CHAPTER

LEARNING OBJECTIVES

The six learning objectives labeled LO1 through LO6 are designed to help improve your understanding of the chapter. After reading this chapter, you should be able to...

LO 1 Describe the two most common models of how society determines which acts are criminal.

LO 2 Define crime and identify the different types of crime.

LO 3 Outline the three levels of law enforcement.

LO 4 List the essential elements of the corrections system.

LO 5 Describe the layers of the “wedding cake” model.

LO 6 Contrast the crime control and due process models.

CHAPTER OUTLINE

- What Is Crime?
- The Criminal Justice System
- Criminal Justice Today
Like many who suffer from insomnia, Michael Jackson would ask for some “milk” when he had trouble sleeping. The famous pop singer was not, however, referring to the nutritious liquid that comes from cows. Rather, he wanted a dose of a white solution called propofol, a powerful anesthetic used to render patients unconscious during surgery. For six weeks in the spring and summer of 2009, Dr. Conrad Murray, Jackson’s personal physician, administered propofol to the singer daily, despite growing concerns that his patient was addicted to the drug. On the morning of June 25, Murray tried to help Jackson sleep using milder sedatives. When that did not work, Jackson again demanded his “milk,” and Murray again acquiesced. Within twelve minutes, the fifty-year-old singer was dead.

Murray initially informed paramedics that he had only given Jackson one sedative—the antianxiety drug lorazepam—while failing to mention anything about propofol. “That [was] a telling omission,” said Dr. Bryan A. Liang, a physician and professor at San Diego’s California Western School of Law. “He knows he is not supposed to be fooling around with propofol.” Because the drug is so powerful, it is generally used only in a hospital setting, where heart monitors and breathing machines can deal with any unexpected side effects. Furthermore, noted another expert, “The concept of using propofol for insomnia is completely crazy. It’s like trying to swat a fly with a bomb.”

On February 9, 2010, about five months after the Los Angeles County coroner ruled that Jackson died of “acute propofol intoxication,” Murray was arrested and charged with involuntary manslaughter. The exact language of the criminal complaint contended that the physician “did unlawfully, and without malice, kill Michael Joseph Jackson” by acting “without due caution.” After watching Murray plead not guilty to the manslaughter charge, Joe Jackson, the singer’s father, gave his own verdict on what had happened: “My son was murdered.”

The Los Angeles County district attorney’s office felt that two different “smoking guns” pointed toward Dr. Conrad Murray’s guilt. The first was the coroner’s report, which detected unsafe levels of propofol in Michael Jackson’s body at the time of his death. The second was the doctor’s own eventual admission, during a three-hour interview with police, that he had not only given Jackson the drug but had also then left to use the restroom while the singer was unattended. Some observers questioned why Murray had been so forthcoming. “If there had been no admissions, you would be left wondering what happened and the prosecution would have to come up with their own theory,” said one attorney. “[Murray’s] the one who laid out exactly what
happened.” A suspect’s fate often hinges on statements that he or she makes to the police, and consequently, as you will learn in Chapter 6, the American legal system has developed a number of safeguards to make sure that the interrogation process is fair and noncoercive.

The case against Murray raised other interesting issues as well. Given the coroner’s report and Murray’s admission, why did prosecutors wait so long—nearly eight months after Jackson’s death—to bring charges? In Chapter 8, we will look at the factors that go into this decision-making process. Furthermore, considering the intense worldwide media attention that Murray’s criminal proceedings would surely attract, how could the judicial system guarantee the physician a fair trial? We also tackle that subject in Chapter 8.

As you proceed through this textbook, you will see that few aspects of the criminal justice system are simple, even though you may have clear opinions about them. In this first chapter, we will introduce you to the criminal justice system by discussing its structure, the values that it is designed to promote, and the most challenging issues it faces today.

What Is Crime?

The Los Angeles County coroner’s finding that Michael Jackson’s death was a homicide did not automatically mean that a crime had been committed. A homicide ruling only means that the death occurred at the hands of another person rather than by natural causes. Furthermore, it is not a crime to administer propofol at home, nor is it a crime to be a bad doctor. Under California law, to find Dr. Conrad Murray guilty of involuntary manslaughter, a jury would have to agree that he carried out a lawful act “in an unlawful manner or without due caution or circumspection.” In other words, it would have to find that even though Murray had no intent to kill his patient, as someone with medical training, he should have known the risks of administering propofol and taken steps to lessen those risks.

In general, an act becomes a crime when it meets the legal definitions that designate it as such. If Murray’s conduct was merely unethical or incompetent, it would not meet California’s definition of involuntary manslaughter, and he would not be found guilty of committing any crime. If he did act “without due caution or circumspection,” he could be found guilty and sentenced to up to four years in prison. If, in contrast, California officials had agreed with Joe Jackson’s assertion that his son was intentionally killed, they would have charged Murray with first degree murder, which carries a maximum penalty of execution. In short, a crime can be defined as a wrong against society proclaimed by law and, if committed under certain circumstances, punishable by society. 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. Furthermore, as the feature Comparative Criminal Justice—The Finnish Line on Speech Crime on the next page shows, different societies can have vastly different ideas of what constitutes criminal behavior.

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 term consensus refers to general agreement among the majority of any particular group. Thus, the consensus model rests on the assumption 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 behavior, thereby setting the boundaries for acceptable behavior within the group.

The consensus model, to a certain extent, assumes that a diverse group of people can have similar morals; that is, they share an ideal of what is “right” and “wrong.” Consequently, as public attitudes toward morality change, so do laws. In the colonial America of the 1700s, those found guilty of adultery were subjected to corporal punishment; a century ago, one could walk into a pharmacy and purchase heroin. Today, social attitudes have shifted to consider adultery a personal issue, beyond the purview of the state, and to consider the sale of heroin a criminal act.

The conflict model

Some people reject the consensus model on the ground that moral attitudes are not constant or even consistent. In large, democratic societies such as the United States, different groups of citizens have widely varying opinions on issues of morality and criminality, including abortion, the war on drugs, immigration, and gun control. These groups and their elected representatives are constantly coming into conflict forms of hate propaganda. Like Finland, most of the other democracies in Europe have outlawed the dissemination of any information that incites discrimination or hatred against racial and ethnic groups. In 2008, for example, French film star Brigitte Bardot was fined $23,000 for “inciting racial hatred” after she said that Muslim immigrants were “destroying our country” by slaughtering animals for religious reasons. A historian named David Irving recently spent thirteen months in an Austrian jail for publicly denying that the Holocaust—the systematic extermination of millions of Jewish men, women, and children during World War II (1939–1945)—took place. Even our neighbor to the north, Canada, penalizes the promotion of hatred “directed against an identifiable group” with fines and incarceration.

For Critical Analysis

Do you think that the United States should criminalize the act of making public statements that promote hatred or discrimination directed at minority groups? What would be the benefits of such a law? What would be the drawbacks?
with one another. According to the conflict model, then, the most politically powerful segments of society—based on class, income, age, and race—have the most influence on criminal laws and are therefore able to impose their values on the rest of the community. Consequently, what is deemed criminal activity is determined by whichever group happens to be holding power at any given time.

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 or, in some cases, by 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.

At this point, it is important to understand the difference between crime and deviance, or behavior that does not conform to the norms of a given community or society. Deviance is a subjective concept; some segments of society may think that smoking marijuana or killing animals for clothing and food is deviant behavior. Deviant acts become crimes only when society as a whole, through its legislatures, determines that those acts should be punished—as is the situation today in the United States with using illegal drugs but not with eating meat. Furthermore, not all crimes are considered particularly deviant; little social disapprobation is attached to those who fail to follow the letter of parking laws. In essence, criminal law reflects those acts that we, as a society, agree are so unacceptable that steps must be taken to prevent them from occurring.

TYPES OF CRIME

Crimes are classified according to 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 funds, personal property, or any other article of value from a person by means of force or fear.

As you will 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, also known as theft. Burglary refers to the act of unlawfully entering 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. Arson is also a property crime; it involves the willful and malicious burning of a home, automobile, commercial building, or any other construction.

**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 you will 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** 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 on the facing page lists various types of white-collar crime; note that certain property crimes fall into this category when committed in a business context.

**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 he or 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 a conspiratorial and illegal relationship among any number of persons engaged in unlawful acts. More specifically, groups engaged in organized crime employ criminal tactics...
CHAPTER 1
Criminal Justice Today

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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 funds at higher-than-legal interest rates), along with more recent ventures into counterfeiting and credit-card scams.

**HIGH-TECH CRIME** The newest variation on crime is directly related to the increased presence of computers in everyday life. The Internet, with approximately 1.5 billion users worldwide, is the site of numerous cyber crimes, such as selling pornographic materials, soliciting minors, and defrauding consumers through bogus financial investments. The dependence of businesses on computer operations has left corporations vulnerable to sabotage, fraud, embezzlement, and theft of proprietary data. Figure 1.2 on the following page describes several of the most common cyber crimes, and we will address this particular criminal activity in much greater detail in Chapter 14.

**SELF ASSESSMENT** Fill in the blanks and check your answers on page 27.

A criminal act is a wrong against _________ and therefore is “avenged,” or prosecuted, by _________, not by the individual victims of a crime. A crime is not the same as an act of _________, the term for behavior that is nonconformist but not necessarily criminal. Murder, assault, and robbery are labeled _________ crimes because they are committed against persons. The category of crime that includes larceny, motor vehicle theft, and arson is called _________ crime. When a criminal acts to gain an illegal business advantage, he or she has committed what is commonly known as a _________ crime.

**Embezzlement** is a form of employee fraud in which an individual uses his or her position within an organization to embezzle, or steal, the employer’s funds, property, or other assets. Pilferage is a less serious form of employee fraud in which the individual steals items from the workplace.

**Credit-Card and Check Fraud** 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.

**Mail and Wire Fraud** This umbrella term covers all schemes that involve the use of mail, radio, television, the Internet, or a telephone to intentionally deceive in a business environment.

**Securities Fraud** covers illegal activity in the stock market. Stockbrokers who steal funds from their clients are guilty of securities fraud, as are those who engage in insider trading, which involves buying or selling securities on the basis of information that has not been made available to the public.

**Bribery,** also known as influence peddling, occurs in the business world when somebody within a company sells influence, power, or information to a person outside the company who can benefit.

**Mail and Wire Fraud**

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**Consumer Fraud**

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.

**Insurance Fraud** involves making false claims in order to collect insurance payments. Faking an injury in order to receive payments from a workers’ compensation program, for example, is a form of insurance fraud.


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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, to determine whether these persons have indeed committed crimes, and to 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.” 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

Controlling and Preventing Crime 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 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.

**MAINTAINING JUSTICE** The third goal—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. 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. Some might think that the homicide was justified and that she should be treated leniently, while others might insist 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, you 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 established a strong national government capable of handling large-scale problems while allowing for state powers and local traditions. For example, in 1994 Oregon voters passed a referendum allowing physicians to help terminally ill patients commit suicide. The federal government challenged this state law, contending that it violated national drug laws. In 2006, the United States Supreme Court sided with Oregon, ruling that the principle of federalism supported the state’s ability to determine its own medical practices in this instance. The Court’s decision paved the way for other states to follow Oregon’s lead, and in 2009 Washington State voters instituted their state’s own Death with Dignity Act.

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, the powers of the national government have expanded significantly. Crime is still primarily a local concern, however, and the majority of all employees in the criminal justice system work for local government (see Figure 1.3 on the next page).
The ideals of federalism can be clearly seen in the local, state, and federal levels of law enforcement. Though agencies from the different levels cooperate if the need arises, they have their own organizational structures and tend to operate independently of one another. We briefly introduce each level of law enforcement here and cover them in more detail in Chapters 4, 5, and 6.

**Local and County Law Enforcement** On the local level, the duties of law enforcement agencies are split between counties and municipalities. The chief law enforcement 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 all police officers—about 580,000—are employed by municipalities. The majority of these forces consist of fewer than ten officers, though a large city such as New York may have a police force of nearly 38,000.

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 trial proceedings, if necessary. Local police are also charged with “keeping the peace,” a broad set of duties that include 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, as well as agents who investigate welfare and food stamp fraud.

**Federal Law Enforcement** The enactment of new national anti-terrorism, gun, drug, and violent crime laws over the past forty years has led to an expansion in the size and scope of the federal government’s participation in the criminal justice system. The

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

Department of Homeland Security, which we will examine in detail in Chapters 4 and 14, combines the police powers of twenty-two federal agencies to protect the United States from terrorist attacks. Other 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. Unlike their local and state counterparts, federal law enforcement agencies operate throughout the United States. In 2009, for example, the FBI conducted a nationwide sweep to remove children from the illegal sex trade, rescuing forty-eight teenage prostitutes and arresting more than 570 suspects in cities from Miami to Chicago to Anchorage, Alaska. Federal agencies are also available to provide support for overworked local police departments, as happened that same year when agents from the ATF joined forces with the Coatesville (Pennsylvania) Police Department to combat a series of arson attacks that had plagued the city for fifteen months.

**THE COURTS** The United States has a dual court system; that is, we have two independent judicial systems: one at the federal level and one at the state level. In practice, this translates into fifty-two different court systems: one federal court system and fifty different state court systems, plus that of 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, 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 7, 8, and 9.

**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. When 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.
As a kid, one of my favorite books was *The Hardy Boys Detective Handbook*. Years later, a friend of mine was going to Lake Superior State University in Michigan to major in criminal justice, and I read the school's handbook to learn what it was about. When I saw the major in criminalistics, I knew that was what I wanted to do.

**DIRTY WORK** Criminalistics is the application of forensic science, crime scene documentation, and evidence collection at the scene, which directly includes crime scene photography. A crime scene photographer's job is invaluable to those who are not present at the scene, yet need to be able to observe the scene as accurately as possible. I like the variety of my work. No two scenes are exactly alike, and the conditions pose different challenges. I have photographed scenes in cramped mobile homes, in spacious mansions, and out in the woods where we had to hike because there were no roads leading directly to the scene. I've been really hot and sweaty, fogging up the viewfinder. Then I have been so cold that I had to go sit in the van to let my hands and the camera warm up because they had stopped working.

I do wonder what the people at the gas stations think when we come in there after we're done to clean up and get something to drink. Fingerprint powder gets everywhere; I have found nothing less than a shower really gets rid of it completely. It is sometimes difficult to accept that there is nothing to prevent the crime that has already happened, but I take pride in representing the victim when he or she cannot speak.

**REAL LIFE** I tend to get aggravated at the perception of speed in television shows such as the *CSI* series. From the scene to the lab, criminalistics is time-intensive and often laborious, and cases take weeks to work instead of hours or days like those on television. I try to wear clothes I won't be upset ruining, and we tend to wear coveralls at scenes, so there's a big difference between how we look and how the actors look. I don't know that television gives anyone a realistic view of life. If someone expects to have the high-tech equipment, amazing wardrobe, and impressive vehicles used in these shows, they will be disappointed. If someone expects to work with others who are passionate about their job and display an intense attention to detail, then they are in the right place.

**CAREER ADVICE** A bachelor's degree is not always required, but it is helpful. There are also good associate's degrees in photography that serve as a foundation for crime scene photography. As important as school and relevant coursework are, an internship is possibly the most useful step in becoming a crime scene photographer. An internship allows you to see if this is what you truly are interested in and gives you good connections and firsthand experiences that cannot be gained in a classroom. It also provides a valuable opportunity to learn if you can handle the graphic nature of the work. A potential employer knows that the applicant with internship experience understands what the job really entails as opposed to what it's like on a television show.

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**CRIME SCENE PHOTOGRAPHER**

**JOB DESCRIPTION:**
- Photograph physical evidence and crime scenes related to criminal investigations.
- Compose reports; testify in court; understand basic computer software and terminology; operate film and print processors; recognize, evaluate, and correct problems with photo lab systems in order to meet quality control standards; produce color-correct images; train other personnel.

**WHAT KIND OF TRAINING IS REQUIRED?**
- One year in law enforcement or commercial photography OR a degree or certificate in photography and darkroom techniques OR some combination of the above training or experience totaling one year.
- Must be willing to work irregular hours, second and/or third shifts, weekends, holidays, and evenings.

**ANNUAL SALARY RANGE?**
- $45,780–$53,290

For additional information on a career as a crime scene/forensic photographer visit: [www.crime-scene-investigator.net](http://www.crime-scene-investigator.net). Also see Steven Staggs, *Crime Scene & Evidence Photographer's Guide*, 2d ed.
Community-based corrections have increased in popularity as jails and prisons have been plagued with problems of funding and overcrowding. Community-based correctional facilities include halfway houses, residential centers, and work-release centers; they operate on the assumption that not all convicts need, or benefit from, 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 10, 11, and 12.

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.7

The commission’s assertion that the criminal justice system is a “continuum” is one that many observers would challenge.8 Some liken the criminal justice system to a sports team, which is the sum of an indeterminable number of decisions, relationships, conflicts, and adjustments.9 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.

THE ASSEMBLY LINE 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.10

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 thousands of decisions made by police officers, 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.

FORMAL VERSUS INFORMAL CRIMINAL JUSTICE Each step in Packer’s assembly line, which comprises the formal criminal justice system, 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 on the following pages.
**Discretionary Basics**  One New York City public defender called his job “a pressure cooker.” That description could apply to the entire spectrum of the criminal justice process. Law enforcement agencies do not have the staff or funds to investigate every crime; they must decide where to direct their restricted resources. Increasing case-loads and a limited amount of time in 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; and judges decide on sentencing, to mention only some of the occasions when discretion is used. (See Figure 1.4 below for a description 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 within 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 instances, 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.11

**Discretionary Values**  Of course, not all discretionary decisions are dictated by the scarcity of resources. Sometimes, discretion is based on policy considerations. For example, many participants in Hempfest, an annual festival in Seattle, Washington, smoke marijuana in public without fear of arrest because that city’s police department deemphasizes arrests for minor drug possession.12 Furthermore, employees of the criminal justice system may make decisions based on their personal values, which, depending on what those values are, may make the system less just in the eyes of some observers. For that reason, discretion is closely connected to questions of ethics in criminal justice and will be discussed in that context throughout this textbook. (For an early look at the role that discretion plays in the criminal justice system, see the feature A Question of Ethics—Girl Gone Wild on page 18.)

**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. As anecdotal evidence, they point to a cultural landmark in the American criminal justice system—the highly publicized O. J. Simpson trial of 1995, during which the wealthy, famous defendant had an experience far different from that of 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. 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 below).

1. The "top" layer consists of a handful of "celebrated" cases that attract the most attention and publicity. Recent examples of top-level cases include the trials of Dr. Conrad Murray in Los Angeles for the involuntary manslaughter of pop star Michael Jackson, discussed in the opening to this chapter; Rod Blagojevich, the former governor of Illinois, accused of numerous acts of corruption while in office; and Casey Anthony, believed by Florida prosecutors to have killed her two-year-old daughter Caylee.

2. The second layer consists of "high-profile" felonies. A felony is a serious crime such as murder, rape, or burglary. 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 puts pressure on the prosecutors to bring such a 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. More than three-quarters of all arrests made by police are for misdemeanors.

The cases on the top level of the cake come closest to meeting our standards of ideal criminal justice. In these celebrated 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. At 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 celebrated cases obscures a truth of the informal criminal justice process: trial by jury is relatively rare (only about 5 percent of those arrested for felonies go to trial), and most cases are disposed of with an eye more 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.
VALUES OF THE CRIMINAL JUSTICE SYSTEM

If the general conclusion of the wedding cake model—that some defendants are treated differently from 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. In his landmark book *The Limits of the Criminal Sanction*, Herbert Packer introduced two models of the American criminal justice system: the crime control model and the due process model.14 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 civil rights of the accused through legal restraints on the police, courts, and corrections. Civil rights are those rights guaranteed to all Americans in the U.S. Constitution.

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.15

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 DUE PROCESS MODEL Packer likened the due process model to an obstacle course instead of 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.¹⁶

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.

Criminal Justice Today

Although crime control and the due process values usually coexist in the American criminal justice system, during certain periods one model takes precedence over the other. In general, when crime rates are high, the public demands that politicians “get tough on crime,” and the criminal justice system responds by favoring crime control values. When crime rates are in decline, politicians allow the court system to favor due process values. As the second decade of the twenty-first century begins, however, the crime control/due process balance is in flux. Crime rates continue to drop, rates of imprisonment continue to grow, and a weak economy clashes with homeland security concerns to create a tumultuous criminal justice landscape.

CRIME: THE BOTTOM LINE

First, the positive. For the most part, Americans are as safe from crime today as they have been in decades. As we will discuss in Chapter 3, the 1990s saw the largest decreases in violent crime in this country since the 1940s, and crime rates have remained “impressively flat” through the 2000s. Indeed, in 2009, violent
and nonviolent crime rates dropped in the United States for the third year in a row.\textsuperscript{17}

\textbf{THE IMPACT OF LAW ENFORCEMENT} The crime trends of the past several years have come as a surprise to many crime experts—known as \textit{criminologists}—who expected the struggling economy to drive crime rates upward. Some, such as Alan Fox of Boston’s Northeastern University, still predict that the recession will have a “delayed impact” on criminal behavior in the United States.\textsuperscript{18} There is a growing consensus, however, that America’s safer streets are attributable to the stellar work of the men and women who patrol them.

The effect of law enforcement on crime rates has always been open to debate. Some observers believe that the police are powerless to combat such forces as a declining economy and the numerous social conditions—covered in the next chapter—that may contribute to criminal behavior.\textsuperscript{19} Even with this skepticism in mind, it would be difficult to deny the crucial role that law enforcement has played in America’s mostly positive crime outlook over the past few decades. The crime wave of the late 1980s and 1990s forced police departments to become more creative, resulting in a crackdown on “quality-of-life” crimes, such as public urination and vandalism, and a recommitment to a strategy known as “community policing.” In Chapter 5, we will take a closer look at these efforts to better determine just how much of an impact they have had on crime.

\textbf{THE SCOURGE OF STREET GANGS} For many local law enforcement agencies, particularly those in large metropolitan areas, success is measured by their ability to control \textit{street gangs}—groups of people who band together to engage in violent, unlawful, or criminal activity. According to the most recent data, there are 26,500 gangs in the United States, with approximately 785,000 members.\textsuperscript{20} Police departments across the country report high levels of gang involvement in auto theft, assault, burglary, vandalism and graffiti, and illegal drug sales.\textsuperscript{21} According to research conducted by the National Gang Intelligence Center, criminal gangs are responsible for 80 percent of the street crime in this country.\textsuperscript{22}

\textbf{GUN SALES AND GUN CONTROL} To a large degree, criminal activity involving gangs also involves guns. Almost 95 percent of all gang-related homicides are carried out with firearms.\textsuperscript{23} Overall, about 30,000 people are killed by gunfire in the United States each year (including suicides), and illegally obtained firearms are a constant concern for law enforcement officials. At the same time, legal ownership is widespread, with almost one-third of American households possessing at least one gun.\textsuperscript{24} In 2008, the United States Supreme Court further solidified the legal basis for this practice by ruling that the U.S. Constitution protects an individual’s right to “bear arms.”\textsuperscript{25}

The Court’s decision has done little to lessen debate over \textit{gun control}, or the policies that the government implements to keep firearms out of the hands of the
wrong people. Believing that “guns kill,” proponents of stricter firearms laws point out that homicide rates are highest in states with the highest levels of legal gun ownership. Opponents of greater gun control argue that such laws do not actually decrease crime, for the reason that someone who is going to commit a crime with a gun is probably going to obtain that firearm illegally anyway.

**THE ILLEGAL DRUGS PROBLEM** Along with perpetuating gun violence, gangs are heavily involved in the distribution of illegal drugs. About 60 percent of local law enforcement agencies report that gangs sell illicit narcotics in their jurisdictions, a number that many expect to increase due to the situation in Mexico. That country is experiencing an intense wave of violence as criminal cartels battle each other for control of the flow of illegal drugs over the border. Unfortunately, the repercussions of these “drug wars” can now be felt in the United States. Officials in Tucson, Arizona—located about sixty miles from the border—estimate that three-quarters of all home invasions in their city are linked to Mexican cartels. Nationwide, the U.S. government has determined that Mexican cartels “maintain drug distribution networks or supply drugs to distributors” in more than 230 American cities, including Billings, Montana, and Anchorage, Alaska.

The broadest possible definition of a drug is any substance that modifies biological, psychological, or social behavior. In this textbook, however, most of our discussions on the subject will focus on illegal psychoactive drugs, which affect the brain and alter consciousness or perception. Marijuana, cocaine, heroin, and amphetamines are all examples of illegal psychoactive drugs. According to the National Survey on Drug Use and Health, more than 20 million Americans regularly engage in illegal drug use (see Figure 1.6 above). The good news is that illegal drug use appears to be declining among those under the age of seventeen years, a topic we will address in Chapter 13. The bad news is that the market for illegal drugs is still large enough to cause significant damage both in the United States and in countries, such as Mexico, that supply America with its “fix.”

**A RISING TIDE: WHITE-COLLAR CRIME** It is difficult to know how much white-collar crime (defined on page 8) occurs in the United States. First, law enforcement agencies do not keep track of white-collar crime to the same extent they do violent and property crime. Second, the victims of white-collar crimes—corporations—often do not report the wrongdoing for fear of negative publicity. Nevertheless, those measures that do exist show that this particular criminal activity has increased as the economy has worsened. A 2009 study by the Association of Certified Fraud Examiners revealed a significant increase in fraud-related
investigations after the real estate market bubble “burst” several years ago. According to the report, American corporations lose about 7 percent of their annual revenue to fraud. If this is correct, then white-collar criminals steal about $500 billion from companies each year.31

White-collar crime has also been in the public eye to a greater extent over the past few years, due in part to general unease concerning financial matters and in part to the extraordinary behavior of Bernard Madoff. On June 29, 2009, the seventy-one-year-old Madoff was sentenced to 150 years behind bars (essentially, a death sentence) for defrauding investors of $65 billion. More than 1,300 victims, including charities and religious organizations, lost billions of dollars thanks to Madoff’s criminal activities, and their stories of suffering added to a national sense of outrage over white-collar criminals.

CRIME AND PUNISHMENT

In theory, fewer crimes lead to fewer people in prison. What, then, are we to make of the following? From 1991 to 2009, the crime rate in the United States fell an impressive 41 percent.32 During that same time period, however, the number of people in American prisons and jails grew by 46 percent.33 If fewer people are committing crimes, why are so many more winding up in prison?

THE GROWING PRISON POPULATION We will take a closer look at the relationship between crime rates and imprisonment rates in Chapter 11. For now, though, it may help to know that rising crime rates in the late 1970s and early 1980s led to increased pressure on politicians to “get tough on crime,” which produced a sustained period during which crime control values dominated criminal justice. The
resulting harsher sentencing laws—discussed in Chapter 9—made it more likely that a person arrested for a crime would wind up behind bars and that, once there, he or she would not be back in the community for a very long while. Consequently, the incarcerated population has been growing steadily for more than two decades, reaching 2.38 million in 2010 (see Figure 1.7 below).34

THE ECONOMICS OF INCARCERATION The last years of the first decade of the 2000s gave criminal justice experts another statistical anomaly to ponder. Although the overall prison population continued to rise, twenty-four states—including California, Michigan, and New York—saw a drop in the total number of inmates.35 This reduction is not an indication that the due process model is gaining primacy. Rather, as Ram Cnaan, a professor at the University of Pennsylvania, notes, it reflects a painful truth about prisons: “They simply cost too much.”36

For many states, corrections is the most expensive item in their shrinking budgets, outpacing important services such as education and health care. Consequently, many states are looking for ways to bring corrections spending under control. One method of doing this is to grant early release to nonviolent offenders. Another is the diversion of offenders from correctional facilities through special courts that promote rehabilitation rather than punishment for drug offenses, domestic violence, and other specific crimes. We will examine these policies and their ramifications for the nation’s prisons and jails in Chapters 11 and 12.

HOMELAND SECURITY AND THE THREAT OF TERRORISM

Without question, the attacks of September 11, 2001—when terrorists hijacked four commercial airlines and used them to kill nearly three thousand people in New York City, northern Virginia, and rural Pennsylvania—were the most significant events of the first decade of the 2000s as far as crime fighting is concerned. As we will see throughout this textbook, the resulting homeland security movement has touched nearly every aspect of criminal justice. This movement has the ultimate goal of protecting America from terrorism, which can be broadly defined as the random use of staged violence to achieve political goals.

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**Homeland Security**
A concerted national effort to prevent terrorist attacks within the United States and reduce the country’s vulnerability to terrorism.

