

# PART 1

# Understanding Criminal Justice

# CHAPTER 1

## Crime and Justice in American Society



## Chapter Outline

1. The Problem of Crime
2. The Criminal Justice System
3. Spotlight On: Can We Afford Our Prison Policy?
4. Understanding the Criminal Justice System
5. International Focus: The Islamic Concept of Crime

## Questions for Investigation

1. How real is the problem of crime in the United States?
2. What is public opinion about how criminals should be treated?
3. What are crime myths? How do they spread?
4. What is the “get-tough” approach to crime?
5. What are the important events in the U.S. criminal justice system?
6. What are the models of the criminal justice system?

David Lee “Chubs” Moore was driving his car in Portsmouth, Virginia, in February 2003 when he was stopped by police for having a suspended license. Although Virginia law allows police only to give a ticket to someone accused of this offense, the police arrested Moore anyway and then searched him for drugs. When they found 16 grams of crack cocaine, they charged him with a drug offense. Moore was later convicted of the crime and sentenced to a five-year prison term.

Moore appealed his conviction, arguing that because his arrest was illegal, the search that found the drugs was unconstitutional and, therefore, his conviction should be overturned. Virginia’s State Supreme Court eventually ruled in his favor. Moore’s attorney later said, “We don’t think the police are evil, but sometimes you get some who are overaggressive. If the Moore arrest and search are upheld, police will effectively gain the right to search anyone whose only ‘crime’ is uttering an obscenity in public, jaywalking or driving one [mile per hour] over the speed limit” (Eisman 2008:A1).

Virginia took the case to the U.S. Supreme Court, which heard arguments in January 2008. The American Bar Association and American Civil Liberties Union submitted briefs on behalf of Moore; one of these briefs noted that stops of citizens by police lead disproportionately to searches of African Americans and Latinos. At the Supreme Court hearing, Moore’s attorney told the justices that the police stopped Moore for the driving offense only as a pretext to search him for drugs. If his conviction were reinstated, the attorney added, the police would be likely to make illegal arrests for very minor offenses to give them an excuse to look for evidence of more serious offenses. Asking the justices to restore the conviction, Virginia’s Deputy Solicitor General said the search was legal because the police had probable cause to conduct it (Greenhouse 2008).

In April 2008, the Supreme Court restored the conviction in a unanimous ruling (Mears 2008). According to the ruling, as long as police have probable cause to believe that a crime has been committed, they may arrest and then search a suspect, even if the arrest violates state law.

The Moore case goes to the heart of some of the most important issues in criminal justice today:

- How much power should the police have to do their jobs?
- Where should we draw the delicate line between civil liberties and public safety?
- How punitive should the criminal justice system be?
- To what extent does the criminal justice system discriminate against poor people and people of color?
- How effective is the criminal justice system in preventing and reducing crime?

This book deals with all these issues and more. It presents a concise but comprehensive understanding of criminal justice in the United States. You will learn how the criminal justice system works, and will hear about the issues just mentioned, along with many others, such as the death penalty, the accuracy of crime statistics, police deviance, plea bargaining, prison rape and prison riots, and the legal response to juvenile violence. This first chapter discusses some basic features of crime, justice, and law in American society. Later chapters examine measurement and explanations of crime and victimization, the types of crime, and the three major stages of the criminal justice system (police, courts, and corrections). An “International Focus” feature in each chapter provides a detailed look at criminal justice in other nations, reflecting our belief that learning about criminal justice elsewhere helps students better understand its operation and impact in the United States.

A **sociological perspective** guides the book’s discussion of criminal justice. Two emphases of this perspective are particularly relevant. The first is sociology’s “debunking motif” (Berger 1963): its challenging of conventional wisdom by looking beyond surface reality and uncovering “inconvenient facts” (Weber 1958:147). The second is sociology’s attention to race and ethnicity, social class, and gender as the major elements of society’s stratification system (Andersen and Collins 2010). Reflecting these emphases, the book critically examines conventional understandings of crime and justice throughout as well as the importance of race/ethnicity, class, and gender for criminal justice dynamics and outcomes. We will assess whether equality and justice under the law are sometimes more of an ideal goal than actual reality, and we will explore the complexity of race/ethnicity, class, and gender in the criminal justice process.

This type of discussion is essential for students to fully appreciate key aspects of crime and justice in the United States. It also stays true to the sociological roots of the scholarly study of criminal justice. When this study emerged during the 1950s and 1960s, it was led by sociologists who published groundbreaking research on the police (Skolnick 1966; Westley 1951), courts (Blumberg 1967; Sudnow 1965), and prisons (Cressey 1961; Sykes 1958) that uncovered important—if sometimes inconvenient—facts about these criminal justice components. Around the same time, sociologists also began investigating whether race (Black 1971; Green 1961; Hagan 1974), social class (Tittle, Villemez, and Smith 1978), and gender (Visher 1983) affect criminal justice dynamics and outcomes—a concern that continues to this day. This book’s sociological approach thus hearkens back to the origins of the study of criminal justice and demonstrates the continuing relevance of a sociological perspective for understanding crime and justice in the United States.

## The Problem of Crime

As we move steadily into the twenty-first century, crime continues to be perceived by many Americans as a major threat. In a 2009 Gallup Poll, 74 percent of respondents said crime was higher in the United States than a year earlier, and 55 percent said it was an “extremely” or “very serious” problem in the nation (Jones 2009). In addition, almost 50 percent said they worry “frequently” or “occasionally” about having their homes burglarized or their car stolen or broken into. One-third of women said they often worry about being sexually assaulted (Pastore and Maguire 2010).

These numbers reflect a gnawing concern over the amount of crime in our communities. Many of us hesitate to go out alone at night. We buy home security systems or at least lock our doors when we are away from home, and we lock our cars when we are away from them. Many of us keep handguns or other firearms in our houses for protection. Spending by

businesses and individuals on private security such as guards, alarm systems, and special locks was estimated a decade ago at more than \$90 billion annually (*The Economist* 1997) and is undoubtedly higher today.

These concerns are real, and so is the problem of crime. The government estimates that approximately 21 million violent and property crimes occurred in 2008 (Rand 2009). About 2 percent of the public are victims of a violent crime in any one year and 13 percent are victims of a property crime. Because these risks add up over a lifetime, the government estimates high lifetime risks of being victimized by crime: 30 percent of Americans will be a robbery victim at least once in their lives; 74 percent will be an assault victim; and 72 percent will have their homes or apartments burglarized (Koppel 1987). Certain types of crime are also very real for women, as approximately one-fourth of all women are victims of domestic violence, rape, or sexual assault (Tjaden and Thoennes 2000). “Street” crime costs Americans in the range of \$17–18 billion in direct costs—measured in terms of the value of money or property stolen, medical expenses, and time missed from work—and much more than that—perhaps hundreds of billions of dollars—when intangibles such as pain, suffering, and quality of life are considered (Miller, Cohen, and Wiersema 1996). Homicide and robbery rates are higher in the United States than in other Western nations, and U.S. rates of other serious street crimes generally rank fairly high compared to these nations (van Dijk 2008).

Public opinion reflects the reality of crime. Approximately 62 percent of Americans think the United States is spending too little money to halt the rising crime rate, and only 28 percent report much confidence in the criminal justice system (Pastore and Maguire 2010). Moreover, the U.S. public generally holds punitive attitudes toward crime and criminals. Almost two-thirds of Americans favor the death penalty for people convicted of murder, although that support has declined since the late 1990s, when the U.S. public was shocked by revelations of innocent people being sent to death row (Unnever and Cullen 2005). Approximately 67 percent of Americans think the courts in their communities do not deal harshly enough with criminals, and large majorities prefer imprisonment for most offenders and long prison terms for violent offenders (Cullen, Fisher, and Applegate 2000). At the same time, Americans broadly support alternatives to incarceration, such as supervision in the community, if they think public safety would not be at risk, and they believe that the criminal justice system should try to rehabilitate offenders (Cullen et al. 2000). Approximately 70 percent of Americans agree that “the criminal justice system should try to rehabilitate criminals, not just punish them,” and, when asked about two competing approaches to lower the crime rate, two-thirds favor spending more money to address the social and economic problems that lead to crime, while only one-third choose spending more money to improve law enforcement (Pastore and Maguire 2010).

It seems clear that Americans think crime is a major problem and worry that efforts to deal with crime and criminals are not working. Crime rates are high in the United States, and so are the numbers of people in prison or jail or otherwise under correctional supervision. The criminal justice system costs taxpayers billions of dollars. The problem of crime is real for all of us, whether or not we commit it or become victims of it.

## The Problem in Understanding Crime

Although crime is a very real problem that needs to be addressed, it is also true that much of what we think we know about crime may not be true or may at least overlook its complexity. For example, Americans underestimate the extent to which convicted offenders go to prison and the length of their prison terms (Cullen et al. 2000). In another example, although, as noted earlier, 74 percent of Americans think the crime rate has risen, the U.S. crime rate has actually remained fairly stable during the last several years and even declined considerably from 1993 through the early part of this decade.

