

# CRIMINAL JUSTICE IN AMERICA

FIFTH EDITION



Constitutional  
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Foundation

TEACHER'S GUIDE

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**FIFTH EDITION**

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*Developed by*

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Constitutional  
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# CRIMINAL JUSTICE IN AMERICA

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Welcome to the Fifth Edition of *Criminal Justice in America*. Both the student book and this teacher's guide have been completely updated and revised. For every chapter and almost every reading, we have resources and links on our web site. This will provide you and your students with additional sources of up-to-date information. We particularly recommend that you go to the web site to find background information, updated information, the text of cases cited in the student book, additional information for students doing activities, and activities and resources that we have omitted from the student book and placed on our web site. You can also send us your e-mail comments on the book, which will help us with future editions. To get to the *Criminal Justice in America* page, go to [www.CriminalJusticeInAmerica.org](http://www.CriminalJusticeInAmerica.org). To e-mail your comments, send them to [bill@crf-usa.org](mailto:bill@crf-usa.org).

## Overview

This guide is designed to support the teaching of the material contained in *Criminal Justice in America*. It provides information about the text, detailed descriptions of the variety of teaching strategies employed, suggested teaching procedures (including sequences, answers to discussion questions and to activities), activity masters, and chapter and final tests.

It is organized into the following sections:

- 1. The Text.** A detailed description of *Criminal Justice in America* to give the teacher a quick overview of the purpose, curriculum goals, content, and features of the text.
- 2. Teaching Strategies.** A description of the major teaching strategies utilized in the text providing a rationale, teacher tips, and needed preparation for both inside and outside the classroom.
- 3. Teaching Procedures.** Suggested teaching procedures and support materials for each chapter of the text organized on a unit-by-unit basis. Each unit includes:
  - An overview.
  - Objectives.
  - Teaching sequences (which utilize the readings and activities and include suggested answers for discussion questions, exercises, or activities).
  - Suggested answers to discussion questions.
  - Suggested answers to class activities.
- 4. Activity Masters.** Forms to support various exercises and activities designed for reproduction and distribution to students.
- 5. Test Masters and Answer Keys.** Opinion Master (for pre- and post-surveying of opinions), Test Masters and Answer Keys for each unit and the final test.

## Section 1: The Text

*Criminal Justice in America* is the most comprehensive and interactive introductory text available on the subjects of criminal law, procedure, and criminology. It can serve as a basal text for an entire law-related education course or as a supplement for civics, government, or contemporary-issues courses. The purpose of this six-unit text is to provide students with an understanding of the criminal justice system and its laws, procedures, and issues. In addition, *Criminal Justice in America* is designed to help students develop critical-thinking and analytical skills and to assist them in applying the concepts learned in the classroom to real-life situations.

The text uses facts, statistics, and opinions for a balanced and informed presentation of timely issues and policies concerning crime and the criminal justice system. Through case studies, simulations, peer-teaching, decision-making, and field activities, students clarify public-policy issues, identify values, and propose and evaluate solutions.

## Goals

The major goals of *Criminal Justice in America* are to help students:

1. Identify the major components of the criminal justice system, including the nature and definition of criminal behavior; the role, scope, and limits of law enforcement; the assumptions and methods of the criminal case process; the philosophies and alternative methods of corrections; the nature and processes of treating the juvenile offender; the causes of crime; and the role of government and citizens in finding solutions to America's crime problems.
2. Develop, state, and defend positions on key issues facing the criminal justice system, including the treatment of victims, police-community relations, jury selection, sentencing, capital punishment, the treatment of juveniles, and the debate over the effect of race and ethnicity at key points in the system.
3. Understand major constitutional protections of due process and equal protection as reflected in the processes of criminal justice.
4. Evaluate the effect of constitutional provisions on criminal procedure, including protections against unreasonable search and seizure, coerced confessions or testimony, cruel and unusual punishment, and the rights of the accused to counsel and a fair trial.

5. Understand the function that people play by taking key roles in the criminal justice system, including police, prosecutors, defense lawyers, judges, jurors, court personnel, probation and parole officers, appellate justices, legislators, and special-interest groups.
6. Understand the role of legislative, executive, and judicial public policy making and analyze and evaluate public policy options.
7. Identify and analyze our society's crime problem in terms of its causes, effects, interventions, and statistical and polemical bases.
8. Develop greater capacity to become involved as citizens to address problems and issues relating to the criminal justice system at the community level, including assessing opinion and conducting crime-prevention projects.

## Standards Addressed

Standards-based education has arrived. *Criminal Justice in America*, with its emphasis on critical thinking and government content, will meet many different standards. You will have to check your own state's and district's standards. Below are a few national standards that the text addresses. They come from the national standards for civics and for thinking and reasoning at the high school level.

### Civics Standards:

Understands the sources, purposes, and functions of law, and the importance of the rule of law for the protection of individual rights and the common good. Specifically:

Knows alternative ideas about the sources of law (e.g., custom, Supreme Being, sovereigns, legislatures) and different varieties of law (e.g., divine law, natural law, common law, statute law, international law)

Knows alternative ideas about the purposes and functions of law (e.g., regulating relationships among people and between people and their government; providing order, predictability, security, and established procedures for the management of conflict; regulating social and economic relationships in civil society)

Understands the importance of Americans sharing and supporting certain values, beliefs, and principles of American constitutional democracy. Specifically:

Understands the significance of fundamental values and principles for the individual and society.

Understands the role and importance of law in the American constitutional system and issues regarding the judicial protection of individual rights. Specifically:

Understands the importance to individuals and to society of major due process protections such as

habeas corpus, presumption of innocence, fair notice, impartial tribunal, speedy and public trials, right to counsel, trial by jury, right against self incrimination, protection against double jeopardy, right of appeal.

Understands the advantages and disadvantages of the adversary system. . . .

Knows the basic principles of the juvenile system and the major differences between the due process rights of juveniles and adults.

Understands current issues regarding judicial protection of the rights of individuals.

Understands the formation and implementation of public policy. Specifically:

Knows a public policy issue at the local, state, or national level well enough to identify the major groups interested in that issue and explain their respective positions

Understands the processes by which public policy concerning a local, state, or national issue is formed and carried out

Knows the points at which citizens can monitor or influence the process of public policy formation

Understands why agreement may be difficult or impossible on [some] issues . . . because of conflicts about values, principles, and interests.

### Thinking and Reasoning Standards:

Understands and applies the basic principles of presenting an argument. Specifically:

Understands that when people try to prove a point, they may at times select only the information that supports it and ignore the information that contradicts it.

Identifies techniques used to slant information in subtle ways.

Identifies the logic of arguments that are based on quantitative data.

Identifies or seeks out the critical assumptions behind a line of reasoning and uses that to judge the validity of an argument.

Understands that to be convincing, an argument must have both true statements and valid connections among them.

Uses tables, charts, and graphs in constructing arguments.

Evaluates the overall effectiveness of complex arguments.

Effectively uses mental processes that are based on identifying similarities and differences (compares, contrasts, classifies). Specifically:

Identifies abstract patterns of similarities and differences between information on the same topic but from different sources.

Identifies abstract relationships between seemingly unrelated items.

Identifies the qualitative and quantitative traits (other than frequency and obvious importance) that can be used to order and classify items.

Applies basic trouble-shooting and problem-solving techniques. Specifically:

Engages in problem finding and framing for personal situations and situations in the community.

Represents a problem accurately in terms of resources, constraints, and objectives.

Provides summation of the effectiveness of problem-solving techniques.

Examines different options for solving problems of historical importance and determines why specific courses of action were taken.

Evaluates the feasibility of various solutions to problems; recommends and defends a solution.

Applies decision-making techniques. Specifically:

Analyzes current or pending decisions that can affect national or international policy and identifies the consequences of each alternative.

Evaluates the costs and benefits of various alternatives within a decision.

## Organization and Content

The text is divided into six units. Each unit contains several chapters. The following provides a brief overview:

### INTRODUCTION

The introduction overviews the content areas of criminal law, procedure, justice, and criminology. Readers are challenged to take an active role in learning about the system.

### UNIT ONE: CRIME

**Chapter 1 — Crimes** — A basic primer in criminal law detailing how crimes are classified and defined, what elements constitute a crime, types of crime, and a special focus on homicide, crimes of stealing, inchoate crimes, crimes against the justice system, hate crimes, and computer crime.

**Chapter 2 — Defenses** — A look at defenses to crimes, including affirmative defenses such as self-defense, insanity, and entrapment.

**Chapter 3 — Criminals** — An examination of those who commit crimes, from the violent street criminal to the con artist to the white-collar criminal. A special focus is given to how crime is measured and to youth gangs.

**Chapter 4 — Crime Victims** — An exploration of crime victims and efforts to compensate them and give them greater rights in the criminal justice system.

### UNIT TWO: THE POLICE

**Chapter 5 — Police and Society** — A look at the history of law enforcement, the structure of local police departments, and the day-to-day activities of police.

**Chapter 6 — Methods and Investigations** — An exploration of the methods of policing and investigation, including community policing, suppressing gang and drug-related violence, chain of custody, eyewitness identification, and the use of informants.

**Chapter 7 — Forensic Science** — A look at the origins of forensic science, the growing use of crime labs, and issues about its validity.

**Chapter 8 — Police and the Law** — An examination of how constitutional doctrines and criminal procedures affect the work of the police with a special focus on the law of search and seizure, interrogations and confessions, and the exclusionary rule.

**Chapter 9 — The Limits of Police Authority** — An exploration of the use of force, controversies over allegations of police brutality, racial profiling, corruption in policing, and methods for policing the police.

### UNIT THREE: THE CRIMINAL CASE

**Chapter 10 — The Courts and Case Process** — An overview of the court system, special courts, judges and judicial independence, the role of prosecutors and defense attorneys, the rights of criminal defendants, the criminal trial adversary process, the use of evidence to establish facts, and the steps of the criminal trial process.

**Chapter 11 — Investigation and Arrest** — An introduction to the law of arrest and to the hypothetical case upon which the unit is based.

**Chapter 12 — Pretrial** — A step-by-step immersion into pretrial processes and issues, including the role of the defense attorney, the first judicial appearance, bail, prosecutorial review, plea bargaining, probable cause and arraignment hearings, and pretrial motions.

**Chapter 13 — Trial** — An in-depth coverage of key steps of the criminal trial, including the courtroom setting, jury selection, opening statements, the use and rules of evidence, closing arguments, the judge's instructions, jury deliberations, and the verdict.

### UNIT FOUR: CORRECTIONS

**Chapter 14 — Sentencing** — An exploration of the rationales and theories of punishment, a brief history of corrections in America, an examination of sentencing laws and guidelines, and a review of controversial issues concerning the sentencing of convicted defendants.

**Chapter 15 — Prison** — A look at different types of prisons, prison conditions and overcrowding, prison revolts and violence, policies driving the high rate of incarceration (such as three-strikes and truth-in-sentencing laws). Also, a focus on the issues of parole, rehabilitation, and recidivism.

**Chapter 16 — Alternatives to Prison** — An examination of the major alternatives to incarceration including fines, probation, community service, and community-corrections programs.

**Chapter 17 — Capital Punishment** — An examination of the legal and political issues raised by the death penalty.

## UNIT FIVE: JUVENILE JUSTICE

**Chapter 18 — From Criminal to Delinquent** — A look at how a separate system developed for young offenders, the underlying assumptions of that system, and how the emphasis from rehabilitation to punishment has shifted over time.

**Chapter 19 — The Problem of Delinquency** — An examination of delinquency, status offenses, the major steps in the juvenile adjudicatory process, and the initial detention of juveniles.

**Chapter 20 — Children and the Constitution** — An exploration of the rights of juveniles as protected by key provisions of the Bill of Rights, how they differ from those that apply to adult offenders, and a special focus on school searches and drug testing.

**Chapter 21 — Juvenile Corrections** — A look inside juvenile corrections focusing on the various models for placing and treating offenders, the issue of waiving jurisdiction and transferring juveniles to the adult system, and court decisions concerning the sentences of death or life without parole for juveniles, and current controversies and trends.

## UNIT SIX: SOLUTIONS

**Chapter 22 — The Causes of Crime** — An introduction to various theories about the causes of crime and the debates that they engender.

**Chapter 23 — Crime and the Government** — An examination of the federal and state governments' role in finding solutions to the crime problem and debates over various policy options to reduce crime and to improve the fairness of the criminal justice system.

**Chapter 24 — Crime and the Citizen** — Citizen options and issues relating to becoming involved in helping address our society's crime problem, including the history of vigilantism, crime in schools, burglary prevention in the neighborhood, and local political action.

## Features

The *Criminal Justice in America* text contains the following features to support teaching of the material:

**Reading and Directed Discussion** — These narrative sections provide background information on the substantive aspects of the criminal justice system: law, procedures, and issues. Each reading is supported by a series of discussion questions to check comprehension, clarify content, and promote analysis and evaluation. In addition, almost all of these narratives lead into an accompanying high-interest group or individual activity, which forces the learner to grapple with the material in the reading.

**Class Activity** — A group or individual classroom activity to provide learners with an opportunity to gather more information on the topic, apply the concepts in the reading to realistic hypothetical situations, and practice analytical, critical-thinking, and decision-making skills. Activities have been designed to provide a variety of learning strategies, including role play, simulation, debate, and research. Many of the activities model real-life criminal justice decision makers dealing with the problems encountered in their professions: the police, prosecutors, defense attorneys, judges, and probation and parole officers. Others demonstrate the role of legislative, judicial, and executive policy makers who make, interpret, and enforce the law. (Note: Most activities are labeled “class activity.” Those simply labeled “activity” are optional.)

**Ask an Expert** — A series of activities utilizing outside resource experts — lawyers, police officers, probation officers, judges — to find out how the criminal justice system works in the real world. In addition, many of the group activities lend themselves to having an outside resource person provide additional data and debrief the activity to compare the processes and decisions in the simulation with those operating in the local jurisdiction.

**Special Features in Unit 3: The Criminal Case** — A set of unique features to provide students with a step-by-step guide to the investigative, pretrial, trial, and verdict phases of a criminal case. As well as educating students about the major assumptions, laws, and procedures that govern a criminal trial, the chapter is specifically designed to help students prepare to participate in a mock trial and intelligently follow local criminal trials as they are reported by the media. Using the hypothetical “drive-by” homicide case of *People v. Evans*, the chapter includes these additional features:

**Case Notes** provide an ongoing storyline covering the facts, characters, and drama of the trial.

**Key Steps** outline the law and procedures of the criminal pretrial and trial.

**Activities** put the students into the shoes of the trial's key players — prosecutors, defense attorneys, judges, and jurors — to make the arguments and decisions to settle the fate of the defendant.

**Special Internet Features** — The Constitutional Rights Foundation web site has resources and links for every chapter of the book. Go to: [www.CriminalJusticeInAmerica.org](http://www.CriminalJusticeInAmerica.org).



## Section 2: TEACHING STRATEGIES

Good teaching engages the learner with interactive learning strategies, such as directed discussion, role play, simulation, debate, and research. *Criminal Justice in America* utilizes all of these methods and features special applications modeling virtually every key procedure in the criminal justice system: mock trials and hearings, legislative and policy-making bodies, and decision-making functions of prosecutors, defense attorneys, jurors, judges, probation officers, and parole boards.

In addition, *Criminal Justice in America* provides models for taking the learning process outside the classroom into the community. It contains opportunities for making field visits to criminal justice institutions such as courts and police facilities, conducting and analyzing opinion polls, doing outside research, and conducting crime prevention and police-community projects. These activities not only promote service learning, they also help students compare the theoretical to actual practices and learn about specific laws and procedures that apply to their own jurisdiction.

In reviewing the materials, note that instructions for conducting the various activities are built into the text. It is important that the teacher utilize as many of these learning opportunities as possible. They are designed to:

- Improve comprehension and concept building by giving the learner the opportunity to review the content covered and apply it to a problem or hypothetical situation in a meaningful and challenging way.
- Develop analytical and critical-thinking skills by making inferences, evaluating evidence, predicting consequences, weighing benefits and costs, identifying and generating alternatives, and stating and supporting opinions and decisions.
- Connect the theoretical and abstract learning of the classroom to real-world domains of issue-oriented citizenship, including those of political and institutional decision making, policy formulation, and political participation.

The following is a brief guide to help teachers plan for and utilize the major teaching strategies employed in the text. It is recommended that teachers review these general guidelines before conducting the various strategies and refer back to them as required.

### Directed Discussion

Directed discussion is an essential part of classroom learning and especially important in civic and law-related education. It gives the learner an opportunity to check comprehension of the material, compare observations with other classmates, practice communication, develop

confidence, and practice higher-order analytical and critical-thinking skills. Each reading in the text is supported by questions to help teachers conduct directed discussions about the major terms and concepts it contains. Sample answers for more technically oriented and higher-order questions are provided for guidance. Depending on the skill levels of the class, the teacher may wish to add and ask additional questions, as necessary.

In discussing a reading or debriefing an activity, it is always important to employ effective questioning techniques, including proper “wait time,” appropriate verbal and non-verbal cues, and necessary follow-up. It is also important that all students get the opportunity to answer questions, which may require calling on less assertive learners, as necessary.

When a question calls for a personal opinion, encourage students to:

- Clearly state their opinion.
- Support it with facts, logical arguments, or references to parallel situations and circumstances.
- Clearly define the terms they use.

This will give students practice in stating and giving reasoned support for their opinions. It will also develop criteria by which students can judge the opinions of others.

### Small-Group Learning

Cooperative and small-group learning give students practice in communication, participation, teamwork, bargaining, sharing, and compromise. In addition, these strategies help students of all ability levels learn more effectively. Research also has demonstrated that cooperative learning, in particular, improves comprehension and conceptual learning. Dozens of small-group and class activities are incorporated into *Criminal Justice in America*. Many lend themselves to cooperative learning and teachers are encouraged to apply these techniques. To facilitate their use, the procedural steps of conducting the various activities are detailed in the text.

In general, to maximize student involvement in these activities:

- Construct groups to include a heterogenous mix of students. Consider academic and verbal skills, gender, ethnic, and affective factors.
- Give students specific objectives; then give clear instructions for meeting these objectives.
- Limit your instructions to the task at hand. If students are unfamiliar with small-group work, divide the activity into several segments, each with its own objective. Give groups instructions for completing the first task. When that objective has been accomplished, proceed to the second task and so forth.

- Check student comprehension of instructions and goals before each segment of the activity.
- Circulate to monitor each group's progress throughout the activity.
- Divide student tasks so that each individual must accomplish his or her task for the group to be successful in its final product. This provides individual motivation and promotes positive peer pressure.
- Encourage students to help one another in accomplishing individual tasks. Provide positive reinforcement for group accomplishments and for the contributions of individual members.
- Hold all students accountable for their groups' decisions, actions, and reports to the class. Also, hold each individual in the group accountable for his or her work.

## Using Resource Experts

Classroom visits from informed professionals can be a valuable teaching tool. Resource experts serve as role models and make community institutions more familiar. Furthermore, research has demonstrated that effective use of outside resource persons is an essential component of law-related education programs designed to reduce delinquency.

*Criminal Justice in America* is designed to give teachers qualitative and consistent methods for utilizing outside resource persons. The Ask an Expert activities provide an ongoing structure for utilizing resource persons at key content points. Even more important, resource experts can provide additional content support to the substantive readings and should be encouraged to participate in critiquing and debriefing activities in which students take on the various decision-making roles of the criminal justice system.

To assure effective use of resource persons, balance in presentation and preparation are key factors. It is important that resource experts do not give an unrealistically glowing or gloomy picture of the criminal justice system. When dealing with controversial issues such as the exclusionary rule or sentencing, both sides should be presented. With many legal issues, it is often effective to balance a prosecutorial point of view with that of the defense bar.

Key to successful preparation of outside resource persons is integrating their expertise into your planned lesson or activity. Experts can serve as subject-matter specialists to enrich the presentation provided or to explain differences in local laws and procedures. They can help students prepare for roles in a simulation from the point of view of a working professional. Using their own experiences, resource volunteers can help debrief the activity by comparing the decisions reached by the students with those reached in the real world.

Avoid using resource experts to give unstructured lectures or career advice. Some experts, inexperienced in working in an educational setting, have the tendency to talk over the students' heads or resort to "war stories." Such anecdotes, while interesting to the students, can give an inaccurate picture of the system. If desirable, set aside a short period at the end of the visit for a question and answer session to deal with such matters.

Finding experts and arranging visits need not be difficult. The public information offices of local or state law-enforcement agencies, the courts, and bar associations are all good sources for contacting people from the justice system. Police departments often have community relations or educational officers who make school visits. Offices of elected officials usually provide constituent services and can identify appropriate speakers from government institutions. Finally, many local college or university faculties have criminal justice instructors or political science professors who specialize in law.

When you contact a resource person to make arrangements, be sure to:

- Explain the purpose of the visit. Briefly describe your lesson objectives and how the guest will support it.
- Place the visit in context. Explain the class's current field of study, your planned follow-up activities, etc.
- Describe the audience. Tell the resource person how many students will be present and briefly characterize their age, interests, and achievement levels.
- Specify the scope of the presentation, both in time and content. Be sure this reflects the grade level, maturity, and attention span of your class.
- Request specific dates and times. Suggest two or three alternatives from which your guest can choose. (Many resource persons require at least three weeks advance notice.)
- Be sure the visitor has the correct address, appropriate directions, and parking instructions.

After arranging the visit, confirm it with the principal and other appropriate personnel. It is probably wise to get final confirmation from the resource expert a few days before the presentation.

To make the visit most effective:

- Prepare the class. Discuss the purpose of the visit and provide basic information about the resource person. It may prove useful to have the class compile a list of questions to ask the expert at the conclusion of the lesson.
- Remember that resource experts are not trained teachers. During the presentation, you may need to direct both the guest and the class with appropriate questions and other cues or intervene to ensure students are on-task and respectful.

- Allow sufficient time at the close of the class for a summary of the presentation and a thank you to the guest. Thank-you letters are greatly appreciated by speakers and can easily serve as a language-arts lesson.
- In addition to the debriefing questions in the following materials, ask students to comment on what they learned from the experience and how it influenced their views about the speaker's profession or topic. Encourage their constructive suggestions for improving such experiences.

## Quotations

Every article in the student book begins with a quotation. The quotations offer a teaching opportunity and can be used by students as a reflection log. Students may write quotations down and reflect on their meaning and whether they agree with them (explaining their reasons). Students may write in their logs on particular days before instruction begins following instructions on the board to write on a quotation.

## Peer Teaching

With peer teaching, young people can practice and apply their research and communication skills while improving their self-esteem. By taking on the responsibility of teaching, students can benefit from one another's knowledge, attitudes, and experiences.

"To teach is to learn twice over," so the saying goes, and the most essential part of peer teaching is that students must thoroughly learn and then demonstrate their knowledge of the subject matter at hand. Peer teaching stresses planning and organization skills. Educators should assist students in developing presentation and teaching skills.

## Handling Controversy

The materials in the text are designed to stimulate the active involvement of students by using methodologies that stress participation. This is particularly true when discussing issues of public policy and criminal justice. As such, some of the hypothetical situations are inherently controversial. These were developed for two reasons: (1) to provide a realistic context for the discussion of the criminal justice system and (2) to generate critical thinking, debate, and analysis on the part of the students.

It's important to lay down ground rules and post them in the classroom in advance of discussing controversial issues. Discuss with the class what these rules should be and get the class to agree in advance to abide by the rules. Below are some suggested rules.

Students should:

- Argue ideas, not personalities or prejudices.
- Represent the opposing position(s) fairly and accurately.

- Demonstrate an attempt to understand the opposing perspective(s).
- Be able to admit doubts and weaknesses in their own position.
- Concentrate on evidence in their arguments.

If a serious disagreement arises in your classroom, remind students that they agreed to abide by the ground rules and then set about clarifying the disagreement:

- Identify the issue or issues under dispute.
- Identify areas of agreement and disagreement.
- Identify underlying assumptions.
- Make sure students concretely define terms and avoid slogans.

The process of definition may bring the subject to closure. If not, use an appropriate strategy for addressing the controversy, such as a discussion, research, formal debate, an anonymous writing assignment, private or public mediation, or a forced perspective activity in which students must argue an issue from the other side. Note that some of these activities can be prepared or completed outside of the class without serious disruption to your schedule.

Students should look for a chance to air their own views, hear their opponents' views, and examine both. Be sure students understand that closure of a controversy does not mean one side has won.

## Field Activities

Field activities can be completed as a class or students can visit places in independent groups of two to six. Either way, field activities increase student interest and actively involve them in the learning process. They also acquaint students with how the law and the criminal justice system work in their own communities, what specific problems relating to crime the community faces, and how students might help in dealing with the problems. In short, field activities can be an essential first step to both effective service learning and citizenship.

Organization and planning are essential to getting the most out of field activities. Make sure that students establish goals (what they want to get out of this visit) and prepare questions to ask while on site.

Here are some tips for successful field activities:

1. Contact the group or institution to be visited at least two weeks in advance. Summarize the purpose of the visit and identify the staff available to meet with the students. Provide vital information, such as number of students, their age, and grade level. One day before the visit, call and confirm the appointment with the organization. It is useful to involve students in this process so that they can take a greater responsibility for future arrangements.
2. Prepare students for the visit. Brief them on the

proper dress and behavior expected of them outside the classroom. Help them develop questions to ask on site. The answers to the questions can serve as the basis of a report on the activity to be given in class or for extra credit.

3. Students allowed to complete their field activities unsupervised should be chosen with regard to their past behavior. If parental consent is necessary, prepare students with the proper forms. While many field visits can be arranged for non-school hours, help make arrangements for permission for excuses from other classes, if necessary. Transportation arrangements should be discussed and confirmed.
4. After the visit, discuss the activity by using debriefing questions, such as: What happened during the visit? How did it affect your view of the criminal justice system? What major insights about the system did you gain? Did you encounter any problems during the experience? How could this field activity be improved?

## Polling Activities

Studying opinion polls helps students understand the role of public opinion in formulating and debating public policy. Polls also give students a view of community opinions, attitudes, and perceived problems. *Criminal Justice in America* cites various opinion polls and even provides several suggested polling activities, which are designed to assess student or community opinion about a range of issues. All the opinion polls in the text offer opportunities for further activities.

Students can:

- Analyze the questions, looking to see if the phrasing could be improved.
- Find updates to polls. Students should start with Opinion Poll Links at: [www.CriminalJusticeInAmerica.org](http://www.CriminalJusticeInAmerica.org).
- Create their own survey, based on the poll.
- Use the opinion poll to conduct a survey of students or the community.

If students are going to undertake a poll, consider the following guidelines:

1. **Before Conducting a Polling Activity.** Lead a class discussion on the role opinion gathering plays in our society. Then discuss some of the practical considerations of opinion sampling. For example:
  - Help students understand the purpose of sampling by discussing the difficulties of polling every member of a community. Ask the students to decide what their collective sample should be. Make sure that students understand that the results of their poll, given the statistical sample, probably will not be scientifically valid, but can give a rough indication of opinion.

- Discuss the general rule of polling: Every person in the “universe” they’re seeking to assess should have an equal chance of being polled. For example, if their “universe” is a high school (grades 9–12), the poll should not just be given in senior home rooms.
- Using the school poll example, explain that the number of students sampled by grade also should be proportional to their size in the “universe.” For example, if 150 students are to be asked to fill out the questionnaire and 30 percent of the students in the school are juniors, then roughly 45 (30 percent of 150) of those questioned should be juniors.
- Review the tips on **Activity Master 0.3: Opinion Surveying**, and if time allows, have students practice role playing before they ask people to fill out the questionnaire. As practice, conduct the poll with the class as the universe and have students work in pairs to poll one another. The results of this poll can serve as a baseline comparison to school- or community-wide results.

2. **Conducting the Poll.** Based on the sample, each student should be given a specific number of subjects to poll. For instance, using the example from above, assuming a target of 150 subjects and a class size of 30, each student should poll five students. Polling could be conducted during lunch, after school, during a weekend, or between class periods. Give students a deadline for completing their polling.
3. **Tallying the Poll Results.** A fast method for tallying is to reassemble the students in their assigned poll-taking groups. Have each group tally its questionnaires. Then combine the group tallies for the class as a whole.
4. **Debriefing the Poll Results.** One interesting way to debrief polling activities is to compare results among the various groups polled. Pay particular attention to school- or community-wide results. This can be done on an item-by-item or on a selected item basis. Ask students to try to explain the differences in results. Also, debrief the polling experience with questions such as:

- What problems did you encounter when conducting the poll? How did you overcome these problems?
- How did it feel to conduct the poll? How cooperative were your subjects?
- Did any of your opinions change as a result of conducting the poll? Why or why not?
- Based on your experience, is polling a valuable way to assess public opinion? Why or why not?
- If you were to conduct another poll, what would you do differently? The same? Why?

## Briefing Supreme Court Opinions

The text cites many Supreme Court opinions. Some students assume that because the Supreme Court has decided a case, this decision is the one and only correct answer. Stress that for a case to reach the Supreme Court, both parties had to hold strong reasons and values that they thought should win. If the court had different members, a different decision may well have been reached. As a matter of law, Supreme Court decisions provide a definitive answer to the issue posed, but many are subsequently modified or even reversed. Emphasize that they can disagree with a court opinion, but they should be able to support their opinion with good reasons.

In law school, students usually brief cases, i.e., make short summaries of court opinions. As an additional exercise, you might assign different students to brief one of the many opinions mentioned in the text. Most of these opinions are readily available on the Internet and can be found from links on Constitutional Rights Foundation's web site. (Tell students to go to [www.CriminalJusticeInAmerica.org](http://www.CriminalJusticeInAmerica.org) and click on Table of Cases.) When students encounter a case on the Internet, it is usually divided into:

- A **syllabus** (a shortened version of the case, but it may be easier for students to read the case itself rather than the syllabus — encourage them to go beyond the syllabus).
- **Opinion of the court.** Court opinions vary in length. Some can be quite long, but most are about five pages.
- **Concurring opinions.**
- **Dissenting opinions.**

When briefing a case, students can use the form on **Activity Master 0.4**. Before students brief cases on their own, be sure to give a demonstration in class and some practice cases. Below is a sample brief of *U.S. v. Ross*, which is discussed in the student book on pages 113–114.

### Brief of Court Opinion for *U.S. v. Ross*

**Name of Court:** U.S. Supreme Court

**Date Decided:** 1982    **Vote:** 6–3

**Facts:** Police pulled over suspect Ross because a reliable informant told them he was dealing drugs and had them in the trunk of his car. Without a warrant, police searched the trunk and found cellophane bags containing white powder. At the station, police again searched the car and found \$3,200 in cash.

**Most Important Issue:** Did the search of the car violate the Fourth Amendment?

**Holding:** No, police may conduct searches of vehicles without warrants as long as they have probable cause.

**Reasoning:** For searches of automobiles, the court

made an exception to the warrant requirement because if police had to wait to get a warrant, cars could easily be moved and any evidence in them could be concealed or destroyed.

**Dissent:** This decision repeals the Fourth Amendment's warrant requirement and ignores the importance of letting a judge determine probable cause. Furthermore, the court rests its decision on the mobility of cars. It fails to explain why the police could not have seized the paper bag, gotten a warrant, and then searched it.

**Do you agree with the opinion of the court?** (Students should answer this with reasons.)

## Using Editorial Cartoons

Only one editorial cartoon appears in the text (on page 145). But students can easily find editorial cartoons on the Internet on criminal justice subjects. Students should begin their search with Editorial Cartoon Links on [www.CriminalJusticeInAmerica.org](http://www.CriminalJusticeInAmerica.org). Editorial cartoons offer opportunities for additional student activities. Students can:

- Collect cartoons. Make sure that students understand they are to collect editorial cartoons, which express an opinion, and not other comics, which may have criminal justice as a topic but which do not necessarily express an opinion. Students can use **Activity Master 0.1** as a subject guide for collecting cartoons. Once they have cartoons, they can analyze them using **Activity Master 0.5** or create scrapbooks or bulletin board displays.
- Create a cartoon on a criminal justice subject. You might suggest that students draw a new cartoon to counter one they disagree with that they find.

## Updating Statistical Charts

The text has more than 50 charts, most filled with statistics from federal government sources. Many of these charts are updated annually. If students have Internet connections, they can be assigned to find and report to the class on the updated version of one of these charts. Listed below are the charts that are usually updated each year and the page they are on in the student text.

U.S. Homicide Rates .....	53
Crime Index Offenses .....	67
States With Victims' Rights Amendments .....	71
Starting Police Salaries.....	79
Local Police Officers .....	80
New York City Crime Statistics .....	84
Estimated Number of Gangs .....	88
Estimated Year-End Backlog at Crime Labs .....	98
Characteristics of Public Defender Offices .....	161
Time from Arrest to Adjudication .....	167
Estimated Number of Arrests .....	175
Felony Convictions in State Courts .....	185
Corrections Population.....	226

Prisoner Profile .....	240
Prisoners in U.S. Prisons .....	245
World Incarceration Rates .....	254
Characteristics of Adults on Parole.....	259
Prison Spending .....	263
Number of Persons Executed.....	277
Persons Under Sentence of Death .....	279
Number of Persons Executed, by Jurisdiction ...	287
Juvenile Court Processing .....	303
Percent of Arrests Involving Juveniles .....	311
Delinquency Case Rates .....	312
Juveniles Held in Residential Facilities .....	331
Black Juvenile Representation in the Juvenile System .....	343
Homicide Rate of Major Developed Nations .....	348
Rate of Violent Crime .....	366

## Section 3: TEACHING PROCEDURES

### Initial Recommendations

Before beginning instruction on *Criminal Justice in America*, it is recommended that the teacher:

- Identify several potential outside resource people, such as a lawyer and a police officer, who can support instruction on the material and serve as a content resource person.
- Thoroughly review the readings and activities in each of the chapters.
- Review the material available at [www.CriminalJusticeInAmerica.org](http://www.CriminalJusticeInAmerica.org).
- Determine whether to teach the entire text, specific chapters, or parts within chapters. Factors in making this determination might include your curriculum goals, the instructional time available, students' ability level, and their familiarity with small-group work. When you have made the selection, estimate the amount of time necessary to adequately cover the material and plan accordingly.
- If desirable, assess students' general attitudes about the criminal justice system by reproducing and distributing copies of the **Pre- and Post-Observations**, an opinion master (on page 104). This instrument can also be administered at the conclusion of the study to determine changes or shifts in attitudes.
- Adequately prepare each lesson by reading each article, reviewing and adjusting the questioning strategy, and reviewing activity procedures (which are provided in the text). The activity procedures give clear instructions for both the teacher and the students. It is important to review them in advance and with the students in class before conducting the activity.
- In preparing a lesson, look for background information and additional lesson ideas at: [www.CriminalJusticeInAmerica.org](http://www.CriminalJusticeInAmerica.org).

- When preparing for a lesson, note that model answers are provided for most discussion questions and activities. They are generally not provided for questions asking students to state and support their own opinions. These questions are best evaluated by the teacher based upon the information provided.

### Teaching Sequence

The following sections, organized chapter-by-chapter, describe a recommended teaching sequence for the material contained in *Criminal Justice in America*. In most cases, each lesson sequence will contain at least one reading and discussion and at least one classroom activity. In many cases, however, additional readings and activities are included for further exploration. In using the sequence, please note the following symbols and their meanings, which are used throughout:

**AM** This symbol means that an **activity master** (which can be reproduced for distribution to students) supports the reading or activity. Activity masters are designated by number and can be found in Section 4: Activity Masters. The first activity for each unit is called Legal-Ease and consists of a glossary of key legal terms. This activity master can be distributed after students read the introduction. It will support their study of the rest of the unit.

**R** This symbol means that a **resource person** is recommended for this lesson. Note: Only those activities designated "Ask an Expert" actually require a resource person.

**O** This symbol means that this reading, feature, or activity, while recommended, is **optional**.

### Introducing the Text

#### Preparation:

- Review the Introduction to the text.
- Bring to class six or seven recent editions of your local newspaper complete with all sections and five or six pairs of scissors or marking pens.
- Sufficient copies of **Activity Master 0.1: Newsbreak**.

#### Procedure:

1. **Introduction:** Briefly overview the purpose for a study of the criminal justice system based on the rationale provided in this teacher's guide (p. 4). If desirable, also cover the goals of the study as described in this guide (p. 4).
2. **Focus Activity:** Crime and Popular Culture Brainstorm — Ask students to think of a movie, book, song or television show that has something to do with crime. Students should give the title or description of the work. Then ask: Why do you think crime is such a popular subject? Encourage

students to state and support an opinion. Explain that writers and artists have long been fascinated by crime, the police, criminals, criminal trials, and prisons and that their study of criminal justice will help them learn about the reality of these issues.

- 3. Reading and Discussion:** Have students read the introduction to the text (p. 6). Write the terms Criminal Law, Criminal Procedure, Criminal Justice System, and Criminology on the board. Ask students to define each and demonstrate their understanding of the terms by providing examples for each. Discuss any questions they might have.

- 4. Activity: Newspaper Crime Search**

Step 1. Explain to students that issues of criminal justice are not only a popular subject for fiction, but they interest the news media as well. Newspapers, news magazines, television news broadcasts, and documentaries often cover issues of crime and are an excellent resource for a study of the subject.

Step 2. Write the following headings on the board: Crime, Police, Criminal Trials, Corrections, Juvenile Justice, and Solutions. Explain that each heading corresponds to one of the units in the text. Then distribute **Activity Master 0.1: Newsbreak** and review the descriptions with students.

Step 3. Divide the class into groups of four to five students and give each group a newspaper (or give each group one of the major sections of the paper).

Step 4. Instruct students to work in their groups to skim newspapers for articles, features, cartoons, photos, reviews of movies or books, and advertisements that fit into the categories. Each one found should be clipped or circled with a marking pen and categorized.

Step 5. Debrief the activity by having groups report on three items from each category, stating why they decided to place the items under those headings. (Note: Items may legitimately fit into more than one category.) Then ask:

- What percentage of your newspaper is devoted to crime issues?
- What percentage of your items fell under the “solutions” category?
- Why do you think the media pay so much attention to crime?

- 5. Follow-up Activity:** Students can continue to collect articles as an ongoing individual activity for credit or extra credit. As they progress through the text, students can use the categories to collect items and prepare (1) scrapbooks, (2) a class bulletin board or collage, or a blog or web site with links to criminal justice articles and sites.

- 6. Additional Resources:** Also included are an opinion master and four additional activity masters for optional use:

**Opinion Master: Pre- and Post-Observations** is designed to assess student opinion on criminal justice issues. Teachers are encouraged to administer the survey before instruction begins and at its completion. Students then can compare any shifts in opinion or attitudes.

**Activity Master 0.2: Research Activities for Enrichment and Extra Credit** outlines individual research and reporting activities students can complete for the first four chapters of the book.

**Activity Master 0.3: Opinion Surveying** provides background information and tips for review by the teacher and students before conducting any of the survey activities throughout the book.

**Activity Master 0.4: Briefing a Case** provides a framework for students to brief court opinions, which are frequently cited in the text and can be found on the Internet and in libraries.

**Activity Master 0.5: Analyzing an Editorial Cartoon** provides a framework for analyzing editorial cartoons. Students can find and collect their own cartoons on the various criminal justice topics.

## Unit 1: Crime

**Overview:** A four-chapter unit focusing on elements of crimes, types of crimes; defenses to criminal charges; a historical perspective on violent crime, violent and non-violent criminals including gangs and white collar offenders; and crime victims, compensating victims, and victims' rights.

**Objectives:** By the completion of this unit, students will be able to:

1. Distinguish between felonies and misdemeanors and give examples of each.
2. Analyze criminal conduct in terms of act, intent, concurrence of act and intent, and causation.
3. Describe and distinguish among four common homicide crimes.
4. Describe and distinguish among four common stealing crimes.
5. Explain what inchoate crimes are and give two examples of them.
6. Describe the crime of perjury.
7. Express a reasoned opinion on whether hate crimes should be enacted.
8. Describe two different types of computer crime.
9. Identify and describe self-defense, insanity, and entrapment as affirmative defenses to criminal conviction.
10. Demonstrate a historical awareness of America's crime problem by comparing current conditions with those that existed in the past.
11. Compare two methods of measuring America's crime rate.
12. Identify and describe violent street gangs and white-collar criminals as significant contributors to America's crime problem.
13. Describe the effects of crime on victims of domestic violence, robbery, and identity theft.
14. Decide whether hypothetical crime victims should receive victim compensation based on criteria.
15. Identify restitution and compensation as methods for addressing the plight of victims.
16. Express and support an opinion on whether a crime victims' rights amendment should be added to the U.S. Constitution.

## CHAPTER 1: CRIMES

### Introduction

**AM** 1.1

#### Lesson Sequence 1

**The Basics of Crime:** Reading and discussion about the sources of criminal law and the classification of crimes into felonies and misdemeanors. (p. 8)

**Answers to Discussion Questions** (p. 9)

1. What characteristics distinguish criminal from civil cases?

Criminal Cases	Civil Cases
State prosecutes individuals	Individuals sue one another
Seek to punish	Seek compensation
Injuries to society	Injuries to individual
2. What are the two sources of criminal law? How are they different?
  - Legislative enactment or laws passed by legislature
    - Expressly forbids conduct in a written criminal statute.
    - Created by legislature
  - Common law
    - Based on legal precedents set by judges in earlier cases.
    - Judge-based
3. Today, most states have done away with common-law crimes. Only acts specifically defined in statutes as illegal can be punished. What would happen if some criminal managed to find a loophole? What if an individual did something obviously harmful to others that was not specifically outlawed by statute? Should the courts be allowed to recognize a new crime to fill the gap? Explain your answer.