**Terrorism**
The use or threat of violence to achieve political objectives.

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Figure 1.7  Prison and Jail Populations in the United States, 1985–2009

THE PATRIOT ACT It is not surprising that the need to create a response to the terrorist threat led American politicians and police officials to turn sharply toward crime control principles. In particular, the Patriot Act, passed six weeks after the 9/11 attacks and reauthorized in 2009, strengthened the ability of federal law enforcement agents to investigate and incarcerate suspects. The 342-page piece of legislation is difficult to summarize, but some of its key provisions include the following:

- An expansion of the definition of what it means to “engage in terrorist activity” to include providing “material support” through such activities as fund-raising and operating Web sites for suspected terrorist organizations.
- Greater leeway for law enforcement agents to track Internet use, access private financial records, and wiretap those suspected of terrorist activity.
- A reduction in the amount of evidence law enforcement agents need to gather before taking a terrorist suspect into custody.

In addition to this kind of legislative action, billions of dollars have been funneled into America’s homeland security apparatus, with the majority of the funds going to federal agencies under the control of the Department of Homeland Security. As the feature Anti-Terrorism in Action—A Close Call below shows, local police

ANTI-TERRORISM IN ACTION

A CLOSE CALL

Very few people have ever heard of the homegrown American Islamic terrorist group Jam’yyat Al-Islam Al Saheeh (JIS). If not for a dropped cell phone, however, JIS might well be as notorious as al Qaeda. The cell phone in question belonged to Gregory Patterson, who, along with Levar Haney Washington and Hammad Riaz Samana, robbed a string of gas stations in 2005 in Torrance, California. Local police had few clues concerning the robberies until they found the cell phone, which led to the arrest of the men and a search of Washington’s apartment. Much to the officers’ surprise, this search uncovered a cache of terrorist materials: bulletproof vests, knives, jihadist literature, and the addresses of potential bombing targets such as National Guard facilities, army recruitment centers, and Jewish synagogues in Southern California.

STUCK IN FOLSOM PRISON The Torrance police immediately contacted federal counterterrorism officials stationed in nearby Los Angeles. The ensuing investigation led the Federal Bureau of Investigation (FBI) to Kevin Lamar James, who was serving a ten-year sentence for armed robbery in Sacramento’s Folsom Prison. While at Folsom, James had converted to Islam and formed JIS, a small group that eventually included fellow inmate Washington. On his release, Washington immediately began recruiting co-conspirators at his mosque in nearby Inglewood. Two signed up—Patterson and Samana. The trio began robbing gas stations to finance their operations.

All four men were charged with conspiracy to levy war against the U.S. government through terrorism. Although Samana was found unfit to stand trial for psychiatric reasons, the other three pleaded guilty. In 2008, Washington and Patterson received sentences of 22 years and 151 months, respectively. A year later, Kevin Lamar James had 16 years added to his existing prison term. Law enforcement officials still shudder at what might have happened had a Torrance police officer not found that cell phone.

FOR CRITICAL ANALYSIS Following the JIS arrests, an FBI spokesperson said, “This case serves as an example of how local officers are serving in the front lines in the war against terrorism.” How does this case “serve as an example” of the importance of local police officers in anti-terrorism efforts?
departments are also crucial participants in the process. We will discuss law enforcement and homeland security throughout the textbook, particularly in Chapters 4, 5, and 14.

**A “NEVER-ENDING RACE”** In Chapter 14, we will also examine how the Patriot Act and other anti-terrorism measures have come under a great deal of criticism for sacrificing American ideals of civil rights and individual freedoms in the interests of greater security. In general, however, most Americans appear willing to exchange some freedoms for security, particularly in the wake of high-profile terrorist activities. On December 25, 2009, for example, a Nigerian named Umar Farouk Abdulmutallab tried to detonate an explosive device sewn into his underwear as his airline flight, Northwest Flight 253, approached Detroit Metropolitan Airport. Within days, President Barack Obama ordered further action in the “never-ending race to protect our country,” including $1 billion in advanced body-scanning technology for screening airplane passengers. Although some critics balked at the increased use of these body scanners, which create vivid images of travelers’ bodies underneath their clothes, a majority of Americans were willing to give up some privacy for security. Indeed, a *USA Today/Gallup* poll taken two weeks after the “underwear bomber’s” failed attempt showed that 78 percent of those asked approved of the use of body scanners at airports.

**TECHNOLOGY: FIGHTING AND FUELING CRIME**

Body-scanning is only one of the many areas in which technology is providing the criminal justice system with expanded crime-fighting abilities. Some experts believe that the continuing decline in crime rates can be attributed, at least in part, to increased use of technology by law enforcement agencies. As one example, in recent years the East Orange (New Jersey) Police Department has adopted high-tech tools such as surveillance cameras and gunshot sensors that are synchronized to alert police officers whenever a firearm is fired within city limits and to show them where the shots were fired. The department also installed Global Positioning System (GPS) devices and laptop computers in its police cars. From 2003 to 2009, criminal incidents in East Orange declined by 71 percent, a development Police Chief Ronald Bargo attributes to increased use of technology. “You can’t fight today’s crime with yesterday’s technology,” Bargo concludes.

Unfortunately, today’s criminal has also benefited from technological advances. As we will explain in Chapter 14, the Internet, in particular, has become a veritable web of criminal activity as users have learned to take advantage of the anonymity and access it provides as cover for identity theft, terrorist activity, gambling, and child pornography. In nearly every chapter of this textbook, you will read about new technologies that favor either the police officer or the crook. In many cases, these technologies have the potential to make the criminal justice system more efficient and just. As you will see in the following discussion of biometrics, however, technology can be a double-edged sword, providing challenges to the same society that it may ultimate benefit.
The science of biometrics involves identifying a person through her or his unique physical characteristics. In the criminal justice context, the term biometrics refers to the various technological devices that read these characteristics and report the identity of the subject to the authorities. Today, there are four leading biometric technologies:

1. **Fingerprint readers** take photographic images of fingerprints to determine patterns based on the points where the ridges of the fingertips begin, terminate, or split. These patterns are then mathematically encoded and the information stored.

2. **Iris recognition systems** capture about 240 minute details of the eye in a similar manner.

3. **Face recognition systems** use a camera to record from thirty to eighty “markers” on a subject’s face, such as cheekbone formation, the width of the nose bridge, and the space between the eyes.

4. **Hand geometry scanners** take and store as many as ninety different measurements, such as vein patterns, distance between knuckles, and the length and width of fingers.

The use of biometrics is becoming more common in law enforcement. More than 2,100 sheriff’s departments in twenty-seven states are using iris recognition technology. Most take digital pictures of the eyes of Alzheimer’s patients and children to help identify the subjects should they become lost or be abducted. Law enforcement officials in New Mexico scan the irises of convicted sex offenders to keep them from avoiding detection under false names. Experts predict that face recognition systems will eventually allow hidden cameras to check the identities of thousands of people shopping in a mall or taking a stroll in a city park. Furthermore, someday police officers will be able to take a photo of a suspect and instantaneously check the biometric markers against a database of millions for an identifying match.

**THINKING ABOUT BIOMETRICS**

Do you have any concerns about a technology that would enable the government to identify thousands of people with the sweep of a camera? What would be the benefits and drawbacks of a database that contained biometric information on every person in the United States?
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.

Define crime and identify the different types of crime. Crime is any action that is punishable under criminal statutes and 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 loss of personal freedom or, in some cases, fines. There are six groups of crimes: (a) violent crimes—murder, rape, assault, battery, and 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 crimes—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 crimes—sabotage, fraud, embezzlement, and theft of proprietary data from computer systems, as well as cyber crimes, such as selling child pornography over the Internet.

Outline the three levels of law enforcement. Because we have a federal system of government, law enforcement occurs at the (a) national, or federal, level and the (b) state level, and within the states at (c) local levels. Because crime is mostly a local concern, 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.

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.

Describe the layers of the “wedding cake” model. The top layer consists of celebrated cases, which are most highly publicized; the second layer involves high-profile felonies, such as rape and murder; the third layer consists of ordinary felonies, such as larcenies and burglaries; and the fourth layer consists of misdemeanors.

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

assault 8
battery 8
burglary 8
civil rights 18
conflict model 7
consensus model 6
crime 5
crime control model 18
criminal justice system 10
deviance 7
discretion 15
drug 21
due process model 19
federalism 11
gun control 20
homeland security 23
larceny 8
murder 8
organized crime 8
psychoactive drug 21
public order crime 8
robbery 8
sexual assault 8
street gang 20
terrorism 23
“wedding cake” model 17
white-collar crime 8

Self Assessment Answer Key

Page 9: i. society; ii. public officials/the government; iii. deviance; iv. violent; v. property; vi. white-collar
Page 19: i. federalism; ii. dual; iii. state; iv. discretion; v. crime control; vi. due process; vii. individual
Page 26: i. dropped/decreased; ii. flat/steady; iii. rising/increasing; iv. homeland; v. Patriot

CHAPTER 1 Criminal Justice Today 27
Questions for Critical Analysis

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. What would be some of the drawbacks of having the victims of crime, rather than the state (through its public officials), prosecute criminals?

3. Do you agree that public order crimes such as prostitution and illegal gambling are “victimless” crimes? Why or why not?

4. Suppose 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?

5. Following the September 11, 2001, terrorist attacks, federal law enforcement agencies reassigned many agents who had been investigating corporate fraud to anti-terrorism duties. Then, in the autumn of 2008, the U.S. economy sank into recession. How might these two developments have contributed to an increase in white-collar crime at the end of the first decade of the 2000s?

Online Resources

1. Get the most out of the materials in this chapter—go to the Criminal Justice in Action companion Web site at www.cjinaction.com, where you will find more resources to help you study. Resources include Web links, learning objectives, Internet exercises, quizzes, and flash cards.

2. Learn about potential criminal justice careers discussed in this chapter—explore careers online at www.cjinaction.com.

Notes


2. Cal. Penal Code, Section 926(b).


7. President’s Commission on Law Enforcement and Administration of Justice.


15. Ibid.

16. Givelber, 137.


18. Quoted in Oren Dorell, “Killings Down 10%, FBI Reports,” USA Today (December 22, 2009), 3A.


22. Ibid., 9.

23. Ibid., 9.


31. 2009 Report to the Nation: Occupational Fraud and Abuse (Austin, TX: Association of Certified Fraud Examiners, 2009), 1.


34. Prison Inmates at Midyear 2009—Statistical Tables, 1; and Jail Inmates at Midyear 2009—Statistical Tables, 2.


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 Notes 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.

Decisions of state courts of appeals 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), North Eastern (N.E. or N.E.2d), North Western (N.W. or N.W.2d), Pacific (P., P.2d, or P.3d), Southern (So. or So.2d), and South Western (S.W., S.W.2d, or S.W.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.

Citations to decisions of state courts of appeals give 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 also give 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.
MEASURING AND EXPLAINING CRIME
The eight learning objectives labeled LO1 through LO8 are designed to help improve your understanding of the chapter. After reading this chapter, you should be able to...

**LO 1** Identify the publication in which the FBI reports crime data, and list the three ways in which the data are reported.

**LO 2** Distinguish between Part I and Part II offenses as defined in the Uniform Crime Report (UCR).

**LO 3** Distinguish between the National Crime Victimization Survey (NCVS) and self-reported surveys.

**LO 4** Discuss the prevailing explanation for the rising number of women incarcerated in the United States.

**LO 5** Discuss the difference between a hypothesis and a theory in the context of criminology.

**LO 6** List and briefly explain two important branches of social process theory.

**LO 7** Discuss the connection between offenders and victims of crimes.

**LO 8** Explain the theory of the chronic offender and its importance for the criminal justice system.

**CHAPTER OUTLINE**

- Crime Measurement in the United States
- Criminology in Action
- The Link between Drugs and Crime
- Criminology from Theory to Practice
It is hard to imagine a more horrible and terrifying fate than the one suffered by Jodi Sanderholm. A neighbor named Justin Thurber abducted the nineteen-year-old Sanderholm in front of her home in Arkansas City, Kansas, and drove her to a secluded area near the Walnut River outside of town. Her body was found four days later, disfigured by evidence of torture, strangulation, and repeated sexual assault with pieces of wood. In 2009, a jury found Thurber guilty of murder and aggravated kidnapping, and a judge sentenced him to be executed. During the trial, a witness testified that Thurber had been spying on Sanderholm since she was a child. Furthermore, after Thurber’s arrest, ten other women came forward and detailed the various ways that he had harassed and stalked them in the years prior to Sanderholm’s death.

Why, wondered Sanderholm’s family and friends, had none of these women reported Thurber’s behavior to the police? In fact, some of them had, but in each case the wording of Kansas’s antistalking legislation kept law enforcement from getting involved. The law required a “credible threat” before police could pursue a stalking charge. In practice, this meant that a victim had to show that a threat had been made to her or his safety and that the alleged stalker possessed the “intent and apparent ability” to carry out that threat. Because many forms of stalking are not clearly threatening, the police were powerless to act. In 2008, the Kansas legislature removed the “credible threat” language from the law, requiring only that victims have a “reasonable” fear of harm to themselves or their families. Brian Sanderholm, Jodi’s father, responded that he had “no doubt” his daughter would be alive today if the law had been revised before her disappearance.

Before the passage of “Jodi’s Law,” the state of Kansas averaged only fifteen stalking convictions each year. Such low numbers are common throughout the United States, thanks to victim silence, vague state antistalking laws, and the difficulty of gathering physical evidence of this particular crime. The extent to which stalking is underreported became crystal clear in early 2009 when the U.S. Department of Justice released the results of a far-reaching study on the subject. According to the survey, stalking—defined as a course of conduct that would make a reasonable person feel fear on at least two separate occasions—affects about 3.4 million Americans annually.

Among their widespread and unprecedented findings, federal researchers determined that nearly 75 percent of the victims knew their stalkers, who were most commonly a former spouse or ex-boyfriend/girlfriend. “The public tends to perceive stalking as something that happens to celebrities,” said report co-author Katrina Baum. “This study tells us that stalking is not a stranger phenomenon.” Victim advocates hope that the sheer scope of the report will encourage states to strengthen their antistalking laws without waiting for a tragic event such as the murder of Jodi Sanderholm.
The measurement of crime is not simply about producing a record of what has happened in the past. Studies such as the Department of Justice’s stalking survey provide crime experts with a better understanding of crime and criminal behavior. In this chapter, we first will look closely at the most common methods of collecting data on criminal offenders. Then, we will examine theories of crime causation based on such data. Finally, we will address the question of relevance: What is the effect of data and theories on the criminal justice system’s efforts to control and prevent crime?

**Crime Measurement in the United States**

The first question a crime researcher must ask himself or herself is, What sort of criminal behavior am I interested in measuring? The authors of the stalking study just mentioned decided to focus on conduct such as making repeated, unanswered phone calls; following or spying on the victim; and leaving unwanted presents. Although individually, these acts may not reach the level of criminal activity, the authors felt that collectively, they would cause a reasonable person to fear for her or his safety from a stalker.6

Every year, hundreds of crime studies are produced, most of them concentrating on narrow topics such as the prevalence of stalking, or the impact of dropping out of school on juvenile delinquency, or the role of alcohol in domestic violence. The best-known annual survey of criminal behavior, however, tries to answer the broadest of questions: How much crime is there in the United States?

**THE UNIFORM CRIME REPORT**

Each year, the U.S. Department of Justice releases the *Uniform Crime Report* (UCR). Since its inception in 1930, the UCR has attempted to measure the overall rate of crime in the United States by organizing “offenses known to the police.”7 To produce the UCR, the Federal Bureau of Investigation (FBI) relies on the voluntary participation of local law enforcement agencies. These agencies—approximately 17,500 in total, covering 95 percent of the population—base their information on three measurements:

1. The number of persons arrested.
2. The number of crimes reported by victims, witnesses, and the police themselves.
3. The number of officers and support law enforcement specialists.

Once this information has been sent to the FBI, the agency presents the crime data in two important ways:

1. As a *rate* per 100,000 people. In 2009, for example, the crime rate was 3,465.1. In other words, for every 100,000 inhabitants of the United States, about 3,465 *Part I offenses* (explained below) were reported to the FBI. This statistic is known as the crime rate and is often cited by media sources when discussing the level of crime in the United States.
2. As a *percentage* change from the previous year or other time periods. From 2008 to 2009, there was a 6.1 percent decrease in the violent crime rate and a 5.5 percent decrease in the property crime rate.8

Uniform Crime Report (UCR)   An annual report compiled by the FBI to give an indication of criminal activity in the United States.
The Department of Justice publishes these data annually in *Crime in the United States*. Along with the basic statistics, this publication offers an exhaustive array of crime information, including breakdowns of crimes committed by city, county, and other geographic designations and by the demographics (gender, race, age) of the individuals who have been arrested for crimes.

**PART I OFFENSES** The UCR divides the criminal offenses it measures into two major categories: Part I and Part II offenses. **Part I offenses** are those crimes that, due to their seriousness and frequency, are recorded by the FBI to give a general idea of the "crime picture" in the United States in any given year. For a description of the seven Part I offenses, see Figure 2.1 below.

Part I offenses are those most likely to be covered by the media and, consequently, to inspire the most fear of crime in the population. These crimes have come to dominate crime coverage to such an extent that, for most Americans, the first image that comes to mind at the mention of "crime" is one person physically attacking another person or a robbery taking place with the use or threat of force. Furthermore, in this stereotypical image of crime, the offender and the victim do not know each other.

Given the trauma of violent crimes, this perception is understandable. It is not, however, accurate. According to UCR statistics, a relative or other acquaintance of the victim commits at least 56 percent of the homicides in the United States. Furthermore, as is evident from Figure 2.1, the majority of Part I offenses committed are property crimes. Notice that almost 60 percent of all reported Part I offenses are larceny/thefts, and about another 20 percent are burglaries.

**Figure 2.1 Part I Offenses**

Every month, local law enforcement agencies voluntarily provide information on serious offenses in their jurisdiction to the FBI. These serious offenses, known as Part I offenses, are defined in this figure. (Arson is not included in national crime rate data, but it is sometimes considered a Part I offense nonetheless, so it is included here.) As the graph shows, most Part I offenses reported by local police departments in any given year are property crimes.

- **Murder.** The willful (nonnegligent) killing of one human being by another.
- **Forcible rape.** The carnal knowledge of a female forcibly and against her will. Included are rapes by force and attempts or assaults to rape.
- **Robbery.** The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.
- **Aggravated assault.** An unlawful attack by one person on another for the purpose of inflicting severe or aggravated bodily injury.
- **Burglary—breaking or entering.** The unlawful entry of a structure to commit a felony or a theft. Attempted forcible entry is included.
- **Larceny/theft (except motor vehicle theft).** The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another.
- **Motor vehicle theft.** The theft or attempted theft of a motor vehicle.
- **Arson.** Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, and the like.

**PART II OFFENSES** Not only do violent crimes represent the minority of Part I offenses, but Part I offenses are far outweighed by Part II offenses, which include all crimes recorded by the FBI that do not fall into the category of Part I offenses. While information gathered on Part I offenses reflects those offenses “known,” or measured by the FBI according to established criteria, Part II offenses are measured only by raw arrest data. In 2009, the FBI recorded about 2.3 million arrests for Part I offenses in the United States. That same year, more than 11.3 million arrests for Part II offenses took place. In other words, a Part II offense was about five times more common than a Part I offense (for a description of Part II offenses and their rates, see Figure 2.2 below). Such statistics have prompted Marcus Felson, a professor at Rutgers University School of Criminal Justice, to comment that “most crime is very ordinary.”

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**Figure 2.2  Part II Offenses**

<table>
<thead>
<tr>
<th>Offense</th>
<th>Estimated Annual Arrests</th>
<th>Offense</th>
<th>Estimated Annual Arrests</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug abuse violations</td>
<td>1,663,582</td>
<td>Offenses against family and children</td>
<td>114,564</td>
</tr>
<tr>
<td>Driving under the influence</td>
<td>1,440,409</td>
<td>Stolen property</td>
<td>105,303</td>
</tr>
<tr>
<td>Other assaults</td>
<td>1,319,458</td>
<td>Runaways</td>
<td>93,434</td>
</tr>
<tr>
<td>Disorderly conduct</td>
<td>655,322</td>
<td>Forgery and counterfeiting</td>
<td>85,844</td>
</tr>
<tr>
<td>Liquor laws</td>
<td>570,333</td>
<td>Sex offenses (except forcible rape and prostitution)</td>
<td>77,326</td>
</tr>
<tr>
<td>Drunkenness</td>
<td>594,300</td>
<td>Prostitution and commercialized vice</td>
<td>71,355</td>
</tr>
<tr>
<td>Fraud</td>
<td>210,255</td>
<td>Vagrancy</td>
<td>33,388</td>
</tr>
<tr>
<td>Vandalism</td>
<td>270,439</td>
<td>Embezzlement</td>
<td>17,920</td>
</tr>
<tr>
<td>Weapons</td>
<td>166,334</td>
<td>Gambling</td>
<td>10,360</td>
</tr>
<tr>
<td>Curfew and loitering law violations</td>
<td>112,593</td>
<td>Suspecion</td>
<td>1,975</td>
</tr>
</tbody>
</table>

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**Curfew and loitering law violations (persons under age eighteen)**—Offenses relating to violations of local curfew or loitering ordinances where such law violations exist.  
**Disorderly conduct**—Breach of the peace.  
**Driving under the influence**—Driving or operating any vehicle or common carrier while drunk or under the influence of liquor or narcotics.  
**Drug abuse violations**—State and/or local offenses relating to the unlawful possession, sale, use, growing, and manufacturing of narcotic drugs.  
**Drunkenness**—Offenses relating to drunkenness or intoxication. Excluded is “driving under the influence.”  
**Embezzlement**—Misappropriation or misapplication of money or property entrusted to one’s care, custody, or control.  
**Forgery and counterfeiting**—Making, altering, uttering, or possessing, with intent to defraud, anything false in the semblance of that which is true. Attempts are included.  
**Fraud**—Fraudulent conversion and obtaining money or property by false pretenses. Included are confidence games and bad checks, except forgeries and counterfeiting.  
**Gambling**—Promoting, permitting, or engaging in illegal gambling.  
**Liquor laws**—State and/or local liquor law violations, except “drunkenness” and “driving under the influence.” Federal violations are excluded.  
**Offenses against family and children**—Nonsupport, neglect, desertion, or abuse of family and children.  
**Other assaults (simple)**—Assaults and attempted assaults where no weapon is used and that do not result in serious or aggravated injury to the victim.  
**Prostitution and commercialized vice**—Sex offenses of a commercialized nature, such as prostitution, keeping a bawdy house, or procuring or transporting women for immoral purposes. Attempts are included.  
**Runaways (persons under age eighteen)**—Limited to juveniles taken into protective custody under provisions of local statutes.  
**Sex offenses (except forcible rape, prostitution, and commercialized vice)**—Statutory rape and offenses against chastity, common decency, morals, and the like. Attempts are included.  
**Stolen property: buying, receiving, possessing**—Buying, receiving, and possessing stolen property, including attempts.  
**Suspicion**—No specific offense; suspect released without formal charges being placed.  
**Vagrancy**—Vagabondage, begging, loitering, and the like.  
**Vandalism**—Willful or malicious destruction, injury, disfigurement, or defacement of any public or private property, real or personal, without consent of the owner or persons having custody or control.  
**Weapons: carrying, possessing, and the like**—All violations of regulations or statutes controlling the carrying, using, possessing, furnishing, and manufacturing of deadly weapons or silencers. Included are attempts.

THE NATIONAL INCIDENT-BASED REPORTING SYSTEM

In the 1980s, aware of several weaknesses inherent in the UCR, the Department of Justice began seeking ways to revise its data-collecting system. The result was the National Incident-Based Reporting System (NIBRS). In the NIBRS, local agencies collect data on each single crime occurrence within twenty-two offense categories made up of forty-six specific crimes called Group A offenses. These data are recorded on computerized record systems provided—though not completely financed—by the federal government.

The NIBRS became available to local agencies in 1989, and today 32 states have been NIBRS certified, with 9 other states in the process of testing the new process. Even in its still-limited form, however, criminologists have responded enthusiastically to the NIBRS because the system provides information about four “data sets”—offenses, victims, offenders, and arrestees—unavailable through the UCR. The NIBRS also presents a more complete picture of crime by monitoring all criminal “incidents” (including stalking, as discussed in the opening to this chapter) reported to the police, not just those that lead to an arrest. Furthermore, because jurisdictions involved with the NIBRS must identify bias motivations of offenders, the procedure is very useful in studying hate crimes, a topic we will address in the next chapter.

VICTIM SURVEYS

The UCR and the NIBRS rely on official reports of crime. In contrast, victim surveys allow the victims of crime to speak directly to crime experts about their experiences. The survey on stalking, discussed in the opening to this chapter, was a victim survey in which the authors were able to gain valuable information about a variety of behavior that goes unnoticed and therefore unrecorded, by police. The first large-scale victim survey took place in 1966, when members of 10,000 households answered questionnaires as part of the President’s Commission on Law Enforcement and the Administration of Justice. The results indicated a much higher victimization rate than had been expected, and researchers felt the process gave them a better understanding of the dark figure of crime, or the actual amount of crime that occurs in the country. (The figure is “dark,” or impossible to detect, because a great number of crimes are never reported to the police.)

Criminologists were so encouraged by the results of the 1966 experiment that the federal government decided to institute an ongoing victim survey. The result was the National Crime Victimization Survey (NCVS), which started in 1972. Conducted by the U.S. Bureau of the Census in cooperation with the Bureau of Justice Statistics of the Justice Department, the NCVS conducts an annual survey of more than 40,000 households with nearly 75,000 occupants over twelve years of age. Participants are interviewed twice a year concerning their experiences with crimes in the prior six months. As you can see in Figure 2.3 on the facing page, the questions cover a wide array of possible victimization.

Supporters of the NCVS highlight a number of aspects in which the victim survey is superior to the UCR:

1. It measures both reported and unreported crime.
2. It is unaffected by police bias and distortions in reporting crime to the FBI.
3. It does not rely on victims directly reporting crime to the police.
Most important, some supporters say, is that the NCVS gives victims a voice in the criminal justice process.

**SELF-REPORTED SURVEYS**

*Self-reported surveys,* a third source of data for criminologists, are based on many of the same principles as victim surveys, but focus instead on offenders. In this form of data collection, persons are asked directly—through personal interviews or questionnaires, or over the telephone—about specific criminal activity to which they may have been a party. Such studies are particularly helpful in finding specific information about groups of subjects. When professors Peter B. Wood, Walter R. Grove, James A. Wilson, and John K. Cochran wanted to learn how criminals felt when committing crimes, for example, they used self-reported surveys. By comparing these results with those gathered from a group of male students at a state university, the researchers were able to draw conclusions on the “high” a criminal experiences during a crime. Another advantage is that self-reported surveys allow researchers to control aspects of the data collection themselves, thereby ensuring that race, class, and gender will not bias the results.

Because there is no penalty for admitting to criminal activity in a self-reported survey, subjects tend to be more forthcoming in discussing their behavior. The researchers mentioned above found that a significant number of the students interviewed admitted to committing minor crimes for which they had never been.
arrested. This fact points to the most striking finding of self-reported surveys: the dark figure of crime, referred to earlier as the actual amount of crime that takes place, appears to be much larger than the UCR or NCVS would suggest.

**CJ & TECHNOLOGY**

**TRANSDERMAL ALCOHOL TESTING**

Sweat, it seems, is one source of self-reported data that never lies, at least when it comes to alcohol consumption. That’s the logic behind the Secure Continuous Remote Alcohol Monitor, otherwise known as the SCRAM bracelet or the “bling with a ping.” This eight-ounce bracelet, usually worn around the subject’s ankle, relies on a process called transdermal alcohol testing to measure the levels of alcohol vapor that show up in perspiration when alcohol has been consumed. The measurements are then transmitted and posted on a Web site via wireless modem, allowing the subject to prove—or disprove—that he or she is remaining sober. The SCRAM bracelet gained notoriety several years ago when actress and socialite Lindsay Lohan voluntarily donned one to show her commitment to sobriety. Most wearers, however, are not celebrities but rather offenders who are required by a court to undergo the testing after an arrest for drunken driving, domestic violence, or some other alcohol-related wrongdoing.

**THINKING ABOUT TRANSDERMAL ALCOHOL TESTING**

Coming soon: passive transdermal detectors in steering wheels. These devices will measure the sweat on the driver’s hands to determine whether she or he has been ingesting drugs or alcohol. How could this technology be used to keep someone from driving under the influence?

**CRIME TRENDS IN THE UNITED STATES**

The UCR, NCVS, and other statistical measures we have discussed so far in this chapter, though important, represent only the tip of the iceberg of crime data. Thanks to the efforts of government law enforcement agencies, educational institutions, and private individuals, more information on crime is available today than at any time in the nation’s history. Pure statistics do not, however, always tell the whole story, and crime rates often fail to behave in the ways criminologists predict.

