1 CRIME AND CRIMINAL JUSTICE

LEARNING OBJECTIVES

After studying this chapter, the reader should understand the following concepts and issues:

- The public's role in the criminal justice system
- Why our criminal justice system is really a nonsystem
- How crimes are defined
- How crimes are classified
- The differences between criminal laws and non-criminal laws

INTRODUCTION

As we begin our study of the American criminal justice system, several important concepts should be considered:

- The response to crime is mainly a state and local function.
- Police protection is primarily a function of cities, towns, and counties.
- Corrections is primarily a function of state governments.
- More than 60 percent of all persons employed in the criminal justice system are employed at the local (city, town, and county) level.

In this chapter, we will examine in summary the American criminal justice system. In later chapters the various organizations and concepts discussed in this chapter will be expanded on. For now, the goal is to get our feet wet regarding the American criminal justice system. The criminal justice system consists of three components: law enforcement, the judicial system, and corrections. In this text when we refer to the American criminal justice system we are referring to these three separate and independent components. Undoubtedly it would be more accurate to refer to them as a nonsystem. The designation "system" generally refers to a group of agencies or organizations that have a close interrelationship among themselves and function as a coordinated group. That is not an accurate description of our criminal justice system.

The criminal justice system is actually three separate independent components: law enforcement, courts, and corrections. Each of these components operate independently of each other and are often at conflict with each other. Accordingly, the criminal justice system is a collection of agencies organized around various functions that is assigned to each group. While there is no single criminal justice system in this country, we have many systems that are similar but individually unique. Even the use of the term "American" is inaccurate. Our friends in Mexico and Canada remind us that they are also Americans since they live in North America. For convenience and out of habit, however, we will use the common phrase "American criminal justice system" to collectively refer to components of the justice systems in the United States.

The phrase "criminal justice" refers in general to society's reaction to conduct that violates criminal laws. The phrase focuses on criminal laws, investigations and handling of individuals who are considered as breaking those laws, and the trial and punishment associated with the violations.

CITIZEN INVOLVEMENT IN THE JUSTICE SYSTEM

As the Report to the Nation on Crime and Justice indicated, our response to crime is a complex process that involves both citizens and agencies at all levels.[1] Often the private sector initiates the response to crime. This first response may come from any part of the private sector—individuals, families, neighborhoods, associations, business, industry, the news media, or other private service organizations.

Citizens' response to crime involves crime prevention as well as participation in the criminal justice process once a crime has been committed. Private crime prevention is more than participating in neighborhood watch or providing private security. It also includes a commitment to stop criminal behavior by not engaging in it or condoning it when it is committed by others.

Citizen involvement in the criminal justice process includes:

- Reporting crimes to the police,
- being a reliable participant as a witness or juror in a criminal proceeding, and
- accepting the disposition of the system as just or reasonable.

THE CHALLENGE OF CRIME IN A FREE SOCIETY

(President's Commission on Law Enforcement and Administration of Justice, Washington, D.C., 1967, pp. 3-5.)

MANY AMERICANS THINK of crime as a very narrow range of behavior. It is not. An enormous variety of acts make up the "crime problem." Crime is not just a tough teenager snatching a lady's purse. It is a professional thief stealing cars "on order." It is a well-heeled loan shark taking over a previously legitimate business for organized crime. It is a polite young man who suddenly and inexplicably murders his family. It is a corporation executive conspiring with competitors to keep prices high. No single theory-no single generalization can explain the vast range of behavior called crime.

. . . The most understandable mood into which many Americans have been plunged by crime is one of frustration and bewilderment. For "crime" is not a single simple phenomenon that can be examined, analyzed and described in one piece. It occurs in every part of the country and in every stratum of society. Its practitioners and its victims are people of all ages, incomes and backgrounds. Its trends are difficult to ascertain. Its causes are legion. Its cures are speculative and controversial. An examination of any single kind of crime, let alone of "crime in America," raises a myriad of issues of the utmost complexity.

As voters and concerned citizens, individuals also participate in criminal justice through the policy-making process that affects how the criminal justice process operates, the resources available to it, and its goals and objectives. At every stage in the process, from the original formulation of objectives to the decision about where to locate jails and prisons and to the reintegration of inmates into society, the private sector has a role to play. Without such involvement, the criminal justice process cannot serve the citizens it protects.

INDIVIDUAL RIGHTS OR LAW AND ORDER

The history of criminal justice in the United States represents a pendulum-like swing between the public's fear of crime and the concept of individual rights. Criminal justice professionals generally are oriented toward one of two opposing directions—"law and order" or "individual rights." The "law and order" orientation stresses the need to solve the crime problem. The "individual rights" orientation stresses the need to protect an individual's rights and often considers this need greater than the need to punish offenders. Too great an emphasis on individual rights will restrict law enforcement and allow offenders to escape punishment. Arbitrary police practices that may occur under the "law and order" orientation may infringe on human and constitutional rights. As Chief Justice Earl Warren stated in the famous case of *Miranda v. Arizona*:[2]

> The quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of the criminal law....All of these policies point to one overriding thought: the constitutional foundation underlying the privilege is the respect a government—state or federal—must accord the dignity and integrity of its citizens. To maintain a fair state—individual balance, the government must shoulder the entire load.

DUE PROCESS

Associated with the individual rights versus law and order issue is the concept of "due process." This concept restricts the power of the state and more particularly the police, courts and corrections. The Bill of Rights, the first eight amendments to the U.S. Constitution, contains 23 separate individual rights, 12 of them concern procedural rights for persons accused of criminal conduct. While we were taught in high school that the Bill of Rights are the first ten amendments to the constitution, that is not entirely correct. Only the first eight pertain to individuals' rights.

In 1798, the U.S. Supreme Court ruled that the prohibitions against government actions contained in those amendments were restrictions only on the federal government and not on state governments. The case, *Calder v. Bull*, involved a statute passed by the legislature of Connecticut which set aside a probate court judgment and directed the probate judge to refuse the recording of a will (an *ex post facto law*).[3] The justices noted that the Bill of Rights was designed to prevent the federal abuse of power, not state abuse.

The Fourteenth Amendment, one of the antislavery amendments enacted in 1865, however, has been used by the courts to place "due process" requirements on the states and the state's criminal justice system in criminal matters.

The clause "without due process" of the Fourteenth Amendment has been interpreted by the U.S. Supreme Court as "incorporating" most of the provisions of the Bill of Rights. Accordingly, those rights which are incorporated under that clause apply to states as well as federal criminal proceedings. In 1897, the Court using the "due process" clause of the Fourteenth Amendment applied the Fifth Amendment's requirement of payment of "just compensation" for the taking of private property for public use to the states.

Later in 1925, in *Gitlow v. New York*, the Court held that the First Amendment's protection on free speech restricted the states right to control free speech. The Sixth Amendment's right to counsel was imposed on the states by *Powell v. Alabama* (1932) and the requirement of a trial by "an impartial jury" in jury cases was imposed by *Norris v. Alabama* (1935).

Incorporation Controversy

For many years, there was a controversy over whether all of the rights contained in the Bill of Rights were incorporated into the due process clause of the Fourteenth Amendment, and thus applied to the states, or only to those that are considered "fundamental" to due process. Justice Hugo Black, in his many years on the court, contended that not only should there be total incorporation of the Bill of Rights but also some other "fundamental" rights not included in the Bill of Rights. While the Court never adopted Black's "total incorporation" concept, it has adopted his concept that the due process clause includes other "fundamental" rights not contained in the Bill of Rights. For example, the Supreme Court has held that we have a fundamental right to privacy even though it is not mentioned in the U.S. Constitution.

U.S. CONSTITUTION, FOURTEENTH AMENDMENT

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; not shall any State deprive any person of life, liberty, or property, without due process; nor deny to any person within its jurisdiction the equal protection of the laws.

Present Approach

Presently the U.S. Supreme Court is using the "selective incorporation" approach. The Court has accepted the concept that not all rights enumerated in the Bill of Rights are necessarily fundamental, and that other rights may be fundamental even though not contained in the Bill of Rights. To determine if a right is "fundamental," the Court looks at whether the procedural safeguard is "fundamental to the American scheme of justice" or "necessary" in the context of the criminal process maintained by the various states.

The following Bill of Rights guarantees have been "selectively incorporated" and thus held enforceable against the states to the same standards that the rights protect against federal encroachment.

