

CRIMINAL JUSTICE



AN INTRODUCTORY TEXT FOR THE 21ST CENTURY

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FRANK SCHMALLEGER

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Criminal Justice Today

AN INTRODUCTORY TEXT
FOR THE TWENTY-FIRST CENTURY

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PEARSON

This book is dedicated to my beautiful wife,
Ellen “Willow” Szirandi Schmalleger, my true companion,
whose wonderful, happy, and free spirit
is a gift to all who know her.

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New to This Edition

Chapter-Specific Changes

Chapter 1: What Is Criminal Justice?

- The chapter opening story now describes the 2015 justice system crisis that arose following refusals by grand jurors in Missouri and New York to indict police officers in the death of two black suspects in separate incidents.
- “Milestones in crime history” now recognize the present-day impact of computer and high-technology crimes
- The late-2014 assassination of two New York City police officers as they sat in their marked patrol car on a Brooklyn Street is now discussed.
- The 2014 trial of Oscar Pistorius, the South African Paralympic athlete known as the “Blade Runner”, who was convicted of the shooting death of his model girlfriend, Reeva Steenkamp is now discussed.
- Mention is made of Justin Bieber’s Miami Beach, Florida arrest in 2014, where he was charged with speeding in a yellow Lamborghini, for driving with an expired license, and for driving under the influence of alcohol, marijuana, and prescription drugs.
- A new key term, “procedural fairness,” has been added to the chapter.
- The 2015 “work stoppage” by NYPD officers is described.

Chapter 2: The Crime Picture

- The chapter opening story now illustrates the growing significance of cybercrimes with a tale about how a county sheriff’s office was made to pay a fee via ransomware to regain access to their important files. The discussion of cybercrimes has been enhanced, recognizing them as contributing to a higher rate of crime than is commonly acknowledged.
- Updated crime statistics are found throughout the chapter.
- A new and detailed box on marijuana legalization and decriminalization is included, along with a map of marijuana legalization initiatives.
- A new definition of “rape” is provided, reflecting a change by the FBI in its Uniform Crime Reporting terminology.
- A new example of the crime of larceny is provided.
- The CJ Issues box dealing with race and the justice system has been modified and updated to include recent incidents in Ferguson, Missouri, and elsewhere.
- New photos are used to illustrate racial tensions affecting the justice system.

- A new “Freedom v. Safety” box now describes the FBI’s concern with encryption technology, and asks if citizens can have too much privacy.
- The discussion of cybercrime has been enhanced.
- The URL for the federal government’s Elder Justice website is now provided.
- The information on hate crimes has been updated.
- A new study on gun control laws and their effectiveness at preventing gun crime is discussed.
- The potential for new 3-D printers to be used in the fabrication of handguns is now discussed, and a photo of such a weapon is provided.

Chapter 3: The Search for Causes

- A new chapter opening photo indicates the importance of new technologies to law enforcement agencies.
- The arrest of rap music mogul, “Surge” Knight on murder charges now opens the chapter.
- New line art depicts the number of persons convicted of homicide, by gender and region of the world.
- Statistics and crime data throughout the chapter have been updated.

Chapter 4: Criminal Law

- A new chapter opening photo has been added.
- The CJ News box detailing the rule of law has been updated, including the photos it contains.
- A discussion of former New Orleans mayor, Ray Nagin, has been added. Nagin was convicted of 20 counts of bribery, conspiracy, and money laundering—crimes that he committed while serving as mayor.
- The offenses of treason and espionage have been better separated in the text, and a new story describing the crime of espionage has been added.
- A story and photo of Saiqa Akhter, the Texas woman who was found not guilty by reason of insanity in 2014 after admitting to the murder of her two young children by strangulation, has been added.

Chapter 5: Policing: History and Structure

- Added photo and brief discussion of the Center for Evidence-Based Crime Policy (CEBCP) at Virginia’s George Mason University.

- Replaced photo of the International Law Enforcement Academy in Budapest, Hungary. The new photo shows the author visiting the academy.
- Added a new CJ News box discussing the Federal Bureau of Investigation's Next Generation Identification (NGI) System. The System was developed to expand the Bureau's biometric identification capabilities, ultimately replacing the FBI's Integrated Automated Fingerprint Identification System (IAFIS).
- Three new key terms and their definitions have been added to this chapter: hot-spot policing, predictive policing, and smart policing.
- A new CJ Careers box focusing on private security has been added to the chapter.

Chapter 6: Policing: Purpose and Organization

- The discussion of police officer discretion has been removed from this chapter and has been moved to a later chapter.
- The discussion of police officer professionalism and ethics has been removed from this chapter and has been moved to a later chapter.
- A graphic detailing policing purposes has been added.
- The 2014 death of 18-year-old Michael Brown, who was shot and killed by a Ferguson, Missouri, police officer is now the chapter opening story. The shooting sparked days of racially-charged protests and revealed a deep distrust of the police by minorities.
- The discussion of the police use of recording devices, especially body cameras, has been enhanced.
- Issues box has been added focusing on the use of social media in policing.

Chapter 7: Policing: Legal Aspects

- The chapter opening story has been updated.
- The chapter now includes discussion of the 2014 U.S. Supreme Court case of *Prado Navarette v. California*, in which the court held that an anonymous and uncorroborated tip can provide a sufficient basis for a police officer's reasonable suspicion to make an investigative stop.
- The 2014 U.S. Supreme Court case of *Feernandez v. California* is now discussed. In that case, the court ruled that where multiple occupants are involved, the search of a dwelling is permissible without a warrant if one person living there consents after officers have removed another resident who objects.

- A new CJ News box has been added that discusses the 2014 case of *Riley v. California*, in which the U.S. Supreme Court ruled that under most circumstances police officers are required to obtain a warrant before accessing and searching the data stored on a suspect's cell phone.
- Additional information on the legal issues surrounding the use of GPS tracking by the police is now included in the chapter.

Chapter 8: Policing: Issues and Challenges

- The material on police discretion has been moved here from Chapter 6.
- A discussion of the dangers of police work has been moved here from Chapter 6.
- The discussion of police professionalism has been moved to this chapter.
- A new key term, police subculture, has been added to the chapter and a definition is provided.
- The corruption and integrity section now includes a story about Puerto Rican police officers who ran a criminal organization out of their department's offices.
- Recent initiatives by the COPS office are now discussed.
- Some new photographs have been added, while others have been updated.
- The need for first responders to protect themselves against diseases such as Ebola is now discussed.
- The diagram depicting stress and fatigue among police officers has been enhanced.
- The Freedom or Safety? box on religion and public safety has been updated.
- The graphic depicting the police use of force continuum has been updated, along with the discussion of such force.
- The discussion of racial profiling has been expanded.
- Discussion has been added of one of the earliest lawsuits (*Thurman v. City of Torrington*) brought against a city police department for ignoring domestic abuse restraining orders.

Chapter 9: The Courts: Structure and Participants

- A new chapter opening story highlights the importance of courts as a central component of the American system of justice.
- A new graphic depicts that structure of state courts in two contrasting jurisdictions.

- Two new key terms have been added to the chapter: courts of general jurisdiction, and courts of limited jurisdiction.
- The CJ News box on America’s judiciary has been updated and expanded.
- The information on judges’ pay has been updated.
- The information on public defenders has been updated, and a revised graphic now shows state government indigent defense expenditures.
- A new CJ News box on DNA sampling has been added to the chapter.
- An update is provided on the use of camera in the chambers of the U.S. Supreme Court.

Chapter 10: Pretrial Activities and the Criminal Trial

- A new CJ Careers box has been added to the chapter, featuring a bail bond agent.
- The discussion of the grand jury system, used in some states, has been updated and expanded.
- The case of Oscar Pistorius, the South African Paralympic athlete, who was convicted in 2014 of the shooting death of his girlfriend is featured, and a photo of Pistorius is included.
- The CJ News box on the use of social media by jurors has been modified and expanded.