**LOOKING GOOD: CRIME IN THE 1990s AND 2000s**  In 1995, James Q. Wilson, noting that the number of young males was set to increase dramatically over the next decade, predicted that “30,000 more young muggers, killers, and thieves” would be on the streets by 2000. “Get ready,” he warned. Other criminologists offered their own dire projections. John Dilulio foresaw a swarm of “juvenile super-predators” on the streets, and James A. Fox prophesied a “blood bath” by 2005. Given that numerous studies show criminal behavior peaking in the teenage years (a phenomenon we will explore in Chapter 13), these experts could be fairly confident in their predictions. Fortunately for the country, they were wrong. As is evident from Figure 2.4 on the facing page, starting in 1994 the United States experienced a steep crime decline that we are still enjoying today.
The Great Crime Decline  The crime statistics of the 1990s are startling. In spite of an upswing at the beginning of the decade, from 1990 to 2000 the homicide rate dropped 39 percent, the robbery rate 44 percent, the burglary rate 41 percent, and the auto theft rate 37 percent. By most measures, this decline was the longest and deepest of the twentieth century. In retrospect, the 1990s seem to have encompassed a “golden era” for the leading indicators of low crime rates. The economy was robust. The incarceration rate was skyrocketing. Plus, despite the misgivings of James Q. Wilson and many of his colleagues, the percentage of the population in the high-risk age bracket in 1995 was actually lower than it had been in 1980.

Several other factors also seemed to favor lower crime rates. Police tactics, many of which we will discuss in Chapter 5, became more efficient—thanks in no small part to “zero-tolerance” policies inspired by Wilson’s writings. Furthermore, many of those most heavily involved in a crack cocaine boom that struck the country during the late 1980s had been killed, were imprisoned, or were no longer offending. Without their criminal activity, the United States became a much safer place.

Leveling Off  Since 2000, American crime rates have been, in the words of Alfred Blumstein, “impressively flat.” During the first decade of the 2000s, both the FBI’s Uniform Crime Reports and the Department of Justice’s victimization surveys measured slight shifts up or down in criminal activity, with the movements being too small to herald either a continuation of the declines of the 1990s or a new crime wave. The outlook brightened considerably in 2009, with the UCR showing a more than five percent decline in violent and property crime rates from the previous year. Also in 2009, the NCVS showed crime to be near its lowest level in more than three decades.

The Immediate Future  Despite these figures, several developments seem to linger pessimistically in the forecast. Most important, as we noted in Chapter 1, the United States is experiencing the highest levels of unemployment and other negative economic indicators since the 1930s. Elliott Currie, a criminologist at the University of California at Irvine, believes that if the economy continues to falter in the second decade of the 2000s, behavior will change, and crime rates will inevitably rise. “If you put people in really lousy conditions,” he says, “they’ll begin to think differently about school, drugs, or gangs.”

Other storm clouds are visible as well. Gang-related criminal activity continues to increase, particularly in midsize cities. Of particular worry are Mexican drug cartels, whose violent attempts to control the market, also noted in Chapter 1, are spilling over the border into the United States. In general, however, when considering crime rate predictions, it is probably a good idea to heed the warning of Ralph
Taylor, a professor of criminal justice at Philadelphia’s Temple University. When experts claim confidence in their ability to see into the country’s crime future, says Taylor, “they don’t know what they’re talking about.”

**CRIME, RACE, AND POVERTY** One group has noticeably failed to benefit from the positive crime trends of the past fifteen years: young African American males. According to data compiled by criminologists James A. Fox and Marc L. Swatt of Northeastern University in Boston, from 2002 to 2007 the number of murders committed by black males under the age of eighteen rose 43 percent. Over the same time period, the number of young black males who were victims of murder also increased significantly, by 31 percent. In both categories, levels for young white males remained the same or declined.

**Race and Crime** Youth homicide rates are not the only area in which there is a “worrisome divergence”—to use Professor Fox’s term—in crime trends between the races. Official crime data seem to indicate a strong correlation between minority status and crime: African Americans—who make up about 13 percent of the population—constitute 39 percent of those arrested for violent crimes and 30 percent of those arrested for property crimes. A black man is almost twelve times more likely than a white man to be sent to prison for a drug-related conviction, while black women are about five times more likely than white women to be incarcerated for a drug offense. (See the feature *Myth versus Reality—Race Stereotyping and Drug Crime* on the facing page.) Furthermore, although less than half of those arrested for violent crimes are African American, blacks account for just over half of all convictions and approximately 60 percent of prison admissions.

The racial differences in the crime rate are one of the most controversial areas of the criminal justice system. At first glance, crime statistics seem to support the idea that the subculture of African Americans in the United States is disposed toward criminal behavior. Not all of the data, however, support that assertion. A recent research project led by sociologist Robert J. Sampson of Harvard University collected extensive data on more than 11,000 residents living in 180 Chicago neighborhoods. Sampson and his colleagues found that 60 percent of the “gap” in levels of violence between whites and African Americans could be attributed to neighborhood and family conditions. In other words, regardless of race, a person has a much higher risk of violent behavior if he or she lives in a poverty-stricken, disorganized neighborhood or in a household run by a single parent.

**Class and Crime** Indeed, a wealth of information suggests that income level is more important than skin color when it comes to crime trends. A 2002 study of nearly 900 African American children (400 boys and
CHAPTER 2
Measuring and Explaining Crime

467 girls) from neighborhoods with varying income levels showed that family earning power had the only significant correlation with violent behavior.34 More recent research conducted by William A. Pridemore of Indiana University found a "positive and significant association" between poverty and homicide.35 Lack of education, another handicap most often faced by low-income citizens, also seems to correlate with criminal behavior. Forty-one percent of all inmates in state and federal prisons failed to obtain a high school education, compared with 18 percent of the population at large.36

It might seem logical that those without the financial means to acquire the consumer goods and services that dominate our society would turn to illegal methods to "steal" purchasing power. But, logic aside, many criminologists are skeptical of such an obvious class-crime relationship. After all, poverty does not cause crime. The majority of residents in low-income neighborhoods are law-abiding. Furthermore, self-report surveys indicate that high-income citizens are involved in all sorts of criminal activities37 and are far more likely to commit white-collar crimes, which are not included in national crime statistics. These facts tend to support the theory that high crime rates in low-income communities are at least partly the result of a greater ease for police to arrest poorer citizens and of the court system to convict them.

Ethnicity and Crime Another point to remember when reviewing statistical studies of minority offenders and victims is that they tend to focus on race, which distinguishes groups based on physical characteristics such as skin color, rather than those convicted of drug crimes and 74 percent of all Americans sentenced for drug crimes. Finally, more than four out of every five drug arrests are for possession of the banned substance, not for its sale or manufacture. Thus, the racial disparity in arrests cannot be due to a large class of African American drug dealers.

Although these statistics leave the criminal justice system open to charges of institutionalized racism, the disparities are more likely the result of practical considerations. "There is as much cocaine in the Stock Exchange as there is in the black community," admits one Chicago police chief. "But those guys are harder to catch. Those deals are done in office buildings [and] in someone's home. But the guy standing on the corner, he's almost got a sign on his back. These guys are just arrestable." In addition, residents of low-income neighborhoods are unlikely to hire expensive legal help to contest police action. Quite simply, the inner city is an easy place for police to rack up impressive arrest numbers with little fear of consequences if mistakes are made.

FOR CRITICAL ANALYSIS Heather Mac Donald, a crime expert at the Manhattan Institute in New York, suggests that the racial disparities in the "war on drugs" make sense because the urban street trade often leads to violence and other crimes that harm inner-city communities. Drug use by whites, in contrast, generally takes place in suburban homes, hidden from view, without the same level of negative side effects. What is your opinion of Mac Donald's contention?
ethnicity, which denotes national or cultural background. Thus, the bulk of criminological research in this area has focused on the differences between European Americans and African Americans, both because the latter have been the largest minority group in the United States for most of its history and because the racial differences between the two groups are easily identifiable. Americans of Hispanic descent have been either excluded from many crime studies or linked with whites or blacks based on racial characteristics. Other minority groups, such as Asian Americans, Native Americans, and immigrants from the South Pacific or Eastern Europe, have been similarly underreported in crime studies.

This state of affairs will more than likely change in the near future. Latinos are the fastest-growing minority group in the U.S. prison population, and, because of immigration offenses, they now account for 40 percent of those convicted of federal crimes. In fact, criminologists have already begun to focus on issues of Hispanic criminality. For example, Robert Sampson’s research project, mentioned earlier, on page 40, found lower rates of violence among Mexican Americans than among either whites or blacks living in Chicago. The authors theorize that strong social ties in immigrant populations create an environment that is antithetical to crime.

WOMEN AND CRIME To put it bluntly, crime is an overwhelmingly male activity. More than 65 percent of all murders involve a male victim and a male perpetrator; in only 2.4 percent of homicides are both the offender and the victim female. Only 12 percent of the national jail population and 7 percent of the national prison population are female, and in 2009 only 24.3 percent of all arrests involved women. These statistics, however, fail to convey the startling rate at which the female presence in the criminal justice system has been increasing. In 1970, there were about 6,000 women in federal and state prisons; today, there are nearly 115,000. In just the past decade, the number of women arrested in this country has risen 11.4 percent, while the number of men arrested has actually declined 4.9 percent.

There are two possible explanations for these figures. Either (1) the life circumstances and behavior of women have changed dramatically in the past forty years, or (2) the criminal justice system’s attitude toward women has changed over that time period. In the 1970s, when female crime rates started surging upward, many observers accepted the former explanation. “You can’t get involved in a bar fight if you’re not allowed in the bar,” said feminist theorist Freda Adler in 1975. It has become clear, however, that a significant percentage of women arrested are involved in a narrow band of wrongdoing, mostly drug- and alcohol-related offenses or property crimes. Furthermore, research shows that as recently as the 1980s, many of the women now in prison would not have been arrested or would have received lighter sentences for their crimes. Consequently, more scholars are convinced that rising female criminality is the result of a criminal justice system that is “more willing to incarcerate women.”

Dorice “Dee Dee” Moore was charged in February 2010 for her involvement in the death and disappearance of lottery winner Abraham Shakespeare. Shakespeare’s body was found on Moore’s property in Hillsborough County, Florida, and she had taken nearly $3.5 million of his lottery winnings. Why is Moore an atypical female offender? (AP Photo/Hillsborough County Sheriff’s Office, File)
Criminology in Action

When a Kansas judge sentenced Justin Thurber—whose stalking, kidnapping, and murder of Jodi Sanderholm were discussed in the opening of this chapter—to death in 2009, Thurber’s parents were in the courtroom. “We’re not bad people,” said Glenda Thurber, Justin’s mother. “We just have a son who was sick, and we didn’t know it.” Attributing crimes as horrible as Thurber’s to an inexplicable “sickness” in the offender is understandable. It does not, however, further the study of the causes of crime, known as criminology.

In fact, Thurber’s lawyers, though acknowledging their client’s guilt, blamed his behavior on low intelligence. Whatever the legal justification for this line of reasoning, criminologists, or researchers who study the causes of crimes, warn against making such a deduction. After all, not every person with low intelligence is a likely criminal. In this case, there may have been a correlation between Thurber’s IQ and his violent behavior, but very few criminologists would go so far as to say that his low IQ caused him to torture and kill Jodi Sanderholm. Correlation between two variables means that they tend to vary together. Causation, in contrast, means that a change in one variable is responsible for the change in the other. Research conducted by Dan Immergluck and Geoff Smith, for example, shows that when levels of single-family mortgage foreclosures rise in a neighborhood, so do levels of violent crime. The researchers are careful, however, not to imply that someone whose house has been foreclosed is necessarily going to turn into a violent criminal. Rather, they focus on the overall negative impact on neighborhoods when families lose their homes.

The Role of Theory

Such is the quandary for criminologists. We can say that there is a correlation between low intelligence and certain characteristics of some violent offenders. But we cannot say what actually caused Justin Thurber to stalk and murder Jodi Sanderholm without knowing much more about his background and environment, and possibly not even then. Consequently, the question that is the underpinning of criminology—What causes crime?—has yet to be definitively answered.

Criminologists have, however, uncovered a wealth of information concerning a different, and more practically applicable, inquiry: Given a certain set of circumstances,
why do individuals commit criminal acts? This information has allowed criminologists to develop a number of theories concerning the causes of crime. For our purposes, a theory is an explanation for a happening or circumstance that is based on observation, experimentation, and reasoning. Scientific and academic researchers observe facts and their consequences to develop hypotheses about what will occur when a similar fact pattern is present in the future. A hypothesis is a proposition that can be tested by researchers or observers to determine if it is valid. If enough authorities do find the hypothesis valid, it may be accepted as a theory. (See Figure 2.5 below for an example of this process, known as the scientific method, in action.)

Criminological theories are primarily concerned with determining the reasons for criminal behavior, but they can also provide practical guidance for law enforcement, the courts, and corrections officials. In this section, we will examine the most widely recognized of these theories, starting with one that relies on the freedom of choice.

CHOICE THEORIES

For those who subscribe to choice theory, the answer to why a person commits a crime is rather straightforward: because that person chooses to do so. James Q. Wilson sums up rational choice theory as follows:

At any given moment, a person can choose between committing a crime and not committing it. The consequences of committing a crime consist of rewards (what psychologists call “reinforcers”) and punishments; the consequences of not committing the crime also entail gains and losses. The larger the ratio of the net rewards of crime to the net rewards of [not committing a crime], the greater the tendency to commit a crime.51

In other words, a person, before committing a crime, acts as if he or she is weighing the benefits (which may be money, in the case of a robbery) against the costs (the possibility of being caught and going to prison or jail). If the perceived benefit is greater than the costs, the person is more likely to commit the crime.

“THRILL OFFENDERS” In expanding on rational choice theory, sociologist Jack Katz has stated that the “rewards” of crime may be sensual as well as financial. The inherent danger of criminal activity, according to Katz, increases the “rush” a criminal experiences on successfully committing a crime. Katz labels the rewards of this “rush” the seduction of crime.52 For example, the National Coalition for the Homeless documented nearly 900 unprovoked attacks against the homeless in the first decade of the 2000s, including 244 fatalities.53 In most of these cases, the assailants were “thrill offenders” who kicked, punched, or set on fire homeless persons for the sport of it. Katz believes that seemingly “senseless” crimes can be explained by rational choice theory only if the intrinsic reward of the crime itself is considered.

CHOICE THEORY AND PUBLIC POLICY The theory that wrongdoers choose to commit crimes
is a cornerstone of the American criminal justice system. Because crime is seen as the end result of a series of rational choices, policymakers have reasoned that severe punishment can deter criminal activity by adding another variable to the decision-making process. Supporters of the death penalty—now used by thirty-six states and the federal government—emphasize its deterrent effects, and legislators have used harsh mandatory sentences to control illegal drug use and trafficking. (To get a better idea of how a convicted criminal’s ability to choose might affect his or her punishment, see the feature You Be the Judge—The Tumor Made Me Do It below.)

TRAIT THEORIES

Somewhat in contrast to choice theories, trait theories suggest that certain biological or psychological traits in individuals could incline them toward criminal behavior given a certain set of circumstances. Biology is a very broad term that refers to the scientific study of living organisms, while psychology pertains more specifically to the study of the mind and its processes. “All behavior is biological,” pointed out geneticist David C. Rowe. “All behavior is represented in the brain, in its biochemistry, electrical activity, structure, and growth and decline.”

THE FACTS

Philip, a forty-year-old schoolteacher with no history of deviant behavior, suddenly became obsessed with sex. He began collecting child pornography, soliciting prostitutes, and making sexual advances to young girls, including his stepdaughter. Eventually, Philip’s wife reported his behavior, and he was tried and found guilty of child molestation. The judge ruled that Philip must complete a rehabilitation program or face jail time. When Philip was expelled from the program for lewdly propositioning the nurses, the judge had no choice but to order him to jail. The evening before his sentence was to begin, Philip checked himself into a hospital, complaining of headaches and an urge to rape his landlady. Doctors removed an egg-sized tumor from Philip’s brain, and the overpowering sexual urges disappeared.

THE LAW

The ability to choose is an important element in determining punishment under American law. If a person has no control over his or her actions, then no “choice” to commit a crime has been made, and a court will often hand down a lesser punishment or no punishment at all if the defendant agrees to seek medical treatment.

YOUR DECISION

There is no doubt that Philip committed the crimes of which he was convicted. The presence of the tumor, however, suggests that he had not chosen to be a sexual deviant, and therefore he might reasonably escape blame for his actions. In light of his dramatic personality change following removal of the tumor, should Philip be required to serve his jail term? How does the basic premise of rational choice theory influence your decision?

[To see how a Virginia judge ruled in a case with similar facts, go to Example 2.1 in Appendix B.]
BIOCHEMICAL CONDITIONS AND CRIME One trait theory holds that biochemistry, or the chemistry of living matter, can influence criminal behavior. To give one example, chemical messengers known as hormones have been the subject of much criminological study. Criminal activity in males has been linked to elevated levels of hormones—specifically, testosterone, which controls secondary sex characteristics and has been associated with aggression. Testing of inmate populations shows that those incarcerated for violent crimes exhibit higher testosterone levels than other prisoners. Elevated testosterone levels have also been used to explain the age-crime relationship, as the average testosterone level of men under the age of twenty-eight is double that of men between thirty-one and sixty-six years old.

THE BRAIN AND CRIME The study of brain activity, or neurophysiology, has also found a place in criminology. Cells in the brain known as neurons communicate with each other by releasing chemicals called neurotransmitters. Criminologists have isolated three neurotransmitters that seem to be particularly related to aggressive behavior:

1. Serotonin, which regulates moods, appetite, and memory.
2. Norepinephrine, which regulates sleep-wake cycles and controls how we respond to anxiety, fear, and stress.
3. Dopamine, which regulates perceptions of pleasure and reward.

Researchers have established that, under certain circumstances, low levels of serotonin and high levels of norepinephrine are correlated with aggressive behavior. Dopamine plays a crucial role in drug addiction, as we shall see later in the chapter.

In addition, research seems to have shown a strong connection between violent behavior and damage to a part of the brain known as the frontal lobe. Located in the part of the brain just behind the forehead, the frontal lobe appears to regulate our ability to behave properly in social situations. Thus, people whose frontal lobes do not function correctly—due to birth defect or injury—tend to act more impulsively and violently. Experts testifying in court often use frontal lobe trauma to explain the horrific actions of defendants. Several years ago, for example, defense attorneys highlighted an “asymmetry” in John Couey’s frontal lobe when arguing (unsuccessfully) that their client should not be executed for abducting, raping, and killing nine-year-old Jessica Lunsford.

PSYCHOLOGY AND CRIME Like biological theories of crime, psychological theories of crime operate under the assumption that individuals have traits that make them more or less predisposed to criminal activity. To a certain extent, however, psychology rests more heavily on abstract ideas than does biology. Even Sigmund Freud (1856–1939), perhaps the most influential of all psychologists, considered the operations of the mind to be, like an iceberg, mostly hidden.

One influential branch of psychology—social psychology—focuses on human behavior in the context of how human beings relate to and influence one another. Social psychology rests on the assumption that the way we view ourselves is shaped to a large degree by how we think others view us. Generally, we act in the same manner as those we like or admire, because we want them to like or admire us. Thus, to a certain extent, social psychology tries to explain the influence of crowds on individual behavior.

About three decades ago, psychologist Philip Zimbardo highlighted the power of group behavior in dramatic fashion. Zimbardo randomly selected some Stanford University undergraduate students to act as “guards” and other students to act as “inmates” in an artificial prison environment. Before long, the students began to
act as if these designations were real, with the “guards” physically mistreating the "inmates," who rebelled with equal violence. Within six days, Zimbardo was forced to discontinue the experiment out of fear for its participants’ safety.60 One of the basic assumptions of social psychology is that people are able to justify improper or even criminal behavior by convincing themselves that it is actually acceptable behavior. This delusion, researchers have found, is much easier to accomplish with the support of others behaving in the same manner.

**TRAITS THEORY AND PUBLIC POLICY** Whereas choice theory justifies punishing wrongdoers, biological and psychological views of criminality suggest that antisocial behavior should be identified and treated before it manifests itself in first-time or further criminal activity. Though the focus on treatment diminished somewhat in the 1990s, rehabilitation practices in corrections have made a comeback of sorts over the past few years. The primary motivation for this new outlook, as we will see in Chapters 9 through 12, is the pressing need to divert nonviolent offenders from the nation’s overburdened prison and jail system.

**SOCIOLOGICAL THEORIES**

The problem with trait theory, many criminologists contend, is that it falters when confronted with certain crime patterns. Why is the crime rate in Detroit, Michigan, twenty-five times that in Sioux Falls, South Dakota? Do high levels of air pollution cause an increase in abnormal brain activity or higher levels of testosterone? As no evidence has been found to suggest that such biological factors can be so easily influenced, several generations of criminologists have instead focused on social environmental factors in their study of criminal behavior. For example, in the early twentieth century, juvenile researchers Clifford Shaw and Henry McKay developed their social disorganization theory. Shaw and McKay studied various high-crime neighborhoods in Chicago and found that these “zones” were characterized by “disorganization,” or a breakdown of the traditional institutions of social control, such as family, school systems, and local businesses.61 (See Figure 2.6 on the following page to better understand social disorganization theory.)

Other sociological theories contend that those who are disadvantaged because of poverty or other factors, such as racial discrimination, are more likely to commit crimes because other, legal avenues to financial success have been closed off. High-crime areas will develop their own cultures, which are in constant conflict with the dominant culture. A cycle of crime claims the youth in the area, who then grow into a life of deviance. Of course, if criminal behavior can be explained by the conditions in which certain groups of people live, then it stands to reason that changing those conditions can prevent crime. Particularly in the present economic downturn, government programs to decrease unemployment, reduce poverty, and improve educational facilities in low-income neighborhoods have been justified to a degree as part of large-scale attempts at crime prevention.

**SOCIAL PROCESS THEORIES**

Some criminologists find sociological theories of crime overly narrow. Surveys that ask people directly about their criminal behavior have shown that the criminal instinct is pervasive in middle- and upper-class communities, even if it is expressed differently. Anybody, these criminologists argue, has the potential to act out criminal behavior, regardless of class, race, or gender.
Philip Zimbardo conducted a well-known, if rather unscientific, experiment to make this point. Zimbardo placed an abandoned automobile with its hood up on the campus of Stanford University. The car remained in place, untouched, for a week. Then, the psychologist smashed the car’s window with a sledgehammer. Within minutes, passersby had joined in the destruction of the automobile, eventually stripping its valuable parts. Social process theories function on the same basis as Zimbardo’s experiment: the potential for criminal behavior exists in everyone and will be realized depending on an individual’s interaction with various institutions and processes of society.

Learning and labeling theories One type of social process theory is learning theory. Popularized by Edwin Sutherland in the 1940s, learning theory sees crime as a learned behavior. In other words, a criminal is taught both the practical and emotional skills necessary to participate in illegal activity. More recently, learning theory has been expanded to include the growing influence of the media. In one of many studies that addresses the topic, psychologists at the University of Michigan’s Institute for Social Research released data in 2003 showing that exposure to high levels of televised violence erodes a natural aversion to violence and increases aggressive behavior among young children. Such findings have spurred a number of legislative attempts to curb violence on television.

Labeling theory focuses on perceptions of criminal behavior rather than the behavior itself. Labeling theorists study how being labeled a criminal—a “whore,” or
a “junkie,” or a “thief”—affects future behavior. Sociologist Howard Becker contends that deviance is a consequence of the application by others of rules and sanctions to an offender. The deviant is one to whom that label has successfully been applied; deviant behavior is behavior that people so label.66

Such labeling, some criminologists believe, becomes a self-fulfilling prophecy. Someone labeled a “junkie” will begin to consider himself or herself a deviant and continue the criminal behavior for which he or she has been labeled. Following this line of reasoning, the criminal justice system is engaged in artificially creating a class of criminals by labeling victimless crimes such as drug use, prostitution, and gambling as “criminal.”

SOCIAL PROCESS THEORY AND PUBLIC POLICY Because adult criminals are seen as too “hardened” to unlearn their criminal behavior, crime prevention policies associated with social process theory focus on juvenile offenders. Many youths, for example, are diverted from the formal juvenile justice process to keep them from being labeled “delinquent.” Furthermore, many schools have implemented programs that attempt to steer children away from crime by encouraging them to “just say no” to drugs and stay in school.

SOCIAL CONFLICT THEORIES

A more recent movement in criminology focuses not on psychology, biology, or sociology, but on power—seen as the ability of one person or group of persons to control the economic and social positions of other people or groups. Those who identify power as the key component in explaining crime entered the mainstream of American criminology during the 1960s. These theorists saw social ills such as poverty, racism, sexism, and destruction of the environment as criminal activity perpetrated by the powerful, or ruling, classes. Burglary, robbery, and even violent crimes were considered justifiable reactions by the powerless against laws that were meant to repress, not protect, them. Supporters of these ideas aligned themselves with Marxist, radical, conflict, and feminist schools of criminology. Collectively, they have constructed the social conflict theories of crime causation.

According to some social conflict theorists, capitalism inevitably leads to high levels of violence and crime because of the disparity of income it encourages. The poor commit property crimes for reasons of need and because, as members of a capitalist society, they desire the same financial rewards as everybody else. They commit violent crimes because of the motivations caused by powerlessness. The poor are less able to control their lives because of their economic position, and this powerlessness leads to frustration and anger. This anger can manifest itself in violent crime.

Protesters express their anger following the acquittal of three New York police officers in the shooting death of an African American named Sean Bell, who the law enforcement agents mistakenly believed was threatening them with a gun. If you were a proponent of social conflict theory, how would you interpret Bell’s death and the lack of punishment for the police officers responsible? (AP Photo/Jason DeCrow)
I think if you ask any social worker why they chose this profession, most of them would say they didn’t; it chose them. It starts from when you are very young and you want to make sure that everyone is okay, so you stay up in the middle of the night worrying about others and wanting to help in any way you can. That said, I do actually remember the moment when I formally decided to become a social worker. It was after I had taken a year off from college and traveled around the United States and Europe. I remember thinking how incredibly fortunate I was and how I wanted to give back to the world some of what had been given to me.

PROTECTING CHILDREN

I work mostly in child protection services, and the children are my favorite part of the job. Granted, some of them have a lot of issues and can be difficult to work with; it’s often depressing to watch some of the horrible things going on in their lives. They are a resilient bunch, however, and many of them are smart and funny and can make me laugh even in the direst of circumstances. One of the real tangible rewards of my line of social work is when one of “my” kids gets adopted into a good family situation. I love watching a child who has been through so much finally get the life that, I feel, they absolutely deserve.

A HOUSE CALL

There is never a dull day in the world of child protection! For instance, when I was still pretty new to the job, our office received an anonymous report that there was a man at the home of a mother I was working with in Boulder County, Colorado. This guy had a history of violence and a restraining order and he was not supposed to be anywhere near the place. So, my boss and I went to the house to check out the situation. We knocked on the door and a very small, sweet-looking grandmother answered. We asked her if the man was at the home. She told us he wasn’t, and we could search the house if we didn’t believe her. Even though she hardly seemed like the person to tell a lie, my boss took her up on her offer.

At first, we didn’t find anything. Then, my boss noticed a swinging hanger in a closet. He asked me to “check it out.” I went to the closet, where I saw nothing but a pile of blankets on the floor. I began peeling them away until, wouldn’t you know, I saw the back of a man lying on the floor of the closet! He scared the devil out of me! I looked at him and said, “What are you doing in there? You come out of there right now!” as if I were scolding a child. Luckily, he seemed more embarrassed than angry. Looking back, it was a very dumb—and dangerous—thing for us to do, especially without someone from law enforcement present. It worked out, however, as we reported the guy to his probation officer and he wound up back in jail.

CAREER ADVICE

In child protection work, many people hold different degrees, including bachelor’s and master’s degrees in the fields of social work, psychology, sociology, and counseling. Some of my co-workers are licensed clinical social workers (LCSWs) and certified addiction counselors (CACs). I feel like a bachelor’s degree in social work (BSW) is the ideal degree for someone just coming into child protection because it gives you a good, well-rounded foundation in social justice, substance abuse, mental illness, and child development on which to rely during your practice.
frustration and rage they feel when those rewards seem unattainable. Laws, instead of reflecting the values of society as a whole, reflect only the values of the segment of society that has achieved power and is willing to use the criminal justice system as a tool to keep that power. Thus, the harsh penalties for “lower-class” crimes such as burglary can be seen as a means of protecting the privileges of the “haves” from the aspirations of the “have-nots.”

VICTIMOLOGY AND VICTIMS OF CRIME

Since its founding days, criminology has focused almost exclusively on one-half of the crime equation: the offender. If you review our discussion of criminology up to this point, you will find little mention of the other half: the victim. Indeed, only in the last several decades has victimology become an essential component of criminology. The growing emphasis on the victim has had a profound impact on the police, the courts, and corrections administrators in this country. Accordingly, Andrew Karmen, a professor of sociology at the John Jay College of Criminal Justice in New York City, has defined victimology as the study of “relationships between victims and offenders [and] the interactions between victims and the criminal justice system.”

