

## CHAPTER 12

# THE U.S. LEGAL SYSTEM

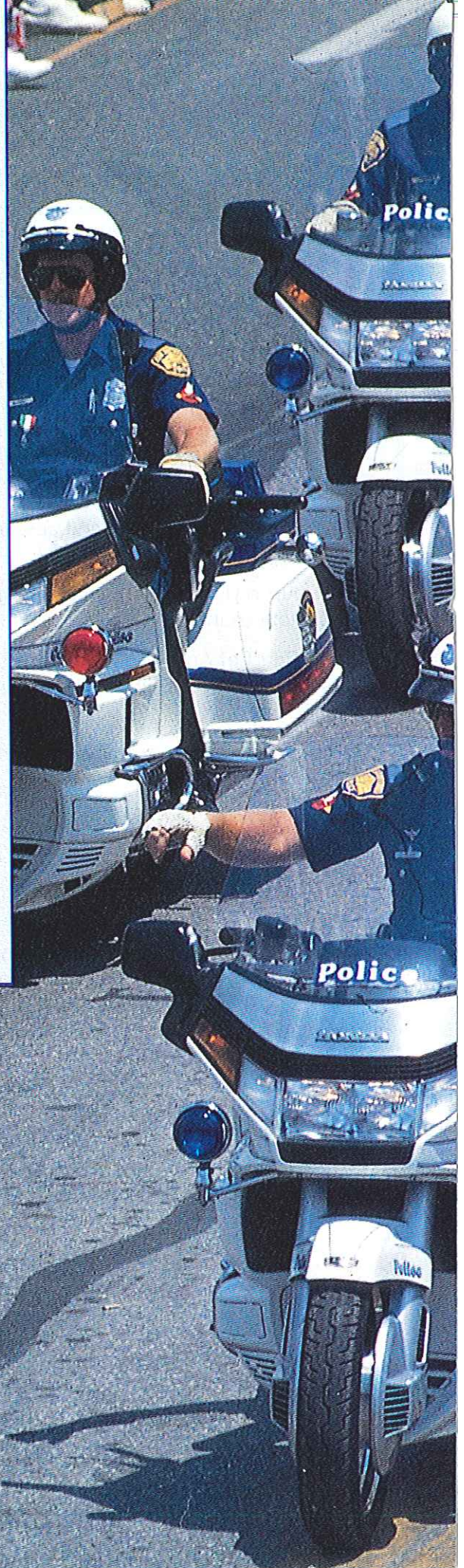
**H**ow do you regard the laws that govern your community and nation? Some people may see laws as restricting their freedom. Most believe that laws generally serve positive functions in U.S. society, such as preserving order and protecting property.

For example, laws determine who receives certain benefits and who does not. Laws create government programs—such as highway construction, flood control, and Social Security—and the organizations to administer them. In addition, laws forbid certain behaviors that harm people or their property—for example, murder or burglary. Laws also make it difficult for government officials to make random decisions that may negatively affect people.



### Government Notebook

In your Government Notebook, make a list of ways—both positive and negative—that laws affect your everyday life.



## SECTION 1

# U.S. LAW

### Political Dictionary



common law  
statutory law  
statutory interpretation  
constitutional interpretation  
administrative law  
felony  
misdemeanor  
plaintiff  
defendant

### Objectives

- ★ What is common law, and where did it originate?
- ★ What is statutory law?
- ★ Whom does administrative law govern?
- ★ What is the difference between civil law and criminal law?

As you know, laws govern people's conduct. You may not realize, however, that there are several types of U.S. law, including common, statutory, constitutional, and administrative. Many of these laws can be further classified as criminal or civil laws. Together, these laws help ensure that both governmental actions and standards of social conduct promote the public good.

## Common Law

**Common law**, also called judge-made law, is a body of law based on judicial rulings in earlier cases. The common-law system first developed in England during a period when very few written laws existed. When conflicts arose to which no law applied, judges had to make decisions based on their individual sense of fairness. Judges in other jurisdictions who recognized these rulings as fair then used them in similar cases. As noted in Chapter 11, this acceptance of earlier court decisions is known as *stare decisis*.

The U.S. legal system today incorporates this common-law heritage. For example, common law includes much of the law applied to cases in which one person blames another for injury and sues for damages. To help decide these cases, judges developed the principle that a defendant must generally have acted negligently, or irresponsibly, before he or she could be required to pay damages to an injured party. Thus, someone whose non-negligent actions harmed another person would not have to pay damages.

The term *negligence* has been applied to many different types of cases, and there are different levels of negligence. For example, officers of federally chartered banks have been charged with negligence for approving large loans that were not repaid and caused the banks to fail. Other professionals, such as stockbrokers, can be charged with negligence if their apparent failure to perform according to the standards of their profession causes a harm, such as an investor's losing large amounts of money.



**POLITICAL FOUNDATIONS** *English judges dressed in their traditional robes and wigs march in a procession. How does the U.S. legal system incorporate the English common-law tradition?*

Both judges and lawyers rely on precedents, or earlier rulings, in their interpretations of the law, thus ensuring stability and predictability in the legal system. Because they have been tested repeatedly in different court cases, rulings based on common-law precedents are given as much respect as rulings based on legislative statutes.

## Statutory Law

**Statutory law** consists of laws (also called statutes) passed by city councils, state legislatures, and Congress—the lawmaking bodies of local, state, and national government. Statutory law serves a variety of purposes. For example, statutes may be passed to create or abolish government programs, increase or decrease the penalty for a crime, or change the salaries of government workers.

In making rulings, courts often must decide the meaning of laws that legislatures have passed, a process referred to as **statutory interpretation**, or statutory construction. Statutes are valid as long as they are not found to be in conflict with the Constitution.

## Constitutional Law

Constitutional law has supreme standing over all other types of law. A court can hold invalid any statutory or common law that contradicts a constitutional provision.

Ruling on the intended meaning of phrases in the Constitution is called **constitutional interpretation**. As noted in Chapter 11, judges often have to interpret the Constitution because its language is broad on many important points. This lack of clarity has allowed the Supreme Court to use its power of judicial review to reach expansive or narrow interpretations of the Constitution each time it hears a case.

## Administrative Law

**Administrative law** includes both the regulations made by executive departments and independent agencies and the laws that govern their actions. Examples of agencies that operate under administrative law include the Federal Trade Commission, the Environmental Protection Agency, and the Food and Drug Administration.

Agencies are part of the executive branch, and they also act as agents of Congress by helping to carry out congressional legislation. Their power is limited in two ways, however. First, the Constitution places the same restrictions on agencies that it places on the president and Congress. Second, Congress determines the structure and powers of all agencies, and the president appoints their top leadership, with the advice and consent of the Senate.

The power that Congress delegates to these agencies comes in three forms. First, Congress authorizes agencies to make rules and regulations that fill in the details of legislation. For example, the Food and Drug Administration (FDA) determines which food additives are safe for human consumption and makes regulations regarding their use. Second, Congress authorizes agencies to enforce the rules they make. For example, the FDA can fine companies that use a food additive it has outlawed. Third, Congress authorizes agencies to attempt to resolve disputes that arise over their enforcement measures. The agencies can also represent the government in court cases that result from those disputes. A food company that believes it has been wrongly fined can demand an agency hearing on the matter. If dissatisfied with this ruling, the company can appeal to a federal court,



**PUBLIC GOOD** Administrative law applies to agencies such as the Occupational Safety and Health Administration (OSHA). What other agencies operate under administrative law?

which hears arguments from both the company and the agency.

Because agency officials are not elected, some people argue, these agencies have too much power, and as a result, they adopt many unfair regulations. Administrative law is intended to ensure that agencies do not abuse their power.

## Criminal and Civil Law

Statutory laws can be further classified as either criminal or civil. As noted in Chapter 4, criminal law covers actions that are forbidden by a society's government and punishable by imprisonment, while civil law



**POLITICAL PROCESSES** In 1996, after several churches in the South were burned, federal investigators stepped in to determine the cause of the fires. Here, FBI and Bureau of Alcohol, Tobacco, and Firearms agents inspect the site of a church near Turner, Arkansas. *What other types of crimes might federal agents investigate?*

## Comparing

### .....▶ Governments

#### The Power of the Courts

By establishing the power of judicial review in *Marbury v. Madison*, the Supreme Court created for itself a much more powerful tool than any held by high courts in other democratic nations at the time. Historically, national governments did not grant their highest courts the power to cancel a law made by the national legislature. Britain's High Court of England, for example, to this day has no power to cancel laws made by Parliament.