Accept reasoned answers.

**Class Activity: Felony or Misdemeanor?** — In pairs, students evaluate whether certain actions should be crimes, and if so, whether they should be felonies or misdemeanors. (p. 9)

#### Lesson Sequence 2

**Elements of a Crime:** Reading that describes and explains the four elements of all crimes — act, intent, concurrence of act and intent, and causation. (p. 10)

**Class Activity: Did They Commit Crimes?** — Students apply the four elements to hypothetical situations to determine whether criminal conduct has taken place. (p. 11)

**Answers to Class Activity** (p. 11)

**Case 1: Tim:** All four elements of battery are accounted for.



**Case 2: Karen:** The act and causation are present. Karen had the intent two months previous to the act, but she denies she had the intent when the act happened. So the problem area is the concurrence of act and intent. A judge or jury would have to decide.

**Case 3: Ray:** All the elements are present. The only problem area is intent. But it seems like criminal negligence to clean a loaded gun pointed toward children at play.

**Case 4: Susan:** All the elements are present.

**Case 5: Gayle:** Three of the elements are clearly present. Causation presents a problem. There was an intervening act (negligence or malpractice) that caused Mary's death. Gayle probably could not be convicted of murder.

### Lesson Sequence 3

**Murder:** Reading and discussion about types of homicide. (p. 12)

**Answers to Discussion Questions** (p. 13)

1. The penalties for homicide depend on the type of homicide: *Involuntary Manslaughter* — *Voluntary Manslaughter* — *Second-Degree Murder* — *First-Degree Murder*. If one person is killed in each of these cases, why do you think the punishments are different? Is this fair? Explain.

The punishments are different depending on the defendant's state of mind — from negligence to premeditated murder.

As for whether this is fair, accept reasoned answers.

2. Howard attempts a first-degree murder, but fails and harms no one. Fred is guilty of involuntary manslaughter when he accidentally kills a person. Which person should be punished more harshly — Howard or Fred? Why?

Accept reasoned answers. Possible follow-up question: Who is more likely to attempt to kill again?

**Class Activity: Death in the School Halls** — Students apply their knowledge about the elements of homicide to a hypothetical case to determine what crime was committed. (p. 13)

**R**

**Answers to Class Activity** (p. 13)

**Murder:** Probably not, because it is difficult to establish malice aforethought since the gun accidentally discharged.

**Felony murder:** This may be a valid theory. Adam was attempting to kill Rick (a felony) when he killed another person by accident.

**Voluntary manslaughter:** Unlikely. Adam had sufficient time to cool off after he was seriously provoked by Rick.

**Involuntary manslaughter:** All the elements are present. Rick was engaged in an unlawful act — carrying

a gun on school premises — and by doing so he was criminally negligent. A killing resulting from the negligence would constitute involuntary manslaughter.

### Lesson Sequence 4

**Theft:** Reading and discussion about the criminal classifications of different types of stealing. (p. 14)

**Answers to Discussion Questions** (p. 15)

1. The penalties for stealing depend on the type of stealing: *Theft* — *Burglary* — *Robbery* — *Armed Robbery*. If a wallet containing only \$20 is stolen in each of these cases, why do you think the punishments are different? Is this fair? Explain.

The punishments are different based on the danger posed to a person. The greater the danger due to use of force or threat of force, the greater the punishment.

As to fairness, accept reasoned answers.

2. What is the difference between robbery and extortion? Between larceny and embezzlement?

Robbery involves a threat of immediate harm, while extortion involves a threat of future harm.

Embezzlement differs from larceny in that the embezzler has legal possession of the object being stolen.

3. Why do you think states outlaw receiving stolen property? Do you think they should? Explain.

States outlaw receiving stolen property because it is considered aiding the thief. If thieves could not sell their stolen goods, they might have little incentive to steal.

As for whether the law should exist, accept reasoned answers.

**Class Activity: What's the Crime?** — Students analyze a hypothetical to determine which crimes of stealing have been committed. (p. 15)

**Answers to Class Activity** (p. 15)

Amy = larceny (theft)

Bob = receiving stolen property

Carol = embezzlement

Dave = burglary

Eden = extortion

Frank = armed robbery

Gina = fraud

**Ask an Expert:** Class invites a criminal lawyer to discuss elements of crimes. (p. 14)

**R**

**O**

### Lesson Sequence 5

**Inchoate Crimes:** Reading and discussion about the crimes of accessory after the fact, attempt, conspiracy, and solicitation. (p. 16)

**Answers to Discussion Questions** (pp. 18–19)

1. What are inchoate crimes? How do they differ from most crimes? Explain.

Inchoate crimes are considered “incomplete crimes.” They are a special group of crimes that penalize planning, preparing, or aiding after the fact the commission of a crime, which means involve intent or preparation to commit a crime. They differ from most crimes in that the actual crime does not need to be carried out, but may be in the beginning stages. Also, the penalties for inchoate crimes are often lesser than those for the actual crime.

2. What crimes have people in the boldface type committed in the examples below?

- a. **Sam, Pam, and Cam** agreed on a plan to rob a bank and split their take among the three of them. Cam scouted the bank to determine the best way to rob it.

All three may be charged with conspiracy, as it is an agreement between two or more people to commit a crime. Cam’s scouting the bank fulfills the overt act requirement.

- b. After shooting a man, Alan ran to Herman’s house and told him what he had done. **Herman** hid Alan’s gun in his house.

Herman is an accessory after the fact because he intentionally helped a felon avoid getting caught after the crime has been committed.

- c. **Robin** decided to kill Chester. Police caught her as she was planting a bomb in his car.

Robin is guilty under the law of attempt, which states that a person must intend to commit a crime, take steps toward it, but fail to commit the crime.

- d. **Roy** offered Michael \$10,000 to kill David. Michael turned him down.

Roy is guilty of solicitation because he asked another to commit a crime, intending that the other commits the crime.

- e. **Susan** worked in a warehouse. When she left one night, she turned off the burglar alarm, which allowed her boyfriend to enter the building and steal thousands of dollars worth of goods.

Susan is an accomplice and is as guilty of committing the crime as her boyfriend. An accomplice is someone who aids another in committing a crime before or during the act.

3. Do you think accomplices should be treated as having committed the crime? Or do the old common-law distinctions make sense? Explain.

Accept reasoned answers.

4. In your opinion, which of the following people has committed the worse crime? Why?

- a. Sam intends to burn down a house but is stopped by police just before he starts the fire.
- b. Jane carelessly throws away her cigarette into the yard and accidentally burns down a house.

Accept reasoned answers.

5. Wilma, Xavier, Yolanda, and Zeno agree to and do rob several banks. They are charged with three counts of bank robbery. Do you think they should be charged with one or three counts of conspiracy to rob a bank? Explain.

A conspiracy consists of the agreement. In the 1942 case of *Braverman v. U.S.*, Braverman and others had joined in a conspiracy to break seven laws. The conspirators were convicted of seven separate conspiracies, but the Supreme Court reversed the convictions, saying there was just one conspiracy.

6. Imagine that Ann and Betty, the only conspirators, are charged with conspiring to rob a bank. Can the jury convict Ann but not Betty of conspiracy? Explain.

No. Conspiracy requires an agreement between the parties. Either Ann and Betty agreed to the conspiracy or they did not. If one did not agree, then there was no conspiracy.

7. Under the Model Penal Code, a person convicted of attempt receives the same punishment as a person who completed the same crime. Do you think this should be the law in your state? Explain.

Accept reasoned answers. Note: This brings up the same issue as question 4.

**Class Activity: An Attempt or Not?** — Students role play judges, decide six cases, and determine whether each amounts to an attempt under a given statute. (p. 19)

**Answers to Class Activity** (pp. 19–20)

Note: Accept reasoned answers. Students are basing their decision on the Georgia law. These decisions were based on other statutes from other states. In addition, each case was appealed, which meant attorneys believed a case could be made on both sides.

**Case 1: Staples.** Edmund Staples was convicted of attempted burglary, and his conviction was upheld on appeal:

“There was definitely substantial evidence entitling the trial judge to find that defendant’s acts had gone beyond the preparation stage. Without specifically deciding where defendant’s preparations left off and where his activities became a completed criminal attempt, we can say that his ‘drilling’ activity clearly was an unequivocal and direct step toward the completion of the burglary. Further, defendant himself

characterized his activity as the actual commencement of his plan. The drilling by defendant was obviously one of a series of acts which logic and ordinary experience indicate would result in the proscribed act of burglary.” (*California v. Staples*, 1970)

**Case 2: Mandujano.** Roy Mandujano was convicted of attempted distribution of heroin, and his conviction was upheld on appeal:

“The evidence was sufficient to support a verdict of guilty under section 846. Agent Cavalier testified that at Mandujano’s request, he gave him \$650.00 for one ounce of heroin, which Mandujano said he could get from a ‘good contact.’ From this, plus Mandujano’s comments and conduct before and after the transfer of the \$650.00, as described in Part I of this opinion, the jury could have found that Mandujano was acting knowingly and intentionally and that he engaged in conduct — the request for and the receipt of the \$650.00 — which in fact constituted a substantial step toward distribution of heroin.” (*U.S. v. Mandujano*, 1974)

**Case 3: Kordas.** The trial court refused to let the charge of attempt against Michel Kordas go forward because, it argued, it is legally impossible to attempt to receive stolen property when the property in question was not in fact stolen. The appeals court disagreed with the trial court and sent the case back to the trial court to reinstate the charge:

“[I]mpossibility not apparent to the actor should not absolve him from the offense of attempt to commit the crime he intended.... In so far as the actor knows, he has done everything necessary to insure the commission of the crime intended, and he should not escape punishment because of the fortuitous circumstance that by reason of some fact unknown to him it was impossible to effectuate the intended result.” (*Wisconsin v. Kordas*, 1995)

**Case 4: Rizzo.** Charles Rizzo and the other defendants were convicted of attempted robbery, but their convictions were reversed on appeal:

“In a word, these defendants had planned to commit a crime and were looking around the city for an opportunity to commit it, but the opportunity fortunately never came. Men would not be guilty of an attempt at burglary if they had planned to break into a building and were arrested while they were hunting about the streets for the building not knowing where it was. Neither would a man be guilty of an attempt to commit murder if he armed himself and started out to find the person whom he had planned to kill but could not find him. So here these defendants were not guilty of an attempt to commit robbery in the first degree when they had not found or reached the presence of the person they intended to rob.” (*New York v. Rizzo*, 1927)

**Case 5: Wilson.** Wilson was convicted of attempted forgery, but his conviction was reversed on appeal:

“[A]n instrument void on its face is not the subject of

forgery, and that, in order to be so subject, it must have been capable of working injury if it had been genuine, and that the marginal numbers and figures are not part of the instrument, and their alteration is not forgery.

“This being true, can the conviction of an attempt to commit forgery be sustained in the case before us? We think not. No purpose appears to change anything on the paper except the figures in the margin, and this could not have done any hurt. Our statute ... confines the crime of forgery to instances where ‘any person may be affected, bound, or in any way injured in his person or property.’ This is not such a case, and sec. 974 forbids convicting of an attempt ‘when it shall appear that the crime intended or the offense attempted was perpetrated.’ In this record the innocuous prefix of the figure ‘1’ on the margin was fully accomplished, and no other effort appears, and, if genuine, could have done no harm; and so the appellant is guiltless, in law, of the crime of which he was convicted.” (*Wilson v. Mississippi*, 1905)

**Case 6: Jackson.** The defendants were convicted of two counts of attempted robbery (as well as conspiracy and weapons charges). Their attempt convictions were upheld on appeal:

“On two separate occasions, appellants reconnoitered the place contemplated for the commission of the crime and possessed the paraphernalia to be employed in the commission of the crime — loaded sawed-off shotguns, extra shells, a toy revolver, handcuffs, and masks — which was specially designed for such unlawful use and which could serve no lawful purpose under the circumstances. Under the Model Penal Code formulation ... either type of conduct, standing alone, was sufficient as a matter of law to constitute a ‘substantial step’ if it strongly corroborated their criminal purpose. Here both types of conduct coincided on both June 14 and June 21, along with numerous other elements strongly corroborative of the firmness of appellants’ criminal intent. The steps taken toward a successful bank robbery thus were not ‘insubstantial’ as a matter of law, and Chief Judge Mishler found them ‘substantial’ as a matter of fact. We are unwilling to substitute our assessment of the evidence for his, and thus affirm the convictions for attempted bank robbery ....” (*U.S. v. Jackson*, 1977)

## Lesson Sequence 6

**Crimes Against the Justice System:** Reading and discussion on crimes of corruption and interference with the justice system, such as contempt of court, perjury, witness tampering, jury tampering, obstruction of justice, and bribery. (p. 21)

### Answers to Discussion Questions (p. 25)

1. Courts often say that a person held in civil contempt “has the keys to the cell.” What does this mean? Do you agree with the federal court’s decision in *Chadwick v. Janecka*? Explain. What is the difference between civil and criminal contempt?

Which do you think is the better remedy?

Civil contempt is when individuals refuse to comply with a court order. The expression of having “the keys to the cell” means that individuals have the ability to release themselves from jail simply by following the court order.

*Chadwick v. Janecka* ruled that Beatty Chadwick’s detention did not violate the U.S. Constitution because he retained the ability to pay the court order. Accept reasoned answers.

Civil contempt is not a crime and its purpose is not to punish people, but to get them to follow the court order. Unlike civil contempt, criminal contempt is a crime, and its purpose is to punish those who disrupt or attack the integrity of the courts.

As for which is the better remedy, accept reasoned answers.

2. What is obstruction of justice? Do you think Barry Bonds should have been convicted of obstruction of justice for the statement he made? Explain.

Obstruction of justice is corruptly interfering with the orderly administration of law and justice.

As for Bonds, accept reasoned answers but students should note the parallel to perjury case of *Bronston v. U.S.*

3. What are perjury and subornation of perjury? Do you agree with the Supreme Court’s decision in *Bronston v. U.S.*? Explain. Do you think lying to an FBI agent should be a crime?

Perjury is when an individual lies under oath. Subornation of perjury is when one person persuades another to lie under oath.

In *Bronston v. U.S.*, the Supreme Court ruled the perjury statute does not cover evasive truthful answers. As for whether they agree with the decision, accept reasoned answers.

4. If you witnessed a violent gang crime and were called to testify, what fears would you have? Would you accept an offer to go into the witness protection program? Explain.

Accept reasoned answers.

5. What is the purpose of all the crimes discussed in this article? Which of these crimes do you think is the most important in upholding this purpose?

The purpose of all the crimes discussed in the article is to ensure the integrity and proper functioning of the criminal justice system.

As for which is most important, accept reasoned answers.

**Class Activity: Section 1001** — Students role play appeals courts and decide some actual cases dealing with the crime of lying to federal officials (18 U.S. Code § 1001). (p. 26)

**Answers to Class Activity** (p. 26)

**Brogan.** Brogan’s appeal went all the way to the U.S. Supreme Court, which upheld his conviction in *Brogan v. U.S.*, 1998.

**Justice Scalia for the court:** “Petitioner repeats the argument made by many supporters of the ‘exculpatory no,’ that the doctrine is necessary to eliminate the grave risk that §1001 will become an instrument of prosecutorial abuse. The supposed danger is that overzealous prosecutors will use this provision as a means of ‘piling on’ offenses — sometimes punishing the denial of wrongdoing more severely than the wrongdoing itself. The objectors’ principal grievance on this score, however, lies not with the hypothetical prosecutors but with Congress itself, which has decreed the obstruction of a legitimate investigation to be a separate offense, and a serious one. It is not for us to revise that judgment. Petitioner has been unable to demonstrate, moreover, any history of prosecutorial excess, either before or after widespread judicial acceptance of the ‘exculpatory no.’ And finally, if there is a problem of supposed ‘overreaching’ it is hard to see how the doctrine of the ‘exculpatory no’ could solve it. It is easy enough for an interrogator to press the liar from the initial simple denial to a more detailed fabrication that would not qualify for the exemption.”

**Justice Stevens, dissenting:** “The mere fact that a false denial fits within the unqualified language of 18 U.S.C. § 1001 is not, in my opinion, a sufficient reason for rejecting a well-settled interpretation of that statute. It is not at all unusual for this Court to conclude that the literal text of a criminal statute is broader than the coverage intended by Congress.... Although the text of §1001, read literally, makes it a crime for an undercover narcotics agent to make a false statement to a drug peddler, I am confident that Congress did not intend any such result. As Justice Ginsburg has explained, it seems equally clear that Congress did not intend to make every ‘exculpatory no’ a felony.”

**Turner.** The Court of Appeals upheld Turner’s conviction under § 1001 in *U.S. v. Turner*, 2008.

**Judge Sykes for the court:** “Turner’s statements to the FBI probably had very little actual influence on the agents because they were already in possession of incriminating recorded conversations between Turner, his wife, and Dinora. The agents were not likely swayed by Turner’s false statements because he was on tape saying precisely the opposite to Dinora. But the point of his telling the agents that he did not learn of the trouble in the Herndon Building in September 2005 was to cast suspicion away from him, which in the ordinary course would have an intrinsic capability — a ‘natural tendency’ — to influence an FBI investigation. The same is true of Turner’s claim that he had not reprimanded any of his employees for monitoring Dinora’s crew, as well as his later denial that he asked his wife to call Dinora

on his behalf. Turner's statements were aimed at misdirecting the agents, and this is enough to satisfy the materiality requirement of § 1001."

**Yermian.** Yermian's conviction was reversed by the Court of Appeals, but the U.S. Supreme Court then heard the case and voted 5-4 to affirm his conviction in *U.S. v. Yermian*, 1984.

**Justice Powell for the court:** "Any natural reading of 1001 ... establishes that the terms 'knowingly and willfully' modify only the making of 'false, fictitious or fraudulent statements,' and not the predicate circumstance that those statements be made in a matter within the jurisdiction of a federal agency. Once this is clear, there is no basis for requiring proof that the defendant had actual knowledge of federal agency jurisdiction. The statute contains no language suggesting any additional element of intent, such as a requirement that false statements be 'knowingly made in a matter within federal agency jurisdiction,' or 'with the intent to deceive the Federal Government.' On its face, therefore, 1001 requires that the Government prove that false statements were made knowingly and willfully, and it unambiguously dispenses with any requirement that the Government also prove that those statements were made with actual knowledge of federal agency jurisdiction. Respondent's argument that the legislative history of the statute supports a contrary interpretation is unpersuasive."

**Justice Rehnquist, dissenting:** "It is common ground that in a prosecution for the making of false statements the Government must prove that the defendant actually knew that the statements were false at the time he made them.... The question presented here is whether the Government must also prove that the defendant actually knew that his statements were made in a matter within 'the jurisdiction of any department or agency of the United States.' The Court concludes that the plain language and the legislative history of 18 U.S.C. 1001 conclusively establish that the statute is intended to reach false statements made without actual knowledge of federal involvement in the subject matter of the false statements. I cannot agree."

## Lesson Sequence 7

**Hate Crimes:** Reading and discussion on the development of hate crimes, court cases challenging them, and the pros and cons of enacting them. (p. 27)

### Answers to Discussion Questions (p. 31)

1. What are hate crimes? Why is it difficult to determine if they are increasing or decreasing? How serious do you think the problem of hate crimes is in the United States? Explain.

A hate crime is any crime committed against a person or a person's property motivated because of the person's race, religion, nationality, ethnicity, gender, sexual orientation, or disability.

It is difficult to determine whether hate crimes are

increasing or decreasing due to lack of statistical data. Many places still do not report hate crimes as a separate type of crime. This combined with the yearly increase in places that report hate crimes makes it difficult to determine if hate crimes are increasing or decreasing.

As for how serious the problem is, accept reasoned answers.

2. Three different hate-crime laws are mentioned in the article. What are they? How are they different? How did the Supreme Court rule on each? Do you agree with the decisions? Why or why not?

Accept reasoned answers on whether students agree or disagree with the decisions.

*R.A.V. v. City of St. Paul* (1992)

City ordinance making it a crime to place on public or private land a hate symbol.

Supreme Court ruled that the law violated the First Amendment. Although government may outlaw activities that present a danger to the community, it may not outlaw them simply because they express ideas that most people or the government find despicable.

*Virginia v. Black* (2003)

Law against cross-burning that made it a felony "for any person... with the intent of intimidating any person or group... to burn... a cross on the property of another, a highway or other public place."

Court ruled that the law must distinguish between cross burnings that are meant as threats and those that are not.

*Wisconsin v. Mitchell* (1993)

Hate-crime statute that increased the maximum penalty for an offense whenever a criminal "intentionally selects the person against whom the crime ... is committed ... because of the race, religion, color, disability, sexual orientation, national origin or ancestry of that person...."

Supreme Court upheld the law because a criminal's motives for a crime may be used in sentencing.

3. Do you think the federal government should pass hate-crime legislation? Explain.

Accept reasoned answers.

Supporters of hate-crime laws believe hate crimes deeply hurt all levels of the community — individuals, families, groups, and society at large. Hate crimes intentionally send a message that minorities are unwelcome and unsafe.

Opponents of hate-crime legislation believe that anyone who commits a serious crime is already punishable under current laws. They believe hate-crime laws will send more people who commit lesser crimes to prison, exposing them to racist gangs potentially making them racist. Opponents believe this could increase hate crimes.

**Class Activity: Hate-Crime Bill** — Students role play legislators considering a proposed hate-crime law. (p. 35)

### **Lesson Sequence 8**

**Cybercrime:** Reading and discussion about Internet crimes, particularly hacking. (p. 31)

**Answers to Discussion Questions** (p. 34)

1. What do you think are the greatest dangers of cybercrime? Why?

Accept reasoned answers. There are many dangers to cybercrime. Criminals can remain anonymous and prey on victims far away. Police have no crime scene to search for clues, and they may have to track criminals halfway around the world.

2. Do you think that an international treaty on cybercrime is important? Explain.

Accept reasoned answers.

3. What are the differences between white-, gray-, and black-hat hackers? Do you think that what gray-hat hackers do should be against the law? Explain.

White-hat hackers are asked to do a job under contract, for example expose security gaps in a company's system. They work when they are asked, do not steal or vandalize anything, and tell the customer exactly what they've done.

Black-hat hackers can steal, vandalize, and disrupt computer systems.

Gray-hat hackers accesses computers without permission but do not steal or vandalize. Gray-hat hackers may post security gaps they find on the Internet for the world to know.

As for whether gray-hat hacking should be against the law, accept reasoned responses, but note that it is against U.S. law.

**Class Activity: Free Speech?** — Students examine examples of material on the Internet and decide whether each should be protected as free speech. (p. 34)

## **CHAPTER 2: DEFENSES**

### **Lesson Sequence 1**

**An Overview of Defenses:** Reading and discussion explaining the basic strategy of defense attorneys and outlining the affirmative defenses of self-defense, necessity, duress, insanity, entrapment, ignorance of the law, mistake of fact, and intoxication. (p. 35)

**Answers to Discussion Questions** (p. 38)

1. What are some ways that a defense attorney can try to establish reasonable doubt?

A defense attorney may bring out inconsistencies in a prosecution witness's story, raise doubts about a witness's believability. The defense may call its own witnesses, experts, and present an alibi for the defendant.

2. What is an affirmative defense? What are the main justification defenses? The main excuse defenses?

An affirmative defense, if proved by the defendant, makes the defendant not guilty of the crime even if the prosecution can prove the elements of the crime. Examples of affirmative defenses are insanity, self-defense, and entrapment.

Main justification defenses: self-defense and necessity.

Main excuse defenses: duress, insanity, entrapment, ignorance of the law, mistake of fact, involuntary intoxication.

3. In these situations, do you think each of the following affirmative defenses would work? Should it work? Explain.

- a. Brad is an accountant. He learns that the FBI is investigating a client for fraud. The client calls and orders him to shred his files. Brad does not know it is against the law to shred the documents. Charged with obstruction of justice, he makes the defense of ignorance of the law.

As a general rule, ignorance of the law is no excuse, and the defense probably would not work here. Brad is an accountant, knows the client is being investigated for fraud, and shreds the files.

But the facts of this case resemble those of the accounting firm Arthur Andersen in the Enron scandal. (See student book pp. 57–58.) There, the accounting firm was convicted under a statute that made it a crime to “knowingly” and “corruptly” persuade another person to “withhold” or “alter” documents to be used in an “official proceeding.” The conviction was reversed because no evidence was produced that members of the firm were conscious of any wrongdoing.

- b. Emily has never had a drink of alcohol. Friends take her to a bar for her 21st birthday. She gets drunk and punches another woman. Charged with battery, she makes the defense of intoxication.

It will not work because she voluntarily drank the alcohol. It might work if she can prove she didn't know she was having an alcoholic drink and thought it was a virgin drink.

- c. Ethan is a schizophrenic. With medication his disease is under control. One day he decides not to take the medication, and he becomes delusional and robs a bank. He does not know what he is doing and that it is wrong. In court, he pleads not guilty by reason of insanity.

He meets the test for legal insanity. But the question is whether his situation is analogous to intoxication: Does he know he is taking medication

for a reason and should take it unless a doctor tells him not to? Or does he not understand what the medicine is, what it's for, and is unaware that he has a mental illness?

4. Do you think serious felonies should have a statute of limitations? Explain.

Accept reasoned answers. Note that the reason the statute of limitations defense is fairness, as with time evidence and eyewitness accounts become old and less reliable.

**Class Activity: Which Defense Is Valid?** — Students look at hypothetical situations and decide which affirmative defense might be raised. (p. 39)

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**Answers to Class Activity** (p. 39 )

- A. **Ned.** Involuntary intoxication.  
B. **Jack.** Necessity.  
C. **Sylvia.** Ignorance of the law. But this defense probably would not succeed because people are supposed to know that they are to pay income taxes on gambling.  
D. **Keri.** Entrapment.  
E. **Mark.** Insanity.  
F. **Fred.** Mistake of fact.  
G. **Peter.** Self-defense, but it is highly unlikely that this defense would succeed.  
H. **Lisa.** Duress.

## Lesson Sequence 2

**Self-Defense:** Reading and discussion about self-defense, defense of others, defense of home, and battered women. (p. 41)

**Answers to Discussion Questions** (p. 41)

1. What is required for a valid argument of self-defense? Why are the rules tougher for the use of deadly force? Do you think they should be? Explain.

For a valid argument of self-defense, persons must establish:

- They reasonably believed that the force was required for their own protection — even if that belief turns out to be mistaken.
- The threat was an imminent threat.
- The force used in self-defense was reasonable.

For the use of deadly force in self defense, persons must establish:

- The attacker was about to kill them or inflict great bodily harm.
- The deadly force was the only way of preventing the harm.

As to why the rules are tougher for deadly force, that's because a person's life can be taken when using such force.

As to whether the rules should be tougher, accept reasoned answers.

2. What is the alter-ego rule? Do you think it should be the law? Why or why not?

The alter-ego rule refers to defense of others, stating that you step into the shoes of the person you are defending and if that person turns out to be the attacker and not entitled to self-defense, you cannot claim self-defense.

As to whether it should be the law, accept reasoned answers and note that some states do not follow the rule.

3. What was the common law rule for defending your home? What is the modern rule? Which do you think is better? Why?

The common law rule was that people could use deadly force if they believed it is necessary to prevent an imminent and unlawful entry into their home.

The modern rule states that people can only use deadly force in defense of a home if the intruder is about to unlawfully enter the home, the intruder intends to commit a felony or injure an occupant of the home, and deadly force is necessary to stop the intruder.

As to which is better, accept reasoned answers.

4. What problems do victims of domestic abuse face in arguing self-defense? Do you think the law of self-defense should be changed for victims of domestic abuse? Explain.

Problems: Abuse can occur over a long period whereas the law requires the threat to be imminent. Also, because the force must be appropriate, the use of deadly force may be interpreted as too much force.

As to whether the law should be changed, accept reasoned answers.

**Class Activity: Stand Your Ground?** — Students role play a state legislative committee considering adopting Florida's Stand Your Ground defense, which gives people greater freedom to use deadly force in self-defense. (p. 42)

## Lesson Sequence 3

**The Insanity Defense:** Reading and discussion about the four different standards for criminal insanity and the new verdict of guilty but mentally ill. (p. 43)

**Answers to Discussion Questions** (p. 44)

1. Which of the definitions of legal insanity do you think is best? Why?

Accept reasoned answers. Students should choose from the *M'Naghten* rule, irresistible impulse rule, *Durham* rule, and *Model Penal Code* test.

2. What purpose would it serve to punish criminally insane persons? Do you think they deserve punishment?

Accept reasoned answers.

- Do you think the law should permit a verdict of not guilty by reason of insanity? Why or why not? If not, what should the law do about people who are criminally insane? Explain.  
Accept reasoned answers.

**Class Activity: The Insanity Defense** — Students apply the four insanity tests to a hypothetical case. (p. 44)



**Answers to Class Activity** (p. 44)

- M’Naghten Rule:** No. There is no evidence that Mark did not know either what he was doing or that it was wrong.
- The Irresistible Impulse Rule:** Yes. If Mark’s statement is true, he was acting under an insane impulse and couldn’t control himself.
- The Durham Rule:** Yes, if it could be shown that Mark’s act was the product of mental disease or defect.
- Model Penal Code Test:** Yes, if it could be shown that because of a mental disease or defect that he lacked substantial capacity to conform his conduct to the requirements of the law.

**Class Activity: Debate on Insanity** — Students write an essay on the statement: *The insanity defense should be abolished.* (p. 45)

### Lesson Sequence 4

**Entrapment:** Reading and discussion about this affirmative defense and its success and failure in several notable cases.

**Answers to Discussion Questions** (p. 47)

- What are the differences between the Abscam, DeLorean, Jacobson, and Lakhani cases. Do you think each of the cases was decided properly? Explain.  
Accept reasoned answers as to whether the cases were decided properly.  
Abscam: No criminal record, but reliable information established criminal intent prior to the operation.  
DeLorean: No criminal record. Single instance. It was argued that DeLorean was not predisposed to commit the crime, but the FBI lured DeLorean into committing it.  
Jacobson: He refused to buy pornography many times before he did and was arrested for it. The postal inspectors were persistent in trying to trap Jacobson, whom the court was unable to establish as being predisposed to commit the crime.  
Lakhani: Bought missiles illegally as a clothing merchant. He was described as “eager” to take part in the operation.
- What is the difference between the objective and subjective tests for entrapment? Which do you think is better? Why?

The subjective test requires that the police lure the defendant into committing the crime and the defendant was not predisposed to commit the crime. It is subjective because it questions whether the defendant was predisposed to commit the crime. The objective test does not look at the defendant’s predisposition to commit the crime. It asks whether the police lured the defendant by creating a substantial risk of criminal behavior by people not predisposed to commit a crime.

As to which is better, accept reasoned answers.

- Do you think the defense of entrapment makes sense? Why or why not?  
Accept reasoned answers. Note that the defense of entrapment is designed to protect those who were entrapped by the authorities into committing a crime they would not have committed otherwise.

**Class Activity: Were They Entrapped?** — Students decide several actual entrapment cases. (p. 47)

**Answers to Class Activity** (p. 47)

Students should give reasoned answers on whether the defendant in each case was entrapped and on which test for entrapment is best (and how it applied to each case). The **objective test** requires that the police lure the defendant into committing the crime by doing something that creates a “substantial risk that such an offense will be committed by persons other than those who are ready to commit it.” The **subjective test** requires that the police lure the defendant into committing the crime *and* the defendant was **not** predisposed to commit the crime.

Below are explanations of how the courts decided each case, with excerpts from the majority and dissenting opinions.

**Case #1: U.S. v. Russell (1973):** The U.S. Supreme Court in a 5–4 decision ruled that Russell was not entrapped.

**Justice Rehnquist for the court:** “... ‘the fact that officers or employees of the Government merely afford opportunities or facilities for the commission of the offense does not defeat the prosecution.’... Nor will the mere fact of ... deceit defeat a prosecution, ... for there are circumstances when the use of deceit is the only practicable law enforcement technique available. It is only when the Government’s deception actually implants the criminal design in the mind of the defendant that the defense of entrapment comes into play.”

**Justice Stewart, dissenting:** “It is the Government’s duty to prevent crime, not to promote it. Here, the Government’s agent asked that the illegal drug be produced for him, solved his quarry’s practical problems with the assurance that he could provide the one essential ingredient that was difficult to obtain, furnished that element as he had promised ... all so that the respondent could be prosecuted for producing and



selling the very drug for which the agent had asked and for which he had provided the necessary component.... Under the objective approach that I would follow, this respondent was entrapped, regardless of his predisposition or 'innocence.' ”

**Case #2: *Washington v. Lively* (1994):** The state of Washington’s Supreme Court held that the defendant failed to prove entrapment, but reversed the conviction on due process grounds.

**Judge Madsen for the court:** “Alcohol and drug rehabilitation programs such as AA/NA provide a life line to many of Washington’s citizens recovering from problems with substance abuse. Society places a premium on rehabilitation. Peoples’ efforts to seek help through such organizations should be commended — not result in victimization by the police and their agents. The courts of this State cannot countenance the conduct which occurred in this case. After reviewing and evaluating the totality of the conduct engaged in by the State’s informant,... with the knowledge of the police, we find there is no question that this conduct, as a matter of law, was so outrageous as to have violated due process principles.”

**Chief Judge Durham, dissenting:** “The majority has haphazardly created a test for evaluating police conduct based on a tenuous interpretation of due process rights. Our courts previously have rejected the outrageous conduct defense. Moreover, the decisions of the United States Supreme Court do not support the majority’s position. While I agree with the majority that the Defendant in this case failed to prove entrapment, I must dissent as to its analysis of the doctrine of outrageous conduct.”

**Case #3: *Sherman v. U.S.* (1958):** The U.S. Supreme Court unanimously reversed Sherman’s conviction, ruling that he had been entrapped. Both the majority opinion and the concurring opinion agreed he had been entrapped, but the majority opinion applied the subjective test and the concurring opinion argued for the objective test.

**Chief Justice Warren for the court:** “The case at bar illustrates an evil which the defense of entrapment is designed to overcome. The government informer entices someone attempting to avoid narcotics not only into carrying out an illegal sale but also into returning to the habit of use. Selecting the proper time, the informer then tells the government agent. The setup is accepted by the agent without even a question as to the manner in which the informer encountered the seller. Thus the Government plays on the weaknesses of an innocent party and beguiles him into committing crimes which he otherwise would not have attempted. Law enforcement does not require methods such as this.”

**Justice Frankfurter, concurring:** [A] test that looks to the character and predisposition of the defendant rather than the conduct of the police loses sight of the underlying reason for the defense of entrapment. No

matter what the defendant’s past record and present inclinations to criminality, or the depths to which he has sunk in the estimation of society, certain police conduct to ensnare him into further crime is not to be tolerated by an advanced society. And in the present case it is clear that the Court in fact reverses the conviction because of the conduct of the informer Kalchinian, and not because the Government has failed to draw a convincing picture of petitioner’s past criminal conduct. Permissible police activity does not vary according to the particular defendant concerned; surely if two suspects have been solicited at the same time in the same manner, one should not go to jail simply because he has been convicted before and is said to have a criminal disposition.”

## CHAPTER 3: CRIMINALS

### Lesson Sequence 1

**History of Violent Crime in America:** Reading and discussion about the history of violent crime in America in comparison to current perceptions about America’s crime problem. (p. 48)

**Answers to Discussion Questions** (pp. 51–52)

1. Why do you think that violent crime has existed at such a high level throughout American history?

The reason for the violence in American society is subject to major debate. Students should discuss their reasons giving examples from the text and then drawing a reasonable conclusion from those examples.

2. Why do you think American outlaws like Jesse James and Billy the Kid have so often been portrayed as heroes? Is there anyone like them today who is portrayed as a hero?

Accept reasoned answers.

3. How do you account for so much mob violence directed against African Americans throughout our history?

Accept reasoned responses. Students should note that African American history of one moving from enslavement to segregation to full equality. Advances such as emancipation, suffrage, and integration caused tension between racial groups and challenged those who wanted to retain white supremacy.

4. Why did the crime rate go down in the 1930s? Why did it go up again in the 1960s? Why do you think it fell in the 1990s? What direction do you think it is heading today? Why?

Accept reasoned responses.

1930s: Decline in the young-adult population, widespread poverty and unemployment and everyone felt in the same boat.

1960s: Increase in the young-adult population.

1990s: More police on the streets, better policing,

more criminals behind bars, population grew older, booming economy, etc.

5. List as many causes of crime in American history as you can. Discuss the list and select the five most important. Explain your reasons.

Accept reasoned answers.

**Class Activity: Now and Then** — Students interview an older person and compare this person’s experience with crime to their own. (p. 52)

## Lesson Sequence 2

**How Much Crime Is There?:** Reading and discussion about the two primary measures used to report and analyze the nation’s crime problem — the Uniform Crime Reports and the National Crime Victimization Survey — and the trends they report in violent crime. (p. 52)

**Answers to Discussion Questions** (po. 53–54)

1. What are the differences between the Uniform Crime Reports and the National Crime Victimization Survey? Which do you think more accurately paints a picture of crime in America? Why?

Uniform Crime Reports (UCR) is published by the FBI, which gets police department data from across the country. UCR includes eight index crimes (4 violent and 4 property), which are homicide, forcible rape robbery, aggravated assault, larceny-theft, motor vehicle theft, and arson. It accounts only for the crimes reported to the police, and relies on the police departments to relay the information accurately.

National Crime Victimization Survey is published by the Department of Justice. The survey polls 42,000 households, and represents 75,000 people over the age of 12. It does not include crimes such as homicides, crimes against businesses, or crimes against children.

As to which is more accurate, accept reasoned answers.

2. Why do you think the UCR and the NCVS report similar numbers of car thefts each year? Why do you think the other crimes are not similar in number?

The UCR and the NCVS report a similar number of car thefts because car thefts are very likely to be reported to the police and victims are more likely to openly report car theft than other crimes such as forcible rape or aggravated assault.

Other crimes may not be similar due to the bias of self-reporting and the fact that not all crimes are reported to the police.

3. Why do you think experts believe UCR homicide statistics are so accurate?

The vast majority of homicides are reported to the police and other homicide studies support the numbers the UCR reports.

4. What do you think could account for the difference in the UCR’s and the NCVS’s trends in violent crime since 1973? Which do you think is more accurate? Why?

Self-reporting bias combined with failure to report all crimes. Additionally, the NCVS does not report homicides and only interviews people over the age of 12.

Accept reasoned answers for which is more accurate.

**Class Activity: Crime Victim Survey** — Students conduct a survey about victims of crime in their own community. (p. 54)



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## Lesson Sequence 3

**Youth, Gangs, and Violence:** Reading and discussion about youth gangs in America from both a historical and contemporary perspective, including efforts at gang suppression. (p. 55)

**Answers to Discussion Questions** (p. 57)

1. List some of the factors that might push a young male toward violence. Do these factors also affect young females? Why do you think young males, as a group, are more violent than young females?

Possible factors (accept other reasonable answers): Lack of parental supervision, education, and skills; desensitization to violence through brutalization by families and surroundings; drug addiction; affiliation in a gang.

As to whether these factors affect females and why young males are more violent, accept reasoned answers.

2. Does gang activity exist in your community? How has it changed in recent years?

Accept reasoned answers.

3. What do you think should be done to stop gang violence? Explain.

Accept reasoned answers.

## Lesson Sequence 4

**White-Collar Criminals:** Reading and discussion on white-collar criminals such as Bernard Madoff and the Enron scandal. (p. 57)

**Answers to Discussion Questions** (p. 60)

1. At the time, Enron’s fraud was called the “corporate crime of the century.” Describe the fraud.

Enron falsely reported rising profits every quarter despite the debt it accrued from making extremely risky investments. Enron falsified financial information and created offshore partnerships with companies to hold the debt and prevent the

debt from being reported to the Securities and Exchange Commission. It gave business to the accounting firm that was supposed to audit the firm's books.

2. At Enron and other companies accused of massive fraud, chief executives, paid millions of dollars a year to run the companies, have claimed they knew nothing about the fraud. Do you think it is likely to be true? If it were true, should the executives be held accountable somehow? Explain.  
Accept reasoned answers.
3. What role did the accounting firm Arthur Anderson play in the Enron scandal? Do you agree with the Supreme Court's decision in *Andersen v. U.S.*? Explain.

The accounting firm Arthur Anderson failed to uncover and report the massive fraud in audits presented to a federal regulatory agency. The firm also shredded Enron documents following its internal policies after learning of the SEC investigation into Enron. The shredding gave rise to a criminal case and conviction under a statute making it a crime to "knowingly" and "corruptly" persuade another person to "withhold" or "alter" documents to be used in an "official proceeding." The U.S. Supreme Court reversed the conviction because the prosecution had not proved people at Anderson were conscious of wrongdoing, which is necessary to prove that they "knowingly ... corruptly persuad[ed]."

As to whether they agree with the court's decision, accept reasoned answers.

4. What is a Ponzi scheme? Why do you think Madoff's scheme was so successful?  
A Ponzi scheme works by creating a constant flow of new money into an investment fund. To do this, the money is first taken from investors, promising a high rate of return. The investors get their profits paid by money from newer investors. Madoff's scheme was so successful because he did not promise extremely high returns and the fund was made to seem exclusive. Accept other reasoned answers.
5. Why didn't the Sarbanes-Oxley Act apply to Madoff's firm? If it had, do you think it would have made a difference? Do you think greater regulation could reduce the amount of white-collar crime? Explain your answers.  
The Sarbanes-Oxley Act was designed to prevent fraud through regulating firms that audit corporations. Madoff's firm was not a corporation.
6. Do you think the criminal justice system should treat white-collar criminals less harshly than violent criminals? Explain.  
Answers should include well-reasoned explanations

noting the differences and similarities between white-collar and violent criminals.