THE RISKS OF VICTIMIZATION

Anybody can be a victim of crime. This does not mean, however, that everybody is at equal risk of being victimized. In the late 1970s, criminologists Larry Cohen and Marcus Felson devised the routine activities theory to explain the circumstances surrounding victimization. According to Cohen and Felson, most criminal acts require the following:

1. A likely offender.
2. A suitable target (a person or an object).
3. The absence of a capable guardian—that is, any person (not necessarily a law enforcement agent) whose presence or proximity prevents a crime from happening.

When these three factors are present, the likelihood of crime rises. Cohen and Felson believe that routine activities often contribute to this “perfect storm” of criminal opportunity. For example, when a person leaves for work, her or his home becomes a more suitable target for a likely offender because the guardian is absent.

REPEAT VICTIMIZATION

Cohen and Felson also hypothesize that offenders attach “values” to suitable targets, and the higher the value, the more likely that target is going to be the subject of a crime. A gold watch, for example, obviously has a higher value for a thief than a plastic watch and therefore is more likely to be stolen. Similarly, people who are perceived to be weak or unprotected can have high value for criminals. Law enforcement officials in southern Florida, for example, believe that illegal immigrants in the area have high victimization rates because criminals know they are afraid to report crimes to authorities for fear of being deported.

Resources such as the National Crime Victimization Survey, which you learned about earlier in the chapter, provide “victimologists” with an important tool for...
determining which types of people are most valued as potential victims. The data clearly show that a small percentage of victims are involved in a disproportionate number of crimes. This statistic has led many observers to champion an approach to crime analysis known as **repeat victimization**. This theory is based on the premise that certain people and places are more likely to be victims of crimes than others, and therefore, past victimization is a strong predictor of future victimization.\(^{71}\)

**THE VICTIM-OFFENDER CONNECTION** When police began investigating a recent double shooting in a Philadelphia barbershop, they thought the prime suspects were four men in ski masks. It soon became clear, however, that the two victims, both of whom had extensive criminal records, had shot each other.\(^{72}\) This incident underscores an important point: criminals and victims are often the same people. In 2008, for example, 92 percent of murder suspects and 72 percent of murder victims in Chicago had been previously convicted of a crime.\(^{73}\) That same year, of Baltimore’s 234 murder victims, 194 had criminal records.\(^{74}\)

“The notion that [violent crimes] are random bolts of lightning, which is the commonly held image, is not the reality at all,” says David Kennedy, a professor at New York’s John Jay College of Criminal Justice.\(^{75}\) Kennedy’s point is further made by Figure 2.7 on the facing page, which shows the demographic groups most vulnerable to violent crime. You may recall that these groups—particularly young, low-income African American males—are also those with the highest rates of criminality.

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**THE LINK BETWEEN DRUGS AND CRIME**

Earlier in this chapter, we discussed the difference between correlations and causes. As you may recall, criminologists are generally reluctant to declare that any one factor causes a certain result. Richard B. Felson and Keri B. Burchfield of Penn State University, however, believe that alcohol consumption has a causal effect on victimization under certain circumstances.\(^{76}\) Felson and Burchfield found that “frequent and heavy” drinkers are at a great risk of assault when they are drinking, but do not show abnormal rates of victimization when sober. They hypothesize that consuming alcohol leads to aggressive and offensive behavior, particularly in men, which in turn triggers violent reactions from others.

In Chapter 1, we mentioned that about 20 million Americans regularly use illegal drugs such as marijuana and cocaine. Another 200 million use legal drugs such as alcohol and nicotine. Here, we will discuss two questions concerning these habits. First, why do people use drugs? Second, what are the consequences for the criminal justice system?
CHAPTER 2  Measuring and Explaining Crime

THE CRIMINOLOGY OF DRUG USE

At first glance, the reason people use drugs, including legal drugs such as alcohol, is obvious: such drugs give the user pleasure and provide a temporary escape for those who may feel tension or anxiety. Ultimately, though, such explanations are unsatisfactory because they fail to explain why some people use drugs while others do not. Several of the theories we discussed earlier in the chapter have been used by experts to explain drug use. Social disorganization theory (page 47) holds that rapid social change can cause people to become disaffiliated from mainstream society, causing them to turn to antisocial drug use. Learning theory (page 48) sees drug use as taught behavior. Focusing on the question of why first-time drug users become habitual users, sociologist Howard Becker sees three factors in the “learning process.” He believes first-time users:

1. Learn the techniques of drug use.
2. Learn to perceive the pleasurable effects of drug use.
3. Learn to enjoy the social experience of drug use.77

Becker’s assumptions are evident in the widespread belief that positive images of drug use in popular culture “teach” adolescents that such behavior is not only acceptable but desirable. The entertainment industry, in particular, has been criticized for glamorizing various forms of drug use.

DRUG ADDICTION AND DEPENDENCY

Another theory rests on the assumption that some people possess overly sensitive drug receptors in their brains and are therefore biologically disposed toward drug use.78 Though there is little conclusive evidence that biological factors can explain
initial drug experimentation, scientific research has provided a great deal of insight into patterns of long-term drug use.

**DRUG USE AND DRUG ABUSE** In particular, science has helped to clarify the difference between drug use and drug abuse. Drug abuse can be defined as the use of any drug—licit or illicit—that causes either psychological or bodily harm to the abuser or to third parties. Just as most people who drink beer or wine avoid abusing alcohol, most users of illegal substances are not abusers. For most drugs, only between 7 and 20 percent of all users suffer from compulsive abuse.79

Despite their relatively small numbers, drug abusers have a disproportionately large impact on the drug market. The 20 percent of Americans who drink the most, for example, consume more than 80 percent of all alcoholic beverages sold in the United States. The data are similar for illicit substance abusers, leading to the conclusion that, to a large extent, abusers and addicts sustain the market for illegal drugs.

**ADDICTION BASICS** The most extreme abusers are addicted to, or physically dependent on, a drug. To understand the basics of addiction and physical dependence, you must understand the role of dopamine in the brain. Dopamine, mentioned earlier in the chapter on page 46, is the neurotransmitter responsible for delivering pleasure signals to brain nerve endings in response to behavior—such as eating good food or engaging in sex—that makes us feel good. When a person takes drugs, they travel through the bloodstream to the area of the brain that produces dopamine, thereby triggering the production of a large amount of the substance in the brain. Over time, the continued use of drugs physically changes the nerve endings, called receptors. To continue operating in the presence of large amounts of dopamine, the receptors become less sensitive, meaning that greater amounts of any particular drug are required to create the amount of dopamine needed for the same levels of pleasure. When the supply of the drug is cut off, the brain strongly feels the lack of dopamine stimulation, and the abuser will suffer symptoms of withdrawal until the receptors readjust.80

**THE DRUG-CRIME RELATIONSHIP**

Of course, because many drugs are illegal, anybody who sells, uses, or in any way promotes the use of these drugs is, under most circumstances, breaking the law. The drug-crime relationship is much more complex than the language of criminal drug statutes, however. More than two-thirds of jail inmates are dependent on or abuse alcohol or drugs.81 More than one-third of all inmates were under the influence of drugs or alcohol at the time of their offense.82 As we will see throughout this textbook, the prosecution of illegal drug users and suppliers has been one of the primary factors in the enormous growth of the American correctional industry.

Epidemiologist Paul Goldstein has devised three models to explain the relationship between drugs and crime:

- The *psychopharmacological model* holds that individuals act violently or criminally as a direct result of the drugs they have ingested.
- The *economically impulsive model* holds that drug abusers commit crimes to get the funds to purchase drugs.
- The *systemic model* suggests that violence is a by-product of the interpersonal relationships within the drug-using community, such as when a dealer is assaulted by a buyer for selling “bad” drugs.83
The strength of the drug-crime relationship has provided justification for increased law enforcement efforts to criminalize drug use by harshly punishing offenders of controlled substance laws. (To learn about a country that has gone in a different direction with this issue, see the feature Comparative Criminal Justice—A Drug War Truce on the following page.)

SELF ASSESSMENT
Fill in the blanks and check your answers on page 58.

Drug ______ is defined as drug use that causes harm to the user or a third party. People who are ______, meaning that they are physically dependent on a drug, need greater amounts of the drug to stimulate a neurotransmitter in the brain called ______. One explanation for the link between drugs and crime, the ______ impulsive model, holds that drug abusers will steal for the funds needed to feed their habit.

CRIMINOLOGY FROM THEORY TO PRACTICE

You have almost completed the only chapter in this textbook that focuses to a large extent on theory. What follows will concentrate on the more practical and legal aspects of the criminal justice system: how law enforcement agencies fight crime, how our court systems determine guilt or innocence, and how we punish those who are found guilty. Criminology can, however, play a crucial role in the criminal justice system. “A lot of my colleagues just want to write scholarly articles for scholarly journals,” notes Professor James Alan Fox of Northeastern University in Boston. “But I think if you’re in a field with specialized knowledge that can be useful to the community, you should engage the public and policymakers.”

CRIMINOLOGY AND THE CHRONIC OFFENDER

Perhaps the most useful criminological contribution to crime fighting in the past half century was Delinquency in a Birth Cohort, published by the pioneering trio of Marvin Wolfgang, Robert Figlio, and Thorsten Sellin in 1972. This research established the idea of the chronic offender, or career criminal, by showing that a small group of juvenile offenders—6 percent—was responsible for a disproportionate amount of the violent crime attributed to a group of nearly 10,000 young males: 71 percent of the murders, 82 percent of the robberies, 69 percent of the aggravated assaults, and 73 percent of the rapes.

Further research has supported the idea of a “chronic 6 percent,” and law enforcement agencies and district attorneys’ offices have devised specific strategies to apprehend and prosecute repeat offenders, with dozens of local police agencies forming career criminal units to deal with the problem. Legislators have also reacted to this research: habitual offender laws that provide harsher sentences for repeat offenders have become quite popular. We will discuss these statutes, including the controversial “three-strikes-and-you’re-out” laws, in Chapter 9.
CRIMINOLOGY AND THE CRIMINAL JUSTICE SYSTEM

Some critics contend that criminology has not done enough to make our country a safer place. Eminent criminologist James Q. Wilson, for one, has criticized his peers for trying to understand crime rather than reduce it.87 This criticism may be too harsh, however. As we discuss further in Chapter 5, Wilson himself (in collaboration with George Kelling) developed the “broken windows” theory, which reshaped police strategy in the 1990s. Furthermore, there is growing evidence of direct cooperation between criminologists and police departments. For example, John Jay College’s David Kennedy has created the Drug Market Initiative (DMI) to help police departments deal with street-level drug dealing.

As part of his research, Kennedy recognized that many police officers were tiring of a cycle in which low-level drug dealers were arrested, prosecuted, jailed, and then released to continue their criminal activity. In applying the DMI, a police department gives known drug dealers a stark choice: continue to deal, and be locked away for many years, or “go straight.” With help from community leaders, the police then offer the offenders the means to stop offending, such as drug treatment or help finding a job or a place to live. The results in High Point, North Carolina, the first community to implement the DMI, were encouraging: an almost complete absence of public drug dealing and a 20 percent reduction in violent crime citywide within five years.88 Subsequently, other cities, such as Chicago, Milwaukee, Nashville, and Seattle, have followed High Point’s lead and adopted Kennedy’s program.

A DRUG WAR TRUCE

For most of the past decade, Mexico and its citizens have suffered through a bloody and seemingly endless “war on drugs.” An estimated $40 billion worth of illegal drugs are smuggled over the border into the United States each year, and various cartels are willing to fight—and kill—for their cut. From 2007 to 2009, more than 11,000 Mexicans were murdered in drug-related slayings. “I really characterize this as a civil war,” says Howard Campbell of the University of Texas at El Paso. “We’re seeing all the casualties of a war, people murdered, people wounded, people fleeing their homes, disintegration and chaos.”

In August 2009, Mexican lawmakers responded with bold legislation relating to drug use. Under the new law, any person caught by police with up to a half-gram of cocaine, 5 grams of marijuana (about 4 cigarettes), 50 milligrams of methamphetamine, or 0.015 milligram of LSD will be spared a jail sentence. The third time a person is caught with small amounts of these drugs, he or she will be forced to go into rehab. The goal of the legislation is to treat drug use as a health problem instead of a criminal one and at the same time to free up space in Mexico’s overcrowded prisons for violent drug traffickers.

FOR CRITICAL ANALYSIS

About 800,000 Americans are arrested for marijuana possession each year. At the same time, fourteen states have decriminalized the possession of small amounts of marijuana for medical or personal use. What would be the benefits of passing federal legislation similar to Mexico’s in the United States? What would be the drawbacks?

SELF ASSESSMENT

Fill in the blanks and check your answers on page 58.

In 1972, Marvin Wolfgang and his colleagues established the idea of the _____ offender by showing that a ________ percentage of offenders is often responsible for a disproportionately ________ amount of crime. Research on this subject has led law enforcement agencies to focus resources on ________ offenders.
LO 1 Identify the publication in which the FBI reports crime data, and list the two ways in which the data are reported. Every year the FBI releases the Uniform Crime Report (UCR), in which it presents certain crimes as (a) a rate per 100,000 people and (b) a percentage change from the previous year.

LO 2 Distinguish between Part I and Part II offenses as defined in the Uniform Crime Report (UCR). Part I offenses are always felonies and include the most violent crimes. Part II offenses include all other crimes recorded in the UCR. They can be either misdemeanors or felonies and constitute the majority of crimes committed.

LO 3 Distinguish between the National Crime Victimization Survey (NCVS) and self-reported surveys. The NCVS involves an annual survey of more than 40,000 households conducted by the Bureau of the Census along with the Bureau of Justice Statistics. The survey queries citizens on crimes that have been committed against them. Thus, the NCVS includes crimes not necessarily reported to police. Self-reported surveys, in contrast, involve asking individuals about criminal activity to which they may have been a party.

LO 4 Discuss the prevailing explanation for the rising number of women incarcerated in the United States. Experts believe that many women are arrested and given harsh punishment for activity that would not have put them behind bars several decades ago. For the most part, this activity is nonviolent: the majority of female arrestees are involved in drug- and alcohol-related offenses and property crimes.

LO 5 Discuss the difference between a hypothesis and a theory in the context of criminology. A hypothesis is a proposition, usually presented in an “If . . . , then . . .” format, that can be tested by researchers. If enough different authorities are able to test and verify a hypothesis, it will usually be accepted as a theory. Because theories can offer explanations for behavior, criminologists often rely on them when trying to determine the causes of criminal behavior.

LO 6 List and briefly explain two important branches of social process theory. (a) Learning theory contends that people learn to be criminals from their family and peers. (b) Labeling theory holds that a person labeled a “junkie” or a “thief” will respond by becoming or remaining whatever she or he is labeled.

LO 7 Discuss the connection between offenders and victims of crime. To a certain extent, those who are at the greatest risk of becoming criminal offenders are also those at the greatest risk of becoming victims of crimes. For this reason, young, low-income African American males are disproportionately represented in American prisons and jails and in victim statistics. In many major cities, law enforcement agencies have adjusted their strategies to account for the high percentage of violent crime victims who have criminal records themselves.

LO 8 Explain the theory of the chronic offender and its importance for the criminal justice system. A chronic offender is a juvenile or adult who commits multiple offenses. According to research conducted by Marvin Wolfgang and others in the 1970s, chronic offenders are responsible for a disproportionately large percentage of all crime. In the decades since, law enforcement agencies and public prosecutors have developed strategies to identify and convict chronic offenders with the goal of lessening overall crime rates. In addition, legislators have passed laws that provide longer sentences for chronic offenders in an attempt to keep them off the streets.
Questions for Critical Analysis

1. Assume that you are a criminologist who wants to determine the extent to which high school students engage in risky behavior such as abusing alcohol and illegal drugs, carrying weapons, and contemplating suicide. How would you go about gathering these data?

2. What are some of the problems with the assumption that there is a link between race and criminal behavior? What are some of the problems with the assumption that there is a link between poverty and criminal behavior?

3. Research shows that ice cream sales and crime rates both rise in the summer. Explain the correlation between these two sets of statistics. Why is it important to understand that ice cream sales do not cause a boost in crime rates?

4. Why would someone who subscribes to choice theory believe that increasing the harshness of the penalty for a particular crime would necessarily lead to a reduction in that crime?

5. How can law enforcement agencies employ repeat victimization theory to devise crime prevention strategies?

Online Resources

1. Get the most out of the materials in this chapter—go to the Criminal Justice in Action companion Web site at www.cjinaction.com, where you will find more resources to help you study. Resources include Web links, learning objectives, Internet exercises, quizzes, and flash cards.

2. Learn about potential criminal justice careers discussed in this chapter—explore careers online at www.cjinaction.com.

Notes

4. Ibid., 4.
6. Ibid., 1.
22. Ibid., 197–198.
23. Ibid., 82.
27. Quoted in Lubrano.
CHAPTER 2  Measuring and Explaining Crime

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Swatt%20Homicide%20Report%20Dec%2029%202008.pdf


35. Caroline Wolf Harlow, “Criminology (February 2008), 133.


38. Sampson, Morenoff, and Raudenbush, 233.

39. See www.ojp.usdoj.gov/content/homicide/gender.cfm.


46. Schwarz and Rooker, 637–671.

47. Schwarz and Rooker, 637–671.


55. Ibid.


58. Becker.

59. Myers, 75–76.


63. Ibid.


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INSIDE CRIMINAL LAW

Do justice
free marcelles!

He was at the wrong place at the wrong time!
LEARNING OBJECTIVES

The eight learning objectives labeled LO1 through LO8 are designed to help improve your understanding of the chapter. After reading this chapter, you should be able to...

LO 1 List the four written sources of American criminal law.

LO 2 Explain the two basic functions of criminal law.

LO 3 Discuss the primary goals of civil law and criminal law, and explain how these goals are realized.

LO 4 Explain the differences between crimes mala in se and mala prohibita.

LO 5 Delineate the elements required to establish mens rea (a guilty mental state).

LO 6 List and briefly define the most important excuse defenses for crimes.

LO 7 Describe the four most important justification criminal defenses.

LO 8 Explain the importance of the due process clause in the criminal justice system.

CHAPTER OUTLINE

- Written Sources of American Criminal Law
- The Purposes of Criminal Law
- Classification of Crimes
- The Elements of a Crime
- Defenses under Criminal Law
- Procedural Safeguards
Obviously, something was wrong. Eleven-year-old Kara Neumann was lying on the floor, weak and unable to speak. According to a police report, she barely had the strength to make “moaning noises and [move] her eyes back and forth.” Despite the urgings of family and friends, Dale and Leilani Neumann refused to seek medical help for their daughter. Followers of an online religious group called Unleavened Bread Ministries, they believed that physical illness was the result of sin and could only be cured by prayer. On Easter Sunday 2008, Kara died of diabetic ketoacidosis. Had she been given some insulin, there is little doubt that she would have lived.

A month after Kara’s death, Marathon County (Wisconsin) state’s attorney Jill Falstad charged Dale and Leilani with second degree reckless homicide. Their attorney argued that the U.S. Constitution protected his clients’ free exercise of religion. The Neumanns could not be punished, he said, just because they believed in the “likelihood of divine prayer.” Judge Vincent Howard rejected this claim, saying that the parents “were very well aware of [Kara’s] deteriorating medical condition” and could not use the Constitution to deflect their responsibility to care for their child.

Reaction to the case in the community was mixed. Some believed that even though the Neumanns should have responded more forcefully to their daughter’s illness, they did not deserve to go to prison. Others held them directly responsible for Kara’s death and felt that they should be harshly punished. “That little girl wasn’t old enough to make the decision about going to a doctor,” said one local resident. “And now, because some religious extremists went too far, she’s gone.” Both Dale and Leilani Neumann were eventually convicted of reckless homicide. As he sentenced each of them to six months in jail and ten years’ probation on October 6, 2009, Wisconsin judge Vincent Howard said, “God probably works through other people, some of them doctors.”

Was the law fair to the Neumanns? Nobody involved with the situation believed that they wanted Kara to die. “We just thought it was a spiritual attack and we prayed for her,” Leilani wrote in a statement for the police. “My husband Dale was crying and mentioned taking Kara to the doctor and I said, ‘The Lord’s going to heal her,’ and we continued to pray.” In this chapter, you will learn that a defendant usually must have had a guilty state of mind, or mens rea, to have committed a crime. The Neumanns may have been misguided, but they certainly had no intention of killing, or even injuring, their daughter.

At the same time, society needs to protect children from harm, even if that harm is not intentionally inflicted. According to the criminal code of Wisconsin, a person is guilty of “criminal recklessness” if he or she creates a “substantial risk of death or great bodily injury” and is aware of that risk. Thus, the Neumanns were guilty because they should have known that their actions posed a grave danger to Kara. As this case suggests, criminal law must be flexible enough to encompass behavior that is not marked by criminal intent yet still poses a threat to society and therefore, in the eyes of some, merits punishment. In this chapter, we will examine...
how these “threats to society” are identified and focus on the guidelines that determine how the criminal justice system resolves and punishes criminal guilt.

**Written Sources of American Criminal Law**

Originally, American criminal law was **uncodified**. In other words, it relied primarily on judicial decisions, and the body of the law was not written down in any single place. Uncodified law, however, presents a number of drawbacks. For one, if the law is not recorded in a manner or a place in which the citizenry has access to it, then it is difficult, if not impossible, for people to know exactly which acts are legal and which acts are illegal. Furthermore, citizens have no way of determining or understanding the procedures that must be followed to establish innocence or guilt. Consequently, U.S. history has seen the development of several written sources of American criminal law, also known as “substantive” criminal law. These sources include:

1. The U.S. Constitution and the constitutions of the various states.
2. Statutes, or laws, passed by Congress and by state legislatures, plus local ordinances.
3. Regulations, created by regulatory agencies, such as the federal Food and Drug Administration.
4. Case law (court decisions).

We describe each of these important written sources of law in the following pages.

**CONSTITUTIONAL LAW**

The federal government and the states have separate written constitutions that set forth the general organization and powers of, and the limits on, their respective governments. **Constitutional law** is the law as expressed in these constitutions.

The U.S. Constitution is the supreme law of the land. As such, it is the basis of all law in the United States. Any law that violates the Constitution, as ultimately determined by the United States Supreme Court, will be declared unconstitutional and will not be enforced. The Tenth Amendment, which defines the powers and limitations of the federal government, reserves to the states all powers not granted to the federal government. Under our system of federalism (see Chapter 1), each state also has its own constitution. Unless they conflict with the U.S. Constitution or a federal law, state constitutions are supreme within the states’ respective borders. (You will learn more about how constitutional law applies to our criminal justice system in later chapters.)

**STATUTORY LAW**

Statutes enacted by legislative bodies at any level of government make up another source of law, which is generally referred to as **statutory law**. **Federal statutes** are laws that are enacted by the U.S. Congress. **State statutes** are laws enacted by state legislatures, and statutory law also includes the ordinances passed by cities and counties. A federal statute, of course, applies to all states. A state statute, in contrast, applies only within that state’s borders. City or county ordinances (statutes) apply...
only to those jurisdictions where they are enacted. As mentioned, statutory law found by the Supreme Court to violate the U.S. Constitution will be overturned. In the late 1980s, for example, the Court ruled that any state laws banning the burning of the American flag were unconstitutional because they impinged on the individual’s right to freedom of expression.³

**MODEL PENAL CODE** Until the mid-twentieth century, state criminal statutes were disorganized, inconsistent, and generally inadequate for modern society. In 1952, the American Law Institute began to draft a uniform penal code in hopes of solving this problem. The first Model Penal Code was released ten years later and has had a broad effect on state statutes.⁴ Though not a law itself, the code defines the general principles of criminal responsibility and codifies specific offenses; it is the source for many of the definitions of crime in this textbook. The majority of the states have adopted parts of the Model Penal Code into their statutes, and some states, such as New York, have adopted a large portion of the Code.⁵

It is important to keep in mind that there are essentially fifty-two different criminal codes in this country—one for each state, the District of Columbia, and the federal government. Even if a state has adopted a large portion of the Model Penal Code, there may be certain discrepancies. Indeed, a state’s criminal code often reflects specific values of its citizens, which may not be in keeping with those of the majority of other states. Wisconsin and Illinois, for example, are the only states where it is illegal for a private citizen to carry a concealed weapon under any circumstances. Sometimes, old laws remain on the books even though they are clearly anachronistic and are rarely, if ever, enforced: in Oklahoma, a person can be sentenced to thirty days in jail for “injuring fruit, melons or flowers in the daytime,”⁶ and a hundred counties in North Carolina prohibit swearing.⁷

**BALLOT INITIATIVES** On a state and local level, voters can write or rewrite criminal statutes through a form of direct democracy known as the ballot initiative. In this process, a group of citizens draft a proposed law and then gather a certain number of
signatures to get the proposal on that year's ballot. If a majority of the voters approve the measure, it is enacted into law. Currently, twenty-four states and the District of Columbia accept ballot initiatives, and these special elections have played a crucial role in shaping criminal law in those jurisdictions. In the mid-1990s, for example, California voters approved a "three-strikes" measure (discussed in Chapter 9) that increased penalties for third-time felons, transforming the state's criminal justice system in the process. In 2008, Massachusetts voters decided to decriminalize possession of small amounts of marijuana. That same year a ballot initiative required Michigan to join thirteen other states in allowing the use of marijuana for medical purposes.8

**ADMINISTRATIVE LAW**

A third source of American criminal law consists of **administrative law**—the rules, orders, and decisions of regulatory agencies. A regulatory agency is a federal, state, or local government agency established to perform a specific function. The Occupational Safety and Health Administration (OSHA), for example, oversees the safety and health of American workers; the Environmental Protection Agency (EPA) is concerned with protecting the natural environment; and the Food and Drug Administration (FDA) regulates food and drugs produced in the United States. Disregarding certain laws created by regulatory agencies can be a criminal violation. Many modern federal statutes, such as the Federal Food, Drug and Cosmetic Act, give a specific regulatory agency, such as the FDA, the authority to promulgate regulations to which criminal sanctions are attached. So, after tainted peanut butter was linked to five hundred cases of salmonella infection—and eight deaths—in 2009, the FDA opened a criminal investigation into the safety practices of the plant in Blakely, Georgia, where the peanut butter was made.

**CASE LAW**

Another basic source of American law consists of the rules of law announced in court decisions. These rules of law include interpretations of constitutional provisions, of statutes enacted by legislatures, and of regulations created by administrative agencies. Today, this body of law is referred to variously as the common law, judge-made law, or **case law**.

Case law relies to a certain extent on how courts interpret a particular statute. If you wanted to learn about the coverage and applicability of a particular statute, for example, you would need to locate the statute and study it. You would also need to
see how the courts in your jurisdiction have interpreted the statute—in other words, what precedents have been established in regard to that statute. A precedent is a judge-made decision that furnishes an example or authority for deciding subsequent cases involving similar legal principles or facts. The use of precedent means that judge-made law varies from jurisdiction to jurisdiction. (For a summary of the four sources of American law, see Figure 3.1 above.)

**Self Assessment**

Fill in the blanks and check your answers on page 92.

The U.S. ______________ is the supreme law of this country. Any law that violates this document will be declared ____________ by the United States Supreme Court. Laws enacted by legislative bodies are known as ____________, while the body of law created by judicial decisions is known as _______ law.

**The Purposes of Criminal Law**

Why do societies need laws? Many criminologists believe that criminal law has two basic functions: one relates to the legal requirements of a society, and the other pertains to the society’s need to maintain and promote social values.

**Protect and Punish:**

**The Legal Function of the Law**

The primary legal function of the law is to maintain social order by protecting citizens from criminal harm. This term refers to a variety of harms that can be fit into two general categories:

1. Harms to individual citizens’ physical safety and property, such as the harm caused by murder, theft, or arson.
2. Harms to society’s collective interests, such as the harm caused by unsafe foods or consumer products, a polluted environment, or poorly constructed buildings.\(^9\)
The rationale for the first category is self-evident: few would deny that it is in society’s best interest to protect individual citizens from harm. The second, however, has proved more problematic, for it is difficult to measure society’s “collective” interests. Often, laws passed to reduce such harms seem overly intrusive and only marginally necessary. An extreme example might be the Flammable Fabrics Act, which makes it a crime for a retailer to willfully remove a precautionary label from a mattress that is protected with a chemical fire retardant. Yet even in this example, a criminal harm is conceivable. Suppose a retailer removes the tags before selling a large number of mattresses to a hotel chain. Employees of the chain then unknowingly wash the mattresses with an agent that lessens their flame-resistant qualities. After the mattresses have been installed in rooms, a guest falls asleep while smoking a cigarette, starting a fire that burns down the entire hotel and causes several deaths.

**MAINTAIN AND TEACH:**

**THE SOCIAL FUNCTION OF THE LAW**

If criminal laws against acts that cause harm or injury to others are almost universally accepted, the same cannot be said for laws that criminalize “morally” wrongful activities that may do no obvious, physical harm outside the families of those involved. Why criminalize gambling or prostitution if the participants are consenting?

**EXPRESSING PUBLIC Morality** The answer lies in the social function of criminal law. Many observers believe that the main purpose of criminal law is to reflect the values and norms of society, or at least of those segments of society that hold power. Legal scholar Henry Hart has stated that the only justification for criminal law and punishment is “the judgment of community condemnation.”