Since World War II, however, judicial review has been established in the constitutions of several countries other than the United States, such as Germany, Japan, and India. In addition, the French during this period established a Constitutional Council with the right to cancel Parliamentary laws that it found to be in conflict with the national constitution.

covers private disputes, such as ones involving personal injury or the breaking of a contract. People found to be at fault in civil law cases must pay fines or settle the dispute according to the law, but they are not subject to imprisonment.

**Criminal Law** Criminal law covers two main types of crime—felonies and misdemeanors. **Felonies** are serious crimes, such as murder, rape, or burglary. **Misdemeanors** are less serious crimes, such as resisting arrest.

Most felonies and misdemeanors are covered by state laws and deal with crimes against people and property. Some crimes, however, are covered by federal law. Crimes against the national government—evading income tax, counterfeiting U.S. currency, and threatening the life of the president, for example—are federal crimes. Other federal crimes include illegal actions that take place across state lines and offenses such as kidnapping, drug trafficking, bank fraud, the shooting of migratory birds out of season, drunken driving on government land, illegal possession of a firearm, and carjacking. Denial of a person's civil rights under the Constitution also is a federal crime.

Crimes are more than private disputes; they are considered an offense against society as well as against an individual victim. To find a person



**PRINCIPLES OF DEMOCRACY** Civil law cases involve the settlement of disputes between two or more parties. The above cartoon gives a humorous look at how some of these cases might be considered extreme or unnecessary. What is the reason for lawsuits regarding contracts?

guilty of a crime, guilt must be established beyond a reasonable doubt. This means that a person cannot be convicted of a crime unless very little doubt exists about his or her guilt.

**Civil Law** Civil law involves disputes in which one private party brings a lawsuit against

another for causing some harm. A party generally files a suit to seek a remedy— money, property, or an action. In civil cases the party bringing the suit is known as the **plaintiff**, while the party against whom the suit is brought is known as the **defendant**. In a civil case a party does not have to prove beyond a reasonable doubt that a wrong was committed. Rather, civil cases are generally decided in favor of the party whose position is supported by most of the evidence that is presented.

Three major categories of civil law involve contracts, torts, and property law. Contracts are legal promises made between two or more parties. When one side breaks a contract, another side may

sue, or bring a lawsuit against, the contract breaker. Torts are harms that one party causes another and for which the victim may receive damages. Tort lawsuits often involve accidents, such as car wrecks. Property law involves violations of the rights one has as an owner of land or other personal property.

harm = danno

lawsuit = causa

**SECTION 1**

**REVIEW**

1. Define the following terms: common law, statutory law, statutory interpretation, constitutional interpretation, administrative law, felony, misdemeanor, plaintiff, defendant.
2. What is the origin of U.S. common law?
3. Who makes statutory laws?
4. To whom do administrative laws apply? What purposes do these laws serve?
5. What is the difference between civil and criminal law? Give two examples of offenses that break each kind of law.

**6. Thinking and Writing Critically**

People can file lawsuits against those who cause them harm. Why is this right necessary to protect people? How might this right be abused?

**7. Applying CONSTITUTIONAL GOVERNMENT**

Think about the laws that you follow every day, such as traffic laws or laws that determine how many days schools are in session and when your school day begins and ends. Into which category or categories do these laws fall? List the other types of law that you have not mentioned and give one example of each.

## SECTION 2

# THE CRIMINAL JUSTICE SYSTEM

### Political Dictionary



county  
bail  
bond  
indictment  
grand jury  
information  
arraignment  
no-contest plea  
petit jury  
*voir dire*  
peremptory challenge  
sequester  
subpoena  
hung jury  
plea bargain

### Objectives

- ★ Who enforces criminal laws?
- ★ What process does an accused person go through after his or her arrest?
- ★ What is a plea bargain?

People sometimes violate the law. The job of the criminal justice system is to stop these violations and to punish lawbreakers. The criminal justice system of the United States consists of three parts: police, courts, and corrections. In this section you will learn about the role of the police and the courts in the criminal justice system. The corrections system will be discussed in Section 3.

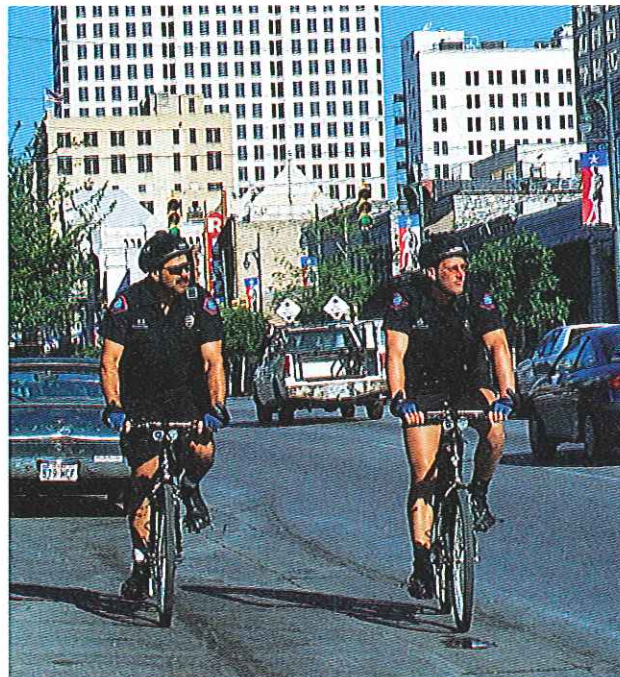
## Police

More than 500,000 police officers enforce the law across the country. They work at the local, state, and national levels, and their jobs involve many responsibilities. Not only do they protect highways and neighborhood streets

and maintain peace and order, they also investigate, arrest, and book people accused of crimes.

**Organization** The police system in the United States is highly decentralized. Though the system exists at the local, state, and federal levels, most law enforcement agencies are located in counties, cities, and towns. (**Counties**—divisions within a state that function as units of government over a particular area—are more fully discussed in Chapter 21.) At the county level, the county police or sheriff's department is the main law enforcement agency. Its duties include preserving order, enforcing court orders, and patrolling areas within the county. Town and city police perform a similar function within town and city limits. At the state level, police patrol state highways and have the responsibility for enforcing some state laws.

The United States, unlike some other countries, does not have a national police force. However, some national agencies, such as the Federal Bureau of Investigation, do help enforce federal laws and aid local authorities in detecting local crimes and catching offenders. Federal offenses in which these agencies would become involved include kidnapping, the attempted assassination



**PUBLIC GOOD** Police officers patrol the streets of Austin, Texas, on bicycles. How do the duties of police officers employed by a city or county differ from the duties of a state police officer?

of a president, mail fraud, bank robbery, and the hijacking of an aircraft.

**Arresting Suspects** After a criminal act has been committed, police officers must make decisions about a number of factors before making an arrest. First, they must investigate the crime and then decide whether there is enough evidence to arrest someone. If they did not witness the crime, they may need to obtain an arrest warrant—or court authorization—before an arrest can be made. Second, they must decide what level of control or force is necessary to make the arrest.

Police officers may use force sometimes, but not more than is necessary to do their job effectively, whether making an arrest, controlling a crowd, or fulfilling any other police function. In general, the use of lethal, or deadly, force is forbidden unless an officer or other person is threatened with serious bodily harm or death. In some states, however, an officer may use lethal force against a suspect who is fleeing after an arrest, even if the arrest was only for a misdemeanor offense.

Because of three significant Supreme Court cases, *Gideon v. Wainwright*, *Miranda v. Arizona*, and *Escobedo v. Illinois*, the police cannot question people without informing them of their constitutional rights to remain silent and to secure the services of an attorney. (The rights of the accused are more fully explained in Chapter 14.) After an arrest, the accused is “booked” at the police station, where his or her picture and fingerprints are taken. These are then used to check the person’s identity and examine criminal records to determine whether he or she has been previously arrested or convicted.

## Courts

Once the police arrest and book someone for a crime, he or she then awaits appearance in court. The accused person’s first court proceeding after an arrest must be held as soon as possible, unless there is good cause for delay.