Chapter 11: Sentencing

- The discussion of how “get-tough on crime” legislation has led to heightened prison populations has been clarified.
- Two new key terms have been added to the chapter: recidivism and recidivism rate.
- Recent changes in California’s three-strikes law are highlighted and discussed.
- Discussion of the proposed federal Smarter Sentencing Act has been updated.
- A new top-level heading, “Sentencing and Today’s Prison Crisis,” has been added to the chapter. That discussion includes a new figure comparing historical rates of imprisonment with crime rates.
- A new CJ Careers box has been added featuring a medicolegal death investigator.
- A new piece of line art depicting the four traditional sentencing options available to criminal court judges has been added.
- Statistics and data have been updated throughout the chapter.

- Convicted child-killer Kevin Ray Underwood is now discussed and a photo of him has been added.
- Discussion of the 2014 U.S. Supreme Court case of *Hall v. Florida* has been added. In that case, the Court ruled that states cannot rely solely on an IQ score to bar an inmate from claiming mental disability in the face of execution.

Chapter 12: Probation, Parole, and Intermediate Sanctions

- All data in the chapter have been completely updated.
- A new Paying for It box describing cost-efficient parole has been added.
- The discussion of the use of GPS technology in parole supervision has been expanded.
- A new key term (desistance) and its definition have been added to the chapter.

Chapter 13: Prisons and Jails

- A 2014 federal court ruling ordering California parole officials to implement a plan to free all nonviolent second-strike offenders (except sex offenders) on parole after serving half of their sentences, is described.
- All data, statistics, and graphics detailing the prison population in various states, and in federal government facilities, have been updated.
- The discussion of the evidence-based movement in corrections has been enlarged.
- The chapter’s discussion of the purpose of imprisonment has been clarified.
- A number of the photographs have been replaced in order to keep abreast of changes now afoot in corrections.
- A discussion of California’s Proposition 47 has been added. The ballot measure changed many felonies to misdemeanors and is anticipated to lead to a decrease in correctional populations in the state.
- A new graphic showing the impact of realignment on prison populations in the state of California has been added.
- A new figure, explaining federal Bureau of Prisons institutional security levels and terminology has been added.
- The CJ Issues box containing arguments for and against the privatization of prisons has been substantially updated.

Chapter 14: Prison Life

- Data on both male and female prisoners have been updated.

- A new CJ Issues box describing the (United Nations) Bangkok Rules on the Treatment of Female Prisoners is now included.
- A description of the federal Bureau of Prisons Mothers and Infants Together program has been added.
- A photograph depicting the role of women in correctional administration has been added.
- A table describing the ten most influential security threat groups (gangs) in American prisons has been added.
- The 2015 U.S. Supreme Court case of *Holt v. Hobbs*, regarding a prisoner's rights to "religious exercise" has been added.
- Information on mentally ill prisoners has been expanded.
- A discussion of the 2015 attack by Islamic terrorists on the offices of French newspaper *Charlie Hebdo*, is now included in the context of prisoner radicalization.

Chapter 15: Juvenile Justice

- The chapter now begins with a discussion of the U.S. Supreme Court's recognition of recent advances in understanding of adolescent brain development—to include the Court's decisions of *Graham v. Florida* (2010) and *Miller v. Alabama* (2012).
- The U.S. Supreme Court case of *J.D.B. v. North Carolina* (2011) has been added to the graphic depicting the legal environment of juvenile justice.
- All statistics have been updated, to include those regarding juveniles held in public and private facilities.

Chapter 16: Drugs and Crime

- The chapter opening story about Joaquin "El Chapo" Guzman has been updated to account for his arrest by Mexican authorities and a request by the U.S. to extradite him from that country.
- The discussion of marijuana legalization and decriminalization has been expanded in the wake of the substance's new legal status in a number of states.
- Lunesta (eszopiclone) and Ambien (zolpidem) have been added to the table of major controlled substances under the federal Controlled Substances Act.
- All of the data and statistics on drug use and abuse have been updated throughout.
- A photograph of Denver's 2015 Cannabis Cup celebration is now included in the chapter.
- The information and graphic on federal drug control spending has been updated.

- Asset forfeiture is now discussed in the context of the purchase by the St. Louis Police Department of a new headquarters building using forfeited funds.
- A new timeline depicting the development of federal drug control legislation has been added.

Chapter 17: Terrorism, Multinational Criminal Justice and Global Issues

- The title of this chapter has changed to better reflect its contents.
- A new story opens the chapter and focuses on "lone wolf" would-be terrorist Christopher Lee Cornell who was arrested by the FBI in 2015.
- The case of Raif Badawi, the Saudi Arabian blogger sentenced to 1,000 lashes, is now discussed. A photo of Badawi has also been added.
- Data throughout the chapter have been updated.
- The 13th United Nations crime congress, held in Qatar in 2015, is now discussed.
- The discussion of the International Criminal Court (ICC) has been updated.
- Cyberterrorism is now better distinguished from other forms of terrorism.
- The list of foreign terrorist organizations has been updated, as has the map showing the location of such organizations.

Chapter 18: High-Technology Crimes

- The chapter opening story has changed to describe the cyberattack on Sony Pictures by North Korean agents.
- The case of Russian national Aleksandr Andreevich Panin, who plead guilty in U.S. federal court to conspiracy to commit wire and bank fraud is now discussed.
- All data (on cybercrimes) throughout the chapter have been updated.
- The 2015 Social Media Internet Law Enforcement (SMILE) national conference is now discussed.
- The discussion of the use of automatic plate recognition (APR) technology by law enforcement agencies has been expanded.
- The CJ News box describing the activities of Kim Dotcom (AKA Megaupload) has been updated.
- A new key term, sentinel event, has been added, along with its description. A detailed description of sentinel events in criminal justice is now included.

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Preface

Many students are attracted to the study of criminal justice because it provides a focus for the tension that exists within our society between individual rights and freedoms, on the one hand, and the need for public safety, security, and order, on the other. Recently, 21st century technology in the form of social media, smartphones, and personal online videos, has combined with perceived injustices in the day-to-day operations of the criminal justice system, culminating in an explosion of demands for justice for citizens of all races and socioeconomic status—especially those whose encounters with agents of law enforcement turn violent. A “Black Lives Matter” movement that began with the shooting of an unarmed black teenager in Ferguson, Missouri, in 2014, has developed into a widespread social movement that demands justice for all.

The tension between individual rights and public order is the theme around which all editions of this textbook have been built. That same theme is even more compelling today because of the important question we have all been asking in recent years: How much personal freedom are we willing to sacrifice to achieve a solid sense of individual and group security?

Although there are no easy answers to this question, this textbook guides criminal justice students in the struggle to find a satisfying balance between freedom and security. True to its origins, the 14th edition focuses on the crime picture in America and on the three traditional elements of the criminal justice system: police, courts, and corrections. This edition has been enhanced with additional “Freedom or Safety” boxes, which time and again question the viability of our freedoms in a world that has grown ever more dangerous. This edition also asks students to evaluate the strengths and weaknesses of the American justice system as it struggles to adapt to an increasingly multicultural society and to a society in which the rights of a few can threaten the safety of many—especially in the modern context of a War Against Terrorism.

It is my hope that this TEXT will ground students in the important issues that continue to evolve from the tension between the struggle for justice and the need for safety. For it is on that bedrock that the American system of criminal justice stands, and it is on that foundation that the future of the justice system—and of this country—will be built.

FRANK SCHMALLEGER, PH.D.