7. Do you think tighter economic regulations help prevent white-collar crime or is there little that can be done to prevent it? Explain.  
Accept reasoned answers.

### Lesson Sequence 5

**Swindlers and Con Artists:** Reading and discussion on smaller fraudulent schemes that victimize thousands each year, including the pigeon drop, bank examiner swindle, phony prize and sweepstakes offers, other telemarketing scams, and Internet fraud. (p. 60)

#### Answers to Discussion Questions (p. 62)

1. Are you familiar with any of these swindles? Which ones seem most tempting to victims? Why?  
Accept reasoned answers.
2. Why do victims fall for swindles? How can they avoid them?  
Victims may fall for swindles based on their desire to "get something from nothing," meaning they fall for swindles based on the false potential for huge rewards. Other victims fall to prey to scams that falsely claim to help others.  
As to how they can avoid scams, accept reasoned answers.

**Activity: More Cons** — Students research and report on additional bunco schemes. (p. 62)



**Ask an Expert:** Class invites an officer from the bunco squad to discuss con games. (p. 61)



## CHAPTER 4: CRIME VICTIMS

### Lesson Sequence 1

**Who are the Victims?:** Introduction to readings about crime victims. (p. 63)

**Victims of Violent Crimes:** Reading and discussion about victims of robbery and domestic violence, including personal accounts of two victims. (p. 61)

#### Answers to Discussion Questions (p. 65)

1. Why do you think many women do not report rapes or instances of domestic violence? Would you if you were a victim of these crimes? Why or why not?  
Possible responses for failure to report: Some women may believe their actions contributed to the violence or that the abuser is genuinely apologetic for their actions and the actions will not

re-occur; others may fail to report due to fear and shame. Accept other reasoned answers.

2. What do you think would help victims of violent crimes recover from the crime? Explain.

Possible responses: Counseling to aid in psychological recovery, medical help and hospitalization to aid in physical recovery, protection from further crimes, punishment and accountability for criminal actions of the attacker/abuser. Accept other reasoned answers.

3. Victims of violent crimes sometimes report that witnesses do not call the police or try to help them. Why do you think people might not respond when they hear screams or see crimes?

People might not respond due to fear for their own safety and due to something referred to as bystander effect.

Bystander effect occurs when individuals do not offer aid in emergency situations when they know that other people are present. Individuals look to other people to determine how to act in such situations, so they do nothing when they observe that everyone else is doing nothing.

**Ask an Expert:** Class invites a representative from a rape or domestic-violence crisis center to discuss services available to victims of these crimes. (p. 65)



## Lesson Sequence 2

**Victims of Property Crimes:** Reading and discussion about victims of two property crimes — burglary and identity theft — and the personal accounts of two victims. (p. 66)

**Answers to Discussion Questions** (p. 67)

1. Many victims speak of not being the same person after being victimized. Why do you think this is so? What has changed for them?

Loss of sense of privacy and security and fear that the crime will happen again may cause the victims to be more insecure. Accept other answers if well reasoned.

2. Many victims of burglary describe the crime as an invasion of their privacy. What do you think they mean by this?

They mean that the home is the one place they thought was secure and safe. Having someone break into their home makes them lose that sense of safety and security and makes them feel exposed and vulnerable.

3. Have you ever had anything stolen? If so, how did it affect you? Do you worry it may happen again? Accept reasoned answers.
4. States make receiving stolen property a crime. Do you think it should be? Why or why not?

Accept reasoned answers.

5. What sorts of crimes do you think people are most likely to report to the police? Least likely? Why do you think some people don't report crimes to the police?

Accept reasoned answers. Possible answers may include that shame, fear of danger, or the lack of confidence in the police finding the criminal may keep some from reporting crimes to the police.

## Lesson Sequence 3

**Helping Victims of Crime:** Reading and discussion about victim compensation programs. (p. 68)

**Answers to Discussion Questions** (p. 69)

1. What is the difference between state victim compensation and restitution for victims? Which do you think is better? Why?

The basic difference is in who pays. In state victim compensation, the state pays. In restitution, the perpetrator of the crime pays.

As to which is better, accept reasoned answers.

2. Do you think courts should order restitution in all cases? Explain.

Accept reasoned answers.

**Class Activity: Crime Victims Board** — Based on given criteria, students reach decisions on whether to award compensation to victims in given hypothetical cases. (p. 70)



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**Answers to Class Activity** (p. 70)

**Case No. 1:** DENY. By throwing a punch at Ken, William contributed to the incident in a significant way.

**Case No. 2:** APPROVE, but limited. Ruth's husband was shot during a robbery that was no fault of his own or of Ruth's. Ruth's husband was the family's primary income generator in their family. She is asking for \$50,000 per year for five years in wage loss. But the award limit is 30,000, paid out \$600 / week. The funeral expenses of \$7,000 also exceed the limit so she will receive \$6,000.

**Case No. 3:** APPROVE, but limited. Maria Pineda should receive \$6,000 (the limit) for the funeral (for which she paid \$7,000). The \$30,000 award for wage loss fits the limit. The question is whether the medical expenses should be paid for her pregnancy: Accept reasoned answers.

**Case No. 4:** APPROVE. She did not contribute to the crime. A woman should be able to invite a man to her apartment without expecting to be raped. Her \$1,800 in lost wages fits within the limit as does her \$3,000 for a psychiatrist.

## Lesson Sequence 4

**The Push for Victims' Rights:** Reading and discussion about federal and state laws and proposals for protecting crime victims. (p. 71)

### Answers to Discussion Questions (p. 73)

1. Do you agree with California's policy of permitting police officers at preliminary hearings to read what the victims said in the police reports instead of having the victims testify? Explain.

Accept reasoned answers. (Reference information on page 72.)

2. Some victims' rights groups propose that statements made by victims during post-crime counseling sessions should not be used in court or made available to the defense. Do you agree with this policy? Why or why not?

Accept reasoned answers, but note that many statements may already be protected by patient-doctor confidentiality laws.

3. The Supreme Court has ruled that victim-impact statements may be used at death penalty hearings. Can you see any danger in doing this? Would you support stronger penalties for killing a nun as opposed to killing a prostitute? Why or why not?

Danger would be the possibility of inducing an emotional decision by the jury. Accept reasoned answers for the remainder of the question.

4. Make a list of the problems that crime victims face. How can society address these problems?

Possible problems (accept other reasonable answers): Emotional shock and physical disorder; economic stress; loss of employment; job changes, etc.; emotional and time burdens through investigations and court procedures; stress and annoyance of rumors and press coverage.

As to how society can address these problems, accept reasoned answers.

5. What is the proposed victims' rights amendment to the U.S. Constitution? What are some arguments in favor of it? What are some arguments opposing it?

The proposed amendment would give victims of violent crimes the right to:

- Be given notice of and to attend any public hearing.
- Be heard at the hearings and submit statements to certain hearings.
- Notice of any release or escape from custody.
- Not have unreasonable delays in the trial.
- Restitution from the convicted offender.
- Consideration for the safety of the victim in determining any release from custody.

Arguments in favor: Cement rights that no state may deny. It will restore balance between rights of victims and defendants.

Arguments against: Most states already guarantee these rights and wording is vague.

**Class Activity: Victims' Rights Amendment** — Students role play state legislators deciding on a proposed victims' right amendment to the U.S. Constitution. (p. 73)

**Ask an Expert:** Class invites a prosecuting attorney to discuss victim services and rights in your state. The expert can also assist in the activity. (p. 73)



## Unit 2: The Police

**Overview:** A five-chapter unit examining the role and history of police in society; how police investigate crimes and methods of policing; the tools of forensic science; the constitutional principles and laws that govern their work, including provisions of the Fourth and Fifth amendments of the U.S. Constitution; and the limits of police authority, which focuses on racial profiling, police corruption, the use of force, and methods of citizen overview.

**Objectives:** By the completion of this unit, students will be able to:

1. Demonstrate a historical awareness about law enforcement by comparing today's professional law enforcement with that of previous eras.
2. Explain several roles that police officers on patrol perform.
3. Describe two drug and gang suppression strategies and express an informed opinion on which is most effective.
4. Explain several different police procedures for identifying suspects and express a reasoned opinion on which is most reliable.
5. Identify several areas of forensic science and explain at least one challenge forensic science faces.
6. Identify the Fourth and Fifth amendments as the source of important restraints on police power.
7. Analyze searches to determine their legality.
8. Identify the *Miranda* rule and describe it in terms of its underlying rationale.
9. Describe the exclusionary rule and state and support an opinion about it in terms of its efficacy and fairness.
10. Explain what racial profiling is and express a reasoned opinion on what should be done about it.
11. Identify examples of police corruption and express a reasoned opinion on what can be done to prevent corruption.
12. Identify the elements of the doctrine of reasonable force and analyze hypothetical situations in terms of its applicability.
13. Decide hypothetical cases of police misconduct.

### Introduction

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## CHAPTER 5: POLICE AND SOCIETY

### Lesson Sequence 1

**From Citizen Volunteers to Professional Police:** Reading and discussion about how publicly funded police forces developed. (p. 76)

### Answers to Discussion Questions (p. 77)

1. How does the organization of police forces in the United States differ from most other countries? Why do you think these differences exist?

The U.S. does not have a national police agency enforcing all the laws throughout the country. More than 40,000 independent law-enforcement agencies exist at different levels of government.

As to why these difference exist, accept reasoned answers. The answers may include that the U.S. system is one of federalism, giving states much power.

2. Could our crime problem be better handled if there were one large police agency to enforce all criminal laws throughout the United States? What would be the advantages of having such a force? What would be the disadvantages? Do you think the United States should have this kind of police force? Why or why not?

Accept reasoned answers.

3. Read the **Police Officer's Oath** on page 81. It describes the ideals of law enforcement. Do you agree with these ideals? If not, what would you change? Why?

Accept reasoned answers.

### Lesson Sequence 2

**Local Police:** Reading and discussion on local police departments, their structure, police work, and opportunities for minorities and women. (p. 78)

### Answers to Discussion Questions (p. 80)

1. Some departments only hire officers who live in the area the police department serves. Why do you think they do this? Do you think it is a good idea? Explain.

Accept reasoned answers. Note that the answers may include that local hires may be more familiar with the area and its residents, which is important because in day-to-day encounters on the street, police officers act using their own discretion. Also, they may feel more responsibility to protect and serve their own community.

2. Do you think police should have college degrees? Why or why not?

Accept reasoned answers. See below for possible no and yes responses.

No, many who go into the police force do it as an alternative to college and not as a career path to follow after college. Requiring a college degree would eliminate this area of the police workforce.

Yes, requiring a higher degree of education would cause increases in police professionalism. A police officer needs to know criminal law and procedure, be able to collect evidence properly, be

familiar with forensic science, know how to interact with different people, and be able to mediate disputes and analyze crime problems.

3. In 1973, the National Advisory Commission on Criminal Justice Standards and Goals recommended that police departments should try to get a workforce that reflects the ratio of minorities in the community. What are pluses and minuses of such a policy? Do you agree with it? Explain.

Accept reasoned answers.

Possible pluses: Having a force reflective of the community may promote better cooperation between police and community. Minorities may feel more protected and secure.

Possible minuses: May cause police forces to hire based on race instead of on ability and qualifications.

4. Do you think police forces should recruit women officers? Explain.

Accept reasoned answers. Note that answers should include that some critics say women are not strong or tough enough for police work. Supporters say women are not as confrontational as men and more adept at mediating disputes.

**Class Activity: Police Call** — Students role play police in action. (p. 81)

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## CHAPTER 6: METHODS AND INVESTIGATIONS

### Lesson Sequence 1

**Community Policing:** Reading and discussion about the theory of community-oriented policing and some different examples of it in practice. (p. 83)

#### Answers to Discussion Questions

1. What are the advantages and disadvantages of community policing?

Advantages: Increases community support and cooperation with law enforcement; causes patrol officers to think in terms of patterns of criminal activity; stresses problem solving; decreases quality-of-life crimes.

Disadvantages: High cost; decreases police ability to respond rapidly to crime.

2. What are the advantages and disadvantages of motorized rapid response?

Advantages: Rapid response to crime; lower cost than community-policing.

Disadvantages: Most officers have little contact with the community, creating a divorced feeling of “us and them.”

3. Why might some police officers prefer working in a department that uses community-oriented policing? Why might others prefer a department that uses motorized rapid response?

Accept reasoned responses.

Community-oriented policing involves the police in the community and gets them away from their desk. Motorized rapid response allows police to focus more on making arrests and solving crimes rather than solving “petty” community problems.

4. New York and San Diego exemplify two different styles of community policing. What are the pros and cons of each? Accept reasoned responses. Answers should mention that San Diego relies on volunteers to help decrease police workload and New York has a computer system that tracks crime block by block.

**Activity: Checking Out Community Policing** — Students research and report on local or national efforts at community policing. (p. 85)



### Lesson Sequence 2

**Suppressing Gang and Drug-Related Violence:** Reading and discussion about different methods for dealing with gang and drug-related violence. (p. 86)

#### Answers to Discussion Questions (p. 90)

1. What is an open drug market? What dangers does it pose?

An open drug market is one in which gangs are actively selling illegal drugs in neighborhoods — either on the streets or from drug houses. It increases gang presence in neighborhoods and can lead to battles between gangs and violence.

2. Which of the four strategies mentioned in the article do you think would be the most difficult to implement? Why?

The four strategies are: Chicago’s gang ordinance, street-gang injunctions, Operation Ceasefire, Drug Market Intervention.

As to which is the most difficult to implement, accept reasoned answers.

3. What is deterrence? Which strategies in the article are deterrent strategies? How does each attempt to deter wrongdoing? Which do you think is most effective? Why?

Deterrence is the use of punishment or threat of punishment to prevent people from committing crimes.

All strategies discussed in the article are meant to have some deterrent effects.

Chicago’s gang ordinance: Warns gang members they will be prosecuted if they “loiter.”

Street-gang injunctions: Gang members know that if they violate the injunction, they will be held in contempt.

Operation Ceasefire: Gang members warned that if their gang is linked to violence, the full force of the law will fall on each gang member.

Drug Market Intervention: Gang members are called in, shown evidence of them selling drugs, and told if they return to the streets to sell drugs, they will be prosecuted.

As to which is the most effective, accept reasoned answers.

### Lesson Sequence 3

**Criminal Investigations:** Reading and discussion about investigative techniques such as sealing off crime scenes, getting eyewitness identifications, and using informants. (p. 90)

#### Answers to Discussion Questions (p. 94)

1. What is a chain of custody? Why is it important?

A chain of custody is proof of who has had possession of the evidence, at what date and time. A chain of custody is important in order to prevent tampering with evidence.

2. What are lineups, showups, and throw-downs? Which do you think is the most reliable? Why?

These are three methods for witness identification of suspects. In a lineup, five or six people, one of whom is the suspect, stand on a stage so witnesses can view them. In a showup, the witness is shown a single suspect. In a throw-down, detectives show pictures for the witness to choose from.

As to which is the most reliable, accept reasoned answers.

3. What problems might arise from using informants? What can be done to prevent these problems?

Many problems may arise: Informants may well be criminals; they may use providing evidence against others as a way to get out of jail or have their sentences reduced, and this may induce them to lie.

As to what can be done, accept reasoned answers.

**Class Activity: Is This the One?** — Students critically examine police procedures for identifying suspects in three hypothetical cases. (p. 94)

#### Answers to Class Activity (p. 94)

##### Case No. 1: Hospital Visit (*Stovall v. Denno*, 1967)

*Why might this identification be unreliable?*

Possible Answers: Mrs. Behrendt's identification may have been unreliable because she had just had major surgery after a major traumatic experience and could have been on painkillers. Also, it is hard to say if she

had a clear look at her attacker. Furthermore, Mrs. Behrendt could have been influenced by the fact that he was the only African American in the room.

*What should the police have done to make it more reliable?*

Possible Answers: As she was unable to go to the police station because she was in the hospital, the police could have brought three or four people to her room and have her identify her attacker. They also could have had multiple people speak so she could identify the voice of her attacker. Also, the suspect should have an attorney and the attorney should have attended.

*Do you think the identification should be admitted in court?*

Accept reasoned answers.

Note: A unanimous Supreme Court upheld allowing the identification into evidence.

**Justice Brennan for the court:** "The practice of showing suspects singly to persons for the purpose of identification, and not as part of a lineup, has been widely condemned. However, a claimed violation of due process of law in the conduct of a confrontation depends on the totality of the circumstances surrounding it, and the record in the present case reveals that the showing of Stovall to Mrs. Behrendt in an immediate hospital confrontation was imperative."

##### Case No. 2: Hallway (*Manson v. Brathwaite*, 1977)

*Why might this identification be unreliable?*

Possible Answers: This identification may be unreliable because the undercover police officer was not solely focusing on the dealer's face during their interaction. He was also focused on the transaction required to purchase the drugs. Also, the hallway was only lit by natural light and the undercover officer could have missed several defining details of the dealer's face. Also, while the undercover officer was trained in making identifications, there is no guarantee that he is correct.

*What should the police have done to make it more reliable?*

Possible Answers: The police could have used an array of photographs instead of only one. They also could have used multiple undercover officers instead of relying only on one.

*Do you think the identification should be admitted in court?*

Accept reasoned answers.

Note: The Supreme Court upheld the admitting identification, noting the undercover police officer was trained in making identifications.

**Justice Stevens for the court:** "1. The opportunity to view. Glover testified that for two to three minutes he stood at the apartment door, within two feet of the



respondent.... Glover looked directly at his vendor. It was near sunset, to be sure, but the sun had not yet set, so it was not dark .... 2. The degree of attention. Glover was not a casual or passing observer, as is so often the case with eyewitness identification. Trooper Glover was a trained police officer on duty .... Glover himself was a Negro and unlikely to perceive only general features of ‘hundreds of Hartford black males’ .... [A]s a specially trained, assigned, and experienced officer, he could be expected to pay scrupulous attention to detail, for he knew that subsequently he would have to find and arrest his vendor. In addition, he knew that his claimed observations would be subject later to close scrutiny and examination at any trial.”

**Justice Marshall and Justice Brennan, dissenting:** “[B]oth common sense and scholarly study indicate that while a trained observer such as a police officer ‘is somewhat less likely to make an erroneous identification than the average untrained observer, the mere fact that he has been so trained is no guarantee that he is correct in a specific case. His identification testimony should be scrutinized just as carefully as that of the normal witness.’ ... Moreover, ‘identifications made by policemen in highly competitive activities, such as undercover narcotic agents ..., should be scrutinized with special care.’ .... Yet it is just such a searching inquiry that the Court fails to make here.”

### **Case No. 3: Lineups (*Foster v. California*, 1969)**

*Why might this identification be unreliable?*

Possible Answers: It might be unreliable because of the way the police conducted the lineup. They first did a lineup (and the witness failed to identify the suspect), then a show up (which is very suggestive), and then another lineup.

Note: Students may be interested to learn that the suspect was the only person who appeared at both lineups. Also, the suspect was wearing clothing much different from the other people in the lineups.

*What should the police have done to make it more reliable?*

Possible Answers: They should not have done the showup. Also, the police should have used people who were wearing similar clothing so that an identification would have been more accurate.

*Do you think the identification should be admitted in court?*

Accept reasoned answers.

Note: The Supreme Court did not uphold this identification, but the Justice Black’s dissent argues that by not allowing the identification into evidence, the court is taking away a right of the jury to decide whether this identification is reliable or not.

**Justice Fortas for the court:** “[T]his case presents a compelling example of unfair lineup procedures. In the first lineup arranged by the police, petitioner stood

out from the other two men by the contrast of his height and by the fact that he was wearing a leather jacket similar to that worn by the robber.... When this did not lead to positive identification, the police permitted a one-to-one confrontation between petitioner and the witness. This Court pointed out in *Stovall* that ‘[t]he practice of showing suspects singly to persons for the purpose of identification, and not as part of a lineup, has been widely condemned.’ Even after this the witness’ identification of petitioner was tentative. So some days later another lineup was arranged. Petitioner was the only person in this lineup who had also participated in the first lineup.... This finally produced a definite identification.”

**Justice Black, dissenting:** “That means that the jury must, if we keep faith with the Constitution, be allowed to hear eyewitnesses and decide for itself whether it can recognize the truth and whether they are telling the truth. It means that the jury must be allowed to decide for itself whether the darkness of the night, the weakness of a witness’ eyesight, or any other factor impaired the witness’ ability to make an accurate identification. To take that power away from the jury is to rob it of the responsibility to perform the precise functions the Founders most wanted it to perform. And certainly a Constitution written to preserve this indispensable, unyielding core of our system for trying criminal cases would not have included, hidden among its provisions, a slumbering sleeper granting the judges license to destroy trial by jury in whole or in part.”

### **Case No. 4: Parking Lot Showup (*Perry v. New Hampshire*, 2012)**

*Why might this identification be unreliable?*

Possible Answers: The woman pointed to the man standing next to the police officer when it was easy to assume that the man next to the officer was the suspect. Also, she was unable to identify the suspect in a throw-down at the police station.

*What should the police have done to make it more reliable?*

Possible Answers: The police could have asked the woman to describe the man without allowing her to look out her window and see the man standing next to the police officer.

*Do you think the identification should be admitted in court?*

Accept reasoned answers.

Note: The Supreme Court upheld the identification.

**Justice Ginsburg for the court:** “The fallibility of eyewitness evidence does not, without the taint of improper state conduct, warrant a due process rule requiring a trial court to screen such evidence for reliability before allowing the jury to assess its creditworthiness.... [T]he jury, not the judge, traditionally

determines the reliability of evidence.... We also take account of other safeguards built into our adversary system that caution juries against placing undue weight on eyewitness testimony of questionable reliability. These protections include the defendant's Sixth Amendment right to confront the eyewitness."

**Justice Sotomayor, dissenting:** "This Court has long recognized that eyewitness identifications' unique confluence of features — their unreliability, susceptibility to suggestion, powerful impact on the jury, and resistance to the ordinary tests of the adversarial process — can undermine the fairness of a trial. Our cases thus establish a clear rule: The admission at trial of out-of-court eyewitness identifications derived from impermissibly suggestive circumstances that pose a very substantial likelihood of misidentification violates due process. The Court today announces that that rule does not even 'com[e] into play' unless the suggestive circumstances are improperly 'police-arranged.' .... Our due process concern, however, arises not from the act of suggestion, but rather from the corrosive effects of suggestion on the reliability of the resulting identification. By rendering protection contingent on improper police arrangement of the suggestive circumstances, the Court effectively grafts a *mens rea* inquiry onto our rule."

## CHAPTER 7: FORENSIC SCIENCE

### Lesson Sequence 1

**The Origins of Forensic Science:** Reading and discussion on the history of forensic science. (p. 95)

**Answers to Discussion Questions** (p. 96)

1. Advances in photography led to the use of "mug shots" and enhanced forensic analysis of questioned documents. What other ways could photography be used by law enforcement?

Accept reasoned answers. Note that answers may include crime scene and evidence photography. Ultraviolet, infrared, and laser photography are used in the examination of questioned documents, or documents thought to be fraudulent or forged.

2. Which scientific advance in history do you think has had the greatest impact on modern forensic science?

Accept reasoned answers, which may include the discovery and developments of blood types, DNA, and fingerprints.

**Modern Crime Labs:** Reading and discussion on the growing use of crime labs and the different components of these labs. (p. 97)

**Answers to Discussion Questions** (p. 99)

1. Which unit do you think is most important? Why?  
Accept reasoned answers. May discuss DNA unit, Latent Print unit, Firearms-Toolmarks unit,

Questioned Documents unit, Trace Evidence unit, or Regional Computer Forensics Laboratory.

2. Do you know of any other aspects of crime labs not mentioned in the article?

Accept reasoned answers.

**Class Activity: DNA From Everyone Arrested? —** Students evaluate the pros and cons of taking DNA from everyone who is arrested. (p. 99)

### Lesson Sequence 2

**Current Issues in Forensic Science:** Reading and discussion on the impact of DNA on forensic science, the questioning of a number of long-used forensic evidence such as fingerprinting, the findings of the 2009 National Academy of Sciences Report, and the issue of the *CSI* Effect. (p. 100)

**Answers to Discussion Questions** (p. 104)

1. Why is DNA evidence considered very reliable? What could cause DNA evidence to be unreliable?

No two people have identical DNA. DNA has been rigorously tested and researched throughout the scientific community. The National Academy of Sciences has concluded that "DNA evidence is scientifically sound."

DNA evidence can be unreliable if it is improperly collected, stored, or handled. Also, the DNA profile charts only a few sections of the DNA; thus, it is possible but highly unlikely that other people could share the DNA profile.

2. What happened in Brandon Mayfield's case? Why do you think the mistake was made?

In 2004, a terrorist attack in Madrid killed almost 200 people. Spain sent fingerprints to the FBI, who declared they matched Mayfield's. Spain disagreed, saying there were some dissimilarities, but the FBI remained steadfast and arrested Mayfield. They held him for two weeks before Spain found the real suspect. Mayfield received an apology and a \$2 million settlement.

As to why the mistake was made, accept reasoned answers, which may include overconfidence in the superiority of FBI examiners, using circular reasoning to suggest details about the case, bias based on facts developed during the field examination (including Mayfield's religion).

3. Why is it important that forensic science be based on science?

If it is not based on science, why is it called science? Forensic science is used to convict people of crimes, and it should be reliable. Accept other reasoned answers.

4. What were the main recommendations of the 2009 National Academy of Sciences report? Do you agree with them? Explain.

They were: (1) Establish an independent National Institute of Forensic Science, (2) accredit all crime labs, (3) conduct more research on forensic sciences, and (4) replace coroners with medical examiners.

As to whether students agree with the recommendations, accept reasoned answers.

5. What is the *CSI* Effect? Do you think it is real? Explain. If it is real, what do you think can be done about it? Explain.

The *CSI* Effect is the claim that juries often find defendants not guilty when the prosecution fails to offer scientific evidence. The reason is that some jurors watch television shows like *CSI* and believe scientific evidence can be presented in all cases.

As to whether students think the effect is real, accept reasoned answers.

As for solutions to the problem, accept reasoned answers.

## CHAPTER 8: POLICE AND THE LAW

### Lesson Sequence 1

**Criminal Procedure:** Introductory reading and discussion about criminal procedure. (p. 105)

**Answers to Discussion Questions** (p. 106)

1. What is the difference between criminal law and criminal procedure?

Criminal law defines which acts are illegal, while criminal procedure sets rules for arrests, trials, appeals, and processing someone through the legal system.

2. How do appellate courts create rules of criminal procedure?

Appellate courts create rules of criminal procedure through interpreting federal and state statutes and U.S. and state constitutions when criminal cases are appealed to them.

3. What are the two, often conflicting, goals of criminal procedure? How might they conflict? Which do you think is more important? Why?

The two goals of criminal procedure are protecting society from criminals and protecting the constitutional rights of those being processed through the system.

They can conflict because upholding the rights of criminal defendants can make it more difficult for law enforcement to convict criminals.

Accept reasoned answers over which goal is most important.

**The Law of Search and Seizure:** Brief introductory reading on Fourth Amendment limits on police. (p. 106)

### Lesson Sequence 2

**Has a Search and Seizure Taken Place?:** Reading and discussion about this first question in analyzing search-and-seizure cases. (p. 107)

**Answers to Discussion Questions** (p. 108)

1. What is the difference between a search and a seizure?

A search is defined as any governmental intrusion into something in which a person has a reasonable expectation of privacy. A seizure is any taking into possession, custody, or control of property or people. The difference between search and seizure is that intrusion is the basis of a search and taking into custody is the basis of a seizure.

2. The Supreme Court has ruled that the police have **not** conducted a search if the object is in plain view, in an open field, or has been abandoned. Why does the court say this in each instance? Do you agree? Why or why not?

People have a reasonable expectation of privacy in their private property, but the court has ruled that objects in plain view, in an open field, or objects that have been abandoned cannot reasonably be expected to be private. Objects in plain view are spotted by officers from a place where they have a legal right to be in, those in open fields are readily accessible to the public, and abandoned property means a person has also abandoned an expectation of privacy. Thus in none of these situations can a person have a reasonable expectation of privacy.

Accept reasoned answers as to whether students agree or not.

3. Why do you think the Fourth Amendment protects only against intrusions by the government? Are these intrusions more dangerous than intrusions by individuals? Why or why not?

Accept reasoned answers. But students should note that some intrusions by individuals are punished by criminal law (e.g., burglary).

4. For each of the following, decide whether a search or seizure has taken place and explain why or why not. Don't be concerned with whether it was legal.

- a. A police officer arrests Mary Clark for shoplifting.

**Yes.** The police officer is an agent of the government and making an arrest is a seizure.

- b. Lois Kindel, a custodian at the Shadyville Police Department, believes her neighbor deals drugs. She tells police, but they have no evidence. She agrees to keep a close watch on her neighbor. One day she spots a marijuana plant, which has grown taller than her neighbor's fence.

**No.** Lois, though an agent of the government, did not search or seize because such items were clearly visible from her property.

- c. Officer Sanchez climbs a hill in a public park and spots three stolen cars in a nearby backyard surrounded by a 10-foot-high fence.

**No.** Sanchez had every right to be on the hill and saw the stolen cars in plain view.

- d. On surprising George Meyers, a known narcotics dealer, police observe him swallow several capsules. They take him to the hospital and have his stomach pumped.

**Yes.** George has a reasonable expectation of privacy in his person.

- e. The police stop Anna and question her for a few minutes about where she's been and what she has been doing the past few days. (Anna has been arrested twice in the last year for prostitution but has never been convicted.)

**No.** The police did not exercise sufficient custody or control to constitute an arrest.

**Class Activity: Is It a Search?** — After small groups discuss actual cases raising issues of search and seizure, individuals research online or in a law library to find out how the U.S. Supreme Court ruled in a given case. (p. 108)

#### Answers to Class Activity

a. *California v. Ciraolo* (1986)

**Facts:** Unable to see over Mike's 10-foot-high fence, police hire a plane and fly over the house at 1,000 feet and see marijuana plants growing in the backyard.

**Court holding: NO SEARCH.**

**Chief Justice Burger for the court:** “[T]he mere fact an individual has taken measures to restrict some view of his activities [does not] preclude an officer’s observations from a public vantage point where he has a right to be and which renders the activities clearly visible.... Any member of the flying public who glanced down could have seen everything that these officers observed... [We] readily conclude that respondent’s expectation that his garden was protected from such observation is unreasonable and is not an expectation that society is prepared to honor.”

**Justice Powell dissenting:** “[T]he Court believes that citizens bear the risk that air travelers will observe activities occurring within backyards... This risk, the Court appears to hold, nullifies expectations of privacy.... This line of reasoning is flawed. First, the actual risk to privacy from commercial or pleasure aircraft is virtually nonexistent. Travelers... normally obtain at most a fleeting, anonymous, and non-discriminating glimpse of the landscape and buildings over

which they pass.... [On the other hand] [a]erial surveillance is nearly as intrusive on family privacy as physical trespass into the curtilage.”

a. *Florida v. Riley* (1989)

**Facts:** Wanting to see inside Riley’s partially covered greenhouse, police fly a helicopter at 400 feet and take a look.

**Court holding: NO SEARCH**

**Justice White for the court:** “Any member of the public could legally have been flying over Riley’s property in a helicopter at the altitude of 400 feet and could have observed Riley’s greenhouse.”

**Justice Brennan dissenting:** “The question before us must not be whether the police were where they had a right to be, but whether public observation of Riley’s curtilage was so commonplace that Riley’s expectation of privacy in his backyard could not be considered reasonable.”

b. *Smith v. Maryland* (1979)

**Facts:** Police install a device at the phone company office that keeps track of the numbers that Gilbert dials from his home phone.

**Court holding: NO SEARCH**

**Justice Blackmun for the court:** “When he used his phone, petitioner voluntarily conveyed numerical information to the telephone company and ‘exposed’ that information to its equipment in the ordinary course of business. In so doing, petitioner assumed the risk that the company would reveal to police the numbers he dialed.”

**Justice Marshall dissenting:** “[I]t does not follow that [people] expect this information to be made available to the public in general or the government in particular. Privacy is not a discrete commodity, possessed absolutely or not at all. Those who disclose certain facts to a bank or phone company for a limited business purpose need not assume that this information will be released to other persons for other purposes.”

c. *California v. Greenwood* (1988)

**Facts:** Suspecting drug dealing, police have the trash collector turn over Bill’s trash to them instead of throwing it in the trash truck.

**Court holding: NO SEARCH**

**Justice White for the court:** “[W]e conclude that respondents exposed their garbage to the public sufficiently to defeat their claim to Fourth Amendment protection. It is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public.”

**Justice Brennan dissenting:** “The mere possibility that unwelcome meddlers might open and

rummage through the containers does not negate the expectation of privacy in its contents any more than the possibility of a burglary negates an expectation of privacy in the home; or the possibility that an operator will listen in on a telephone conversation negates an expectation of privacy in the words spoken on the telephone.”

d. **Katz v. U.S. (1967)**

**Facts:** The FBI listens to Joe’s conversation by attaching an electronic eavesdropping device to the outside of the public telephone booth he uses at 11 a.m. every day.

**Court holding: SEARCH**

**Justice Stewart for the court:** “The Government’s activities in electronically listening to and recording the petitioner’s words violated the privacy upon which he justifiably relied while using the telephone booth and thus constituted a ‘search and seizure’ within the meaning of the Fourth Amendment. The fact that the electronic device employed to achieve that end did not happen to penetrate the wall of the booth can have no constitutional significance.”

**Justice Black dissenting:** “A conversation overheard by eavesdropping, whether by plain snooping or wiretapping, is not tangible and, under the normally accepted meanings of the words, can neither be searched nor seized.”

e. **Arizona v. Hicks (1987)**

**Facts:** Investigating a shooting, police legally enter an apartment looking for weapons and the shooter. While inside, an officer spots a high-priced stereo, which seems out of place in the rundown apartment. The officer picks it up, jots down the serial number, puts it down, calls headquarters, and finds out the stereo is stolen.

**Court holding: SEARCH**

**Justice Scalia for the court:** “Officer Nelson’s moving of the equipment... did constitute a ‘search’ separate and apart from the search for the shooter, victims, and weapons.... Merely inspecting those parts of the turntable that came into view during the latter search would not have constituted an independent search, because it would have produced no additional invasion of respondent’s privacy interest.... But taking action, unrelated to the objectives of the authorized intrusion, which exposed to view concealed portions of the apartment or its contents, did produce a new invasion of respondent’s privacy.... A search is a search, even if it happens to disclose nothing but the bottom of a turntable.”

**Justice O’Connor dissenting:** “[I]f police officers have a reasonable, articulable suspicion that an object they come across during the course of a

lawful search is evidence of crime, in my view they may make a cursory examination of the object to verify their suspicion. If the officers wish to go beyond such a cursory examination of the object, however, they must have probable cause.”

f. **Oliver v. U.S. (1986)**

**Facts:** Oliver posts “no trespassing” signs around his land and locks the gate to his property. Police go onto a highly secluded part of his land about a mile from his house and find marijuana plants growing.

**Court holding: NO SEARCH.**

**Justice Powell for the court:** “The Amendment does not protect the merely subjective expectation of privacy, but only those ‘expectation[s] that society is prepared to recognize as “reasonable.” ’ [A]n individual may not legitimately demand privacy for activities conducted out of doors in fields, except in the area immediately surrounding the home.... [O]pen fields do not provide the setting for those intimate activities that the Amendment is intended to shelter from government interference or surveillance. There is no societal interest in protecting the privacy of those activities, such as the cultivation of crops that occur in open fields. Moreover, as a practical matter these lands usually are accessible to the public and the police in ways that a home, an office, or commercial structure would not be. It is not generally true that fences or ‘No Trespassing’ signs effectively bar the public from viewing open fields in rural areas.”

**Justice Marshall dissenting:** “[The] law not only recognizes the legitimacy of Oliver’s and Thornton’s insistence that strangers keep off their land, but subjects those who refuse to respect their wishes to the most severe of penalties — criminal liability. Under these circumstances, it is hard to credit the Court’s assertion that Oliver’s... expectations of privacy serve not of a sort that society is prepared to recognize as reasonable.... [A] deliberate entry by a private citizen onto private property marked with ‘No Trespassing’ signs will expose him to criminal liability. I see no reason why a government official should not be obliged to respect such unequivocal and universally understood manifestations of a landowner’s desire for privacy.”

g. **Bond v. U.S. (2000)**

**Facts:** A Border Patrol agent boards a bus in Texas. As he walks down the aisle, he squeezes the luggage that passengers have stored above their seats. When he squeezes Bond’s bag, he feels a suspicious “brick-like” object, which the agent believes to be a “brick” of methamphetamine.

**Court holding: SEARCH.**

**Justice Rehnquist for the court:** “Our Fourth Amendment analysis embraces two questions. First, we ask whether the individual, by his conduct, has exhibited an actual expectation of privacy; that is, whether he has shown that ‘he [sought] to preserve [something] as private.’ Here, petitioner sought to preserve privacy by using an opaque bag and placing that bag directly above his seat.... Second, we inquire whether the individual’s expectation of privacy is ‘one that society is prepared to recognize as reasonable.’ When a bus passenger places a bag in an overhead bin, he expects that other passengers or bus employees may move it for one reason or another. Thus, a bus passenger clearly expects that his bag may be handled. He does not expect that other passengers or bus employees will, as a matter of course, feel the bag in an exploratory manner. But this is exactly what the agent did here.”

**Justice Breyer dissenting:** “How does the ‘squeezing’ just described differ from the treatment that overhead luggage is likely to receive from strangers in a world of travel that is somewhat less gentle than it used to be? I think not at all.... ‘[A]ny person who has travelled on a common carrier knows that luggage placed in an overhead compartment is always at the mercy of all people who want to rearrange or move previously placed luggage’ .... The trial court, which heard the evidence, saw nothing unusual, unforeseeable, or special about this agent’s squeeze. It found that Agent Cantu simply ‘felt the outside of Bond’s softside green cloth bag,’ and it viewed the agent’s activity as ‘minimally intrusive touching.’ ”

**h. *Kyllo v. U.S.* (2001)**

**Facts:** Suspecting that Danny was growing marijuana in his house, federal agents scanned the house with a thermal imager to see whether it was emitting abnormal amounts of heat consistent with lamps for growing marijuana.

**Court holding: SEARCH.**

**Justice Scalia for the court:** “We think that obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical ‘intrusion into a constitutionally protected area’ constitutes a search — at least where (as here) the technology in question is not in general public use. This assures preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted. On the basis of this criterion, the information obtained by the thermal imager in this case was the product of a search.”

**Justice Stevens dissenting:** “All that the infrared camera did in this case was passively measure

heat emitted from the exterior surfaces of petitioner’s home; all that those measurements showed were relative differences in emission levels, vaguely indicating that some areas of the roof and outside walls were warmer than others. As still images from the infrared scans show,... no details regarding the interior of petitioner’s home were revealed. Unlike an x-ray scan, or other possible ‘through-the-wall’ techniques, the detection of infrared radiation emanating from the home did not accomplish ‘an unauthorized physical penetration into the premises,’ nor did it ‘obtain information that it could not have obtained by observation from outside the curtilage of the house.’ ”

**I. *Illinois v. Caballes* (2005)**

**Facts:** Police stop Roy for a traffic violation. During the stop, an officer walks a drug-sniffing dog around the car, and the dog “alerts” the officer to drugs in the trunk.

**Court holding: NO SEARCH**

**Justice Stevens for the court:** “[T]he use of a well-trained narcotics-detection dog — one that ‘does not expose noncontraband items that otherwise would remain hidden from public view,’ — during a lawful traffic stop, generally does not implicate legitimate privacy interests. In this case, the dog sniff was performed on the exterior of respondent’s car while he was lawfully seized for a traffic violation. Any intrusion on respondent’s privacy expectations does not rise to the level of a constitutionally cognizable infringement.”

**Justice Souter dissenting:** “[I]n practice the government’s use of a trained narcotics dog functions as a limited search to reveal undisclosed facts about private enclosures, to be used to justify a further and complete search of the enclosed area. And given the fallibility of the dog, the sniff is the first step in a process that may disclose ‘intimate details’ without revealing contraband, just as a thermal-imaging device might do....”

**j. *U.S. v. Jones* (2012)**

**Facts:** Without Jones’ knowledge, police install a GPS device on his car and track where he goes in his car for a month. The tracking shows Jones makes frequent visits to a particular address, linking him to a drug conspiracy.

**Court holding: SEARCH.** All nine justices agreed it was a search, but split 5–4 on the reasoning.

**Justice Scalia for the court:** “It is important to be clear about what occurred in this case: The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a ‘search’ within the meaning of the Fourth Amendment when it was adopted.”

**Justice Alito concurring:** “[T]he use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy. For such offenses, society’s expectation has been that law enforcement agents and others would not — and indeed, in the main, simply could not — secretly monitor and catalogue every single movement of an individual’s car for a very long period.”

**k. Florida v. Jardines (2012)**

**Facts:** Police receive an unverified tip that Jardines is growing marijuana in his home. Police take a drug-sniffing dog to Jardines’ front door, and the dog “alerts” officers that drugs are in the house.

**Court holding:** To be decided in the term beginning October 2012. Look for an update on the case at [www.CriminalJusticeInAmerica.org](http://www.CriminalJusticeInAmerica.org).

**Answers to Debriefing Questions** (p. 109)

1. What is the test used by the Supreme Court to determine whether a search has taken place?

The question is: Has the government intruded into something in which a person has a reasonable expectation of privacy?