Take, for example, the misdemeanor of bigamy, which occurs when someone knowingly marries a second person without terminating her or his marriage to an original husband or wife. Apart from moral considerations, there would appear to be no victims in a bigamous relationship, and indeed many societies have allowed and continue to allow bigamy to exist. In the American social tradition, however, as John L. Diamond of the University of California’s Hastings College of the Law points out, marriage is an institution encouraged and supported by society. The structural importance of the integrity of the family and a monogamous marriage requires unflinching enforcement of the criminal laws against bigamy. The immorality is not in choosing to do wrong, but in transgressing, even innocently, a fundamental social boundary that lies at the core of social order.

When discussing the social function of criminal law, it is important to remember that a society’s views of morality change over time. Seventeenth-century Puritan New England society not only had strict laws against adultery, but also considered lying and idleness to be criminal acts. Today, such acts may carry social stigmas, but only in certain extreme circumstances do they elicit legal sanctions. Furthermore, criminal laws aimed at minority groups, which were once widely accepted in the legal community as well as society at large, have increasingly come under question.

(See the feature *Landmark Cases*—Lawrence v. Texas on the following page.)
Some scholars believe that criminal laws not only express the expectations of society, but “teach” them as well. Professor Lawrence M. Friedman of Stanford University thinks that just as parents teach children behavioral norms through punishment, criminal justice “teaches a lesson’ to the people it punishes, and to society at large.” Making burglary a crime, arresting burglars, putting them in jail—each step in the criminal justice process reinforces the idea that burglary is unacceptable and is deserving of punishment.  

This teaching function can also be seen in traffic laws. There is nothing “natural” about most traffic laws; Americans drive on the right side of the street, and the British on the left side, with no obvious difference in the results. Nevertheless, rules that require drivers to stop at intersections, use headlights at night, and follow speed limits do lead to a more orderly flow of traffic and fewer accidents—certainly socially desirable goals. The laws can also be updated when needed. Over the past few years, several states have banned the use of handheld cell phones while driving.

Police officers in Houston arrested John Geddes Lawrence and Tyron Garner for violating a Texas law that prohibits individuals of the same sex from engaging in “deviate sexual intercourse.” Lawrence and Garner challenged the law as unconstitutional because it banned sexual practices—in this case, sodomy—by homosexual couples that are lawful when performed by a man and a woman. The Texas Supreme Court upheld the statute, relying on the United States Supreme Court’s decision in Bowers v. Hardwick (1986), which preserved a similar state law (since repealed) in Georgia. Lawrence and Garner appealed to the Supreme Court, in essence telling the highest court in the land that it had been mistaken when it ruled on the Bowers case and asking it to reconsider.

Lawrence v. Texas
United States Supreme Court
laws.findlaw.com/US/000/02-102.html

The laws involved in Bowers and here are, to be sure, statutes that purport to do no more than prohibit a particular sexual act. Their penalties and purposes, though, have more far-reaching consequences, touching upon the most private human conduct, sexual behavior, and in the most private of places, the home. The statutes do seek to control a personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of persons to choose without being punished as criminals.

This, as a general rule, should counsel against attempts by the State, or a court, to define the meaning of the relationship or to set its boundaries absent injury to a person or abuse of an institution the law protects. It suffices for us to acknowledge that adults may choose to enter upon this relationship in the confines of their homes and their own private lives and still retain their dignity as free persons. The liberty protected by the Constitution allows homosexual persons the right to make this choice.

When homosexual conduct is made criminal by the law of the State, that declaration in and of itself is an invitation to subject homosexual persons to discrimination both in the public and in the private spheres. The central holding of Bowers has been brought in question by this case, and it should be addressed. Its continuance as precedent demean the lives of homosexual persons.

The petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime.

Overturning its earlier Bowers decision, the Court ruled that the Texas antisodomy law was unconstitutional, at the same time invalidating similar statutes in three other states—Kansas, Missouri, and Oklahoma.

Nine states still have laws on the books that make sodomy illegal for both heterosexual and homosexual partners. How do you think one of these laws would fare if brought before the Supreme Court today? Have the morals of American society changed to the extent that any law criminalizing consensual sexual conduct between adults is outdated?

For more information and activities related to this case, click on Landmark Cases under Book Resources at www.cjinaction.com.
because of the safety hazards associated with that behavior. Various forms of punishment for breaking traffic laws teach drivers the social order of the road.

**SELF ASSESSMENT**

Fill in the blanks and check your answers on page 92.

The __________ function of the law is to protect citizens from __________ harm by assuring their physical safety. The __________ function of the law is to teach citizens proper behavior and express public __________ by codifying the norms and values of the community.

**CLASSIFICATION OF CRIMES**

The huge body of the law can be broken down according to various classifications. Three of the most important distinctions are those between (1) civil law and criminal law, (2) felonies and misdemeanors, and (3) crimes *mala in se* and *mala prohibita*.

**CIVIL LAW AND CRIMINAL LAW**

All law can be divided into two categories: civil law and criminal law. As U.S. criminal law has evolved, it has diverged from U.S. civil law. The two categories of law are distinguished by their primary goals. The criminal justice system is concerned with protecting society from harm by preventing and prosecuting crimes. A crime is an act so reprehensible that it is considered a wrong against society as a whole, as well as against the individual victim. Therefore, the state prosecutes a person who commits a criminal act. If the state is able to prove that a person is guilty of a crime, the government will punish her or him with imprisonment or fines, or both.

Civil law, which includes all types of law other than criminal law, is concerned with disputes between private individuals and between entities. Proceedings in civil lawsuits are normally initiated by an individual or a corporation (in contrast to criminal proceedings, which are initiated by public prosecutors). Such disputes may involve, for example, the terms of a contract, the ownership of property, or an automobile accident. Under civil law, the government provides a forum for the resolution of torts—or private wrongs—in which the injured party, called the plaintiff, tries to prove that a wrong has been committed by the accused party, or the defendant. (Note that the accused party in both criminal and civil cases is known as the defendant.)

**GUilt AND RESPONSIBILITY** A criminal court is convened to determine whether the defendant is guilty—that is, whether the defendant has, in fact, committed the offense charged. In contrast, civil law is concerned with responsibility, a much more flexible concept. For example, after nineteen-year-old George Baldwin was paralyzed in an automobile accident, an Illinois judge partially blamed Lauralee Pfeifer. Baldwin had been drinking beer with Pfeifer’s underage daughters at Pfeifer’s home before losing control of his car. Even though Pfeifer was unaware of Baldwin’s activities on her property, the judge decided that she was liable, or legally responsible, for his injuries because she should have monitored her daughters’ behavior more closely.

**Civil Law** The branch of law dealing with the definition and enforcement of all private or public rights, as opposed to criminal matters.

**Plaintiff** The person or institution that initiates a lawsuit in civil court proceedings by filing a complaint.

**Defendant** In a civil court, the person or institution against whom an action is brought.

**Liability** In a civil court, legal responsibility for one’s own or another’s actions.
Most civil cases involve a request for monetary damages to compensate for the wrong that has been committed. Thus, in 2009 Lauralee Pfeifer agreed to pay George Baldwin $2.5 million for medical bills and the “pain and suffering” caused by his injuries. (See Mastering Concepts on the facing page for a comparison of civil and criminal law.)

**THE BURDEN OF PROOF** Although criminal law proceedings are completely separate from civil law proceedings in the modern legal system, the two systems do have some similarities. Both attempt to control behavior by imposing sanctions on those who violate society’s definition of acceptable behavior. Furthermore, criminal and civil law often supplement each other. In certain instances, a victim may file a civil suit against an individual who is also the target of a criminal prosecution by the government.

Because the burden of proof is much greater in criminal trials than civil ones, it is almost always easier to win monetary damages than a criminal conviction. Several years ago, fifteen-year-old Max Gilpin collapsed and died of heat stroke during football practice at Pleasure Ridge Park High School in Louisville, Kentucky. In September 2009, following a criminal trial, his coach, Jason Stinson, was acquitted of criminal charges relating to the tragedy (see photo below). More than a year later, however, Stinson was still facing the possibility that he would be found responsible for Gilpin’s death in a civil lawsuit brought by the boy’s parents, who were seeking $15 million in damages. In this case, the jury in the criminal trial did not feel that the evidence proved *beyond a reasonable doubt* (the burden of proof in criminal cases, in which the defendant’s behavior must be the only reasonable explanation for the criminal act) that Stinson’s coaching methods led to Gilpin’s death. The jurors in the civil trial would only have to find that a *preponderance of evidence* (the burden of proof in civil cases) established Stinson’s responsibility for the boy’s death.

**FELONIES AND MISDEMEANORS**

Depending on their degree of seriousness, crimes are classified as felonies or misdemeanors. Felonies are serious crimes punishable by death or by imprisonment in a federal or state penitentiary for one year or longer (some states, such as North Carolina, consider felonies to be punishable by at least two years’ incarceration). The Model Penal Code, a general guide for criminal law discussed on page 64, provides for four degrees of felony:

1. Capital offenses, for which the maximum penalty is death.
2. First degree felonies, punishable by a maximum penalty of life imprisonment.
3. Second degree felonies, punishable by a maximum of ten years’ imprisonment.
4. Third degree felonies, punishable by a maximum of five years’ imprisonment.¹⁶

**DEGREES OF CRIME** Though specifics vary from state to state, some general rules apply when grading the seriousness of crimes. For example, most jurisdictions punish a burglary that involves a nighttime forced entry into a home more seriously than one that takes...
place during the day and involves a nonresidential building or structure. Furthermore, the seriousness of any crime is, to a large extent, determined by the mental state of the offender. That is, the law punishes those who plan and intend to do harm more harshly than it does those who act wrongfully because of strong emotions or other extreme circumstances. We will address the importance of mental state in crime more extensively later in this chapter, but here we can see how it affects the degrees of murder.

Murder in the first degree occurs under two circumstances:

1. When the crime is *premeditated*, or considered (contemplated) beforehand by the offender, instead of being a spontaneous act of violence. 
2. When the crime is *deliberate*, meaning that it was planned and decided on after a process of decision making. Deliberation does not require a lengthy planning process; a person can be found guilty of first degree murder even if she or he made the decision to murder only seconds before committing the crime.

Second degree murder, generally punishable by fifteen years to life in prison, occurs when no premeditation or deliberation was present, but the offender did have *malice aforethought* toward the victim. In other words, the offender acted with wanton disregard of the consequences of his or her actions. The difference between first and second degree murder is clearly illustrated in a case involving a California man who beat a neighbor to death with a partially full brandy bottle. The crime took place after Ricky McDonald, the victim, complained to Kazi Cooksey, the offender, about the noise coming from a late-night barbecue at Cooksey’s home. The jury could not find sufficient evidence that Cooksey’s actions were premeditated, but he certainly acted with wanton disregard of his victim’s safety. Therefore, the jury convicted Cooksey of second degree murder rather than first degree murder.

**TYPES OF MANSLAUGHTER** A homicide committed without malice toward the victim is known as *manslaughter* and is usually punishable by up to fifteen years in prison. **Voluntary manslaughter** occurs when the intent to kill was present, but malice was lacking. Voluntary manslaughter covers crimes of passion, as when the emotion of an argument between two friends leads to a homicide. Voluntary manslaughter can also occur when the victim provoked the offender to act violently. **Involuntary manslaughter** covers incidents in which the offender’s acts may have been careless, but she or he had no intent to kill. Several years ago, for example, Kevin Eckenrode of Philadelphia was convicted of involuntary manslaughter for his
role in his girlfriend’s fatal fall from a twenty-third-story apartment window. Even though there was no evidence that Eckenrode intended for his girlfriend to slip from his grasp while he was playfully dangling her out the window, a jury felt that he was responsible for her death nonetheless. As you might recall from the opening pages of this textbook, in 2010 Dr. Conrad Murray was charged with involuntary manslaughter for allegedly administering a powerful anesthetic to Michael Jackson.

**DEGREES OF MISDEMEANOR** Under federal law and in most states, any crime that is not a felony is considered a **misdemeanor**. Misdemeanors are crimes punishable by a fine or by confinement for up to a year. If imprisoned, the guilty party goes to a local jail instead of a penitentiary. Disorderly conduct and trespassing are common misdemeanors. Like felonies, misdemeanors are graded by level of seriousness. In Illinois, for example, misdemeanors are either Class A (confinement for up to a year), Class B (not more than six months), or Class C (not more than thirty days).

Most states similarly distinguish between **gross misdemeanors**, which are offenses punishable by thirty days to a year in jail, and **petty misdemeanors**, or offenses punishable by fewer than thirty days in jail. Whether a crime is a felony or a misdemeanor can also determine whether the case is tried in a magistrate’s court (for example, by a justice of the peace) or in a general trial court (for example, a superior court).

Probation and community service are often imposed on those who commit misdemeanors, especially juveniles.

**INFRACTIONS** The least serious form of wrongdoing is often called an **infraction** and is punishable only by a small fine. Even though infractions such as parking and traffic violations technically represent illegal activity, they generally are not considered “crimes.” Therefore, infractions rarely lead to jury trials and are deemed to be so minor that they do not appear on the offender’s criminal record. In some jurisdictions, the terms **infraction** and **petty offense** are interchangeable. In others, however, they are different. Under federal guidelines, for example, an infraction can be punished by up to five days of prison time, while a petty offender is only liable for a fine. Finally, those who string together a series of infractions (or fail to pay the fines that come with such offenses) are in danger of being criminally charged. In Illinois, having three or more speeding violations in one year is considered criminal behavior.

**MALA IN SE AND MALA PROHIBITA**

Criminologists often express the social function of criminal law in terms of **mala in se** or **mala prohibita** crimes. A criminal act is referred to as **mala in se** if it would be considered wrong even if there were no law prohibiting it. **Mala in se** crimes are said to go against “natural laws”—that is, against the “natural, moral, and public” principles of a society. Murder, rape, and theft are examples of **mala in se** crimes. These crimes are generally the same from country to country or culture to culture. In contrast, the term **mala prohibita** refers to acts that are considered crimes only because they have been codified as such through statute—“human-made” laws. A **mala prohibita** crime is considered wrong only because it has been prohibited; it is not inherently a wrong, though it may reflect the moral standards of a society at a given time. Thus, the definition of a **mala prohibita** crime can vary from country to country and even from state to state. Bigamy could be considered a **mala prohibita** crime.
Some observers question the distinction between *mala in se* and *mala prohibita*. In many instances, it is difficult to define a “pure” *mala in se* crime; that is, it is difficult to separate a crime from the culture that has deemed it a crime.19 As you can see in the feature *Comparative Criminal Justice—A Custom of Killing* on the following page, in a number of traditional areas of the Middle East and Asia, the law excuses certain types of family-related homicide. Our own legal system excuses homicide in extreme situations, such as self-defense or when a law enforcement agent kills in the course of upholding the law. Therefore, even “natural” laws can be seen as culturally specific. Similar difficulties occur in trying to define a “pure” *mala prohibita* crime. More than 150 countries, including most members of the European Union, have legalized prostitution. With the exception of seven rural counties in Nevada, prostitution is illegal in the United States.

**SELF ASSESSMENT**

Fill in the blanks and check your answers on page 92.

____ law is concerned with disputes between private individuals or other entities, whereas criminal law involves the _________’s duty to protect society by preventing and prosecuting crimes. A ________ is a serious crime punishable by more than a year in prison or the death penalty, while a person found guilty of a _________ will usually spend less than a year in jail or pay a fine. ______ occurs when a homicide is premeditated and deliberate. If there is no premeditation or malice on the part of the offender toward the victim, the homicide is classified as ____________.

### THE ELEMENTS OF A CRIME

In fictional accounts of police work, the admission of guilt is often portrayed as the crucial element of a criminal investigation. Although an admission is certainly useful to police and prosecutors, it alone cannot establish the innocence or guilt of a suspect. Criminal law normally requires that the *corpus delicti*, a Latin phrase for “the body of the crime,” be proved before a person can be convicted of wrongdoing.20 *Corpus delicti* can be defined as “proof that a specific crime has actually been committed by someone.”24 It consists of the basic elements of any crime, which include (1) *actus reus*, or a guilty act; (2) *mens rea*, or a guilty intent; (3) concurrence, or the coming together of the criminal act and the guilty mind; (4) a link between the act and the legal definition of the crime; (5) any attendant circumstances; and (6) the harm done, or result of the criminal act.

**CRIMINAL ACT: ACTUS REUS**

Suppose Mr. Smith walks into a police department and announces that he just killed his wife. In and of itself, the confession is insufficient for conviction unless the police find Mrs. Smith’s corpse, for example, with a bullet in her brain and establish through evidence that Mr. Smith fired the gun. (This does not mean that an actual dead body has to be found in every homicide case. Rather, it is the fact of the death that must be established in such cases.)

Most crimes require an *act of commission*; that is, a person must do something in order to be accused of a crime. The prohibited act is referred to as the *actus reus*, or guilty act. Furthermore, the act of commission must be voluntary. For instance, if Mr. Smith had an epileptic seizure while holding a hunting rifle and accidentally...
A LEGAL DUTY

In some cases, an act of omission can be a crime, but only when a person has a legal duty to perform the omitted act. One such legal duty is assumed to exist based on a “special relationship” between two parties, such as a parent and child, adult children and their aged parents, and spouses. These persons involved in contractual relationships with others, such as physicians and lifeguards, must also perform legal duties to avoid criminal penalty. Rhode Island, Vermont, and Wisconsin have even passed “duty to aid” statutes requiring their citizens to report criminal conduct and help victims of such conduct if possible. Another example of a criminal act of omission is failure to file a federal income tax return when required by law to do so.

FOR CRITICAL ANALYSIS

Obviously, the vast majority of Americans find the idea of “honor killings” to be abhorrent. What responsibility does the U.S. government have to pressure other countries to “fall in line” with its own version of mala in se criminality?
A PLAN OR ATTEMPT  The guilty act requirement is based on one of the premises of criminal law—that a person is punished for harm done to society. Planning to kill someone or to steal a car may be wrong, but the thoughts do no harm and are therefore not criminal until they are translated into action. Of course, a person can be punished for attempting murder or robbery, but normally only if he or she took substantial steps toward the criminal objective and the prosecution can prove that the desire to commit the crime was present. Furthermore, the punishment for an attempt normally is less severe than if the act had succeeded.

MENTAL STATE: MENS REA
A wrongful mental state—mens rea—is as necessary as a wrongful act in establishing guilt. The mental state, or requisite intent, required to establish guilt is indicated in the applicable statute or law. For theft, the wrongful act is the taking of another person’s property, and the required mental state involves both the awareness that the property belongs to another and the desire to deprive the owner of it.

THE CATEGORIES OF MENS REA  A guilty mental state includes elements of purpose, knowledge, negligence, and recklessness. A defendant is said to have purposefully committed a criminal act when he or she desires to engage in certain criminal conduct or to cause a certain criminal result. For a defendant to have knowingly committed an illegal act, he or she must be aware of the illegality, must believe that the illegality exists, or must correctly suspect that the illegality exists but fail to do anything to dispel (or confirm) his or her belief. Criminal negligence involves the mental state in which the defendant grossly deviates from the standard.

YOU BE THE JUDGE
A VOLUNTARY ACT?

THE FACTS  On a bright, sunny afternoon, Emil was driving on Delaware Avenue in Buffalo, New York. As he was making a turn, Emil suffered an epileptic seizure and lost control of his automobile. The car careened onto the sidewalk and struck a group of six schoolgirls, killing four of them. Emil knew that he was subject to epileptic attacks that rendered him likely to lose consciousness.

THE LAW  A “guilty act” committed by a person who is unconscious is in reality not a guilty act at all. It is a physical event or occurrence over which the defendant has no control; that is, such an act is involuntary. If the defendant voluntarily causes the loss of consciousness by, for example, using drugs or alcohol, however, then he or she will usually be held criminally responsible for any consequences.

YOUR DECISION  Emil was charged in the deaths of the four girls. He asked the court to dismiss the charges, as he was unconscious at the time of the accident and therefore had not committed a voluntary act. In your opinion, is there an actus reus in this situation, or should the charges against Emil be dismissed?

[To see how the appellate court in New York ruled in this case, go to Example 3.1 in Appendix B.]
of care that a reasonable person would use under the same circumstances. The defendant is accused of taking an unjustified, substantial, and foreseeable risk that resulted in harm. In Texas, for example, a parent commits a felony if she or he fails to secure a loaded firearm or leaves it where it could easily be accessed by a child.25

A defendant who commits an act recklessly is more blameworthy than one who is criminally negligent. The Model Penal Code defines criminal recklessness as “consciously disregarding a substantial and unjustifiable risk.”26 Some courts, particularly those adhering to the Model Penal Code, will not find criminal recklessness on the part of a defendant who was subjectively unaware of the risk when she or he acted. In the case of Kara Neumann, discussed at the beginning of this chapter, prosecutors showed that her parents were aware of her inability to speak, eat, drink, or breathe easily for two days before her death. This awareness made their actions reckless rather than simply negligent. (See Figure 3.2 on the facing page for more information on the different categories of mens rea.)

CRIMINAL LIABILITY Intent plays an important part in allowing the law to differentiate among varying degrees of criminal liability for similar, though not identical, guilty acts. The role of intent is clearly seen in the different classifications of homicide, defined generally as the willful killing of one human being by another. It is important to emphasize the word willful, as it precludes deaths caused by accident or negligence and those deemed justifiable. A death that results from negligence or accident generally is considered a private wrong and a matter for civil law. Nevertheless, some statutes allow for culpable negligence, which permits certain negligent homicides to be criminalized. As we saw earlier in the chapter, when the act of killing is willful, deliberate, and premeditated (planned beforehand), it is considered first degree murder. When premeditation does not exist but intent does, the act is considered second degree murder.

Different degrees of criminal liability for various categories of homicide lead to different penalties. The distinction between murder and manslaughter was evident in the charges brought against Robert Aragon, who, on December 25, 2008, instructed his two children to walk to their mother’s house after his truck became lodged in a snowbank. Twelve-year-old Bear survived the ten-mile hike in frigid Idaho winter temperatures, but his sister, eleven-year-old Sage, did not. After she died of hypothermia, Lincoln County prosecutors wanted to charge Robert with second degree murder. There was no evidence, however, that Robert intentionally killed his daughter. Rather, his decision was one of carelessness and stupidity. Consequently, officials had no choice but to charge him with involuntary manslaughter, which carries a maximum punishment of ten years in prison. In contrast, a conviction for second degree murder in Idaho can lead to a life sentence.

STRICT LIABILITY For certain crimes, criminal law holds the defendant to be guilty even if intent to commit the offense is lacking. These acts are known as strict liability crimes and generally involve endangering the public welfare in some way.27 Drug-control statutes, health and safety regulations, and traffic laws are all strict liability laws.

Protecting the Public To a certain extent, the concept of strict liability is inconsistent with the traditional principles of criminal law, which hold that mens rea is
required for an act to be criminal. The goal of strict liability laws is to protect the public by eliminating the possibility that wrongdoers could claim ignorance or mistake to absolve themselves of criminal responsibility.28 Thus, a person caught dumping waste in a protected pond or driving 70 miles per hour in a 55 miles-per-hour zone cannot plead a lack of intent in his or her defense. The principle is often applied in more serious situations as well. Several years ago, twenty-year-old Kieran Hunt of Piscataway, New Jersey, was charged with a first degree felony after he accidentally injected his friend, eighteen-year-old Justin Warfield, with a fatal dose of heroin. Because Hunt had no intention of killing Warfield, in many jurisdictions he would have been charged with involuntary manslaughter. Under New Jersey law, however, strict liability is imposed on anybody who helps another person obtain drugs that lead to a fatal overdose. As a result, Hunt’s mens rea concerning Warfield’s death was irrelevant.29

**Protecting Minors** One of the most controversial strict liability crimes is **statutory rape**, in which an adult engages in a sexual relationship with a minor. In most states, even if the minor consents to the sexual act, it is still a crime because, being underage, the minor is considered incapable of making a rational decision on the matter.30 Therefore, statutory rape has been committed even if the adult was unaware of the minor’s age or was misled to believe that the minor was older.
ACCOMPlice LIABILITY Under certain circumstances, a person can be charged with and convicted of a crime that he or she did not actually commit. This occurs when the suspect has acted as an accomplice to a crime; that is, he or she has helped another person commit the crime. Generally, to be found guilty as an accomplice, a person must have the “dual intent” (1) to aid the person who committed the crime and (2) to promote the commission of the crime by providing the aid. As for the actus reus, the accomplice must have helped the primary actor in either a physical sense (for example, by providing the getaway car) or a psychological sense (for example, by encouraging her or him to commit the crime).

In some states, a person can be convicted as an accomplice even without intent if the crime was a “natural and probable consequence” of his or her actions. This principle has led to a proliferation of felony-murder legislation. Felony-murder is a form of first degree murder that applies when a person participates in any of a list of serious felonies that results in the unlawful killing of a human being. Under felony-murder law, a person can be convicted as an accomplice to an intentional killing, even when there is no intent. Consider an example in which Harold murders the inhabitant of an apartment that he and Marjorie are burglarizing. Even though Marjorie had no intent to harm anyone, she will probably be charged with murder because burglary is a felony.

CONCURRENCE According to criminal law, there must be concurrence between the guilty act and the guilty intent. In other words, the guilty act and the guilty intent must occur together. Suppose, for example, that a woman intends to murder her husband with poison in order to collect his life insurance. Every evening, this woman drives her husband home from work. On the night she plans to poison him, however, she swerves to avoid a cat crossing the road and runs into a tree. She survives the accident, but her husband is killed. Even though her intent was realized, the incident would be considered an accidental death because she had not planned to kill him by driving the car into a tree.

CAUSATION Criminal law also requires that the criminal act cause the harm suffered. In Michigan, for example, two defendants were convicted of murder even though their victim died several years after the initial crime. In the course of a robbery, the defendants had shot the victim in the heart and abdomen and abandoned him in a sewer. Though the victim survived, his heart remained very weak. Four years later, the victim collapsed during a basketball game and died. Medical examination established that his heart failed as a direct result of the earlier injury, and the Michigan Supreme Court ruled that, despite the passing of time, the defendants’ criminal act had been the cause of the man’s death.

ATTENDANT CIRCUMSTANCES In certain crimes, attendant circumstances—also known as accompanying circumstances—are relevant to the corpus delicti. Attendant circumstances are facts surrounding an event that must, like actus reus and mens rea, be proved beyond a reasonable doubt for the act to have been criminal. For example, in the statutory rape statutes mentioned on the previous page, the fact that the minor is under the age of
consent is an attendant circumstance. If he or she is over the age of consent, then no crime took place. The classification of a crime often depends on attendant circumstances as well. Most states differentiate between simple assault and the more serious offense of aggravated assault depending on whether the defendant used a weapon, such as a gun or a knife, while committing the crime. The presence of the weapon is an attendant circumstance for aggravated assault.

Sometimes, the attendant circumstance requirement can lead to unfair results. In October 2009, a fifteen-year-old girl was gang-raped for more than two hours outside a school dance in Richmond, California (see photo alongside). As many as twenty people witnessed the rape and did nothing, seemingly placing them on the wrong side of a state law that requires bystanders to report the sexual assault of a child to police. An attendant circumstance of the law, however, requires that the victim be fourteen years old or younger.36 Because the victim in this case was fifteen, no charges could be brought against the witnesses for their failure to act.

HATE CRIME LAWS

In most cases, a person’s motive for committing a crime is irrelevant—a court will not try to read the accused’s mind. Over the past few decades, however, nearly every state and the federal government have passed hate crime laws that make the suspect’s motive an important attendant circumstance to his or her criminal act. In general, hate crime laws provide for greater sanctions against those who commit crimes motivated by bias against a person based on race, ethnicity, religion, gender, sexual orientation, disability, or age.

In 2009, for example, Dwight DeLee was convicted of first degree manslaughter for fatally shooting LaTeisha “Teish” Green, a transgender person who was born a male but often dressed as a woman. Because witnesses testified that DeLee had made antigay slurs moments before killing Green, officials were able to prosecute the defendant under New York’s hate crime legislation. According to this law, a hate crime designation adds two years to the minimum sentence for any felony.37

HARM

For most crimes to occur, some harm must have been done to a person or to property. A certain number of crimes are actually categorized depending on the harm done to the victim, regardless of the intent behind the criminal act. Take two offenses, both of which involve one person hitting another in the back of the head with a tire iron. In the first instance, the victim dies, and the offender is charged with murder. In the second, the victim is only knocked unconscious, and the offender is charged with battery. Because the harm in the second instance was less severe, so was the crime with which the offender was charged, even though the act was exactly the same. Furthermore, most states have different degrees of battery depending on the extent of the injuries suffered by the victim.