Distinguished Professor Emeritus,

The University of North Carolina at Pembroke

Key Features Include

Freedom OR safety? YOU decide boxes in each chapter highlight the book’s ever-evolving theme of individual rights versus public order, a hallmark feature of this text since the first edition. In each chapter of the text, Freedom or Safety boxes build on this theme by illustrating some of the personal rights issues that challenge policymakers today. Each box includes critical-thinking questions that ask readers to ponder whether and how the criminal justice system balances individual rights and public safety.

freedom OR safety? YOU decide
A Dress Code for Bank Customers?



Many banks and some retail establishments require customers to remove hats, hoodies, and sunglasses before entering their place of business. Do you see such requests as limitations on personal rights and freedoms, or as reasonable and necessary precautions?

Hoodies, or hooded sweatshirts, made the national news in 2012 following the fatal shooting of Trayvon Martin in Florida. Martin, a black 17-year-old, was wearing a hoodie when he was apparently confronted by George Zimmerman, a Hispanic community watch volunteer working in a gated community. Following the shooting, hooded sweatshirts became a symbol of racial profiling and harassed protesters, including one by U.S. Representative Bobby Lujan (D-NM), who wore sunglasses and a hoodie on the House floor.

Even before the Martin shooting, however, dark glasses, hooded sweatshirts, and hats had been banned by some banks—which called them the “uniform of choice” for bank robbers. In an effort to thwart an increase in robberies, many banks post requests for customers to remove hats, hoodies, and sunglasses before entering financial establishments. In 2009, for example, Houston-area banks began putting up signs requiring that customers remove even their cowboy hats—a request that some saw as going too far. Since Sterling Bank, with 60 branches across Texas, asked customers to follow such rules, none of its branches has been robbed. Graham Fleming, a Sterling Bank spokesman, said, “We don’t want our regular customers thinking that we’re telling them how they ought to dress. But it seems reasonable and not too much to ask to give us an advantage over the robber.”

Not all banks, however, are following the trend. “I think what you have to weigh is convenience to customers versus the added benefits in terms of identifying suspects with a measure like this,” said Melodie Jackson, spokeswoman for Citizens Bank of Massachusetts. “We’re taking a very close look at things.”

Nonetheless, dress code signs are now commonplace at banks throughout the country, and it is likely that the request will soon become the de facto standard of all financial venues.


You Decide

Are bank “dress codes” asking too much of customers? How would you feel about doing business with a bank that posts requests like those described here? Would you discriminate against certain members of the public if they dressed in ways that you considered suspicious? If so, what type of clothing would cause your suspicion?

References: Cindy Hirshel, “Some Banks Strike Hats, Sunglasses from Dress Code,” *Houston Chronicle*, April 23, 2009; Michael S. Rosenwald and Emily Rommelow, “Banks That Dress Code: Is Deter Robbers,” *Boston Globe*, July 13, 2002; and “Major Banks Altering Unwaring Robbers,” *Fortune Magazine*, online, October 28, 2002. <http://www.fox.com/story/0,2933,17822,00.html> (accessed August 8, 2012).

CJ Careers boxes outline the characteristics of a variety of criminal justice careers in a Q&A format, to introduce today’s pragmatic students to an assortment of potential career options and assist them in making appropriate career choices.

CJ | CAREERS
Police Officer



Name: Narcotics Agent Christian Tomas
Position: QRT Agent (Quick Response Team/Narcotics) City of West Palm Beach, Florida
College attended: Palm Beach State College
Major: Psychology
Year hired: 2007

Please give a brief description of your job.
As a narcotics agent, my co-workers and I target street-level drug dealers and other quality of life issues, to include prostitution as well as other illegal business practices.

We use our own initiative to begin investigations throughout the city. We buy narcotics in an undercover capacity and work with the S.W.A.T. team by writing search warrants for them to execute.

What is a typical day like? Typical day involves doing research and identifying a target. Once an investigation is complete, we move on to another. Some days are spent primarily on surveillance; while on others we are directly involved with drug dealers.

What qualities/characteristics are most helpful for this job? Common sense, honesty, integrity, confidence, self-discipline, dedication, humility, composure, physical and mental toughness, tactical awareness and the ability to work with minimal, to no, supervision.

What is a typical starting salary? The West Palm Beach Police Department starting salary is \$45,324 annually, with excellent benefits.

What is the salary potential as you move up into higher-level jobs? An officer reaching PFC (Patrolman first Class) and MPO (Master Patrol Officer) will receive a 2 and 1/2% raise for each level attained. Promotion in rank produces significant raises over time.

What advice would you give someone in college beginning studies in criminal justice? This isn’t a job for someone expecting to win all of the battles. You try as hard as you can, but you have to be prepared for some disappointments when a case doesn’t go the way you wanted it to. Get your degree, as it will help you get promoted. When choosing a department, make sure that it’s the kind of department that you are looking for. I came to West Palm Beach for the experience and to be busy. I wanted to be challenged and to do as much as I possibly could. Policing is a very rewarding career if you have the motivation and determination to succeed.

CJ News boxes in each chapter present case stories from the media to bring a true-to-life dimension to the study of criminal justice and allow insight into the everyday workings of the justice system.

CJ | NEWS
Evidence of "Warrior Gene" May Help Explain Violence



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The media nicknamed MAOA-L the "warrior gene" after it was identified as highly prevalent in a constantly warring Maori tribe. Another study found that boys with an MAOA variation were more likely to join gangs and become some of the most violent members. Researchers now know that MAOA-L may alter the very structure of the brain. Using structural magnetic resonance imaging (MRI) scanning, a 2016 study found that men with the gene variant were much more likely to have abnormalities in an area of the brain associated with behavior than were other men. Functional MRI scanning then showed that these men had difficulty inhibiting strong emotional impulses. Lawyers for violent defendants have latched on to the growing science. In the 2009 murder trial of Bradley Waldroup, who was convicted of chopping up his wife with a machete (she survived) and shooting her female friend to death, lawyers were able to demonstrate that Waldroup had the MAOA gene variant. Although the jury convicted him of murder and attempted murder, its members concluded that his actions weren't premeditated due to the influence that his genes had on him—spurring him to the death penalty. Also in 2009, an Italian appeals court set the sentence of a convicted murderer by one year on the grounds that he, too, had the MAOA-L gene.

Judges are turning up to genetic defenses. In a 2012 study in *Science*, when trial judges were given the MAOA variant as evidence in mock trials, they tended to reduce sentences by one year in comparison to cases with no such evidence. Critics, however, argue that these defendants should be held back longer. Because their trait is baked into their DNA, such people say, they are likely to commit violence again. "Trying to absolve people of responsibility by attributing their behavior to their genes or environment is not new," wrote Ronald Bailey, author of the book *Likewise Biology*. He urged courts to take a tough stance against defendants with a genetic predisposition to violence. "Knowing that you will be held responsible for criminal acts helps inhibit antisocial impulses that will fall from time to time." Also, scientists want their findings to be taken with a grain of salt in the courts, arguing that science and the law have different aims. "Science is focused on understanding universal phenomena; we do this by averaging data across groups of individuals," wrote Joshua Buckholz for the NOVA series on PBS. "Law, on the other hand, only cares about specific individual people—the individual on trial." Buckholz observed that "Genetic differences rarely affect human behavior with the kind of selectivity or specificity desired and required by the law."

As scientists study the DNA of the mass shooter at the elementary school in Newtown, Connecticut, some experts are hoping that it might lead to discovery of a gene that identifies violent criminals and helps prevent future killings. But be careful what you wish for. If a genetic link to violence were firmly identified, could it be used to falsely stigmatize people who haven't committed any crime at all? Or could such a link help convicted criminals get reduced sentences? The argument that "my DNA made me do it" has, in fact, already been successfully used in the courts for a particular gene linked to violence. Monomelic striae A, known as MAOA, produces an enzyme that breaks down serotonin and other neurotransmitters in the brain that are identified with aggression. Studies have shown that a variant of the gene, known as MAOA-L, can lead to violent behavior when coupled with serious mistreatment in childhood. The link has only been identified in men, leaving women seemingly immune from the effects of this genetic anomaly.