Also, although Americans often have a sense that crime is a more serious problem than ever before, it turns out that Americans have *always* considered crime a serious problem. As a presidential commission reported in 1967, “There has always been too much crime. Virtually every generation since the founding of the Nation and before has felt itself threatened by the spectre of rising crime and violence” (quoted in Pepinsky and Jesilow 1984:21). Mob violence was a

common occurrence in major U.S. cities in the decades before the Civil War, for example, and teenage gangs were perceived as a threat. Many observers during the nineteenth century warned of what they called the “dangerous classes” (J. Adler 1994). Concern over crime was a common theme in the development of criminal justice policy after the Civil War and in the early decades of the twentieth century (Shelden 2008).

In short, our nation has never been free from crime and has always been concerned about it. The concern over crime in the last few decades is real, but it also needs to be considered within its larger historical context.

It is also true that our current concern about crime may both exaggerate the extent of violent crime and minimize the harm caused by other types of crime. Consider homicide—a crime featured in countless movies, TV shows, books, and news crime stories. Approximately 16,300 homicides occurred in 2008. This is not a small number, but it does not even place homicide among the top ten causes of death (which are led by heart disease and include cancer, motor vehicle accidents, and suicide) (U.S. Census Bureau 2010). Homicide thus receives much more media attention than its actual occurrence might warrant.

Homicide and other “street crimes” probably receive so much attention because they threaten us personally and violate our sense of security. Yet this fact leads us to neglect the gravity of “white-collar crime,” which in many ways is more harmful than street crime (see Chapter 3). Examples of white-collar crime include medical fraud, false advertising and price fixing, and “corporate violence” in the form of practices by corporations that threaten the health and safety of their workers or of the public. Estimates of the costs of white-collar crime dwarf those of street crime. For example, although the Federal Bureau of Investigation (FBI) estimates that property crime costs the public about \$17 billion in direct costs, the monetary costs of white-collar crime may exceed \$700 billion. Similarly, whereas almost 16,300 people died from homicide in 2008, the annual number of deaths from white-collar crime (from such sources as pollution and unsafe workplaces and products) may exceed 100,000 (Barkan 2009a). Although white-collar crime is undoubtedly far more costly than street crime, it receives far less attention from the media and the public than street crime and, likewise, much less attention from the criminal justice system.

## Media Coverage and Myths About Crime

What accounts for this false or oversimplified understanding of crime? Many observers blame the news media. Because most people learn about crime from the media, it is important that these sources of information provide an accurate picture of the amount of crime, the nature of crime, trends in crime rates, and the operation of the criminal justice system. Yet many studies confirm that the media, in fact, do not provide an accurate picture (Kappeler and Potter 2005; Muraskin and Domash 2007; Surette 2011).

A major problem is that the media tend to “overdramatize” crime in at least two ways. First, they report many crime stories in an effort to capture viewer or reader attention. Local TV news-casts often report more stories about crime than about any topic other than sports. If a particularly violent crime or a spurt of crimes occurs, the media give these events heavy attention, contributing to false perceptions that crime is becoming more frequent. In this way, the media create “crime waves” by devoting so much attention to one crime or a small number of crimes that the public becomes more alarmed about the perceived menace of crime.

The second way in which the media overdramatize crime is by devoting disproportionate attention to violent crime, reflecting the old news adage that “If it bleeds, it leads.” Many studies have found that most crime stories on TV news or in the newspapers feature violent crime, even though it is actually much less common than other types of crime. For example, homicides account for more than one-fourth of the crime stories on the evening news, even though homicides represent much less than 1 percent of all crimes (Dorfman and Schiraldi 2001). Researchers have also found that media coverage tends to distort actual trends in violent crime rates. For example, the number of stories about homicides on the national TV network news shows increased 473 percent from 1990 to 1998, even though the number of homicides actually decreased by 33 percent over the same span (Dorfman and Schiraldi 2001).

Such coverage yields the false impression that most crime is violent and can affect public perceptions of the amount of violent crime and the level of concern crime generates. One study



The news media overdramatize crime by reporting many stories about crime and by highlighting violent crime in these stories.

carried out in 1994 asked several hundred college students in an introductory criminal justice class to estimate the annual number of U.S. homicides. Almost half of the students estimated this number to be at least 250,000; in reality, fewer than 24,000 homicides occurred in the year the study was done (Vandiver and Giacomassi 1997). Other studies of Baltimore and Philadelphia residents have found that those who often watch TV news shows are more likely than those who watch such programs less often to worry about crime (Bunch 1999; Farkas and Duffett 1998).

Another problem is that media coverage often highlights the involvement of minorities and teenagers in crime (Dorfman and Schiraldi 2001). Some studies have determined that, in crime stories reported on TV news programs and in newspapers, a greater proportion of the offenders are African Americans and Latinos than is true in actual crime statistics. Conversely, a greater proportion of the victims are whites than is true in actual statistics. Newspaper stories about white victims of homicide are longer than those of African American victims. Crime stories also disproportionately describe crimes in which African Americans are the offenders and whites are the victims, even though most crimes involve offenders and victims of the same race. A study of *Los Angeles Times* coverage of homicides illustrated these problems: Although 80 percent of L.A. homicide victims are African American or Latino, murders involving white victims were much more likely than those involving African American or Latino victims to be covered by that city's largest newspaper (Sorenson, Manz, and Berk 1998).

In all these ways, media coverage exaggerates both the degree to which African Americans and Latinos commit crime and the degree to which whites are victims of crime. Perhaps for this reason, one poll found that whites think they are more likely to be victimized by people of color than by whites, even though approximately 75 percent of all crimes against whites are committed by other whites (Dorfman and Schiraldi 2001). Another provocative study focused on subjects who watched news stories that did not depict the offender. Sixty percent of the subjects falsely remembered seeing an offender, and 70 percent of these subjects actually said the offender was African American (Gilliam and Iyengar 2000)!

A similar bias exists in the coverage of youth crime (Dorfman and Schiraldi 2001). A greater proportion of offenders in crime stories are teenagers, especially African American teenagers, than is true in actual crime statistics. For example, one study in California found that almost 70 percent of TV news stories on violence featured teenagers, even though only 14 percent of all violent crime arrests in that state involved teenagers. In a related problem, newspaper and TV news stories about teenagers tend to show them committing violence rather than “prosocial” acts. Such coverage exaggerates the degree to which teenagers commit violence. Perhaps not surprisingly then, 62 percent of respondents in a national poll at the beginning of this decade asserted that youth violence was increasing, even though youth homicides actually declined 68 percent from 1993 to 1999. Respondents in other polls have claimed that teenagers commit most violent crime even though they are actually responsible for only 14 to 16 percent of such offenses (Dorfman and Schiraldi 2001).

These problems in media coverage help contribute to **crime myths**, or false beliefs about crime and criminal justice (Kappeler and Potter 2005). As in the fable of “The Emperor’s New Clothes,” people believe certain things are true when, in fact, they are not. The media coverage leads the public to believe falsely that crime is rising when, in fact, it is not; to think that most crime is violent when, in fact, it is not; to exaggerate the involvement of people of color and youths in crime and to understate their victimization by crime; to worry more about street crime than perhaps the facts warrant; and to call for tougher treatment of criminals.

Statements by public officials also contribute to crime myths. Politicians have regularly used harsh rhetoric—some of it racially “coded”—about crime and criminals to win public support for harsher criminal sanctions and, not incidentally, for the politicians’ campaign efforts (Beckett and Sasson 2004; Chambliss 1999). A memorable example involved a 1988 TV commercial aired on behalf of the presidential campaign of then-Vice President George H. W. Bush. The commercial featured convicts passing through a revolving door and showed a picture of a black Massachusetts prisoner, Willie Horton, who had committed a vicious murder while on a prison furlough. The commercial was widely credited with hurting the campaign of Bush’s Democratic Party opponent, Massachusetts Governor Michael Dukakis, and was heavily criticized for its racial overtones (Mendelberg 2001).

After Bush became President, he gave a speech about drugs on Labor Day 1989 in which he held up a bag of crack cocaine that, he said, had been bought by undercover agents in Lafayette Park across the street from the White House. It was later revealed that the White House had asked federal agents to buy the crack in the park to provide a dramatic prop for the President’s speech. When the agents were unable to find anyone selling crack in the park—because, they were told, it was too near all the police at the White House—they had to trick a drug dealer into going to the park so that they could buy it there (Isikoff 1989).

Although both of the preceding examples involved a Republican president, Bush’s successor, Democrat Bill Clinton, also engaged in harsh rhetoric when he sought Congressional support for a major crime bill during his first term as president (Chambliss 1999).

Whether promoted by the news media or by elected officials, crime myths help distort public understanding about crime. Crime itself is a real problem, but the “knowledge” about crime and criminal justice gained from the media and from official statements may not be so real.

## The Get-Tough Approach

If the understanding of crime can be problematic, then the U.S. response to crime in the last few decades has been much more certain. This response has taken the form of a concentrated “get tough” approach that involves the arrest and incarceration of many more offenders than in the past and that has prompted the extraordinarily high rates of incarceration noted earlier in this chapter. It emphasizes the need to arrest and punish criminals over the needs to rehabilitate them and to address the many social factors underlying criminal behavior.