2. Do you think this is a good test? Explain.  
Accept reasoned answers.
3. Do you think the Supreme Court has applied this test satisfactorily in these cases? Why or why not?  
Accept reasoned answers.
4. A few police departments have begun using drones, which can observe people for 20 hours straight, flying high above noiselessly and out of sight. Is using a drone a search?  
Accept reasoned answers.

**Lesson Sequence 3**

**Is the Search and Seizure Reasonable?:** Reading and discussion about this second, final question in analyzing search-and-seizure cases, with a focus on probable cause and the requirements for obtaining a search warrant. (p. 110)

**Answers to Discussion Questions** (p. 110)

1. What is a search warrant? What do police officers have to prove before they can get a warrant from a judge?  
A warrant is a court order issued by a judge authorizing a search. The warrant must specifically describe the place to be searched and the items or persons to be seized. Police officers have to prove that there is probable cause to believe that a crime has been or is about to be committed and the person, place, or thing to be searched or seized is related to that crime.
2. Why do you think courts require police officers to obtain warrants? Why are search warrants so important?

Search warrants are important to protect individuals from unreasonable searches and seizures. A warrant requires a judge to make an independent judgment that police have probable cause to make a search.

3. When do you think it might be reasonable for a police officer to make a search without a warrant? Explain.

Accept reasoned answers. Possible answers: It is reasonable for a police officer to make a search without a warrant when there is a need for immediate police action to protect the safety of officers and the public, to ensure that evidence will be seized before it can be hidden or destroyed, and to help apprehend suspects or prevent their escape.

**Class Activity: The Warrant** — Students create and evaluate search warrants for a hypothetical case. (p. 112)



**Lesson Sequence 4**

**The Motor Vehicle Exception:** Reading and discussion on the motor vehicle exception to the warrant requirement, with a focus on the Supreme Court case of *U.S. v. Ross* (1982). (p. 113)

**Answers to Discussion Questions** (p. 114)

1. Did Detective Marcum’s opening of Bandit’s car trunk constitute a search? What about the brown paper bag? The cellophane envelopes? Explain your answers.  
Yes, Detective Marcum’s opening of Bandit’s car trunk, brown paper bag, and cellophane envelopes constituted a search because the government intruded into something in which Bandit had a reasonable expectation of privacy. (This true even of the cellophane envelopes, which are transparent but were not in plain view.)
2. Assume that opening the trunk, brown bag, and cellophane envelopes were searches. Do you think they were reasonable under the circumstances or should the officers have secured a warrant first? Why?  
Accept reasoned answers. Students arguing that the searches are reasonable cannot simply argue that the police had probable cause, because this would do away with the warrant requirement. Students must articulate reasons why a warrant should not be required in this situation.
3. Was unzipping the red leather pouch at the police station a search? If so, was it reasonable under the circumstances or should the officers have obtained a warrant first? Why?  
Unzipping the red leather pouch at the police station was a search. Accept reasoned answers on

whether it was reasonable. Again, students must articulate reasons beyond that the police had probable cause.

4. Why did the court carve out an exception to the warrant requirement in automobile searches? What reasons did the dissenters give in opposing it? Do you agree with the decision in *Ross*? Why or why not?

The court carved out an exception to the warrant requirement in automobile searches because if the police had to wait to get a warrant, motor vehicles could easily be moved and any evidence in them concealed or destroyed.

Dissenters opposed this exception because they believe that a container in an automobile could easily be seized and immobilized while the police are obtaining a warrant.

### Lesson Sequence 5

**The Stop and Frisk Exception:** Reading and discussion on the stop and frisk exception initiated by the Supreme Court case of *Terry v. Ohio* (1968) and elaborated on in these subsequent decisions: *Florida v. J.L.* (2000), *Illinois v. Wardlow* (2000), *U.S. v. Arvizu* (2002), and *Hiibel v. Nevada* (2004). (p. 116)

#### Answers to Discussion Questions (p. 119)

1. The lone dissenter in *Terry* was Justice William O. Douglas. He said that if it was necessary to create a standard other than probable cause, then the Constitution should be amended. Otherwise, he said, the court was creating an unconstitutional standard. Do you agree with Douglas? Why or why not?

Accept reasoned answers. In their answers, students should show that they understand what the two standards are and that only one of them (probable cause) is mentioned in the Constitution. Probable cause is evidence strong enough to give a careful person good reason to believe it. Reasonable suspicion is evidence that would make an experienced police officer suspicious that a crime had happened or was about to happen.

2. What did the court decide in *Florida v. J.L.*? Do you agree? Explain.

The court decided that the search was illegal because the police did not independently establish reasonable suspicion, but rather received an unreliable tip from an unknown person.

3. How were the reasons for stopping J.L. different from those for stopping and questioning Hiibel?

J.L. was stopped because his appearance matched an informant's description. Hiibel was questioned because the police were responding to an incident that was reported to them.

4. Do you think the circumstances in *Wardlow* gave officers reasonable suspicion that criminal activity was going on? Explain.

Accept reasoned answers. The discussion should focus on whether an experienced officer would be suspicious of a teenager in a high crime neighborhood if the teenager took off running upon the sight of police cars. Note: The teenager could be running to avoid being caught for being involved in a crime, or the teenager could be running to avoid danger.

5. *Arvizu* was decided shortly after September 11, 2001. Some critics say this explains the unanimous decision. Do you think the reasonable suspicion was overwhelmingly clear? Explain.

Accept reasoned answers.

6. What was the decision in *Hiibel*? Do you agree with it? Explain.

The U.S. Supreme Court in a 5–4 decision in *Hiibel v. Nevada* upheld the Nevada law requiring people (who police have reasonable suspicion to believe are engaged in criminal activity) to identify themselves. The court noted that asking people their names is a routine part of *Terry* stops and serves important government interests. The court reasoned the law did not violate his Fifth Amendment right preventing self-incrimination, as his refusal was not based on a fear that his name would be used to incriminate him.

As to whether students agree with the decision, accept reasoned answers.

**Class Activity: The Next Decision** — Students role play the U.S. Supreme Court deciding whether a law is constitutional that requires suspects stopped with reasonable suspicion to answer police questions about what they are doing. (p. 119)

## R

### Lesson Sequence 6

**Other Exceptions:** Reading and discussion about other recognized exceptions to the warrant requirement, such as incident to lawful arrest, consent, hot pursuit, emergency situations, airline, border, and custom searches. (p. 120)

#### Answers to Discussion Questions (p. 122)

1. What reasons do the court consider in making exceptions to the warrant requirement? What are the dangers in making exceptions?

The court considers the safety of officers and the public, the possibility evidence will be hidden or destroyed, and whether the exception will help apprehend suspects or prevent their escape.

The danger is each exception erodes the Fourth Amendment protection.



2. The court has carved out several exceptions: motor vehicle searches, stop and frisks, searches incident to a lawful arrest, consent searches, searches done in hot pursuit, searches in emergency circumstances, border searches, and airline security searches. What is the reason for each of these exceptions? Do you disagree with any of these exceptions? Why or why not?

Motor vehicle searches: Motor vehicles are mobile and evidence may be moved or destroyed.

Stop and frisks: Stopping criminal suspects is dangerous and officers may search for weapons in order to protect themselves.

Searches incident to a lawful arrest: These searches let police remove any weapons that the arrestee might use to resist arrest or effect his escape and to seize any evidence on the arrestee's person to prevent its concealment or destruction.

Consent searches: A person knowingly and voluntarily gives permission for the police to search.

Searches done in hot pursuit: It wouldn't be reasonable to wait for a warrant to enter a place the police saw a criminal suspect go when the police are following someone who just committed a crime.

Emergency situations: Failure to respond to an emergency based on lack of a warrant could cause physical harm to a victim, which could have been prevented had the officer entered without a warrant.

Border searches: These searches prevent people or items from entering the country illegally.

Airline security searches: These searches promote passenger safety.

As to whether students disagree with any of these exceptions, accept reasoned answers.

**Class Activity: Applying the Checklist** — Working in pairs, students apply the Search and Seizure Checklist to evaluate the legality of some hypothetical search and seizures. (p. 123)

**Answers to Class Activity** (p. 123)

**Case 1: Hans Metcalf.** Issue is whether a briefcase was abandoned property. If it was, then what police did was not a search and therefore no violation. The question is: Do you have a reasonable expectation that no one will search through belongings that you forget? If you do, then this would be a search, and since the police have no probable cause to make a search, it would be a violation.

**Case 2: Vivian Madison.** A search, but no violation because her roommate gave consent to the search and the roommate had a right to be in the garage.

**Case 3: Dan Lewis.** Clearly a warrantless search and seizure. The question is: Do any of the exceptions

apply? There seems to be no probable cause — mere suspicion. Lack of license plates on the car would allow a car stop, but not a search without probable cause. There is a question whether search of the trailer would be justified in any case since it is not attached to the car. No consent for the search. Person said, "Go away!" Wisp of smoke does not constitute emergency situation especially since the person told him to go away.

**Case 4: Betty Kim.** Clearly a warrantless search. Do any exceptions apply? No consent, because she told him to get out. Search of her pocket could conceivably be legal under stop and frisk doctrine, but this would be a real stretch. Even if this search and arrest are upheld, the search of the house is not incident to the arrest. The officer should have gone back and gotten a warrant to search the living room.

### Lesson Sequence 7

**Interrogation and Confessions:** Reading and discussion about Fifth Amendment restrictions on police, with a focus on the *Miranda* decision and the cases leading up to this decision. (p. 124)

**Answers to Discussion Questions** (p. 125)

1. The article lists six Supreme Court decisions invalidating confessions because they violated due process — *Brown*, *Ward*, *Ashcraft*, *Malinski*, *Leyra*, *Spano*, and *Lynum*. Would you trust the confessions as being reliable in any of these cases? Explain. Would you consider any of the confessions voluntary? Why or why not?

Accept reasoned answers.

2. What does the quotation (at the beginning of the article) from Supreme Court Justice Arthur J. Goldberg mean? : "We have learned the lesson of history, ancient and modern, that a system of criminal law enforcement which comes to depend on 'confession' will, in the long run, be less reliable than a system which depends on extrinsic evidence independently secured through skillful investigation." What did he mean by this? Do you agree? Why or why not?

He meant that tangible proof of criminal activity is more valuable than confessions, because confessions can be forced, and a reliance on them leads to less active police work to find the criminal.

As to whether students agree, accept reasoned answers.

3. What are the *Miranda* warnings? When do police have to give these warnings? What are the warnings supposed to prevent? Do you agree with the decision in *Miranda*? Explain.

The *Miranda* warnings are statements given to suspects before questioning that outline their rights. They are: (1) Suspects have the right to remain silent. (2) Anything they say may be used

against them in court. (3) They have a right to a lawyer. (4) If they want a lawyer but can't afford one, the court will appoint one before any questioning. Police have to give these warnings before questioning suspects in custody. The warnings are supposed to prevent coerced confessions and unconstitutional interrogations.

As to whether students agree with the *Miranda* decision, accept reasoned answers.

**Miranda's Aftermath:** Reading and discussion on how the Supreme Court has interpreted *Miranda*, with a focus on the meaning of "custody" and "interrogation," the public safety exception, *Dickerson v. U.S.*, *Missouri v. Seibert*, and *Berghuis v. Thompkins*. (p. 126)

**Answers to Discussion Questions** (p. 130)

1. When do police have to give *Miranda* warnings? Do you think a person should be considered in custody when police pull them over for a traffic stop? Explain. What is the test for whether a person is in custody? Do you agree with the court's decision in *Rhode Island v. Innis*? Why or why not?

Police have to give *Miranda* warnings before questioning suspects who are in custody.

People stopped briefly by police are not considered in custody because they will soon be on their way.

The test for custody: Would a reasonable person feel not at liberty to end an interrogation and leave?

The question in *Rhode Island v. Innis* is whether the officers' conversation within earshot of the suspect amounted to interrogation. Accept reasoned responses as to whether students agree with the decision.

2. According to the *Miranda* decision, why should the incriminating statement in the *Quarles* case be excluded from evidence? The court majority in *Quarles* said that the public safety exception did not give the police the right to coerce confessions from suspects. According to the *Miranda* decision, was *Quarles*' incriminating statement made in a coercive situation? Why or why not?

According to the *Miranda* decision, the incriminating statement in the *Quarles* case should be excluded from evidence because *Quarles* was questioned when he was in custody and before he was given *Miranda* warnings. (Note: the court created a public safety exception that says police do not have to give *Miranda* warnings when their questions are reasonably prompted by a concern for the public safety.)

Accept reasoned answers on whether *Quarles*' incriminating statement was made in a coercive situation, but note that *Miranda* found questioning in custody was inherently coercive.

3. Both the majority and dissenting opinions in *Quarles* stated that the decision would "lessen the desirable clarity" of the *Miranda* rule. Why is it desirable that the rule be clear?

It should be clear to police when they must give *Miranda* warnings. Lack of clarity will lead to more court cases challenging the admission of incriminating statements.

4. Do you think Section 3501 is constitutional? Explain.

Most legal commentators have long agreed that the section is not constitutional. Accept reasoned answers, but those who believe it is constitutional must argue that Section 3501 is an effective substitute for *Miranda* warnings.

5. Do you agree with the court's decision in *Seibert*? Why or why not?

Accept reasoned answers.

6. Do you agree with the majority opinion that *Thompkins* waived his right to remain silent? Explain.

Accept reasoned answers.

7. When *Miranda* was decided, its critics claimed that suspects would stop making confessions. This claim has proved false. Suspects confess today as often as before *Miranda*. In fact, one commentator has stated that "next to the warning label on cigarette packs, *Miranda* is the most widely ignored piece of official advice in our society." Do you think *Miranda* sufficiently protects suspects' Fifth Amendment rights? Do you think it goes too far? Explain.

Accept reasoned answers.

8. Many police departments now commonly record — either on audio or video — all interrogations. Do you think this should be a requirement everywhere? Explain.

Accept reasoned answers.

**Ask an Expert:** Class invites a criminal attorney or a police officer to discuss briefly the *Miranda* decision and to take part in and debrief the activity **Taking the Fifth**. (p. 129)



**Class Activity: Taking the Fifth** — In pairs, students argue Fifth Amendment cases before a Supreme Court made up of other students. (p. 131)



**Answers to Class Activity** (p. 132)

- a. **Yarborough v. Alvarado (2004). Statements CAN be introduced.** In a 5–4 decision, the Supreme Court held that although reasonable jurists may differ on whether Alvarado was in custody, the California Court of Appeals ruled that he was not, and the Supreme Court found that this was a reasonable decision considering prior case law.
- b. **Illinois v. Perkins (1990). Statements CAN be introduced.** In an 8–1 decision, the Supreme Court held that Perkins’ Fifth Amendment rights were not violated. Since Perkins believed he was talking with another inmate, there was no coercion or “police-dominated atmosphere.”
- c. **Duckworth v. Eagan (1989). Statements CAN be introduced.** In a 5–4 decision, the Supreme Court ruled that the warning given “touched all the bases required by *Miranda*.... The Court in *Miranda* emphasized that it was not suggesting that ‘each police station must have a “station house lawyer” present at all times to advise prisoners.’ .... If the police cannot provide appointed counsel, *Miranda* requires only that the police not question a suspect unless he waives his right to counsel. Here, respondent did just that.”
- d. **Arizona v. Mauro (1987). Statements CAN be introduced.** In a 5–4 decision, the Supreme Court held that the police did not send Mrs. Mauro to elicit statements, nor did they subject Mauro to “compelling influences, psychological ploys, or direct questioning. Thus, his volunteered statements cannot properly be considered the result of police interrogation.”
- e. **Edwards v. California (1981). Statements CAN NOT be introduced.** In a 9–0 decision, the Supreme Court held that once a defendant requests a lawyer, the police may not contact the defendant again to see if he has changed his mind. They must deal with the lawyer unless the defendant initiates the contact.
- f. **Fare v. Michael C. (1979). Statements CAN be introduced.** In a 6–3 decision, the Supreme Court held that a lawyer has a unique ability to protect a suspect’s rights. A request for a person other than a lawyer is not the same. The court explained that a lawyer understands the criminal process and has the official status to object to wrongful police actions. He or she is the only one who can be summoned and have the effect of stopping police interrogation. Otherwise, a suspect like Michael could ask for his coach, his music teacher, or his priest and still not receive the legal protections that made the *Miranda* rule necessary.
- g. **Oregon v. Mathiason (1977). Statements CAN be introduced.** A six-member majority Supreme

Court opinion stated: “He came voluntarily to the police station, where he was immediately informed that he was not under arrest. At the close of a one half-hour interview respondent did in fact leave the police station without hindrance. It is clear from these facts that Mathiason was not in custody ‘or otherwise deprived of his freedom of action in any significant way.’ ”

- h. **Beckwith v. U.S. (1976). Statements CAN be introduced.** A six-member majority opinion held that Beckwith was not in custody and therefore *Miranda* warnings were not required. Beckwith could have told the agents to leave at any time.

**Lesson Sequence 8**

**The Exclusionary Rule:** Reading and discussion about the rule, *Mapp v. Ohio*, and other Supreme Court decisions. (p. 133)

**Answers to Discussion Questions** (p. 135)

1. What is the exclusionary rule? Why was it established? What two justifications are given for it?

The exclusionary rule states that no illegally obtained evidence may be presented in court to convict a defendant whose constitutional rights have been violated.

It was created by the courts to compel police to respect the constitutional rights of suspects.

Judicial integrity and deterrence are the two justifications given for it. Judicial integrity deals with the necessity of the legal system to maintain its legality by refusing admission of illegally obtained evidence. Deterrence deals with effectively discouraging police lawlessness in searches and seizures by refusing to admit illegally obtained evidence.

2. Do you think it is necessary? Why or why not?

Accept reasoned answers. Note that answers should discuss the justifications for the rule (mentioned in question 1) and criticisms listed in the text, such as criminals escaping convictions due to errors made by the police.

3. What exceptions has the Supreme Court carved out to the exclusionary rule? Do you think each of them should be an exception? Explain.

The exceptions carved out are:

If criminal defendants testify in their own defense, evidence illegally seized can be used to challenge the defendants’ testimony;

Evidence gathered by the police acting in good faith can be admitted if the police acted on a search warrant that later turns out to be defective as a result of a technical or judicial error.

Evidence found due to a police record-keeping error as long as the error is not on purpose or common practice.

Evidence discovered after a violation of the knock-and-announce rule can be admitted.

As to whether each should be an exception, accept reasoned answers.

**Fruit of the Poisonous Tree:** Brief reading and discussion about this doctrine and its exceptions. (p. 134)

**Answers to Discussion Questions** (p. 134)

1. What is the fruit of the poisonous tree doctrine? Do you agree with this doctrine? Why or why not?

The doctrine holds that if illegally obtained evidence (the poisonous tree) leads to new police evidence (the fruit), this new evidence may not be used in court against the person whose rights have been violated.

As to whether students agree with the doctrine, accept reasoned answers.

2. What are the exceptions to the doctrine? Do they make sense? Why or why not?

The exceptions to the doctrine are:

Independent source — Police did not have to rely on the illegal evidence to find new evidence.

Inevitable discovery — Police would have found the evidence eventually.

Cleansed taint — The connection between the illegal action and the new evidence so weak as to be insignificant.

As to whether the exceptions make sense, accept reasoned answers.

**Class Activity: A Second Look at the Exclusionary Rule** — Students evaluate the pros and cons of the exclusionary rule and proposed changes to it. (p. 135)

## CHAPTER 9: THE LIMITS OF POLICE AUTHORITY

### Lesson Sequence 1

**Racial Profiling:** Reading and discussion about racial profiling, its constitutionality, and proposals for dealing with it. (p. 136)

**Answers to Discussion Questions** (p. 138)

1. A bank is robbed and the suspect is described as an Asian woman driving a red sports car. Police start looking for such a suspect. Is this a racial profile? Explain.

No, the police know the suspect is Asian.

2. Amnesty International in its 2004 report defined racial profiling as “the targeting of individuals and groups by law enforcement officials, even partially, on the basis of race, ethnicity, national origin, or religion, except where there is trustworthy information, relevant to the locality and timeframe, that links persons belonging to one of the aforementioned groups to an identified

criminal incident or scheme.” Do you think this is a good definition of racial profiling? Explain.

Accept reasoned answers.

3. Do you think profiling is an effective law-enforcement tool? If so, are its benefits worth its costs? Explain.

Accept reasoned answers.

4. Should police ever be allowed to consider race when deciding whether to stop someone?

Accept reasoned answers.

**Class Activity: What Should Be Done About Profiling?** — Students role play advisers to a governor who is considering legislation on racial profiling. (p. 138)

### Lesson Sequence 2

**Police Corruption:** Reading and discussion about the problem of corruption in our nation’s police departments. (p. 139)

**Answers to Discussion Questions** (p. 140)

1. In your opinion, which type of corrupt officer is more dangerous — a grass eater or a meat eater? Why?

Grass eaters accept offered bribes but do not actively seek out bribes.

Meat eaters actively seek out bribes or other favors.

Answers should use the definitions as a basis to discuss which type is more dangerous.

2. Which type of corruption—that for personal benefit or for departmental benefit—do you think is more dangerous? Why?

Accept reasoned answers.

3. What do you think can be done to prevent police corruption? Explain.

Accept reasoned answers. Note that answers may mention four that are discussed in the book: (1) Get rid of victimless crimes. (2) Monitor police officers better. (3) Make internal review stronger. (4) Break down the blue wall of silence surrounding corruption.

**Class Activity: Preventing Corruption** — Students evaluate different proposals for preventing police corruption. (p. 140)

### Lesson Sequence 3

**Use of Force:** Reading and discussion about the limits on use of force by police. (p. 141)

**Answers to Discussion Questions** (p. 143)

1. Why might deciding what force is reasonable and necessary be difficult for a police officer in the field?

Factors such as fear, anger, darkness, and split-second changes can make deciding what force is reasonable and necessary difficult.

2. Do you think the Supreme Court’s decisions in *Tennessee v. Gardner* and *Scott v. Harris* are consistent with each other? Do you agree with decisions in each case? Explain.

Accept reasoned answers. The court majority in *Scott* would argue they are consistent. *Tennessee v. Gardner* only ruled that it was not reasonable to use deadly force to arrest someone unless that person posed a threat to another person. In *Scott v. Harris*, the defendant threatened the lives of innocent bystanders.

3. In *California v. Gilmore* (1988), Gilmore, a private citizen, found a man trying to burglarize his house. The man ran, but Gilmore yelled three times for him to halt and then fired his gun and killed the man. Gilmore was convicted of manslaughter, but a California Court of Appeals reversed his conviction. It stated that *Tennessee v. Garner* only limits what police officers may do, not private citizens, because the Fourth Amendment only applies to government officials. Under California law, any killing “necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed” is justifiable. So the court found the killing justifiable. Do you think private citizens should be able to shoot non-violent fleeing felons? Do you think police should be able to? Who should have more right to use force — police or private citizens? Why?

Accept reasoned answers.

**Class Activity: Split Second** — Students simulate police split-second decision making in two hypothetical situations and analyze their decisions. (p. 143)

**Ask an Expert:** Students find out their local police department’s policy on the use of deadly force. (p. 141)



### Lesson Sequence 4

**Policing the Police:** Reading and discussion about how citizen complaints about police are handled and issues raised when police are subject to prosecution. (p. 145)

**Answers to Discussion Questions** (p. 147)

1. There are several ways of disciplining problem officers — criminal prosecutions, civil lawsuits, departmental action, and citizen review boards. What are the strengths and weaknesses of each?

Criminal prosecutions: Strengths: officers can be charged with crimes. Weaknesses: it can be difficult to convict a police officer for using excessive force.

Civil lawsuits: Strengths: Can compensate victims and can have an effect on encouraging cities to root out problem officers. Weaknesses: Lawyers

will only take cases dealing with the most outrageous police misbehavior.

Departmental action: Strengths: Investigations done by other officers who know what police work is really like. Weaknesses: Police may be reluctant to police their own.

Citizen review boards: Strengths: Allow citizens to have more control over police behavior. Weaknesses: Boards may or may not have the power to carry out their recommendations. Many police officers believe citizen control boards hamper police work and that outsiders may be hostile to the police.

2. Who should police the police? How should it be done? Explain your answer.

Accept reasoned answers.

**Class Activity: A Board of Rights** — Students simulate a review board on police misconduct and decide two hypothetical cases. (p. 148)

**You and the Police:** Reading and discussion about what to do when stopped by police. (p. 151)

**Answers to Discussion Questions** (p. 151)

1. How can you best assure mutual respect between you and the police?

Accept reasoned answers, but emphasize the importance of being courteous and cooperative, noting police badge numbers if dissatisfied, and reporting complaints later.

2. Do you think mutual respect between you and the police is important? Why or why not?

Accept reasoned answers.

3. Why is it important not to resist police?

If you resist the police, they can use whatever force is reasonable and necessary to stop you.

## Unit 3: The Criminal Case

**Overview:** A four-chapter unit covering the criminal court system and every key step in the investigative, pretrial, and trial phases of a criminal case. The unit features an expanded mock trial hypothetical in which students assume the major roles of attorneys, judges, and jurors to apply criteria to make decisions and judgments affecting the case.

**Objectives:** By the completion of this unit, students will be able to:

1. Identify and describe the function of major roles in the criminal case process including police, prosecuting attorneys, defense attorneys, hearing and trial judges, and jurors.
2. Describe the structure of state and federal courts.
3. Express a reasoned opinion on what are valid reasons for supporting or opposing judges in retention elections.
4. Express a reasoned opinion on which rights are most important for criminal defendants.
5. Identify factors used in determining bail and apply them to hypothetical bail situations.
6. Describe the role of prosecutorial discretion and plea bargaining.
7. Identify and describe the concepts of probable cause, burden of proof, and reasonable doubt.
8. Write a reasoned opinion on whether a gag order should be issued in a hypothetical case.
9. Identify key steps in a criminal trial.
10. Identify and apply factors in selecting a hypothetical jury.
11. Compose an opening statement based on given criteria.
12. Distinguish between direct and circumstantial evidence and analyze hypotheticals on this basis.
13. Identify basic rules of evidence and state and support opinions about the admissibility of evidence on this basis.
14. Compose and present closing arguments based on given criteria.
15. State and support an opinion about the verdict in a hypothetical case.

### Introduction

AM 3.1

## CHAPTER 10: COURTS AND THE CASE PROCESS

### Lesson Sequence 1

**The Two Systems of Criminal Courts:** Reading and discussion about the federal and state court systems. (p. 154)

### Answers to Discussion Questions (p. 155)

1. “We don’t have two systems of criminal justice. We have 51.” Do you agree? Explain.  
The two systems refers to the state and federal criminal court systems. The reference to 51 systems means that each state has its own criminal court system in addition to the federal court system.  
As to whether students agree with the statement, accept reasoned answers.
2. What is discretionary jurisdiction? Why do you think the U.S. Supreme Court and many state supreme courts have this type of jurisdiction?  
Discretionary jurisdiction means that the court does not have to take every appeal and that parties must petition to have their appeals heard by the court.  
The reason these courts have this type of jurisdiction is due to the huge number of appeals they would otherwise have to hear.
3. Under what circumstances could the U.S. Supreme Court overrule a state Supreme Court’s interpretation of its state’s law? Explain.  
The U.S. Supreme Court could overrule a state Supreme Court’s interpretation of its state law if the state Supreme Court’s interpretation violates the U.S. Constitution.

### Lesson Sequence 2

**Special Courts:** Reading and discussion about drug, mental health, and veterans courts. (p. 156)

### Answers to Discussion Questions (p. 157)

1. How are the special courts similar? Different?  
Special courts are similar in purpose — they are in place to help people in special circumstances who committed crimes. They are in place to rehabilitate the offenders and keep the rates of recidivism low.  
They are different in the offenders they target, i.e., non-violent drug users are eligible for drug courts, mentally ill patients may go through mental health courts, and veterans courts are available for those with PTSD or other war-related disorders.
2. What benefits do you see? Drawbacks? Do you think each is a good idea? Explain.  
Benefits: Individuals get help to prevent repeat offenses, which, if successful, can reduce burdens on taxpayers, keep families united, and promote safety.  
Drawbacks: Concerns over special treatment, that some programs allow violent offenders, and whether the programs work.  
Accept reasoned answers as to other benefits and drawbacks and to whether each is a good idea.

### Lesson Sequence 3

**Judges and Judicial Independence:** Reading and discussion about federal and state judges, how they are selected and removed, and the importance of judicial independence. (p. 158)

#### Answers to Discussion Questions (p. 159)

1. What is judicial independence? Why is it important?

Judicial independence refers to the fair and impartial nature of judges. Judges are expected to base their decisions on the law and never be swayed by politics or popular opinion. This is important to ensure fair and objective rulings. Our democracy depends on an independent judiciary.

2. What are the differences between the way state and federal judges are selected and removed?

All federal judges are appointed by the president, confirmed by the Senate, and serve for life. Federal judges can only be removed by impeachment and conviction: The U.S. House of Representatives can vote to impeach any federal judge for “treason, bribery or other high crimes or misdemeanors.” The Senate then tries the judge. Two-thirds of the Senate must vote to convict.

For states, it varies. About 20 states hold direct elections for judges. But judges can’t make campaign promises about how they will rule. For this reason, most states have moved away from direct election of judges. The governor usually appoints all state appellate court judges and most trial court judges. In some states the governor makes selections from a list prepared by a judicial commission, which searches for the most qualified judicial candidates. Appellate judges usually go on the ballot after being appointed in order to see if the people want to retain them as judges. Many states can recall a judge if they believe that judge does not belong on the bench.

3. What do you think the best system of selecting and removing judges would be? Why?

Accept reasoned answers.

**Class Activity: Retention Election** — Students role play voters deciding whether to retain three justices on the state supreme court. (p. 159)

### Lesson Sequence 4

**Criminal Lawyers:** Reading and discussion on the role of prosecutors and defense attorneys. (p. 160)

#### Answers to Discussion Questions (p. 163)

1. What does it mean that prosecutors and defense attorneys are “officers of the court”?

It means that prosecutors and defense attorneys have the job of protecting the integrity of the justice system.

2. Do you think defense attorneys should defend people they know are guilty? Why or why not?

Accept reasoned answers. But students should understand the importance of the right to a fair trial, that the entire power of the government is lined up against the defendant, and that the defense attorney is there to protect the rights of the defendant, who must be proved to be guilty beyond a reasonable doubt.

3. Do you think indigent criminal defendants should be provided lawyers? Explain.

Accept reasoned answers. Students should note the quote by Justice Hugo Black, which states that “any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”

4. In 1979 in *Scott v. Illinois*, the Supreme Court refused to overturn the misdemeanor shoplifting conviction of a man who was tried without a defense attorney because he could not afford one. The statute he was convicted under authorized up to a year in jail but the trial judge sentenced him to pay a \$50 fine. The Supreme Court ruled 6–3 that since the judge imposed no prison time, the sentence could stand. Do you agree with this decision? Explain.

Accept reasoned answers. Possible answers may include — yes, because the judge did not impose a severe sentence, or no, because it violates the Sixth Amendment, which states that in “all criminal prosecutions, the accused shall enjoy the right .... to have the assistance of counsel for his defense.”

5. The California Commission on the Fair Administration of Justice listed seven examples of egregious misconduct. Which do you think is the worst? Why?

Accept reasoned answers. The seven types of egregious misconduct are: Lying to court, appearing in a judicial proceeding while under the influence of illicit drugs or alcohol, engaging in willful unlawful discrimination in a judicial proceeding, willful *Brady* violations, willful presentation of material perjured testimony, willful unlawful disclosure of victim or witness information, failure to properly identify oneself in interviewing a victim or witness.

**Class Activity: Prosecutorial Misconduct** — In small groups, students examine actual cases of alleged prosecutorial misconduct, identify the alleged misconduct, decide whether it amounts to misconduct in their opinion, and if it is, students decide whether the prosecutor should be penalized and whether the defendant deserves a new trial. (p. 163)

#### Answers to Class Activity (pp. 163–164)

Accept reasoned answers on the questions. Below are excerpts from court opinions on each case. The

opinions only address the issue of a new trial and not whether the prosecutor should be disciplined.

### ***U.S. v. Sanchez (2011)***

Prosecutorial Misconduct Claim: “[T]he prosecutor chose to present the argument in a manner that urged the jury to look beyond the facts of the particular case, and to consider that an acquittal might lead to future lawbreaking not just by Sanchez, but by drug couriers throughout the United States and Mexico. The prosecutor’s statement did not merely comment on the evidence and arguments in the case, but also ‘appeal[ed] to the passions, fears and vulnerabilities of the jury’ by suggesting that an acquittal would make it easier for drugs to come into the United States.”

Decision: Conviction reversed and new trial ordered.

Reasoning: “Because the sole issue in Sanchez’s case centered on witness credibility, the ‘send a memo’ statement likely affected the jury’s ability to decide the case fairly. We cannot comfortably assume that the jury would have convicted Sanchez absent the prosecutor’s misconduct, given the scarcity of evidence for either side on the duress claim, other than Sanchez’s testimony. Moreover, the prosecutor presented the ‘send a memo’ rhetoric during his rebuttal, thus ensuring that it was the last argument the jury heard before going to the jury room to deliberate. This timing increased the risk that the inflammatory statement would improperly influence the jurors.”

### ***Bordenkircher v. Hayes (1978)***

Prosecutorial Misconduct Claim: The issue is whether it is proper for a prosecutor to threaten to go back and indict the defendant on new charges if he does not accept the plea agreement and “save the court the inconvenience and necessity of a trial.”

Decision: The Court of Appeals reversed the conviction, but then the U.S. Supreme Court affirmed it. The Supreme Court found no violation of due process.

**Justice Stewart for the court:** “Hayes was properly chargeable under the recidivist statute .... In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion. Within the limits set by the legislature’s constitutionally valid definition of chargeable offenses, ‘the conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation’ so long as ‘the selection was [not] deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification.’ “

**Justice Powell, dissenting:** “In this case, the prosecutor’s actions denied respondent due process because their admitted purpose was to discourage and then to penalize with unique severity his exercise of constitutional

rights [to a trial]. Implementation of a strategy calculated solely to deter the exercise of constitutional rights is not a constitutionally permissible exercise of discretion.”

### ***Coe v. Bell (1998)***

Prosecutorial Misconduct Claim: The issue is whether making an appeal to the Bible instead of the law is proper.

Decision: The Court of Appeals upheld the conviction.

Reasoning: “Although we find these statements inappropriate, we cannot conclude that they so tainted the proceedings that they constitute reversible error.”

**Ask an Expert:** Students invite a representative from a local law school to explain requirements and courses offered. (p. 162)



## **Lesson Sequence 5**

**The Rights of Criminal Defendants:** Reading and discussion on the various rights of criminal defendants found in the U.S. Constitution and Bill of Rights. (p. 164)

### **Answers to Discussion Questions (p. 169)**

1. What is a writ of habeas corpus? Why do you think it is important?

The writ of habeas corpus is a court order to an official holding someone in custody that orders the official to deliver the person to the court.

It is important because it allows the court to decide whether the person is being held illegally, and if so, to order the executive branch to release the prisoner. Many criminal appeals are petitions for a writ of habeas corpus.

2. What is double jeopardy? Do you think *U.S. v. Lanza* was correctly decided? Explain.

Double jeopardy is a constitutional protection against being tried a second time for the same crime after having already been found not guilty.

As to the decision in *U.S. v. Lanza*, accept reasoned answers.

3. What is due process of law?

Due process of law is fair procedures. It includes all the protections accorded by English common law. These include: notice, an opportunity to be heard, and the right to defend in an orderly proceeding, in addition to those listed in the text.

### **Class Activity: Which Rights Are Most Important?**

— Students rank the due process rights in order of importance. (p. 169)



## Lesson Sequence 6

**The Criminal Case Process:** Reading and discussion about adversarial fact-finding. (p. 170)

### Answers to Discussion Questions (p. 171)

1. What is the main purpose of the criminal-case process?

The criminal-case process exists to find the truth.

2. What is the adversarial system? How does it aid truth finding in a criminal case? What might be some weaknesses in the system?

The adversarial system allows attorneys to present evidence and arguments to a neutral fact finder (a judge or jury). It aids truth finding in a criminal case by allowing each side to strictly examine the other. Some weaknesses of the system come from human bias and prejudice, and also advocates may pursue their side so strongly that the truth gets lost.

3. What are some checks and balances found in the criminal-case process?

Checks and balances of the criminal-case process include: removing judges and jurors for bias or prejudice, swearing of witnesses to tell the truth, following the rules of evidence, and binding lawyers to a code of ethics.

**Class Activity: Just the Facts** — Students analyze the facts of a hypothetical criminal case. (p. 172)

**Using this Unit:** Explanation of the unit’s format, including information about the case guide, key steps, case notes, and activities, and their symbols. (p. 172)

## CHAPTER 11: INVESTIGATION AND ARREST

### Lesson Sequence 1

**Key Step: Arrest:** Brief explanation of arrest and its purpose. (p. 174)

**Police Crime Investigation Report:** Reading and discussion about the police report for the mock case of *People v. Evans*. (p. 174)

### Answers to Discussion Questions (p. 176)

1. To arrest Evans, Lt. Jackson must have had **probable cause**. Probable cause means that the officer has enough evidence to cause a reasonable person to believe that a crime was committed and that the suspect committed it. Murder is often defined as the unlawful killing of a human being with **malice aforethought**. “Malice aforethought” refers to the state of mind of the person doing the killing. Malice aforethought can mean that the killer, with no serious provocation from the victim, either:
  - intended to kill,
  - intended to inflict great bodily harm, or

- intended to do any act where there was an obvious risk that death or great bodily injury might result.

What evidence did Lt. Jackson have that might give him probable cause to arrest Evans on a charge of murder? Explain your answer.

Lt. Jackson had statements from witnesses. These statements showed: Hanks had hit Evans over the head at the party, giving Evans a motive for the crime. Evans was still angry the next day, made threats against Hanks, asked how to work a shotgun, asked his girlfriend to drive him while he sat in the backseat, rode to Hanks’ truck, and the gun fired, killing Joyce Ann Miller.

2. According to the information gathered by Lt. Jackson, do we know for sure what happened inside the car at the moment the shotgun was fired? What else could have happened? What are some other ways the shooting could have taken place?

We do not know for sure what happened inside the car at the moment the shotgun was fired. The suspect could have intentionally fired the gun at the little girl, he could have fired it at Hanks’ truck and hit the little girl, he could have accidentally fired the weapon.

**Case Notes: State Criminal Code** — Description and discussion of mock homicide statutes for the *Evans* case. (p. 176)

### Answers to Discussion Questions (p. 176)

1. Under the laws of Joyce Ann Miller’s state, what is the major difference between the crimes of murder and manslaughter?

Murder requires malice aforethought and manslaughter is defined as any killing committed without malice aforethought.

2. What is malice aforethought? What is premeditation? (If necessary, review materials in “Murder,” pp. 12–13)

Malice aforethought is an actual or implied intention to kill with no provocation by the victim. Premeditation means the person reflected on the murder before committing it.

3. Reread section 274 of the state code. What is the major difference between first and second-degree murder?

First-degree murder is defined as all premeditated killings. Second-degree murder is defined as all other killings with malice aforethought.

4. Reread section 298 of the state code. What is the major difference between voluntary and involuntary manslaughter?

Voluntary manslaughter is intentional (though committed as a result of serious provocation or extreme anger) while involuntary manslaughter is unintentional.

**Class Activity: Is It Murder?** — Students work in pairs to apply the mock homicide statutes to hypothetical situations. (p. 177)

**Answers to Class Activity** (p. 177)

- a. **Mr. Jones:** Murder in the first degree [274(a)]: The long-term poisoning shows clear evidence of premeditation.
- b. **David:** Murder in the second degree [274(b)]: Malice aforethought is established by the intent to do an act with obvious risk of death or great bodily injury. This has been called an act with “an abandoned and malignant heart.”
- c. **Mary:** Voluntary Manslaughter [298(a)]: The killing was intentional but malice aforethought was not present because Mary was provoked and acted in uncontrolled anger.
- d. **Jim:** Involuntary Manslaughter [298(b)(1)]: The killing was unintentional but dangerous and unlawful. The case could be made for second-degree murder by arguing malice aforethought was established by the intent to act with an obvious risk of death or great bodily injury.
- e. **Donna:** Involuntary Manslaughter [298(2)(b)(2)]: The killing was unintentional and though her act may not have been unlawful, it was done with great carelessness and negligence.

**Case Notes: In the Defense of Thomas Evans:** Reading on Evans’ defense attorney’s interview with her client and her notes on the case. (p. 177)

## CHAPTER 12: PRETRIAL

### Lesson Sequence 1

**Key Step: First Appearance Before a Judge:** Brief explanation of the first court hearing in a criminal case. (p. 179)

**Case Notes: The Question of Bail:** Explanation of the bail system. (p. 179)

**Class Activity: Bail Hearing** — In small groups, students role play the prosecution, defense, and judge in a simulated bail hearing for the *Evans* case. (p. 180)

### Lesson Sequence 2

**Case Notes: Prosecutorial Review:** Explanation and discussion of prosecutorial review, including a mock dialogue among prosecutors discussing what charges to file in the *Evans* case. (p. 181)

**Answers to Discussion Questions** (p. 183)

1. In your own words, what is prosecutorial discretion? What are its advantages and disadvantages?  
Text definition of prosecutorial discretion: The prosecutors’ authority to decide what charges to bring and how to pursue a criminal case. They choose how to approach the case.

As to advantages and disadvantages, accept reasoned answers.

2. Review the factors in exercising prosecutorial discretion on page 182. Which do you think are valid? Which, if any, don’t you think should be used? Why?

Accept reasoned answers.