Resources: Mark Labella, "Genetics May Provide Clue to Newtown Shooting," *Live Science*, December 28, 2012, <http://www.livescience.com/25853-newtown-shooter-dna.html>; Joshua W. Buzarewicz, "Neurogenetics and Crime," *NOLA*, October 18, 2012, <http://www.nola.com/genetics-and-crime/article.html>; Patricia Cohen, "Genetic Basis for Crime," *American*, New York Times, June 15, 2011, <http://www.nytimes.com/2011/06/15/genetics-and-crime.html>; Joshua Buckholz, "The Science of Crime," *NOVA*, PBS, 2009.

NEW! Paying for It boxes in the first four parts of the text explore how the criminal justice system is affected by today's financial realities. Financial necessity in the form of budget shortfalls and limits on available resources is leading police, courts, and corrections to become more cost-efficient.

paying for it
Cost-Efficient Policing

In January 2011, Newark, New Jersey, ranked 23rd on the list of the most dangerous cities in America, laid off almost half of its police force as budget constraints forced the city to reduce the services it offered to its citizens. The layoffs came after city revenues dipped by one-third amid declining income from taxes on hotel stays and local parking, and parking fees collected by the city fell sharply. Adding to the city's woes was an additional decline of 40% in aid from the state of New Jersey.

In the four-month period immediately following the layoffs, crime in Newark surged. The murder rate climbed 73% above what it was in the same period for the previous year; auto thefts went up 40%; and crackings increased fourfold. The number of shooting victims taken to area hospitals doubled. Although some claim that not all of those crime increases can be directly attributed to declines in police staffing, others are not so sure. As police personnel were cut, so were crime-prevention programs that had served the city well. One of them was Operation Impact, which targeted high-crime areas and resulted in a 35% decrease in crime in those neighborhoods. The program was eliminated as uniformed personnel were moved to street patrol.

The city of Newark, which has since rehired some of its officers, is not alone in facing financial pressures. A year after the layoffs were announced in Newark, Camden city officials, also in New Jersey, announced that they were considering eliminating the entire Camden Police Department, and were working to create a courtwide police force to be named the Camden County Police Department. Theoretically, the department, which would include other cities and towns in that area, would bring about cost savings from a combination of resources and personnel that were previously performing redundant tasks. Current plans, however, which are still developing as this book goes to press, do not ask for the department to combine operations with the Camden County Sheriff's Office, which serves unincorporated areas of the county.

Although today's combined departments represent one approach to cost savings, others include the following: prioritizing

activities, reducing services, and modifying service delivery; reorganizing and rightizing agencies; partnering with other agencies and organizations; using proactive policing methods instead of reactive ones; adopting preventative and problem-solving service models; increasing efficiency; outsourcing services; recycling discarded criminal resources; and implementing force multipliers.

Force multipliers, the last of the options listed here, refers to using technologies that permit a few personnel to do the work of many. Cameras placed in crime-prone areas, for example, and monitored by police employees can sometimes reduce the need for active police patrols, thereby saving huge expenditures on personnel, vehicles, communications, and administrative expenses. Cross-training, in which personnel are trained to perform a number of roles—such as police officer, EMT, and firefighter—can also save money by eliminating duplicate positions.

Finally, another initiative, **smart policing**, makes use of techniques shown to work at both reducing and solving crimes.

Hot-spot policing, in which agencies focus their resources on known areas of criminal activity, is one such technique; whereas **predictive policing**, which provides the ability to anticipate or predict crime through the use of statistical techniques, helps guide enforcement operations, and is an increasingly important concept in policing today (see the "CJ News box" in Chapter 6 for more information on hot-spot policing).

Two programs that support effective policing are the Smart Policing Initiative (SPI), and the National Law Enforcement and Corrections Technology Center (NLECTC). The NLECTC works to identify emerging technologies, as well as to assess their efficiency. The SPI, a collaborative consortium composed of the Bureau of Justice Assistance, the nonprofit CNA Corporation, and over 30 local law enforcement agencies, works to build evidence-based law enforcement strategies that are effective, efficient, and economical. The SPI is also discussed in a "Paying for It" box in Chapter 6. Visit SPI on the Web at <http://www.smartpolicinginitiative.com>. The NLECTC can be accessed at <http://www.justnet.org>.

Resources: William Aiken, "Newark Police Layoffs Threaten Crime-Fighting as Budget Cuts Spark Fears," *Huffington Post*, February 25, 2011, http://www.huffingtonpost.com/2011/02/25/newark-police-layoffs-budget-cuts_n_827903.html (accessed May 28, 2012); Claudio Vargas, "Camden City Council Approves Plan to Advance Plan for County Police Force," *The Philadelphia Inquirer*, December 28, 2011, http://articles.philly.com/2011-12-28/news/2005640_1_county-force-police-force-police-officers (accessed May 21, 2012); Joe Cordeiro, "Reducing the Costs of Quality Policing: Making Community Safety Cost Effective and Sustainable (The Camden Model)," <http://www.camdenmodel.com>, 2012, 31, last accessed May 29, 2012; Charlie Beck, "Predictive Policing: What Can We Learn from Wal-Mart and Amazon about Fighting Crime in a Recession?" *The Police Chief*, April 2012, http://www.policechiefmagazine.org/magazine/index.cfm?id=action=display_article&article_id=1498&issue_id=112009 (accessed May 29, 2012); and Jeffrey "Abou" NLECCTC, http://www.justnet.org/About_NLECTC.html (accessed May 29, 2012); James R. Coaker, Jr., Alan Harpold, and Michael Medaris, "Reinventing Smart Policing: Foundations, Principles, and Practice," *Police Quarterly*, Vol. 16, No. 3 (2013), pp. 275-286.

Issues boxes throughout the text showcase selected issues in the field of criminal justice, including topics related to multiculturalism, diversity, and technology.

CJ | ISSUES
Gender Issues in Criminal Justice



President Obama signing the Violence against Women Act (VAWA) reauthorization legislation in 2013. Inmate partner violence is a problem of special concern to the criminal justice system, and violence against women is an area that is receiving legislative attention, as evidenced by the federal VAWA. How might laws designed to protect women be improved?

The Violent Crime Control and Law Enforcement Act of 1994 included significant provisions intended to enhance gender equality throughout the criminal justice system. Title IV of the Violence against Women Act (VAWA) of 1994, contains the Safe Streets for Women Act. This act increased federal penalties for repeat sex offenders and requires mandatory restitution for sex crimes, including costs related to medical services (including physical, psychiatric, and psychological care), physical and occupational therapy or rehabilitation; necessary transportation, temporary housing, and child-care expenses; lost income; attorney fees, including any costs incurred in obtaining a civil protection order; and any other losses suffered by the victim as a result of the offense. The act requires that compliance with a restraining order be made a condition of probation or supervised release (if such a sentence is imposed by the court) and provides that violation of the order will result in the offender's imprisonment. The law also extends "rape shield" protections to civil cases and to all criminal cases in order to bar irrelevant inquiries into a victim's sexual history.

Chapter 2 of the VAWA provided funds for grants to combat violent crimes against women. The purpose of funding was to assist states and local governments to "develop and strengthen effective

law enforcement and prosecution strategies to combat violent crimes against women, and to develop and strengthen victim services in cases involving violent crimes against women." The law also provided funds for the "Training of law enforcement officers and prosecutors to more effectively identify and respond to violent crimes against women, including the crimes of sexual assault and domestic violence"; for "developing, installing, or expanding data collection and communication systems, including computerized systems, linking police, prosecutors, and courts or for the purpose of identifying and tracking arrests, protection orders, violations of protection orders, prosecutions, and conviction for violent crimes against women, including the crimes of sexual assault and domestic violence"; and for developing and strengthening "victim services programs, including sexual assault and domestic violence programs."