First Amendment

- free speech (*Gitlow v. New York*)
- freedom of press (*Near v. Minnesota*)
- freedom of assembly (*Dejonge v. Oregon*)

Fourth Amendment

- general right to privacy (*Griswold v. Connecticut*)
- protection against unreasonable searches and seizures (*Wolf v. Colorado*)
- exclusionary rule (*Mapp v. Ohio*)
- requirement of probable cause to arrest (*Terry v. Ohio*)

Fifth Amendment

- protection against self-incrimination (*Malloy v. Hogan*)
- protection against double jeopardy (*Benton v. Maryland*)

Sixth Amendment

- right to trial by jury in serious cases (*Duncan v. Louisiana*)
- right to speedy trial (*Klopfer v. North Carolina*)
- right to be informed of nature of charges (*Connally v. General Construction Co.*)
- right to confront and cross-examine adverse witnesses (*Pointer v. Texas*)
- right to subpoena witnesses in a criminal case (*Washington v. Texas*)

Eighth Amendment

- protection against "cruel and unusual" punishment (*Louisiana ex rel. Francis v. Resweber*)

The following rights, although required in federal criminal proceedings, have not been imposed on the states:

Fifth Amendment

- right to grand jury indictment (*Hurtado v. California*)

Sixth Amendment

- right to jury trial in minor criminal cases (*Duncan v. Louisiana*)

Eighth Amendment

- prohibition against excessive bail (The Court has never decided this issue, but indicated in *Schilb v. Kuebel* 404 U.S. 357 (1971) that it would apply to the states.)

CRIMINAL JUSTICE SYSTEMS

In the United States, there are numerous criminal justice systems. Each state, each territory, the District of Columbia, and the federal government has a criminal justice system. For example, an individual may rob a federally insured bank in Kansas. The individual has violated the Kansas criminal statute on robbery and also the federal statute that makes it a federal crime to rob a federally insured bank. Accordingly, he or she could be convicted in both federal and state courts for the single criminal act of robbery. The rationale for this is that the individual has violated both a federal and a state statute and therefore both jurisdictions may prosecute him or her.

The United States has a federalist form of government. Accordingly, each state and the federal government has its own criminal justice system. The federal criminal justice system is regulated by the U.S. Constitution, federal statutes, and federal regulations. The state criminal justice systems are regulated in addition to the U.S. Constitution by the state constitutions, state statutes, and state regulations. [Note: State and federal systems must respect the rights of individuals that are guaranteed by the U.S. Constitution.]

COMPONENTS OF THE JUSTICE SYSTEM

As noted earlier, our justice system is composed of three basic components: law enforcement, courts, and corrections. The common goals of the criminal justice system include:

- Deterring crime,
- maintaining peace and order,

- investigating crimes,
- apprehending, convicting, and
- punishing criminals.

"Law enforcement" is a generic term used for agencies whose tasks normally include enforcing criminal law, exercising the power to arrest, maintaining public order and peace, providing emergency services to the public, and generally serving the public at large. "Courts" are the agencies that have the authority to decide on cases and controversies in law brought before them. "Corrections" is used to include those agencies involved in probation, incarceration, and parole. In general, most criminal justice activities take place at the local or state level and is therefore prosecuted in state criminal courts.

Adversarial System

After the Norman invasion of England, the English criminal justice was based on two fundamental premises. First, the responsibility for accusing an individual of a crime rested with the victim or the victim's family. If no private accuser came forward, there was no prosecution. The second premise was the adversarial nature of criminal procedure. The present day American system of criminal justice is still based on the adversarial concept. The role of the judge was and remains that of an impartial referee between two contending parties. In criminal cases, the adversaries were the accused and the private accuser. The private accuser was later replaced by the police or public prosecutor and, in the United States, a district attorney or state's attorney.

CRIMINAL JUSTICE ADMINISTRATION

A brief overview of criminal justice administration is presented in this chapter. Later chapters of this text will focus on each major component of the system. The primary state agency involved in criminal law administration in most states is the State Department of Justice or Office of Attorney General (Criminal Division). This department is usually composed of the State Attorney General and the Division of Law Enforcement. The typical goals of the department are:

- To seek to control and eliminate organized crime in the state.
- Publish and distribute a compilation of the state laws relating to crimes and criminal law enforcement that are of general interest to peace officers.
- Operate the state's law enforcement telecommunications and electronic systems.
- Promote training and professionalism of law enforcement officers.

State Attorney General

The chief law officer of a state is the attorney general. It is the state attorney general's duty to see that all laws of the state are uniformly and adequately enforced. The attorney general usually has limited

supervisory authority over district attorneys, sheriffs, and other law enforcement officers in matters pertaining to the duties of their respective offices. The attorney general may require any of these officers to make reports concerning the investigation, detection, prosecution, and punishment of crime within their jurisdiction.

The attorney general in most states may prosecute any violations of law of which a major trial court has jurisdiction when he or she is of the opinion that the law is not being adequately enforced in any judicial district. Also, when directed by the governor, the attorney general shall assist the local prosecutor in the discharge of his or her duties. If a local prosecutor is disqualified to conduct a criminal prosecution, the attorney general may appoint a special prosecutor.[4]

One court noted that the broad authority given most attorney generals by the state constitutions has been limited by "judicial construction." The court stated:

> These officials (referring to state attorney generals) are public officers, as distinguished from mere employees, with public duties delegated and entrusted to them, as agents, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which they, as agents, are active.... It is at once evident that "supervision" does not contemplate control, and that… (they) cannot avoid or evade the duties and responsibilities of the respective offices by permitting a substitution of judgment.[5]

Prosecutors

The primary duty of a prosecutor is not to prosecute, but to promote justice.

Prosecutors in most states are elected county or judicial district officers. In a few states (i.e., Illinois, Florida and Rhode Island for example), there are "state attorneys" who are appointed rather than elected and perform those duties normally performed by the district attorney. The prosecutor in the lower courts are referred to as county prosecutors or county attorneys. In some states, the prosecutors are also referred to as "the public prosecutor."[6] The normal duties of a prosecutor in criminal matters generally include:

- Institution of proceedings before magistrates (judges) for the arrest of persons charged with or reasonably suspected of public offenses.
- Presenting cases to the grand jury in those states that use grand juries for indictments.
- Conducting all prosecution for public offenses.
- **The first and primary duty of a prosecutor is not to prosecute, but to promote justice.**
- In some states, they are called "county attorneys."

U.S. District Court house in Denver, Colorado named in honor of former U.S. Supreme Court Justice Byron White. Photo by Cliff Roberson

Law Enforcement Officers

Unlike other nations, the United States has no national police force. There are federal law enforcement agencies, such as the Federal Bureau of Investigation (FBI), but all of them have limited subject matter jurisdiction. Policing is mainly a function of local cities, towns, and counties. Accordingly, we have thousands of independent police agencies in the United States. In spite of this independence, the organizations of most police departments are very similar.

As a general rule, within city limits the police have primary jurisdiction for keeping peace and enforcing the laws, whereas the sheriff has the similar responsibilities in areas outside the cities. It is not unusual, however, for some of the smaller communities or towns to contract with the sheriff for law enforcement services within their communities. While most states have some form of state police, these units have only limited jurisdiction, e.g., the state highway patrol.

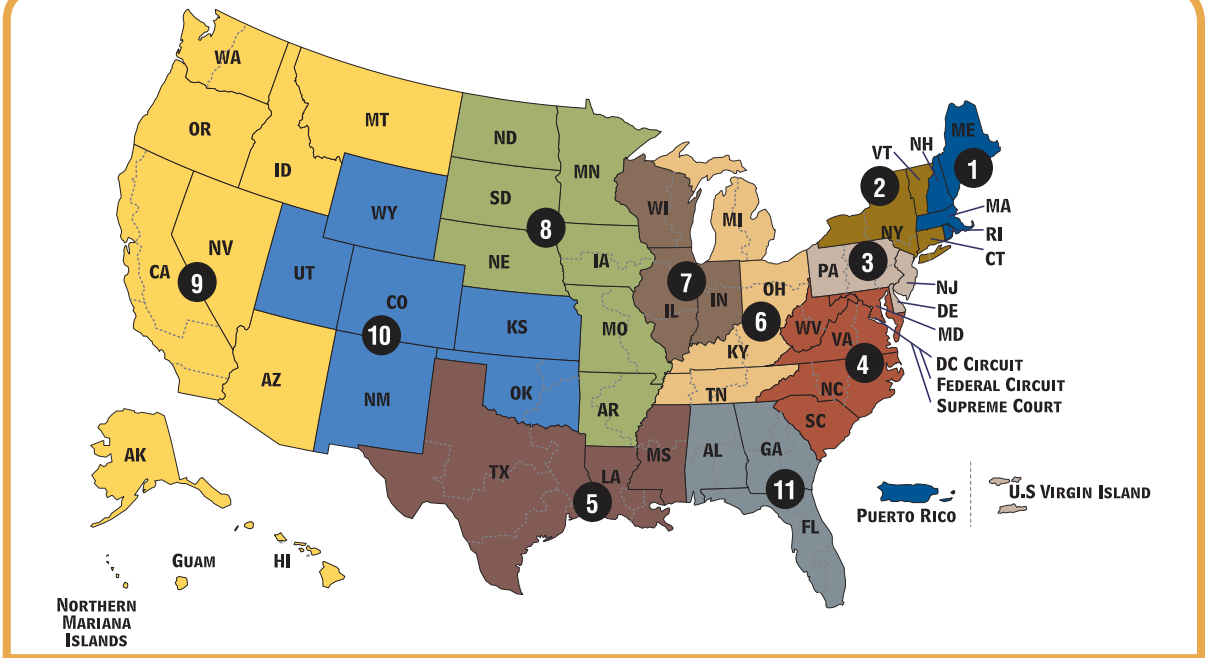
COURTS

The United States has two separate court systems, the federal and state. Ninety-five percent of all criminal trials in the United States are conducted in state courts and involve violations of state laws. Federal courts are involved only in matters involving federal issues.