Many acts are deemed criminal if they could do harm, provided the harm is one that the law tries to prevent. Such acts, called inchoate offenses, arise when someone only attempts a criminal act. If Jenkins solicits Peterson to murder Jenkins’s business partner, and Peterson fails to carry out the act, Jenkins has committed an

Students attend a November 2009 vigil for the fifteen-year-old victim of a gang rape that took place outside a dance at Richmond High School in Richmond, California. Should the approximately twenty witnesses who failed to report this crime have been punished? Why weren’t they? (AP Photo/ Jeff Chiu)
inchoate offense. Conspiracies also fall into the category of inchoate offenses. In 2003, the United States Supreme Court ruled that a person could be convicted of criminal conspiracy even though police intervention made the completion of the illegal plan impossible.38

DEFENSES UNDER CRIMINAL LAW

Moments after killing his ex-girlfriend, Demi Cuccia, by stabbing her sixteen times, John Mullarkey of Monroeville, Pennsylvania, slashed his throat in an attempt to take his own life. While recovering in a hospital room, Mullarkey wondered if his actions could be blamed on Accutane, an acne drug that he had started taking four months before attacking Cuccia. In 2009, a jury rejected Mullarkey’s contention that a deep depression caused by the prescription medicine had caused him to act violently and found the twenty-year-old guilty of first degree murder. A number of defenses for wrongdoing can, however, be successfully raised in the course of a criminal trial. These defenses generally rely on one of two arguments: (1) the defendant is not responsible for the crime, or (2) the defendant was justified in committing the crime.

CRIMINAL RESPONSIBILITY AND THE LAW

The idea of responsibility plays a significant role in criminal law. In certain circumstances, the law recognizes that even though an act is inherently criminal, society will not punish the actor, because he or she does not have the requisite mental condition. In other words, the law “excuses” the person for his or her behavior. Insanity, intoxication, and mistake are the most important excuse defenses today, but we start our discussion of the subject with one of the first such defenses recognized by American law: infancy.

INFANCY Under the earliest state criminal codes of the United States, children younger than seven years of age could never be held legally accountable for crimes. Those between seven and fourteen years old were presumed to lack the capacity for criminal behavior, while anyone over the age of fourteen was tried as an adult. Thus, early American criminal law recognized infancy as a defense in which the accused’s wrongdoing is excused because he or she is too young to fully understand the consequences of his or her actions.

With the creation of the juvenile justice system in the early 1900s, the infancy defense became redundant, as youthful delinquents were automatically treated...
differently from adult offenders. Today, most states either designate an age (sixteen or eighteen) under which wrongdoers are sent to juvenile court or allow prosecutors to decide whether a minor will be charged as an adult on a case-by-case basis. We will explore the concept of infancy as it applies to the modern American juvenile justice system in greater detail in Chapter 13.

**INSANITY** After Jessie Bratcher killed a man he mistakenly believed had impregnated his fiancée, his lawyer argued that Bratcher was a “walking time bomb” who had been taught by the U.S. military to shoot first and ask questions later. In November 2009, a jury agreed, finding that the Oregon National Guardsman had severe mental problems linked to his eleven-month stint in Iraq and did not realize that his actions were wrong. As a result, Bratcher was sent to a mental hospital rather than prison. Thus, **insanity** may be a defense to a criminal charge when the defendant’s state of mind is such that she or he cannot be held legally responsible for her or his actions.

**Measuring Sanity** The general principle of the insanity defense is that a person is excused for his or her criminal wrongdoing if, as a result of a mental disease or defect, he or she

- Does not perceive the physical nature or consequences of his or her conduct;
- Does not know that his or her conduct is wrong or criminal; or
- Is not sufficiently able to control his or her conduct so as to be held accountable for it.39

Although criminal law has traditionally accepted the idea that an insane person cannot be held responsible for criminal acts, society has long debated what standards should be used to measure sanity for the purposes of a criminal trial. This lack of consensus is reflected in the diverse tests employed by different American jurisdictions to determine insanity. The tests include the following:

1. **The M’Naghten rule.** Derived from an 1843 British murder case, the M’Naghten rule states that a person is legally insane and therefore not criminally responsible if, at the time of the offense, he or she was not able to distinguish between right and wrong.40 As Figure 3.3 on the next page shows, half of the states still use a version of the M’Naghten rule.

2. **The ALI/MPC test.** In the early 1960s, the American Law Institute (ALI) included an insanity standard in its Model Penal Code (MPC), discussed earlier in the chapter. Also known as the **substantial-capacity test**, the ALI/MPC test requires that the defendant lack “substantial capacity” to either “appreciate the wrongfulness” of his or her conduct or to conform that conduct “to the requirements of the law.”41

3. **The irresistible-impulse test.** Under the irresistible-impulse test, a person may be found insane even if he or she was aware that a criminal act was “wrong,” provided that some “irresistible impulse” resulting from a mental deficiency drove him or her to commit the crime.42

The ALI/MPC test is considered the easiest standard of the three for a defendant to meet because the defendant needs only to show a lack of “substantial capacity” to be released from criminal responsibility. Defense attorneys generally consider it more difficult to prove that the defendant could not distinguish “right” from “wrong” or that he or she was driven by an irresistible impulse.
Guilty but Mentally Ill Whatever the standard, the insanity defense is rarely entered and is even less likely to result in an acquittal, as it is difficult to prove. Nevertheless, public backlash against the insanity defense caused seven state legislatures to pass “guilty but mentally ill” statutes. Under these laws, a defendant is guilty but mentally ill if

at the time of the commission of the act constituting the offense, he [or she] had the capacity to distinguish right from wrong... but because of mental disease or defect he [or she] lacked sufficient capacity to conform his [or her] conduct to the requirements of the law.

In other words, the laws allow a jury to determine that a defendant is “mentally ill,” though not insane, and therefore criminally responsible for her or his actions. Defendants found guilty but mentally ill generally spend the early years of their sentences in a psychiatric hospital and the rest of the time in prison, or they receive treatment while in prison.

INTOXICATION The law recognizes two types of intoxication, whether from drugs or from alcohol: voluntary and involuntary. Involuntary intoxication occurs when a person is physically forced to ingest or is injected with an intoxicating substance, or is unaware that a substance contains drugs or alcohol. Involuntary intoxication is a viable defense to a criminal charge if the substance leaves the person unable to form the mental state necessary to understand that the act committed while under the influence was wrong. In Colorado, for example, the murder conviction of a man who shot a neighbor was overturned on the basis that the jury in the initial trial was not informed of the possibility of involuntary intoxication. At the time of the crime,
the man had been taking a prescription decongestant that contained phenylpropanolamine, which has been known to cause psychotic episodes.

Voluntary drug or alcohol intoxication is also used to excuse a defendant's actions, though it is not a defense in itself. Rather, it is used when the defense attorney wants to show that the defendant was so intoxicated that mens rea was negated. In other words, the defendant, by definition, voluntarily chose to enter an intoxicated state. Twelve states have eliminated voluntary intoxication as a possible defense, a step that has been criticized by many legal scholars but was upheld by the United States Supreme Court in *Montana v. Egelhoff* (1996).46

**MISTAKE** Everyone has heard the saying, “Ignorance of the law is no excuse.” Ordinarily, ignorance of the law or a mistaken idea about what the law requires is not a valid defense. For example, Gilbert A. Robinson appealed a conviction for possession of sexually explicit photographs of teenage boys by claiming that he did not know that such an act had become illegal. Chief Judge Juan R. Torruella del Valle of the Fifth Circuit Court of Appeals upheld Robinson's conviction, stating that child pornography is “inherently deleterious” and that the “probability of regulation is so great that anyone who is aware that he is in possession of [it] . . . must be presumed to be aware of the regulation.”47

**Mistake of Law** In some states, however, that rule has been modified to allow for a mistake-of-law defense. People who claim that they honestly did not know that they were breaking a law may have a valid defense if (1) the law was not published or reasonably known to the public or (2) the person relied on an official statement of the law that was erroneous.48

**THE MYTH** The American system of criminal justice answers this question by stating that a person may not be tried for an offense if that person cannot be held legally responsible for her or his actions. Because of the publicity surrounding the insanity defense, many people are under the impression that it is a major loophole in our system, allowing criminals to be “let off” no matter how heinous their crimes.

**THE REALITY** In fact, the insanity defense is raised in only about 1 percent of felony trials, and it is successful only one out of every four times it is raised. The reason: it is extremely difficult to prove insanity under the law. For example, Andre Thomas cut out the hearts of his wife, their young son, and his wife’s thirteen-month-old daughter. Before his murder trial, Thomas pulled his right eye out of its socket. (Several years later, while on death row, he ripped out the other eye and apparently ate it.) Nonetheless, prosecutors were able to convince a Texas jury that Brown understood the difference between right and wrong at the time of the murders, and in 2009 an appeals court upheld the conviction. Thomas is “clearly ‘crazy,’” said one of the appellate judges who heard his case, “but he is also ‘sane’ under Texas law.” Even if Thomas had succeeded with the insanity defense, he would not have been “let off” in the sense of being set free. Many defendants found not guilty by reason of insanity spend more time in mental hospitals than criminals who are convicted of similar acts spend in prison.

**FOR CRITICAL ANALYSIS** What do the relatively limited use and success rate of the insanity defense indicate about the impact of public opinion on criminal law?
**Mistake of Fact** A *mistake of fact*, as opposed to a *mistake of law*, operates as a defense if it negates the mental state necessary to commit a crime. If, for example, Oliver mistakenly walks off with Julie’s briefcase because he thinks it is his, there is no theft. Theft requires knowledge that the property belongs to another. In some instances, mistake of fact is not an excuse but does allow for a lighter sentence. In 2009, a Skagit County (Washington) judge sentenced teenage hunter Tyler Kales to 30 days in juvenile detention and 120 hours of community service for shooting and killing a hiker he mistook for a bear. Normally, of course, homicide with a firearm brings a much harsher punishment.

**JUSTIFICATION CRIMINAL DEFENSES AND THE LAW**

In certain instances, a defendant will accept responsibility for committing an illegal act, but contend that—given the circumstances—the act was justified. In other words, even though the guilty act and the guilty intent are present, the particulars of the case relieve the defendant of criminal liability. In 2009, for example, there were 667 “justified” killings of people who were in the process of committing a felony: 406 were killed by law enforcement officers, and 261 by private citizens. Four of the most important justification defenses are duress, self-defense, necessity, and entrapment.

**DURESS**

**Duress** exists when the *wrongful* threat of one person induces another person to perform an act that she or he would otherwise not perform. In such a situation, duress is said to negate the *mens rea* necessary to commit a crime. For duress to qualify as a defense, the following requirements must be met:

1. The threat must be of serious bodily harm or death.
2. The harm threatened must be greater than the harm caused by the crime.
3. The threat must be immediate and inescapable.
4. The defendant must have become involved in the situation through no fault of his or her own.

When ruling on the duress defense, courts often examine whether the defendant had the opportunity to avoid the threat in question. Two narcotics cases illustrate this point. In the first, the defendant claimed that an associate threatened to kill him and his wife unless he participated in a marijuana deal. Although this contention was proved true during the course of the trial, the court rejected the duress defense because the defendant made no apparent effort to escape, nor did he report his dilemma to the police. In sum, the drug deal was avoidable—the defendant could have made an effort to extricate himself, but he did not, thereby surrendering the protection of the duress defense.

In the second case, a taxi driver in Bogotá, Colombia, was ordered by a passenger to swallow cocaine-filled balloons and take them to the United States. The taxi driver was warned that if he refused, his wife and three-year-old daughter would be...
killed. After a series of similar threats, the taxi driver agreed to transport the drugs. On arriving at customs at the Los Angeles airport, the defendant consented to have his stomach X-rayed, which led to discovery of the contraband and his arrest. During trial, the defendant told the court that he was afraid to notify the police in Colombia because he believed them to be corrupt. The court accepted his duress defense on the grounds that it met the four requirements listed above and the defendant had notified American authorities when given the opportunity to do so.52

JUSTIFIABLE USE OF FORCE—SELF-DEFENSE A person who believes he or she is in danger of being harmed by another is justified in defending himself or herself with the use of force, and any criminal act committed in such circumstances can be justified as self-defense. Other situations that also justify the use of force include the defense of one's dwelling, the defense of other property, and the prevention of a crime. In all these situations, it is important to distinguish between deadly and non-deadly force. Deadly force is likely to result in death or serious bodily harm.

A Reasonable Belief Generally speaking, people can use the amount of nondeadly force that seems necessary to protect themselves, their dwellings, or other property or to prevent the commission of a crime. Deadly force can be used in self-defense if there is a reasonable belief that imminent death or bodily harm will otherwise result, if the attacker is using unlawful force (an example of lawful force is that exerted by a police officer), if the defender has not initiated or provoked the attack, and if there is no other possible response or alternative way out of the life-threatening situation.53 Deadly force normally can be used to defend a dwelling only if the unlawful entry is violent and the person believes deadly force is necessary to prevent imminent death or great bodily harm or—in some jurisdictions—if the person believes deadly force is necessary to prevent the commission of a felony (such as arson) in the dwelling.

The Duty to Retreat When a person is outside the home or in a public space, the rules for self-defense change somewhat. In almost thirty states, someone who is attacked under these circumstances has a duty to “retreat to the wall” before fighting back. In other words, under this duty to retreat, one who is being assaulted may not resort to deadly force if she or he has a reasonable opportunity to “run away” and thus avoid the conflict. Once this person has run into a “wall,” literally or otherwise, then deadly force may be used in self-defense.

In general, the duty to retreat requirement is not popular with the general public. Many Americans feel that they should be able to take action to protect themselves when attacked, whatever the circumstances. As a result, nearly half the states have passed “stand your ground” laws that do away with the duty to retreat and allow citizens to use force, including deadly force, whenever they “reasonably” fear for their safety.54 In general, these laws also permit individuals to use deadly force against someone who unlawfully enters their house regardless of whether or not they fear for their safety.55

NECESSITY According to the Model Penal Code, the necessity defense is viable if “the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged.”56 In 2009, for example, Jason Blair of Brooksville, Florida, successfully used the necessity defense to justify leaving the scene of a car accident involving a death. After accidentally hitting a pedestrian who later died from injuries suffered in the collision, Blair claimed that he heard someone yell, “I’m going to kill you.” Fearing for his life, Blair fled the scene. A jury
agreed that a “greater evil” existed—a threat to his own life—and acquitted Blair of a crime that carries a maximum of thirty years in state prison. The one crime for which the necessity defense is not acceptable under any circumstances is murder.

**ENTRAPMENT** Entrapment is a justification defense that criminal law allows when a police officer or government agent deceives a defendant into wrongdoing. Although law enforcement agents can legitimately use various forms of subterfuge—such as informants or undercover agents—to gain information or apprehend a suspect in a criminal act, the law places limits on these strategies. Police cannot persuade an innocent person to commit a crime, nor can they coerce a suspect into doing so, even if they are certain she or he is a criminal. (For more examples of justification and excuse defenses, see Figure 3.4 on the facing page.)

**SELF ASSESSMENT** Fill in the blanks and check your answers on page 92.

Criminal law recognizes that a defendant may not be _______ for a criminal act if her or his mental state was impaired by either _______—the psychological inability to separate right from wrong—or _______ due to drugs or alcohol. Defendants may also claim that they were _______ in committing an act either because they were under _______ to perform an act that they would not otherwise have performed or because they were acting in _______ to protect themselves from deadly harm. _______ occurs when a government agent deceives a defendant into committing a crime.

**Procedural Safeguards**

To this point, we have focused on substantive criminal law, which defines the acts that the government will punish. We now turn our attention to procedural criminal law. (The section that follows will provide only a short overview of criminal procedure. In later chapters, many other constitutional issues will be examined in more detail.) Criminal law brings the force of the state, with all its resources, to bear against the individual. Criminal procedures, drawn from the ideals stated in the Bill of Rights, are designed to protect the constitutional rights of individuals and to prevent the arbitrary use of power by the government.

**THE BILL OF RIGHTS**

For various reasons, proposals related to the rights of individuals were rejected during the framing of the U.S. Constitution in 1787. The need for a written declaration of rights of individuals eventually caused the first Congress to draft twelve amendments to the Constitution and submit them for approval by the states. Ten of these amendments, commonly known as the *Bill of Rights*, were adopted in 1791. Since then, seventeen more amendments have been added.

The Bill of Rights, as interpreted by the United States Supreme Court, has served as the basis for procedural safeguards of the accused in this country. These safeguards include the following:

1. The Fourth Amendment protection from unreasonable searches and seizures.
2. The Fourth Amendment requirement that no warrants for a search or an arrest can be issued without probable cause.
3. The Fifth Amendment requirement that no one can be deprived of life, liberty, or property without “due process” of law.
4. The Fifth Amendment prohibition against double jeopardy (trying someone twice for the same criminal offense).
5. The Fifth Amendment guarantee that no person can be required to be a witness against (incriminate) himself or herself.
6. The Sixth Amendment guarantees of a speedy trial, a trial by jury, a public trial, the right to confront witnesses, and the right to a lawyer at various stages of criminal proceedings.
7. The Eighth Amendment prohibitions against excessive bails and fines and cruel and unusual punishments. (For the full text of the Bill of Rights, see Appendix A.)

The Bill of Rights initially offered citizens protection only against the federal government. Over the years, however, the procedural safeguards of most of the provisions of the Bill of Rights have been applied to the actions of state governments through the Fourteenth Amendment (and the states, under certain circumstances, have the option to grant even more protections than are required by the federal Constitution). As these protections are crucial to criminal justice procedures in the United States, they will be afforded much more attention in Chapter 6, with regard to police action, and in Chapter 8, with regard to the criminal trial.

DUE PROCESS

Both the Fifth and Fourteenth Amendments provide that no person shall be deprived of “life, liberty, or property without due process of law.” This due process clause basically requires that the government not act unfairly or arbitrarily. In other words, the government cannot rely on individual judgment and impulse when making decisions, but must stay within the boundaries of reason and the law. Of course, disagreements as to the meaning of these provisions have plagued courts, politicians, and citizens since this nation was founded, and will undoubtedly continue to do so.

To understand due process, it is important to consider its two types: procedural due process and substantive due process.

PROCEDURAL DUE PROCESS According to procedural due process, the law must be carried out by a method that is fair and orderly. It requires that certain procedures be followed in administering and executing laws so that an individual’s basic freedoms are never violated.

<table>
<thead>
<tr>
<th>JUSTIFICATION DEFENSES</th>
<th>A defendant admits that he or she committed the particular criminal act, but asserts that under the circumstances, the criminal act was justified.</th>
</tr>
</thead>
<tbody>
<tr>
<td>DURESS</td>
<td>A mother assists her boyfriend in committing a burglary after he threatens to kill her children if she refuses to do so.</td>
</tr>
<tr>
<td>SELF-DEFENSE</td>
<td>A husband awakes to find his wife standing over him, pointing a shotgun at his chest. In the ensuing struggle, the firearm goes off, killing the wife.</td>
</tr>
<tr>
<td>NECESSITY</td>
<td>Four people physically remove a friend from her residence on the property of a religious cult, arguing that the crime of kidnapping was justified in order to remove the victim from the damaging influence of cult leaders.</td>
</tr>
<tr>
<td>ENTRAPMENT</td>
<td>The owner of a boat marina agrees to allow three federal drug enforcement agents, posing as drug dealers, to use his dock to unload shipments of marijuana from Colombia.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EXCUSE DEFENSES</th>
<th>A defendant admits that she or he committed the criminal act, but asserts that she or he cannot be held criminally responsible for the act due to lack of criminal intent.</th>
</tr>
</thead>
<tbody>
<tr>
<td>INFANCY</td>
<td>A thirteen-year-old takes a handgun from his backpack at school and begins shooting at fellow students, killing three. (In such cases, the offender is often processed by the juvenile justice system rather than the criminal justice system.)</td>
</tr>
<tr>
<td>INSANITY</td>
<td>A man with a history of mental illness pushes a woman in front of an oncoming subway train, which kills her instantly.</td>
</tr>
<tr>
<td>INTOXICATION</td>
<td>A woman who had been drinking malt liquor and vodka stabs her boyfriend to death after a domestic argument. She claims to have been so drunk that she cannot remember the incident.</td>
</tr>
<tr>
<td>MISTAKE</td>
<td>A woman, thinking that her divorce in another state has been finalized when it has not, marries for a second time, thereby committing bigamy.</td>
</tr>
</tbody>
</table>
ELLEN KALAMA CLARK
SUPERIOR COURT JUDGE

I was an attorney in private practice when I was asked to serve as a temporary court commissioner. I did that for a few years, then was appointed as a full-time court commissioner and did that for six years. (Court commissioners in Washington are judicial officers who handle only certain types of cases, such as juvenile and family law.) I thought becoming a trial judge would be an interesting challenge, and I especially wanted to be able to handle trials, jury trials, and criminal matters.

COURTROOM DECORUM One thing about my job: it is never dull. Attorneys come up with some very interesting arguments. As for the cases and the parties, just when you think you’ve heard it all, something else comes in the door that you never, in a million years, could have made up. It is also great to see the system in action, and to be able to interact with jurors and learn about their perceptions of the criminal justice system. There are light moments, as well. When I took the bench, I was going to be a stickler for proper courtroom decorum, including no cell phones in the courtroom. On my first day, a cell phone started ringing. I gave a stern lecture about turning off all cell phones, and the ringing stopped, although I had not seen anyone in the courtroom make any suspicious movements. I felt pretty good about being in control, until my judicial assistant slipped me a note indicating that my cell phone had rung, but not to worry because she had turned it off.

A GREAT SUCCESS STORY My favorite thing about my work is making a difference in people’s lives. This is especially true in juvenile court, which is my favorite assignment. For example, early one morning I was walking to the juvenile court building when I saw a group of teenage boys heading towards me. Some of them I recognized from being in court, and they recognized me. A couple avoided eye contact, one looked me straight in the eye rather defiantly, and the last one kind of smirked. As we got closer to each other, the last boy—a tall, stocky kid—stopped, and the group just about blocked the sidewalk. It made me nervous. The boy then leaned forward towards me and said, not in an intimidating manner but certainly meaning to get my attention, “Hey, Judge.” I said good morning. He then broke into a big smile and said, “I got my GED [general equivalency diploma]! And I’m staying out of trouble.” I didn’t remember his name or his offense, but I was absolutely thrilled that he had accomplished those things, that he would want me to know that, and that he was bragging about it in front of his friends. I consider this a great success story.

CAREER ADVICE There is not just one way to become a judge. I started as a temporary commissioner, then a full-time commissioner, then a trial judge. Some other judges have come from lower courts to the superior courts. Some have come from positions as government attorneys (either prosecutor or defense) and others from private practice. No matter what path taken, judicial officers do a lot of reading, writing, analyzing, and public speaking, so do things that will increase your skills in these areas. You also need to realize that, as a lawyer or judicial officer, you will primarily be dealing with people having some crisis in their lives, such as facing a criminal charge or being a victim. Dealing with these folks takes patience, as well as the ability to set boundaries.
What steps could school administrators take to protect the procedural due process rights of students like Savana Redding who are suspected of bringing prohibited items such as prescription drugs onto campus? (Mark Wilson/Getty Images)
THE SUPREME COURT’S ROLE IN DUE PROCESS As the last example suggests, the United States Supreme Court often plays the important role of ultimately deciding when due process has been violated and when it has not. (See Figure 3.5 above for a list of important Supreme Court due process cases.) As we will see throughout this textbook, the Court has recently had to make a number of important decisions regarding the due process rights that should be afforded to terrorist suspects by the American government. In particular, in Chapters 8 and 14, we will look at the due process ramifications of President Barack Obama’s efforts to try terrorist suspects in U.S. criminal courts.

**SELF ASSESSMENT**  Fill in the blanks and check your answers on page 92.

The basis for procedural safeguards for the accused is found in the ________ of the U.S. Constitution. According to these safeguards, no person shall be deprived of life or liberty without ________ of law. This means that the ________ by which the law is carried out must be fair and orderly and the laws themselves must be _________. The ________ ultimately decides whether these rights have been violated.

---

**Figure 3.5 Important United States Supreme Court Due Process Decisions**

<table>
<thead>
<tr>
<th>Year</th>
<th>Issue</th>
<th>Amendment Involved</th>
<th>Court Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>1948</td>
<td>Right to a public trial</td>
<td>VI</td>
<td><em>In re Oliver, 333 U.S. 257</em></td>
</tr>
<tr>
<td>1952</td>
<td>Police searches cannot be so invasive as to “shock the conscience”</td>
<td>IV</td>
<td><em>Rochin v. California, 342 U.S. 165</em></td>
</tr>
<tr>
<td>1961</td>
<td>Exclusionary rule</td>
<td>IV</td>
<td><em>Mapp v. Ohio, 367 U.S. 643</em></td>
</tr>
<tr>
<td>1963</td>
<td>Right to a lawyer in all criminal felony cases</td>
<td>VI</td>
<td><em>Gideon v. Wainwright, 372 U.S. 335</em></td>
</tr>
<tr>
<td>1964</td>
<td>No compulsory self-incrimination</td>
<td>V</td>
<td><em>Malloy v. Hogan, 378 U.S. 1</em></td>
</tr>
<tr>
<td>1964</td>
<td>Right to have counsel when taken into police custody and subjected to questioning</td>
<td>VI</td>
<td><em>Escobedo v. Illinois, 378 U.S. 478</em></td>
</tr>
<tr>
<td>1965</td>
<td>Right to confront and cross-examine witnesses</td>
<td>VI</td>
<td><em>Pointer v. Texas, 380 U.S. 400</em></td>
</tr>
<tr>
<td>1966</td>
<td>Right to an impartial jury</td>
<td>VI</td>
<td><em>Parker v. Gladden, 385 U.S. 363</em></td>
</tr>
<tr>
<td>1966</td>
<td>Confessions of suspects not notified of due process rights ruled invalid</td>
<td>V</td>
<td><em>Miranda v. Arizona, 384 U.S. 436</em></td>
</tr>
<tr>
<td>1967</td>
<td>Right to a speedy trial</td>
<td>VI</td>
<td><em>Klopfer v. North Carolina, 386 U.S. 21</em></td>
</tr>
<tr>
<td>1967</td>
<td>Juveniles have due process rights, too</td>
<td>V</td>
<td><em>In re Gault, 387 U.S. 1</em></td>
</tr>
<tr>
<td>1968</td>
<td>Right to a jury trial ruled a fundamental right</td>
<td>VI</td>
<td><em>Duncan v. Louisiana, 391 U.S. 145</em></td>
</tr>
<tr>
<td>1969</td>
<td>No double jeopardy</td>
<td>V</td>
<td><em>Benton v. Maryland, 395 U.S. 784</em></td>
</tr>
</tbody>
</table>
List the four written sources of American criminal law. (a) The U.S. Constitution and state constitutions; (b) statutes passed by Congress and state legislatures (plus local ordinances); (c) administrative agency regulations; and (d) case law.

Explain the two basic functions of criminal law. The primary function is to protect citizens from harms to their safety and property and from harms to society’s collective interests. The second function is to maintain and teach social values as well as social boundaries.

Discuss the primary goals of civil law and criminal law, and explain how these goals are realized. Civil law is designed to resolve disputes between private individuals and other entities, such as corporations. In these disputes, one party, called the plaintiff, tries to gain monetary damages by proving that the accused party, or defendant, is to blame for a tort, or wrongful act. In contrast, criminal law exists to protect society from criminal behavior. To that end, the government prosecutes defendants, or persons who have been charged with committing a crime.

Explain the differences between crimes mala in se and mala prohibita. A criminal act is mala in se if it is inherently wrong, while a criminal act mala prohibita is illegal only because it is prohibited by the laws of a particular society. It is sometimes difficult to distinguish between these two sorts of crimes because it is difficult to define a “pure” mala in se crime; that is, it is difficult to separate a crime from the culture that has deemed it a crime.

Delineate the elements required to establish mens rea (a guilty mental state). (a) Purpose, (b) knowledge, (c) negligence, or (d) recklessness.

List and briefly define the most important excuse defenses for crimes. Insanity—different tests of insanity can be used, including (a) the M’Naghten rule (right-wrong test); (b) the ALI/MPC test, also known as the substantial-capacity test; and (c) the irresistible-impulse test. Intoxication—voluntary and involuntary, the latter being a possible criminal defense. Mistake—sometimes valid if the law was not published or reasonably known or if the alleged offender relied on an official statement of the law that was erroneous. Also, a mistake of fact may negate the mental state necessary to commit a crime.

Describe the four most important justification criminal defenses. Duress—requires that (a) the threat is of serious bodily harm or death; (b) the harm is greater than that caused by the crime; (c) the threat is immediate and inescapable; and (d) the defendant became involved in the situation through no fault of his or her own. Justifiable use of force—the defense of one’s person, dwelling, or property, or the prevention of a crime. Necessity—justifiable if the harm sought to be avoided is greater than that sought to be prevented by the law defining the offense charged. Entrapment—the criminal action was induced by certain governmental persuasion or trickery.

Explain the importance of the due process clause in the criminal justice system. The due process clause acts to limit the power of government. In the criminal justice system, the due process clause requires that certain procedures be followed to ensure the fairness of criminal proceedings and that all criminal laws be reasonable and in the interest of the public good.