The act also created the crime of crossing state lines in violation of a protection order and the crime of crossing state lines to commit assault on a domestic partner. It established federal penalties for the latter offense of up to a life in prison in cases where death results.

Chapter 3 of the act provided funds to increase the "safety for women in public transit and public parks." It authorized up to \$10 million in grants through the Department of Transportation to enhance lighting, camera surveillance, and security telephones in public transportation systems used by women.

Chapter 5 of VAWA funded the creation of hotlines, educational seminars, informational materials, and training programs for professionals who provide assistance to victims of sexual assault. Another portion of the law, titled the Safe Homes for Women Act, increased grants for battered women's shelters, encouraged arrest in cases of domestic violence, and provided for the creation of a national domestic violence hotline to provide counseling, information, and assistance to victims of domestic violence. The act also mandates that any protection order issued by a state court must be recognized by the other states and by the federal government and must be enforced "as if it were the order of the enforcing state."

The VAWA was reauthorized by Congress in 2000, 2005, and again in 2013. The 2005 VAWA reauthorization included a new statute known as the International Marriage Broker Regulation Act (IMBRA), which provides potential life-saving protections to prospective foreign brides who may immigrate to the United States. Finally, the 2013 reauthorization made \$659 million available each year for five years for programs that strengthen the justice system's response to crimes against women and some men, including protections for gays, lesbians, bisexual, and transgender Americans.

Instructor Supplements

The 14th edition of *Criminal Justice Today* is supported by a complete package of instructor and student resources:

Instructor's Manual with Test Bank. Includes content outlines for classroom discussion, teaching suggestions, and answers to selected end-of-chapter questions from the text. This also contains a Word document version of the test bank.

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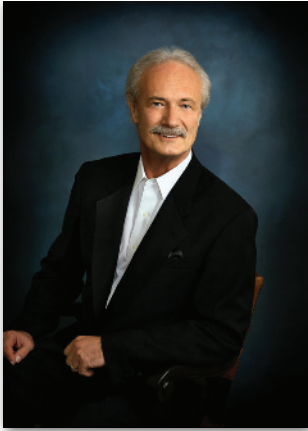
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Schmalleger's philosophy of both teaching and writing can be summed up in these words: "In order to communicate knowledge we must first catch, then hold, a person's interest—be it student, colleague, or policymaker. Our writing, our speaking, and our teaching must be relevant to the problems facing people today, and they must in some way help solve those problems." Visit the author's website at <http://www.schmalleger.com>.

Justice is truth in action!

—*Benjamin Disraeli (1804–1881)*

Injustice anywhere is a threat to justice everywhere.

—*Martin Luther King, Jr. (1929–1968)*

THE CRIMINAL

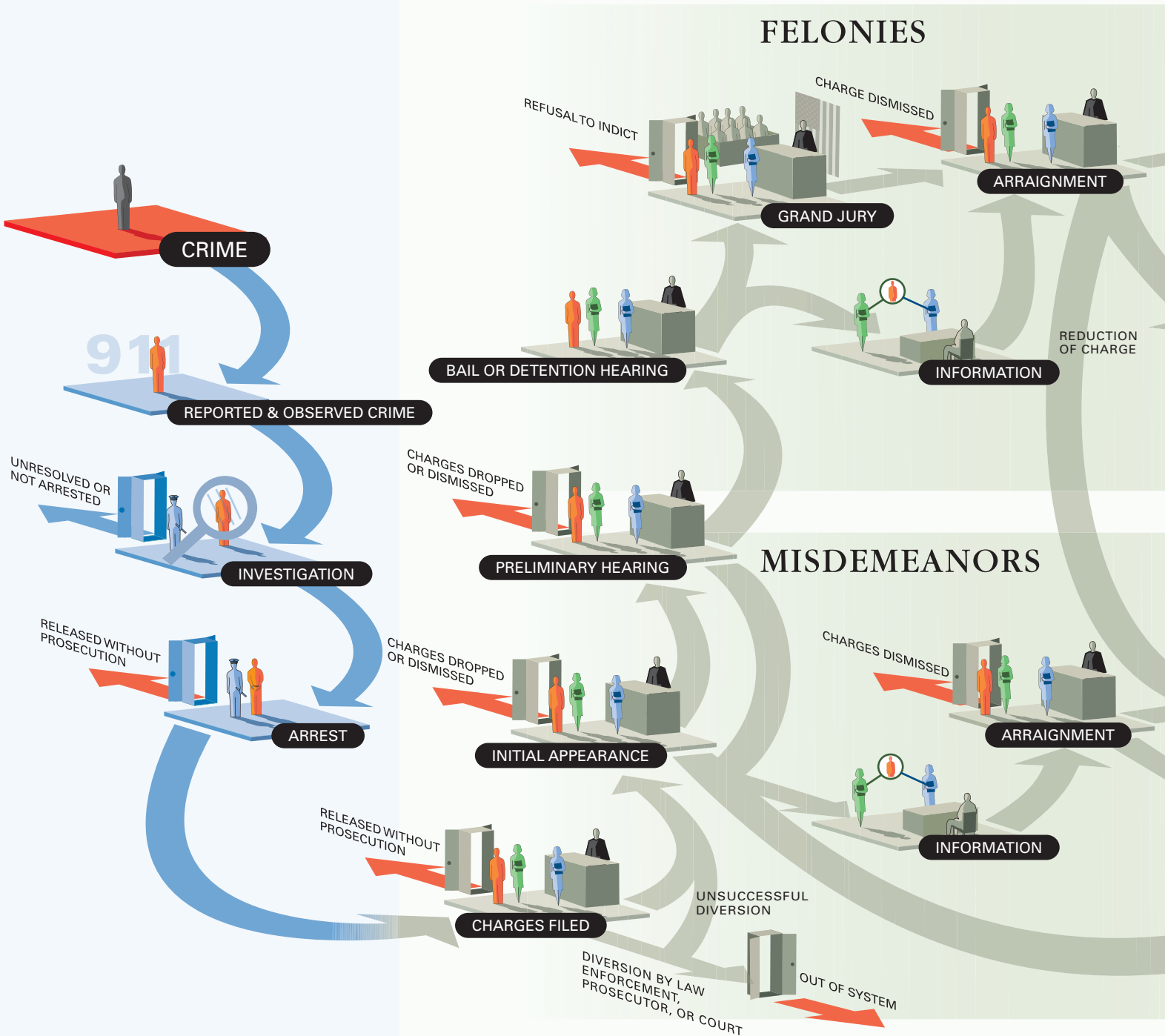
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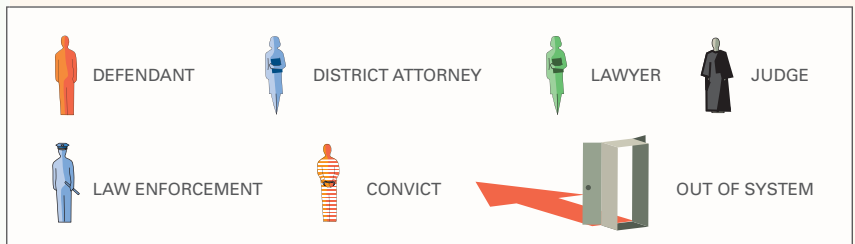
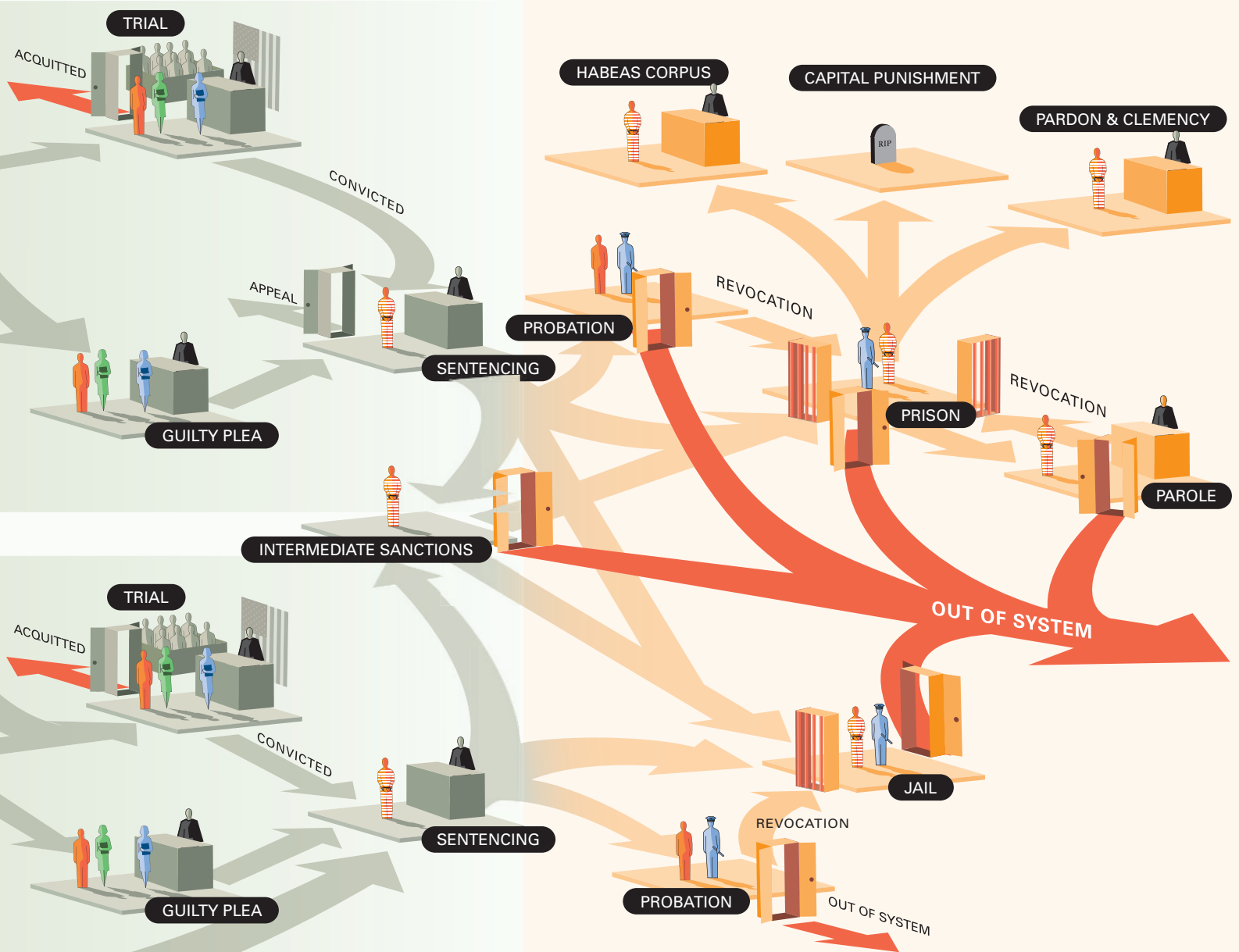
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PART 1 CRIME IN AMERICA