Other Western nations emphasize these latter needs to a much greater extent. Their approach is more akin to the public health model used in the field of medicine (Hemenway 2004). This model stresses the need to identify and address the causes of disease so as to reduce its incidence significantly. For example, unless the causes of cancer are identified and then eliminated, millions



The amount of money spent on the criminal justice system in the United States has increased tremendously during the past few decades, thanks in large part to the building of new prisons, such as the one depicted here, and the housing of many more inmates.

of more people will get cancer, no matter how many cancer patients are successfully treated. Thus the public health model focuses on the *prevention* of disease, not just on its treatment once it does occur. By neglecting the underlying causes of criminal behavior, the get-tough approach to crime makes it likely that crime will continue no matter how many offenders are arrested and imprisoned.

This is a harsh charge, to be sure, and one with which get-tough advocates would doubtless disagree (Muhlhausen 2006). In their view, the get-tough approach has reduced crime by imprisoning so many offenders. This view probably holds some truth, and we examine it in more detail later in this book. Yet the bulk of the evidence indicates that the get-tough approach has achieved only modest reductions in crime and that these reductions have come at a very heavy social and financial cost (Blumstein and Wallman 2006; Walker 2010).

What are some of these costs? The United States has more than 7.3 million people (more than 3 percent of all U.S. adults) under some form of correctional supervision (incarceration, probation, or parole). Of this number, more than 2.3 million people are incarcerated in prison or jail, and 5.1 million are on probation or parole. The U.S. incarceration rate—754 jail or prison inmates per 100,000 residents at year-end 2008—is the highest rate in the world. As a recent news report observed, “The United States has less than 5 percent of the world’s population. But it has almost a quarter of the world’s prisoners. . . . Americans are locked up for crimes—from writing bad checks to using drugs—that would rarely produce prison sentences in other countries. And in particular they are kept incarcerated far longer than prisoners in other nations” (Liptak 2008:A1). The get-tough approach has cost the United States tens of billions of tax dollars for more police and more prisons and jails, with states facing financial crises having to pay for their prisons by taking money out of higher education and various social programs (Vuong et al. 2010; Warren 2008).

The get-tough approach has struck racial and ethnic minorities disproportionately hard. Although the government estimates that more than 5 percent of all Americans will be put in

prison at least once during their lifetime, this figure—in itself the highest by far in the Western world—rises to 16 percent for Latino men and almost 30 percent for African American men (Bonczar and Beck 1997). About one-third of young African American men are under correctional supervision (Mauer 2006).

In related problems, the get-tough approach has destabilized urban neighborhoods by putting so many of their young males into prison (Abramsky 2007; Western 2006). It has also created a force of hundreds of thousands of inmates who are released from prison back into their communities every year with the same personal problems that helped put them into prison and with bleak chances of stable employment or social relationships. Many—and maybe even most—of these individuals will commit new offenses and go back to prison, and their sheer numbers may be setting the stage for an increase in crime in the years ahead (Clear 2008; Travis and Visher 2005).

We discuss these costs further in later chapters. First, however, we examine the operation of the criminal justice system in the United States. The controversy over the get-tough approach notwithstanding, the criminal justice system plays a fundamental role in American society, and it is impossible to imagine our nation without it. It employs hundreds of thousands of people, costs billions of dollars, and processes millions of offenders annually. In one way or another, it touches all of our lives, either directly or indirectly. For all these reasons, it is important to understand the criminal justice system's operation, its strengths, its weaknesses, and its impact on the crime rate and other aspects of American society. To begin this understanding, we next discuss several aspects of the criminal justice system.

## The Criminal Justice System

The U.S. criminal justice system is only partly a “system” as that word is usually defined. “System” implies a coordinated and unified plan of procedure, but criminal justice in the United States is only partly coordinated and unified. The basic stages of criminal justice—police or law enforcement, courts or judicial processing, and corrections—are the same throughout the nation, but the U.S. criminal justice “system” really comprises thousands of smaller systems. For example, the federal government has one system of criminal justice, each state has its own system, and each county and municipality has its own system.

Although each system's components—police, prosecutors, judges, corrections officials—work together on occasion, they have separate budgets and work independently of one another for the most part. Inevitably, they also often work at cross-purposes. Thus the police may crack down on drug trafficking in a particular neighborhood by making mass arrests, only to have this flood of cases overwhelm the prosecutor's office and judicial system. Or new legislation may require judges to put more people in prison, only to find that prisons have too few cells to hold the newly convicted individuals. This problem then forces prison officials to let out other inmates early, overcrowd their cells further, or request funds for new prison construction.

## Events in the Criminal Justice System

Although U.S. criminal justice is thus composed of many systems, all involve a series of events, or stages, that are fairly similar from one jurisdiction to the next. These stages are outlined in **Figure 1–1**. Later chapters examine these stages extensively, but a brief discussion here is in order.

The left side of the diagram in Figure 1–1 begins with a crime being committed. Only if a crime comes to the attention of the police can it enter the next stages of the criminal justice process. In reality, almost 60 percent of crime is *not* reported to the police and, therefore, stays out of the justice system. If the police do learn about a crime, they investigate it. Although the chances of arrest vary from one crime to another, approximately 80 percent of the serious crimes that do come to the attention of the police do *not* end in an arrest. Sometimes the police never find a suspect, and sometimes they do find a suspect but decide not to make an arrest, often because the evidence is too weak to do so.

If an arrest does occur, then a series of stages summarized in Figure 1–1 under the heading “Prosecution” ensues. The police give information about the case to the prosecutor, who must then decide whether to file formal charges with the court or, instead, to release the suspect. As Figure 1–1 indicates, the prosecutor may decide to release a suspect or dismiss the charges at several points in this part of the process even if formal charges are initially filed. Charges may be dismissed for any one of several reasons: The evidence may be too weak, a witness may be uncooperative, and so on. If the prosecutor chooses to proceed with a case after the initial arrest, the defendant ordinarily appears before a judge to hear the charges against him or her and to determine whether the evidence is sufficient to allow the prosecution to proceed. Defense counsel is also often assigned at this appearance, as most suspects are too poor to afford their own attorneys. At this or a later appearance, a judge decides whether to release the defendant on his or her own recognizance or on bail, and, in the latter case, the size of the bail.

A later preliminary hearing determines whether there is “probable cause” to believe that the defendant committed a crime. If the judge makes an affirmative decision, the case is often sent to the grand jury. The grand jury hears evidence about the case and must decide if it is sufficient to justify a trial. If the grand jury decides that the evidence is strong enough, it indicts the defendant. In some jurisdictions, grand juries are not used; instead, the prosecutor issues an “information” to the court that is the equivalent to an indictment; such informations are also ordinarily used for minor offenses.

This series of decisions finally brings us into the trial stage in Figure 1–1. After an indictment or information is filed, the defendant has an arraignment before a judge. Here the judge tells the defendant the charges, advises the defendant of his or her legal rights, and asks for a plea on the charges. Defendants must decide whether they will plead guilty; those who plead not guilty must decide whether they will request their right to a jury trial or settle for a “bench trial,” in which the case is heard solely by the judge. Most defendants do plead guilty in return for a reduction in the number or severity of the charges and the promise of a reduced sentence. If a defendant does go to a trial, the jury or judge must obviously decide whether the defendant is guilty or not guilty.

If the defendant is found guilty, the judge must decide on the appropriate sentence (the “Sentencing” part of Figure 1–1). Often a sentencing hearing is held, during which the judge considers all the aspects of the case, including any aggravating or mitigating circumstances, and reviews a presentence report prepared by a probation officer or other legal official that discusses the personal background of the defendant. The most important decision the judge can make at the sentencing stage is whether to incarcerate the defendant. Defendants convicted of minor offenses (misdemeanors) may be sent to jail for less than a year, while those convicted of serious offenses (felonies) may be sent to prison for one year or more. In lieu of incarceration, a judge may sentence a defendant to probation; in this case, the defendant remains in the community but must fulfill certain conditions and follow certain rules such as drug testing under the supervision



As this courtroom scene reflects, decisions by judges and other criminal justice professionals characterize all stages of the criminal justice system.