The primary federal trial courts are the U.S. District Courts. There is at least one federal district court in each state. In states with more than one district court, the districts are divided geographically. For example, the U.S. District Court, Southern District of California is the federal district court for San Diego and the

THE JUDICIARY ACT OF 1789

THE JUDICIARY ACT OF 1789, officially titled "An Act to Establish the Judicial Courts of the United States," was signed into law by President George Washington on September 24, 1789. Article III of the Constitution established a Supreme Court, but left to Congress the authority to create lower federal courts as needed. The Judiciary established the structure and jurisdiction of the federal court system and created the position of attorney general. Although amended throughout the years by Congress, the basic outline of the federal court system established by the First Congress remains largely intact today.



Court of Appeals map [The bold numbers on the map indicate which U.S. Court of Appeals circuit that has jurisdiction over those states. For example, the U.S. Court of Appeals for the 11th Circuit includes the states of Alabama, Georgia, and Florida.]

California State Supreme Court Room. Located in Sacramento, Ca. Photo taken in 1997. Photo courtesy of Library of Congress Prints and Photographs Division Washington, D.C.

southern-most part of California. [Note: Within a district there may be more than one district court judge each acting as the district court. For example, the U.S. District Court, Southern District of New York (including New York City) has over 100 judges, each acting as the district court.]

The appellate courts in the federal system are the U.S. Court of Appeals and the U.S. Supreme Court. The United States is divided into circuits and each has a court of appeals. There are 12 Courts of Appeals Circuits when you include the Court of Appeals for the District of Columbia. For example, the U.S. Court of Appeals, Ninth Circuit includes the western part of the United States.

Lower Federal Courts

Beneath the Supreme Court are the U.S. Courts of Appeals. There are 94 judicial districts divided into 12 regional circuits, and each circuit has a court of appeals. These courts hear appeals from within their respective districts as well as from federal administrative agencies.

U.S. Federal Prison in Leavenworth, Kansas. Picture taken ca. 1902. Photo courtesy of Library of Congress Prints and Photographs Division Washington, D.C.

State Courts

In the state system, the trial courts are usually the lower courts of limited jurisdiction (municipal or justice) (municipal or justice) and the courts of general jurisdiction (superior or district) courts. Most states also have courts of appeal and a supreme court. In two states, Texas and Oklahoma, the state supreme court does not handle criminal matters and criminal matters are handled by the state court of criminal appeals.

CORRECTIONS

Corrections consists of probation departments usually operated by the superior or district court judges, jails which are locally controlled, parole departments which are generally state operated, and state operated correctional institutions. In addition, there are numerous community correctional programs that may be state, county or locally operated. There is also a separate federal correctional system.

HISTORY OF CRIME

What is Crime?

Important words frequently are beyond the assigned boundaries of their dictionary meanings. Crime is one such important word, a word that signifies different meanings to many different people and is always straining at the boundaries of its conventional meaning.

Crime is one of the oldest problems faced by civilizations. The act of defining "crime" is however a difficult task. At first glance, it seems simple why we call certain acts "crimes" and certain people "criminals";

WHO IS COMMITTING A CRIME?

IF IN 1932, John and Jill Smith had walked down a street in New York City and John had a pint of whiskey in his pocket and Jill had a gold coin in her pocket, John would have committed a criminal act because of the prohibition statutes. Two years later under the same circumstances, John's conduct would be lawful since the prohibition statutes had been repealed, but Jill's would be illegal because of the new currency statutes which made the possession of gold coins for currency illegal.

crimes are acts that pose threats to our society and criminals are people who commit those acts. This simple approach fails to consider the relativity of criminal definitions.

The relativity of criminal definitions indicates that every definition of an act as a crime must be viewed as tentative and subject to redefinition.

The question, "What is crime?" focuses on four issues.

- First, the relationship between crime and law. Which gives rise to which?
- Second, the problem of measurement. How much crime is there in society today and what do the crime rates tell us?
- Third, the problem of causation. What causes crime?
- And fourth, who is a criminal? Each of these issues will be discussed in later chapters of this text.

We generally assume that the law criminalizes particular behaviors that most people disapprove of. From this point of view, designating some acts as crimes is a simple way of sanctioning certain conduct while condemning other conduct. The law under this perspective is a protective reaction against behaviors and people considered by society as unacceptable.

In measuring crime, we have a tendency to accept official crime statistics at face value. Crime is what is reflected in and measured by official crime statistics. A common criticism of official crime statistics, however, is that they measure only one kind of crime—the street crimes of the poor and the working-class. Another criticism is that statistics measure only that crime which is reported to authorities.

Noted late Canadian criminologist Gwynn Nettler once remarked, "Crime is a word, not a deed."[7] In this context, crime constitutes a category of events that contains numerous subcategories. And at the same time, the category of crime is itself a subcategory of a larger set of events (e.g., socially harmful acts).

Labeling an act, a crime involves a series of judgments. First, the judgment is made that the act is harmful. Next is the decision that the act should be regulated by law. Finally, the decision that the law regulating the act should be a criminal statute rather than a civil one.

Webster's New Universal Unabridged Dictionary provides us with four definitions of crime:

> An act committed in violation of a law prohibiting it, or omitted in violation of a law ordering it; crimes are variously punishable by death, imprisonment or the imposition of certain fines or restrictions.
>
> An extreme violation of the law; wrongdoing of a criminal nature, as felony or treason, which affects the whole public and not just the rights of an individual; distinguishable from a misdemeanor.
>
> - An offense against morality; sin.

- The acts of a criminal; habitual violation of the law.

The above definitions present two basic positions;

- first, crime is a defiance of a positive law and
- second, crime is a breach of moral law.

Henry Campbell Black in Black's Law Dictionary defined crime as "a positive or negative act in violation of penal law; an offense against a state." Black then proceeds to discuss crimes which are *malum in se* (evil in themselves) and crimes which are *malum in prohibita* (which are crimes simply because statutes have made them crimes). It appears that both dictionaries suggest that crime has a positive definition (i.e., that which a state condemns) and a moral dimension (i.e., an offense against morality).[8]

The above analysis of the definitions of crime fails to explain why a given act is a crime and another similar act is not. Herbert Johnson, a police researcher, states that crime, as a concept, does not emerge full grown in any society. It develops out of experience and is conditioned by social and cultural attitudes.

Accordingly, to understand why some acts are considered crimes and similar acts are not, not only do we need to look at the current values of our society but also the historical background of the prohibited or sanctioned conduct.

Since religious beliefs are one of the most formative influences upon us, there is still a moral dimension to the definition of crime. At the time that our country was founded, most of our crimes were also considered moral sins. In Colonial America, those who committed crimes were also considered to be "offenders against the divine." Over the passage of time, the diversity in our society on matters of religion tended to separate crime from moral wrongs. Our movement to secularize the criminal statutes has resulted in the definition of crime as an offense against the laws of state without reference to the divine. When legislatures or judges participate in the lawmaking processes, however, they are strongly influenced by their religious or lack of religious beliefs.

A working definition of crime that has been adopted by most criminologists is the one proposed by Edwin Sutherland, who is considered by many as the father of American criminology:

> The essential characteristic of crime is that it is behavior which is prohibited by the State (or federal government) as an injury to the State and against which the State may react, at least at the last resort, by punishment. [9]

The above definition limits crimes only to those acts which violate a criminal statute. It does not address the morality aspects of human behavior. For purposes of the discussions in this text, we will use Sutherland's definition.

TYPES OF LAWS

Law can be divided into several different classifications. The most common ones include:

- crimes and torts, and
- common law and statutory law

As defined by a Louisiana criminal court, crime is a "wrong involving the violation of the peace and dignity of the State."[10] In theory, it is committed against the interest of all of the people of the State, not just the victim(s). Accordingly, crimes are prosecuted by the prosecutor in the name of the "United States," "State," "People," or "Commonwealth." As defined by the Missouri Supreme Court in *State v. Thomas*, "crime is offense against state to which state has annexed punishments and penalties, and which it prosecutes in "criminal proceeding."[11] The Thomas case involved the theft of chickens from a Mrs. Groves. When the defendant was apprehended, he stated that he would return the chickens to Mrs. Groves if she would drop the charges. Mrs. Groves agreed. The court held that the state could still prosecute the defendant because the crime was also against the state and not just Mrs. Groves.