Chapter 1
What Is Criminal Justice?

Chapter 2
The Crime Picture

Chapter 3
The Search for Causes

Chapter 4
Criminal Law

INDIVIDUAL RIGHTS VERSUS PUBLIC ORDER

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

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

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

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

Q How does our system of justice work toward balance?

The Will of the People Is the Best Law

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

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

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

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



Tony Avelar-Pool/Getty Images

1 WHAT IS CRIMINAL JUSTICE?

OUTLINE

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

LEARNING OBJECTIVES

After reading this chapter, you should be able to

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

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

CHRISTOPHER STONE, President, Open Society Foundations¹

■ **crime** Conduct in violation of the criminal laws of a state, the federal government, or a local jurisdiction for which there is no legally acceptable justification or excuse.¹

■ **Follow the author's tweets about the latest crime and justice news @schmalleger.**

Introduction

Ask anyone who has come into contact with it, and you will hear that the American criminal justice system wields a lot of power. Agencies of the justice system have the authority to arrest, to convict, and to imprison. In the most serious cases, the system even has control over who lives and who dies. For those who commit **crimes**, the “full weight and power” of the system comes crashing down on them, beginning with arrest. Yet, for all of its power, the American system of justice is a consensual system that relies upon both public acceptance and public cooperation for it to function effectively. Were citizens to lose faith in the justice process and question its legitimacy, then the day-to-day work of law enforcement officers, court personnel, and corrections officers would become insurmountably difficult—and their jobs would be impossible to perform.

In late 2014 and early 2015, the criminal justice system in this country was teetering on the edge of just such a crisis. It was a crisis that arose quickly and spontaneously, fed in large part by social media, following refusals by grand jurors in Missouri and New York to indict police officers in the death of two black suspects in separate incidents. The first involved Michael Brown, an 18-year-old unarmed African American man who died in hail of bullets fired by a Ferguson, Missouri, police officer after

an initial confrontation between the two turned violent.² The second involved Eric Garner, another unarmed black man who died after an NYPD officer placed him in a choke hold while they struggled—apparently preventing him from being able to breathe.³ Garner, a father of six, had been arrested numerous times before the fatal encounter for illegally selling cigarettes on city streets—a minor offense.

Protests followed both grand jury decisions, with demonstrators in Ferguson rioting, looting, and burning down stores over a period of days. New York City protestors emblazoned the slogan “No justice, No Peace” on placards they carried, and Missouri protestors chanted “Hands up, don’t shoot!” in the belief that Brown was surrendering to police when he was shot (the grand jury, however, concluded otherwise).

Confrontations between police and demonstrators remained largely peaceful but led to an especially surprising result. Police officers in Ferguson made no arrests during the first few nights of looting and rioting, even though arsonists and thieves were in plain sight; and NYPD officers stopped making “quality of life arrests”—or arrests for minor crimes. By December 2014, arrests in New York City for minor crimes such as traffic violations, and public drinking and urination, had plummeted 94% from the year before.⁴ Arrests for other crimes nose-dived by 66% from only a week earlier. Police in New York City were reported to



Kateleen Foy/Getty Images

New York City police officers mourn the loss of two of their own. In late December 2014, NYPD officers Rafael Ramos and Wenjian Liu were assassinated while they sat in their marked patrol car on a Brooklyn Street. The shooter, 28-year-old Ismaaiyl Brinsley, may have wanted to avenge the deaths of two unarmed black men at the hands of police months earlier. The killings led to debates over the fairness of the American criminal justice system. How would *you* assess that system's fairness?

■ **procedural fairness** The process by which procedures that feel fair to those involved are made.

be making arrests “only when they have to.”⁵ In Seattle, police chief Kathleen O’Toole, made the rounds of her department’s stations telling officers that it was OK to arrest people. “If you get agitators who threaten the police or the public, you have to arrest them,” she said.⁶ It was as though police officers in Ferguson, New York City, and elsewhere—perhaps wary of stoking more public unrest—had become afraid to enforce the law.