# THE CRIMINAL

## POLICE

## COURTS

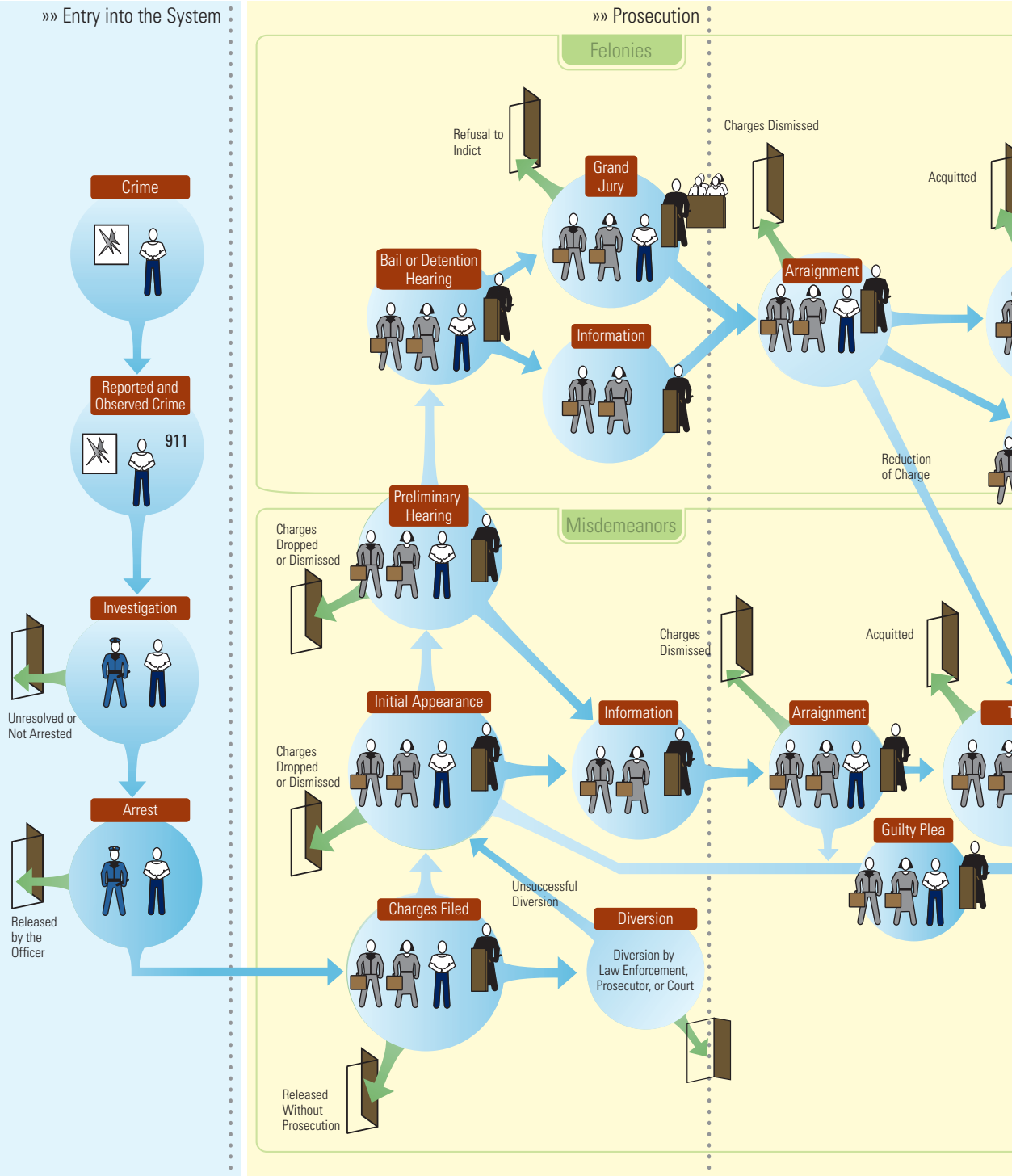
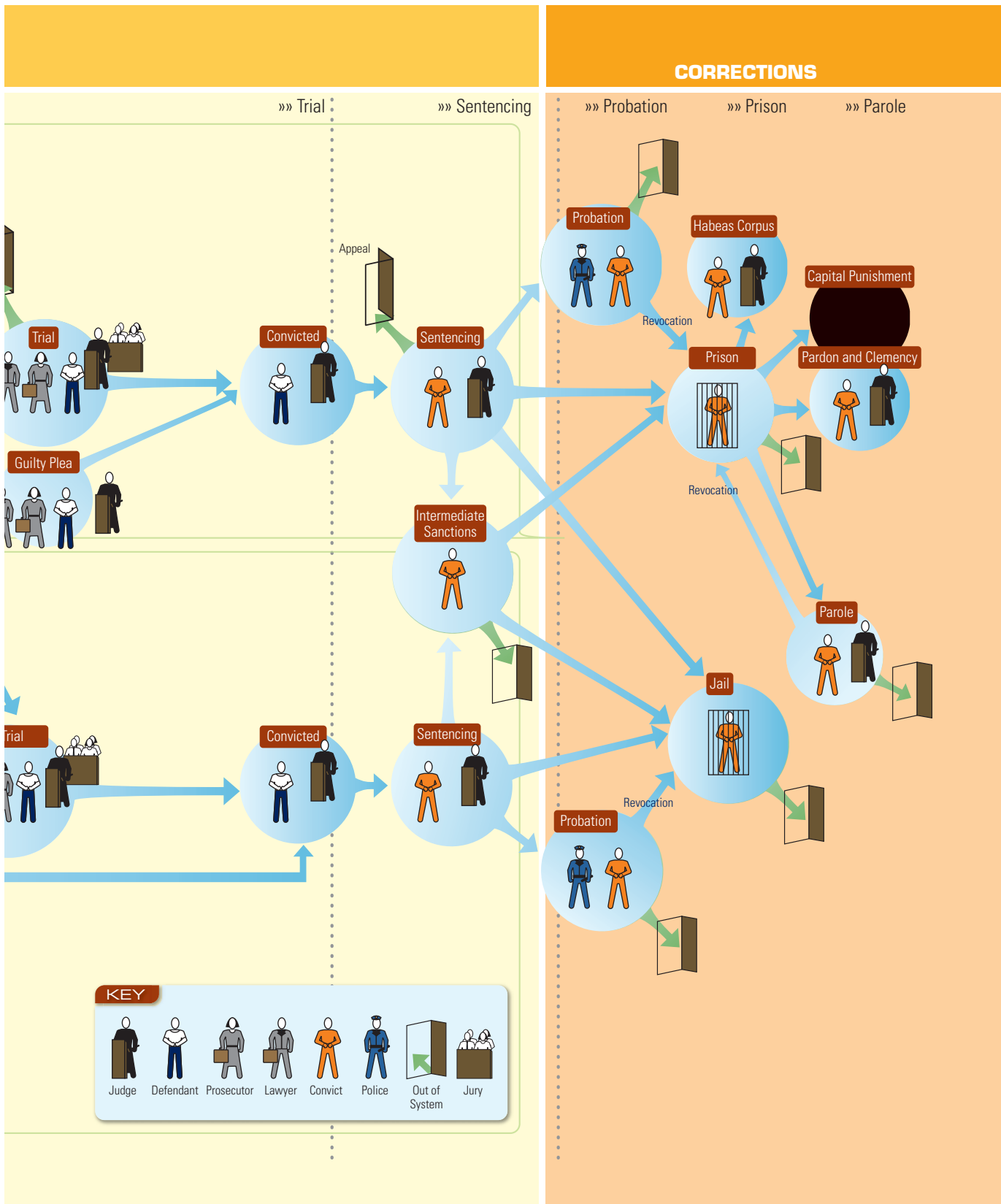


Figure 1-1

Sequence of Events in the Criminal Justice System

# JUSTICE SYSTEM





## Spotlight On

### Can We Afford Our Prison Policy?

Figure 1–3 shows that prisons and jails cost the United States almost \$70 billion annually. Most of this cost is borne by the states, not by the federal government. As the U.S. economy entered into crisis mode by early 2009, many states had begun to consider granting early release to thousands of prisoners and eliminating required parole supervision for thousands more.

For example, California, with a prison population of about 170,000, was facing a \$42 billion budget deficit as 2009 began. To save costs, Governor Arnold Schwarzenegger announced several weeks earlier that he wanted to reduce his state's prison population by at least 15,000 by placing nonviolent offenders in county jails and by releasing some prison inmates before their terms expired. To save parole costs, he also proposed eliminating parole for all nonviolent offenders.

Many other states were also reconsidering their prison policies and sentencing practices. New York Governor David Patterson called for the early release of 1,600 prisoners and asked his state legislature to take a hard look at the state's harsh mandatory prison terms for nonviolent drug offenders. An official of

the New York Civil Liberties Union supported Patterson's effort to repeal the mandatory prison time. "These laws have neither curbed drug use nor enhanced public safety," the official said. "Instead, they have ruined thousands of lives and annually wasted millions of tax dollars in prison costs."

Democrats and Republicans alike in these and other states have begun to consider changes to sentencing and parole policies in an effort to save money and reduce their states' budget deficits. As noted by the director of the Pew Center's Public Safety Performance Project, which has issued reports on the growing costs of current prison and parole policies, "Prisons are becoming less and less of a sacred cow. The budget crisis is giving leaders on both sides of the aisle political cover they need to tackle issues that would be too tough to tackle when budgets are flush."

Other individuals urged states to act cautiously as they considered the early release of prisoners and other changes to prison and parole policies. The executive director of the National District Attorneys Association warned, "I don't think the public at large has any idea of who's in

these prisons. If they went and visited, they'd say, 'My God, don't let any of these people out.'"