In a later but somewhat similar case, *State v. Tuemler*, the defendant was involved in a vehicle accident and was convicted of improper backing (a traffic offense which in the state involved is considered as a criminal offence). He claimed on appeal that he and his insurer had entered into settlement agreement with victim of traffic accident to resolve victim's property damage claim. The court held did not preclude the trial court from imposing a criminal sanction.[12]

Tort

A tort is a wrong that is a violation of a private interest and thus gives rise to civil liability. The same conduct, however, may be both a crime and a tort. For example, a woman is stalked by a former lover. The criminal aspect of the stalking is a violation of the peace and dignity of the state and therefore a crime against all the people in the state. It is also a violation of the private interest of the victim, and she may file a civil suit and obtain civil damages against the offender.

An offender may be acquitted at the criminal trial where proof of his or her guilt is required to be established beyond a reasonable doubt and yet held accountable at the civil trial where the degree of proof required to hold the offender accountable is much less. For example, in the case of *Rufo v. Simpson*, a California Court of Appeals approved a group of consolidated civil actions against the former NFL football player Orenthal James (O. J.) Simpson for the murders of Nicole Brown Simpson and Ronald Lyle Goldman. A civil jury found that defendant Simpson committed these homicides willfully and wrongfully, with oppression and malice. Sharon Rufo and Fredric Goldman, the parents and heirs of Ronald Goldman, were awarded $8.5 million compensatory damages on their cause of action for wrongful death.[13]

Nicole Simpson and Ronald Brown were stabbed to death on the night of June 12, 1994, in front of Nicole's home on Bundy Drive in Los Angeles. In a prior criminal trial, Simpson had been acquitted of the murders of Nicole and Ronald. In the civil trial under a relaxed standard of proof, the jury concluded that Simpson killed Nicole and Ronald.

As described by a 1940 Superior Court of Connecticut, a tort is defined to be a wrong independent of contract; the performance of an act forbidden by a civil statute. It is a breach of legal duty, as distinguished from a breach of conventional duty. A tort is generally defined as the infringement of right created otherwise than by a contract.[14]

Common Law

Common law developed during the Middle Ages in English society as a body of unwritten judicial opinions which were based on customary practices of Anglo-Saxon society. The decisions that British justices made in new situations became the precedents for such future situations. Common law, in large part, forms the basis of our modern statutory and case law.

Statutory law is law that originates with specifically designated lawmaking bodies. It is enacted by legislative bodies of government. The primary statutory laws dealing with crimes and criminal procedure are the state and federal penal codes.

Under our present system of justice, crimes are defined by statutes. However, common law is often used to help interpret the statutes. For example, in *Kirby v. State*, an Alaska Court of Appeals used common law to help interpret an Alaskan statute (AS 11.41.434(a)(1) establishing the crime of sexual abuse of a minor in the first degree.[15] In that case, James Kirby, a 20-year-old first offender plead no contest to sexually abusing his eight-year-old female cousin. The appellate court noted in its decision that it used the development of common law in determining the aggravating and mitigating factors to be applied. In this context, the court used the term "dangerous" to connote likely recidivism rather than potential for violence in the sexual abuse statute.

Another example of the use of common law to interpret statutory crime was in the Maryland Court of Appeals case of *Hardy v. State*.[16] Lawrence Hardy was indicted in adult criminal court as a juvenile for attempted murder. The lower court held that since attempted murder in the first degree carries a maximum penalty of life imprisonment that jurisdiction vested exclusive original jurisdiction in the adult court. Defendant's counsel argued that attempted murder, unlike murder, was not divided into degrees by statute. Based on this argument, Hardy reasons that Maryland does not recognize degrees of attempted murder, but only the basic crime of attempted common-law murder. The court of appeals stated that because this issue is one of apparent first impression in Maryland, it would examine the historical development of common-law murder and the crime of attempt.

The court noted that at early common law, all homicide, unless justifiable, was deemed unlawful and punished by death. The severity of the punishment gradually abated as the English rulers recognized

EXAMPLES OF SUBSTANTIVE AND PROCEDURAL STATUTES

Substantive Statute

Arizona Revised Statutes: A.R.S. § 13-1001 Attempt; classifications

A person commits attempt if, acting with the kind of culpability otherwise required for commission of an offense, such person:

1. Intentionally engages in conduct which would constitute an offense if the attendant circumstances were as such person believes them to be; or

2. Intentionally does or omits to do anything which, under the circumstances as such person believes them to be, is any step in a course of conduct planned to culminate in commission of an offense; or

3. Engages in conduct intended to aid another to commit an offense, although the offense is not committed or attempted by the other person, provided his conduct would establish his complicity under Chapter 3 if the offense were committed or attempted by the other person.

Procedural Statute

Florida Statutes Annotated § 90.104 Rulings on Evidence

(1) A court may predicate error, set aside or reverse a judgment, or grant a new trial on the basis of admitted or excluded evidence when a substantial right of the party is adversely affected and:

(A) When the ruling is one admitting evidence, a timely objection or motion to strike appears on the record, stating the specific ground of objection if the specific ground was not apparent from the context; or

(B) When the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer of proof or was apparent from the context within which the questions were asked.

If the court has made a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(2) In cases tried by a jury, a court shall conduct proceedings, to the maximum extent practicable, in such a manner as to prevent inadmissible evidence from being suggested to the jury by any means.

(3) Nothing in this section shall preclude a court from taking notice of fundamental errors affecting substantial rights, even though such errors were not brought to the attention of the trial judge.

that the circumstances giving rise to unlawful homicides were not always the same and hence called for different punishment, depending upon the presence or absence of malice in the commission of the crime. The court stated that the issue narrows to whether a person charged with attempted common-law murder can be convicted of attempted murder in the first-degree or attempted murder in the second degree. As previously stated, unlike other jurisdictions, Maryland does not have a statute defining the crime of attempt. Rather, the court has defined the crime of attempt as the intent to commit a crime coupled with some overt act beyond mere preparation. The court concluded that an indictment that charges attempted murder in the first-degree is proper and carries with it a maximum penalty of life imprisonment and, in the case of a juvenile defendant, vests exclusive original jurisdiction in the adult court.

NATURE OF CRIMINAL LAW

Criminal law is the ultimate form of legal control by the government. By use of the provisions for punishment and sanctions, a government can use criminal law to repress any conduct that threatens the government. The concept of criminal acts as injuries to the government developed when the custom of private or community redress was replaced by the principle that the government is wronged when it or one of its subjects are harmed.

A rule of conduct is a criminal law if it is created by a state (or federal government), contains provisions for criminal punishment to be administered upon the conviction of its violation and the punishment is administered by the state or federal government in the name of society. The basic conceptual difference between civil law and criminal law is that criminal law defines conduct that is considered against the interest of the society, whereas civil law refers to conduct that is against the interest of the individual.

Substantive and Procedural Criminal Law

There are two basic types of criminal laws: substantive and procedural. Substantive criminal law defines what conduct is considered as a crime. It lists the elements that constitute the conduct or failure to act that are classified as a crime. Substantive criminal law also attaches penalties for violations of the crimes.

Procedural law controls the manner in which substantive criminal law is involved and controlled. It provides the rules by which we investigate, bring to trial and punish criminals. To be legally convicted of a crime, a person must be tried according to procedural criminal law and convicted of committing an act or a failure to act in violation of the substantive criminal law.

JURISDICTION AND VENUE

Jurisdiction is generally defined as the power of a court to decide an issue or a case. As noted by a Tennessee state court: "It is elementary that before a court may exercise judicial power to hear and determine a criminal prosecution, that court must possess three types of jurisdiction: jurisdiction over the defendant,

FRISBIE V. COLLINS

342 U.S. 519 (1952)

SHIRLEY COLLINS WAS indicted for murder in the State of Michigan. At the time he was living in Chicago, Illinois. Michigan officers without authority went to Chicago and forcibly seized, handcuffed, blackjacked and forcibly took him to Michigan where he was tried and convicted of murder. He claimed that trial and conviction under such circumstances was in violation of the Due Process Clause of the Fourteenth Amendment and the Federal Kidnaping Act, and that therefore his conviction is a nullity.

Justice Hugo Black delivered the opinion of the court. He stated that this Court has never departed from the rule announced in *Ker v. Illinois*, 119 U.S. 436, (1886), that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a forcible abduction. No persuasive reasons have been presented to justify overruling this line of cases. They rest on the sound basis that due process of law is satisfied when one present in court is convicted of crime after having been fairly apprised of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will.