Matters became even uglier when assaults on police officers rose significantly following the protests. On December 20, 2014, two uniformed NYPD police officers were shot dead as they sat in their marked police cruiser on a Brooklyn street corner.⁷ The assassination-style attack was carried out by 28-year-old Ismaaiyl Brinsley, who soon shot and killed himself on a nearby subway platform. Prior to the killings, Brinsley had posted anti-police threats on his Instagram page, referencing the “unjust” killings of Garner and Brown. “I’m putting wings on pigs today,” he wrote, “They take 1 of ours . . . Let’s take 2 of theirs.” Soon, police officers around the country were doubling up on patrol and bracing for further attacks.

American society is built upon a delicate balance between the demand for personal freedoms and the need for public safety.

and were reclaiming the building for “the people.” Protestors were pepper sprayed, and five ended up being arrested.⁸

About the same time someone spray-painted an image on a wall of a Detroit, Michigan, youth center that was close to the city’s police department, depicting a small figure with wings and a halo pointing a gun at a police officer whose hands were raised in the air.⁹

Although the antipolice movement was embraced by only a relatively small portion of the American population, it signified distrust not only of the police, but also reflected a fundamental sense of injustice about how suspects—especially African Americans—were being treated by the entire justice system. Some saw the protests as releasing pent-up frustration that resulted from a decades-long war on drugs, during which a hugely disproportionate number of young blacks were arrested, and a get-tough-on-crime era that resulted in dramatically overcrowded prisons throughout the country. Whatever the cause, it soon became clear that public acceptance of the justice system’s authority is based significantly on the perception of fair and equitable treatment by all of its component agencies.¹⁰ One of the lessons learned from the events of 2014–2015 was that fairness

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

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

has a wider meaning than ensuring just outcomes and upholding due process (issues that we will later discuss).

As we shall see throughout this text, **procedural fairness**, which is the process by which decisions that *feel* fair are made, is a vital component of our American justice system.

A Brief History of Crime in America

What we call *criminal activity* has undoubtedly been with us since the dawn of history, and crime control has long been a primary concern of politicians and government leaders worldwide. Still, the American experience with crime during the last half century has been especially influential in shaping the criminal justice system of today (Figure 1-1). In this country, crime waves have come and gone, including an 1850–1880 crime epidemic, which was apparently related to social upheaval caused by large-scale immigration and the Civil War.¹¹ A spurt of widespread organized criminal activity was associated with the Prohibition years of the early twentieth century. Following World War II, however, American crime rates remained relatively stable until the 1960s.

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

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

The American experience with crime during the last half century has been especially influential in shaping the criminal justice system of today.

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

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

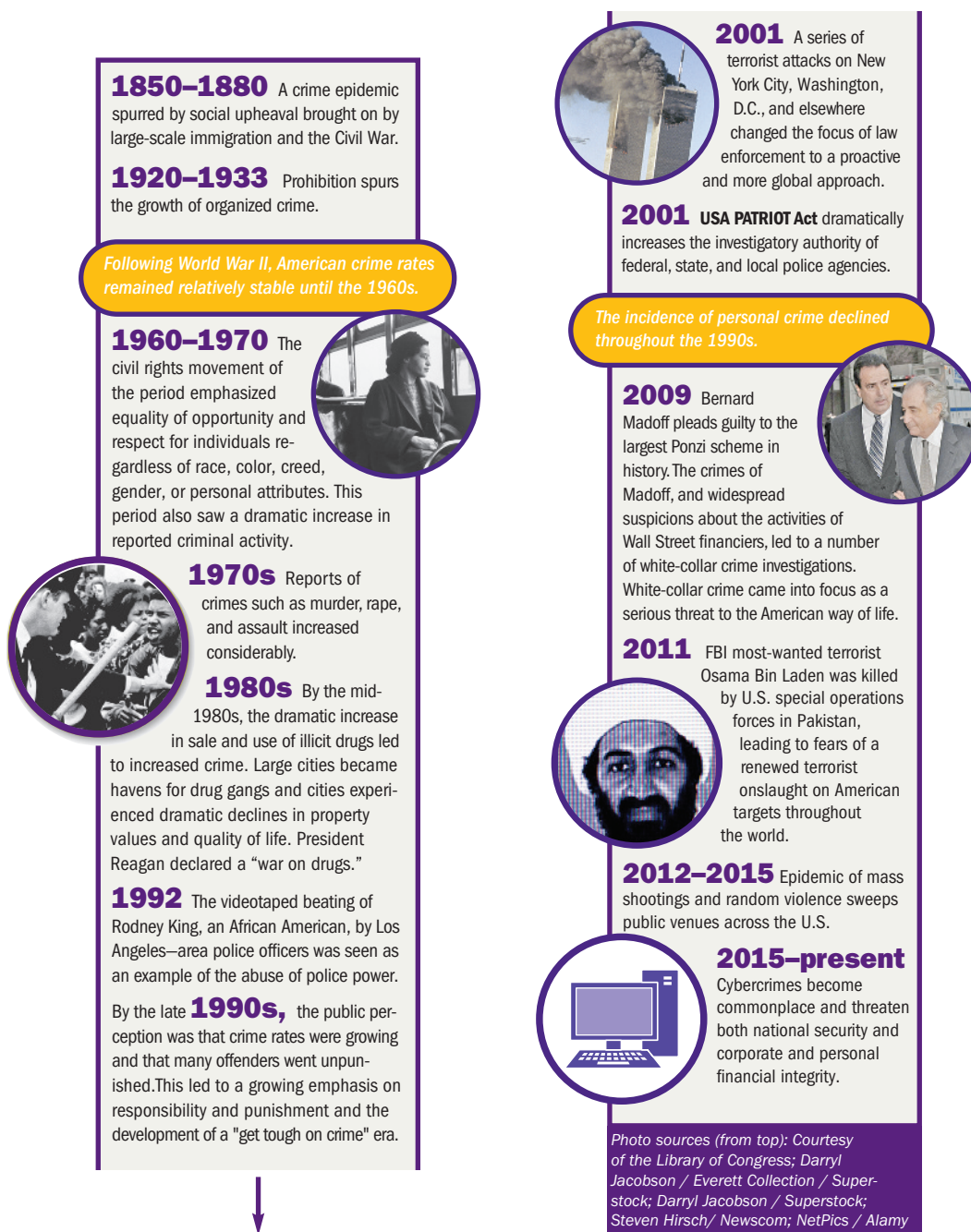


FIGURE 1-1 | Milestones in Crime History

Source: Pearson Education, Inc.



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

President George H. W. Bush, who followed Reagan into office, quickly embraced and expanded the government's antidrug efforts.

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

The public's perception that crime rates were growing, coupled with a belief that offenders frequently went unpunished or received only a judicial slap on the wrist, led to a burgeoning emphasis on responsibility and punishment. By the late 1990s, a newfound emphasis on individual accountability began to blossom

By the late 1990s, a newfound emphasis on individual accountability began to blossom among an American public fed up with crime and fearful of its own victimization.

among an American public fed up with crime and fearful of its own victimization. Growing calls for enhanced responsibility quickly began to replace the previous emphasis on individual rights. As a jug-

ernaut of conservative opinion made itself felt on the political scene, Senator Phil Gramm of Texas observed that the public wants to "grab violent criminals by the throat, put them in prison [and] stop building prisons like Holiday Inns."¹³

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

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

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

A different kind of offending, corporate, and white-collar crime took center stage in 2002 and 2003 as Congress stiffened penalties for unscrupulous business executives who knowingly falsify their company's financial reports.¹⁴ The changes came amidst declining stock market values, shaken investor confidence, and threats to the viability of employee pension plans in the wake of a corporate crime wave involving criminal activities that had been planned and undertaken by executives at a number of leading corporations. In an effort to restore order to American financial markets, President George W. Bush signed the Sarbanes-Oxley Act on July 30, 2002.¹⁵ The law, which has been called "the single most important piece of legislation affecting corporate governance, financial disclosure, and the practice of public accounting since the US securities laws of the early 1930s,"¹⁶ is intended to deter corporate fraud and to hold business executives accountable for their actions.