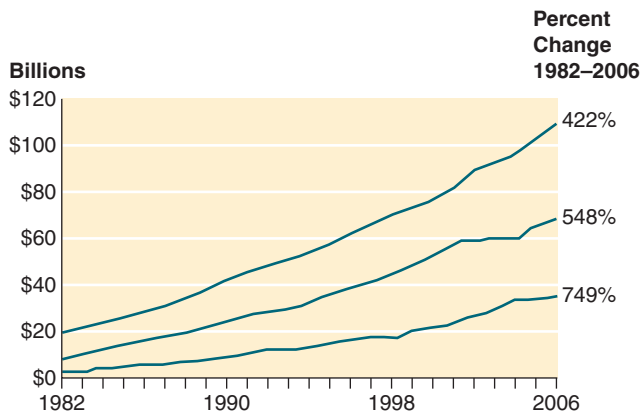
Yet proponents of the new reforms said they were long overdue. "There's an unprecedented level of interest in this kind of thinking," observed the director of the Council of State Government's Justice Center. "It's a combination of fiscal pressure and a certain fatigue of doing the same thing as 20 years ago and getting the same return."

As you read through this book, you will get a good sense of how well the criminal justice system works and which improvements might be in order. The fiscal crisis of 2009 reminds us that the United States must strike the correct balance between public safety and fiscal responsibility. As you will see in several chapters, public safety might actually be enhanced if dollars now spent on costly imprisonment were diverted to more effective—and also less expensive—crime prevention strategies. To the extent that the fiscal crisis forced the states to adopt these strategies, it may have actually helped to keep us safer from crime.

Source: Crary 2009.

of a probation officer. Defendants may also be fined or sentenced to other types of intermediate sanctions, such as house arrest and electronic monitoring, that are stricter than routine probation but less harsh than incarceration.

Once defendants are sentenced, they enter the corrections stage. Many inmates serve the full length of their prison term less any time off for good behavior, whereas others are released early after a favorable decision by a parole board. Once an inmate is released under either set of circumstances, he or she ordinarily will be supervised by a parole officer and must follow certain conditions similar to those convicted offenders on probation. If they violate these conditions,



**Figure 1-2** Criminal Justice System Expenditure by Level of Government, 1982–2006

Source: Reproduced from Bureau of Justice Statistics, "Expenditure Trends by Government Chart," *Key Facts at a Glance*. U.S. Department of Justice, 2010.

individuals risk being sent back to prison. Once convicted offenders successfully complete the terms of their release (or, if not incarcerated in the first place, the conditions of their probation or intermediate sanctions), they leave the corrections system and are no longer under correctional supervision.

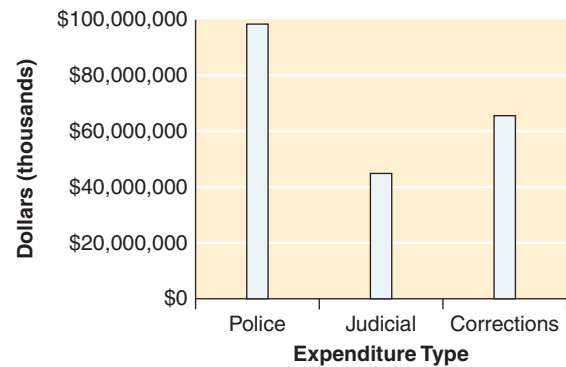
The preceding description applies to adults; a separate process exists for juvenile offenders. The juvenile justice system is part of the broad U.S. legal system but separate from the adult criminal justice system. Its stages generally parallel those for the adult system but are more informal. In recent years, more juvenile offenders have been tried as adults in response to public concern about youth violence. We explore this recent trend and the entire juvenile justice system further in the last chapter of this book.

## The Size and Cost of Criminal Justice

As noted previously, the U.S. criminal justice system costs billions of dollars. This expenditure breaks down as follows. In 2006 (the latest year for which data were available when this book went to press), the United States as a whole spent approximately \$214 billion on criminal justice: \$36 billion at the federal level, \$69 billion at the state level, and \$109 billion at the local (county or municipality) level. These figures represent dramatic increases in crime-related expenditures since 1982, when only \$36 billion was spent nationwide on criminal justice (Figure 1-2). Thus the national cost of criminal justice almost sextupled in only 24 years. In 1982, the United States spent roughly \$155 for every American citizen on criminal justice; today, it spends about \$600 per capita (Pastore and Maguire 2010).

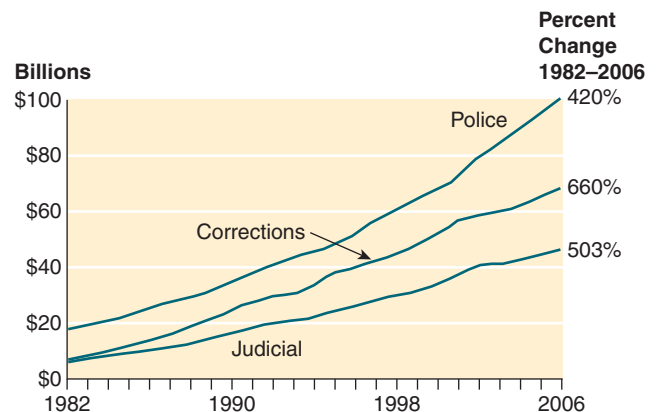
Nationwide, the single greatest expense is for police, followed by corrections and then judicial and legal expenses (Figure 1-3). Expenditures for each of these activities also soared from the early 1980s through 2006 (Figure 1-4).

A major reason why these costs are so high is the fact that the criminal justice system employs hundreds of thousands of people. In 2006, the system employed more than 2.4 million people (Pastore and Maguire 2010). The single greatest number worked in policing, followed by



**Figure 1-3** Criminal Justice System Expenditure by Type of Activity, 2006

Source: Data from Bureau of Justice Statistics, "Description of Crime and Justice Expenditure Trends by Function," *Key Facts at a Glance*. U.S. Department of Justice, 2010.



**Figure 1-4** Criminal Justice System Expenditure by Function, 1982–2006

Source: Reproduced from Bureau of Justice Statistics, "Expenditure Trends by Function Chart," *Key Facts at a Glance*. U.S. Department of Justice, 2010.

corrections and then judicial and legal services. The 2.4+ million employees in 2006 represented about twice as many people as were employed in 1982.

The criminal justice system also monitors millions of people. At yearend 2008, more than 4.2 million people were on probation; more than 800,000 were on parole; 1.5 million were in prison; and another 785,000 were in jail or under jail supervision. The total number under some form of correctional supervision was about 7.3 million, representing 3.2 percent of the U.S. adult population (Glaze and Bonczar 2009).

## Understanding the Criminal Justice System

With the structure of the criminal justice system in mind, we now turn to its goals and models of operation to understand how and why it works the way it does.

### Goals of Criminal Justice

Criminal justice in the United States tries to serve several goals. How well it achieves these goals is, of course, a matter of debate. Nevertheless, to understand the role played by criminal justice in American society, we must understand the goals it tries to accomplish.

The first goal—and perhaps the most important for most Americans and the one with which you are probably most familiar—is to control and prevent crime. The criminal justice system tries to apprehend and punish people who commit crime and, through these and other measures, to prevent crime by deterring both offenders and would-be offenders from committing it in the first place. The larger goal, of course, is to keep the public as safe as possible from crime.

The police are the most visible branch of the criminal justice system as it tries to achieve this goal. Most of us encounter the police only through traffic violations, but even here the police act, whether we like it or not, to keep the roads safer from our driving misdeeds. As important and valuable as the police are in protecting the public from crimes of so many types, they are also highly controversial as both the chapter-opening vignette and the possibility of racial profiling suggest.

The other branch of the criminal justice system that gets much attention in its effort to control and prevent crime is the corrections system, which tries to do so in several ways. First, it “incapacitates” criminals by putting them behind bars: Once there, they no longer pose a threat to the public. Second, it tries to teach punished offenders a lesson and promise them more of the same should they commit new offenses, in hopes that they will be less willing to break the law again. Finally, it aims to deter would-be offenders from committing crime by threatening them with incarceration. Whether the corrections system helps to prevent crime in all these ways is a matter of some contention that we explore in later chapters. As noted earlier, many observers now worry that the steep rise in incarceration in the last few decades is creating a dangerous flood of former inmates who will exacerbate crime and other social problems upon their release into the general community.

The second goal of criminal justice is to achieve justice by protecting all citizens—those guilty of crimes as well as those not guilty—from government abuse of power. Jerome Skolnick (1994) referred to this concept as “the rule of law” and noted that, in the United States and other democracies, the police and other government agents must respect individual rights and freedoms as they pursue the goal of crime control. Otherwise, we would live in an authoritarian nation, not a democratic one. This goal of the U.S. criminal justice system is reflected in the U.S. Constitution and Bill of Rights, which guarantee several legal rights to people suspected or convicted of crimes. These provisions grew out of the colonial experience in which England abused the courts to harass the colonists. When the new nation began, this abuse was fresh in the minds of the framers of the Constitution and Bill of Rights, and they considered the legal rights of the criminally accused very important to protect.

These first two goals of the criminal justice system—to control crime and to achieve justice—sometimes clash. Skolnick (1994:1) called this clash a classic “dilemma of democracy.”