Justice Hugo Black who wrote the majority opinion in Frisbie v. Collins. Photo was taken in August, 1937. Photo courtesy of Library of Congress Prints and Photographs Division Washington, D.C.

jurisdiction over the alleged crime, and territorial jurisdiction."[17] Jurisdiction over the alleged crime is generally considered as "subject matter jurisdiction." Jurisdiction over the defendant is generally referred to as "personal jurisdiction" or "jurisdiction over the person."

Subject Matter Jurisdiction

Subject matter jurisdiction is defined as the courts' statutory or constitutional power to adjudicate the case. As noted by Judge Robert Miller of the U.S. District Court, N.D. Indiana, South Bend Division in *Ellis v. United States*, the "subject-matter jurisdiction in every federal criminal prosecution comes from 18 U.S.C. § 3231."[18] That section of the U.S. Code provides that the district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States. Generally, the require-

ments of subject matter jurisdiction are satisfied when appropriate charges are filed in a competent court.[19] An example of this restriction is that a probate court generally would not have subject-matter jurisdiction to try a defendant for murder.

Personal Jurisdiction

Generally, jurisdiction of the person is acquired when the party charged is arrested or voluntarily appears in court and submits himself to its jurisdiction.[20] A defendant may waive any complaints he or she may have regarding personal jurisdiction by failing to object to the lack of personal jurisdiction and by appearing to defend his case. Unlike subject matter jurisdiction, personal jurisdiction may be waived since it is an individual right.

In the case of *Town of Ridgeland v. Gens*,[21] the court found no personal jurisdiction problem where the defendant appeared for his trial, was represented by an attorney, and defended his case on the merits. However, in the case of *United States v. Best*,[22] a U.S. Court of Appeals held that the trial court did not have personal jurisdiction to try a defendant for violations of immigration laws committed wholly outside the territory and territorial sea of the United States because he was intercepted and seized while on a foreign vessel within the contiguous zone to the territorial sea of the United States without the consent of country under whose flag he was sailing.

The U.S. Supreme Court has stated:

> The party may, by consent, confer jurisdiction over his person, or may waive the right to raise the question, whether the proper steps prescribed by law for obtaining such jurisdiction have been taken, as is illustrated by the familiar instance of a party who, though not served with a summons, appears and answers, and is thereby precluded from afterwards raising the question as to whether the court had acquired jurisdiction of his person.[23]

Territorial Jurisdiction

Territorial jurisdiction generally refers to the territorial reach of the government in question. Under that territorial principle, states have power to make certain conduct a crime only if that conduct takes place, or its results occur, within the state's territorial border. For example, the state of Texas may not enact a statute that makes it a crime for a New Jersey home owner to obtain a home loan by a New Jersey state bank with a high interest rate.

Frequently, however, the state and the federal government's territorial jurisdictions may overlap. As noted in the earlier example, robbing a federally insured bank in the state of Washington violates both the state of Washington's statute against robbery and the federal statute prohibiting the robbery of a federally insured bank.

In 1992, Los Angeles police officers were acquitted in a California state criminal court on state charges of assault and excessive use of force in the beating of Rodney King. Later the officers were tried and

convicted in federal court under 18 U.S. Code § 242 of violating King's constitutional rights under color of law.[24] California had territorial jurisdiction on the assault and excessive use of force because the conduct occurred in the State of California and the accused were alleged to have violated the California Penal Code. The United States had territorial and subject matter jurisdiction of the charges of violating King's constitutional rights because it occurred in the United States and the alleged civil rights violations were violations of the U.S. Constitution.

Venue

While jurisdiction may be generally defined as the power of a court to decide an issue or case, venue refers to the geographical location of the trial. The Sixth Amendment of the U.S. Constitution provides that a criminal trial be held in the "State and district wherein the crime shall have been committed." Accordingly, unless the venue is waived by the defendant, he or she has a right to be tried in the judicial district where the crime occurred. In those cases, where the crime occurred in several locations, then each location has the right to try the defendant.

The U.S. Supreme Court in *United States v. Anderson*[25] held that the constitutional specification is geographic, and geography prescribed is the judicial district or districts within which offense is committed, within doctrine of continuing offenses, as to which trial constitutionally may be had in one or another of districts in which offense is carried on.

In the Anderson case, the defendant Sheldon Anderson was accused in an indictment of refusal to submit for induction into the armed services during World War II. The Supreme Court noted that the place where offense of "refusing to submit to induction under Selective Service Act" was committed may or may not be the place where defendant resides, where draft board is located, or where duty violated would be performed if performed in full, and places of residence, of draft,board's location, of final and complete performance, all may be situated in districts different from that where criminal act is done and when they so differ, it is the place where the crime was committed which determines venue. [Under the Sixth Amendment of the U.S. Constitution, a defendant has a right to be tried in the judicial district in which the crime occurred.]

What if a college student was kidnapped in Galveston, Texas and taken to Chicago, Illinois? It appears that the defendants may be tried in each jurisdiction in which the victim was forcibly taken. For example, had the victim been taken to Chicago via Oklahoma, the defendant(s) may also be tried in Oklahoma.

Each state and the federal government has statutes that define the venue requirements of its courts. For example, the Consolidated Laws of the State of New York, § 20.40 Geographical jurisdiction of offenses; jurisdiction of counties provides venue guidance for the New York state courts.

New York Consolidated Laws, § 20.40 provides in part, that a person may be convicted in an appropriate criminal court of a particular county, of an offense of which the criminal courts of this state have

jurisdiction pursuant to section 20.20, committed either by his or her own conduct or by the conduct of another for which he or she is legally accountable pursuant to § 20.00 of the penal law, when:

1. Conduct occurred within such county sufficient to establish:

(a) An element of such offense; or

(b) An attempt or a conspiracy to commit such offense; or

2. Even though none of the conduct constituting such offense may have occurred within such county:

(a) The offense committed was a result offense and the result occurred in such county; or

(b) The offense committed was one of homicide and the victim's body or a part thereof was found in such county; or

(c) Such conduct had, or was likely to have, a particular effect upon such county or a political subdivision or part thereof, and was performed with intent that it would, or with knowledge that it was likely to, have such particular effect therein; or

(d) The offense committed was attempt, conspiracy or criminal solicitation to commit a crime in such county; or

(e) The offense committed was criminal facilitation of a felony committed in such county; or

3. The offense committed was one of omission to perform a duty imposed by law, which duty either was required to be or could properly have been performed in such county. In such case, it is immaterial whether such person was within or outside such county at the time of the omission.

SOURCES OF CRIMES

This section examines the sources of our laws, our crime classification systems, general rules regarding criminal punishment, and the repeal of criminal statutes.

General and Specific Sources of Law

The criminal laws in most states come from three primary sources:

- Federal and state constitutions
- Statutory law
- Case law

Generally, the federal and state constitutions provide rights and protections for individuals and restrict the power of the government to prosecute or punish. Statutes contain the substantive acts and procedural requirements for prosecution. Case law contains interpretations of constitutional and statutory provisions.

Constitutional Law

Both the U.S. Constitution and the state constitutions are sources of criminal law for the courts. Constitutions provide the framework for criminal law by:

- Limiting the power of the government
- Establishing individual rights
- Providing for the establishment of a judicial system

As noted earlier, constitutions generally leave the creation and definition of crimes to statutory enactments. The U.S. Constitution, for example, defines criminal acts in only two sections, Article III, Section 3 on treason and Amendment 13 which forbids involuntary servitude except as punishment for crime. The state constitution defines criminal acts in a few more areas, but for the most part, the state constitution, like the federal, focuses on individual rights and limitations of governmental power.

Statutory Law

Generally, there are two types of statutory law, (1) statutes which are passed by the legislators and (2) initiatives which are passed by the voters. Under most circumstances, the power to designate state criminal offenses and provide for the punishment of prohibited acts is reserved for the state legislature and cannot be delegated. In establishing the elements of a crime, the legislature may depart from the norm or common law concepts as long as the elements do not conflict with federal or state constitutions or federal law.

Many of the state crimes are set forth in the Penal, Health and Safety, and Vehicle Codes. Other state codes that contain numerous crimes are the Welfare and Institutions Code, Business and Professions Code, Fish and Game Code, and Government Code.

In some states, such as California, the voters have the power via the initiative petition process to propose and approve statutes and amendments to the state constitution. An initiative measure is started by presenting a petition to the secretary of state that has been signed by the number of voters that is equal to at least 5 percent of the number that voted in the last gubernatorial election for all the candidates for governor. The secretary of state is then required to submit the measure at the next general election held at least 31 days after the petition is certified or a special election may be called. A simple majority of votes is sufficient to pass the measure and it takes effect the day after the election unless the measure provides otherwise. Initiative measures should be interpreted liberally to give full effect to its objective and the needs of the people.