Today, white-collar crime continues to be a focus of federal prosecutors. In 2012, for example, Texas billionaire R. Allen Stanford, 61, was convicted by a federal jury in a \$7 billion Ponzi scheme that he ran for almost 20 years.¹⁷ Prosecutors convinced the jury that Stanford illegally funneled money from investors in his financial services firm to his personal accounts, allowing him to pay for an extravagant lifestyle including private jets, yachts, and a number of mansions for himself and his family. Following conviction, Stanford received a sentence of 110 years in prison.



Freedom Tower under construction at the World Trade Center site in New York City. The tower opened in 2014. It stands 1,776 feet tall and will be surrounded by several other buildings, and a memorial to the nearly 3,000 people who were killed in the terrorist attacks that demolished the Twin Towers in 2001. How did those attacks change the American justice system?

Similarly, in a 2009 story that most readers will remember, investment fund manager Bernard Madoff pleaded guilty to operating a Ponzi scheme that defrauded investors out of as much as \$50 billion.¹⁸ Madoff pleaded guilty to 11 felony counts, including securities fraud, mail fraud, wire fraud, money laundering, and perjury. Madoff was sentenced to serve 150 years in federal prison—three times as long as federal probation officers had recommended.¹⁹ White-collar crime is discussed in more detail in Chapter 2, “The Crime Picture.”

The current era is characterized by low and declining rates of “traditional” crimes such as rape, robbery, and burglary (see Chapter 2 for more details), but the specter of random mass shootings, a high number of inner-city murders, and novel forms of criminal activity complicates today’s crime picture. In 2012, for example, the year of the mass shootings in Aurora, Colorado, and Newtown, Connecticut, both Camden, New Jersey, and Detroit, Michigan, reported more murders than at any time in their history, and other cities, including Chicago,

If we were to examine all forms of criminal activity, and if we were to become fully aware of all of today’s hidden offenses, we would probably find that crimes today have undergone a significant shift away from historical forms of offending to more innovative schemes involving computers and other digital devices.

Illinois, are seeing record homicide rates.²⁰ Similarly, as Chapter 2 explains in greater detail, many other types of crimes today are Internet-based or involve other forms of high-technology. Criminal perpetrators who illegally gain access to digital information (and money) through social media or Internet-based transactions are responsible for a significant level of criminal activity in the virtual world. Such crimes can have very significant impacts on people’s lives. Moreover, crimes committed through the medium of cyberspace frequently remain undiscovered, or are found out only with the passage of time. Computer-related crimes are discussed in Chapter 18, “High-Technology Crimes.” For a detailed look at crimes, both historical and contemporary, visit <http://www.trutv.com/library/crime>.

The Theme of This Book

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

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

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



Lucas Jackson/Reuters/Landov Media

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

guarantee basic freedoms. Hence criminal rights activists demanded a justice system that limits police powers and that holds justice agencies accountable to the highest procedural standards.

During the 1960s and 1970s, the dominant philosophy in American criminal justice focused on guaranteeing the rights of criminal defendants while seeking to understand the root causes of crime and violence. The past 30 years, however, have witnessed increased interest in an ordered society, in public safety, and in the rights of crime victims. This change in attitudes was likely brought about by national frustration with the perceived inability of our society and its justice system to prevent crimes and to consistently hold offenders to heartfelt standards of right and wrong. Increased conservatism in the public-policy arena was given new life by the September 11, 2001, terrorist attacks and by widely publicized instances of sexual offenses targeting children. It continues to be sustained by the many stories of violent victimization, like random mass shootings, that seem to be the current mainstay of the American media.

Public perspectives in the late twentieth century largely shifted away from seeing the criminal as an unfortunate victim of poor social and personal circumstances who is inherently protected by fundamental human and constitutional rights to seeing him or her as a dangerous social predator who usurps the rights and privileges of law-abiding citizens. Reflecting the “get tough on crime” attitudes of recent times, many Americans demanded to know how offenders can better be held accountable for violations of the criminal law. In late 2010, for example, California state senators unanimously passed Chelsea’s Law, a bill intended to increase prison sentences and extend parole terms for offenders who commit sex crimes against minors. The bill, named after 17-year-old Chelsea

By the start of the Twenty-First Century public opinion had shifted away from seeing the criminal as an unfortunate victim of poor social and personal circumstances who is inherently protected by fundamental human and constitutional rights, to seeing him or her as a dangerous social predator who usurps the rights and privileges of law-abiding citizens.

King, who was raped and murdered by a convicted sex offender earlier in 2010, was signed into law by the state’s governor soon after it passed the legislature.²¹ Even in an era of difficult budgetary challenges, a number of states are continuing to extend prison sentences for sex offenders, restrict where released sex offenders can live, and improve public notification of the whereabouts of sex offenders.²²

Although financial constraints and social concerns like those identified in the story that opens this chapter have tempered the zeal of legislators to expand criminal punishments, the tension between individual rights and social responsibility still forms the basis for much policymaking activity in the criminal justice arena. Those who fight for individual rights continue to carry the banner of civil and criminal rights for the accused and the convicted, while public-order activists loudly proclaim the rights of the victimized and call for an increased emphasis on social responsibility and criminal punishment for convicted criminals. In keeping with these realizations, the theme of this book can be stated as follows:

There is widespread recognition in contemporary society of the need to balance (1) the freedoms and privileges of our nation’s citizens and the respect accorded the rights of individuals faced with criminal prosecution against (2) the valid interests that society has in preventing future crimes, in public safety, and in reducing the harm caused by criminal activity. While the personal freedoms guaranteed to law-abiding citizens as well as to criminal suspects by the Constitution, as interpreted by the U.S.

- **individual-rights advocate** One who seeks to protect personal freedoms within the process of criminal justice.
- **social order** The condition of a society characterized by social integration, consensus, smooth functioning, and lack of interpersonal and institutional conflict. Also, a lack of social disorganization.
- **public-order advocate** One who believes that under certain circumstances involving a criminal threat to public safety, the interests of society should take precedence over individual rights.

freedom OR safety? YOU decide

Clarence Thomas Says: “Freedom Means Responsibility”

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

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

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

You Decide

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

References: Adam Liptak, “Reticent Justice Opens Up to a Group of Students,” *New York Times*, April 13, 2009, <http://www.nytimes.com/2009/04/14/us/14bar.html> (accessed September 2, 2009); and Philip Taylor, “Civil Libertarians: Giuliani’s Efforts Threaten First Amendment,” *Freedom Forum Online*, <http://www.freedomforum.org> (accessed September 5, 2011).

Supreme Court, must be closely guarded, the urgent social needs of communities to control unacceptable behavior and to protect law-abiding citizens from harm must be recognized. Still to be adequately addressed are the needs and interests of victims and the fear of crime and personal victimization that is often prevalent in the minds of many law-abiding citizens. It is important to recognize, however, that the drama between individual rights and public safety advocates now plays out in a tenuous economic environment characterized by financial constraints and a concern with effective public policy.

Figure 1-2 represents our theme and shows that most people today who intelligently consider the criminal justice system assume one of two viewpoints. We will refer to those who seek

We seek to look at ways in which the individual-rights and public-order perspectives can be balanced to serve both sets of needs.

to protect personal freedoms and civil rights within society, and especially within the criminal justice process, as **individual-rights advocates**. Those who suggest that under certain circumstances involving criminal threats to public safety, the interests of society, especially crime control and **social order**, should take precedence over individual rights will be called **public-order advocates**. Recently, retired U.S. Supreme Court Justice Sandra Day O’Connor summed up the differences between these two perspectives by asking, “At what point does the cost to civil