**Key Terms**

- actus reus 73
- administrative law 65
- attempt 75
- attendant circumstances 78
- beyond a reasonable doubt 70
- Bill of Rights 86
- case law 65
- civil law 69
- constitutional law 63
- corpus delicti 73
- defendant 69
- due process clause 87
- duress 84
- duty to retreat 85
- entrapment 86
- felony 70
- felony-murder 78
- hate crime law 79
- inchoate offense 79
- infancy 80
- infraction 72
- insanity 81
- intoxication 82
- involuntary manslaughter 71
- irresistible-impulse test 81
- liability 69
- mala in se 72
- mala prohibita 72
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- M’Naghten rule 81
- Model Penal Code 64
- necessity 85
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- strict liability crimes 76
- substantial-capacity test (ALI/MPC test) 81
- substantive criminal law 86
- substantive due process 89
- voluntary manslaughter 71
Questions for Critical Analysis

1. Give an example of a criminal law whose main purpose seems to be teaching societal boundaries rather than protecting citizens from mala in se crime. By searching the Internet, can you find examples of other countries where this behavior is not considered criminal?

2. Two fathers, Scott and Andrew, get in a heated argument following a dispute between their sons in a Little League baseball game. They come to blows, and Scott strikes Andrew in the temple, killing him. Will Scott be charged with voluntary manslaughter or involuntary manslaughter? What other details might you need to know to be sure of your answer?

3. Keith lends his car to Jermaine, who drives with two other friends to the home of a marijuana dealer. The three men break into the home, intending to steal a safe full of cash. The drug dealer is unexpectedly at home, however, and in a struggle Jermaine winds up murdering him. What rule allows local prosecutors to charge Keith with first degree murder? Why?

4. Why do you suppose that motive usually is not considered in criminal law? Why might determining motive be difficult when prosecuting a hate crime?

5. Suppose that Louisiana’s legislature passes a law allowing law enforcement officers to forcibly remove residents from their homes in the face of an imminent hurricane. Why might a court uphold this law even though, in most circumstances, such forcible removal would violate the residents’ due process rights? If you were a judge, would you uphold Louisiana’s new law?

Online Resources

1. Get the most out of the materials in this chapter—go to the Criminal Justice in Action companion Web site at www.cjinaction.com, where you will find more resources to help you study. Resources include Web links, learning objectives, Internet exercises, quizzes, and flash cards.

2. Learn about potential criminal justice careers discussed in this chapter—explore careers online at www.cjinaction.com.

Notes

5. Ibid., 23.
11. Stuart P. Green, “Why It’s a Crime to Tear the Tag Off a Mattress,” Emory Law Journal 46 (Fall 1997), 137–164.
15. Ibid., 10.
CHAPTER 3
Inside Criminal Law

18. 625 Illinois Compiled Statutes Annotated Section 5/6-104 (West, 2002).
23. Rhode Island General Laws Section 11-56-1 (1956); Vermont Statutes Annotated Title 12, Section 519 (2000); and Wisconsin Statutes Section 940.34 (West, 2000).
24. Model Penal Code Section 2.02.
26. Model Penal Code Section 2.02(c).
29. New Jersey Statutes Annotated Section 2C:35-9 (West 2004).
39. Paul H. Robinson, Criminal Law Defenses (St. Paul, MN: West, 2008), Section 173, Ch. 5.
40. M'Naghten’s Case, 10 CL & F. 200, Eng.Rep. 718 (1843). Note that the name is also spelled M'Naughten and McNaughten.
46. United States v. Robinson, 19 F.3d 1205 (9th Cir. 1997).
47. Lambert v. California, 335 U.S. 225 (1945).
55. Model Penal Code Section 3.02.
56. John Frank, “Hit-Run Driver Acquitted,” St. Petersburg (FL) Times (February 4, 2009), 1B.
CHAPTER 4

LEARNING OBJECTIVES

The seven learning objectives labeled LO1 through LO7 are designed to help improve your understanding of the chapter. After reading this chapter, you should be able to...

LO 1 Describe the first systems of law enforcement in colonial America.
LO 2 Tell how the patronage system affected policing.
LO 3 List the four basic responsibilities of the police.
LO 4 List five main types of law enforcement agencies.
LO 5 Indicate some of the most important law enforcement agencies under the control of the Department of Homeland Security.
LO 6 Identify the duties of the FBI.
LO 7 Analyze the importance of private security today.

CHAPTER OUTLINE

- A History of the American Police
- The Responsibilities of the Police
- Law Enforcement Agencies
- Private Security
Justin Garner had wanted to be a police officer since, in his father’s words, “he was old enough to talk about it.” Garner eventually achieved his goal, joining the department in his hometown of Carthage, North Carolina. During his first five years on the force, Garner established a solid reputation, even winning the town’s Officer of the Year award. Nothing, however, could have prepared him for the call he received on the morning of March 29, 2009: shots fired inside the Pinelake Health and Rehab Center, a local nursing home. “You can train all you want,” said Carthage police chief Chris McKenzie of the events that followed, “but it comes down to whether you have what it takes.”

A Special Weapons and Tactics (SWAT) team had also responded to the call, but the twenty-five-year-old Garner beat them to the nursing home. At the time, Garner could not know that Robert Stewart was in the process of murdering seven elderly patients and a staff member inside the building. He did know that, whatever the circumstances, he needed to take immediate action. His Glock .40 handgun at the ready, Garner entered the building and walked past several of Stewart’s victims, shot in their wheelchairs and beds “like sitting ducks.” Finally encountering Stewart in a hallway, Garner ordered the shooter to put down his weapons. In response, Stewart pulled the trigger of his shotgun, spraying pellets into the young officer’s leg and foot. Garner returned fire, hitting Stewart in the upper chest and incapacitating him with a single shot.

Stewart was eventually charged with eight counts of first degree murder. (His main target turned out to be his estranged wife, a nurse’s assistant at Pinelake who saved herself by hiding in a passcode-protected section of the facility.) Garner, for his efforts, was hailed as a hero. Without backup, he had entered a facility the size of a small shopping center and stopped a killer who would certainly have claimed more victims had he been allowed to do so. “If that’s not heroism, I don’t know what is,” said Chief McKenzie.

Law enforcement holds endless surprises. Officer Justin Garner certainly did not expect to find himself in a firefight at 10:30 on a sleepy Sunday morning when nearly everybody else in the small town of Carthage, North Carolina (population 2,021), was at church. The next morning, Garner’s face was plastered on newspapers and the Internet, and his story dominated local and national television news shows. The media’s response was hardly surprising. Police officers are the most visible representatives of our criminal justice system. Indeed, they symbolize the system for many Americans who may never see the inside of a courtroom or a prison cell. The police are entrusted with immense power to serve and protect the public good: the power to use weapons and the power to arrest. But that same power alarms many citizens, who fear that it may be turned arbitrarily against them. The role of the police is constantly debated as well. Is their primary mission to fight crime, or should they also be concerned with the social conditions that presumably lead to crime?

This chapter will lay the foundation for our study of law enforcement agents and the work that they do. A short history of policing will be followed by a discussion of the responsibilities placed on the modern police officer by society. We will then take a look at the many different agencies that make up the American law enforcement system—local, state, and federal.
A History of the American Police

Although modern society relies on law enforcement officers to control and prevent crime, in the early days of this country police services had little to do with crime control. The policing efforts in the first American cities were directed toward controlling certain groups of people (mostly slaves and Native Americans), delivering goods, regulating activities such as buying and selling in the town market, maintaining health and sanitation, controlling gambling and vice, and managing livestock and other animals. Furthermore, these police services were for the most part performed by volunteers, as a police force was an expensive proposition. Most communities simply could not afford to pay a group of law enforcement officers. Eventually, of course, as the populations of American cities grew, so did the need for public order and the willingness to devote resources to the establishment of formal police forces.

THE EARLY AMERICAN POLICE EXPERIENCE

Policing in the United States and England evolved along similar lines, and many of our policing institutions have their roots in English tradition. Indeed, in colonial America and immediately following the American Revolution (1775–1783), law enforcement precisely mirrored the English system. Constables and night watchmen were taken from the ranks of ordinary citizens. The governor of each colony hired a sheriff (from the English shire reeve, the chief law enforcement officer in Britain’s shires, or counties) in each county to oversee the formal aspects of law enforcement, such as selecting juries and managing jails and prisons. These colonial appointees were not always of the highest moral character. In 1730, the Pennsylvania colony felt the need to pass laws specifically prohibiting sheriffs from extorting money from prisoners or selling “strong liquors” to “any person under arrest.”

THE FIRST POLICE DEPARTMENT

In 1801, Boston became the first American city to acquire a formal night watch; the watchmen were paid 50 cents a night. For the next three decades, most major cities went no further than the watch system. Finally, facing the rising levels of criminal activity, major American metropolitan areas began to form “reactive patrol units” geared toward enforcing the law and preventing crime. In 1833, Philadelphia became the first city to employ both day and night watchmen. Five years later, Boston formed the first organized police department, consisting of six full-time officers. In 1844, New York City set the foundation for the modern police department by combining its day and night watches under the control of a
single police chief. By the onset of the Civil War in 1861, a number of American cities, including Baltimore, Boston, Chicago, Cincinnati, New Orleans, and Philadelphia, had similarly consolidated police departments, modeled on the Metropolitan Police of London.

Like their modern counterparts, many early police officers were hardworking, honest, and devoted to serving and protecting the public. On the whole, however, in the words of historian Samuel Walker, “The quality of American police service in the nineteenth century could hardly have been worse.” This poor quality can be attributed to the fact that the recruitment and promotion of police officers were intricately tied into the politics of the day. Police officers received their jobs as a result of political connections, not because of any particular skills or knowledge. The political bosses who were in power in a given city would hire their own cronies to run the police department; consequently, the police were often more concerned with serving the interests of the political powers than with protecting the citizens.

**THE SPOILS SYSTEM** Corruption was rampant during this political era of policing, which lasted roughly from 1840 to 1930. (See Figure 4.1 below for an overview of the three eras of policing, which are discussed in this chapter and referred to throughout the book.) Police salaries were relatively low; thus, many police officers saw their positions as opportunities to make extra income through any number of illegal activities. Bribery was common, as police would use their close proximity to the people to request “favors,” which went into the police officers’ own pockets or into the coffers of the local political party as “contributions.” This was known as the patronage system, or the “spoils system,” because to the political victors went the spoils.

The political era also saw police officers taking an active role in providing social services for their bosses’ constituents. In many instances, this role even took

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**Figure 4.1 The Three Eras of American Policing**

George L. Kelling and Mark H. Moore have separated the history of policing in the United States into three distinct periods, summarized briefly here.

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Primary Function of Police</th>
<th>Organization</th>
<th>Police-Community Relationship</th>
<th>Tactics</th>
<th>Strategic Goal</th>
<th>Strategic Weakness</th>
</tr>
</thead>
<tbody>
<tr>
<td>1840 to 1930</td>
<td>Provide range of social services to citizenry</td>
<td>Decentralized</td>
<td>Intimate</td>
<td>Patrolling neighborhoods on foot</td>
<td>Satisfy the needs of citizens and political bosses</td>
<td>Widespread police corruption and brutality</td>
</tr>
<tr>
<td>1930 to 1980</td>
<td>Crime control</td>
<td>Centralized</td>
<td>Professional and distant</td>
<td>Patrolling neighborhoods in cars, rapid response to emergency calls for service (911 calls)</td>
<td>Crime control</td>
<td>Lack of communication with citizens fostered mistrust and community violence (riots)</td>
</tr>
<tr>
<td>1980 to present</td>
<td>Continue to control crime while providing a broader range of social services</td>
<td>Decentralized, with specialized units and task forces</td>
<td>Return to intimate</td>
<td>Foot patrol, problem solving, and public relations</td>
<td>Improve the quality of life of citizens</td>
<td>An overreliance on police officers to solve all of society’s problems</td>
</tr>
</tbody>
</table>

precedence over law enforcement duties. Politicians realized that they could attract more votes by offering social services to citizens than by arresting them, and they required the police departments under their control to act accordingly.

THE MODERNIZATION OF THE AMERICAN POLICE

The abuses of the political era of policing did not go unnoticed. Nevertheless, it was not until 1929 that President Herbert Hoover appointed the national Commission on Law Observance and Enforcement to assess the American criminal justice system. The Wickersham Commission, named after its chairman, George Wickersham, focused on two areas of American policing that were in need of reform: (1) police brutality and (2) “the corrupting influence of politics.” According to the commission, this reform should come about through higher personnel standards, centralized police administrations, and the increased use of technology. Reformers of the time took the commission’s findings as a call for the professionalization of American police and initiated the progressive (or reform) era in American policing.

PROFESSIONALISM In truth, the Wickersham Commission was not groundbreaking. Many of its recommendations echoed the opinions of one of its contributors—August Vollmer, the police chief of Berkeley, California, from 1905 until 1932 (see photo alongside). Known as “the father of modern police administration,” Vollmer pioneered the training of potential police officers in institutions of higher learning. The first program to grant a degree in law enforcement, at San Jose State College (now a university), was developed under Vollmer.

Along with increased training, Vollmer also championed the use of technology in police work. His Berkeley police department became the first in the nation to use automobiles to patrol city streets and to hire a scientist to assist in solving crimes. Furthermore, Vollmer believed that police could prevent crime by involving themselves in the lives of potential criminals, which led to his establishing the first juvenile crime unit in the nation.

Vollmer’s devotion to modernism was also apparent in the career of his most successful protégé, police reformer O. W. Wilson, who promoted a style of policing known as the professional model. In an attempt to remove politics from police work, Wilson stressed the need for efficiency through bureaucracy and technology.

ADMINISTRATIVE REFORMS Under the professional model, police chiefs, who had been little more than figureheads during the political era, took more control over their departments. A key to these efforts was the reorganization of police departments in many major cities. To improve their control over operations, police chiefs began to add midlevel positions to the force. These new officers, known as majors or assistant chiefs, could develop and implement crime-fighting strategies and more closely supervise individual officers. Police chiefs also tried to consolidate their power by bringing large areas of a city under their control so that no local ward, neighborhood, or politician could easily influence the police department.

Finally, police chiefs set up special units such as criminal investigation, vice, and traffic squads with jurisdiction-wide power. Previously, all police powers within a precinct were controlled by the politicians in that precinct. By creating specialized units that worked across all precincts, the police chiefs increased their own power at the expense of the political bosses.
TECHNOLOGY

Technological innovations on all fronts—including patrol cars, radio communications, public records systems, fingerprinting, toxicology (the study of poisons), and forensics (the application of chemistry to the examination of physical evidence)—allowed police operations to move even more quickly toward O. W. Wilson’s professional model. By the 1950s, America prided itself on having the most modern and professional police force in the world.

HIGH-TECH COP CARS

The capabilities of the patrol car, perhaps the most important piece of policing technology of the past century, continue to expand. Project 54, a voice-recognition system developed at the University of New Hampshire, allows police officers to “multitask” without having to divert their attention from the road or to take a hand off the wheel. The officer simply presses a button, and all the technological equipment in the car becomes voice activated. Four Andrea digital array microphones positioned in the cab of the automobile cancel all noise except the sound of the officer’s voice. So, for example, if the officer witnesses a hit-and-run accident, he or she simply says the word “pursuit” to activate the automobile’s siren and flashing lights. Then the officer can call for an ambulance and run a check on the suspect’s license plate—all by voice command. Other recent innovations include Automatic License Plate Recognition, a three-camera computer-operated system that performs a “20-millisecond” background check on every license plate it sees, and the StarChase launcher, a small, laser-guided cannon that shoots a sticky radio transmitter at a fleeing vehicle. Once the offending car has been “tagged” with this device, police can track the fugitive at a safe distance without the need for a dangerous high-speed pursuit.

THINKING ABOUT POLICE AUTOMOBILE TECHNOLOGY

American automobile manufacturers do not produce ready-made police cars. Law enforcement agencies must add technologies such as the ones discussed here after the car has been purchased. What might be some of the benefits of large-scale production of a car that would be sold only for law enforcement purposes?

TURMOIL IN THE 1960S

As efficiency became the goal of the reform-era police chief, relations with the community suffered. Instead of being members of the community, police officers were now seen almost as intruders, patrolling the streets in the anonymity of their automobiles. The drawbacks of this perception—and of the professional model in general—became evident in the 1960s, one of the most turbulent decades in American history. The civil rights movement, though not inherently violent, intensified feelings of helplessness and impoverishment in African American communities. These frustrations resulted in civil unrest, and many major American cities experienced race riots in the middle years of the decade.

Even though police brutality often provided the spark for riots—and there is little question that police departments often overreacted to antiwar demonstrations during the Vietnam era (1964–1975)—it would be simplistic to blame the strife of the 1960s on the police. The rioters were reacting to social circumstances that they found unacceptable. Their clashes with the police were the result rather than
the cause of these problems. Many observers, however, believed that the police contributed to the disorder. The National Advisory Commission on Civil Disorders stated bluntly that poor relations between the police and African American communities were partly to blame for the violence that plagued many of those communities. In striving for professionalism, the police appeared to have lost touch with the citizens they were supposed to be serving. To repair their damaged relations with a large segment of the population, police would have to rediscover their community roots.

RETURNING TO THE COMMUNITY

The beginning of the third era in American policing, the community era, may have started with several government initiatives that took place in 1968. Of primary importance was the Omnibus Crime Control and Safe Streets Act, which was passed that year. Under this act, the federal government provided state and local police departments with funds to create a wide variety of police-community programs. Most large-city police departments established entire units devoted to community relations, implementing programs that ranged from summer recreation activities for inner-city youths to “officer-friendly” referral operations that encouraged citizens to come to the police with their crime concerns.

In the 1970s, as this vital rethinking of the role of the police was taking place, the country was hit by a crime wave. Thus, police administrators were forced to combine efforts to improve community relations with aggressive and innovative crime-fighting strategies. At first, these strategies were reactive; that is, they focused on reducing the amount of time the police took to react to crime—how quickly they were able to reach the scene of a crime, for example. Eventually, police departments began to focus on proactive strategies—that is, strategies aimed at stopping crimes before they are committed. A dedication to proactive strategies led to widespread acceptance of community policing in the 1980s and 1990s. Community policing is based on the notion that meaningful interaction between officers and citizens will lead to a partnership in preventing and fighting crime. Though the idea of involving members of the community in this manner is hardly new, innovative tactics in community policing, many of which will be discussed in Chapter 5, have had a significant impact on modern police work.

THE CHALLENGES OF ANTI-TERRORISM

Although the commitment to community policing is still strong in most of the nation’s law enforcement agencies, the events of September 11, 2001, dramatically changed the direction of policing in the United States. Within two years of the attacks, about 90 percent of the nation’s local police and sheriff departments serving large cities (250,000 residents or more) had written plans to deal with terrorist attacks. More than a third of these agencies were also gathering intelligence related to terrorism, which represents a significant shift for the law enforcement community. Most police officers, after all, are trained to gather evidence and solve crimes after they have been committed. Anti-terrorism policing, in contrast, involves gathering intelligence and preventing terrorist acts before they occur.
The transition has not always been smooth. American policing is decentralized and localized, with more than 14,000 local, state, and federal law enforcement agencies. Cooperation and information sharing among these many organizations are crucial to combating terrorism. Yet, due to funding shortages, technological limitations, and, in some circumstances, “turf wars,” collaborative efforts have often been lacking. Furthermore, many local police administrators resent having to expend scarce resources on anti-terrorism efforts instead of traditional crime fighting. In many ways, law enforcement is still adjusting to the massive demands and challenges of homeland security in response to the events of September 11, 2001. We will discuss these struggles, as well as numerous successes, in the chapters to follow and particularly in Chapter 14. (See the feature Anti-Terrorism in Action—Foreign Exchange below to learn how advice from abroad is helping American law enforcement pass the tests of homeland security.)

ANTI-TERRORISM IN ACTION

FOREIGN EXCHANGE

Like most law enforcement agents in the United States, the men and women of the Washington, D.C., Metropolitan Police Department’s Special Operations Division had been trained to “shoot for the chest” when dealing with an armed suspect. The chest, after all, is the broadest part of the body and offers the best chance for single-shot success. Now, Commander Cathy Lanier was telling them to aim for the head, because hitting the chest could detonate the explosives strapped to a suicide bomber’s torso.

Lanier picked up this piece of hard-earned wisdom when, like thousands of other American law enforcement officials in recent years, she traveled to Israel—the “Harvard of anti-terrorism,” in the words of U.S. Capitol police chief Terrance Gainer. Even though the crime rate in this small Middle Eastern country is low compared with that in the United States, acts of terrorism are commonplace, thanks to a long-simmering land dispute with Palestine. Consequently, Israeli law enforcement is expert in dealing with suicide bombers; understanding the psychology of Islamic fundamentalism; interrupting the flow of information and explosives between terrorist cells; gathering intelligence; and other anti-terrorism strategies.

In addition to acting as host, Israel has sent many of its law enforcement agents to the United States to run anti-terrorism seminars. Much of what the Americans have learned in these exchanges has contradicted their national training. For example, whereas a bomb scene in the United States will be roped off for days to allow for evidence gathering, in Israel the site is returned to normal as quickly as possible. “It is very important for [the Israelis to] get back to business as usual,” noted Sterling P. Owen IV, chief of police in Knoxville, Tennessee. “They do not want their lives and businesses to be disrupted.” “We’ve paid in blood for our experience,” says Mickey Levy of the Jerusalem police, speaking of the damage caused by suicide bombers. “We don’t want the American people or the American police to pay as we have.”

FOR CRITICAL ANALYSIS Given that the incidence of terrorism on American soil—particularly of suicide bombings—is relatively low compared with that in Israel, are there any drawbacks to programs that teach Israeli tactics to American police?
The Responsibilities of the Police

Like many other aspects of law enforcement, the idea of fighting terrorism may be more glamorous than the reality. For the most part, the incidents that make up a police officer’s daily routine would not make it onto television dramas such as *CSI: Crime Scene Investigation*. Besides catching criminals, police spend a great deal of time on such mundane tasks as responding to noise complaints, confiscating firecrackers, and poring over paperwork. Sociologist Egon Bittner warned against the tendency to see the police primarily as agents of law enforcement and crime control. A more inclusive accounting of “what the police do,” Bittner believed, would recognize that they provide “situationally justified force in society.” In other words, the function of the police is to solve any problem that may possibly, though not necessarily, require the use of force.

Within Bittner’s rather broad definition of “what the police do,” we can pinpoint four basic responsibilities:

1. To enforce laws.
2. To provide services.
3. To prevent crime.
4. To preserve the peace.

As will become evident over the next two chapters, there is a great deal of debate among legal and other scholars and law enforcement officers over which responsibilities deserve the most police attention and what methods should be employed by the police in meeting those responsibilities.

ENFORCING LAWS

In the public mind, the primary role of the police is to enforce society’s laws—hence, the term *law enforcement officer*. In their role as “crime fighters,” police officers have a clear mandate to seek out and apprehend those who have violated the law. The crime-fighting responsibility is so dominant that any police activity—from the purchase of new automobiles to a plan to hire more minority officers—must often be justified in terms of its law enforcement value.

Police officers also primarily see themselves as crime fighters, or “crook catchers,” a perception that often leads people into what they believe will be an exciting career in law enforcement. Although the job certainly offers challenges unlike any other, police officers normally do not spend most of their time in law enforcement duties. After surveying a year’s worth of dispatch data from the Wilmington (Delaware) Police Department, researchers Jack Greene and Carl Klockars found that officers spent only about half of their time enforcing the law or dealing with crimes. The rest of their time was taken up with order maintenance, providing services, traffic patrol, and medical assistance. Furthermore, information provided by the Uniform Crime Report shows that most arrests are made for “crimes of disorder” or public annoyances rather than violent or property crimes. In 2009, for example, police made more than 11 million arrests for drunkenness, liquor law violations, disorderly conduct, vagrancy, loitering, and other minor offenses, but only about 580,000 arrests for violent crimes.
PROVIDING SERVICES

The popular emphasis on crime fighting and law enforcement tends to overshadow the fact that a great deal of a police officer’s time is spent providing services for the community. The motto “To Serve and Protect” has been adopted by thousands of local police departments, and the Law Enforcement Code of Ethics recognizes the duty “to serve the community” in its first sentence. The services that police provide are numerous—a partial list would include directing traffic, performing emergency medical procedures, counseling those involved in domestic disputes, providing directions to tourists, and finding lost children. Along with firefighters, police officers are among the first public servants to arrive at disaster scenes to conduct search and rescue operations. This particular duty adds considerably to the dangers faced by law enforcement agents (discussed in more detail in Chapter 5). As mentioned earlier, a number of police departments have adopted the strategy of community policing, and as a consequence, many officers find themselves providing assistance in areas that have not until recently been their domain. Along these lines, police are expected to deal with the problems of the homeless and the mentally ill to a greater extent than in past decades.

PREVENTING CRIME

Perhaps the most controversial responsibility of the police is to prevent crime, terrorist related or otherwise. According to Jerome Skolnick, co-director of the Center for Research in Crime and Justice at the New York University School of Law, there are two predictable public responses when crime rates begin to rise in a community. The first is to punish convicted criminals with stricter laws and more severe penalties. The second is to demand that the police “do something” to prevent crimes from occurring in the first place. Is it, in fact, possible for the police to prevent crimes? The strongest response that Professor Skolnick is willing to give to this question is “maybe.”

On a limited basis, police can certainly prevent some crimes. If a rapist is dissuaded from attacking a solitary woman because a patrol car is cruising the area, then the police officer behind the wheel has prevented a crime. Furthermore, exemplary police work can have an effect. The nation’s two largest cities—New York and Los Angeles—have both experienced sharp declines in crime in recent years, a trend many attribute in large part to aggressive and innovative law enforcement. In general, however, the deterrent effects of police presence are unclear. Carl Klockars has written that the “war on crime” is a war that the police cannot win because they cannot control the factors—such as unemployment, poverty, immorality, inequality, political change, and lack of educational opportunities—that lead to criminal behavior in the first place. As we shall see in the next chapter, many police stations have adopted the idea of community policing in an attempt to better prevent crime. (The feature
A QUESTION OF ETHICS
LAW ENFORCEMENT 2.0

THE SITUATION Detective Paredes of the West Somerville Police Department is well aware that the Internet is a wellspring of information on crime. In particular, numerous criminals and victims—particularly young ones—have taken to leaving clues of criminal behavior on social networks such as MySpace and Facebook. It would be relatively easy for Paredes to place any number of fake profiles on these sites, posing as a young boy or girl or an older gang member to gain crucial information on sexual predators and violent criminals operating in West Somerville.

THE ETHICAL DILEMMA There are two problems with Detective Paredes’s plan. First, social networking sites forbid people from using pseudonyms, with no exceptions for law enforcement officers. “Facebook is based on a real-name culture, so fake names and false identities are actually a violation of the terms of use,” points out a spokesperson for the company. Second, what about the ethics of a police officer pretending to be someone’s friend to get access to the personal information available on his or her profile? As you will learn in Chapter 6, when police want to search a person’s physical property, they first need to get permission from a judge. “If police are creating a fake profile and asking to be a friend, they are not going through the court,” says Jennifer Lynch, a legal expert from the University of California at Berkeley School of Law. “So you’re losing the checks and balances that we value in our criminal justice system.”

WHAT IS THE SOLUTION? No court decision or law exists that expressly forbids law enforcement officers from creating fake profiles or otherwise accessing the information on social networking sites to learn about criminal behavior. Indeed, police departments across the country have, on a number of occasions, used fake profiles to apprehend sex offenders and prevent sex crimes, find missing persons, thwart drug deals, and monitor juvenile misconduct such as underage drinking parties. Thus, Detective Paredes can rely on his own discretion in deciding whether to start posting fake profiles online. What advice would you give him?

A Question of Ethics—Law Enforcement 2.0 above explores a relatively new, and somewhat controversial, way police officers can become more involved in the community and fight crime.)

PRESERVING THE PEACE

To a certain extent, the fourth responsibility of the police, that of preserving the peace, is related to preventing crime. Police have the legal authority to use the power of arrest, or even force, in situations in which no crime has yet occurred, but might occur in the immediate future.

In the words of James Q. Wilson, the police’s peacekeeping role (which Wilson believes is the most important role of law enforcement officers) often takes on a pattern of simply “handling the situation.”27 For example, when police officers arrive on the scene of a loud late-night party, they may feel the need to disperse the partygoers or even arrest some of them for disorderly conduct. By their actions, the officers have lessened the chances of serious and violent crimes taking place later in the evening. The same principle is often used when dealing with domestic disputes, which, if escalated, can lead to homicide. Such situations are in need of, to use Wilson’s terminology again, “fixing up,” and police can use the power of arrest, or threat, or coercion, or sympathy to do just that.