3. Review **What Should the Charge Be?** on page 182. Then answer the following questions:

- What is the doctrine of transferred intent? How does it apply to the *Evans* case? (Try drawing a diagram on the board using the characters from the case.)

The doctrine of transferred intent holds that the elements of a first-degree murder can be satisfied even if the defendant kills someone other than his intended victim. It applies to the *Evans* case because *Evans* may have intended to kill Oscar Hanks but instead killed a little girl.

- Why might Prosecutor Stein think that the facts do not support premeditation or transferred intent?

He might think this because there is little evidence that *Evans* intended to kill Hanks.

- Why did Prosecutor Stein argue against a charge of voluntary manslaughter? Explain your answer.

Stein argued against a charge of voluntary manslaughter because *Evans* had 12 hours to cool off.

- What additional evidence, if any, do the prosecutors need to make a decision?

Accept reasoned answers.

**Ask an Expert:** Class invites a criminal attorney to discuss prosecutorial review and to take part in and debrief the activity **The Prosecutor Decides**. (p. 183)



**Class Activity: The Prosecutor Decides** — In small groups, students go over various homicide charges and decide which charge to bring in the *Evans* case. (p. 184)



**Answers to Class Activity** (p. 184)

#### First-Degree Murder

- Is there evidence that Thomas *Evans* formed an intent to kill Oscar Hanks?

Yes. He told Robertson, “That man is going to pay in a big way.” This could mean he intended to kill him. Plus the other evidence mentioned under premeditation.

- Is there evidence of premeditation?  
Yes. Several things: What he said to Robertson, getting gun lessons from Robertson, loading the shotgun, and getting someone to drive the car.
- Is there evidence which would show that this intent was transferred to the killing of Joyce Ann Miller (using the doctrine of transferred intent)?  
Yes. His intent to kill Hanks could be transferred since he killed another person.

or

- Is there evidence to show that Thomas Evans formed an intent to kill and premeditated the killing of Joyce Ann Miller?

No. There is no evidence to support this.

### Second-Degree Murder

- Is there evidence that Thomas Evans formed an intent to kill Joyce Ann Miller?

No. He didn't even know her or realize she was there.

or

- Is there evidence that Thomas Evans had the intent to do an act where there was an obvious risk that death or great bodily harm would result?

Yes. He got a gun, learned how to use it, and fired it on a public street.

### Voluntary Manslaughter

- Is there evidence that Thomas Evans formed an intent to kill Oscar Hanks?

Yes. Same reasons as above.

- Is there evidence that Oscar Hanks seriously provoked the actions of Thomas Evans?

Yes. He hit Evans over the head with a bottle.

- Is there evidence that Thomas Evans did not have sufficient time to calm down after being provoked?

No. Evans had a full day to calm down.

### Involuntary Manslaughter

- Is there evidence that Thomas Evans committed an act in a criminally negligent manner?

Yes. Evans pointed a loaded shotgun out a car window.

### Decision

Considering all relevant factors, what crime would you charge Thomas Evans with?

Answers will vary.

### Lesson Sequence 3

**Plea Bargaining:** Reading and discussion on the plea-bargaining process, its pros and cons, and court decisions related to it. (p. 185)

### Answers to Discussion Questions (p. 186)

1. What are the advantages of plea bargains? What are the disadvantages? Do you think they should be banned? Explain?

Advantages: Saves money and time; saves victims of crimes from the emotional trauma of testifying; more criminals go to prison because of plea bargains.

Disadvantages: A trial does not take place to determine whether the defendant is guilty; an innocent person may go to prison just to make a deal; some argue it tarnishes the dignity of the justice system; others argue it results in defendants serving less time than they should.

As to whether it should be banned, accept reasoned arguments.

2. Assuming that plea-bargaining exists, do you think courts should be allowed to take *Alford* pleas? Why or why not?

An *Alford* plea is when the defendant claims innocence but pleads guilty because the evidence is against him.

Accept reasoned arguments on whether courts should be allowed to accept such pleas.

3. Justice Antonin Scalia dissented in all three cases extending the right of effective counsel to plea bargains. Below are comments he made about each case:

*Padilla v. Kentucky*: "The Sixth Amendment guarantees the accused a lawyer 'for his defense' against a 'criminal prosecutio[n]—not for sound advice about the collateral consequences of conviction."

*Missouri v. Frye*: "Counsel's mistake did not deprive Frye of any substantive or procedural right; only of the opportunity to accept a plea bargain to which he had no entitlement in the first place."

*Lafter v. Cooper*: The defendant has been fairly tried lawfully convicted, and properly sentenced, and any 'remedy' provided for this will do nothing but undo the just results of a fair adversarial process."

What points is he making in each case? How do you think the justices in the majority would respond? Do you agree with the majority opinion in each of these cases or the dissent? Explain.

In *Padilla v. Kentucky*, Justice Scalia states that the Sixth Amendment right to counsel is limited to defense of the criminal charge and should not include competent legal advice about what will happen as a result of the defendant pleading guilty.

In *Missouri v. Frye*, he implies that a lawyer is under no obligation to tell clients about plea offers because plea bargaining is not a substantive or procedural right.

In *Lafler v. Cooper*, he suggests that giving wrong advice during a plea bargain does not amount to ineffective counsel especially since the defendant received a fair trial.

The majority argued that these are examples of ineffective counsel protected by the Sixth Amendment.

As to whether students agree with the majority opinions or dissents in each of these cases, accept reasoned answers.

**Class Activity: Plea Bargain** — Students role play prosecutors and defense attorneys negotiating a plea agreement in the *Evans* case. (p. 187)

### Lesson Sequence 4

**Key Step: Probable Cause Hearing:** Explanation of preliminary hearings and grand jury hearings. (p. 187)

**Case Notes: Evans' Probable Cause Hearing:** Reading of outcome of the grand-jury hearing for the *Evans* case. (p. 188)

**Key Step: Arraignment:** Explanation of an arraignment. (p. 189)

**Pretrial Motions:** Reading and discussion of types of pretrial motions, including motions on suppression of evidence, pretrial publicity, dismissal, severance or joinder, and mental capacity to stand trial. (p. 189)

**Answers to Discussion Questions** (p. 191)

1. What are pretrial motions? Why are they important?

Pretrial motions are presented before a case goes to trial. They ask the court to take specific action. For example, the defense may make a motion to dismiss the case. Motions play an important role in the appeals process. An appellate court can normally only rule on legal issues if they were previously raised at trial or pretrial.

2. What threat does pretrial publicity pose to a fair trial? Which of the pretrial motions, if granted, do you think could offer the best protection against the harmful effects of publicity? Why?

Juries are supposed to base their decisions on the evidence presented in court. Pretrial publicity could make jurors biased and use outside information in their deliberations.

Accept reasoned answers on which of the pretrial motions offers the best protection. Students should discuss motion for a change of venue (which moves the location of the trial to a place where the case may have not received as much publicity), motion for a continuance (which allow publicity to die down before conducting the trial), motion for a gag order (which prevents those involved with the case to talk about it), and motion

to sequester the jury (which shelters the jury from the world to keep away outside influences).

3. Imagine that a prosecutor has indicted 20 people as part of a drug conspiracy case. If you were the attorney defending a person accused of being a messenger in the conspiracy, what pretrial motion or motions would you make? Why?

An attorney defending a messenger in the conspiracy should make a motion of severance and move for a separate trial, as the defendant played a minor in committing the crime. By being tried with others, the defendant's right to a fair trial may be impaired. Accept other reasoned answers.

4. Why do you think courts require that defendants be mentally capable of standing trial? Do you agree? Explain. What is the test to determine whether a defendant is mentally capable of standing trial? Do you think anything else should be added to the test? Explain. What is the difference between the tests for a defendant being mentally incapable of standing trial and for a defendant being legally insane?

It makes little sense to try a person who doesn't understand what is going on. Accept other reasoned answers.

The two-part test is: (1) Defendants must be coherent enough to provide their attorney with information needed for the case. (2) Defendants must understand the significance of the trial and their relation to it.

As to whether anything should be added to the test, accept reasoned answers.

Most defendants pass the test of competence to stand trial. Few defendants mount a successful insanity defense. See p. 43 of the student text for the various legal insanity tests.

**Case Notes: A Pretrial Motion:** Description of Evans' plea of not guilty and his lawyer's motion for gag order at the arraignment. (p. 192)

**Class Activity: Ruling on the Motion:** Students take the role of judges and write decisions on the gag-order motion. (p. 193)

## CHAPTER 13: TRIAL

### Lesson Sequence 1

**Key Step: Trial Procedures:** Explanation of procedural steps in a criminal trial, including jury selection, opening statements, presentation of evidence, closing arguments, jury instructions, and jury deliberations. (p. 194)

**Case Notes: Cast of Characters:** Description of and discussion about the important players in a criminal

trial, including the judge, bailiff, court clerk, court reporter, prosecution lawyers, defense lawyers, defendant, witnesses, and jury. (p. 195)

#### Answers to Discussion Questions (p. 197)

1. What are the main functions of the defense and prosecuting attorneys?

The prosecuting attorney must prove that the accused is guilty of a particular crime beyond a reasonable doubt.

The defense attorney must defend the accused by showing that the government does not have enough evidence to convict the defendant. The defense attorney tries to raise reasonable doubt in the minds of jurors.

2. At trial, whose role is it to decide issues of law? Whose role is charged with deciding issues about facts?

The judge decides issues of law, and the jury decides issues of facts.

**The Courtroom Setting:** Brief reading and discussion on the arrangement of a courtroom. (p. 196)

#### Answers to Discussion Questions (p. 196)

1. In most courtrooms, the judge's bench is on a raised platform. Why do you think this is so?

Accept reasoned answers. One is that it enables the judge may see everything that goes on in the courtroom.

2. In all courtrooms, the witness stand is on the side of the judge's bench closest to the jury box. Why do you think this is so?

It enables both the judge and jury to hear the witnesses more easily.

3. The partition between the spectators and the active courtroom participants has traditionally been called the bar. Why do you think it is there? Who may pass the bar?

It is there to separate the legal proceedings from the "audience" and so that there is no communication between the spectators and the active courtroom during trial. Attorneys, the jury, the judge, the bailiff, the court clerk, the court reporter, the defendant, and the witnesses may pass the bar.

**Activity: In the Halls of Justice** — Students take a field trip to a criminal court with worksheet questions and suggestions for interviews. (p. 197)



### Lesson Sequence 2

**Case Notes: The Trial of Thomas Evans:** Reading and discussion about the beginning of the trial of Thomas Evans. (p. 198)

#### Answers to Discussion Questions (p. 198)

1. What is the charge in the Thomas Evans case? What are its elements?

The charge is second-degree murder.

Second-degree murder is killing done with malice aforethought, but without deliberation and premeditation.

2. Review **Key Step: Trial Procedures** on pages 194–195. What will happen next in Thomas Evans' trial?

The next step in the trial will be jury selection.

**Key Step: Jury Selection:** Explanation and discussion of the jury selection process, including voir dire, challenges for cause, and peremptory challenges. (p. 199)

#### Answers to Discussion Questions (p. 199)

1. Why do you think there is no limit on the number of challenges for cause and a limit on peremptory challenges?

There is no limit on challenges for cause because these jurors show a bias or another reason why they would not be suitable as jurors.

There is a limit on peremptory challenges because these jurors automatically excused at the request of the defense or prosecution.

2. Should the Supreme Court ban peremptory challenges based on religion or disability? Why or why not?

Accept reasoned answers. Note that the Supreme Court has banned peremptory challenges based on race and gender.

3. The goals of the judge, prosecution, and defense in criminal trials are often quite different. What differences might they have about jury selection?

The judge wants a fair and impartial jury that would judge solely on the facts presented. The attorneys want jurors likely to side with the defense or prosecution, feel connected to their side, or sympathize with their witnesses.

**Class Activity: Choosing a Jury** — Students take roles of prosecuting attorneys, defense attorneys, prospective jurors, and court clerk in a jury selection simulation. (p. 200)



### Lesson Sequence 3

**Case Notes: Trial Strategy:** Reading on how to prepare to prove or disprove elements of a criminal case. (p. 203)

**Class Activity: Preparing for Trial** — Students complete charts that will help them prepare trial strategy. (p. 204)

**Case Notes: Opening Statements:** Explanation of opening statements and instructions on their preparation. (p. 204)

**Class Activity: Writing an Opening Statement** — Based on given criteria, students write opening statements for the defense and prosecution in the *Evans* case. (p. 205)

### Lesson Sequence 4

**Case Notes: Direct and Circumstantial Evidence:** Explanation of direct and circumstantial evidence. (p. 205)

**Class Activity: Direct or Circumstantial** — Students analyze hypotheticals to determine whether they are examples of direct or circumstantial evidence. (p. 206)

**Answers to Class Activity** (p. 206)

- Direct
- Circumstantial
- Circumstantial
- Direct
- Circumstantial

### Lesson Sequence 5

**Case Notes: Rules of Evidence:** Explanatory reading and discussion of basic rules of evidence, including relevance, foundation, personal knowledge, hearsay, opinion testimony, argumentative questions, and special rules for direct and cross-examination. (p. 206)

**Answers to Discussion Questions** (p. 210)

- Why is eyewitness testimony (“I saw Bill steal the wallet”) more trustworthy than something heard secondhand (“Mary told me she saw Bill steal the wallet”)? How can the first statement be tested in court? How can the second statement?

Eyewitnesses are in a position to know about the facts. Their testimony relies on personal knowledge rather than hearsay. If a person hears something secondhand, that person has no personal knowledge of what happened.

An eyewitness can be questioned about what the eyewitness saw, where the witness was standing, etc. Whereas the person hearing it secondhand has nothing to relate other than someone else said it.

- When are leading questions permitted and prohibited? Why do you think this difference exists?

Leading questions are prohibited during direct examination but are permitted during cross-examination.

This difference exists because direct examination witnesses are witnesses that support the side that called them. Leading questions could prompt witnesses to tell the story in a particular manner.

Leading questions are permitted during cross-examination because the witness was called by the other side, has told what the other side asked, and now the cross-examiner can ask yes and no questions to delve into certain areas.

- Can you think of examples of relevant testimony that would not be allowed in evidence?

Accept reasoned answers.

**Class Activity: Objection** — Students, given hypothetical situations from the *Evans* trial, decide whether an attorney should object and explain why. (p. 210)

**Answers to Class Activity** (p. 210)

- Yes. Opinion and lack of personal knowledge.
- Yes. Hearsay.
- Yes. Irrelevant.
- Yes. Opinion and lack of personal knowledge.
- No. It is proper to ask a leading question on cross-examination.
- Yes. Opinion and lack of personal knowledge.
- Yes. The witness has no personal knowledge as to whether the truck was there or not.
- Yes. Irrelevant.
- No. Although it is hearsay, the statement is probably admissible as an admission against interest.
- No. Opinions about speed of a car are within the realm of an ordinary person’s experience.
- Yes. Leading question.
- Yes. Opinion, but because of Joel Robertson’s knowledge about guns, he may be qualified as an expert.

**Class Activity: Cross Fire** — In this simulation of the *Evans* case, students role playing prosecutors and defense attorneys examine witnesses role played by students. (p. 211)

## R

### Lesson Sequence 6

**Case Notes: Closing Statements:** Guidelines for an effective closing statement. (p. 215)

**Class Activity: The Defense Rests** — Students role play attorneys and make closing statements to the rest of the class role playing jurors. (p. 215)

## AM

3.5

### Lesson Sequence 7

**Case Notes: Instructing the Jury:** Reading and discussion on the purpose and nature of jury instructions and on those given in the *Evans* case. (p. 215)

**Answers to Discussion Questions** (p. 218)

- What things should be considered and discussed by the jurors? What things should not enter into the jury’s deliberations?

The jury must only rely on evidence presented in court. It should consider the credibility of the

witnesses, whether reasonable doubt has been established, which charge is more valid, and which version of the truth has the least amount of doubt.

The jury should not consider testimony or other evidence stricken from the record, should not speculate about what witnesses might have said if they had been allowed to answer an objected question, or about why an objection was made to a question. Sympathy, guesswork, emotion, prejudice, or public opinion should not be part of the jury's deliberations.

2. Review the definition of "beyond a reasonable doubt" in instruction #5. According to this definition, which one of the following statements would be true?
  - a. A juror should vote to convict only if 100 percent sure that the defendant is guilty.
  - b. A juror should vote to acquit if the juror believes there is any possible chance that the defendant is not guilty.
  - c. A juror should vote to convict if the juror believes that a very high degree of probability exists that the defendant is guilty.

C is true.

3. Review the second-degree murder charge against Thomas Wade Evans in instruction #6. According to the prosecution, how was Joyce Ann Miller killed? According to the defense, how was Joyce Ann Miller killed?

According to the prosecution, Joyce Ann Miller was killed when Evans intentionally fired the gun, knowing that such an act was dangerous to human life.

According to the defense, Joyce Ann Miller was killed when the gun accidentally fired.

**Class Activity: We, the Jury** — Students form juries and deliberate on the *Evans* case. (p. 219)

**Class Activity: Verdict** — Students write an essay explaining their personal verdict in the *Evans* case. (p. 219)

## Unit 4: Corrections

**Overview:** A four-chapter unit focusing on the purposes of corrections and sentencing; prisons, prison conditions, and current debates about corrections; alternatives to prisons, including probation, community service, and community corrections; and the law and debate over the death penalty.

**Objectives:** By the completion of this unit, students will be able to:

1. Identify retribution, incapacitation, deterrence, restitution, and rehabilitation as the underlying rationale for criminal corrections.
2. Identify factors used for determining a sentence and apply them to a hypothetical case.
3. Demonstrate a historical awareness of corrections by comparing methods of corrections from previous eras with those of today.
4. Explain three-strikes legislation and give a reasoned opinion on its value.
5. Express a reasoned opinion on whether federal drug laws discriminate against African Americans.
6. Identify factors for granting probation and apply them to hypothetical cases.
7. Describe alternatives to prison and state and support opinions about their value.
8. Identify factors used in granting parole and apply them to hypothetical situations.
9. Describe community corrections efforts and identify challenges facing them.
10. Describe current conditions in prisons and state and support opinions about current sentencing standards.
11. Identify aggravating and mitigating factors in applying a death penalty statute and apply them to a hypothetical situation.
12. State and support a reasoned opinion about the death penalty.

### Introduction

**AM** 4.1

## CHAPTER 14: SENTENCING

### Lesson Sequence 1

**The Purpose of Punishment:** Reading and discussion of five rationales for punishment. (p. 222)

**Answers to Discussion Questions** (p. 223)

1. Which of the five reasons for punishment do you agree with? Disagree with? Why?  
Accept reasoned answers. The five reasons for punishment are rehabilitation, restitution, incapacitation, deterrence, and retribution.
2. If someone broke into your house and stole your television, what do you think would be an appropriate punishment? Which of the reasons for punishment did you base the punishment on?

Accept reasoned answers. Try to cover all five purposes in the discussion.

3. In recent years, two theories of punishment have been advanced. Do you think each of the following is a new theory or does it fit under one or more of the theories described in the article?
  - a. **Just deserts.** A person should be punished according to the seriousness of the crime. The more serious the crime, the harsher the punishment should be. In words, offenders should get the punishment they deserve.
  - b. **Restorative justice.** It seeks to meet the needs of the victim, the wrongdoer, and the community. It tries to get the wrongdoer to admit the wrongdoing to the victim and to work to make the victim and community whole.

Just deserts seems to fit under the retribution theory, as the society seeks to retaliate against a person who commits crime, based “eye for an eye.”

Restorative justice seems to fit under restitution, as it gets the wrongdoer to work to repay the victim and the community.

**Class Activity: The Student Court** — Students role play members of a student court deciding appropriate punishments for hypothetical cases. (p. 223)

### **Lesson Sequence 2**

**A Brief History of Punishment in the United States:** Reading and discussion about the development of the U.S. corrections system. (p. 224)

#### **Answers to Discussion Questions** (p. 225)

1. Why did prisons develop?

Prisons developed in the late 1700s (1790 in Philadelphia) as a response to “brutal treatment of criminals” in the American colonies. The Quakers called for solitary confinement of criminals in order for them to “think about their deeds and become penitent.” The purpose of these first institutions, called penitentiaries, was to punish and correct the behavior of lawbreakers.
2. Discuss this statement: “The history of corrections has been one of good intentions and bad results.” What does it mean? Do you agree with it? Why or why not?

Accept reasoned answers. Students should mention the following:

Penitentiaries — Although Quakers wanted more humane punishments, they ended up with an institution that executed a rather cruel punishment.

The work system — Again good intentions, but did not provide rehabilitation.

Rehabilitation system — This was questioned as recidivism rates rose in 1960s and 1970s.

Incapacitation — It tries to get criminals off the

street, but results in a staggering number of criminals behind bars.

**Class Activity: Pros and Cons of Punishment** — In small groups, students discuss the strengths and weaknesses of different kinds of punishment. (p. 225)

### **Lesson Sequence 3**

**Sentencing Laws:** Reading and discussion about fixed and indeterminate sentencing, mandatory sentencing, sentencing guidelines, and other factors judges consider at sentencing. (p. 226)

#### **Answers to Discussion Questions** (p. 229)

1. Review the list of sentencing factors on pages 226–227. Which do you think are the most important? Least important? Explain.

Accept reasoned answers.
2. Are there any additional factors you think judges should consider? What factors should they not consider? Explain.

Accept reasoned answers.
3. What is the difference between fixed and indeterminate sentencing? What are some arguments for fixed sentences? What are some arguments for indeterminate sentences? Which do you think is more just? Why?

In fixed sentencing, judges set a specific time of imprisonment, based on the severity of the crime.

Indeterminate sentencing has no specific end date. Parole boards determine when a criminal is released and judges merely set the range of years for the prison sentence.

Accept reasoned answers for which is more just.
4. What are mandatory sentences? What do you think are the pluses and minuses of these sentences? Do you think they are a good idea? Explain.

Mandatory sentences take away sentencing options from judges. They may require judges to sentence offenders to prison terms for certain situations such as repeat offenders and gun use. Judges may not shorten these sentences or impose alternative sentences.
5. What role do you think each of the following groups should have in sentencing: judges, juries, parole boards, and legislatures? Explain.

Accept reasoned answers.

**Class Activity: The Sentencing of Thomas Evans** — In small groups, students act as judges and sentence Thomas Evans. (p. 229)

**Ask an Expert:** Students invite a judge or criminal attorney to take part in and debrief this activity. (p. 229)





## Lesson Sequence 4

**The Shaky Status of Sentencing Guidelines:** Reading and discussion about a series of recent Supreme Court decisions and their effect on sentencing guidelines. Note: It is probably best to read and discuss each case separately to ensure a full understanding of the cases. (p. 232)

**Answers to Discussion Questions** (pp. 235–236)

1. What were the decisions in the *Apprendi* and *Blakely* cases? Do you agree with them? Explain.

Both the *Apprendi* and *Blakely* cases held that it was unconstitutional to increase a penalty for a crime beyond the prescribed statutory maximum unless any fact that increases the penalty is submitted to a jury and proved beyond a reasonable doubt.

As to whether students agree, accept reasoned answers.

2. What were the two questions in *Booker*? How did the court decide these questions? Do you agree with them? Explain.

Q1: Does the rule in *Apprendi* and *Blakely* apply to the Federal Sentencing Guidelines?

Ruling: Yes, it applies to the Federal Sentencing Guidelines.

Q2: If so, can the guidelines remain in effect?

Ruling: The guidelines can remain in effect to help judges determine what is reasonable, but they can no longer be mandatory.

As to whether students agree, accept reasoned answers.

3. Aside from number four (the sentencing guidelines), which of the seven “Factors To Be Considered in Imposing a Sentence” in the U.S. Code do you think are most important? Why?

Accept reasoned answers.

4. If you had been the trial judge in Gall’s case, what sentence would you have imposed? Why? Do you think the sentence the judge imposed was reasonable? Explain.

Accept reasoned answers. Note that the trial judge in Gall’s case stated that “a sentence of imprisonment may work to promote not respect, but derision, of the law,” especially if the law is simply a means to punish each crime without looking at its circumstances. In this case, the defendant had rehabilitated his life, which is the change most prisons strive to deliver.

5. Do you think the *Cunningham* case was correctly decided? Explain.

Accept reasoned answers. Note that in agreement with California’s determinate sentencing law, *Cunningham* was sentenced to the highest term possible, due to the judge finding aggravating fac-

tors. The Supreme Court found that the law violated the Sixth Amendment, as “any fact that exposes a defendant to a greater potential sentence must be found by a jury ... and established beyond a reasonable doubt.”

6. The above Section 3553 of the US Code’s Title 18 sets the factors a judge may consider in imposing a sentence. Section 3582 says that a judge may only use these factors and must recognize “that imprisonment is not an appropriate means of promoting correction and rehabilitation.” In *U.S. v. Kubezcko* (2011), a federal appeals court imagined two different sentencing statements by a judge:

(a) “I’m not worried that you’ll commit more crimes if I gave you a shorter sentence; I am giving you a long sentence to enable you to obtain psychiatric assistance that will bring about your complete rehabilitation.”

(b) “I am going to sentence you to a sentence long enough to enable you to obtain psychiatric assistance, because until then you will continue to be a danger to the public because you can’t control your violent impulses.”

Which, if any, of these sentencing statements is legal under the U.S. Code?

Statement “a” violates Section 3582, as it regards imprisonment as a means to promote correction and rehabilitation. Statement “b” would be OK because the purpose is to protect public safety.

7. What are the choices that Congress faces regarding the sentencing guidelines?

Congress faces whether to uphold the guidelines as advisory, make them mandatory by requiring a jury finding of beyond a reasonable doubt for factors influencing sentences, or impose sentences with a higher range and let judges sentence.

**Class Activity: What Should Congress Do?** — Students role play members of the Judiciary Committee and decide what should be done about sentencing guidelines. (p. 236)

## Lesson Sequence 5

**Do Sentences Have to Be Proportionate?** Reading and discussion on whether repeat-offender laws mandating long sentences violate the Eighth Amendment when the offender has committed a relatively minor crime. (p. 236)

**Answers to Discussion Questions** (p. 238)

1. Do you think that the decisions in *Solem* and *Harmelin* are compatible? Explain?

They seem incompatible. The decision in *Solem* stated that “a criminal sentence must be proportionate to the crime for which the defendant has been convicted,” while the decision in *Harmelin* could not get five justices to agree on the reasoning, three

justices argued the sentence was not “grossly disproportionate” while two others argued that proportionality has no place in reviewing sentences other than death penalty cases.

2. What theory of punishment is California’s three-strikes law based on?

As Justice Sandra Day O’Connor points out, California’s three strike law intends to keep repeat offenders off the street. Therefore, the law is based on incapacitation.

3. In *Ewing*, Justice O’Connor stated that the Supreme Court is not a “superlegislature.” What did she mean? Do you agree? Explain.

She meant that the Supreme Court is not supposed to decide whether the laws are good or bad but only whether they are constitutional.

4. Do you think the Eighth Amendment requires sentences be proportional to the crime? Why or why not?

Accept reasoned answers.

5. There were three opinions in *Ewing*: the majority, concurring, and dissenting opinions. What did each say?

The majority opinion stated the sentence was not “grossly disproportionate” to the crime. The concurring opinion said the court had no business looking into whether the sentence was disproportionate.

The four dissenters applied the three tests in *Solem* and found the sentence “grossly disproportionate.”

**Class Activity: Cruel and Unusual** — Students role play Supreme Court justices and decide the *Ewing* case, which involved the constitutionality of a sentence under California’s three-strikes law. (p. 238)

### Lesson Sequence 6

**Federal Sentencing: Crack Versus Cocaine:** Reading and discussion on federal laws that impose far harsher penalties on crack than on powder cocaine, the pros and cons of these laws, and court challenges to them. (p. 238)

#### Answers to Discussion Questions (p. 241)

1. What is the 100:1 ratio?

The 100:1 ratio is a structure for crack and cocaine sentences set by Congress that states that a person dealing 5 grams of crack receives the same 5-year minimum sentence as a person with 500 grams of powder cocaine, and the person that deals 50 grams of crack receives the same 10-year mandatory minimum sentence as someone who deals 5,000 grams of powder cocaine.

2. If Congress were to equalize the crack-powder ratio at 1:1, what might be some reasons for and against either lowering the amount of powder, raising the amount of crack, or moving both? Explain.

Accept reasoned answers. (Consider these things: Both crack and powder are cocaine, this law makes small time-crack dealers suffer the same punishment as higher-level cocaine dealers; crack users are no more prone to violence than powder cocaine users; violence has been associated with the sale of crack; race of users; addictiveness; and cost.)

3. Since the 2005 U.S. Supreme Court decision in *U.S. v. Booker*, the U.S. Sentencing Guidelines have become advisory only and not mandatory. If you were a federal judge, would you follow the new guidelines that reflect the 18:1 ratio? Explain.

Accept reasoned answers. Note that under the Fair Sentencing Act, the 18:1 ratio results in a 5-year mandatory sentence for 28 grams of crack, and 10-year sentence for 280 grams.

4. Do you think the federal sentencing laws on crack cocaine discriminate against African Americans? Explain.

Accept reasoned answers.

**Class Activity: The Ratio** — Students role play a congressional committee deciding whether to change the difference in penalties between crack and powder cocaine. (p. 241)

## CHAPTER 15: PRISON

### Lesson Sequence 1

**Types of Prisons:** Reading and discussion about the security levels of prisons and about private prisons. (p. 242)

#### Answers to Discussion Questions (p. 244)

1. Do you think super-maximum-security prisons are a good idea? Explain.

Accept reasoned answers. Note that super-maximum-security prisons lock away the most dangerous offenders, particularly those who commit crimes such as organized crime and leading prison gangs. Critics argue that there is a lot of potential for abuse and the mental effect on prisoners may be “horrifying.”

2. Do you think that prisoners should be able to challenge being placed in a super-max? Why or why not?

Accept reasoned answers. Note that a unanimous decision in *Wilkinson v. Austin* found that prisoners have a right to liberty, thus the procedure of being placed in a super-max must meet due process standards.

3. Why do you think states and the federal government are turning to private facilities?

Accept reasoned answers.

4. Do you think privatizing prisons is a good idea? Why or why not?

Accept reasoned answers.

## Lesson Sequence 2

**Overcrowding in Prisons:** Reading and discussion about prison conditions and legal responses to poor conditions. (p. 245)

### Answers to Discussion Questions (p. 248)

1. What problems can prison overcrowding cause?  
Overcrowding can lead to discipline problems, unrest, unhealthy conditions, and far too often, violence.
2. Do you agree with the U.S. Supreme Court decision in *Rhodes v. Chapman*? Why or why not?  
*Rhodes v. Chapman* ruled that “harsh conditions” are the price of crime and that the Constitution does not require comfortable prisons. Accept reasoned answers for whether students agree with the decision.
3. What is the purpose of the Prison Litigation Reform Act? What are its requirements? Could Congress pass a law that denied prisoners their constitutional rights? Explain.

The purpose was to make court-mandated prison caps “a remedy of last resort.”

It set up a process that courts must follow. First, a federal trial court must issue an order to improve the dangerous conditions and give the state a reasonable time to comply with the order. If the state fails to improve the dangerous conditions, then the trial court can set up a special three-judge panel. Before it can order a state to limit its prison population, the panel must find that (1) “crowding is the primary cause of the violation of a Federal right” and (2) no other action “will remedy the violation of the Federal right.” It also requires that the panel give “substantial” weight to “public safety” and make sure that the remedy “extends no further than necessary to correct the violation of the Federal right.”

Make sure students understand that if Congress passed a law that denied prisoners their constitutional rights, it could be challenged in court and declared unconstitutional.

4. What are the facts of the case of *Brown v. Plata*? What was the issue? What was the holding and reasoning of the court? What did the dissenters say? Do you agree with the decision? Explain.

Facts: The case consolidated two overcrowding cases in California prisons. One involved medical care and the other, mental health care. Both cases had been in the court system for many years. The cases detailed horrible prison conditions. A three-judge panel ordered California to reduce its prison population to 137 percent of capacity (down from 200 percent).

Issue: Was the three-judge panel’s order valid?

Holding: The Supreme Court upheld the order.

Reasoning of the court: The court majority noted a long litany of horrible conditions in mental and medical care. The court majority said that prisoners with either mental or physical illness were not receiving adequate care due to overcrowding. They found that no other remedy was available, and stated that statistical evidence was provided to show that prison populations were lowered without adversely affecting public safety in a number of jurisdictions.

Dissent: The court order extended further than necessary to correct the problem and the order failed to meet the requirements of the Prison Litigation Reform Act. The other dissenting opinion argued that the three-judge panel did not give adequate weight to public safety, not taking the proper precautions before putting criminals back on the street.

As to whether students agree with the decision, accept reasoned answers.

**Class Activity: *Brown v. Plata*** — Students write an opinion piece on the *Brown v. Plata* decision. (p. 248)

## Lesson Sequence 3

**Prison Revolts:** Reading and discussion about riots at Attica and New Mexico State Prison and the development of gangs in prison. (p. 249)

### Answers to Discussion Questions (p. 251)

1. How did the revolts at Attica and New Mexico prisons differ? Explain why.

The revolts at Attica and New Mexico prisons are similar in the prison conditions that set off the revolts. The revolts themselves differ significantly. The Attica revolt was organized and relatively non-violent. The New Mexico revolt was violent and unorganized.

2. What, if anything, do you think can be done to prevent future prison revolts? Explain.

Accept reasoned answers.

3. How might conditions in a maximum-security prison affect a first-time offender?

Accept reasoned answers.

4. Do you think California’s policy of dividing prisoners by race for 60 days makes sense? Do you think it passes strict scrutiny? Explain.

As to whether the policy makes sense, accept reasoned opinions, but students should note the policy’s purpose to protect the prisoners, as there are racial divisions and tensions in prisons.

To pass strict scrutiny a practice must serve a “compelling governmental interest” and be the least restrictive means of achieving that interest. Answers should apply this definition of strict scrutiny to the practice of dividing prisoners by race.

5. How do you think the racial divisions in the prisons can be resolved?

Accept reasoned answers.

### Lesson Sequence 4

**Policies Behind the Rise in Incarceration:** Reading and discussion of get-tough policies such as mandatory sentencing, three strikes, and truth in sentencing. (p. 252)

#### Answers to Discussion Questions (p. 253)

1. What are mandatory sentences? What do you think might be some arguments in favor of them? Against them?

Mandatory sentencing laws require judges to sentence offenders to prison terms.

Those in favor of them argue that judges should be forced to send convicts to prison in certain cases, such as repeat offenders and offenders who use guns.

Those who oppose them worry about harsh sentences for low-level offenses and increasing numbers of low-level offenders in prison.

2. What are the different types of three-strikes laws?

The three-strikes provision in federal law requires that the three convictions must be for violent felonies. In some states, like California, only the first two convictions must be for violent or other specified felonies. The third can be for any felony.

3. What are truth-in-sentencing laws? What do you think might be some arguments in favor of them? Against them?

Truth-in-sentencing laws attempt to reduce or eliminate parole and good-time credits for convicts for good behavior, which allows them to be released into the community before their full sentence is up. Truth-in-sentencing laws force convicts to serve close to their full sentences.

As to arguments for and against, accept reasoned answers.

4. Today, due to budgetary problems, states are trying to lower the number of prisoners they hold. If you were an adviser to a governor trying to lower incarceration in the state, what changes in get-tough policies would you recommend? Why?

Accept reasoned answers.

**Class Activity: Three Strikes** — Students role play legislative advisers making recommendations on proposed three-strikes legislation. (p. 253)

### Lesson Sequence 5

**Are Too Many People Behind Bars?:** Reading and discussion about arguments for and against massive incarceration in the United States. (p. 253)

#### Answers to Discussion Questions (p. 257)

1. The United States has the highest rate of incarceration of any country in the world. What dangers might too many people in prison pose to a democratic society? What dangers might come from having too few in prison?

Dangers of too many in prison: high cost, inefficient way to reduce crime, cost to social cohesion. Accept other reasoned answers.

Dangers of too few in prison: increased crime. Accept other reasoned answers.

Note: The number of prisoners behind bars varies in the quotation at the beginning of the article, the chart on p. 252, and the chart on p. 254. The differences are because they are from different periods or measure different populations (just prison as opposed to prison and jail combined).

2. Do you think prisons should have more rehabilitation programs for prisoners? Explain.

Accept reasoned answers. Refer to the **What About Rehabilitation** sidebar on p. 256.

3. Studies show that a few offenders commit the vast majority of crimes. If this is true, what effect should it have on incarceration policy?

Accept reasoned answers. The studies are mentioned in the sidebar on p. 255.

4. What are the main arguments in favor of imprisoning so many people? What are the main arguments against it? Do you think it is a good idea to have so many people locked up? Why or why not?

Arguments in favor: It deters others from committing violent acts and locking criminals up keeps them from committing more crimes (incapacitation). Accept other reasoned arguments.

Arguments against: Other factors have contributed to the drop in crime, and incapacitation costs too much, destroys communities, and leads to more crime and violence. Accept other reasoned arguments.

**Activity: Prison Sentences** — Students write brief essays on whether America needs to incarcerate more people. (p. 257)



### Lesson Sequence 6

**Parole:** Reading and discussion about the parole system, including case studies of Sirhan Sirhan and Lawrence Singleton. (p. 257)

#### Answers to Discussion Questions (p. 260)

1. What problems do parole officers face?

Parole officers face many of the same problems as probation officers including: limited budgets and high caseloads. Parole officers also have two

roles which may sometimes be in conflict with one another — they must act both as a social worker and a corrections officer.

2. Why do parole boards have less power in states with fixed sentencing laws?

Parole boards have less power in states with fixed sentencing laws because fixed-term sentencing requires offenders to serve a specific judge-set time in prison, therefore eliminating prisoners' ability to be granted parole.

3. Infamous convicts, such as Charles Manson and Mark David Chapman (the murderer of John Lennon), have been repeatedly denied parole. Do you think public opinion or pressure about such cases should influence parole board decisions? Why or why not?

Accept reasoned answers.

4. Where should notorious offenders be placed if their community does not want them back? Explain your answer.

Accept reasoned answers.

**Class Activity: Parole Board** — Students role a parole board deciding whether to grant parole in four separate cases. (p. 260)

### Lesson Sequence 7

**Staying Out of Prison:** Reading about the experiences of an ex-offender. (p. 261)

**Class Activity: Staying Out** — Students role play reporters and make up a fictional parolee or parolees and write about their experiences in the first few weeks on parole. (p. 261)

## CHAPTER 16: ALTERNATIVES TO PRISON

### Lesson Sequence 1

**The Need for Alternatives:** Brief explanatory reading about the need for alternatives to prison. (p. 262)

**Fines:** Reading and discussion about fines. (p. 262)

**Answers to Discussion Questions** (p. 263)

1. In what circumstances do you think fines are appropriate as punishment? When would they be inappropriate? Explain.

Accept reasoned answers. Fines are typically used as punishment for low-risk offenses or in addition to other punishment in greater offenses.

2. Do you think fines could substitute for imprisonment in some cases? Why or why not?

Accept reasoned answers.

3. What are day fines? What problem do they address? Do you think they are a good idea? Why or why not?

Day fines are calculated on how much a person

earns a day and demand that the person pay an amount based on this.

They address the problem of fines creating hardship for the poor criminals, but being easy for richer ones to pay.

As to whether they are a good idea, accept reasoned answers.

4. Do you agree with the Supreme Court's decision in *Tate v. Short*? Why or why not?

*Tate v. Short* decided that alternative sentences (30 days or \$300) were unconstitutional because they violated the equal protection clause of the 14th Amendment.

As to whether students agree, accept reasoned answers.

**Class Activity: One Fine Day** — Students role play advisers to a governor who is considering introducing day-fine legislation. (p. 263)

### Lesson Sequence 2

**Probation:** Reading and discussion about probation. (p. 264)

**Answers to Discussion Questions** (p. 265)

1. How are probation and parole alike? How are they different?

Both return prisoners to society under supervision and with conditions that must be met. Probation may be used in place of jail time or after a period in prison.

Parole returns offenders to community after they have served time in prison.

Unlike probation, parole is set by a parole board, not a judge.

2. What are some advantages in granting probation to an offender? What are some possible disadvantages?

Possible advantages: Keeping petty offenders away from the corrupting influence of prisons, emphasizing community links, and supervising the criminal to make sure they meet court guidelines.

Possible disadvantages: Returning offenders to the environment in which they committed the crime and inadequate supervision of offenders.

3. What are some qualities that it would be helpful for a probation officer to have?

Accept reasoned responses. Possible responses: Ethics, professionalism, leadership skills, calm, mature, confident, observant, alert, computer and writing skills, good communication skills, good listening skills, integrity.

4. Do you think high-tech house arrest should be used more commonly? Why or why not? If you agree that it should be used, for what crimes is it best suited?

High-tech house arrest involves offenders wearing an ankle bracelet that keeps track of them.

Accept reasoned answers for whether it should be used more commonly and for what crimes it is best suited.

5. Which of the factors for identifying likely candidates for probation do you think are most important? Least important? Why?

Accept reasoned answers.