**Appearance in Court** At the initial hearing, a judge determines whether there is sufficient evidence to hold the person and possibly sets **bail**—an amount that the accused must deposit with the court to be released from jail while awaiting trial. The bail money—called a **bond**—is held as security to ensure that the accused will not flee from

## The Legal Process

### APPEARANCE IN COURT

Accused appears before a judge, who may set bail.

### PRELIMINARY HEARING

Judge decides if there is enough evidence to have the accused bound over for formal charges.

### INDICTMENT

Formal accusation is brought against the accused by a grand jury or an information [sworn statement].

### ARRAIGNMENT

Accused is formally notified of charges and enters plea.

### JURY SELECTION

Prosecution and defense attorneys choose panel of 6 to 12 people to decide accused person’s guilt or innocence.

### TRIAL

Prosecution and defense present evidence and question witnesses to prove guilt or establish innocence.

### VERDICT

Jury decides guilt or innocence, usually by unanimous decision.

### SENTENCING

Judge sets punishment for convicted defendant.

*Each step in the legal process is necessary to guarantee that the rights of the accused are protected. How many people are selected to serve on a jury?*

the jurisdiction of the court. It is returned when the accused appears for the trial.

Even though people are presumed innocent until proved guilty and the Eighth Amendment prevents judges from setting “excessive bail,” the Supreme Court has ruled that people do not have the *right* to be released on bail. To protect the community from people accused of serious crimes, judges may set high bail or refuse to set bail at all.

**Preliminary Hearing** Many states give accused people the right to appear at a preliminary hearing, though they may give up that right. At a preliminary hearing the judge will review a copy of the complaint, which is the written statement of the facts of the case. The judge will then determine whether there is reason to believe that an offense was committed and that the defendant is the one who committed it.

The preliminary hearing is largely one-sided, with the prosecutor trying to persuade the judge that there is sufficient reason for the case to go to trial. If the judge determines that there is enough evidence, the accused will then answer formal charges at the next stage of the process.

**Indictment** The **indictment**, or the formal accusation against the accused, is the next step in the process after the initial appearance in court or the preliminary hearing, depending on the jurisdiction. In the federal courts and in about half of the states, a person is indicted by a grand jury. A **grand jury** is made up of 12 to 23 people who decide if the government has enough evidence to try an accused person on formal charges.

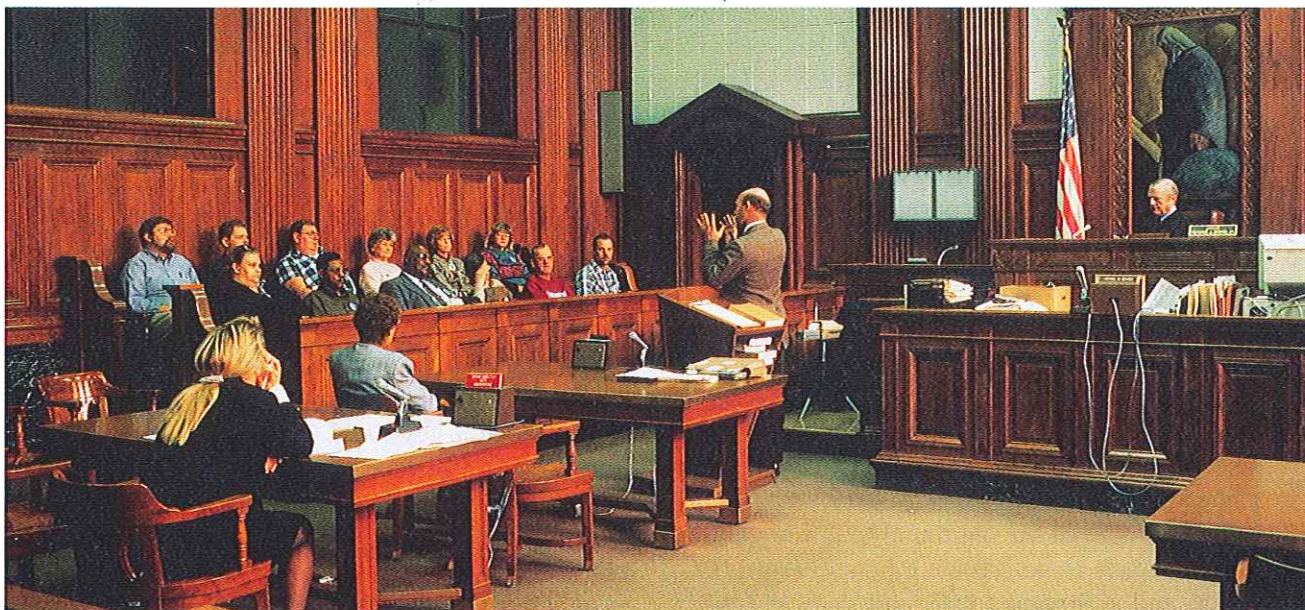
Grand jury meetings are closed to the public, and only the prosecutor is allowed to present evidence. Grand juries almost always accept the prosecutor's recommendation to begin formal criminal

proceedings. They can also act as powerful investigative tools because they can call any person to appear as a witness before them and can order any person to produce documents and papers related to the case. (The grand jury system is more fully explained in Chapter 14.)

States that do not use the grand jury system indict by an information. An **information** is an affidavit, or sworn statement, in which the state's prosecuting attorney declares that there is sufficient evidence against the accused to justify trying the case.

**Arraignment** At **arraignment**, the accused is formally notified of the charges against him or her and is asked to enter a plea of guilty or not guilty. Most states also permit a **no-contest plea**, which comes from the term *nolo contendere*, or "I will not contest it." The major difference between a guilty plea and a no-contest plea is that with a no-contest plea, the accused does not deny committing the offense but does deny that the offense involved any moral wrongdoing.

In some instances a not-guilty plea can later be changed to a guilty plea, and a guilty plea can sometimes be withdrawn. If the accused pleads not guilty, a trial will be scheduled. Sometimes, however, he or she accepts a plea bargain, in which case there will be no trial. (You will learn more about plea bargains later in this section.)



**CONSTITUTIONAL GOVERNMENT** *The jury (seated, top left) and judge listen to the court proceedings of a trial. How is a grand jury different from a petit jury?*



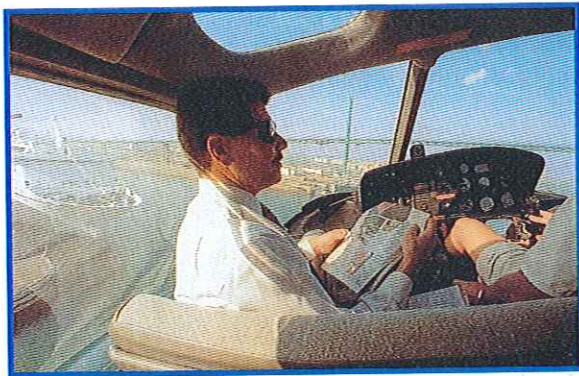
# Careers in Government



## State Trial Judge

Every Friday, California state trial judge Peter Mirich takes a helicopter or ferry from San Pedro, California, to Santa Catalina, an island just off the California coast. There he presides over a small municipal court and hears cases typical of a popular resort town, ranging from falsifying a fishing license to disturbing the peace. In the afternoon the judge may perform wedding ceremonies.

On the mainland, Roosevelt Dorn, also a California state trial judge, looks over the rap sheet—a list of criminal charges—of a 13-year-old who has stolen a car. Judge Dorn sternly lists the probation rules the teenager must follow to stay out of jail. A few cases later, the judge smiles at a young man who has completed his probation and graduated from high school. In this court Judge Dorn's stern attention may make an important difference in a young person's life.



Judge Peter Mirich, flying to Santa Catalina in a private helicopter to preside over the city's municipal court

Judges Mirich and Dorn are just 2 of some 12,000 state, county, and municipal trial court judges in the country. State courts handle around 27 million criminal and civil cases per year in the United States. State court judges weigh the evidence that is presented, apply the appropriate laws, and decide penalties. In jury trials, judges also must instruct the jurors on how to apply the law to the evidence.

At the municipal court level, judges try misdemeanor cases and civil cases involving minor monetary damages. Municipal court judges also hold preliminary hearings to decide if defendants charged with felonies should be tried in a superior court. Superior court judges handle felonies and civil cases with higher monetary damages. They also run juvenile and family courts.

