reports* (L.Ed.), West's *Supreme Court Reporter* (S.Ct.), and other publications. The *United States Reports* is the official publication of United States Supreme Court decisions. It is published by the federal government. Many early decisions are missing from these volumes. The citations of the early volumes of the *United States Reports* include the names of the actual reporters, such as Dallas, Cranch, or Wheaton. *McCulloch v. Maryland*, for example, is cited as 17 U.S. (4 Wheat.) 316. Only after 1874 did the present citation system, in which cases are cited based solely on their volume and page numbers in the *United States Reports*, come into being. The *Lawyers' Edition of the Supreme Court Reports* is an unofficial and more complete edition of Supreme Court decisions. West's *Supreme Court Reporter* is an unofficial edition of decisions dating from October 1882. These volumes contain headnotes and numerous brief editorial statements of the law involved in the case.

State courts of appeals decisions are cited by giving the name of the case; the volume, name, and page number of the state's official report (if the state publishes its own reports); and the volume, unit, and page number of the *National Reporter*. Federal court citations are also listed by giving the name of the case and the volume, name, and page number of the reports. In addition to the citation, this textbook lists the year of the decision in parentheses. Consider, for example, the case *Miranda v. Arizona*, 384 U.S. 436 (1966). The Supreme Court's decision in this case may be found in volume 384 of the *United States Reports* on page 436. The case was decided in 1966.