As the nation adopted a get-tough approach to the crime problem in recent decades, it expanded the powers of police and increased the punishment given to convicted offenders. As the chapter-opening vignette suggests, it is very difficult to strike the correct delicate balance between the twin goals of controlling crime and achieving justice. As you read this book, keep this difficulty in mind.

The third goal of the criminal justice system is to express the nation's morality and values on important issues of the day. For example, the nationwide laws against murder make very clear that Americans believe it is very wrong to take someone's life. Thus criminal justice serves an important role in teaching us moral lessons in addition to controlling crime and preserving justice. That said, it is also true that this goal of criminal justice arouses much controversy when it comes to crimes such as prostitution, drug use, and other behaviors that involve no unwilling victims. Critics argue that the use of law to prevent these behaviors amounts to the state legislating morality by "coercing virtue" (Meier and Geis 2007; Skolnick 1968). In a free society, they say, people should be free to engage in these behaviors just as they are free to engage in other potentially harmful actions such as eating high-fat foods, parachuting, and gambling via the state lottery. The majority should not impose its sense of morality on the minority when it comes to consensual behaviors, however distasteful these behaviors may be to some people. On a more practical level, some critics say that the legal attempt to outlaw these behaviors may do more harm than good. Among other consequences, it may encourage police corruption, increase public disrespect for the law, and prompt the police to engage in unsavory practices such as wiretapping and use of informants (Meier and Geis 2007).

## Models of Criminal Justice

In the social and natural sciences, a *model* is a simplified representation of a phenomenon or system that helps to understand its operation and outcomes. Several models of criminal justice exist that help us understand the way it works and some of the dilemmas it faces.

### **System Model**

The first kind of model is the **system model** depicted in Figure 1–1. It may be considered an "input–output" model in which crime is the input and entrance into corrections is the output. Along the way, a series of stages are marked by limited cooperation among criminal justice officials. As noted earlier, the criminal justice system is only partly a "system" as that term is usually meant; the various branches of the system are too independent to allow for the tight coordination that the term "system" usually implies.

### **Discretionary Model**

A second model of criminal justice may be called the **discretionary model**, in which the criminal justice system can be understood as a series of decisions at every stage of the process. Reread our earlier discussion of Figure 1–1, and note how often the words "decide," "decides," and "decision" were used. As the number of these words suggests, **discretion** characterizes every event in the criminal justice system. Crime victims and witnesses must decide whether to report the crime; police must decide how much to investigate a crime and whether to arrest a suspect; prosecutors must decide whether to prosecute a case and which charges to file; judges must decide whether to dismiss a case and whether to let defendants out on bail or their own recognizance; defendants must decide whether to plead guilty; and prosecutors and defendants must decide on a plea bargain. If a trial occurs, juries or judges must decide whether to convict a defendant; if a conviction occurs, judges must decide on the appropriate sentence. Finally, various corrections officials must decide whether to release inmates early from prison or, for persons in the community under supervision, whether to send them to prison for violating the conditions of their supervision.

The criminal justice system could not operate without all this discretion. No two cases are alike, and no two defendants are alike. Criminal justice officials recognize this fact, and they also recognize the need to keep the whole process working as smoothly and efficiently as possible. Thus discretion is a necessary component of the criminal justice system (Abadinsky 2008). Yet with so much discretion at every stage of the process, the opportunity for conscious or unconscious abuse of discretion inevitably arises. By this statement, we mean that criminal justice officials may make biased decisions, either consciously or unconsciously, based on such factors as a defendant's or victim's race, ethnicity, gender, or social class (Walker, Spohn, and DeLone 2007). Officials may also allow their views of the nature of certain criminal behaviors to affect their decision making. For example, some officials in the past, and perhaps still in the present, did not take crimes such as rape and domestic violence too seriously and failed to arrest or prosecute persons who committed these offenses to the fullest extent of their law (Schmidt and Steury 1989). More generally, discretion may mean that similar, if not identical, cases have very different outcomes in different jurisdictions of the nation, raising important questions about the fairness of these outcomes. Clearly, discretion is a double-edged sword with profound implications for the operation of the criminal justice system, and we explore these implications throughout the book.

Note also the earliest exercise of discretion, in which victims decide not to report to the police almost 60 percent of the crimes they suffer. Also recall that most of the crimes known to the police do not end in an arrest. These twin facts suggest that the criminal justice system faces serious obstacles in being able to address the crime problem in any significant way.

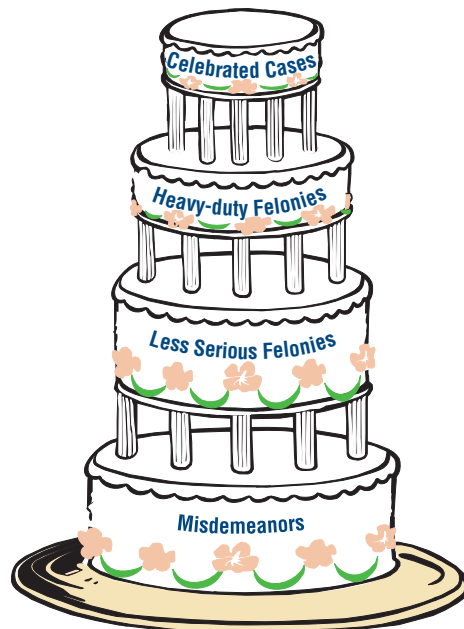
### Wedding-Cake Model

The system model depicted in Figure 1–1 distinguishes between felonies and misdemeanors but does not adequately portray the vast differences in how the criminal justice system handles different types of crimes. In this regard, a **wedding-cake model** may be more useful (Walker 2011).

As **Figure 1–5** illustrates, a wedding cake has a small layer on the top, a larger layer just beneath it, and larger layers below that. The criminal justice system may be understood through this model. A very small number of *celebrated cases* can be found at the top of the model.

Because of the enormity of the crime and the fame of the offender and/or victim, these cases receive heavy media attention and draw the utmost scrutiny from criminal justice officials. The most celebrated case during the last two decades was probably the 1994 arrest and subsequent trial of football star and TV/movie celebrity O. J. Simpson for allegedly murdering his ex-wife and a friend of hers. A close second, perhaps, was the arrest and trial of Timothy McVeigh for bombing the Alfred P. Murrah Federal Building in Oklahoma City in 1995. As Samuel Walker (2011) notes, cases like these usually involve a criminal trial that is filled with drama. Because they receive so much publicity, celebrated cases unduly influence public perceptions of how the criminal justice system works, even though almost all other criminal cases do not necessarily proceed the way the celebrated ones do.

The second layer of the wedding cake comprises the most *serious felonies*. These



**Figure 1–5**

#### The Wedding Cake Model of Criminal Justice

Source: Adapted from Samuel Walker, *Sense and Nonsense About Crime and Drugs: A Policy Guide*, 6th ed. (Belmont, CA: Thomson/Wadsworth, 2006), p. 36.



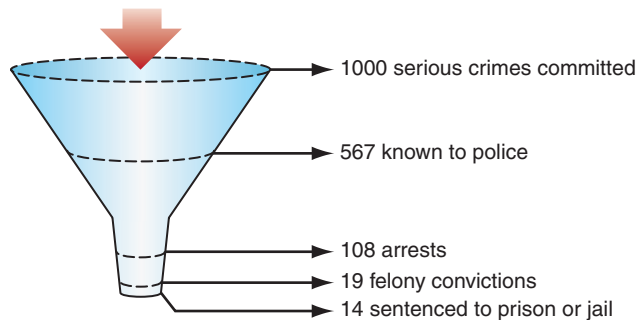
When an offender is a celebrity, a criminal case is likely to receive heavy media attention and often a prolonged criminal trial, which otherwise is a relatively rare event. Here actor Winona Ryder sits in court in Beverly Hills, CA after she was charged with stealing more than \$5,500 worth of designer clothing from Saks Fifth Avenue in Beverly Hills. She was later convicted of grand theft and vandalism and sentenced to do community service with babies with AIDS and with other ill individuals.

cases are distinguished by the seriousness of the offense and the extent of the injuries involved, the extent of the defendant's prior record, the relationship between the victim and the offender (specifically, whether they knew each other), and some other factors. Many homicides and robberies and some rapes fall into this category, although offenses in which the offender and the victim were not strangers are apt to be included in the next layer. Although serious felonies represent only a small percentage of all crimes, they demand a disproportionate amount of the time, money, and energy of the criminal justice process. Because prosecutors believe that defendants in these cases should receive harsh punishment, they are reluctant to plea bargain, and a greater proportion of these cases than those in the remaining layers are likely to go to trial. In this second layer of the wedding cake, the criminal justice system is very tough, as most people think it should be, because these cases involve serious crimes against strangers by offenders with long prior records.

The third layer of the wedding cake involves *less serious felonies*, those whose circumstances do not prompt them to be considered for the second layer. These cases typically involve less serious charges, such as property crimes and violent crimes where little or no injury occurred and where the victim knew the offender. In addition, the defendant generally has little or no prior record. Compared to cases in the top two layers, cases in this third layer are more likely to be dismissed or to end in guilty pleas as a result of plea bargaining. Defendants convicted in these cases are more apt than those in the upper layers to avoid incarceration.