Judges have a college education and a law degree. Many also have years of experience practicing law. Although any type of lawyer may become a judge, district attorneys—also known as prosecuting attorneys—are particularly likely to be selected as judges because of their courtroom experience.

The process of selecting judges varies from state to state. In some they are elected; in others they are appointed by state governors or legislatures. Once selected, judges may serve for fixed terms or until mandatory retirement. In some states, judges may serve many terms, and sometimes they move up from the municipal courts to superior courts. Judges generally enjoy the challenges of applying the law and carrying out justice. California superior court judge Barbara Lane describes her job as stimulating and enjoys it so much that she says, "I should pay to come in here."

**Jury Selection** In the criminal justice system a defendant has the right to a trial by jury. A trial jury, sometimes called a **petit** (PEHT-ee) **jury**, is a panel of people who live in the community and are chosen to hear a case to determine a person's guilt or innocence. In the federal courts and in all but two states, a trial jury is made up of 12 people. Trial by jury is the defendant's right under the Sixth Amendment to the Constitution. However, the

defendant may choose to give up this right in favor of a "bench" trial—a trial held before a single judge.

If the defendant chooses a jury trial, the lawyers from both sides must agree on the people to serve on the jury, as well as any alternates, from a pool of citizens summoned for jury duty. To guide them in their selections, the lawyers engage in the process called **voir dire** (VWAHR DIR), meaning "to speak the truth," in which they

question each potential juror and may ask the judge to dismiss anyone they believe holds a strong opinion about the case. For example, if the defendant is a stockbroker, any potential jurors who appear hostile to stockbrokers may be dismissed.

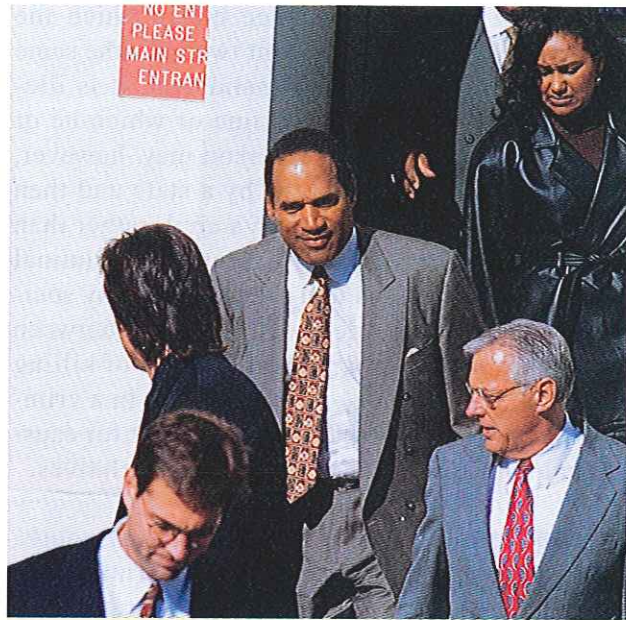
In addition, the defense lawyer or prosecuting attorney may dismiss a juror without giving a reason by issuing a **peremptory challenge**. Such challenges are used when a potential juror's presence on the jury might harm the defense's or prosecution's chances of winning, but no reason for dismissal would satisfy the judge. Usually each side is limited to about six peremptory challenges.

Once members of the jury are chosen, they are sworn in and the trial begins. In cases that receive a lot of publicity, the jury may be **sequestered**, or kept in isolation, in a hotel during the trial. In an attempt to keep their viewpoints from being influenced by outside information, sequestered jurors are allowed neither to speak about the case with family or friends nor to watch television, read newspapers, or observe other media.

**Trial** Both sides in a criminal trial have the right to call witnesses to testify about the case. If a witness will not come to the court voluntarily, he or she may receive a **subpoena**—a court order requiring the person's presence.

The lawyers ask their own witnesses questions in a process called direct examination, and they question the other side's witnesses in a process called cross-examination. The judge also may question the witnesses. Witnesses must respond to every question, unless answering the question will reveal their participation in a crime. The right not to answer such questions is protected by the Fifth Amendment. (The Fifth Amendment is more fully explained in Chapter 13.) Similarly, defendants in a criminal case are not required to testify, though they may choose to if they wish.

After the prosecution has presented its case, the defense routinely asks for a dismissal of the charges on the grounds that the evidence is insufficient to prove beyond a reasonable doubt that the defendant is guilty. If the judge sustains the motion, the defendant is acquitted—or freed from the charges. If the judge rejects the motion, the defense can take one of two actions. It can rest its case, hoping that its cross-examination of the prosecuting witnesses raised enough reasonable doubt



**CONSTITUTIONAL GOVERNMENT** Former football star O. J. Simpson was tried in both a criminal court case and a civil court case for the deaths of his former wife and her friend. Under what circumstances may a person be tried twice for the same charges?

to result in an acquittal. Or, if the defense feels the need to make a stronger case, it can present its own witnesses. In this case, however, the prosecution may call additional witnesses to rebut—or contradict—the defense's new witnesses.

In the final step of the process, the lawyers make their closing arguments to the jury. The defense also will renew its motion to dismiss the charges, giving the judge a final opportunity to acquit the defendant before the case is submitted to the jury to decide the defendant's fate.

**The Verdict** The judge tells the jury to decide on a verdict of guilty or not guilty, and in most states the verdict must be reached unanimously. If the defendant is found guilty, he or she will face sentencing. The verdict may be appealed, however, by claiming that errors were made in the trial. If the verdict is overturned on appeal, the defendant may receive a new trial or the prosecution may drop the case.

In states requiring a unanimous verdict, the presence of one or more jurors who vote differently from the majority results in a **hung jury**—a jury that is unable to reach a verdict. In the event of a hung jury, the state may either retry the defendant on the same charge or else on a lesser charge.

This is the only circumstance under which the government can try a defendant twice for the same offense. (Under the Fifth Amendment, it is illegal to retry someone for a crime of which he or she has been acquitted.) A person may, however, be tried on a criminal charge by a state and then be tried for a similar charge in a civil, rather than a criminal, case. As noted in Section 1, criminal laws deal with actions that are forbidden by society, while civil laws deal with disputes between private parties. Thus, a person accused of killing someone, for instance, can be charged in a criminal court for murder and in a civil court for causing pain and suffering to the victim's relatives.

**Sentencing** In state, local, and federal courts, after a person has been convicted of a crime, he or she receives a sentence. Sentencing statutes vary considerably from state to state. In recent years legislatures and sentencing commissions have moved toward establishing specific sentencing guidelines for each crime, rather than leaving judges to choose a sentence within broad, unspecified guidelines.

After a defendant in a criminal trial is found guilty by a jury or a judge, the prosecuting and defense attorneys suggest a sentence they consider appropriate. The defense lawyer is likely to emphasize the defendant's good record and chance to become a productive member of society, while the prosecution is likely to emphasize injuries to society or to the victim and the victim's family, as well as any prior criminal record the defendant might have. In some jurisdictions the defendant and the victim or family of the victim may have the opportunity to speak as well. Then, also considering

information from a probation report, if applicable, the judge makes a sentencing decision.

The judge does not need to explain how he or she decided on the sentence, and the sentence cannot be appealed as long as it falls under proper legal guidelines. Sentences for the same crime can vary greatly because the range of sentencing guidelines is generally very broad, and each judge has great leeway in determining the sentence for a crime.

**Plea Bargaining** Some defendants avoid going to trial by accepting a **plea bargain**—agreeing to plead guilty to a less serious charge, which generally results in a shorter sentence than he or she would receive if found guilty in a jury trial. In the U.S. criminal justice system today, more than 90 percent of convictions are obtained through a plea bargain. The Supreme Court upholds plea bargains so long as defendants understand the charges, know that they are giving up their rights to a jury trial, and realize that they are acknowledging guilt for a crime.

Those who support the use of plea bargaining argue that trials usually are costly and sometimes lengthy. Also, no matter how strong the case is against the accused, there is always a chance in a jury trial that the defendant may be found not guilty. With a plea bargain, finding the defendant guilty is a certainty. In addition, the courts already have far more cases pending than they can possibly try. Opponents of plea bargaining argue that it allows those who are guilty to avoid adequate punishment. They also criticize plea bargaining on the grounds that it deprives a person of his or her right to a fair trial.