All laws of a general nature have uniform operation within the state. A local or special statute is invalid in any case if a general statute can be made applicable. A statute or initiative must embrace only one subject, which shall be expressed in its title. If a statute or initiative embraces more than one subject or the subject is not embraced in its title, the provision is void. The one subject limitation must, however, be interpreted liberally to uphold legislation whose various parts are reasonably germane to the subject contained in its title.

Felony or Misdemeanor

The most popular classification of crimes is by the categories of treason, felonies, misdemeanors, and infractions. Treason is defined in the U.S. Constitution as levying war against the United States, or in adhering to our enemies by giving them aid and comfort. Treason, since it threatens the very existence of our nation, is considered the most serious. Because of its rarity of occurrence, treason will not be further discussed in this text.

The majority of our crimes are classified as either felonies or misdemeanors. The key to distinguishing between a felony and a misdemeanor is not the punishment actually given in court but the punishment that could have been imposed. For example, a person who commits the crime of burglary could receive 10 years in prison. The judge, however, only sentences him to six months in local jail, the sentence typically given for a misdemeanor crime. That person has been convicted of a felony in most states, even though he only received a jail sentence.

HOW TWO STATES CLASSIFY CRIMES:

California Penal Code, § 17

FELONY; MISDEMEANOR; INFRACTION; classification of offenses

(a) A felony is a crime that is punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail under the provisions of subdivision (h) of Section 1170. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

[Section 1170 (h)(1) provides: A felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years in a state prison.]

Commonwealth of Virginia Annotated Code

§ 18.2-8. FELONIES, misdemeanors and traffic infractions defined

Offenses are either felonies or misdemeanors. Such offenses as are punishable with death or confinement in a state correctional facility are felonies; all other offenses are misdemeanors. Traffic infractions are violations of public order as defined in § 46.2-100 and not deemed to be criminal in nature.

At common law, a felony was considered as any crime for which the offender would be compelled to forfeit property to the king. Most common law felonies were punishable by the death penalty. The common law felonies include murder, rape, assault and battery, larceny, robbery, arson, and burglary. Presently in the United States because of U.S. Supreme Court rulings, only aggravated murder subjects the offender to the death penalty.

Most states distinguish between misdemeanors and felonies on the basis of the place of incarceration. If the offender can only be incarcerated in a local jail, then the offense is a misdemeanor. Felony offenders can be incarcerated in state prisons or other state correctional institutions. Other states use a combination of place of incarceration and character of offense to make the distinction between felonies and misdemeanors.

The Model Penal Code provides that a crime is a felony if it is so designated, without regard to the possible penalty. In addition, any crime for which the permissible punishment includes imprisonment in excess of one year is also considered a felony under the Code. All other crimes are misdemeanors.

Several states, such as California, have crimes that are referred to as "wobblers" based on the fact that they can be considered by the court as either a felony or a misdemeanor.

Infractions are considered the lowest level of criminal activity. An infraction is an act that is usually not punishable by confinement, (i.e. a traffic ticket). In several states, the term "petty misdemeanors" is used in lieu of infractions.

Similar to infractions are violations of municipal ordinances. In some states, ordinance violations are not considered crimes, based on the theory that a crime is a public wrong created by the state and thus prosecuted in the name of the state. An ordinance is a rule created by a public corporation (the municipality or county) and prosecuted in the name of the municipality or county.

The classification of a crime as a felony or misdemeanor is important for several reasons. First, a felony conviction on a person's record can prevent the individual from entering many professions and obtaining certain jobs. A felony conviction has been used to deny a person the right to enter the armed forces, to obtain employment with a law enforcement agency, and may even affect the ability of a person to obtain credit or adopt a child. In one state, a felon (person who has been convicted of a felony) may not obtain a license to sell chickens wholesale. In addition, the conviction of a felony can be grounds to impeach a public official. At one time, many states did not allow a person who had been convicted of a felony to vote, hold office, or serve on a jury. Today, in all but eight states, many of the sanctions commonly associated with a felony conviction have been abolished. The federal government prohibits anyone with a felony conviction from carrying or possessing a firearm.

CLASSIFICATIONS OF CRIMES

At common law, crimes were classified as either *mala in se* or *mala prohibita*. *Mala in se* crimes involve conduct that is inherently and essentially wrong and injurious. Crimes such as murder, rape, incest, arson, etc. are considered as *mala in se* crimes. *Mala prohibita* crimes are wrong only because they violate legislative acts and not because they are inherently and essentially wrong in themselves. Most *mala prohibita* crimes involve traffic, social, and economic behavior. Criminal violation of a rent-control statute is an example of a *mala prohibita* crime.

Moral Turpitude

Moral turpitude is a classification used to describe acts that are contrary to justice, honesty, modesty, or good morals. It has also been defined as an act of baseless, vileness, or depravity in the private and social duties that one person owes to others, or to society in general. Crimes that suggest a lack of honesty, or that imply immoral conduct are considered as crimes involving moral turpitude. For example, perjury, theft, and rape are considered crimes involving moral turpitude. [Note: Crimes involving moral turpitude may also be considered as *mala in se* crimes.]

Conviction of a crime involving moral turpitude may disqualify a person from holding a professional qualification such as an "attorney at law." The conviction of an attempt to commit a crime involving moral turpitude has the same disqualifications attached as a conviction of the actual offense.

Infamous Crimes

While various crimes are referred to as infamous crimes in the state constitutions and statutes, there is no statutory definition. An infamous crime is one that entails infamy upon the one who committed the crime. At common law, the term infamous was applied to those crimes upon the conviction of which the person became incompetent to testify as a witness on the theory that they were so depraved as to be unworthy of credit. It was not the character of the crime that determined whether or not it was an infamous crime but the punishment that may be imposed for conviction of it.

Crimen Falsi

Crimen falsi is a phrase used to describe those crimes that involve the element of falsehood and includes everything that has a tendency to injuriously affect the administration of justice by the introduction of falsehood and fraud (Black's Law Dictionary). The phrase is, also, used as a general designation of a class of offenses involving fraud and deceit. *Crimen falsi* crimes include forgery, perjury, using false weights or measurements, and counterfeiting.

High Crimes

"High crimes" is a phrase used to describe those crimes that, if convicted of, will disqualify the offender from holding public office or make the person ineligible to act as a juror. High crimes include bribery, perjury, forgery, and malfeasance in office by a public official.

Wobblers

In most cases, it is not the punishment awarded by a court that determines whether or not a crime is a felony, misdemeanor or infraction, but the punishment that could have been imposed. There are some offenses, however, that are considered "wobblers." Wobblers are offenses that are either felonies or misdemeanors depending on the sentences awarded at court or action by the court after conviction. Wobblers are treated as felonies until sentencing time, unless the crimes are formally charged as misdemeanors.

For example, California Penal Code 524 provides that an attempted extortion may be punished by imprisonment in the county jail or in a state prison. Accordingly, it is a "wobbler." If the accused on conviction receives a jail term, then it is a misdemeanor conviction. If he or she receives a prison term, then it is a felony conviction. [Note: The district attorney (DA) can charge it as a felony or misdemeanor. If the DA charges the offense as a felony offense, at the preliminary hearing the judge may reduce it to a misdemeanor offense.]

PUNISHMENTS

When an act or omission is declared by a statute to be a crime, and punishment is provided for but no specific penalty is prescribed in the statute, then the general punishment statutes prevail. For example, in most states, even in jury trials the judge has the duty to impose sentences.

In capital cases with a jury, however, the jury must make a finding as to whether special circumstances exist and if so, do they outweigh the mitigating circumstances before the death penalty can be imposed. For example, if the accused, with no prior criminal record, intentionally kills his girlfriend by administering poison, the jury must decide that the special circumstances (death by poisoning) outweigh the mitigating circumstances (no prior criminal record) before the death penalty may be imposed.

Concurrently or Consecutively

When the accused is convicted of two or more crimes, the judge is required to make a determination as to whether or not the sentences will be served concurrently or consecutively. Sentences that are served concurrently are served at the same time. Consecutive sentences are served one at a time—one following the other. For example, the defendant is convicted of two crimes, arson and robbery. If he received two years for each offense and the sentences are served concurrently, he will serve a maximum of two years. If the sentences run consecutively, he will first serve one sentence and when that sentence is completed, he will serve the other (two years plus two years for a maximum of four years). [Note: If the accused has

pending confinement from a previous court, the court should also indicate whether the present sentence will be served concurrently or consecutively with the sentence given in the prior court.]

Stacked Sentences

Prison slang for assigning a subsequent sentence to run consecutively is to "stack" it (i.e., a sentence begins to run only after the earlier sentence has been completely served). Most states have statutes that require prisoners who are convicted of crimes that occurred in prison to have their new sentences "stacked" on top of the sentence they are currently serving. For example, if a prisoner is serving a 10-year sentence and receives a new conviction for assault on a correctional officer, any time received for the assault committed in prison would be served after the original 10-year sentence was served.