**Class Activity: Who Gets Probation?** — In small groups, students decide whether particular hypothetical offenders should be placed on probation. (p. 266)

**Ask an Expert:** Students interview a probation officer. (p. 265)



### Lesson Sequence 3

**Revoking Probation:** Reading and discussion about what happens when probationers violate the conditions of their probation and about how Hawaii's HOPE Probation works. (p. 267)

**Answers to Discussion Questions** (p. 268)

1. Which of the Possible Conditions of Probation (on page 267) would you recommend for every probationer? Why?  
Accept reasoned answers. The answers should stress the goal of probationers remaining out of trouble.
2. What is a probation revocation hearing?  
At a probation revocation hearing, a judge decides whether the probationer has violated the terms of probation and whether the probation should be revoked or continued.
3. What problems do large numbers of probationers pose?  
Large numbers of probationers increase the case-loads of probation officers and make detecting and dealing with probation violations harder.
4. What are the elements of HOPE Probation?  
HOPE Probation punishes every probation violation immediately by arresting violating probationers and keeping them in jail for a few days until their court hearing. Also, for the first two months, probationers are drug tested at least twice a week. New probationers are only placed in residential drug treatment if they request it.
5. When asked for the reason behind HOPE Probation's success, one criminologist said that when our children misbehave, we don't say, "You have a 50-50 chance nine months from now of being grounded." What do you think he meant? Do you agree with his point? Explain.

The idea behind HOPE Probation was that people respond to the threat of immediate punishment. Thus, people stop misbehaving not because the punishment is severe, but because it is certain and prompt.

As to whether students agree, accept reasoned answers.

**Class Activity: Probation Revocation Hearing** — Students role play a probation revocation hearing. (p. 268)

### Lesson Sequence 4

**Community Service:** Reading and discussion about community service as an alternative punishment. (p. 271)

**Answers to Discussion Questions** (p. 272)

1. Do you approve or disapprove of community-service sentencing? Why or why not?  
Accept reasoned answers.
2. Should community-service sentencing be available to convicted adult felons? To juvenile criminal offenders? Why or why not?  
Accept reasoned answers.
3. What might be some problems in expanding community-service sentencing to those convicted of violent crimes?  
Accept reasoned answers.

**Community Corrections:** Reading and discussion about community corrections as an alternative to prison. (p. 272)

**Answers to Discussion Questions** (p. 275)

1. What are some of the advantages of community-based corrections programs? What are some disadvantages?  
Advantages: Individualized care and supervision, community involvement, opportunities for counseling, rehabilitation, and job training.  
Disadvantages: Can be difficult to find funding; communities may not welcome halfway houses.
2. What types of offenders do you think community-based corrections are appropriate for? Inappropriate for? Why?  
Accept reasoned answers.

**Class Activity: Halfway House** — Students role play a city-council hearing determining whether to grant a zoning variance allowing a halfway house to be placed in a residential neighborhood. (p. 275)

**Ask an Expert:** Class invites an ex-convict to speak. (p. 274)



## CHAPTER 17: CAPITAL PUNISHMENT

### Lesson Sequence 1

#### A Short History of the Death Penalty in America:

Reading and discussion that gives an overview of capital punishment. (p. 276)

#### Answers to Discussion Questions (p. 276)

1. Why do you think prisons separate those sentenced to death from other prisoners?  
Accept reasoned answers.
2. Which, if any, of the methods of execution seems most humane? Why?  
Accept reasoned answers. Note that some states do allow other methods as an option in place of a lethal injection.
3. Do you think it matters that the United States is the only Western democracy that executes criminals? Explain.  
Accept reasoned answers.

**Public Opinion on the Death Penalty:** Reading and discussion comparing two opinion polls on the death penalty, which get different results by asking different questions. (p. 277)

#### Answers to Discussion Questions (p. 278)

1. What do you think accounts for the shift in public opinion favoring the death penalty?  
Accept reasoned answers.
2. What do you think accounts for the different responses to the two questions? Which question do you think is better? Why?  
The two questions are: “Are you in favor of the death penalty for a person convicted of murder?” and, “What do you think should be the penalty for murder: the death penalty or life imprisonment with absolutely no possibility of parole?”  
Accept reasoned answers for which is better.

**Activity: Death Penalty Poll** — Students conduct a poll on the death penalty. (p. 278)



### Lesson Sequence 2

**Recent Legal History of the Death Penalty:** Reading and discussion of Supreme Court cases on capital punishment since the 1960s. (p. 279)

#### Answers to Discussion Questions (p. 282)

1. What reason did the Supreme Court give in *Furman* for saying that death penalty statutes were unconstitutional? How did states change their statutes to make them constitutional? Do you agree with the court that these statutes are constitutional? Why or why not?

The Supreme Court stated in *Furman* that the death penalty was unconstitutional because it violated the Eighth Amendment’s ban on cruel and unusual punishment due to its inconsistent use.

One group of states changed its statutes by clearly describing which capital crimes could be punished by death, adding that someone could only be sentenced to death if aggravating circumstances outweighed mitigating circumstances. A second group of states made the death penalty mandatory for everyone convicted of a capital crime.

The Supreme Court in *Gregg v. Georgia* ruled that the first type of statute (weighing mitigating vs. aggravating circumstances) was constitutional, but the second type was unconstitutional as it was too rigid and did not allow for individual circumstances.

As for whether these statutes should be constitutional, accept reasoned answers.

2. What did the court decide in the *McCleskey* case? Do you agree with its decision? Why or why not?  
The Supreme Court looked at whether there was racial discrimination in how the death penalty was applied. It upheld the death penalty and ruled that a mere statistical variation was not enough to invalidate the death penalty, as the defendant would have to show that the state had somehow encouraged the result or there was actual discrimination in a particular case.  
As to whether students agree with the decision, accept reasoned answers.
3. Which of the decisions after *McCleskey* do you agree with? Disagree with? Why?

Accept reasoned answers. Below is a list of the decision discussed in the book.

- Death-row inmates have no right to free legal assistance after an initial round of appeals. *Murray v. Giarratano* (1989)
- Inmates may lose their right to appeal if they make procedural errors. *Coleman v. Thompson* (1991)
- Inmates can’t take advantage of any rule changes or precedents set *after* they have exhausted their appeals. *Teague v. Lane* (1989) and *Butler v. McKellar* (1990), and *Saffle v. Parks* (1990)
- The prosecution may introduce victim-impact statements in penalty hearings. *Payne v. Tennessee* (1991)
- Death-row inmates cannot get a federal hearing on new-found evidence showing innocence unless that evidence overwhelmingly proves their innocence. *Herrera v. Collins* (1993)
- *Felker v. Turpin* (1996) upheld Congress’ limiting state prisoners’ habeas corpus appeals in

federal court, which later the court interpreted as limiting unreasonable habeas appeals.

- *Terry Williams v. Taylor* (2000) ruled that the defendant had been deprived of his right to effective counsel when the defense attorney failed to mention the defendant's mental status and horrible upbringing at the sentencing hearing.
  - *Michael Wayne Williams v. Taylor* (2000) ruled that the defendant did not receive a fair trial when the jury forewoman failed to disclose her connections with the prosecution.
  - *Penry v. Lynaugh* (1989) ruled that mentally retarded criminals could be executed, but in 2002, the court overruled this in *Atkins v. Virginia*.
  - *Roper v. Simmons* (2005) struck down the death penalty for murderers who were under 18 when committing the crime.
  - *House v. Bell* (2006) held that federal courts could hear a habeas corpus appeal when "in light of new evidence, 'it is more likely than not that no reasonable juror would have found [the defendant] guilty beyond a reasonable doubt.' "
  - *Kennedy v. Louisiana* (2008) struck down the death penalty for the crime of raping a child.
4. Some have argued that capital punishment is just too expensive. Do you agree? Explain.

Accept reasoned answers. Note the example given in the text of California's spending \$137.7 million every year maintaining the death penalty. Without it, California would only spend \$11.5 million if it imposed sentences of life without parole.

**Class Activity: Life or Death** — Students role play jurors and apply a capital punishment statute to hypothetical cases. (p. 282)

### Lesson Sequence 3

**The Execution of Karla Faye Tucker:** Reading and discussion of the Karla Faye Tucker case. (p. 284)

**Answers to Discussion Questions** (p. 285)

1. At the start of this unit, five purposes of punishment were discussed. What were they?  
They were rehabilitation, restitution, incapacitation, deterrence, and retribution.
2. For those who favored the execution of Tucker, what purpose(s) of punishment do you think they believed it served?

Accept reasoned answers. The answer may not include rehabilitation, as Tucker had turned her life around in prison.

3. Again looking at the purposes of punishment, what do you think those opposing her execution would argue?

Accept reasoned answers. Those who favor reha-

bilitation would argue that since she had turned her life around, that change was sufficient and she did not have to be executed.

4. Do you think Karla Faye Tucker should have been executed? Explain.

Accept reasoned answers.

**Are We Executing Innocent People?:** Reading and discussion on the implications of the release of many prisoners due to DNA tests showing them to be innocent and a case study of the executed prisoner Cameron Willingham, who many believe was innocent. (p. 285)

**Answers to Discussion Questions** (p. 288)

1. Do you think Illinois Governor George H. Ryan was correct in suspending all executions in the state? Was he correct in commuting all the sentences? Do you favor a moratorium across the United States? Explain.

Accept reasoned answers.

2. Do you think the federal Innocence Protection Act is needed? Explain.

Accept reasoned answers. Note that the Innocence Protection Act gives federal prisoners the right to ask a court for DNA tests to prove their innocence. It also provides grants to states that adopt measures that allow prisoners easier access to DNA tests, preserve biological evidence used for DNA testing, and issue minimum standards for court-appointed defense attorneys.

3. What was the Willingham case about? Do you think he should have been executed?

Cameron Willingham was executed for setting fire to his home, killing his three daughters. A leading fire expert later found that the conclusions of arson investigators who testified at the trial were incorrect. Although this expert's report was rushed to the Texas Board of Pardons and Parole, Willingham was still executed. Nine top fire scientists found that Willingham did not commit arson. His conviction was also based on a jailhouse informant.

As to whether he should have been executed, accept reasoned answers.

4. If it could be proven that a number of innocent people have been executed, would that make you more likely to oppose the death penalty? Explain.

Accept reasoned answers.

### Lesson Sequence 4

**Does the Death Penalty Deter Murders?:** Reading and discussion on the significance of studies showing that the death penalty deters murders. (p. 288)

**Answers to Discussion Questions** (p. 290)

1. What do the deterrence studies show? What do you think is the strongest criticism of the studies?



Do you think the studies are valid? Explain.

The deterrence studies show that every execution deterred anywhere from three to 18 murders.

The strongest criticism comes from a special committee of the National Academies of Science, which found all the studies flawed.

As to whether students think the studies are valid, accept reasoned answers.

2. What moral argument did two professors make in the *Stanford Law Review*? Do you agree with their argument? Why?

The professors argued that if capital punishment is found to deter further murders, then it would be morally wrong not to have the death penalty. They argued that not having the death penalty would allow more murders to occur that could have been deterred with the threat of capital punishment.

As to whether students agree with the argument, accept reasoned answers.

3. If it were proven that every execution deterred a certain number of murders, would you be more likely to favor the death penalty? Explain.

Accept reasoned answers.

**Class Activity: Should the Death Penalty Be Outlawed?** — Students line up based on their attitudes about the death penalty, discuss arguments with neighbors in line, and then the line is moved into two lines, and students find a partner in the next line, and exchange arguments. (p. 290)

## Unit 5: Juvenile Justice

**Overview:** A four-chapter unit highlighting the history of juvenile justice, the laws pertaining to delinquency, the processes of adjudication, constitutional rights of juveniles, and correctional options for juvenile offenders.

**Objectives:** By the completion of this unit, students will be able to:

1. Demonstrate a historical awareness of developments in juvenile justice by comparing the treatment of juveniles in the past with methods used today.
2. Distinguish between procedures that apply to juveniles and those that apply to adult criminal defendants.
3. Identify status and delinquent behaviors and distinguish between them given hypothetical situations.
4. Identify screening criteria used at juvenile intake and apply them to given situations.
5. Identify constitutional due process rights guaranteed to juveniles.
6. Identify criteria used to determine fitness to be adjudicated as a juvenile and apply that criteria to hypothetical situations.
7. Explain different options in the juvenile corrections system and decide which options should be used in hypothetical cases.
8. State and support a reasoned opinion about the constitutionality of the death penalty for juveniles.
9. State and support a reasoned opinion about the constitutionality of the sentence of life without the possibility of parole for juveniles.

### Introduction

AM 5.1

## CHAPTER 18: FROM CRIMINAL TO DELINQUENT

### Lesson Sequence 1

**Children and the Law: A History:** Reading and discussion about how the law historically treated children in England and America, including early reform movements to treat children differently than adults. (p. 294)

**Answers to Discussion Questions** (p. 296)

1. What is the doctrine of *parens patriae*? Do you think it has validity today? Why or why not?

Literally, the doctrine means “the parent of the country.” Representing the monarch, English courts acted as *parens patriae* to manage orphans’ estates, protect

children's property from wasteful parents, and provide for abandoned young people.

Accept reasoned answers regarding its current validity.

2. At what age do you think children should be held criminally responsible for their actions?

Accept reasoned answers.

3. What were the negative effects of placing juveniles in the adult criminal system?

Juveniles became better criminals through contact with older criminals, and adults in prison regularly abused younger and weaker inmates.

4. What arguments can you think of against keeping Mary Ann in the House of Refuge?

Accept reasoned arguments.

## Lesson Sequence 2

**From the Criminal to Delinquent:** Reading and discussion about how the concept of delinquency arose. (p. 296)

### Answers to Discussion Questions (p. 298)

1. Do you agree with the reasoning advanced by reformers in the Chicago Women's Club? Why or why not?

Accept reasoned answers.

2. Are young people incapable of forming criminal intent? Should they be treated rather than punished when they harm others?

Accept reasoned answers. It has been argued that young people do not have a clear sense of right and wrong, and thus are unable to form criminal intent. Criminal intent may be formed when the brain is more developed. Note that the Women's Club argued that wayward, disobedient, and criminal behaviors were caused by poverty and neglect. Rehabilitating and re-educating them may keep them from becoming repeat offenders.

3. Should young people who commit crimes be treated differently from adults? Explain.

Accept reasoned answers. Note that almost all Western states do treat children who commit crimes differently from adults.

**Class Activity: Same or Different?** — In small groups, students evaluate situations to determine whether the adult and juvenile in each case should be treated the same or differently. (p. 298)

**Different Worlds: The Two Systems:** A short reading and discussion about the differences between the juvenile and adult justice systems. (p. 298)

### Answers to Discussion Questions (p. 300)

1. Looking at the chart, which differences seem to be merely words? If some differences are just words, does it make any sense to use different words? Why or why not?

Accept reasoned answers. Students may find that the following differences are merely words: Arrested and taken into custody; crime and delinquent act; judges and juvenile court judges; trial and adjudicatory hearing; verdict of guilty and finding of delinquency; sentencing hearing and dispositional hearing; parole and aftercare.

2. What are the major differences between the two systems? Try to explain some of these important differences in light of the early 20th-century reforms. In your opinion are these differences justified? Explain.

Accept reasoned answers. Major differences of juvenile system include: Offenders may be placed on probation without an official hearing; no trial by jury; proceedings and records are kept private; the main goal is rehabilitation instead of punishment.

3. Do you think all juvenile records should be automatically expunged? Explain.

Accept reasoned answers.

4. What are some "collateral consequences" of a delinquency offense? Do you think these consequences should exist? Explain.

Possible "collateral consequences" of a delinquency offenses are: denial of right to bear arms as an adult, disqualification of army enlistment, and harsher sentencing for crimes committed as an adult.

Accept reasoned answers on whether they should exist.

## CHAPTER 19: THE PROBLEM OF DELINQUENCY

### Lesson Sequence 1

**What Is Delinquency?:** Reading and discussion about delinquency and status offenses. (p. 301)

### Answers to Discussion Questions (p. 301)

1. What is delinquency?

Delinquent acts are those acts that bring a young person into the juvenile justice system for committing acts that would be considered criminal if committed by an adult.

2. What are status offenses? Do you think they should be classified as delinquent behavior?

Status offenses are acts that are thought harmful to young people because they are dangerous and may lead to criminal behavior. They are called status offenses because they only apply to those who have the status of juveniles.

Accept reasoned answers for if they should be classified as delinquent behavior.

3. Why do you think California removed the words "who ... is in danger of leading an idle, dissolute, lewd, or immoral life" from its code?

California most likely removed these words from its code due to their vagueness. People can have diverse opinions and definitions for these words.

**Class Activity: Are You Now or Have You Ever Been?**

— Students evaluate a list of behaviors to determine which are crimes (and should be delinquent acts), which of the others are harmful to young people (and should be status offenses), and which should not be classified either as delinquent acts or as status offenses. (p. 302)

**Lesson Sequence 2**

**A Tour of the System:** Explanatory reading and discussion featuring a flow chart on juveniles processed through the system. (p. 302)

**Answers to Discussion Questions** (p. 303)

1. How do police officers, intake workers, and juvenile court judges exercise discretion in the juvenile justice system? Give some examples. What are some advantages and disadvantages of this discretion? Explain.

Police officers exercise discretion in the juvenile justice system by deciding whether to bring the juvenile into the system or to refer them to parents or social welfare agencies. Intake workers exercise discretion in the juvenile justice system by deciding whether to file a petition against the juvenile based on the offense, the strength of the case, and the juvenile's history and needs.

Juvenile court judges exercise discretion in the juvenile justice system by examining petitions and deciding whether to hold adjudicatory hearings.

One advantage of this system is that the problems are encouraged to be solved informally, as opposed to sending a juvenile deeper into the system.

A disadvantage is that decisions may be too lenient or too harsh, as each decision maker down the line exercises discretion.

Accept other reasoned answers.

2. Why do you think juvenile justice officials prefer to resolve delinquency problems informally? What are the advantages and disadvantages?

Accept reasoned answers.

3. Look at the chart. At what stage do juveniles have the best chance of getting their cases dismissed? At what stage do they have the worst chance? How do you account for this?

Juveniles have the best chance of getting their cases dismissed at intake.

Juveniles have the worst chance of getting their cases dismissed when a judge holds an adjudicatory hearing.

The reason is that the deeper into the system, the more likely it is that a juvenile will remain in the system.

**Class Activity: Who Should Be in the System?** — In pairs, students determine which, if any, government agency should be responsible for juveniles in hypothetical situations. (p. 304)

**AM** 5.2

**Lesson Sequence 3**

**Initial Detention of Juveniles:** Reading and discussion — describing prehearing detention problems and a proposed solution. (p. 305)

**Answers to Discussion Questions** (p. 306)

1. What are the pros and cons of locking up all juveniles brought to juvenile hall until their hearing dates?

Pros: guarantees they will be present at their hearing; prevents them from committing further crimes.

Cons: expensive; troubled youth in detention pose a high risk of suicide; serious offenders stay alongside lesser ones.

2. Authorities in Sacramento, and most experts, believe that there are only two reasons to detain juveniles before a hearing: (1) They pose a threat to society or (2) they may not show up for the hearing. Do you think there are other valid reasons? Explain.

Accept reasoned answers.

**Class Activity: Detain or Release** — Students role play intake officers at a juvenile facility and, using screening criteria and their judgment, determine whether to keep particular juveniles in custody or release them. (p. 307)

**AM** 5.3

**CHAPTER 20: CHILDREN AND THE CONSTITUTION**

**Lesson Sequence 1**

**The Rights of Juveniles:** Reading and discussion about the Supreme Court's *Gault* decision, which guaranteed certain rights to juveniles in juvenile court. (p. 310)

**Answers to Discussion Questions** (p. 312)

1. Why do you think Gerry Gault's hearing officer decided that the 15-year-old was delinquent and in need of the state's protection? Do you think Gerry could be defined as delinquent? Why or why not?

Delinquency is defined as committing an act that would be considered criminal if committed by an adult. If making an obscene phone call is a crime, then Gerry could be found to be delinquent.

2. What rights did the Supreme Court guarantee juveniles in the *Gault* decision? What rights were not guaranteed?

Rights guaranteed juveniles by *Gault*: to be informed of the charges, have an attorney, be informed of the right to remain silent at a hearing, be able to cross-examine their accusers.

Rights not mentioned in the decision: Many were not mentioned, such as the exclusionary rule, *Miranda* warnings, and the rights to a speedy, public, and jury trial. Accept other reasoned answers.

3. It has been said that *In Re Gault* “shook the American juvenile justice system to its foundations.” How did it contradict the philosophy behind our juvenile justice system?

It went against the philosophy that the juvenile justice system protected juveniles and juveniles had no inherent right to liberty. *Gault* ruled that juveniles have a right to liberty and that any juvenile proceeding that could lead to confinement must follow minimum standards of fairness and due process.

4. Do you agree with the court’s decision in *Schall*? Why or why not?

The case challenged New York law that allowed detaining juveniles for 17 days before their hearings if they might commit further crimes. The court decided in *Schall* that juveniles have an interest in liberty but that unlike adults, juveniles are always in some form of custody and the state has a right to hold a juvenile in custody when parental control falters. Accept reasoned answers for whether students agree with the decision.

**Class Activity: The Court Decides** — Students decide five cases involving issues left unanswered by *Gault*. (p. 313)

**Answers to Class Activity** (pp.313–317)

1. ***In Re Winship* (1970)**. A five-member majority ruled in *Winship*’s favor. A sixth justice concurred with the judgment, since requiring reasonable doubt standards would not jeopardize the aims of juvenile justice, but felt there was not necessarily any relationship between the due process requirement of criminal and juvenile proceedings. The remaining three justices dissented because the Constitution doesn’t specify the reasonable doubt standard; juvenile justice systems need flexibility; and barring a direct violation of due process, the issue should be left to individual state legislatures.
2. ***In Re Burrus* (1971)**. By a vote of 5–4, the court declared that as long as juvenile proceedings were fundamentally fair, neither trials by jury nor public trials in juvenile proceedings were necessary. One dissenting justice felt that though jury trials weren’t mandated, public proceedings were needed in order to protect the juvenile from misuse of judicial power. The remaining three justices thought the Constitution protected juveniles’ right to trial by jury when charged with offenses

that would be triable by jury if the offender were an adult.

3. ***McKeiver v. Pennsylvania* (1971)**. A six-member majority agreed that the due process clause of the 14th Amendment did not require juvenile jury trials. (The justice who had dissented in *Burrus* because North Carolina didn’t allow a public hearing reversed himself in this case, since Pennsylvania’s laws did let detained juveniles request public hearings.) The other justices who dissented in *Burrus* again dissented using the same reasoning as before.
4. ***Breed v. Jones* (1975)**. A unanimous Supreme Court ruled that the double jeopardy clause of the Fifth Amendment prohibited prosecution in adult court after an adjudicatory hearing in juvenile court. The decision to prosecute juveniles as adults must be made before they are tried in juvenile court.
5. ***J.D.B v. North Carolina* (2011)**. By a vote of 5–4, the court ruled that police must take age into consideration when determining whether a juvenile is in police custody. The majority said “to hold ... that a child’s age is never relevant to whether a suspect has been taken into custody — and thus to ignore the very real differences between children and adults — would be to deny children the full scope of the procedural safeguards that *Miranda* guarantees to adults.” The dissenters argued that the decision made it less clear to police when they must give *Miranda* warnings.

## Lesson Sequence 2

**School Searches:** Reading and discussion about the Supreme Court decisions in *New Jersey v. T.L.O.* and *Safford Union School District #1 v. Redding*. (p. 318)

**Answers to Discussion Questions** (p. 319)

1. What two rulings on school searches did the Supreme Court make in *T.L.O.*? Do you agree with the rulings? Explain.  

The Supreme Court ruled that school officials do not need warrants and that school officials do not need probable cause. The reasoning was that schools need to maintain discipline and cannot be expected to get warrants or even have probable cause when disciplining students. The court created a new standard for schools to conduct searches, reasonable suspicion. The court also ruled that students do have privacy interests in personal items they bring to school.

As to whether students agree with the decision, accept reasoned answers.
2. Do you agree with the ruling in the *Safford* case? Explain. If you do agree, can you think of a situation when a strip search would be reasonable? Explain.

The Supreme Court ruled that the school had no basis for conducting a strip search.

The judges found that there was no indication of danger from the power of the drugs or their quantity, and the principal had no reason to believe that Redding was hiding more drugs in her underwear, thus making the search unreasonable. Following this logic, a strip search may be reasonable if there is a threat for the safety of other students, and a reason to suppose that a strip search may eliminate that threat.

Accept other reasoned answers.

**Class Activity: Applying T.L.O.** — Students role play federal appeals courts and decide actual cases on whether school searches were reasonable. (p. 320)

**Answers to Class Activity** (p. 320)

**Case #1: *Bridgman v. New Trier High School* (1997).** The trial court granted the defense a summary judgment, meaning it upheld the search as reasonable. The appeals court affirmed the judgment of the trial court. From the appeals court decision:

“[The coordinator’s] own expertise as a certified drug addiction counselor, along with the publications she produced suggesting that a respectable segment of medical opinion supports both her interpretation of Bridgman’s alleged symptoms and her use of the medical assessment as an investigative tool, indicate that her suspicions and further actions, based upon the symptoms she alleges, were not unreasonable. The symptoms were sufficient to ground [her] suspicion, and the medical assessment was reasonably calculated to uncover further evidence of the suspected drug use.

...

“In addition, this Court agrees with the district court’s conclusion that the search was not excessively intrusive in relation to its purpose. In *Cornfield* [another case], this Court upheld the constitutionality of a strip search of a male student conducted by two male staff members.... We noted that “as the intrusiveness of the search of a student intensifies, so too does the standard of Fourth Amendment reasonableness.”

**Case #2: *DesRoches v. Caprio* (1998).** The trial court found the search unreasonable but the appeals court reversed, ruling that the search was reasonable. From the appeals court decision:

“[W]hile school officials initially lacked individualized suspicion with respect to DesRoches, they developed such suspicion by virtue of their unsuccessful search of the classroom and the other eighteen students. As the facts demonstrate, those who remained in the classroom during lunch informed school officials that, to the best of their knowledge, only one student from outside the art class had entered the classroom during lunch. Therefore, once the classroom and the other

eighteen students had been searched, school officials had certainly developed individualized suspicion with respect to DesRoches and the unnamed non-classmember.”

**Case #3: *Brannum v. Overton School Board* (2008).** The appeals court ruled that the search was unreasonable, but dismissed the lawsuits on other grounds.

“Given the universal understanding among middle school age children in this country that a school locker room is a place of heightened privacy, we believe placing cameras in such a way so as to view the children dressing and undressing in a locker room is incongruent to any demonstrated necessity, and wholly disproportionate to the claimed policy goal of assuring increased school security, especially when there is no history of any threat to security in the locker rooms.

“We are satisfied that both the students’ expectation of privacy and the character of the intrusion are greater in this case than those at issue in ... T.L.O. We conclude that the locker room videotaping was a search, unreasonable in its scope, and violated the students’ Fourth Amendment privacy rights.”

### **Lesson Sequence 3**

**School Drug Testing:** Reading and discussion about the Supreme Court decisions in *Vernonia School District v. Acton* and *Board of Education v. Earls*. (p. 321)

**Answers to Discussion Questions** (p. 323)

1. How was the *Vernonia* case different from *T.L.O.* and *Safford*? What was the school board’s policy in this case? What did the court decide? Do you think it was the right decision? Explain.

This case was different because there was no individualized suspicion of any particular student.

The school board’s policy was to reduce overall drug use in the school and community, so all student athletes were tested, as it was believed that student athletes were the leaders of the increased drug usage. The tests took place at the beginning of an athletic season and randomly throughout the season with written permission from the students’ parents. Students were not allowed to play if they refused to be tested or if they tested positive for drugs.

The court decided that the program was constitutional for three reasons (1) schools serve as protectors of children, (2) the drug testing was minimally intrusive (students who voluntarily participate in school athletics have reason to expect intrusions upon their privacy), and (3) the compelling interest the state has in stopping drug use, given that the school was experiencing an epidemic of drug use.

As to whether students agree with the decision, accept reasoned answers.

2. How did the *Earls* decision extend the *Vernonia* decision? Do you agree with the majority or the dissenters in *Earl*? Why?

The *Earls* decision extended the *Vernonia* decision by upholding drug testing of students in all extracurricular activities when there was no increase in drug usage in the school or community.

As to whether students agree with the majority or dissenters, accept reasoned answers.

**Class Activity: Universal School Testing** — Students role play attorneys and Supreme Court justices and decide a hypothetical case of a school that demands drug testing from all students. (p. 324)

**Ask an Expert:** Class invites a juvenile court judge or a lawyer specializing in juvenile cases to talk about state law on interrogation of juveniles, school searches, and hearings in juvenile court. (p. 323)



## CHAPTER 21: JUVENILE CORRECTIONS

### Lesson Sequence 1

**Options for Placing Juvenile Offenders:** Reading and discussion about juvenile corrections and placement options, including a comparison of the different systems in California and Missouri. (p. 325)

**Answers to Discussion Questions** (p. 327)

1. The article lists many placement options. Which sounds least effective for juvenile offenders? The most effective? Why?  
Accept reasoned answers.
2. Are any of the options better suited to particular problems? Explain.  
Accept reasoned answers. Note that some options, such as substance abuse treatment centers, are specifically devoted to a particular problem.

**Sidebar: Youth Court: An Alternative for Offenders:** A short reading and discussion about youth court. (p. 326)

**Answers to Discussion Questions** (p. 326)

1. What are youth courts? What purposes do they serve?  
Youth courts are volunteer-run courts whose positions are filled by youth who sentence their peers for non-violent offenses or problem behaviors. Usually, youthful offenders, often called respondents, must first admit their wrongdoing. These courts are based on the theory that if peer pressure gets some young people in trouble, peer pressure might also serve to get them out of trouble.
2. Do you think youth courts are a good idea? Why or why not?  
Accept reasoned answers.

### Lesson Sequence 2

**What Are the Best Options?:** Reading and discussion which options are best for juvenile offenders and which options are used. (p. 327)

**Answers to Discussion Questions** (p. 330)

1. Why do you think many states turned toward locking up many juvenile offenders? Why is the trend today away from locking them up?

Many states turned toward locking up many juvenile offenders in the late 1970s due to a public backlash against community programs as juvenile court judges were assigning violent offenders to programs designed for non-violent offenders. States responded to the backlash by turning to the model of punishment, focusing less on rehabilitation.

A great deal of data supports the conclusion that the Missouri system works, as the recidivism rates are significantly lower, and that it should be used as a guiding light for reform in juvenile justice. Many states turned away from locking up juvenile offenders because it is viewed as more effective and less costly.

2. What do you think is the best way of dealing with young mentally ill offenders? Why?  
Accept reasoned answers.
3. What are the benefits and costs of Missouri's approach to juvenile offenders? Do you agree with this approach? Why?

Missouri Benefits: Cost-effective, low rate of recidivism, focus on rehabilitation, less suicide

Missouri Costs: Requires more counselors and teachers, requires establishment of small facilities within 50 miles of high-crime areas

**Problems With Locking Up Juveniles:** Reading and discussion about efforts to remove juveniles from contact with adult prisoners. (p. 331)

**Answers to Discussion Questions** (p. 331)

1. What does the 1974 Juvenile Justice and Delinquency Prevention Act compel states to do? How is the act enforced?  
The 1974 Juvenile Justice and Delinquency Prevention Act compels states to separate adults from juveniles in jails.  
The act is enforced by requiring states to separate adults before they can qualify for federal grants.
2. Do you agree with the purposes of the act? Why or why not?  
Accept reasoned answers.
3. The article mentions three regulations to the act. What are they? Do you agree with them? Explain.  
Three regulations to the act (accept reasoned answers as to whether students agree with them):

Regulations permit jail confinement of juveniles convicted or awaiting trials as adult offenders.

Regulations allow adult jails to hold alleged delinquents for six hours before and after initial court appearances until other arrangements can be made.

Regulations allow accused status offenders to be locked up for a maximum of 24 hours following their first contact with police or juvenile court.

**At Home Plus:** Reading and discussion about three programs for juvenile offenders living at home. (p. 332)

#### Answers to Discussion Questions (p. 333)

1. What are the main benefits of all these programs?

The main benefits of all these programs are close supervision, short duration, and low cost.

2. Which program do you think would be most effective in preventing juveniles from committing another offense? Least effective? Why? Does the program you consider least effective have any value?

Accept reasoned answers. Note the programs discussed are Detention Diversion Advocacy Program, AMIkids, Juvenile Alternative Work Service, and COPE.

**Class Activity: Individual Treatment Plan** — Students decide on treatment plans for six hypothetical cases. (p. 334)

#### Lesson Sequence 3

**The Question of Waiver:** Reading and discussion about the process of referring juvenile offenders to adult court. (p. 334)

#### Answers to Discussion Questions (p. 336)

1. Do you think waiving jurisdiction of some juvenile offenders is a good idea? Why or why not?

Accept reasoned answers.

2. If you think waiver is a good idea, what offenders should be transferred to adult courts? Should it be done through judicial waiver, prosecutorial discretion, or legislative exclusion? Explain.

The reasoning behind the decision as to whether it should be done through judicial waiver, prosecutorial discretion, or legislative exclusion, should be based on the amount of discretion available and the possibility of appeal. If students reason that it is better to have a mandated waiver then they should choose legislative exclusion. If they favor more discretion but still a regulated decision, then they should choose judicial waiver. If they reason that complete discretion is best, then they should choose prosecutorial discretion.

3. Would you add any additional guidelines for determining judicial waiver? Describe them.  
Accept reasoned answers.

**Class Activity: A Waiver Hearing** — Students individually apply waiver guidelines to six case studies, write reasons for their decisions, and then discuss cases in groups of three and vote. (p. 336)

#### Lesson Sequence 4

**Christopher Simmons and the Death Penalty:** Reading and discussion about the case of Christopher Simmons, who appealed his death sentence to the Supreme Court because he was 17 at the time of his crime. (p. 337)

#### Answers to Discussion Questions (p. 337)

1. At the time of Simmons' sentence, 12 states did not allow the death penalty at all. Of the remaining 38 states, 20 allowed the execution of juveniles and 18 set the minimum age for capital punishment at 18. Do you think these statistics are relevant in determining whether the death penalty for juveniles is cruel and unusual punishment? Why or why not?

Accept reasoned answers.

2. The judge instructed the jury to consider Simmons' young age as a mitigating factor. Simmons' lawyer reminded the jurors that juveniles of Simmons' age cannot drink, serve on juries, or marry without a parent's consent because "the legislatures have wisely decided that individuals of a certain age aren't responsible enough." Do you think that the limits for drinking or serving on a jury should be the same as the limits for capital punishment? Explain.

Accept reasoned answers.

3. Do you think that executing juveniles under 18 is cruel and unusual punishment? Explain.

Accept reasoned answers.

**Important Cases on Sentencing Juveniles:** Reading and discussion about the juvenile sentencing cases of *Roper v. Simmons*, *Graham v. Florida*, *Jackson v. Hobbs*, and *Miller v. Alabama*. (p. 338)

#### Answers to Discussion Questions (p. 341)

1. Do you agree with the Supreme Court's decision in the Christopher Simmons case? Why or why not?

Accept reasoned answers. Note that the Supreme Court found the death penalty to be a cruel and unusual punishment for offenders under 18.

2. Do you agree with the Supreme Court's decision in the Terrance Graham case? Explain.

Accept reasoned answers. Note that the Supreme Court found that in a non-homicide case, sentencing a juvenile to life without parole is cruel and unusual punishment, thus banned by the Eighth Amendment.

3. The majority in both *Simmons* and *Graham* decided to make categorical rules. What is a

categorical rule? Do you think they were appropriate in each case? Explain.

A categorical rule is one that applies to everyone in a particular category, such as everyone under 18. In *Simmons*, for example, the court found that juveniles could not get the death penalty, because they were not mature enough, thus making a categorical ruling that applied to all juveniles.

As to whether categorical rules were suitable to each case, accept reasoned answers.

4. Do you think that international opinion on juvenile sentences should be considered in deciding cases like *Simmons* and *Graham*?

Accept reasoned answers. Note that the U.S. has not ratified the U.N. Convention on the Rights of a Child, thus it does not apply to the U.S.

5. Neither Christopher Simmons nor Terrance Graham was set free by the Supreme Court's decision in their cases. Simmons' new sentence is life without the possibility of parole (which may change depending on the outcome of the *Jackson* and *Miller* cases). Graham's sentence was changed to 25 years (without the possibility of parole). Imagine that the trial court had changed Graham's sentence to 70 years behind bars. Do you think the Supreme Court would find that sentence cruel and unusual? Explain.

Accept reasoned answers. Note that the dissenting opinion in *Graham* asked, "If states are not allowed to sentence juveniles to life without parole, does not the same logic require that they not sentence them to long prison terms?"

**Class Activity: The *Jackson* and *Miller* Cases** — Students role play the Supreme Court and decide these companion cases. (p. 341)

**Court Decision in the *Jackson* and *Miller* Cases:** The U.S. Supreme Court ruled 5–4 in the consolidated cases that *mandatory* sentences of life without the possibility of parole may not be given to those who commit homicide when under the age of 18. But the court did not strike down all cases of life without the possibility of parole (even for those younger than 15). The court majority held that the Constitution bans "requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes." Since the court decided as it did, it leaves open for another case the question of whether life without parole sentences may be given to juveniles under 18 (or 17, 16, 15, etc.).

## Lesson Sequence 5

**Current Trends and Controversies:** Reading and discussion about issues surrounding the increasing incarceration of juveniles, over-representation of minorities in the system, and how to deal with status offenders. (p. 342)

**Answers to Discussion Questions** (p. 343)

1. Do you think the juvenile justice system should focus on rehabilitation or punishment? Why?

Accept reasoned answers. Note that many studies have shown that rehabilitation works well with juvenile offenders as they are still developing.

2. How do you account for the great number of minority youth in detention? What do you think can be done about it? Explain.

Accept reasoned answers. Note that some address this as a race issue while others as a class issue.

3. Should status offenders be treated as offenders or as cases of abuse and neglect? Why?

Accept reasoned answers.

**Class Activity: What Should Be Done?** — Students write essays on whether the juvenile justice system should try to rehabilitate or punish serious offenders. (p. 343)



## Unit 6: Solutions

**Overview:** A three-chapter unit focusing on the ongoing debate over the causes of crime; the role of state and federal government in addressing America's crime problems with public policy initiatives; and the role of the citizen in helping solve problems associated with crime and criminal justice at the local level.

**Objectives:** By the completion of this unit, students will be able to:

1. Identify and evaluate social and individual factors proposed as causing crime.
2. Describe the role of the federal, state, and local government in addressing crime problems.
3. Express a reasoned opinion on the proper balance between national security and the protection of individual rights.
4. Express a reasoned opinion on whether our nation's gun laws should be stricter, be less strict, or remain the same.
5. Evaluate public policy proposals to assure fairness in the criminal justice system using given criteria.
6. Demonstrate a historical awareness of constructive and destructive attempts to attack crime problems.
7. Identify opportunities for citizens to become involved in reducing crime.
8. Evaluate public policy proposals for the allocation of resources in addressing crime problems using given criteria.
9. Generate and evaluate recommendations for reducing a community's crime problem.

### Introduction

AM 6.1

## CHAPTER 22: THE CAUSES OF CRIME

### Lesson Sequence 1

**Theories and Approaches:** Brief introductory reading on the causes of crime. (p. 346)

**Social and Cultural Factors:** Reading and discussion about some social and cultural factors causing crime, such as poverty, unemployment, racial discrimination, child abuse and neglect, values that make crime more acceptable, and violence in the media. (p. 347)

**Answers to Discussion Questions** (p. 349)

1. Which do you think are the most important cultural or social factors that contribute to crime? Which are the least important? Why?

Social and cultural factors include poverty, unemployment, racial discrimination, child abuse, child neglect, values that make crime more acceptable, and the influence of the media.

Students should give reasoned opinions on factors contribute the most and which, the least.

2. Which factors are most difficult to change? Which are the easiest?

Accept reasoned answers.

3. If all murderers drank milk as children, does this prove drinking milk leads to murder? Explain.

No, it does not. Even if all murderers drank milk as children, all children who drink milk do not become murderers; therefore milk does not lead to murder.

Even if everyone who drank milk became a murderer, this would not prove milk leads to murder. This is the *post hoc ergo propter hoc* logical fallacy (after that therefore because of that). Just because something happens after something else does not prove the first event caused the second event. E.g., if a rooster cries every dawn, that does not prove the rooster causes the sun to come up. It is difficult to prove one thing causes another thing to happen. It is especially difficult to prove causes of human behavior.

### Lesson Sequence 2

**Individual and Situational Factors:** Reading and discussion about individual and situational factors causing crime, such as biology, drugs and alcohol, guns, and rational choice. (p. 349)

**Answers to Discussion Questions** (p. 352)

1. Which do you think are the most important individual or situational factors that contribute to crime? Which are the least important? Why?

Individual and situational factors include biology, drugs and alcohol, guns, and rational choice.

Students should give reasoned opinions on factors contribute the most and which, the least.

2. Which factors are most difficult to change? Which are the easiest?

Accept reasoned answers.

3. Which of all the theories discussed do you think is most important? Which is least important? Why?

Accept reasoned answers.

4. What additional factors do you think contribute to crime?

Accept reasoned answers.

5. White-collar crimes are often committed by employed, well-educated people from good family backgrounds. If they don't need money, why would such people commit fraud or embezzlement?

Accept reasoned answers.

**Class Activity: The Causes of Crime** — Students meet in groups of four, select one of the causes of crime, brainstorm solutions, choose their best solution, and present it to the class. (p. 352)

## CHAPTER 23: CRIME AND THE GOVERNMENT

### Lesson Sequence 1

**The Role of Government:** Brief overview of the chapter. (p. 353)

**Crime and the Federal Government:** Reading and discussion about the roles of the executive, legislative, and judicial branches of federal government in crime control. (p. 354)

#### Answers to Discussion Questions (p. 355)

1. For what part of the American criminal legal process is the legislative branch of the federal government responsible? The executive branch? The judicial branch?

The legislative branch makes laws that define federal crimes and set punishments, passes legislation, and creates agencies to study and reduce crime.