## SECTION 2

# REVIEW

1. Define the following terms: county, bail, bond, indictment, grand jury, information, arraignment, no-contest plea, petit jury, *voir dire*, peremptory challenge, sequester, subpoena, hung jury, plea bargain.
2. What role do police play in the criminal justice system?
3. What happens after a person is arrested and booked?

4. What are plea bargains? Why are some people opposed to them?

### 5. Thinking and Writing Critically

Why is it important for police to follow certain procedures when they make arrests?

### 6. Applying CONSTITUTIONAL GOVERNMENT

Why would some people accused of crimes be more inclined to accept a plea bargain than to have a jury trial?

## SECTION 3

# CORRECTIONS

### Political Dictionary



probation  
parole  
capital punishment  
juvenile delinquent

### Objectives

- ★ What are the various sentencing options in the criminal justice system?
- ★ What is parole?
- ★ Why is capital punishment controversial?
- ★ What happens to juvenile offenders after their arrest?

Once a person has been convicted of a crime in the United States, various types of sentences may be imposed. In some instances, people who have not committed a serious crime may be placed on probation. More serious offenders generally are imprisoned. Some of the most serious offenders, however, may receive the death sentence.

Juvenile offenders are treated differently in the criminal justice system than are adults. Although juvenile offenders have some of the same rights and receive some of the same punishments as adults, their correction, or punishment, is often handled in a much different manner.

## Probation

Around 60 percent of all persons convicted of crimes in state and federal courts are sentenced to probation. Under a sentence of **probation**, someone found guilty of an offense remains free but under supervision. Supporters of probation argue that it benefits both the defendant and society. The probationer retains his or her freedom, and society does not have to pay the high cost of imprisonment.

When sentencing an offender to probation, a judge hopes that the person will use the freedom

avoid = evitate

to become more responsible and avoid future crime. The defendant may be on probation for several years and may be required to participate in a drug treatment or other kind of program, maintain employment, or stay in school. The judge determines the length and terms of probation, as well as how closely the offender will be monitored by authorities. If the offender violates certain set conditions, a judge may revoke probation and instead impose a prison or jail sentence.

## Imprisonment

More serious or repeat offenders usually are not placed on probation, but are imprisoned. In the mid-1990s approximately 1.3 million people were in U.S. prisons and jails. A prison is a state or federal correctional institution where inmates serve a sentence of a year or more (for felonies). A jail generally is a county or local institution where accused persons await trial, sentencing, or transfer to another correctional institution. A jail may also house convicted persons who are serving sentences of less than one year (for misdemeanors).

The organizations that run prisons at the state and federal levels usually are called departments of correction. These departments decide if offenders



**CONSTITUTIONAL GOVERNMENT** Some criminal offenders are required to perform community service as a part of their sentence. What are some of the conditions of probation that an offender might be required to follow?

## Largest U.S. Prison Inmate Populations (end of 1995)

Prison System	Number of Inmates
California	135,646
Texas	127,766
Federal	100,250
New York	68,484
Florida	63,879
Ohio	44,677
Michigan	41,112
Illinois	37,658
Georgia	34,266
Pennsylvania	32,410

Source: *World Almanac*: 1997

*Prison populations in many states are so large that officials are searching for solutions to the problem of overcrowded prison facilities. What are some alternatives to imprisonment that may help address the problem of overcrowded prisons?*

should be sent to a maximum-, medium-, or minimum-security prison or jail. They base their decisions on the offenders' age, how dangerous they are, and how likely they are to attempt to escape. In theory, the jail or prison to which a person is sent depends on the crime committed. However, state prisons are so overcrowded today that many state prisoners are now housed in county or city jails.

Although most people agree that lawbreakers should be removed from society for a period of time, they often disagree on the reasoning behind imprisonment. There are usually four major arguments for putting people behind bars—it serves as a form of retribution, as rehabilitation, as a deterrent to other would-be criminals, and as a form of protection for society.

When people say that imprisonment is proper retribution for a crime, they mean that it is a deserved punishment for a crime committed against society. They argue that it would be wrong not to punish people who have significantly harmed others.

Some people believe that imprisonment is a deterrent to future crime. They argue that the threat of a prison term will keep people from committing illegal acts.

The third major argument for imprisonment is that it will rehabilitate a convicted criminal. People who believe that prison is a form of rehabilitation hold that the purpose of imprisonment is to reform criminals and then free them to become law-abiding members of society.

Finally, some people feel safer knowing that a convicted criminal is off the streets. They say that putting a criminal behind bars keeps him or her from committing other crimes, therefore serving to protect members of the community.

## Parole *release = liberatio*

After serving part of their sentence, many prisoners are eligible for **parole**—early release from prison. The amount of time an offender must serve before being eligible for parole varies greatly from state to state. Every state, however, maintains a parole board to determine when and if a prisoner will be released. Each board's members are chosen by the governor of its state. Parole boards typically meet with a prospective parolee at the prison to determine if he or she is eligible for parole. This process also involves examining the prisoner's previous record and the facts of the crime for which he or she was imprisoned. If parole is denied, the prisoner remains in prison, but may be reviewed for parole at a later date set by law.

An inmate who is granted parole must fulfill his or her parole terms until the time remaining on the sentence is served (minus any time subtracted from the sentence for the good behavior of the inmate while in prison). The parole agency may require that the parolee receive counseling, be tested for illegal drug use, attend school, or avoid certain people or places. If the parolee violates the terms of his or her parole, the parole agency will re-evaluate the case to decide whether to cancel parole and send the offender back to prison.

## Capital Punishment

The most serious offenders may receive **capital punishment**—the death penalty. Capital punishment is legal in 36 states and is usually reserved only for people convicted of murder.

Carry out = eseguire



**PUBLIC GOOD** Camp Sandhill, located near Patrick, South Carolina, is a private juvenile correction facility that houses 32 boys. How has the treatment of juvenile offenders changed since the 1800s?

Capital punishment sentences are passed far more frequently than they are carried out. Although only about 30 executions take place each year, almost 3,000 inmates currently sit on death row. The sentence in many death penalty cases is eventually reversed or reduced.

Capital punishment is a highly controversial topic in the United States. Research, however, indicates that a majority of Americans support its use in at least some instances. Reflecting this sentiment, Congress—in the 1994 crime bill—increased the number of offenses subject to the death penalty.

Supporters of capital punishment frequently argue that people who commit the worst crimes deserve to die. They also suggest that would-be killers will be less likely to commit murder if they know that they might face death if caught. Supporters further argue that the death penalty is less expensive than life imprisonment.

Opponents of capital punishment argue that cost savings are offset by the fact that in the United States, offenders on death row spend years appealing their cases. These appeals are very expensive and may in some cases cost more than life imprisonment. Opponents also argue that the

deny = negare  
death penalty has not worked in preventing people from committing horrible crimes, and most importantly has sentenced innocent people to death in some instances. But possibly the most controversial charge leveled by opponents is the claim that capital punishment is discriminatory. In support of this claim, they note that African Americans receive the death penalty in a much higher proportion than do whites in cases involving similar circumstances. (Capital punishment is further discussed in Chapter 15.)

## Juvenile Crime

Young people are responsible for a large number of the nation's crimes. Each state has special laws that apply to **juvenile delinquents**—or young offenders. The legal definition of a juvenile varies across the country. It can range anywhere from under 16 to under 21 years of age, depending on the state. Separate criminal justice agencies designed to deal with juvenile offenders first emerged in the 1800s. Before that time, juveniles at least 14 years old were fully accountable for their crimes and could be tried in adult courts. They could be sentenced to adult prisons and even

# Citizenship in

## Action

### Teen Court

The 17-year-old defendant sat nervously in the witness chair. Facing the judge and jurors, the prosecuting attorney described the crime: vandalism to a vehicle. The jurors listened attentively to the facts and chose the maximum punishment: 25 hours of community service, payment for damage to the car, and four weeks of service as a juror.

Though this sounds like a scene from a regular courtroom, this particular court was different. The attorneys, jurors, and most of the key courtroom personnel were teenagers, just like the defendant. These peer courts, known as teen courts, allow young, first-time offenders and some second-time offenders to be heard by a jury of their peers.

Teen courts provide a legal alternative to the juvenile court system. In most teen courts the



Teen courts allow young defendants the opportunity to have their cases heard by a jury of their peers.

defendants—some as young as 7 years old and others as old as 19—have already pleaded guilty to misdemeanor charges in a juvenile court. These juveniles come before a teen court only because the judges who heard their initial trials sent them there.