White-Collar Crimes

According to a popular joke that circulates in Washington, DC, "the best way to rob a bank is to own it."

White-collar crimes are nonviolent crimes committed for financial gain by means of deception by persons having professional status or specialized skills. The most common white-collar crimes include: counterfeiting, embezzlement, forgery, fraud, and regulatory offenses. Generally, prosecuting white-collar crimes is more complicated than street crimes. There is often one single victim or no one to report the commission of the offense. The crime is often based on trust between the victim and the offender. Normally the building of trust expands the time frame of the crime, permitting repeated victimizations of an unsuspecting victim.

Computer-Assisted Crime

Generally, computer-assisted crimes are divided into three categories:

1. Computer abuse—an intentional illegal act involving knowledge of computer use or technology. For example, wrongly obtaining bank withdrawal codes by the use of computer equipment.
2. Computer fraud—the use of a computer either directly or as a vehicle for deliberate misrepresentation or deception usually to hide embezzlement or thefts.
3. Computer crime—the violation of a computer crime statute.

ADVERSARIAL SYSTEM

Frequently scholars tend to associate the growth of the adversarial system of justice to the same concepts that lead to parliament and trial by jury. Scholar James Hostettler claims that this is not true. Hostettler claims that the origins of the adversarial system had been totally ignored by lawyers and jurists until the 1980s.[26]

According to Hostettler, the adversary trial is a rights-based system. The system emerged in England in the early 18th century and quickly spread to other common law countries including those in North America. The adversarial system differs from the Roman-canon inquisitorial system used in many countries, especially in Europe. The inquisitorial system imposes on the judge a duty to inquire into the circumstances of the case with a view to uncovering the truth. The inquisitorial system was adopted on the European continent after the abolition of the trial by ordeal.

The adversarial system developed in England partly because of the opposition to the fact that under the inquisitorial system the judge was a very powerful person. Over the centuries as the right to a jury trial in a criminal case emerged in England, the jury remained as the fact-finding body. This evolution made the parties to the trial responsible for producing the evidence that would be presented to the juries. As this process developed, the emerging conflict between the parties and the development of the right to examine and cross-examine witnesses resulted in the development of the adversarial system.

Presently under the inquisitorial system the judge has a duty to investigate and determine the facts of the case. Under the adversarial system, the judge acts more like a referee and is supposed to be impartial and insure that the parties receive a fair trial. The function of the jury (and the judge in a trial by judge alone) in the adversarial system is to decide the facts of the case after the parties have presented evidence.

Jurors

The first jurors were witnesses or were in contact with witnesses and were from the community where the alleged crime occurred. After the Wars of the Roses (1455–1485), the Tudors established a strong central government and a nation state in England. One of the changes was that jurors were drawn from a wider area than from the locality where the crime was committed and the jurors ceased to be self-informing and instead depended upon the parties to present the evidence to determine the guilt or innocence of the defendant.

Lawyers

In early England, defendants were not permitted to have counsel to assist them during the trial. The Treason Trial Act of 1696 gave prisoners on trial for treason the right to have counsel act on their behalf. The right included the right of the lawyers to address the jury on facts as well as on questions of law. Later the right to counsel was extended to other felony trials. The expansion of the right to counsel started in the 1730s and was not by legislation but by active judges.[27]

EVIDENCE-BASED JUSTICE

What does "evidence-based justice" mean or imply? Law professor Jennifer Laurin[28] states that evidence-based practice is a paradigm that aims to tether decision-making to empirical, rather than intuitive or experiential, evaluations of practice or policy options. The concept of evidence-based originated in medi-

cine and was already in medicine and already taking hold in isolated sectors of criminal justice policy. Laurin notes that evidence-based practice is sprouting in the indigent defense field, spurred on by legislative reform, shifts in federal funding priorities, and the concerted energy of thought leaders in a number of states.

Noted police researcher Lawrence Sherman noted that policing in 1975 was largely delivered in a one-size-fits-all strategy. Sherman stated that this policy could be described as the "three Rs": random patrol, rapid response, and reactive investigation. He notes that random patrolling was promoted on the basis that police omnipresence would deter crime. In the 1960s, 911 phone numbers turned random patrolling into an airport-style holding pattern for rapid response. By 2012, the three Rs were changing into what Sherman describes as the "triple T": targeting, testing, and tracking. With this strategy, police agencies had moved toward far greater proactive management of police resources.[29]

Sherman concludes that the best test of evidence-based policing is whether it has improved public safety and police legitimacy. He notes that there is certainly a correlation over time between the rise of evidence and a decline in serious crime, in both the United States and the United Kingdom. The most important points of Sherman's article on the use of evidence-based practices are as follows:

- The evidence base for police decisions has grown enormously since 1975.
- Use of that evidence lags behind the knowledge but use has also grown.
- Most police practices, despite their enormous cost, are still untested.
- Police in 2012 used evidence on targeting much more widely than evidence from testing.
- Research on tracking police outputs remains largely descriptive and incomplete, with great room for using new technologies to improve the quality of evidence.
- More use of evidence can increase police legitimacy, both internal and external.

LEGAL REFERENCES

This section is included to introduce the students to the basic concepts of legal research and methodology. Researching legal issues and cases is different from standard literature research. Once the student has mastered the concepts and methodology, however, legal issues, case law, and statutes can be located quickly and efficiently.

In conducting legal research, the researcher should:

1. Research the subject systematically, going sequentially from one source (e.g., statutes, court decisions, or law reviews) to the next.

2. Check to ensure that the latest available information has been consulted. For example, use only the latest copy of the penal code. Using only the latest references is essential because legal information and points of authority change frequently as the result of statutory modifications and new court decisions.

3. In researching legal questions, be patient and thorough. To many questions, the law frequently does not yield easy "yes or no" answers. At times, the answers will be considered ambiguous and conflicting.

Legal Citations

Legal citations are a form of shorthand used to assist in locating legal sources. Appellate court decisions are published in case law books, more popularly known as "reporters." The basic rules of legal citation are as follows:

1. In most citation formats, the volume or title number is presented first.

2. Following is the standardized abbreviation for the legal reference source.

3. Finally, in the case of court cases, after the listing of the reporter edition is the page number of the first page of the court decision.

For example, the citation, 107 U.S. 468, refers to the case starting on page 468 of volume 107 of United States Reports. A citation of 18 U.S.C. 347, refers to title 18 U.S. Code, section 347.

National Reporter System

West Publishing Company's National Reporter System is the standard for researching court reports. The system includes, in bound volumes and advance sheets, decisions of all state and federal appellate courts and selected trial court opinions. Included in the bound volumes are the table of cases, table of cited statutes, criminal and appellate procedure tables, words and phrases, and a key number digest. For more detailed information on the West Reporter Series visit http://lscontent.westlaw.com/images/banner/documentation/2009/NationalReporter09.pdf.

The Reporter System was started in 1876 by two brothers doing business under the name of "John B. West and Company." The brothers reported the decisions of courts in Minnesota in a series of pamphlets known as "The Syllabi." In 1879, the name of the series was changed to "North Western Reporter." By 1887, the venture had expanded to a total of seven regional reporters covering all the states. The seven regional reporters are still being published with only slight modifications in state coverage. The present day coverage is as follows:

1. Atlantic Reporter: Me., N. H., Conn., Vt., Pa., Del., Md., and N.J.

2. North Eastern Reporter: Mass., N.Y., Ohio, Ind., and Ill.

3. North Western Reporter: N.Dak., S.Dak., Nebr., Minn., Iowa, Wis., and Mich.
4. Pacific Reporter: Kan., Ok., N.M., Col., Wyo., Mont., Id., Utah, Ariz., Nev., Or., Wash., Ca., Alaska, and Ha.
5. South Eastern Reporter: Ga., S.Car., N.Car., Va., and W. Va.
6. South Western Reporter: Tex., Ark., Tenn., Ky., and Mo.
7. Southern Reporter: La., Miss., Ala., and Fla.

In addition to the regional reporters, West publishes the Supreme Court Reporter which reports only decisions of the U.S. Supreme Court; The Federal Reporter which reports decisions of the U.S. Courts of Appeal, and the Federal Supplement which reports selected U.S. District Court decisions, decisions of federal judicial panels, and other special federal courts. The New York Supplement, which also reports New York state appellate cases, was started in 1887, and the California Reporter, which reports current decisions of the California Supreme Court, District Courts of Appeal and Superior Court (Appellate Department) decisions, was started in 1960.

Official Reporters

As noted above, West's National Reporter System is the standard case reporter; however, in most cases they are not considered the "official reporter." Each high court designates a publisher as the "official reporter." For example, the official reporter of the U.S. Supreme Court is the U.S. Reports (U.S.), whereas the reporter is the Supreme Court Reporter (S. Ct.). Contained in each case reported in the West reporter is the official reporter citation.