The fourth layer of the wedding cake involves *misdemeanors*, which account for the bulk of all criminal acts. The major violent and property crimes—homicide, aggravated assault, rape, robbery, burglary, larceny, motor vehicle theft, and arson (see Chapter 2)—represent only 16 to 17 percent of all arrests in any given year. Approximately half of all arrests in the United States involve minor offenses such as disorderly conduct, public drunkenness, prostitution, simple assault, and petty theft. Because so many cases are in the fourth layer, they are processed very quickly. Public defenders or assigned counsel spend only a few minutes with their clients, if that much time, and the cases are resolved through offenders plea bargaining and appearing before a judge, one after the other. Very few defendants in this layer are incarcerated.

In sum, the wedding cake model helps us understand that different kinds of cases in the criminal justice system are treated very differently. The major attention given to the celebrated cases at the top of the cake may lead to misperceptions of how the bulk of criminal cases in lower layers are handled.



**Figure 1-6**

**The Funnel Effect for Serious Crime**

Source: Data from Pastore, Ann L. and Kathleen Maguire, eds. *Sourcebook of Criminal Justice Statistics*, 2004 data [Online]. Available: <http://www.albany.edu/sourcebook>.

**Funnel Model**

Another way of understanding the criminal justice system is to think of it as a **funnel**, with many cases entering the top of the system, and only a very few trickling out into prison at the bottom. **Figure 1-6** illustrates this effect, which is partly the result of the discretion that pervades the criminal justice process. Note that many crimes are investigated by police at the top of the funnel, but only relatively few lead to arrests. Fewer still are fully prosecuted, and even fewer of those cases that are prosecuted end in convictions. According to 2004 figures, for every 1,000 felonies that occur in the United States,

only 14 result in someone going to prison or jail. Some of the remaining cases are dismissed by prosecutors or judges, while others result in guilty pleas to misdemeanor charges that avoid incarceration. Although **Figure 1-6** does not show it, most arrests for serious crimes do result in some punishment for the offender and, as the wedding cake reminds us, heavy punishment for those accused of the most serious crimes (Walker 2011). At the same time, the funnel model reminds us that most serious offenses do not lead to imprisonment. As we shall see in later chapters, this fact has important implications for the ability of the corrections system to make a large dent in the crime rate through increased incarceration rates.

**Crime Control and Due Process Models**

Herbert Packer (1964) long ago outlined two competing models of the criminal justice system: the crime control model and the due process model. These models, too, help us understand the way the criminal justice system works and the dilemmas it faces.

As its name implies, the key objective of the **crime control model** is to pursue one of the goals already described: to prevent and punish crime and, by so doing, to keep society safe. Because this model assumes that most criminal suspects are guilty, it emphasizes the need to process cases as quickly and efficiently as possible. Packer wrote that the image of an assembly-line conveyor belt best captures the operation of the criminal justice system under the crime control model. Analogous to products on a conveyer belt, cases are passed as quickly as possible from one stage to another. The task of everyone on the criminal justice conveyor belt is clear and simple: to make sure that offenders are appropriately punished as soon and as easily as possible.

The **due process model** stands in sharp contrast to the crime control model. Its key goal is another one already described: to prevent government abuse of the legal system against guilty and innocent people alike. This model assumes that some suspects are, indeed, innocent of the crimes with which they are charged. It also assumes that even guilty suspects deserve fair treatment in a democracy. Accordingly, it should be relatively difficult for the government to arrest, prosecute, and convict suspects. Packer wrote that the image of an obstacle course best captures the operation of criminal justice under the due process model.

Packer (1964), Skolnick (1994), and other writers emphasize the tension between these two models of criminal justice. The get-tough trend of the last few decades indicates that the crime control model has won out over the due process model. The reverse was true during the 1960s, when the U.S. Supreme Court under the leadership of Chief Justice Earl Warren expanded the legal rights of suspects, defendants, and prisoners. Due process rights remain a key part of the

U.S. criminal justice system but have since been somewhat curtailed, and the crime control model is now more popular.

The clash between the two models became especially evident in the aftermath of the terrorist attacks on September 11, 2001, when the hijacking of jet planes by Islamic extremists led to the deaths of more than 3,000 people at the World Trade Center, at the Pentagon, and in western Pennsylvania. The U.S. Congress passed, and President George W. Bush signed, the U.S.A. Patriot Act, which authorized the detention and deportation of immigrants and the seizure of financial and medical records on grounds much weaker than required for these actions in the past; it also led to the designation of various domestic groups as terrorist organizations. The government quickly detained hundreds of Middle Eastern immigrants for intense secret questioning and denied many of them legal counsel or monitored attorney–client conversations of those who were allowed counsel. President Bush also announced that immigrants accused of terrorism could be tried by secret military tribunals; in these trials, they would not be permitted many of the rights of due process enjoyed by defendants in normal criminal proceedings, including the right to a jury trial and to the presumption of innocence. Officials also said that torture of suspected terrorists was under consideration. Critics charged that all of these measures violated several amendments to the U.S. Constitution, while supporters claimed they were all necessary to ensure public safety against the threat of new terrorist acts (Purdy 2001). Controversy over the Patriot Act and the torture of detainees that later came to light continues to this day (Alexander 2010; Cole and Lobel 2007).

### ***Adversarial Versus Consensual Models***

Closely aligned with these due process and crime control models are the **adversarial model** and **consensual model** of criminal justice, or, to be more accurate, of the criminal courts. The adversarial model is probably more familiar to you, as the United States is often said to have an adversary system of criminal justice (Abadinsky 2008). This model views court proceedings as a contest between the prosecution and the defense in which both parties do their best to win, often with fiery rhetoric. *Perry Mason* and other TV shows about lawyers feature this model,



The U.S. government's treatment of people of Middle Eastern descent in the aftermath of the 9/11 attacks reflects the tension between the crime control and due process models of criminal justice. In this photo, military police at the Naval Base on Guantanamo Bay, Cuba are taking a detainee to an interrogation room.

which theoretically gives defendants the opportunity to take advantage of their due process rights, thereby limiting the arbitrary exercise of state power through the legal system.

The adversary model is certainly highlighted in many law school courses and generally characterizes the celebrated cases found at the top layer of the wedding-cake model and some of the serious felony cases found below them in the second layer. For most criminal cases, however, the adversary model does not apply, as prosecutors, defense attorneys, and judges generally



## International Focus

### The Islamic Concept of Crime

By looking at crime and criminal justice in other cultures, we can better understand the problem of crime and the purpose and operation of the criminal justice system in the United States. In this first International Focus feature, we discuss the concept of crime in the Islamic world.

Islam is the second largest religion in the world today, with more than 1 billion adherents called Muslims. Most Muslims live in the Middle East, northern Africa, and parts of Asia. Islam is the predominant or at least major religion in several nations, including Afghanistan, Algeria, Egypt, Iran, Iraq, Jordan, Kuwait, Libya, Malaysia, Morocco, Pakistan, Saudi Arabia, Singapore, Sudan, Syria, and Tunisia.

Islam was founded by the prophet Muhammad in the seventh century A.D. The term *Islam* means “surrender” and connotes the idea that a devout Muslim is to surrender to the will of Allah, the Muslim term for God. The sacred book of Islam is the *Koran* (also spelled *Quran*), which is analogous to the Bible for Christians and Jews; it is considered the word of God as delivered to Muhammad by the angel Gabriel. Another important written source of Islamic principles is the *Sunnah*, a collection of the words and practices of Muhammad.

In the United States, the First Amendment to the Constitution guarantees the separation of church and state. This separation does not exist in Islamic nations, which are theocracies (nations in

which the law of God is also the law of the land.) Thus Islamic law and the concept of crime that it involves are best understood as vehicles to enable Muslims to achieve the principles embodied in their faith.

Islamic law, or the *Shari’ah* (translated as “the path leading to the watering place”), derives from both the *Koran* and the *Sunnah*. The *Shari’ah* includes rules not only about an individual’s relationship to the state and to other individuals—the scope of U.S. law—but also about religious practices, such as daily prayer and fasting, and about other practices, such as parenting, personal hygiene, diet, and giving charity to the poor. The *Koran* yields the principles that the *Shari’ah* embodies, while the *Sunnah* yields the practical application of these principles. These two sources complement each other nicely and together provide the basis for the *Shari’ah*: “The *Sunnah* provides essential and useful social and moral guidance and is viewed as indispensable in applying the principles of the *Quran* to daily life” (Holscher and Mahmood 2000:86). Accordingly, Islamic law reflects the religious beliefs and practices fundamental to the Islamic faith. Although many centuries have elapsed since Muhammad’s time, the *Koran* “still wields tremendous influence in Muslim countries, since it largely determines what is sinful, and therefore illegal” (Holscher and Mahmood 2000:88).