The crimes with which the juveniles are charged include shoplifting, vandalism, violation of curfew, truancy, and possession of alcohol or drugs. Sentences might include hours of community service or repayment to the victim. Defendants also might be required to attend an alcohol, drug, or violence prevention workshop and to obey a curfew. Defendants may also have to write letters of apology to their victims or sometimes even a research paper. Many teen courts also require service on a teen court jury.

Teen courts often issue harsher sentences to their peers than regular juvenile courts do. For example, a Kentucky teen court sentenced a teenager to 90 hours of community service, four months of jury duty in teen court, and a one-month curfew for carrying a concealed weapon. The teenager appealed the sentence in a standard, juvenile court and received only a \$50 fine and two days of service on a teen court jury.

The success of teen courts stems from a number of factors. Teen court defendants must examine their actions and take into account the effect of their actions on others. Teen courts also give teenagers a second chance. Once the defendant completes his or her sentence, the court clears the charge from the defendant's criminal record.

Perhaps the most important factor, however, is positive peer pressure. In teen court, defendants receive punishment from teenagers just like themselves. "The kids who are the prosecuting and defense attorneys and the kids who sit on the jury take it very seriously," says Bill Ferchland, a lawyer who has served as a teen court judge. "And that means that the defendants take it seriously."

### What Do You Think?



1. Do you think that teen courts are an effective legal alternative to standard courts?
2. Why do you think many teens volunteer their time as attorneys, jurors, or personnel in teen courts?

to death. During the late 1800s, however, many people believed that the juvenile justice system needed to be reformed and that young people should be given special attention rather than receiving the same punishments as adults. Today's juvenile court is based on the idea that the government must assume the role of parent to juveniles accused of crimes.

**Juvenile Court** Treatment of juvenile offenders today varies depending on the offense, and some states even try juveniles as adults if they commit serious crimes such as murder. Juveniles who are arrested are taken to a juvenile detention center that is separate from the adult jail. Most states deny bail to juveniles, and judges must decide whether to release a juvenile based on the likelihood that he or she might flee or pose a threat to the community.

Although juveniles have the right to an attorney and are presumed innocent until proved guilty, in the past they have had no right to a trial by jury. In recent years, however, about one quarter of the

states have passed legislation allowing trial by jury for many juvenile offenses.

**Juvenile Corrections** Juveniles who are found guilty beyond a reasonable doubt may be sentenced to probation, to community service, or to pay a fine. (See the Citizenship in Action feature, opposite page.) They also may be required to serve time in a juvenile detention center. The judge decides the length of the sentence, but the juvenile must be released when he or she reaches adulthood. Instead of giving juveniles probation or time in a detention center, some states are experimenting with juvenile "boot camps." These camps are designed like military boot camps and are intended to provide a structured environment where juvenile offenders can learn positive social values.

## C A S E S T U D Y

### Boot Camps

**PUBLIC GOOD** The first "boot camps" for criminal offenders were established in 1983 in Georgia as an alternative to jail, prison, or juvenile detention centers. Often modeled after boot camps used to train military recruits, most of these programs have incorporated many typical military features, such as drill instructors, barracks-style housing, and military-style uniforms.

Boot camps vary widely in time spent per day on military drill, discipline, and physical labor. Camps in Pennsylvania require juveniles to spend only 10 percent of their day on these activities, while camps in South Carolina require 80 percent. Other activities that are emphasized include education, counseling, and physical fitness.

In the mid-1990s there were about a dozen juvenile camps in at least 10 states. Most boot camp programs range from 90 to 120 days. One study of such boot camps, including those for adults, found that between 3 and 42 percent of those attending either drop out or fail and that most of those do so in the first weeks of a program. Another study of boot camps discovered

### Possible Juvenile Court Penalties

- Warned and dismissed
- Required to attend appropriate counseling or youth assistance programs
- Required to pay for damages
- Placed on monitored probation
- Required to perform community service
- Sent to a youth corrections facility (Sentences range from 30 days to until the offender turns 21 years old.)
- Fined \$15 to several hundred dollars plus court costs



*Sentences for juvenile offenders vary depending on such factors as the severity of the crime and the offenders' juvenile record. How does the treatment of juvenile offenders differ from the treatment of adult offenders?*





**PUBLIC GOOD** Juvenile offenders sentenced to boot camp are often required to perform military drills such as marching. Why are boot camps less expensive than prisons?

that between 7 and 52 percent of offenders are expelled from boot camps as a part of disciplinary action. The percentage varies so widely because different camps tolerate different levels of misconduct.

Boot camps have proven to be an effective alternative to incarceration in some ways, but not in others. The positive aspects of boot camps include maintaining inmates' physical fitness and improving their education. Also, boot camps spend less money per inmate than do prisons. Unfortunately, boot camps have not reduced the rate of people who revert to criminal behavior upon being released from custody. In addition, boot camps have only proved to be less expensive

than prison because they keep offenders for shorter periods of time. In the long run, however, boot camps may be a better option than prisons if they succeed in improving educational performance, physical conditioning, and attitudes of offenders.

Many people believe that the juvenile justice system needs a massive overhaul. Some believe that all juveniles should receive the same rights granted to adults in criminal proceedings, such as the right to trial by jury. Others believe that juvenile justice is far too lenient, given that young males under the age of 21 commit the highest number of offenses.

### SECTION 3

## REVIEW

1. Define the following terms: probation, parole, capital punishment, juvenile delinquent.
2. What are some of the advantages of probation?
3. What are some of the opposing opinions concerning the death penalty?
4. Are juvenile offenders treated in the same manner as adult offenders? Explain your answer.

### 5. Thinking and Writing Critically

What do you think about the practice of allowing prisoners to be released on parole? Explain your answer.

### 6. Applying **CONSTITUTIONAL GOVERNMENT**

What alternatives to imprisonment do you think might be effective in helping to solve prison overcrowding and prevent crime?

## SECTION 1

There are several types of U.S. law, including common, statutory, constitutional, and administrative. Laws are further classified as criminal or civil.

## SECTION 2

The criminal justice system consists of three parts: police, courts, and corrections. There are hundreds of thousands of police across the country, at local, state, and national levels. When a criminal act has been committed, police are responsible for arresting suspects. Police must follow certain procedures when a person is arrested.

After an arrest the suspect is “booked” at the police station and awaits his or her first appearance in court. At the initial hearing a judge may allow a person to post bail. Some states then hold a preliminary hearing.

The next stage is the indictment. Around half of the states have indictment by grand jury. Others have indictment by information. After the indictment is the arraignment, during which the accused is formally notified of the charges and then enters a plea.

A not-guilty plea is followed by a trial, at which the first step is jury selection. Once the jury is selected, the trial begins. Sometimes, juries are sequestered in an attempt to keep their viewpoints from being influenced by outside information.

During the trial, both sides can call witnesses. After the witnesses testify, the lawyers make their closing arguments to the jury, which then determines a verdict. A jury that cannot agree on a verdict is considered hung, and the case can be retried. After a guilty verdict, the judge hands down the sentence.

In some instances, a person may accept a plea bargain instead of going to trial. Some of those who support plea bargaining argue that trials can be lengthy and costly. Those opposed to plea bargaining say that it allows criminals to avoid adequate punishment, while others argue that it deprives a person of his or her right to a fair trial.

## SECTION 3

A sentence may take several forms. Some offenders are placed on probation, or allowed to remain in society while being supervised. More serious offenders and repeat offenders may be imprisoned. After serving part of a prison term, a person may be eligible for parole. If a person is denied parole, he or she remains in prison and is reviewed again at set intervals. If granted parole, the person will remain so until the entire sentence is fulfilled. If parole is broken, he or she may be returned to prison.

In some states, people convicted of the most serious crimes may receive a sentence of capital punishment, or the death penalty. Capital punishment is a highly controversial topic in this country.

Many of the nation’s crimes are committed by juvenile offenders. Juvenile delinquents are treated differently from adult offenders in most cases. The juvenile court is different from the regular court; most juvenile offenders, for example, do not have the right to trial by jury. The judge sets a juvenile’s sentence and determines its length, but when the juvenile reaches adulthood, he or she must be released. In some cases, juveniles receive probation. In others, they are sent to juvenile detention centers. Some states also are experimenting with juvenile “boot camps” to rehabilitate young offenders.