The executive branch enforces federal laws.

The judicial branch decides cases and interprets the meaning of the laws.

2. Describe two crimes that fall under the jurisdiction of federal rather than state law.

Committing a crime on federal territory and assaulting a federal employee are examples of two crimes that fall under the jurisdiction of federal rather than state law.

3. How do courts set precedents? How can precedents change the law? Do you think courts should follow precedents? Why or why not?

Courts set precedents by making decisions that resolve one case but the decision can also be applied to future cases as a general rule to follow.

As to whether courts should follow precedents, accept reasoned answers.

4. How might the *Small* decision affect the way laws are written?

Congress will probably not use the phrase “in any court” unless it just means U.S. courts. Congress may specify in future laws whether it means foreign courts as well as U.S. courts.

**Class Activity: What Does It Mean?** — Students are given one of four cases to decide the meaning of words in a statute. (p. 356)

#### Answers to Class Activity (p. 356)

**Case 1: *Watson v. U.S.* (2007).** A unanimous court ruled that Watson did not use a firearm under the meaning of the statute.

**Justice Souter for the court:** “The Government may say that a person ‘uses’ a firearm simply by receiving it in a barter transaction, but no one else would.”

**Justice Ginsburg, concurring:** “I would read the word ‘use’ in §924(c)(1) to mean use as a weapon, not use in a bartering transaction.”

**Case 2: *New Mexico v. Ogden* (1994).** The court interpreted “peace officer” to include a Community Service Officer.

**Judge Frost for the court:** “The purpose of Section 31-20A-5(A) is to deter the killing of law enforcement officers by enhancing the penalty for committing that crime.... Furthermore, by using the term “peace officer,” [the section] demonstrates the legislature’s intention to protect a broader category of law enforcement officers than only police officers. A court should not hobble statutory interpretation with the requirement that every circumstance meant to be covered must be specifically mentioned in the statute.”

**Case 3: *Tune v. Texas Dept. of Public Safety* (2000).** The Texas Supreme Court ruled that Tune had been convicted of a felony.

**Justice Enoch for the court:** “The Act considers a person ‘convicted’ after an adjudication of guilt is entered against him whether or not his sentence is subsequently probated and he is discharged from community supervision. On its face, this language covers Tune. That is: (1) he was adjudicated guilty of a felony by a court of competent jurisdiction; and (2) it doesn’t matter that his sentence was subsequently probated and he was discharged from community supervision.”

**Case 4: *Maddox v. Florida* (2006).** The Florida Supreme Court ruled 4–3 that the ticket should be allowed in evidence.

**Per Curiam:** “[A] sterile literal interpretation should not be adhered to when it would lead to absurd results.... When section 316.650 is read in the context in which it is found and in conjunction with related statutory provisions, the reasonable construction of this statutory provision is that the Legislature intended only to exclude traffic citations in a more limited fashion in matters with issues related to the operation, maintenance or use of the motor vehicle. To hold otherwise would expand the scope of this statute unreasonably and lead to absurd results.”

**Justice Cantero, dissenting:** “I would apply the plain meaning of the statute, which prohibits the introduction of traffic citations ‘in any trial.’ Contrary to the majority, I agree with the First District Court of Appeal’s conclusion in *Dixon v. State* ... that the statute at issue is unambiguous and therefore must be applied as written. I do not believe that we can, or should, circumvent the statute’s plain language. Its directive that traffic ‘citations shall not be admissible evidence in any trial,’ § 316.650(9), Fla. Stat. (2001), is simple and clear. ‘Any trial’ means literally any trial.”

## Lesson Sequence 2

**Federal Policy: The Patriot Act:** Reading and discussion on several provisions of the Patriot Act, especially those affecting privacy. (p. 357)

### Answers to Discussion Questions (p. 360)

1. How does the Patriot Act define “domestic terrorism”? Do you think participants in public protests could ever be accused of “domestic terrorism” under this definition? Why or why not?

The Patriot Act defines “domestic terrorism” as “activities within the United States that involve acts dangerous to human life that appear to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping.”

As to whether peaceful protesters could ever meet this definition, accept reasoned answers.

2. The Justice Department has proposed that the government should be able to ask a court to revoke the citizenship of any American who provides “material support” to terrorists. Do you support the proposal? Why or why not?

Accept reasoned answers.

3. Explain the District Court’s and Ninth Circuit’s opinions in *Mayfield v. U.S.* Which do you think is right? Why?

The District Court found parts of the Patriot Act unconstitutional. It argued that the executive branch was able to bypass the Fourth Amendment’s probable cause requirement in gathering evidence for a criminal prosecution.

The Ninth Circuit did not base its decision on the constitutionality of the Patriot Act, but instead ruled that Mayfield lacked standing to bring the case, as he could not show that the law immediately harmed him.

As to students’ opinions of the decisions, accept reasoned answers.

4. At the beginning of the article are two famous quotations. What do they mean? Which, if any, do you agree with? Explain.

The two quotations are:

“Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety.” — Benjamin Franklin (1706–1790)

Franklin stresses the high value of liberty (which Americans fought for) and that it should not be given up.

“[The] Bill of Rights [is not] a suicide pact.” — Robert H. Jackson, Supreme Court justice, dissenting in *Terminiello v. Chicago* (1949)

Jackson stresses that our freedoms should not be interpreted to mean we cannot defend ourselves from dangers.

As to whether students agree with either quotation, accept reasoned answers.

**Class Activity: National Security and Freedom** — Students examine and debate controversial provisions of the Patriot Act and conclude by writing essays on the balance between national security and freedom. (p. 361)

## Lesson Sequence 3

**Policies on Guns:** Reading and discussion on federal gun policies and proposals, their pros and cons, and the Second Amendment. (p. 361)

### Answers to Discussion Questions (p. 365)

1. Do you agree with the *Heller* and *MacDonald* decisions? Explain.

Accept reasoned answers. In *Heller*, the court struck down a DC law that essentially banned handguns, holding that the government could not ban handguns held and used for self-defense at home, as this violated the Second Amendment. In *MacDonald*, the court ruled that the Second Amendment applied to the states as the 14th Amendment incorporated it because the right to “bear arms was a fundamental right necessary to our system of ordered liberty.”

2. Do you think gun control can reduce violent crime? Why or why not?

Accept reasoned answers.

3. Which of the gun-control policies mentioned seem the best? The worst? Why?

Accept reasoned answers. Gun control policies mentioned include: sharply increasing taxes on the sale of guns and bullets, requiring gun owners to register firearms and to have a firearms license, compelling gun manufacturers to install safety devices, making bullet manufactures put serial numbers on every bullet, and limiting gun purchases to one a month per person.

**Class Activity: Gun Policies** — Students debate the merits of different gun policies. (p. 365)

## Lesson Sequence 4

**An Attack on Crime: The State Level:** Reading and discussion about the different branches of state government and their role in fighting crime. (p. 365)

### Answers to Discussion Questions (p. 365)

1. Why do you think controlling violent crime is primarily the responsibility of the states?

Accept reasoned answers, but students should mention that we have a federal system and controlling crime is seen primarily as a local and state problem.

2. Under what circumstances could the U.S. Supreme Court overturn a state law? Explain.

The U.S. Supreme Court could overturn a state law if the law is deemed to violate the U.S. Constitution.

**Class Activity: A State Senate Committee** — Students role play a state senate committee debating a proposed crime bill. (p. 366)

### Lesson Sequence 5

**State Supreme Courts and State Constitutions:** Reading and discussion about criminal defendants basing their appeals on state constitutions instead of the U.S. Constitution. (p. 370)

**Answers to Discussion Questions** (p. 370)

1. On what basis can state courts grant greater protections for criminal defendants than those guaranteed by the U.S. Constitution?

A state Supreme Court can declare that its state constitution grants certain rights. These rights are protected independently by the state constitution. The U.S. Supreme Court cannot overrule these decisions, because state supreme courts are the final judges of the meaning of their constitutions.

2. Do you think state courts should do this? Why or why not?

Accept reasoned answers.

3. Could a state court restrict or deny rights guaranteed by the U.S. Constitution? Explain.

No. A state may not restrict or deny rights guaranteed by the U.S. Constitution. The U.S. Constitution is the highest law of the land.

### Lesson Sequence 6

**The Color of Justice:** Reading and discussion about whether the criminal justice system discriminates against minorities. (p. 371)

**Answers to Discussion Questions** (p. 375)

1. Describe the disparities between white and black defendants at each of the following key decision points: arrest, plea bargaining, jury verdicts, sentencing, and death penalty.

**Arrest:** African Americans have a disproportionately high arrest rate for drug possession, drug trafficking, and violent crimes.

**Plea bargaining:** Whites are more likely to get their sentences reduced through plea bargaining.

**Jury verdicts:** The race of the defendant affects jurors' decisions when jurors are members of a different race. African-American jurors are more likely to find white defendants guilty and vice versa.

The effect of race is mitigated in racially mixed juries.

**Sentencing:** Convicted African Americans are more likely than whites to go to prison and have longer sentences. Federal mandatory sentences seem to have aggravated this problem.

**Death penalty:** Defendants are more likely to be sentenced to death if the victim is white than if the victim is black. More white defendants receive pre-trial waivers for the death penalty in a plea agreement than blacks.

2. What do you think accounts for these disparities? Explain.

Accept reasoned answers.

**Class Activity: Toward a Colorblind Justice System** — Students evaluate proposals to prevent discrimination in plea bargaining, jury verdicts, sentencing, and the death penalty. (p. 375)

## CHAPTER 24: CRIME AND THE CITIZEN

### Lesson Sequence 1

**Getting Involved in Fighting Crime:** Brief introduction on what citizens can do about crime at the local level. (p. 377)

**Vigilantes in American History:** Reading and discussion about vigilantism in American history. (p. 377)

**Answers to Discussion Questions** (p. 380)

1. Why did normally law-abiding and well-to-do citizens turn to illegal vigilante methods? Do you think that people today could turn to vigilantism? Explain.

Vigilante methods were used due to the lack of police, courts, and jails and in order to keep taxes low. Frontier Americans lived in isolated communities susceptible to ravaging outlaws and devoid of law enforcement. Vigilante methods were used to fill a need for order and security in a state of disorder.

As to whether students think people today could turn to vigilantism, accept reasoned answers.

2. How are vigilante groups and lynch mobs different? How are they similar?

**Similar:** Organized independently from the government, serve to punish individuals, do not provide any rights to the accused.

**Different:** Lynch mobs are usually spontaneously organized under high emotion to punish perceived offenders, often by hanging.

Accept other reasonable answers.

3. Do you think vigilantism was ever justified in American history? Do you think it would ever be justified today? Why or why not?

Accept reasoned answers.

## Lesson Sequence 2

**Crime in Schools:** Reading and discussion about the problem of violence in U.S. schools. (p. 380)

### Answers to Discussion Questions (p. 384)

1. Describe how school conditions differed in each of the following periods: 1950–1969, 1970–1992, and 1993–present.

1950–1969: Main problems in 1950s were pranks, isolated fistfights, and occasional vandalism. Main problems in late 1960s were demonstrations.

1970–1992: Crimes of violence, drug offenses, rape, and shootings in schools began in early 1970s. Main problems in 1980s were drug dealing, gang rivalries, and increased levels of violence. Crime began to decrease in schools beginning in 1990s. Reports of gangs in schools decreased in 1989.

1993–present: Reports of gangs in schools rose in 1995 but decreased in 2003. A series of shootings took place in non-urban schools in the 1990s. Anti-bullying, zero tolerance, and other measures were taken to increase the safety of students, reducing crime, violence, and bullying.

2. Does your school look different from a school of the 1950s? What is different and why?

Accept reasoned answers.

3. Does your school have a crime problem? If so, what do you think are the primary causes of crime in your school? Explain. What do you think can be done about the problem?

Accept reasoned answers.

**Class Activity: A School Plan** — Students examine problems and develop solutions to potential crime problems at their school. (p. 384)

**Activity: What Are Communities Doing About Crime in Schools** — Students research and report on school crime statistics and programs to reduce crime in schools. (p. 384)



## Lesson Sequence 3

**Burglary Prevention:** Reading and discussion on preventing burglary with neighborhood watch programs. (p. 384)

### Answers to Discussion Questions (p. 386)

1. Why do you think it's so difficult for the police to catch burglars without citizen help?

Accept reasoned answers.

2. What are some easy ways to reduce burglary rates? What can individual homeowners do?

Some easy ways to reduce burglary rates are to pay attention to the look of an area, get to know

your neighbors, upgrade locks and window latches, cancel the newspaper and the mail while on vacation, and put lights on timers.

3. How much responsibility should neighbors have for each other? Could neighborhood watches lead to an invasion of people's privacy? How could such problems be avoided?

Accept reasoned answers.

4. Have you ever seen someone suspicious hanging around a neighbor's house? Did you call the police? Would you if it happened again? Why?

Accept reasoned answers.

5. Is there a neighborhood-watch plan in your area? How is it working?

Accept reasoned answers.

**Ask an Expert:** Class invites an officer from a burglary-prevention unit to discuss the burglary problem in the community and practical steps for burglary prevention. (p. 385)



**Activity: A Home Security Check** — Students apply a checklist to determine how secure their own homes are against the threat of burglary. (p. 386)



## Lesson Sequence 4

**Class Activity: A Citizen Task Force** — Students role play interest groups and a mayoral committee making a decision about how to spend federal money on crime programs. (p. 387)



6.1 and 6.2

## Lesson Sequence 5

**A Conclusion on Crime:** Reading and discussion about proposed solutions to reduce the problem of crime. (p. 392)

### Answers to Discussion Questions (p. 394)

1. After studying the issues, has your opinion about America's crime problem changed? If so, how?

Accept reasoned answers.

2. What do you think should be done about crime in the United States? Explain.

Accept reasoned answers.

**Class Activity: What Should Be Done?** — Students write recommendations on what to do about the problem of crime. (p. 394)

## Section 4: Activity Masters

### List of Activity Masters

- 0.1 Newsbreak
- 0.2 Research Activities for Enrichment and Extra Credit
- 0.3 Opinion Surveying
- 0.4 Briefing a Case
- 0.5 Analyzing an Editorial Cartoon
- 1.1 Legal-Ease
- 1.2 Crime Victim Survey
- 1.3 Crime Victims Board
- 2.1 Legal-Ease
- 2.2 Application and Affidavit for Search Warrant
- 2.3 Search Warrant
- 3.1 Legal-Ease
- 3.2 The Prosecutor Decides
- 3.3 In the Halls of Justice
- 3.4 Choosing a Jury
- 3.5 The Defense Rests
- 4.1 Legal-Ease
- 5.1 Legal-Ease
- 5.2 Who Should Be in the System?
- 5.3 Detain or Release
- 6.1 Legal-Ease
- 6.2 Fighting Crime in the City of Athena (Part 1)
- 6.3 Fighting Crime in the City of Athena (Part 2)

Name \_\_\_\_\_

Date \_\_\_\_\_

## Newsbreak

Criminal justice constantly makes the news. Newspapers print many items about crime, policing, trials, court decisions, sentencing, and juvenile delinquency. To keep current with *Criminal Justice in America*, you need to read the newspaper, news magazines, or Internet news sources.

In this activity, you will clip out articles, editorials, and editorial cartoons about criminal justice. Below is a list of the book's units. Under each unit is a list of suggested articles to find.

### Unit 1: Crime: Find articles on:

- Proposals and programs to help crime victims.
- Gangs, crime in schools, and youth violence in general.
- Different kinds of crime—property crime, violent crime, and other types.
- Various defenses to crime, particularly insanity, self-defense, and entrapment.

### Unit 2: The Police: Find articles on:

- What police do and the problems they face.
- Community policing.
- Advanced technology in investigating crime (e.g., DNA profiles).
- Rules that police must follow in conducting searches, seizing evidence, making arrests, and questioning suspects.
- Cases of police brutality, corruption, or other misconduct and how to police this misconduct.

### Unit 3: The Criminal Case: Find articles on:

- The courtroom participants: prosecutors, defense attorneys, judges, witnesses, jurors.
- The rights of criminal defendants.
- All stages of a criminal case: arrest, first appearance before a judge, bail, preliminary hearing or indictment, arraignment, pretrial motions, trial, sentencing, post-trial motions, and sentencing.
- Prosecutorial discretion in determining charges in particular cases.
- Plea bargaining.
- Various pretrial motions (e.g., to suppress evidence, change venue, and issue gag orders).
- Procedural steps in a criminal trial, including jury selection, opening statements, presentation of evidence, closing arguments, jury instructions, and jury deliberations.

### Unit 4: Corrections: Find articles on:

- The purpose of punishing criminals.
- Three-strike, truth-in-sentencing, and mandatory-sentencing laws.
- The number of persons in prison.
- Fixed and indeterminate sentencing and sentencing guidelines.
- Alternatives to prison such as probation, house arrest, community service, halfway houses, and others.
- Prison conditions, private prisons, and prison revolts.
- Super-maximum-security prisons.
- Parole.
- Death penalty.

### Unit 5: Juvenile Justice: Find articles on:

- Differences between the juvenile and adult justice systems.
- Legal rights of juveniles.
- Where juvenile offenders should be placed.
- Referring juvenile offenders to adult court.
- Juveniles and the death penalty.

### Unit 6: Solutions: Find articles on:

- Racism in the justice system.
- The causes of crime.
- Proposals for government action against crime.
- Action citizens are taking or can take against crime.

### Follow-up:

Unlike other activities, this activity can continue while you study the entire book. It will not be completed until you complete the text.

Be creative. You can create a scrapbook using the unit headings as organizers. Or, work with other students to create an ongoing class bulletin board or collage.

## Research Activities for Enrichment and Extra Credit

For extra credit, you may present a report on one of the subjects listed below. These subjects all supplement material in the book. Use the Internet and encyclopedias, biographies, history books, and periodicals in the library to help you research your report.

### Unit 1: Criminals and Victims

**Crime victims:** Judge Crater, Elizabeth Short, Kitty Genovese, Patty Hearst, the Lindbergh baby, Robert F. Kennedy, George Wallace, Jimmy Hoffa.

**Criminals:** Jesse and Frank James, William H. Bonney, Butch Cassidy, William Quantrill, Joaquin Murietta, John Wilkes Booth, Bonnie Parker and Clyde Barrow, Al Capone, “Ma” Barker, Bruno Richard Hauptmann, John Dillinger, Willie Sutton, Charles Manson, Clarence Chance and Benny Powell, John Gotti, “Bugsy” Siegel, Clifford Irving, Jim Bakker, G. Gordon Liddy, Ivan Boesky.

### Unit 2: Law Enforcers and Law-Enforcement Agencies

**Law enforcers:** Robert Peel, Wyatt Earp, James Butler “Wild Bill” Hickok, William Barclay “Bat” Masterson, Elfege Baca, Patrick Floyd “Pat” Garrett, J. Allan Pinkerton, William J. Burns, J. Edgar Hoover, Eliot Ness, William Parker, “Popeye” Doyle, Frank Serpico, William Bratton, Bernard Parks, Joe Arpaio, August Vollmer.

**Law-enforcement agencies:** Federal Bureau of Investigation; Secret Service; Drug Enforcement Administration; Bureau of Alcohol, Tobacco, and Firearms; Internal Revenue Service; Immigration and Customs Enforcement; Texas Rangers; New York Police Department; Los Angeles Police Department; your local police department.

### Unit 3: Trials, Lawyers, and Judges

**Trials:** Salem witch trials (1692), John Peter Zenger (1735), Aaron Burr (1807), Lambdin P. Milligan (1864), Lizzie Borden (1892), Bill Haywood (1907), Sheriff Joseph F. Shipp (1907), James and John McNamara (1910), Sacco and Vanzetti (1921), Leopold and Loeb (1924), Scottsboro Boys (1931), Massie trials (1931 and 1932), “Lucky” Luciano (1936), Alger Hiss (1950), Julius and Ethel Rosenberg (1951), Samuel Sheppard trials (1954 and 1966), Chicago Seven (1969), Claus von Bulow (1982 and 1985), Joe Hunt (Billionaire Boys Club, 1987), McMartin Preschool case (1990), Rodney King beating trials (1992 and 1993), O.J. Simpson (1994–1995), Menendez brothers (1994 and 1996).

**Lawyers:** Clarence Darrow, Thomas Dewey, Edward Bennett Williams, Jerry Geisler, William Kunsler, F. Lee Bailey, Alan Dershowitz, Johnnie Cochran.

**Judges and Justices:** Roy Bean, John Sirica, Benjamin Cardozo, Learned Hand, Earl Warren, William Brennan, William Rehnquist, Antonin Scalia, John Roberts.

### Unit 4: Prisons, Prisoners, and Punishment

**Prisons:** Alcatraz, San Quentin, Leavenworth, Sing Sing, Joliet, Pelican Bay.

**Prisoners:** Birdman of Alcatraz, Caryl Chessman, Robert E. Burns, Willie Horton, Jean Harris, Gary Gilmore, Robert Alton Harris, Randall Adams, Jack Abbott, Geronimo Pratt, Winnie Ruth Judd.

**Punishments:** Penal colony, ducking stool, pillory and stocks, whipping, public shaming, firing squad, hanging, electrocution, lethal injection, gas chamber.



## Opinion Surveying

### Tips on Selecting the Sample:

To get an accurate opinion poll, you need to consider what population the survey represents. Is it the school? The community? Then you need to select a sample that represents that population. Most professional pollsters try to get a random sample of the population they are surveying. In a random sample, everyone in the population has an equal chance of being included in the survey. Consider these ideas for getting a random sample:

#### If your survey is of . . .

Students at your school  
School staff  
Community members

#### Try surveying . . .

Every 4th student in the lunch line  
Every 3rd person on the staff list  
Every 100th person in the telephone book

If you are surveying the community, consider including demographic information at the top of each questionnaire (which you can fill out). The following is an example:

<b>Identify respondent:</b>	<b>Age Range:</b>	<b>Gender:</b>
<input type="checkbox"/> School Personnel	<input type="checkbox"/> 15–20	<input type="checkbox"/> Male
<input type="checkbox"/> Student	<input type="checkbox"/> 21–35	<input type="checkbox"/> Female
<input type="checkbox"/> Community member	<input type="checkbox"/> 36–50	
<input type="checkbox"/> Other _____	<input type="checkbox"/> over 50	

### Tips for Conducting the Survey:

**Practice an introduction.** When approaching a stranger, you should . . .

- introduce yourself.
- tell what school or group you are from.
- explain why you are giving a survey.
- ask whether the person would mind spending a few minutes to help you complete your project.

**Don't persuade anyone to take the survey.** If the person is reluctant, don't persist — the responses of a reluctant individual are normally not usable.

**Inform people that their responses will be reported anonymously.**

**Be as organized as possible.** Use a clipboard to hold the surveys and bring extra pens or pencils. If the interviewee fills out the survey, be sure to check that all the information is complete. If the demographic information needs to be completed, complete it yourself right then by asking the appropriate questions.

**Be polite.** Ask for clarification if the response is not clear, for example: “Would you please repeat that?” or “Please explain.” If the respondent marks the survey, wait for it. If you read it to the respondent and fill it in, write exactly what the person says. Thank the respondents when they finish. If they ask you who else you are asking as part of the survey, or “How did you pick me?” explain the categories briefly and the random selection process.

**Work as a team.** Accompany each other in conducting a survey for support, encouragement, and safety.

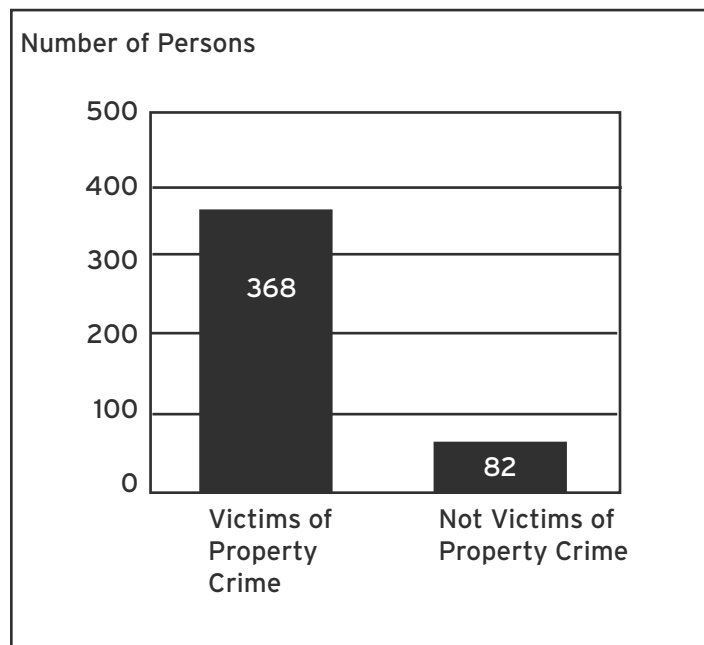
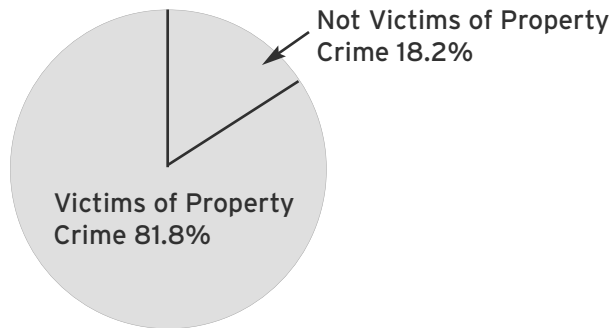
**Tips on Tabulating the Results of Your Survey:**

- Write down how your sample was chosen. People will want to know this.
- Count the number of completed surveys.
- Tabulate the survey results on one of your blank survey forms.
- Write down your *most significant findings*.
- *Optional:* Report any unusual comparisons of demographic characteristics (age, gender, etc.).
- Plan how you will present your data. You can present it as:

**raw numbers:** “Of the 450 people polled, 368 had been victims of property crimes.”

**percentages:** “More than 81 percent had been victims of property crimes.”

**pie charts or bar graphs:**



Name \_\_\_\_\_

Date \_\_\_\_\_

## Briefing a Case

Title of Case \_\_\_\_\_

Name of Court \_\_\_\_\_ Date Decided \_\_\_\_\_ Vote \_\_\_\_\_

**Facts:** (Briefly summarize the most important facts of the case.)

**Most Important Issue:** (Some cases have several issues. Choose what you believe to be the most important issue decided by the case. The issue should be stated in the form of a question that can be answered with a yes or no.)

**Holding:** (Tell how the court ruled on the issue.)

**Reasoning:** (Explain the reasons for the court's decision.)

**Dissent:** (Explain how the dissenters would have decided the case and give their reasoning.)

**Do you agree with the opinion of the court?** (Explain your answer and give your reasons.)

Name \_\_\_\_\_

Date \_\_\_\_\_

## Analyzing an Editorial Cartoon

Name of cartoonist: \_\_\_\_\_ Source of cartoon: \_\_\_\_\_

- 1 . List any famous people, places, or things represented in the cartoon.
2. List any symbols in the cartoon and tell what they represent.
3. Does the cartoonist use hyperbole, metaphors, satire, or irony in the cartoon? If so, explain their use.
4. What issue does the cartoon deal with?
5. What is the cartoonist's opinion on this issue?
6. Do you agree with the cartoonist's opinion? Explain.

## Legal-Ease for Unit 1

The law has a special language of its own. Below are definitions of some legal terms you will find in this unit. Study them and watch for them in your reading. If you come across other terms you need help with, look them up in the glossary at the back of the book.

**accomplice** Someone who aids another in committing a crime, either before or during the crime.

**acquit** In a criminal case, to find a defendant not guilty.

**affirmative defense** A defense such as insanity, self-defense, and entrapment. If proved by the defendant, it makes the defendant not guilty of the crime even if the prosecution can prove the elements of the crime.

**attempt** The crime of taking substantial steps toward committing a crime, but not actually committing it. Attempt is considered an **inchoate crime**.

**bunco** A con game; a swindle.

**burglary** The crime of unlawfully entering a building with the intent to commit a crime, such as theft.

**civil case** A lawsuit between individuals or organizations, which normally seeks monetary compensation for damages.

**common law** 1. The unwritten law in England that evolved over centuries and is the basis for U.S. law. 2. Case law in the United States as opposed to statutory law.

**conspiracy** The crime of two or more people agreeing to commit a crime. Most jurisdictions also require an overt act toward committing the crime. It is considered an **inchoate crime**.

**contempt of court** It consists of two types: civil and criminal. Civil contempt typically occurs when a person fails to obey a court order and is held in contempt until the order is obeyed. Criminal contempt is a crime that punishes an offender for disrupting or attacking the integrity of the court.

**crime** An illegal act punishable upon conviction in a court.

**criminal lawyer** A prosecutor or defense attorney.

**felony** Serious crime usually punished by one or more years of imprisonment in a state or federal penitentiary.

**fraud** The crime of obtaining another's property through lies and deceit.

**inchoate crime** A group of crimes that penalize planning, preparing, or aiding after the fact the commission of a crime. Examples of inchoate crimes are accessory after the fact, attempt, conspiracy, and solicitation.

**larceny** The unlawful taking of another's property with the intention of permanently depriving the owner of its possession and use; theft.

**mens rea** Guilty mind; the state of mind requirement for a crime.

**misdemeanor** Crime less serious than a felony, usually punished by a fine or imprisonment up to one year in a local jail.

**Model Penal Code** A criminal code composed by legal experts at the American Law Institute as a standard that legislatures may want to adopt. Unless sections of it are adopted by jurisdictions, it has no legal authority.

**perjury** The crime of lying while testifying under oath.

**restitution** Direct payments made from criminal to victim as compensation for a crime.

**robbery** The taking of a person's property by violence or threat of violence; forcible stealing.

## Crime Victim Survey

Questions	Explanations
1. Have you ever been a victim of a crime such as bike theft, burglary, assault, etc.?  YES                    NO	
2. Have any members of your family been victims of crime?  YES                    NO	
3. Have any nearby neighbors ever been victims of crime?  YES                    NO	
4. Do you feel unsafe alone at night in your own neighborhood?  YES                    NO	
5. Do you believe a crime problem exists at the local schools?  YES                    NO	
6. Has crime forced the people in your family to change any part of their lives?  YES                    NO	
7. Do you think the police in your community are doing an adequate job of protecting you and other citizens from crime?  YES                    NO	
8. Compared to one year ago, do you think the crime problem in your community has gotten worse?  YES                    NO	

Name \_\_\_\_\_

Date \_\_\_\_\_

### Crime Victims Board

<b>CASE NUMBER:</b>	<b>CASE NUMBER:</b>
Approve or Denied (Circle one.)	Approve or Denied (Circle one.)
Reasons:	Reasons:
Amount:	Amount:
Medical:	Medical:
Vocational Rehabilitation:	Vocational Rehabilitation:
Funeral or Burial:	Funeral or Burial:
Earnings:	Earnings:
Support:	Support:
Cash or essential personal property:	Cash or essential personal property:
<b>CASE NUMBER:</b>	<b>CASE NUMBER:</b>
Approve or Denied (Circle one.)	Approve or Denied (Circle one.)
Reasons:	Reasons:
Amount:	Amount:
Medical:	Medical:
Vocational Rehabilitation:	Vocational Rehabilitation:
Funeral or Burial:	Funeral or Burial:
Earnings:	Earnings:
Support:	Support:
Cash or essential personal property:	Cash or essential personal property:

## Legal-Ease for Unit 2

The law has a special language of its own. Below are definitions of some legal terms you will find in this unit. Study them and watch for them in your reading. If you come across other terms you need help with, look them up in the glossary at the back of the book.

**appellate court** A court that hears appeals. An appeals court, not a trial court.

**arrest** Taking a person into custody for the purpose of charging the person with a crime.

**citizen**, or **civilian**, **review board** An official group, staffed by ordinary citizens, authorized to review complaints of police misconduct.

**civil court** A court that handles civil cases rather than criminal cases.

**criminal procedure** The rules for processing someone through the criminal justice system.

**deadly force** Force that poses a high risk of death or serious injury to a human.

**exclusionary rule** A judicial rule that prevents the government from introducing illegally obtained evidence at a criminal trial.

**interrogation** Questioning.

**magistrate** A court officer who issues warrants, normally a lower-court judge who handles pretrial proceedings or presides over misdemeanor trials.

**Miranda warning** A statement about the rights of suspects that police must read to suspects in custody before questioning them.

**motion** A formal request made to a court.

**motion to suppress** A request to exclude evidence from the trial because it was illegally obtained.

**plea bargain** An agreement struck between a criminal defendant and prosecutor. In exchange for a guilty plea from the defendant, the prosecutor will either (1) drop one of several charges, (2) lower the charge, or (3) recommend a light sentence.

**probable cause** Evidence that an independent, cautious person would have good reason to believe.

**prosecute** To press charges and put someone on trial for a crime.

**search** In *Katz v. United States* (1967), the Supreme Court defined a search as any governmental intrusion into something in which a person has a reasonable expectation of privacy.

**seizure** Any taking into possession, custody, or control. Property may be seized, but so may people. An arrest is one form of seizure.

**warrant** A court order issued by a judge authorizing a search, an arrest, or a seizure of evidence of a crime.



Name \_\_\_\_\_

Date \_\_\_\_\_

## Application and Affidavit for Search Warrant

Court of the State of \_\_\_\_\_ County of \_\_\_\_\_

I, \_\_\_\_\_, declare that:

1. I am a police officer in this county.

2. Police want to conduct a search at the following address: \_\_\_\_\_

\_\_\_\_\_

3. I have reason to believe that on the property or premises described above (#2), there is concealed the following items: \_\_\_\_\_

\_\_\_\_\_

4. The following facts support a finding of probable cause: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The facts supporting a finding of probable cause are continued on the attached sheet and made a part of this application and affidavit.

I declare under penalty of perjury that all the statements on this application and affidavit are true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name \_\_\_\_\_

Date \_\_\_\_\_

## Search Warrant

Court of the State of \_\_\_\_\_ County of \_\_\_\_\_

**To any police officer in this county:**

An application and affidavit has been present to me by police officer \_\_\_\_\_.

This application and affidavit established probable cause for this search.

You are ordered to execute the search as follows: \_\_\_\_\_

**Place to be searched (address or location):** \_\_\_\_\_

**Items to be seized:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

- Time of Search:**  The search must be conducted between 6 a.m. and 10 p.m.  
 The search may be conducted at any time.

**Time Limit:** The search must be conducted before: \_\_\_\_\_  
(must not exceed 10 days from date of warrant)

**Disposition of Items Seized:** All items seized shall be kept in the custody of the above-named police officer. The officer must prepare a written inventory of the items seized and return the inventory and this warrant to the judge named below.

**Date and time issued:** \_\_\_\_\_

**Location of Judge (city and county):** \_\_\_\_\_

\_\_\_\_\_  
Name and Title of Judge

\_\_\_\_\_  
Signature of Judge

## Legal-Ease for Unit 3

The law has a special language of its own. Below are definitions of some legal terms you will find in this unit. Study them and watch for them in your reading. If you come across other terms you need help with, look them up in the glossary at the back of the book.

**arraignment** A court hearing in which the defendant must enter a plea.

**arrestee** The person arrested.

**bail** A pretrial procedure permitting an arrestee to stay out of jail by depositing a set amount of money as security that the arrestee will show up for trial.

**bench** The judge's desk in the courtroom. (A bench trial is one conducted without a jury.)

**booking** The process of recording the arrest. A booking officer records the accused's name and address, the charges, and time and place of arrest and may take fingerprints and photographs of the accused.

**burden of proof** The responsibility of proving facts in a case. In a criminal trial, the prosecution has the burden of proving its case beyond a reasonable doubt.

**case in chief** One side's trial evidence. In a criminal trial, the prosecution presents its evidence first. After it rests its case, the defense presents its case.

**cross-examination** The questioning of an opponent's witnesses.

**defendant** The accused in a criminal trial.

**defense attorney** The lawyer for the accused.

**direct examination** An attorney's initial questioning of his or her own witness.

**evidence** The means of determining facts in a trial.

**fact finder** The one responsible for deciding the facts of a particular case and coming to a verdict; either a judge or jury.

**hearing** Any court proceeding, such as a trial.

**homicide** Literally, human killing. The crimes of homicide range from different degrees of murder to different kinds of manslaughter.

**jurisdiction** The geographical area or subject matter over which particular courts or law-enforcement agencies have power.

**prosecutor** The government's attorney who presents the case against a criminal defendant.

**prosecutorial discretion** The prosecutor's authority to decide what charges to bring and how to pursue a criminal case.

**redirect examination** An attorney's requestioning of his or her own witness after cross-examination.

**relevant** Pertinent, appropriate, related to the subject at hand.

**testify** To make statements as a witness under oath.

**testimony** Statements made by witnesses under oath.

**victimless crimes** Crimes, such as prostitution and possession of illegal drugs, in which everyone is involved by choice.

**voir dire** During jury selection, the questioning of prospective jurors.

Name \_\_\_\_\_

Date \_\_\_\_\_

## The Prosecutor Decides

### CHARGES:

#### First-Degree Murder

- Is there evidence that Thomas Evans formed an intent to kill Oscar Hanks? Explain.

\_\_\_\_\_

\_\_\_\_\_

- Is there evidence of premeditation? Explain.

\_\_\_\_\_

\_\_\_\_\_

- Is there evidence showing that this intent was transferred to the killing of Joyce Ann Miller (using the doctrine of transferred intent)? Explain.

\_\_\_\_\_

or

- Is there evidence to show that Thomas Evans formed an intent to kill and premeditated the killing of Joyce Ann Miller? Explain.

\_\_\_\_\_

\_\_\_\_\_

#### Second-Degree Murder

- Is there evidence that Thomas Evans formed an intent to kill Joyce Ann Miller? Explain.

\_\_\_\_\_

\_\_\_\_\_

or

- Is there evidence that Thomas Evans had the intent to do an act where there was an obvious risk that death or great bodily harm would result? Explain.

\_\_\_\_\_

\_\_\_\_\_

**Decision:** Considering all the relevant factors, what crime would you charge Thomas Evans with? (Be prepared to present and discuss your final recommendation with the class.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

#### Voluntary Manslaughter

- Is there evidence that Thomas Evans formed an intent to kill Oscar Hanks? Explain.

\_\_\_\_\_

\_\_\_\_\_

- Is there evidence that Oscar Hanks seriously provoked the actions of Thomas Evans? Explain.

\_\_\_\_\_

\_\_\_\_\_

- Is there evidence that Thomas Evans did not have sufficient time to calm down after being provoked? Explain.

\_\_\_\_\_

\_\_\_\_\_

#### Involuntary Manslaughter

- Is there evidence that Thomas Evans committed an act in a criminally negligent manner? Explain.

\_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

## In the Halls of Justice

### Field Experience Report

Name of Courthouse:	
Address:	
Telephone:	Reporting Time:
Contact Person (if any):	
1. Describe the general environment of the courthouse. Are the court facilities crowded and noisy, or calm?	
2. Describe the security arrangements in the court building and in the courtrooms.	
3. In the arraignment court, describe what is going on.	
4. In a preliminary hearing, describe what is going on.	

5. At a criminal jury trial:

- What is the case about?
- Is it a felony or misdemeanor prosecution?
- Is the prosecutor a city attorney, district attorney, state prosecutor, or federal prosecutor?
- What do you observe the prosecutor doing during the trial?
- Is the defense attorney a public defender or private attorney?
- What do you observe the defense attorney doing during the trial?
- What do you observe the judge doing during the trial?
- Describe the questioning of one witness in the trial.
- Do the jurors seem to be attentive? Describe them.

6. What is your overall impression of your courthouse visit? Were you confused by anything you saw or heard?

7. If the opportunity arises or can be arranged, interview an officer of the court (e.g., court clerk, judge, attorney). Report back your findings.

Name \_\_\_\_\_

Date \_\_\_\_\_

## Choosing a Jury

### Observer Evaluation Form

1. Put a (+) in front of the most realistic role players. Put a (-) in front of the least realistic groups.

. . . . prospective jurors

. . . . lawyers

. . . . judge

2. The jurors who most realistically portrayed their roles were:

3. Based on the jury that was finally selected, which side do you think will win this case? Why?

4. An effective question asked by the defense attorney was:

5. An effective question asked by the prosecuting attorney was:

6. A good question not asked of the prospective jurors is:

## The Defense Rests . . .

### Closing Statement Evaluation Form

Evaluate each closing statement you hear using this sheet. Put the name of the presenter in the appropriate box. Each number on the left below summarizes one of the **Guidelines for an Effective Closing Statement** on page 215. After each presentation, place a check mark in the box if the presenter's statement met the criterion.

Names of Presenters

<b>Guidelines for an Effective Closing Statement</b>										
1. Was emotionally charged.										
2. Only referred to evidence admitted during the trial.										
3. Emphasized facts supporting their side.										
4. Noted weaknesses in other side.										
5. Summarized favorable testimony.										
6. Reconciled inconsistencies in their side.										
7. Used few, if any, notes.										
8. Was well-organized.										
9. Addressed reasonable doubt.										
10. Ended with an appeal to convict or acquit.										



## Legal-Ease for Unit 4

The law has a special language of its own. Below are definitions of some legal terms you will find in this unit. Study them and watch for them in your reading. If you come across other terms you need help with, look them up in the glossary at the back of the book.

**capital punishment** The death penalty.

**deterrence** The idea that fear of punishment will prevent crimes. For example, some people might be deterred from robbing banks because they know that bank robbers go to jail.

**determinate, or fixed, sentence** A prison sentence for a specific length of time, for example, “five years.”

**indeterminate sentence** A prison sentence of an indefinite period of time, for example, “one year to 30 years.” Under this sentence, prisoners are released when the parole board determines they are rehabilitated.