The *Shari’ah* specifies three types of crimes: *hadd*, *qisas*, and *tazir*. *Hadd*

offenses are considered the most serious because prohibitions against them exist in the *Koran* and the *Sunnah*. They include theft, highway robbery, adultery, drinking alcohol, apostasy (abandonment) of Islam, and false accusation of adultery, all of which were considered serious misbehaviors in Muhammad’s era. The *Koran* specified that punishment of these offenses was the duty of the community, not the individual. In this way, the *Koran*, which stresses compassion and forgiveness, attempted to prevent individuals from taking justice into their own hands. The *Koran* further specifies the exact punishment that each offense should receive. For example, the punishment for adultery is flogging (100 lashes with a whip) for someone who is unmarried or death by stoning for someone who is married; for theft, the amputation of a hand; for apostasy and highway robbery, death; for drinking, flogging (80 lashes).

*Qisas* offenses include homicide and assault. Traditionally, the victim or the victim’s family have been allowed to choose to forgive the offender, to be compensated by money or goods, or to request the death penalty. In reality, so much proof of the crime, including eyewitnesses, is required under Islamic law that in practice the death penalty is difficult to carry out.

Unlike the previous two types of crimes, *tazir* offenses do not have their punishment specified in either the *Koran* or the *Sunnah*; they are considered

cooperate to push cases through as quickly and efficiently as possible. They share ideas of what “normal” crimes are and what appropriate punishment should be, and these shared ideas permit most cases to be resolved through plea bargaining (Abadinsky 2008). Without such efficient case processing, the criminal court system would quickly break down. Indeed, U.S. criminal courts would be severely hampered if they actually did follow the adversary model for which the U.S. legal system is so renowned. Chapter 10 examines plea bargaining further.

crimes against society, not against Allah. As such, they are deemed less serious than the other two types of crimes, and judges have great latitude in determining their appropriate punishment. Examples of *tazir* crimes include bribery, selling defective products or obscene materials, eating pork, and adultery not involving sexual intercourse. Common punishments for *tazir* crimes include confinement at home, counseling, fines, confiscation of the offender's property, and flogging. In determining the appropriate punishment, judges take into account the seriousness of the offense and the prior record and personality of the offender.

Scholars of Islam and Islamic law rightly condemn prejudice against Muslims and common stereotypes about their religion. One such stereotype is that the principles of Islamic law and the practice of criminal justice are uniform from one Islamic nation to another. In fact, different nations practice Islamic law differently, and some have blended Islamic law with principles and practices from Western (Euro-American) law. Some nations, such as Iran, interpret Islamic law very strictly, whereas others, such as Egypt, apply Islamic law to Muslims and other principles of law to other peoples.

A second, more common stereotype is that Islamic criminal justice is appallingly harsh. The fact that the *Koran* specifies very harsh punishments, including hand amputation for theft, suggests there might be some truth to this stereotype. However, scholars of Islamic law stress that “in practice, both in contemporary Muslim countries and historically, these

traditional penalties have rarely been carried out” (Holscher and Mahmood 2000:88). When they do occur, say these scholars, they often actually *violate* Islamic principles. Given this understanding, add the scholars, Islamic law should not be blamed for these harsh penalties. Instead, these punishments are “distortions based upon pre-Islamic custom” (Griswold 2001:13).

The reason traditional penalties are rare lies in the protections Islamic law gives to criminal defendants. Islamic courts usually have such strict standards of evidence that it is difficult to prove that defendants have committed the most serious crimes. For example, for a theft to be proven and hand amputation to be imposed, circumstantial evidence is not sufficient; instead, testimony from at least two male witnesses to the crime is required. Likewise, for adultery involving sexual intercourse to be proven, the law requires testimony by four male witnesses who actually saw the sexual intercourse occur. Because most sexual intercourse obviously does not occur in front of four witnesses, conviction of an adultery offense is very, very rare. Thus, say Holscher and Mahmood (2000:82), “By adopting a system of strict requirements of proof and testimony in criminal cases, Islamic law avoids despotic and arbitrary decisions and has limited the judges' discretion in the defendants' interest.” (For more on Islamic criminal procedure, see Under Investigation following Chapter 5.)

Although this is how Islamic law works in theory and often works in practice, harsh applications of Islamic law in certain nations have aroused interna-

tional concern, especially regarding the treatment of women. A recent example involved the legal response to the gang rape of a woman in Saudi Arabia in 2006. The woman, age 19, was sitting in a car with a former boyfriend when seven men kidnapped and raped both of them. Because the woman and former boyfriend were found in violation of Saudi Arabia's strict interpretation of Islamic law that limits private get-togethers between a woman and a man to spouses or relatives, both were sentenced to 90 lashes. After the woman's lawyer appealed her sentence, a Saudi court in November 2007 increased her sentence to 200 lashes and 6 months in jail. Another Saudi Arabian lawyer criticized the new sentence: “I don't agree with this judgment. I think it's overly severe. She should not be punished for going to the media and explaining her case” (Abou-Alsamh 2007:2).

In an earlier example where strict interpretation of *Shari'ah* aroused international controversy, a German businessman, Helmut Hofer, age 56, was arrested and sentenced to death in 1998 for having sex with a Muslim woman. The death sentence was declared even without the four witnesses that *Shari'ah* normally requires. After more than two years in Iranian jails, Hofer was finally allowed to leave Iran in January 2000 after paying a fine for an alleged assault of an Iranian police officer.

Sources: Abou-Alsamh 2007; Abu-Hassan 1997; Griswold 2001; Holscher and Mahmood 2000; Singer 2001; Wiechman, Kendall, and Azarian 1999.

## Summary

1. Crime in the United States is a very real problem. Millions of serious crimes occur each year, and the public is very concerned about crime and about our national efforts to deal with it.
2. At the same time, public beliefs about crime may neglect the complexity of crime. For example, the public underestimates the extent to which criminal offenders go to prison, and it is more concerned about “street crime” than about “white-collar crime,” which is far more costly in both financial and human terms.
3. The news media contribute to myths about crime in several ways. For example, they overdramatize violent crime by airing or publishing so many stories about it, and they highlight the involvement of racial and ethnic minorities in crime. Such coverage reinforces the mistaken view that most crime is violent and exaggerates minority participation in crime. Politicians also contribute to crime myths when they use harsh rhetoric about crime, much of it racially tinged.
4. A “get-tough” approach has characterized the U.S. response to crime since the 1970s. This approach has dramatically increased the imprisonment rate and number of prisons, but has had only a modest effect on the crime rate and has proved costly in several ways. The United States has the highest incarceration rate in the Western world and

spends tens of billions of dollars on corrections and other aspects of its criminal justice system. The war on crime has had a disproportionate impact on racial and ethnic minorities and created a wave of hundreds of thousands of prison inmates released back to their communities every year.

5. The U.S. criminal justice system is only partly a “system” and includes several events from arrest through incarceration. Its goals include controlling and preventing crime, achieving justice, and expressing the nation’s moral values. In a democracy such as the United States, these first two goals often clash.
6. Models of criminal justice help us understand how the criminal justice system is supposed to work and how it actually works. These models include the system, discretionary, wedding-cake, funnel, crime control and due process, and adversarial and consensual models.

## Key Terms

adversarial model  
consensual model  
crime control model  
crime myth  
discretion  
discretionary model

due process model  
funnel model  
sociological perspective  
system model  
wedding-cake model

## Questions for Exploration

1. What are the major sources of information about crime for most Americans? How reliable are these sources?
2. In a group, discuss the possible reasons why the public is more concerned about “street crime” than about “white-collar crime.” Given that the latter is so much more costly, what can be done to alert the public about it?
3. Discuss how various media treat crime—TV news reports, in-depth TV news programs, daily newspapers, print news magazines, and Internet news sources. What differences do you see?
4. Discuss the pros and cons of the “get-tough” approach to crime and the public health approach to crime.
5. Discuss the third goal of the criminal justice system: to express the nation’s morality and values. How far-reaching should this goal be? What limitations, if any, do you think should be applied?
6. Discuss the use and abuse of the discretionary model of criminal justice. Do you think that abuse is an inherent part of the discretionary model? Explain your answer.

## It's Your Call

1. Suppose you are the producer of the 6:00 P.M. news show for a local television station in a small town that normally has a very low crime rate. One of your responsibilities is to determine the order in which the news stories your reporters have developed will be shown on the air and the amount of time that will be devoted to each story. One day, a particularly grisly murder happens in your town. You realize that this is obviously a big story that should attract a lot of viewers, but you are also reluctant to sensationalize what is, after all, a very unusual event in your town and to needlessly worry the public. Which decisions will you make regarding how much attention to give to the murder and how graphic your coverage will be?
2. You are an assistant district attorney in a medium-sized city. A week ago, the police arrested a young man for killing a store clerk during an armed robbery. Having fit the general description of a witness, he was arrested three blocks from the store about 15 minutes after the shooting occurred. The store’s security video camera filmed the shooting, but its images are rather murky. No murder weapon has been found as of yet. This homicide was the lead story on the local TV news shows and was the lead article in your city’s two major newspapers. The defendant’s attorney comes to you to see if a deal can be struck before trial. Familiar with the wedding-cake model, you realize that this case falls into the second tier of the model. Do you insist on a trial, or do you decide to strike a deal? Explain your decision.