## Government Notebook

Review the list in your Government Notebook of positive and negative ways that laws affect your everyday life. In what ways do you think the U.S. legal system works to protect most Americans? In what ways do you think it is effective, and in what areas do you see need for improvement? Explain your answers in your Notebook.

## REVIEW

### REVIEWING CONCEPTS

1. How are criminal and civil laws different?
2. Name the four main types of law.
3. List the steps that an accused person typically goes through after being booked by the police.
4. What is the difference between a felony and a misdemeanor? Give an example of each.
5. What are the major arguments for and against capital punishment?
6. In what ways are juvenile offenders treated differently than adults?

### THINKING AND WRITING CRITICALLY



1. **CONSTITUTIONAL GOVERNMENT** What are some of the reasons that constitutional law takes precedence over other types of law?
2. **PRINCIPLES OF DEMOCRACY** Do you think that all accused people should have the right to stay out of jail until their trial? Why or why not?
3. **POLITICAL PROCESSES** Why do you think that some states require their juries to unanimously agree on a verdict?
4. **PUBLIC GOOD** Do you think that the treatment of juveniles in the U.S. court system promotes the public good? Why do you think juveniles are treated differently from adults? Explain your answer.

### CITIZENSHIP IN YOUR COMMUNITY



Look for newspaper, magazine, television, and radio reports of unusual sentences imposed on

people convicted of crimes. Keep a log of the reports, and select a case in which you think the sentence is particularly effective or ineffective. Cut out the related articles and take notes about the details of the case. Write a letter to the editor of a local newspaper expressing your opinions about the sentence. Be sure to include arguments that explain why you think the sentence is effective or ineffective.

### INDIVIDUAL PORTFOLIO PROJECT



Research the career of a certain state or federal judge. Where did that person attend law school? What jobs did he or she have before becoming a judge? Was he or she appointed or elected to the court? What are some of that judge's important rulings? You might want to begin your research by checking your library's card catalog or conducting an Internet search. After you have completed your research, write a one-page biography on the judge you selected. If possible, include a photograph of the judge with your biography.

### PRACTICING SKILLS: CONDUCTING RESEARCH



Create a chart that illustrates the different types of laws that make up the U.S. legal system. Divide the chart into four sections. In a separate section of the chart place a label for each type of law: common, statutory, constitutional, and administrative. Under each section, include information about the origin of the type of law and examples of specific laws. Be sure to include information on how laws may be further classified as either criminal or civil law where appropriate.

## THE INTERNET: LEARNING ONLINE



Conduct an Internet search to find statistics on the prison inmate populations for each state. You might start by using the search words *prison inmate populations* and *Department of Justice*. After you find these statistics, draw a map of the United States showing the inmate population for each state. Highlight the states with the highest and lowest inmate populations with a specific color. Include a list of Internet sites you visited to gather the information used in the map.

## ANALYZING PRIMARY SOURCES



### LEWIS V. UNITED STATES

Sandra Day O'Connor was appointed to the Supreme Court by President Ronald Reagan on September 21, 1981. As the first female Supreme Court justice, her appointment was a significant event for the Court.

The following excerpt from the Court's opinion in *Lewis v. United States*, written by Justice O'Connor, clarifies some circumstances under which a person is not guaranteed a jury trial. Read the excerpt and answer the questions that follow.

“Petitioner [the person making the appeal to the Supreme Court] was charged with two counts of obstructing the mail. . . . Each count carried a maximum authorized prison sentence of six months. Petitioner requested a jury, but the magistrate judge granted the Government's motion for a bench trial. She explained that because she would not, under any circumstances, sentence petitioner to more than six months' imprisonment, he was not entitled to a jury trial. . . .

The Sixth Amendment guarantees that [in] all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial [unbiased] jury of the State and district wherein the crime shall have been committed. . . . It is well established that the Sixth Amendment, like the common law, reserves this jury trial right for prosecutions of serious offenses, and

that 'there is a category of petty crimes or offenses which is not subject to the Sixth Amendment jury trial provision'. . . .

Petitioner argues that, where a defendant is charged with multiple petty offenses in a single prosecution, the Sixth Amendment requires that the aggregate [total] potential penalty be the basis for determining whether a jury trial is required. Although each offense charged here was petty, petitioner faced a potential penalty of more than six months' imprisonment; and, of course, if any offense charged had authorized more than six months' imprisonment, he would have been entitled to a jury trial. The Court must look to the aggregate potential prison term to determine the existence of the jury trial right, petitioner contends, not to the "petty" character of the offenses charged.

We disagree. The Sixth Amendment reserves the jury trial right to defendants accused of serious crimes. . . . We determine whether an offense is serious by looking to the judgment of the legislature, primarily as expressed in the maximum authorized term of imprisonment. Here, by setting the maximum authorized prison term at six months, the legislature categorized the offense of obstructing the mail as petty. The fact that the petitioner was charged with two counts of a petty offense does not revise the legislative judgment as to the gravity [seriousness] of that particular offense, nor does it transform the petty offense into a serious one, to which the jury trial right would apply. We note that there is precedent at common law that a jury trial was not provided to a defendant charged with multiple petty offenses.”

1. Where is it established that the right to a jury trial is reserved for prosecutions of serious crimes? Why do you think that this right is reserved for cases involving serious crimes?
2. Although he was charged only with petty offenses, why did the petitioner in *Lewis v. United States* argue for the right to a jury trial?
3. What was the Supreme Court's ruling in this case? What was its reasoning behind the ruling?

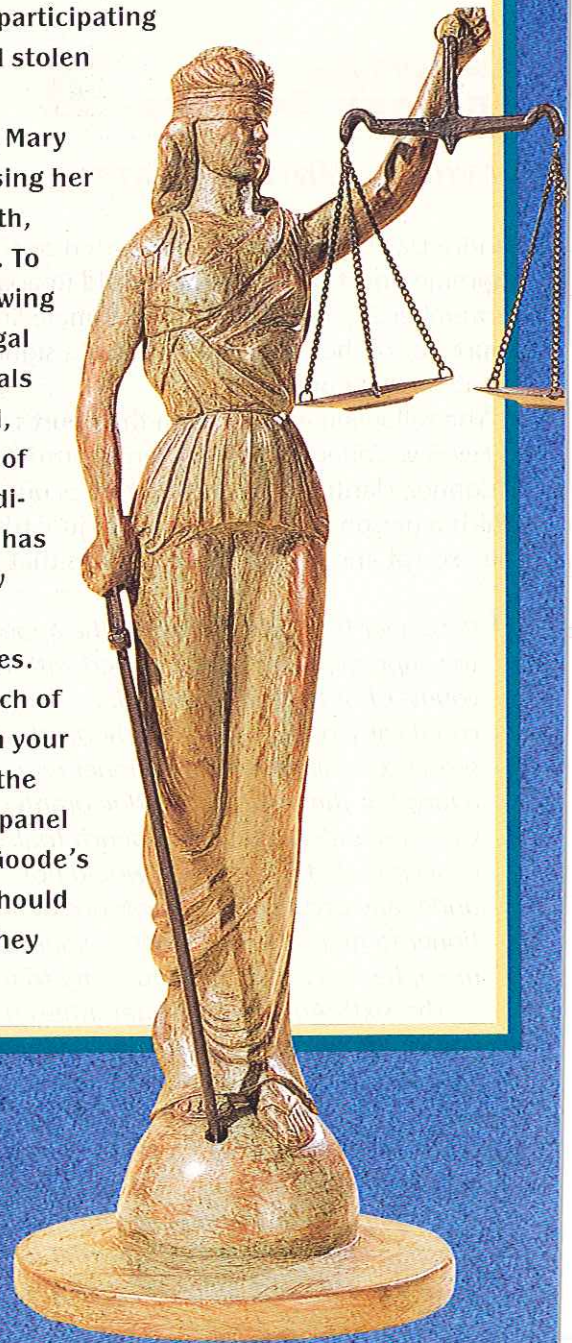
## YOUR ASSIGNMENT

## Judging an Appeal

**Y**ou and the other members of your group are sitting judges on a federal court of appeals. Your panel is hearing an appeal of a case in which the defendant, John Goode, has been convicted in a federal district court of participating in a crime ring. This ring was shown to have transported stolen goods across state lines, a federal offense.