Legal Digests

Legal digests are not legal authorities. They are used as research tools. Legal digests identify and consolidate similar issues by topical arrangement. Most legal digests, using West's standard format, divide the body of law into seven main divisions, 32 subheadings, and approximately 400 topics. West also publishes a digest for each series of case reporters.

Each topic is assigned a digest "key" number. For example, Crim Law 625 is the key number for the legal issue of "exclusion from criminal trial." The key number is the same for each digest published. Legal points from court decisions are published with a brief statement of the legal point involved and the case citation for the court decision being digested. If, for example, a point being researched is located in a digest under Crim Law 625, then reference to other digests using the same key number (Crim Law 625) will help locate other court decisions on the same or similar issues.

Law Reviews

The major law schools publish law reviews. In general, the law reviews contain scholarly articles on various aspects of California law. They are not legal authority but are often cited as persuasive authorities. Law reviews are cited similar to court cases. For example, an article in volume 50 of the Standard Law Review which begins on page 192 would be cited as: 50 Stan. L. Rev. 192.

Standard Jury Instructions—Criminal

Standard Jury Instructions—Criminal are collections of standard jury instructions that a judge may use to instruct the jury regarding elements of crimes, defenses, and other matters relating to the trial. They are also used by non-judges as references, since the instructions contain explanations of crimes and criminal procedural matters.

Attorney General Opinions

Generally, the state attorney general has charge, as attorney, of most legal matters in which the state is interested. The attorney general is normally required to provide legal opinions in writing to the legislature or either house thereof, and to the governor, the secretary of state, controller, treasurer, state lands commission, superintendent of public instruction, any state agency prohibited by law from employing legal counsel other than the attorney general, and any district attorney when required, upon any question of law relating to their respective offices.

The opinions are generally of two types: formal and informal. Formal opinions concern legal questions that are of general statewide concern. Formal attorney general opinions are usually published in volumes similar to case reports. Informal opinions normally concern problems that are of local interest only. Informal opinions are not usually published, but many are available to the public from the Attorney General's Office. Informal opinions are generally issued in letter format.

Attorney general opinions are considered as "quasi-judicial" in character. While they do not have the force and effect of statutes or court decisions, they are entitled to great weight and are persuasive to the courts.

Legal Research on the Web

The World Wide Web has changed the manner in which most legal research is accomplished. No longer do law firms need large law libraries and full-time staff to keep them updated. Many universities and government agencies offer virtual library service to criminal justice professionals. These are electronic resources to databases, electronic journals, and other criminal justice resources.

Westlaw is one of the premier online legal research programs. It has recently been renamed as Thomson Reuters Westlaw. For a fee, attorneys can use Westlaw in lieu of a costly law library. Subscribers to Westlaw can access cases and other legal materials online at any time. An introduction to research using

Westlaw may be downloaded from the website: **http://info.legalsolutions.thomsonreuters.com/pdf/wln2/L-355700_v2.pdf**

SUMMARY

- The response to crime is mainly a state and local function.
- Police protection is primarily a function of cities and towns.
- Corrections is primarily a function of state governments.
- More than 60 percent of all persons employed in the criminal justice system are employed at the local (city or county) level.
- The American criminal justice system is actually three separate components: law enforcement, courts, and corrections.
- Each of these components operate independently of each other and are often at conflict with each other.
- Accordingly, the criminal justice system is a group of agencies organized around various functions that is assigned to each group.
- The phrase "criminal justice" refers in general to society's reaction to conduct that violates criminal laws.
- Citizen involvement in the criminal justice process includes: reporting crimes to the police, being a reliable participant as a witness or juror in a criminal proceeding, and accepting the disposition of the system as just or reasonable.
- Criminal justice professionals generally are oriented toward one of two opposing directions—"law and order" or "individual rights."
- Due Process Requirements restrict the power of the federal and state governments and more particularly the police, courts, and corrections.
- The clause "without due process" of the Fourteenth Amendment has been interpreted by the U.S. Supreme Court as "incorporating" most of the provisions of the Bill of Rights.
- Each state, each territory, the District of Columbia, and the federal government have a criminal justice system.
- The primary duty of a prosecutor is not to prosecute but to promote justice.
- Policing is mainly a function of local cities and counties.

- Ninety-five percent of all criminal trials in the United States are conducted in state courts and involve violations of state law.
- Federal courts are involved only in matters involving federal issues.
- The act of defining "crime" is a difficult task.
- Law can be divided into several different classifications. The most common ones include: crimes and torts, and common law and statutory law.
- Common law developed during the Middle Ages in English society as a body of unwritten judicial opinions, which were based on customary practices of Anglo-Saxon society.
- Substantive criminal law defines what conduct is considered as a crime. It lists the elements that constitute the conduct or failure to act that are classified as a crime.
- Substantive criminal law also attaches penalties for violations of the crimes.
- Procedural law controls the manner in which substantive criminal law is involved and controlled. It provides the rules by which we investigate, bring to trial, and punish criminals.
- Jurisdiction is generally defined as the power of a court to decide an issue or a case.
- Subject matter jurisdiction is defined as the courts' statutory or constitutional power to adjudicate the case.
- Generally, jurisdiction of the person is acquired when the party charged is arrested or voluntarily appears in court and submits himself to its jurisdiction.
- Under that territorial principle, states have power to make certain conduct a crime only if that conduct takes place, or its results occur, within the state's territorial border.
- Venue refers to the geographical location of the trial.
- The Sixth Amendment of the U.S. Constitution provides that a criminal trial be held in the "State and district wherein the crime shall have been committed."
- The criminal laws in most states come from three primary sources: federal and state constitutions, statutory law, and case law.
- The most popular classification of crimes is by the categories of treason, felonies, misdemeanors, and infractions.
- At common law, crimes were classified as either *mala in se* or *mala prohibita*. *Mala in se* crimes involve conduct that is inherently and essentially wrong and injurious.

PRACTICUMS

Practicum # 1: Who is a criminal?

Being labeled a "criminal" generally has negative consequences.

How would you label someone a criminal? Explain your answer.

Some of the more frequent definitions of a criminal include:

- Someone who has committed a criminal act regardless of whether or not the act is known or discovered by others. For example, knowingly making a false statement on your income tax return to reduce your taxes is a crime. The fact that the act that may generally not be discovered does not affect its status as a crime. Another example is the mother who provided a school with a false home address so that her child would be qualified to attend a better school.
- Someone who has been convicted of a criminal act. Generally, anyone who has a criminal conviction is considered as a criminal. This definition would exclude an individual who murders a child but his identity is never discovered.
- Someone who has committed a serious criminal act. Like the preceding comment, unless we know the individual has committed the act, he or she is not labeled as a criminal.

The next time you are in a discussion group, ask the group members this question: Who in this group has never broken the law?

All of us, unless we are living a very sheltered life, have at one time or another violated a law. Remember even driving above the post speed limit is a violation.

Practicum # 2

In 1996, Marcus Lewis pleaded guilty to statutory rape in Missouri and was sentenced to five years of probation. He later served prison time on account of a probation violation. As a convicted sex offender, Lewis was required by federal law to register his status in his state of residence under the federal Sex Offender Registration and Notification Act (SORNA). Lewis last registered in Kansas in May 2011, and he has not voluntarily registered in any other state since that time. Congress enacted SORNA in 2006 to require convicted sex offenders to register where they live, work, or attend school. Any changes in status must be reported to authorities at any new place of residency. In this way, a national database is created

and kept current, providing up-to-date information about the location and movement of covered sex offenders.

On his prosecution for failure to comply with SORNA, the defense questioned the proper venue for the trial. As noted by the court of appeals, the case requires us to decide whether a convicted sex offender who violates 18 U.S.C. § 2250(a) when he (1) abandons his residence in one state, (2) moves from that state to another, and (3) knowingly fails to update his sex offender registration can be prosecuted in the state from which he departed. In other words, is venue proper in the departure district for the federal crime of knowingly failing to register as a sex offender after traveling in interstate commerce?

As an associate justice on the court of appeals, how would you answer the above questions?

[See *United States v. Lewis*, 768 F.3d 1086 (2014)]

DISCUSSION QUESTIONS

1. Explain the difference between jurisdiction and venue.
2. Define the different types of jurisdiction in criminal cases.
3. What is meant by the phrase "dual court systems"?
4. Discuss the development of the adversarial system.
5. How to crimes and torts differ?
6. Explain the differences between the "law and order" orientation and the "individual rights" orientation.
7. What are the roles of a prosecutor, judge, and defense counsel in a criminal case?
8. What roles should the public play in our criminal justice system?
9. Explain the differences between procedural and substantive laws.
10. What role does "common law" play in the current criminal justice system?