The basis of Wilson and George Kelling’s zero-tolerance theory is similar: street disorder—such as public drunkenness, urination, and loitering—signals to both law-abiding citizens and criminals that the law is not being enforced and therefore leads to more violent crime. Hence, if police preserve the peace and “crack down” on the minor crimes that make up street disorder, they will in fact be preventing serious crimes that would otherwise occur in the future.28
At times, police officers encounter a task that requires the “multilayering” of law enforcement. For example, a network of local, state, and federal law enforcement agencies are now involved in an effort to combat a rash of home invasion–style robberies tied to the Mexican drug trade in the Phoenix, Arizona, area. Hundreds of law enforcement agents from the Phoenix Police Department, the Maricopa County Sheriff’s Office, the Arizona Department of Public Safety, and the Bureau of Alcohol, Tobacco, Firearms and Explosive (ATF) have combined forces to fight this activity.

The home invasion crackdown in Phoenix shows how many agencies can be involved in a single operation. There are more than 15,000 law enforcement agencies in the United States, employing more than 1 million people. The various agencies include:

- Approximately 12,500 local police departments.
- Approximately 3,000 sheriffs’ departments.
- More than 1,000 special police agencies, limited to policing parks, schools, airports, and other areas.
- 49 state police departments, with Hawaii being the one exception.
- 70 federal law enforcement agencies.

Each level has its own set of responsibilities, which we shall discuss starting with local police departments.

**MUNICIPAL LAW ENFORCEMENT AGENCIES**

According to the FBI, there are 2.3 state and local police officers for every 1,000 citizens in the United States. This average somewhat masks the discrepancies between the police forces in urban and rural America. As noted in Chapter 1, the vast majority of all police officers work in small and medium-sized police departments (see Figure 4.2 alongside). While the New York City Police Department has about 34,000 employees, 55 percent of all local police departments have 10 or fewer law enforcement officers. Justin Garner, whose heroism was covered in the opening of this chapter, was the only law enforcement officer on duty in Carthage, North Carolina, when he responded to the shots at the Pinelake Health and Rehab Center.

Of the three levels of law enforcement, municipal agencies have the broadest authority to apprehend criminal suspects, maintain order, and provide services to the community. Whether the local officer is part of a large force or the only law enforcement officer in the community, he or she is usually responsible for a wide spectrum of duties, from responding to noise complaints to investigating homicides. Much of the criticism of local police departments is based on the
belief that local police are too underpaid or poorly trained to handle these various responsibilities.32

SHERIFFS AND COUNTY LAW ENFORCEMENT

A vestige of the English shire reeve mentioned earlier in the chapter, the sheriff is still an important figure in American law enforcement. Almost every one of the more than three thousand counties in the United States (except those in Alaska) has a sheriff. In every state except Rhode Island and Hawaii, sheriffs are elected by members of the community for two- or four-year terms and are paid a salary set by the state legislature or county board. As elected officials who do not necessarily need a background in law enforcement, modern sheriffs resemble their counterparts from the political era of policing in many ways. Simply stated, the sheriff is also a politician. When a new sheriff is elected, she or he will sometimes repay political debts by appointing new deputies or promoting those who have given her or him support. This high degree of instability and personnel turnover in many states is seen as one of the weaknesses of county law enforcement.33

SIZE AND RESPONSIBILITY OF SHERIFFS’ DEPARTMENTS Like municipal police forces, sheriffs’ departments vary in size. The largest is the Los Angeles County Sheriff’s Department, with more than 8,600 full-time employees. Of the 3,067 sheriffs’ departments in the country, thirteen employ more than 1,000 officers, while nineteen have only one.34

The image of the sheriff as a powerful figure patrolling vast expanses is not entirely misleading. Most sheriffs’ departments are assigned their duties by state law. About 80 percent of all sheriffs’ departments have the primary responsibility for investigating violent crimes in their jurisdictions. Other common responsibilities of a sheriff’s department include:

• Investigating drug crimes.
• Maintaining the county jail.
• Carrying out civil and criminal processes within county lines, such as serving eviction notices and court summonses.
• Keeping order in the county courthouse.
• Collecting taxes.
• Enforcing orders of the court, such as overseeing the sequestration of a jury during a trial.35

It is easy to confuse sheriffs’ departments and local police departments. Both law enforcement agencies are responsible for many of the same tasks, including crime investigation and routine patrol. There are differences, however. Sheriffs’ departments are more likely to be involved in county court and jail operations and to perform certain services such as search and rescue. Local police departments, for their part, are more likely to perform traffic-related functions than are sheriffs’ departments.36
**THE COUNTY CORONER** Another elected official on the county level is the coroner, or medical examiner. Duties vary from county to county, but the coroner has a general mandate to investigate “all sudden, unexplained, unnatural, or suspicious deaths” reported to the office. The coroner is ultimately responsible for determining the cause of death in these cases. For example, after pop star Michael Jackson died under mysterious circumstances on June 25, 2009, the Los Angeles County coroner determined that the cause of death was a lethal mixture of propofol administered by Conrad Murray, the singer’s personal physician (see page 4 in Chapter 1).

Coroners also perform autopsies and assist other law enforcement agencies in homicide investigations. In certain rare circumstances, such as when the sheriff is arrested or otherwise forced to leave his or her post, the coroner becomes the leading law enforcement officer of the county.

**STATE POLICE AND HIGHWAY PATROLS**

The most visible state law enforcement agency is the state police or highway patrol agency. Historically, state police agencies were created for four reasons:

1. To assist local police agencies, which often did not have adequate resources or training to handle their law enforcement tasks.
2. To investigate criminal activities that crossed jurisdictional boundaries (such as when bank robbers committed a crime in one county and then fled to another part of the state).
3. To provide law enforcement in rural and other areas that did not have local or county police agencies.
4. To break strikes and control labor movements.

The first statewide police organization was the Texas Rangers. When this organization was created in 1835, the Rangers’ primary purpose was to patrol the border with Mexico as scouts for the Republic of Texas Army. The Rangers evolved into a more general-purpose law enforcement agency, and in 1874 they were commissioned as police officers and given law enforcement duties. The Arizona Rangers (created in 1901) and the New Mexico Mounted Police (1905) were formed in a similar manner.

Today, there are twenty-three state police agencies and twenty-six highway patrols in the United States. State police agencies have statewide jurisdiction and are authorized to perform a wide variety of law enforcement tasks. Thus, they provide the same services as city or county police departments and are limited only by the boundaries of the state. In contrast, highway patrols have limited authority. They are limited either by their jurisdiction or by the specific types of offenses they have the authority to control. As their name suggests, most highway patrols concentrate primarily on regulating traffic; specifically, they enforce traffic laws and investigate traffic accidents. Furthermore, they usually limit their activity to patrolling state and federal highways.

**FEDERAL LAW ENFORCEMENT AGENCIES**

Statistically, employees of federal agencies do not make up a large part of the nation’s law enforcement personnel. In fact, only about 15 percent of all law enforcement officers in the United States work for the federal government. Nevertheless, the influence of these federal agencies is substantial. Unlike local police departments, which must deal with all forms of crime, federal agencies have been authorized, usually by Congress, to enforce specific laws or attend to specific situations.

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**Coroner** The medical examiner of a county, usually elected by popular vote.

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Nearly every law enforcement agency hosts a Web site. To find the home pages of the Pennsylvania State Police and the Washington State Highway Patrol, click on Web Links under Chapter Resources at [www.cjinaction.com](http://www.cjinaction.com).
The U.S. Coast Guard, for example, patrols the nation’s waterways, while U.S. Postal Inspectors investigate and prosecute crimes perpetrated through the use of the U.S. mails.

As mentioned in Chapter 1, the most far-reaching reorganization of the federal government since World War II took place in the first half of the first decade of the 2000s. These changes, particularly the formation of the Department of Homeland Security, have had a significant effect on federal law enforcement. (See Figure 4.3 below for the current federal law enforcement “lineup.”) In Chapter 14, we will take a close look at just how profound this effect has been. Here, you will learn the basic elements of the most important federal law enforcement agencies, which are grouped according to the federal department or bureau to which they report.

**THE DEPARTMENT OF HOMELAND SECURITY** On November 25, 2002, President George W. Bush signed the Homeland Security Act. This legislation created the Department of Homeland Security (DHS), a new cabinet-level department designed to coordinate federal efforts to protect the United States against international and domestic terrorism. The department has no new agencies; rather, twenty-two existing agencies were shifted under the control of the secretary of homeland security, a post now held by Janet Napolitano. For example, the Transportation Security Administration (TSA), which was formed in 2001 to place undercover federal agents on commercial flights, was moved from the Department of Transportation to the DHS. U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and the U.S. Secret Service are perhaps the three most visible agencies under the direction of the DHS.

**U.S. Customs and Border Protection (CBP)** One of the most important effects of the Homeland Security Act was the termination of the Immigration and Naturalization Service (INS), which had monitored and policed the flow of immigrants into the United States since 1933. Many of the INS’s duties have been transferred to U.S. Customs and Border Protection (CBP), which polices the flow of goods and people across the United States’ international borders. In general terms, this means that the agency has two primary goals: (1) to keep illegal immigrants (particularly terrorists), drugs, and drug...
traffickers from crossing our borders and (2) to facilitate the smooth flow of legal trade and travel. Consequently, CBP officers are stationed at every port of entry to and exit from the United States. The officers have widespread authority to investigate and search all international passengers, whether they arrive on airplanes, ships, or other forms of transportation.

The U.S. Border Patrol, a branch of the CBP, has the burden of policing both the Mexican and Canadian borders between official ports of entry. In 2009, Border Patrol agents caught nearly 560,000 people entering the country illegally and confiscated more than 4.75 million pounds worth of narcotics. Today, about 21,000 Border Patrol agents guard 19,000 miles of land and sea borders, around double the number of agents ten years earlier.

**U.S. Immigration and Customs Enforcement (ICE)** The CBP shares responsibility for locating and apprehending those persons illegally in the United States with special agents from U.S. Immigration and Customs Enforcement (ICE). While the CBP focuses almost exclusively on the nation’s borders, ICE has a broader mandate to investigate and to enforce our country’s immigration and customs laws. Simply stated, the CBP covers the borders, and ICE covers everything else. The latter agency’s duties include detaining illegal aliens and deporting (removing) them from the United States, ensuring that those without permission do not work or gain other benefits in this country, and disrupting human trafficking operations. Recently, ICE has become more aggressive in its efforts to apprehend and remove illegal immigrants with criminal records. In 2009, ICE officers blanketed California searching for such individuals, arresting nearly three hundred of them over the course of three days. That year, in total, ICE removed about 300,000 illegal immigrants from this country. As we shall see in Chapter 14, both the CBP and ICE are crucial elements of the nation’s anti-terrorism strategy.

Increasingly, local, county, and state law enforcement offices are also aiding the federal immigration agencies with their duties. Under a law that was all but ignored prior to September 11, 2001, nonfederal police can be trained as immigration agents, giving them the power to arrest illegal immigrants who have broken no laws and turn them over to ICE for deportation. By 2010, sixty-seven agencies in twenty-three states had reached agreements with the federal government that allow them to enforce immigration law.

**The U.S. Secret Service** When it was created in 1865, the Secret Service was primarily responsible for combating currency counterfeiters. In 1901, the agency was given the added responsibility of protecting the president of the United States, the president’s family, the vice president, the president-elect, and former presidents. These duties have remained the cornerstone of the agency, with several expansions. After a number of threats against presidential candidates in the 1960s and early 1970s, including the shootings of Robert Kennedy and Governor George Wallace of Alabama, in 1976 Secret Service agents became responsible for protecting those political figures as well.

In addition to its special plainclothes agents, the agency also directs two uniformed groups of law enforcement officers. The Secret Service Uniformed Division protects the grounds of the White House and its inhabitants, and the Treasury Police Force polices the Treasury Building in Washington, D.C. This responsibility includes investigating threats against presidents and those running for presidential office.
THE DEPARTMENT OF JUSTICE The U.S. Department of Justice, created in 1870, is still the primary federal law enforcement agency in the country. With the responsibility of enforcing criminal law and supervising the federal prisons, the Justice Department plays a leading role in the American criminal justice system. To carry out its responsibilities to prevent and control crime, the department has a number of law enforcement agencies, including the Federal Bureau of Investigation; the Bureau of Alcohol, Tobacco, Firearms and Explosives; the federal Drug Enforcement Administration; and the U.S. Marshals Service.

The Federal Bureau of Investigation (FBI) Initially created in 1908 as the Bureau of Investigation, this agency was renamed the Federal Bureau of Investigation (FBI) in 1935. One of the primary investigative agencies of the federal government, the FBI has jurisdiction over nearly two hundred federal crimes, including a number of white-collar crimes, espionage (spying), kidnapping, extortion, interstate transportation of stolen property, bank robbery, interstate gambling, and civil rights violations. With its network of agents across the country and the globe, the FBI is also uniquely positioned to combat worldwide criminal activity such as terrorism and drug trafficking.

The agency also provides valuable support to local and state law enforcement agencies. The FBI’s Identification Division maintains a large database of fingerprint information and offers assistance in finding missing persons and identifying the victims of fires, airplane crashes, and other disfiguring disasters. The services of the FBI Laboratory, the largest crime laboratory in the world, are available at no charge to other agencies. Finally, the FBI’s National Crime Information Center (NCIC) provides lists of stolen vehicles and firearms, missing license plates, vehicles used to commit crimes, and other information to local and state law enforcement officers through the NCIC database. The FBI employs about 34,000 people and had a budget of approximately $7.9 billion.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) As its name suggests, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is primarily concerned with the illegal sale, possession, and use of firearms and the control of untaxed tobacco and liquor products. The Firearms Division of the agency has the responsibility of enforcing the Gun Control Act of 1968, which sets the circumstances under which firearms may be sold and used in this country. The bureau also regulates all gun trade between the United States and foreign nations and collects taxes on all firearm importers, manufacturers, and dealers. In keeping with these duties, the ATF is responsible for policing the illegal use and possession of explosives. Furthermore, the ATF is charged with enforcing federal gambling laws.

The Drug Enforcement Administration (DEA) With a $3.4 billion budget and more than 5,500 special agents, the Drug Enforcement Administration (DEA) is one of the most important law enforcement agencies in the country. The mission of the DEA is to enforce domestic drug laws and regulations and to assist other federal and foreign agencies in combating illegal drug manufacture and trade on an international scale.
ARNOLD E. BELL
FEDERAL BUREAU OF INVESTIGATION (FBI) AGENT

As an FBI agent, I work for the largest investigative arm of the U.S. Department of Justice. Since September 11, 2001, our primary focus has shifted from criminal activity to counterterrorism. This has been a difficult transformation for many of us “old timers” because we grew up in the Bureau doing criminal work. We all recognize, however, the importance of this new challenge and, despite the difficulties, I believe we have been successful in fulfilling both missions.

WORKING THE CYBER BEAT I came to the FBI from the U.S. Army, where I worked as a crewman on a UH-1 helicopter and subsequently as a special agent with the U.S. Army Criminal Investigation Command. My work experience in the U.S. Army and degree from St. Leo College (now University) provided the educational foundation that allowed entry into the FBI. As I have ascended up the ranks, though, I have been able to receive significant management- and cyber-related training.

Coming out of the FBI Academy in Quantico I was assigned to our Los Angeles division, where I spent the next twelve years. It was a particularly interesting time to be working in Los Angeles, which was experiencing a boom in bank robberies. During the most intense stretches, we were averaging between five and seven bank robberies a day! When I wasn’t chasing down a bank robber, I had my hands full with hunting down fugitives, working against organized crime, and dealing with public corruption. I am currently assigned to the FBI’s cyber division as an assistant section chief. The primary mission of my division is to combat cyber-based terrorism and hostile-intelligence operations conducted via the Internet, and to address general cyber crime. As assistant section chief of the cyber crime section, I am responsible for the general cyber crime program of the FBI with specific focus on the online sexual exploitation of children.

FROM HERE TO CHINA I have had the good fortune to be involved with many exciting and high-profile assignments over my career. In particular, I remember working on an international kidnapping case involving a teenage boy from San Marino, California, who was abducted a week before Christmas in 1998. The crime immediately took top priority in my squad, and we worked twenty-hour days from the moment the kidnapping was called in until we rescued the boy more than two weeks later. On Christmas Day, I took a couple hours off to be with my kids, and then I was back in the office. It could have been worse: several of my colleagues had their leaves cancelled due to the urgency of the case. Nobody complained, however—we knew the stakes.

The case required close coordination with the People’s Republic of China, as the ransom calls had been traced to the southeastern coast of that immense country. Ultimately, we coordinated a money drop in the city of Fuzhou, China, and simultaneously raided a home in Temple City, California, where we rescued the young victim. I was the first person into the Temple City home, where we arrested two persons. We also apprehended four suspects in China and recovered all the ransom money. The reunion between the boy and his mother is burned into my memory forever. He talked with little emotion as he was taken to the hospital for examination. Upon the sight of his mother, however, both of them broke down in tears—as did I, my partner, and the San Marino Police detective who had been working with us. The feeling I experienced at that moment validated my decision to become a law enforcement officer.
level. The agency also enforces the provisions of the Controlled Substances Act, which governs the manufacture, distribution, and dispensing of legal drugs, such as prescription drugs.42

**The U.S. Marshals Service** The oldest federal law enforcement agency is the U.S. Marshals Service. In 1789, President George Washington assigned thirteen U.S. Marshals to protect his attorney general. That same year, Congress created the office of the U.S. Marshals and Deputy Marshals. Originally, the U.S. Marshals acted as the main law enforcement officers in the western territories. Following the Civil War (1861–1865), when most of these territories had become states, these agents were assigned to work for the U.S. district courts, where federal crimes are tried. The relationship between the U.S. Marshals Service and the federal courts continues today and forms the basis for the officers’ main duties, which include:

1. Providing security at federal courts for judges, jurors, and other courtroom participants.
2. Controlling property that has been ordered seized by federal courts.
3. Protecting government witnesses who put themselves in danger by testifying against the targets of federal criminal investigations. This protection is sometimes accomplished by relocating the witnesses and providing them with different identities.
4. Transporting federal prisoners to detention institutions.
5. Investigating violations of federal fugitive laws.43

**THE DEPARTMENT OF THE TREASURY** The Department of the Treasury, formed in 1789, is mainly responsible for all financial matters of the federal government. It pays all the federal government’s bills, borrows money, collects taxes, mints coins, and prints paper currency. The largest bureau of the Treasury Department, the Internal Revenue Service (IRS), is concerned with violations of tax laws and regulations. The bureau has three divisions, only one of which is involved in criminal investigations. The examination branch of the IRS audits the tax returns of corporations and individuals. The collection division attempts to collect taxes from corporations or citizens who have failed to pay the taxes they owe. Finally, the criminal investigation division investigates cases of tax evasion and tax fraud. Criminal investigation agents can make arrests. The IRS has long played a role in policing criminal activities such as gambling and selling drugs for one simple reason: those who engage in such activities almost never report any illegally gained income on their tax returns. Therefore, the IRS is able to apprehend them for tax evasion. The most famous instance of this took place in the early 1930s, when the IRS finally arrested famed crime boss Al Capone—responsible for numerous violent crimes—for not paying his taxes.
Private Security

Even with increasing numbers of local, state, and federal law enforcement officers, the police do not have the ability to prevent every crime. Recognizing this, many businesses and citizens have decided to hire private guards for their properties and homes. In fact, more than $100 billion a year is spent worldwide on private security. In the United States, the National Association of Security Companies puts the figure at $13 billion. More than 10,000 firms employing around 1.1 million people provide private security services in this country, compared with about 700,000 public law enforcement agents.

Privatizing Law Enforcement

In the eyes of the law, a private security guard is the same as any other private person when it comes to police powers such as being able to arrest or interrogate a person suspected of committing a crime. Ideally, a security guard—lacking the training of a law enforcement agent—should only observe and report criminal activity unless use of force is needed to prevent a felony.

Citizens’ Arrests

Any private citizen (including private security guards) may perform a “citizen’s arrest” under certain circumstances. The California Penal Code, for example, allows a private person to arrest another:

- For a public offense committed in his or her presence.
- When the person arrested has committed a felony, even if it was not in the arrester’s presence, if he or she has reasonable cause to believe that the person committed the felony.

Obviously, these are not very exacting standards, and, in reality, private security guards have many, if not most, of the same powers to prevent crime that a police officer does.

The Deterrence Factor

As a rule, however, private security is not designed to replace law enforcement. It is intended to deter crime rather than stop it. A uniformed security guard patrolling a shopping mall parking lot or a bank lobby has one primary function—to convince a potential criminal to search out a shopping mall or bank that does not have private security. For the same reason, many citizens hire security personnel to drive marked cars through their neighborhoods, making the latter a less attractive target for burglaries, robberies, vandalism, and other crimes.
PRIVATE SECURITY TRENDS

Despite the proliferation of private security, many questions remain about this largely unregulated industry. In March 2009, Jessie Walker, a sixty-four-year-old security guard for Markman’s Diamonds & Fine Jewelry in West Knoxville, Tennessee, was charged with aggravated assault for shooting Kevin Bowman and Elizabeth Day. Walker had intervened when he heard the couple having a loud argument in the store’s parking lot. When the altercation continued, Walker eventually drew his handgun and shot Bowman and Day, neither of whom was armed, sending them to the hospital in critical condition. The only requirement for becoming a weapons-licensed security guard in Tennessee is eight hours of training.48

LACK OF STANDARDS As there are no federal regulations regarding private security, each state has its own rules for employment as a security guard. In several states, including California and Florida, prospective guards must have at least forty hours of training. Twenty-nine states, however, have no specific training requirements, and ten states do not regulate the private security industry at all. By comparison, Spain mandates 160 hours of training in law enforcement theory, 20 hours of practical training, and 20 hours of annual continuing education for anybody hoping to find employment as a security guard.49

The quality of employees is also a problem for the U.S. private security industry. Given the low pay (see Figure 4.4 below) and lack of benefits such as health insurance, paid vacation time, and sick days, the industry does not always attract highly qualified and motivated recruits.50 “At those wages,” notes one industry specialist, “you’re competing with McDonald’s.”51 To make matters worse, fewer than half of the states require a fingerprint check for applicants, making it relatively easy for a person with a criminal record in one state to obtain a security guard position in another.52

The security industry is finding it much easier to uncover past convictions of employees and job applicants thanks to the Private Security Officer Employment Authorization Act of 2004.53 The legislation, which authorizes the FBI to provide background checks for security firms, was spurred by congressional concern over possible terrorist attacks on shipping ports, water treatment facilities, telecommunications facilities, power plants, and other strategic targets that are often secured by private guards. In the first year of this program, the FBI found that 990,000 of the estimated 9 million applicants for private security positions (about 11 percent) had criminal records.54

CONTINUED GROWTH IN THE INDUSTRY Issues surrounding private security promise to gain even greater prominence in the criminal justice system, as indicators point to

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**Figure 4.4 Average Salaries in Law Enforcement**

In New York City, servers in restaurants, landscapers, hotel desk clerks, and domestic workers all earn more than private security guards. Nationwide, as this graph shows, security guards are the lowest paid of the “protective service occupations.”

<table>
<thead>
<tr>
<th>Occupation</th>
<th>Average Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detectives and criminal investigators</td>
<td>$60,000</td>
</tr>
<tr>
<td>Police and sheriff’s patrol</td>
<td>$40,000</td>
</tr>
<tr>
<td>Fish and game wardens</td>
<td>$30,000</td>
</tr>
<tr>
<td>Correctional officers</td>
<td>$30,000</td>
</tr>
<tr>
<td>Airport screeners</td>
<td>$30,000</td>
</tr>
<tr>
<td>Parking enforcement</td>
<td>$30,000</td>
</tr>
<tr>
<td>Security guards</td>
<td>$30,000</td>
</tr>
<tr>
<td>Minimum wage</td>
<td>$10,000</td>
</tr>
</tbody>
</table>

higher rates of growth for the industry. The Hallcrest Report II, a far-reaching overview of private security trends funded by the National Institute of Justice, identifies four factors driving this growth:

1. An increase in fear on the part of the public triggered by media coverage of crime.
2. The problem of crime in the workplace. According to the University of Florida’s National Retail Security Survey, American retailers lose more than $40 billion a year because of shoplifting and employee theft.55
3. Budget cuts in states and municipalities that have forced reductions in the number of public police, thereby raising the demand for private ones.
4. A rising awareness of private security products (such as home burglar alarms) and services as cost-effective protective measures.56

Another reason for the industry’s continued health is terrorism. Private security is responsible for protecting more than three-fourths of the nation’s likely terrorist targets, such as power plants, financial centers, dams, malls, oil refineries, and railroad lines. When security guards were caught sleeping on the job at the Turkey Point nuclear power plant near Miami, Florida, in 2008, the incident was greeted not with chuckles but with alarm.57 To avoid this kind of negative publicity, private security companies are becoming more professional, with better screened and trained employees. “The importance of [the industry] has resulted in a crackdown on those who think they can sit around and do nothing,” says Gregory A. Thomas, a senior manager at Columbia University’s National Center for Disaster Preparedness.58

SELF ASSESSMENT

Fill in the blanks and check your answers on page 117.

Private security is designed to _______ crime rather than to prevent it. The majority of states require _______ hours of training and _______ background checks for security guards. This perceived lack of standards in the industry is changing, however, as private security companies are responsible for protecting many of the country’s likely _______ targets.
Describe the first systems of law enforcement in colonial America. Constables and night watchmen were drawn from the ranks of ordinary citizens. Each colony had a sheriff in each county who selected juries and managed incarcerations.

Tell how the patronage system affected policing. During the political era of policing (1840–1930), bribes paid to police officers by citizens and business owners often went into the coffers of the local political party. This became known as the patronage system.

List the four basic responsibilities of the police. (a) To enforce laws, (b) to provide services, (c) to prevent crime, and (d) to preserve the peace.

List five main types of law enforcement agencies. (a) Municipal police departments; (b) sheriffs’ departments; (c) special police agencies, such as those limited to school protection or airport security; (d) state police departments (in all states except Hawaii); and (e) federal law enforcement agencies.

Indicate some of the most important law enforcement agencies under the control of the Department of Homeland Security. (a) U.S. Customs and Border Protection, which polices the flow of goods and people across the United States’ international borders and oversees the U.S. Border Patrol; (b) U.S. Immigration and Customs Enforcement, which investigates and enforces our nation’s immigration and customs laws; and (c) the U.S. Secret Service, which protects high-ranking federal government officials and federal property.

Identify the duties of the FBI. The FBI has jurisdiction to investigate hundreds of federal crimes, including white-collar crime, kidnapping, bank robbery, and civil rights violations. The FBI is also heavily involved in combating terrorism and drug trafficking operations in the United States and around the world. Finally, the agency provides support to state and local law enforcement agencies through its crime laboratories and databases.

Analyze the importance of private security today. In the United States, businesses and citizens spend $13 billion a year on private security. Heightened fear of crime and increased crime in the workplace have fueled the growth in spending on private security.

Key Terms
- coroner 108
- Federal Bureau of Investigation (FBI) 111
- patronage system 98
- professional model 99
- private security 114
- sheriff 107

Self Assessment Answer Key
Page 102: i. political; ii. patronage; iii. reform; iv. professional; v. community; vi. anti-terrorism
Page 106: i. enforce; ii. services; iii. prevent; iv. preserve
Page 113: i. sheriffs'; ii. highway patrol; iii. Federal Bureau of Investigation (FBI); iv. Drug Enforcement Administration (DEA); v. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
Page 116: i. deter; ii. zero; iii. no; iv. terrorist
Questions for Critical Analysis

1. Increased professionalism in police forces has been made possible by two-way radios, telephones, and automobiles. In what ways has society not benefited from this increased professionalism? Explain your answer.

2. Which of the four basic responsibilities of the police do you think is most important? Why?

3. One of the major differences between a local police chief and a sheriff is that the sheriff is an elected official, while the police chief is appointed. What are some possible problems with having a law enforcement official who, like any other politician, is responsible to voters? What are some of the possible benefits of this situation?

4. Many immigration rights advocates dislike the idea of giving local law enforcement agents the power to detain illegal immigrants who have not committed a crime. What do you think the implications of this power are for police-immigrant relations? Why do you think that some local police departments would rather not take on this responsibility?

5. What strategies could be implemented—both by government agencies and private corporations—to improve the quality and performance of the private security industry?

Online Resources

1. Get the most out of the materials in this chapter—go to the Criminal Justice in Action companion Web site at www.cjinaction.com, where you will find more resources to help you study. Resources include Web links, learning objectives, Internet exercises, quizzes, and flash cards.

2. Learn about potential criminal justice careers discussed in this chapter—explore careers online at www.cjinaction.com.

Notes

15. Local Police Departments, 2003, Table 68, page 31; and Sheriff’s Offices, 2003, Table 68, page 31.
33. Vern L. Folley, American Law Enforcement (Boston: Allyn & Bacon, 1980), 228.
34. Sheriffs’ Offices, 2003, 2.
35. Ibid., 15–18.
42. 21 U.S.C.A. section 824(a)(2).