Goode claims that he is innocent, and his attorney, Mary Kelly, has challenged her client's conviction. She is basing her client's appeal largely on rights guaranteed in the Fourth, Fifth, and Eighth Amendments to the U.S. Constitution. To support her client's case, Kelly has submitted the following documents as evidence for your panel to examine: a legal brief stating her arguments in asking the court of appeals to send the case back to federal district court for retrial, copies of the applicable amendments, and a transcript of the arresting officer's testimony in Goode's trial. In addition, the prosecutor in Goode's trial, Will Gordon, also has supplied a legal brief opposing Kelly's motion for a new trial.

You will find these documents on the following pages. After you have finished reviewing the information in each of the documents, answer the accompanying questions in your Government Notebook. When you have reviewed all of the information, compare notes with other judges on your panel and arrive at a decision in favor of or against sending Goode's case back to district court. Your written legal opinion should address the arguments made by Kelly, as well as how they affected your decision.



**EXHIBIT 1**

**Fourth Amendment to the U.S. Constitution**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**EXHIBIT 2**

**Fifth Amendment to the U.S. Constitution**

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury . . . ; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**EXHIBIT 3**

**Eighth Amendment to the U.S. Constitution**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**◀ WHAT DO YOU THINK?**

- ★ Identify five things the Fifth Amendment specifically forbids. Why do you believe the protection against self-incrimination is important?
- ★ What does the Eighth Amendment guarantee? How has the Supreme Court ruled on the right of accused people to be released on bail? Do you agree with the Supreme Court's position?

**WHAT DO YOU THINK? ▶**

- ★ Do you believe that Lt. Theodore's search violated Goode's rights? Explain your answer.
- ★ Why did Lt. Theodore go to Goode's house?

**FEDERAL DISTRICT COURT  
TRANSCRIPT**

Case:  
*The United States v. John Goode*

**EXHIBIT 4**

Date:  
May 31, 1998

Transcript:

EXCERPT FROM THE TESTIMONY OF LT. JOEL R. THEODORE, AN OFFICER IN THE CITY POLICE DEPARTMENT, UNDER CROSS-EXAMINATION BY DEFENDANT'S ATTORNEY:

KELLY: Lt. Theodore, why did you go to the home of the defendant, Mr. Goode, on February 2 of this year?

THEODORE: Well, I had been providing security at a Groundhog Day ceremony, and I got to thinking about the crime ring we had busted the year before. During a trial of one of the members of that crime ring last year, Mr. Goode had refused to testify about his connection to the defendant, claiming the Fifth Amendment right not to incriminate oneself. Well, that sounded to me like Mr. Goode was guilty of taking part in the ring's criminal activity and did not want to admit it. Second, one of his neighbors told me at the Groundhog Day ceremony that Mr. Goode had been selling a lot of new televisions from his home in the last two days. I decided that I needed to drive over to Mr. Goode's house and check it out.

KELLY: But you did not get a search warrant to do that, did you?

THEODORE: No, I did not. I thought that if I went to get a search warrant from a judge, Mr. Goode would have time to sell the last of the televisions I suspected had been stolen when he was part of the crime ring the year before. I thought I needed to go over to his house right away.

KELLY: You have testified that Mr. Goode would not let you in the door but that you could see five new televisions in his living room. And then you forced your way into the house without a search warrant. Is that right?

THEODORE: Well, yes. I thought I had reason enough to go in without a search warrant because I saw what I believed was evidence of a crime. After I checked the televisions out, I discovered that serial numbers on them matched those of stolen televisions from the year before. I then arrested Mr. Goode and took him to the police station.

# PUBLIC POLICY LAB

No. 12-789  
In the Federal Court of Appeals

John Goode  
v.  
United States

## BRIEF OF APPELLANT

My client, Mr. John Goode, is appealing in federal district court his conviction of participating in the transportation of stolen goods across state lines. We are appealing Mr. Goode's conviction on the following grounds.

First, the arresting police officer entered the appellant's home, searched the premises, and arrested him without either a search warrant or an arrest warrant. In doing so, the arresting officer violated Mr. Goode's rights as protected under the Fourth Amendment to the U.S. Constitution.

Please see Exhibit 4, which is an excerpt from the district court testimony of Lt. Joel Theodore. We believe that Mr. Theodore did not have sufficient evidence to justify a search warrant in the first place. In addition, if he did have such evidence, we believe he was required by the Constitution to request a search warrant from a judge before entering Mr. Goode's home.

Second, Mr. Goode's refusal to testify in an earlier trial of suspected members of the crime ring in question—a refusal that was based on his Fifth Amendment right not to incriminate himself—was used as evidence against him in his trial. For example, in his testimony, Lt. Theodore mentioned Mr. Goode's refusal to testify, saying that it revealed his guilt in a crime about which he wished to remain silent for fear of incriminating himself. In addition, in his summation the prosecuting attorney at Mr. Goode's trial also told jurors that they could assume Mr. Goode's refusal to testify, either at his trial or at earlier trials, was basically an admission of guilt.

Finally, the presiding federal judge in Mr. Goode's trial ordered bail for the defendant set at \$500,000. We believe the bail was excessive and therefore a violation of the Eighth Amendment to the U.S. Constitution. As a result of this excessive bail, Mr. Goode—whose bank accounts contain only about \$10,000—was unable to secure his release from jail prior to his conviction.

Based on these arguments, we believe Mr. Goode's case should be sent back to federal district court for retrial. Thank you.

Respectfully submitted,



Mary Kelly  
Attorney-at-Law

### ▲ WHAT DO YOU THINK?

- ★ On what grounds are John Goode and his lawyer appealing his conviction? Do you think Mary Kelly presents convincing arguments for why this case should be sent back for retrial?
- ★ Do you believe that Goode's use of the Fifth Amendment's protection against self-incrimination was improperly used to convict him of a crime? Why or why not?
- ★ Why was Goode unable to secure his release from jail? Do you think the bail was excessive or justified?

## WHAT DO YOU THINK? ▼

- ★ Why does the government believe that searching John Goode's home and arresting him without a search warrant was justified?
- ★ Do you believe that refusing to testify in your own trial should be taken as an admission of guilt? Why or why not?
- ★ Why might the judge believe that Goode would flee the country if he were able to post bond? For what other reasons might the judge set a high bail?

No. 12-789  
In the Federal Court of Appeals

*John Goode*  
v.  
*United States*

### Brief of Appellee

The government believes that Mr. Goode's appeal of his conviction for participating in the transportation of stolen goods across state lines should be rejected by the court of appeals. The arguments presented by Mr. Goode's attorney, on examination, do not justify sending the case back for retrial in federal district court.

Mr. Goode's argument that his rights under the Fourth Amendment were violated when Lt. Theodore searched his home without a search warrant and arrested him without an arrest warrant are weak. Based on information provided by a neighborhood witness and on his own suspicions that Mr. Goode was involved in a crime ring, Lt. Theodore had every reason to believe that Mr. Goode might get rid of important evidence if the search were delayed. By waiting, Lt. Theodore would have allowed Mr. Goode to flee the scene and escape arrest.

Second, Mr. Goode's refusal to explain under oath his connections with the crime ring that was broken last year was a legitimate cause for suspicion that he was guilty of a crime. If Mr. Goode were not involved in a crime, what objection should he have to testifying in court? Our use in court of his refusal to testify in an earlier trial, then, was justified.

Finally, the \$500,000 bail set for Mr. Goode prior to his trial was justified. The high bail was based on the judge's concern that Mr. Goode had the resources to leave the country and would try to do so if he were able to post bond.

We believe, then, that Ms. Kelly has failed to justify sending Mr. Goode's case back for retrial in federal district court.

## THINGS TO DO

1. Review with other judges in your group the notes you have taken and answers you have given about the information presented in this activity.
2. You might want to conduct some outside research to help you in deciding whether or not to grant John Goode's appeal for a retrial. Search for information about how the Supreme Court has applied the Fourth, Fifth, and Eighth Amendments to similar cases. You might also want to conduct an Internet search.
3. When you have finished your research and have debated the case with other group members, take a vote of the judges to determine your decision. Then work with other judges to prepare a written decision on the matter, explaining your court's decision and addressing the arguments made by the opposing attorneys. Your formal, written decision should be typed or neatly handwritten. Consider presenting the decision to your class.