**pardon** An act by the governor or president that forgives all or part of a prisoner’s sentence.

**parole** The conditional release of a prisoner before the end of a prison term.

**parole board** A board appointed by the governor that determines when prisoners may be released on parole.

**penitentiary** A state or federal maximum-security prison.

**probation** An alternative to prison. This sentence requires the offender to follow certain conditions, usually under the supervision of a probation officer.

**recidivism** The committing of further crimes by offenders with previous convictions.

**rehabilitation** Helping convicted offenders change their behavior so that they can lead productive lives in society.

**sentence** A punishment for a crime.

## Legal-Ease for Unit 5

The law has a special language of its own. Below are definitions of some legal terms you will find in this unit. Study them and watch for them in your reading. If you come across other terms you need help with, look them up in the glossary at the back of the book.

**adjudicatory hearing** A trial in juvenile court.

**aftercare** A program for supervising a juvenile who has returned home after a period of confinement. An equivalent to parole in the adult system.

**age of majority** The age a person is considered an adult for legal purposes.

**delinquent act** An act, which if done by an adult, would be a crime.

**dispositional hearing** The term for a sentencing hearing in juvenile court.

**fitness hearing** A special hearing in juvenile court to determine whether a juvenile should be tried in adult court.

**habeas corpus, writ of** A court order requiring authorities to release a prisoner because the court has found that the prisoner is being illegally detained.

**incorrigible** A term describing juveniles who cannot be controlled by their parents.

**parens patriae** Latin for “parent of the country.” The idea that the state takes the role of parents to protect juveniles.

**plaintiff** The party in a lawsuit who sues the other party.

**status offense** An offense, such as truancy and running away from home, that would not be a crime if committed by an adult.

**training schools** Large secure facilities that hold juveniles after they are found delinquent.

## Who Should Be in the System?

Who should deal with the *juveniles* involved in the following cases? Mark the appropriate boxes.

	State or local service agencies	Juvenile courts	Adult criminal courts	No government institution
Abuse or neglect				
Criminal influence				
Economic hardship				
Unconventional homes				
Ungovernability				
Runaways				
Status offenses				
Abuse of intoxicating substances				
Misdemeanors				
Victimless crimes				
Shoplifting				
Major theft or other property crimes				
Violent crimes				

## Detain or Release

### Sacramento County Pretrial Juvenile Detention Risk Assessment

Name of Minor: \_\_\_\_\_ Screened By: \_\_\_\_\_

Date: \_\_\_\_\_

Instructions: Score each factor below and enter scores in the right-hand column. Select only one score for each of the nine factors.

FACTOR	SCORE
<b>1. MOST SERIOUS INSTANT OFFENSE</b> .....	_____
( ) ANY 707(b) offense (see page 307)                      10	( ) Other felony offenses except drugs                      5
( ) Felony crimes of violence                                      8	( ) Sale of drugs or possession for sale of drugs                      5
( ) Felony sexual offenses    7	( ) Possession of drugs    3
( ) Series of three or more separate felony offenses                      7	( ) Misdemeanors involving violence (3 points); other misdemeanors (2 points)                      3/2
( ) Felony high-speed chase (driver only)                      7	( ) Probation violations    1
<b>2. WEAPONS ENHANCEMENT</b> .....	_____
( ) Possession of firearm and ammunition                      2	( ) Possession of firearm (no ammunition) or other weapon                      1
<b>3. WARRANTS</b> .....	_____
( ) Surrendered    2	( ) Apprehended    3
<b>4. LEGAL STATUS</b> (Check only one) .....	_____
( ) Currently on Home Supervision Program                      7	( ) Ward: last offense more than 1 year                      2
( ) Pending Court:    6	( ) Ward: last sustained offense within 3 months                      4
( ) No current status, but prior probation status or 2+ referrals by law enforcement:                      1	( ) Ward: last offense 3 months to 1 year                      3
	( ) None    0
<b>5. RISK OF FAILURE TO APPEAR</b> .....	_____
( ) # of Previous Court FTAs ____: 1 to 3 points	
<b>6. RISK OF NEW OFFENSE</b> .....	_____
( ) Previously sustained new offense while pending court: 3	
<b>7. MITIGATING FACTORS</b> (Can decrease by a total of 1-3 points—specify points) .....	_____
( ) Stable & supportive family or caretaker                      ____	( ) Stability in school and/or employment                      ____
( ) First offense at 16 or older                                      ____	( ) No arrests within the last year                      ____
( ) Successful completion of furlough, home supervision, or electronic monitoring                      ____	( ) Other (specify): _____
<b>8. AGGRAVATING FACTORS</b> (Can increase by a total of 1-3 points—specify points) .....	_____
( ) Witness intimidation    ____	( ) Gang membership    ____
( ) Runaway behavior from home                                      ____	( ) Recalcitrant behavior/curfew                                      ____
( ) Victim threats    ____	( ) Misdemeanor high-speed chase                                      ____
( ) Poor or no attendance at school                                      ____	( ) Other (specify): _____
<b>9. MANDATORY DETENTION CASES</b> (Add "M" along with total score) .....	_____
( ) Escape from county institution                      ( ) Abscond from placement                      ( ) Placement failure	
( ) Electronic monitoring arrest                      ( ) Home supervision arrest                      ( ) Furlough failure	
( ) Weapons—personal use of firearm in commission of felony offense	

**TOTAL SCORE** \_\_\_\_\_

**DETENTION DECISION** (check):

- ( ) Detain (10 or more points)    ( ) Release without restriction (0-5 points)  
 ( ) Release to non-secure detention (6-9 points)  
     \_\_\_\_ Home Supervision      \_\_\_\_ Shelter      \_\_\_\_ Other

**OVERRIDE DECISION** (specify reason):

- ( ) Parent/guardian refusal to pick up      ( ) Threat to public safety                      ( ) Likely to flee  
 ( ) Unable to reach parent/guardian      ( ) Victim threats or victim resides in home                      ( ) Safety of minor  
 ( ) Other (specify): \_\_\_\_\_

Explain decision on back.

Adapted from Sacramento County Pretrial Juvenile Detention Risk Assessment

## Legal-Ease for Unit 6

The law has a special language of its own. Below are definitions of some legal terms you will find in this unit. Study them and watch for them in your reading. If you come across other terms you need help with, look them up in the glossary at the back of the book.

**criminology** The study of crime.

**discretionary jurisdiction** The power of some appeals courts, such as the U.S. Supreme Court, to accept or refuse to hear particular appeals.

**due process** Under the Fifth and 14th amendments, the basic requirement that no person may be deprived of life, liberty, or property without fair procedures.

**incarceration rate** The number of prisoners per 100,000 population.

**precedent** An issue of law previously decided by a court that other courts follow.

**vigilantes** Persons who take the law into their own hands and punish suspected lawbreakers.

**white-collar crime** A class of property crimes that are usually job-related, such as embezzlement, bribery, and consumer fraud.

## Fighting Crime in the City of Athena (Part 1)

### Ranking the Proposals

Rank the six proposals in order of which would be the most effective at fighting crime in the city.

Most Effective
1.
2.
3.
4.
5.
6.

Rank the six proposals again, this time in order of which would be the most effective for the *least amount of money*.

Most Cost-Effective
1.
2.
3.
4.
5.
6.

## Fighting Crime in the City of Athena (Part 2)

### Program Awards

Use this sheet to keep track of the awards for the various programs. Remember the total awards must add up to \$180,000.

Program	Request	Award
Police Aides	\$108,000	
Force One Security Patrol	\$144,000	
Self-Defense Classes	\$ 45,000	
Crime Prevention Seminars	\$ 67,500	
Citizenswatch Patrols	\$ 33,000	
Crimescope Hotline	\$ 75,000	
<b>TOTAL</b>	<b>\$472,500</b>	<b>\$180,000</b>

## Section 5. Test Masters and Answer Keys

The following test masters and answer keys are designed to serve as a part of assessing student performance in obtaining the content and skills objectives of *Criminal Justice in America*.

The **Pre- and Post-Observations**, an opinion master, is designed to assess student opinion on a range of issues relating to criminal justice. Teachers are encouraged to administer the survey before instruction begins and at its completion. Students then can compare any shifts in opinion or attitudes. When the survey is given a second time, students also can be asked to write short essays explaining their responses to the various items. These essays can be used as a part of the final evaluation.

In addition, there are six master tests (one for each unit) and a final test. Test items include true and false, matching, multiple choice, fill-in, short answer, and essay. Each type of item has a consistent point scale, but the total points on each test do not add up to 100. Teachers are encouraged to convert raw scores into percentages on a test-by-test basis or on the basis of total points for all tests administered. To better assure testing integrity, teachers are also encouraged to reproduce and collect tests each time they are administered.

In developing these tests, every effort was made to link the items to the stated objectives and develop items that would test a range of performance, including recall, identification, comprehension, comparison, analysis, and evaluation. Because the needs of individual classes vary, however, teachers are also encouraged to create their own items to supplement those that are provided.

Finally, it is important that these tests serve as only one component in assessing student performance. Teachers should also consider class participation; responses to directed discussions; products from activities; performance in writing activities, reports, and field work; and extra-credit accomplishments in making a final evaluation of student achievement.



## Pre- and Post-Observations

Next to each statement below, write the number that indicates the degree of your agreement or disagreement with the statement.

5 — strongly agree

4 — agree

3 — uncertain

2 — disagree

1 — strongly disagree

- 
- \_\_\_ 1. The government should provide compensation to victims of violent crimes.
  - \_\_\_ 2. The verdict “not guilty by reason of insanity” should be abolished.
  - \_\_\_ 3. Those arrested and charged with crimes should be held in jail until their guilt or innocence is decided at trials.
  - \_\_\_ 4. People accused of crimes have too many rights.
  - \_\_\_ 5. People suspected or accused of crimes should **not** have to answer questions from police.
  - \_\_\_ 6. Juveniles under 16 accused of crimes should be treated differently from adults accused of crimes.
  - \_\_\_ 7. Criminal defendants should be treated as if they are innocent until they are proved guilty in a court of law.
  - \_\_\_ 8. Judges, rather than police, should have the final say about whether police should search a person’s home.
  - \_\_\_ 9. If the police obtain evidence illegally, it should still be allowed to be used in a trial.
  - \_\_\_ 10. Longer prison terms would deter crime and cause crime rates to drop.
  - \_\_\_ 11. Juveniles under 18 who are convicted of first-degree murder should be subject to the death penalty.
  - \_\_\_ 12. The death penalty should be abolished.

**TRUE or FALSE (2 points each):**

- \_\_\_\_ (1) Most states have laws for compensating victims of violent crimes.
- \_\_\_\_ (2) Except for the last 30 years, the United States has experienced relatively little violent crime in its history.
- \_\_\_\_ (3) Compared to males, females are responsible for few violent crimes.
- \_\_\_\_ (4) Many swindlers rely on the victim trying to get something for nothing.

**MULTIPLE CHOICE QUESTIONS (4 points each):**

- \_\_\_\_ (5) Which of the following is **not** an affirmative defense?
- a. John claims he didn't do it.
  - b. John claims he acted in self-defense.
  - c. John claims the police entrapped him.
  - d. John's lawyer claims John is insane.
  - e. John claims he did it under duress.
- \_\_\_\_ (6) Which of these crimes is most likely **not** to be reported to the police?
- a. Domestic violence
  - b. Robbery
  - c. Auto theft
  - d. Homicide
  - e. Both a and c

**FILL IN THE BLANKS (6 points each):**

- (7) When a criminal is forced to pay back a victim directly, it is called \_\_\_\_\_.
- (8) \_\_\_\_\_ are more serious crimes than misdemeanors.
- (9) \_\_\_\_\_ is another name for theft.
- (10) Many police departments have \_\_\_\_\_ squads to investigate con games.

**SHORT ANSWER QUESTIONS (10 points each):**

- (11) List the four basic elements that make up every crime.
- (12) List four homicide offenses in the order of most serious to least serious.
- (13) Compare burglary and robbery. Give an example of each.

Name \_\_\_\_\_

Date \_\_\_\_\_

**ESSAY QUESTIONS (25 points each):**

(14) Imagine that legislators in your state are considering replacing the verdict of “not guilty by reason of insanity” with “guilty but mentally ill.” Write an essay supporting or opposing this change.

In your essay, discuss the following points:

- what the two verdicts mean (5 points)
- the pros and cons of both (10 points)
- the reasons you believe as you do (10 points)

(15) Imagine that legislators in your state are considering adopting the following hate-crime law:

Anyone who intentionally selected the victim because of the victim’s race, color, national origin, ancestry, religion, disability, or sexual orientation shall have his or her sentence increased by 30 percent over the normal sentence.

Write an essay supporting or opposing this law. In your essay, discuss the following points:

- the pros of this law (5 points)
- the cons of this law (5 points)
- possible constitutional challenges to the law (5 points)
- the reasons you believe as you do (10 points)

**TRUE or FALSE (2 points each):**

- \_\_\_\_ (1) Like most other nations, the United States has one national police force that enforces all laws throughout the nation.
- \_\_\_\_ (2) Police officers have many other tasks besides enforcing the law.
- \_\_\_\_ (3) If your neighbor Sam breaks into your house, he has violated your constitutional right to privacy.
- \_\_\_\_ (4) Police may use whatever level of force is reasonable and necessary to make an arrest.
- \_\_\_\_ (5) Police have the right to shoot any person fleeing after committing a crime.

**MULTIPLE CHOICE QUESTIONS (4 points each):**

- \_\_\_\_ (6) Which creates rules of criminal procedure?
- U.S. Supreme Court
  - State and federal appeals courts
  - State statutes
  - Federal statutes
  - All of the above
- \_\_\_\_ (7) Which of the following meets the Supreme Court's definition of a search?
- From the sidewalk, a police officer sees a marijuana plant growing in a yard.
  - The police walk through a cornfield on a large farm and find marijuana growing.
  - The police look through the dump and find letters that Sam has thrown away.
  - The police stop Phil on the street and ask him a few questions.
  - After getting George's consent, the police look through George's house.
- \_\_\_\_ (8) Which of the following is **not** a legal search?
- Late at night, near the scene of a robbery, police stop Sam, pat him down, feel a soft bag in his pocket, pull it out, and find marijuana.
  - Police lawfully arrest George, search the knapsack he is carrying, and find a handgun.
  - Police search Phil's car for drugs. They have probable cause for the search, but no warrant.
  - Police chase Harry, who has just robbed a liquor store. They follow Harry to his house, order him out, and break down the door when he refuses.
  - Police, with probable cause, obtain a search warrant and search Marty's house.
- \_\_\_\_ (9) Which **one** of the following statements requires a *Miranda* warning for it to be admissible in court?
- Stopping Sam for speeding, the police ask him why he was driving so fast. He replies: "I just robbed a bank."
  - Police handcuff George outside a liquor store. He shouts, "I confess! I robbed the store."
  - Police trace a bomb threat to Bob's phone. They arrest Bob and demand to know where the bomb is located. Bob says, "On the third floor of the office building in a file cabinet."
  - Suspicious about Phil's behavior, police stop him and ask what he's doing. He replies, "You will find out sooner or later. I just killed Dan."
  - Police arrest Fred for breaking into a house. In the squad car they ask him why he did it. He replies, "I needed cash to buy drugs."

Name \_\_\_\_\_

Date \_\_\_\_\_

**FILL IN THE BLANKS (6 points each):**

- (10) Criminal \_\_\_\_\_ sets out the rules for processing someone through the criminal justice system.
- (11) The \_\_\_\_\_ Amendment to the U.S. Constitution is the source of procedures about police searches.
- (12) Another word for questioning is \_\_\_\_\_.
- (13) Police normally need a \_\_\_\_\_ to search a house.

**SHORT ANSWER QUESTIONS (10 points each):**

- (14) Define probable cause.
- (15) Define and give examples of a seizure.
- (16) List one method used to discipline problem police officers. Give a strength and weakness of this method.
- (17) What is the difference between community policing and motorized rapid response?

**ESSAY QUESTIONS (25 points each):**

- (18) Write an essay supporting or opposing this statement: "The exclusionary rule should be abolished." In your essay, discuss the following points:
- what the exclusionary rule is (10 points)
  - two reasons for supporting it (5 points)
  - two reasons for opposing it (5 points)
  - your reasons for supporting or opposing it (5 points)
- (19) Select one of the problems below. Write an essay on what should be done about it. In your essay, discuss the following points:
- what the problem is (10 points)
  - at least two options for dealing with it (6 points)
  - what you think should be done and why (9 points)
- Problems:
- Racial profiling
  - Police corruption

**TRUE or FALSE (2 points each):**

- \_\_\_ (1) The preliminary hearing or grand jury determines whether there is enough evidence to hold a defendant for trial.
- \_\_\_ (2) Juries are supposed to base their verdicts solely on the evidence presented during the trial.
- \_\_\_ (3) Many criminal suspects are tried and convicted only with circumstantial evidence.
- \_\_\_ (4) In most situations, all evidence will be admitted into a trial unless an attorney objects that it violates one of the rules of evidence.
- \_\_\_ (5) To prove a defendant is guilty of a crime, the state must prove its case beyond a reasonable doubt.
- \_\_\_ (6) Most criminal cases conclude with a plea bargain.

**MULTIPLE CHOICE QUESTIONS (4 points each):**

- \_\_\_ (7) Which is **not** circumstantial evidence that Sam shot George.
  - a. George was shot with Sam's gun.
  - b. A neighbor saw Sam shoot George.
  - c. Sam was caught outside George's house right after the murder.
  - d. Sam's fingerprints were found inside George's house.
  - e. Sam told people he wanted to kill George.
- \_\_\_ (8) Which of the following may a judge take into consideration in setting bail?
  - a. the crime
  - b. the past record of the accused
  - c. the likelihood that the defendant will appear in court
  - d. all of the above
  - e. a and b only
- \_\_\_ (9) Who ultimately decides what charges to bring against criminal suspects?
  - a. arresting officer
  - b. police captain
  - c. prosecutor
  - d. mayor
  - e. a or b

**FILL IN THE BLANKS (6 points each):**

- (10) After an attorney calls and questions a witness, the other side gets to \_\_\_\_\_ the witness.
- (11) Most people arrested are entitled to be released on \_\_\_\_\_.

**SHORT ANSWER QUESTIONS (10 points each):**

- (12) Compare first-degree murder and second-degree murder.

Name \_\_\_\_\_

Date \_\_\_\_\_

(13) Compare peremptory challenges and challenges for cause.

(14) Draw and label a diagram of a typical courtroom. Include prosecution and defense tables, jury box, judge's bench, spectator seats, clerk's desk, and witness stand.

**ESSAY QUESTIONS (25 points each):**

(15) Write an essay explaining the following steps in a criminal case: Arraignment, Initial Appearance Before a Judge, Defendant's Case in Chief, Jury Selection, Prosecution's Case in Chief. In your essay, do the following:

- Put each step in the proper order (5 points).
- Describe each step (10 points).
- Tell each step's purpose (10 points).

(16) Write an essay giving your opinion of what are the **three** most important due process rights that a criminal defendant has. In your essay, do the following:

- List and explain at least **seven** rights (10 points).
- List the three rights you have chosen as most important and explain why they are so important (15 points).

**TRUE or FALSE (2 points each):**

- \_\_\_ (1) Because of high rates of recidivism and public demand to get tough on criminals, the corrections system turned away from rehabilitation during the 1980s.
- \_\_\_ (2) If a convict is caught violating probation, the convict automatically goes to prison.
- \_\_\_ (3) Non-violent offenders can be sentenced to perform community service.
- \_\_\_ (4) Some prisons in the United States are privately owned.
- \_\_\_ (5) The American public has always overwhelmingly supported the death penalty.

**MULTIPLE CHOICE QUESTIONS (4 points each):**

- \_\_\_ (6) Which of these is **not** an example of a community-based correctional facility?
  - a. boot camp
  - b. halfway house
  - c. residential care facility
  - d. group home
  - e. drug treatment center
- \_\_\_ (7) Which of these is **not** a problem that community-based correctional programs face?
  - a. Lack of funding
  - b. Difficulty in handling habitual and violent criminals
  - c. Community alarm about safety and property values
  - d. Higher costs than maximum-security facilities
  - e. None of the above
- \_\_\_ (8) Which of the following is currently a major problem in U.S. prisons?
  - a. overcrowding
  - b. racial gangs
  - c. idleness of prisoners
  - d. danger of prison revolts
  - e. all of the above
- \_\_\_ (9) Which of the following punishments was **not** used in Colonial America?
  - a. stocks and pillory
  - b. penitentiary
  - c. ducking stool
  - d. branding and mutilation
  - e. public humiliation
- \_\_\_ (10) Compared to other countries, the rate of incarceration in the United States is
  - a. the lowest in the world.
  - b. lower than the rate in most countries.
  - c. about the same as the rate in most countries.
  - d. higher than the rate in most countries.
  - e. the highest in the world.
- \_\_\_ (11) Which Western democracies still have the death penalty for criminals?
  - a. United States
  - b. Great Britain
  - c. France
  - d. Italy
  - e. all of the above



Name \_\_\_\_\_

Date \_\_\_\_\_

**SHORT ANSWER QUESTIONS (10 points each):**

(12) Briefly explain the Eighth Amendment to the U.S. Constitution.

(13) Compare probation and parole.

(14) Describe some common difficulties ex-convicts face when they are released from prison.

**ESSAY QUESTIONS (25 points each):**

(15) Write an essay on **three** different kinds of sentencing laws: (a) fixed sentences, (b) indeterminate sentences, and (c) sentencing guidelines. In your essay, do the following:

- Define and give an example of each (5 points).
- Explain a strength and weakness of each (5 points).
- Explain which kind of sentencing law you believe is best (5 points).
- Support your conclusion with reasons (10 points).

(16) Choose **three** of the five major theories of punishment (Rehabilitation, Restitution, Incapacitation, Deterrence, Retribution) and write an essay that covers the following points:

- Explain three of the theories (5 points).
- Give an example of all three (5 points).
- Explain a strength and weakness of each (10 points).
- Explain which theory comes closest to your idea of what is just (5 points).

(17) Imagine that legislators in your state are considering adopting three-strikes legislation that counts any felony as a strike. Write an essay supporting or opposing this law. In your essay, discuss the following points:

- the pros of this law (5 points)
- the cons of this law (5 points)
- the possible constitutional challenges to this law (5 points)
- the reasons you believe as you do (10 points)

**TRUE or FALSE (2 points each):**

- \_\_\_ (1) The main goal of the juvenile justice system has traditionally been rehabilitation.
- \_\_\_ (2) The U.S. Supreme Court has ruled that juveniles under age 18 may not be executed.
- \_\_\_ (3) One of the problems cited by the Office of Juvenile Justice and Delinquency Prevention is the large number of minority youths held in custody.

**MATCHING (3 points each):**

Match the term from the juvenile justice system with the adult system's equivalent term.

**Juvenile court term**

**Adult system term**

- |                                |                       |
|--------------------------------|-----------------------|
| ___ (4) adjudicatory hearing   | A. arrest             |
| ___ (5) aftercare              | B. crime              |
| ___ (6) delinquent act         | C. parole             |
| ___ (7) finding of delinquency | D. sentencing hearing |
| ___ (8) dispositional hearing  | E. trial              |
| ___ (9) take into custody      | F. verdict of guilty  |

**MULTIPLE CHOICE QUESTIONS (4 points each):**

- \_\_\_ (10) A juvenile justice system, separate from the adult system was developed in most states by about
  - a. 1820
  - b. 1850
  - c. 1920
  - d. 1960
- \_\_\_ (11) Which is **not** currently a problem of prehearing detention in most jurisdictions?
  - a. Juvenile detention facilities are overcrowded.
  - b. It is very expensive to detain juveniles.
  - c. Juveniles in custody face danger from other juveniles.
  - d. Juveniles in custody are at high risk of suicide.
  - e. Juveniles are mixed with adults.
- \_\_\_ (12) The U.S. Supreme Court decision that changed the juvenile justice system is
  - a. *Gault*
  - b. *McKeiver*
  - c. *Miranda*
  - d. *Mapp*
  - e. *Schall*
- \_\_\_ (13) Which of the following age groups commits has the highest rate for committing violent crimes?
  - a. 18 to 30 year olds
  - b. 30 to 45 year olds
  - c. 50 to 60 year olds
  - d. There is no significant difference among the groups.

- \_\_\_\_ (14) In *New Jersey v. T.L.O.*, the U.S. Supreme Court held that school officials can search a student only if
- they have a search warrant
  - they have probable cause
  - they have the principal's permission.
  - it is reasonable under the circumstances.
  - both a. and b.

**DEFINE (5 points each):**

(15) Fitness hearing

(16) *Parens patriae*

(17) Status offense

**SHORT ANSWER QUESTIONS (10 points each):**

(18) List **two** options judges have in sentencing juveniles and briefly describe each.

a.

b.

(19) Read the following fact situation. Based on what you know about the rights of juveniles in juvenile court, list **two** violations of the juvenile's rights under the U.S. Constitution. (There are a total of four violations. For extra credit, you may list one or two other violations.)

A neighbor accuses Sam of writing graffiti on a wall. Taken into custody, Sam is held without bail. After two days, he is released into his parents' custody. A petition is filed against him claiming he is a delinquent minor, but the petition does not mention any specific charges against Sam. At his hearing, Sam demands a jury trial, but the judge refuses. Conducting the case without a jury, the judge orders Sam to testify. Sam denies any wrongdoing. A police officer testifies next and states that the neighbor saw Sam painting graffiti on a wall. After hearing only these two witnesses, the judge rules Sam delinquent because a preponderance of the evidence is against him. The judge orders that Sam be placed in a juvenile detention facility.

Violation #1:

Violation #2:

Violation #3 (4 points extra credit):

Violation #4 (4 points extra credit):

Name \_\_\_\_\_

Date \_\_\_\_\_

(20) What are some differences between the “lock ’em up” approach and the Missouri approach to juvenile corrections? What are potential problems of each? Which do you think works better? Why?

**ESSAY QUESTIONS (25 points):**

(21) Should juveniles convicted of murder be subject to the death penalty? In your essay, do the following:

- Discuss the current state of the law on this subject (15 points).
- Give reasons supporting and opposing imposing the death penalty on juvenile offenders (5 points).
- Give your opinion with reasons supporting it (5 points).

Name \_\_\_\_\_

Date \_\_\_\_\_

**TRUE or FALSE (2 points each):**

- \_\_\_ (1) Experts are in unanimous agreement about what causes violent crime.
- \_\_\_ (2) About half of all persons convicted of violent crimes drank alcohol shortly before committing their crime.
- \_\_\_ (3) All other Western democracies have much stricter national gun-control laws than the United States.
- \_\_\_ (4) Neighborhood watch programs have proven successful in reducing crime.
- \_\_\_ (5) The homicide rate in the United States is lower than in other Western nations.

**MULTIPLE CHOICE QUESTIONS (4 points each):**

- \_\_\_ (6) In which stage of the criminal justice system have studies shown that racial disparities exist?
  - a. plea bargaining
  - b. jury verdicts
  - c. sentencing
  - d. death penalty
  - e. all of the above
- \_\_\_ (7) Which branch of the federal government is responsible for addressing the crime problem?
  - a. Legislative branch
  - b. Executive branch
  - c. Judicial branch
  - d. a, b, and c
  - e. a and c
- \_\_\_ (8) Which time period had the worst crime problem for U.S. schools?
  - a. 1950 to 1967
  - b. 1968 to 1971
  - c. 1972 to 1992
  - d. 1993 to present
  - e. No difference in crime in these periods.

**SHORT ANSWER QUESTIONS (10 points each):**

- (9) List three possible causes of crime. Briefly explain which cause you think is most important and why.

Name \_\_\_\_\_

Date \_\_\_\_\_

(10) List in order the courts that a criminal defendant in a state trial court would have to go through before an appeal would reach the U.S. Supreme Court.

1. State trial court.
2. \_\_\_\_\_
3. \_\_\_\_\_
4. U.S. Supreme Court

**ESSAY QUESTIONS (25 points each):**

(11) Write an essay answering this question: What is the proper balance between national security and the protection of individual rights? Give specific examples of how some rights and freedoms may conflict with national security. In your essay, discuss the following points:

- The need for national security (5 points).
- The value of individual freedom (5 points).
- Examples of possible conflicts between national security and freedom (5 points).
- How the balance should be struck between the two (10 points).

(12) Write an essay supporting or opposing this statement: There should be strict national gun control laws. In your essay, discuss the following points:

- The problem gun-control laws attempt to solve (5 points).
- Reasons for supporting gun control (5 points).
- Reasons for opposing it (5 points).
- Your reasons for supporting or opposing it (10 points).

Name \_\_\_\_\_

Date \_\_\_\_\_

**TRUE or FALSE (2 points each):**

- \_\_\_ (1) The FBI's Uniform Crime Reports is based on reports from police departments across the country.
- \_\_\_ (2) When a criminal is forced to pay back a victim directly, it is called restitution.
- \_\_\_ (3) Almost every state has laws providing compensation for victims of violent crimes.
- \_\_\_ (4) Except for the last 30 years, the United States has experienced relatively little violent crime in its history.
- \_\_\_ (5) Crime in schools today is worse than ever.
- \_\_\_ (6) Intent is not an element of most crimes.
- \_\_\_ (7) Robbery is another word for burglary.
- \_\_\_ (8) Police do not normally need a search warrant to search a house.
- \_\_\_ (9) Police have the right to shoot any person fleeing after committing a crime.
- \_\_\_ (10) In a criminal trial, the prosecutor presents the government's case against the defendant.
- \_\_\_ (11) A physical object, such as a weapon, can be evidence at a trial.
- \_\_\_ (12) Criminal suspects can be tried and convicted on the basis of circumstantial evidence.
- \_\_\_ (13) In most situations, evidence will be admitted into a trial unless an attorney objects that it violates one of the rules of evidence.
- \_\_\_ (14) Evidence must be relevant to an issue in a trial.
- \_\_\_ (15) A common objection to testimony at a trial is that it is hearsay.
- \_\_\_ (16) Attorneys cross-examine the witnesses they call to the stand.
- \_\_\_ (17) A defendant in a criminal action is presumed to be innocent until proved guilty.
- \_\_\_ (18) The percentage of persons imprisoned in America is lower than in most countries in the world.
- \_\_\_ (19) Probation is another word for parole.
- \_\_\_ (20) Some prisons in the United States are privately owned.
- \_\_\_ (21) Some states have outlawed the death penalty.
- \_\_\_ (22) Juveniles can be taken into custody for offenses that adults cannot be taken in for.
- \_\_\_ (23) The U.S. Supreme Court has ruled that juveniles under the age of 18 cannot be executed.
- \_\_\_ (24) Experts agree about what causes violent crime.
- \_\_\_ (25) All Western democracies have stricter national gun-control laws than the United States.

**FILL IN THE BLANKS (4 points each):**

- (26) In \_\_\_\_\_ policing, police walk foot patrols to get to know the community better.
- (27) The \_\_\_\_\_ Amendment to the U.S. Constitution forbids cruel and unusual punishments.
- (28) The main goal of the juvenile justice system has traditionally been \_\_\_\_\_.
- (29) If a police undercover agent talks you into committing a crime, you may defend yourself at trial by claiming you were \_\_\_\_\_.
- (30) The \_\_\_\_\_ Amendment to the U.S. Constitution is the source of

Name \_\_\_\_\_

Date \_\_\_\_\_

procedures about police searches.

- (31) The \_\_\_\_\_ rule prohibits the introduction of illegally seized evidence at trials.
- (32) In the case of \_\_\_\_\_ *v. Arizona*, the Supreme Court held that before police can question suspects in custody, they must read them their rights.
- (33) At the \_\_\_\_\_, the defendant pleads to the charges.
- (34) To prove someone guilty of a crime, the state must prove its case \_\_\_\_\_.
- (35) \_\_\_\_\_ are citizens who illegally take the law into their own hands and punish lawbreakers.
- (36) Institutions that confine large numbers of juvenile offenders are known as \_\_\_\_\_ schools.
- (37) The death penalty is also known as \_\_\_\_\_ punishment.
- (38) \_\_\_\_\_ are more serious crimes than misdemeanors.
- (39) In response to the terrorist attacks on September 11, 2001, Congress passed the \_\_\_\_\_, a law to combat terrorism.
- (40) Trials in juvenile court are called \_\_\_\_\_ hearings.

**SHORT ANSWER QUESTIONS (10 points each):**

- (41) Explain what an affirmative defense is. Give two examples.
- (42) Explain the exclusionary rule. Give an example of how it works.
- (43) Name two objections a lawyer can make to a witness's testimony. Explain what they mean.
- (44) Compare determinate and indeterminate sentences.
- (45) Explain what "due process" means. Give examples of **eight** due process rights.

**ESSAY QUESTIONS (25 points each):**



Name \_\_\_\_\_

Date \_\_\_\_\_

- (46) You have read about many problems in the criminal justice system. Write an essay on **one** of these problems. In your essay:
- Explain in detail what the problem is (10 points).
  - Propose your solution to the problem (10 points).
  - Give reasons supporting your solution (5 points).
- (47) Write an essay giving your opinion on **one** of the following statements. In your essay include:
- Arguments in favor (5 points)
  - Arguments opposed (5 points)
  - Your opinion supported by at least two reasons (10 points).
    - A. There are too many restrictions on police behavior.
    - B. Mandatory minimum sentences should be abolished.
    - C. The criminal justice system unfairly discriminates against minority groups.

# Test Answers

## TEST FOR UNIT 1

- (1) T
- (2) F
- (3) T
- (4) T
- (5) a
- (6) a
- (7) restitution
- (8) Felonies
- (9) Larceny
- (10) bunco
- (11) prohibited act + intent + concurrence of act and intent + causation
- (12) first-degree murder, second-degree murder, voluntary manslaughter, and involuntary manslaughter
- (13) Both are forms of stealing. A robber uses force or a threat of force to steal from someone. For example, a robber holds up a liquor store. A burglar illegally enters a structure to commit a crime, usually a theft. For example, a burglar breaks into a house and steals a television set.
- (14) Students should touch on the following points:
  - Both verdicts keep people in mental hospitals until they are well.
  - Under a verdict of GBMI, a person serves a particular term whereas under NGBRI a person can be released when the person recovers.
  - GBMI assigns criminal guilt while NGBRI assigns no guilt for the action.On the pluses and minuses of both, accept any reasonable answer in addition to:
  - NGBRI makes people only responsible for what they can control, but insanity is difficult to define and may be subject to abuse.
  - GBMI makes all people responsible for their actions, which could be too severe if a person is not in control. It prevents abuse and people getting off.On the reasons they believe as they do, accept any reasoned response.
- (15) On the pros of hate-crime legislation, accept any reasonable response in addition to:
  - Hate crimes are particularly harmful to our diverse society, sending a message some groups are not welcome.
  - The laws express our intolerance to these crimes.
  - They will prevent much violence.On the cons, accept any reasonable answer in addition to:

- Current laws already cover the most serious offences.
- Sending minor offenders to prison will only harden their prejudices.
- Hate crime laws set up a special class of victims. On the reasons they believe as they do, accept any reasoned response.

## TEST FOR UNIT 2

- (1) F
- (2) T
- (3) F
- (4) T
- (5) F
- (6) e
- (7) e
- (8) a
- (9) e
- (10) procedure
- (11) Fourth
- (12) interrogation
- (13) warrant
- (14) Probable cause means that evidence must be strong enough that an independent, cautious person would have good reason to believe it.
- (15) A seizure is the taking of objects or persons into custody. Examples: an arrest, taking evidence during a search.
- (16) Possible answers for methods: criminal law (strength: strong punishment; weakness: applies to few cases, difficult to prove case, etc.), civil lawsuits (strength: monetary damages can force departmental change; weakness: difficult to get verdicts, cumbersome); review boards (strength: handles all sorts of complaints; weakness: often lack power or accused of being too close to police).
- (17) Community policing stresses strengthening the community, fixing problems that citizens care about, and using problem solving. Motorized rapid response focuses on responding rapidly to reports of crime.
- (18) Be sure students touch on the following points:

Meaning: The exclusionary rule bars illegally obtained evidence from use in criminal trials.

Reasons for supporting it: Promotes judicial integrity and deters illegal behavior.

Reasons for opposing it: Hampers fight against crime and makes no sense to let person go free because police made a mistake.

Their reasons: Accept any reasoned response.

(19) Students have selected one of two problems.

For Racial Profiling:

Problem definition: Racial profiling is the stopping of suspects because (1) of their race alone or (2) the suspects match a profile that includes race as a factor.

Options: Have police collect data on race of people they stop; thoroughly investigate all allegations of officers targeting minorities; accept other reasonable responses.

What should be done: Accept any reasoned response.

For Police Corruption:

Problem definition: Corruption can be for personal gain or for departmental benefit.

Options: Get rid of victimless crimes; monitor police better; strengthen internal review; break down the code of silence; accept other reasonable responses.

What should be done: Accept any reasoned response.

### TEST FOR UNIT 3

- (1) T
- (2) T
- (3) T
- (4) T
- (5) T
- (6) T
- (7) b
- (8) d
- (9) c
- (10) cross-examine
- (11) bail
- (12) Both require malice aforethought. But first-degree murder also requires premeditation.
- (13) Both challenges are attorney requests to the court that a potential juror not serve on the jury. A peremptory challenge can be made for any reason, but each attorney has a limited number of these challenges. Challenges for cause, on the other hand, must be made for a good legal reason, such as bias. There is no limit to the number of challenges for cause.
- (14) Make sure the diagram of a courtroom has the witness stand on the side of the judge's bench next to the jury box. The drawing should include prosecution and defense tables, jury box, judge's bench, spectator seats, clerk's desk, and witness stand.
- (15) The steps should be arranged in the following order:

FIRST APPEARANCE: A defendant's first pretrial hearing. It has several purposes: To inform the defendant of charges, rights, and to set the amount of bail, if any.

ARRAIGNMENT: At this pretrial hearing, the judge reads the charges to the defendant and asks for a plea. The purpose is to determine what the plea is. If guilty, there will be no trial.

JURY SELECTION: The first step at a trial. Jurors are subject to voir dire questioning. Purpose: To assure an impartial jury.

PROSECUTION'S CASE IN CHIEF: The evidence presented by the prosecution. Purpose: To convince the jury of the defendant's guilt.

DEFENDANT'S CASE IN CHIEF: The defendant's evidence. Purpose: To sow doubt in the minds of jurors, present alibis, or assert affirmative defenses.

- (16) Students should list and explain seven of the following due process rights: the right of habeas corpus, protection from bills of attainder, protection from ex post facto laws, protection from unreasonable searches or seizures, right to a hearing on probable cause, protection against double jeopardy, protection from self-incrimination, right to a speedy trial, right to a public trial, right to an impartial jury, right to get notice of any accusation, right to confront witnesses, right to compel witnesses to testify, right to assistance of counsel, protection from excessive bail, protection from excessive fines, protection against cruel and unusual punishments, the right to equality under the law, the protection of being considered "innocent until proved guilty," and the right to have the prosecution prove a defendant "guilty beyond a reasonable doubt." Accept reasoned answers for their choices of the three most important due process rights.

### TEST FOR UNIT 4

- (1) T
- (2) F
- (3) T
- (4) T
- (5) F
- (6) a
- (7) d
- (8) e
- (9) b
- (10) e
- (11) a
- (12) The Eighth Amendment bans excessive fines or bail and cruel and unusual punishments.

- (13) Similar: Supervision of convicted offenders.  
Different: Court makes probation part of a sentence. Parole granted during sentence by parole board.
- (14) Getting a job, not falling back into old patterns, gaining acceptance from society, etc.
- (15) (a) fixed sentences: judges determine the amount of time to be served at the time of sentencing, e.g., 5 years in prison (strength: prisoner knows how much time will be served, more equity in sentences; weakness: prisoner is released whether he or she is rehabilitated or not).  
(b) indeterminate sentences: the sentence is stated as a range of years and the parole board determines the release date, e.g., sentence of 5 to 15 years (strength: the sentences tailored to individual prisoners; weakness: dissimilar sentences for similar crimes).  
(c) sentencing guidelines: some sort of formula that judges apply mechanically, e.g., Minnesota grid (strength: equity in sentencing; weakness: little room to tailor the sentence to each individual).  
Make sure students support their conclusion with reasons.
- (16) Rehabilitation: treat and reform lawbreakers, e.g., a person who commits a crime receives counseling, education, and job training. Strength: Seeks to change the individual so he or she will not commit more crimes. Weakness: Critics say it doesn't work.  
Restitution: repayment, e.g., the offender repays the victim. Strength: victim is repaid. Weakness: Cannot repay for violent crimes.  
Incapacitation: Isolate criminals. Strength: Protects citizens. Weakness: Most criminals will return to society so protection is only temporary.  
Deterrence: Prevent further crimes by making an example. E.g., Sam is sentenced to 10 years in prison for spitting on the sidewalk. This will make Sam (specific deterrence) and others (general deterrence) think twice before spitting. Strength: Keeps people from committing crimes. Weakness: Critics argue that most criminals do not expect to be caught, and therefore they aren't deterred.  
Retribution: revenge, e.g., Sam kills George so Sam must die. Strength: Advocates say victim has a right to get even. Weakness: Some say retribution is primitive and does not address the need to reform criminals or protect the innocent.  
Make sure students support their conclusion with reasons.
- (17) Pros: Keeps violent offenders behind bars for a long time; accept other reasonable answers.

Cons: High cost, may keep non-dangerous prisoners; accept other reasonable answers.

Possible constitutional challenges: The main issue is whether these laws violate the Eighth Amendment in certain cases because an offender may go to prison for life for a relatively minor offense. The Supreme Court has ruled that sentences may not be grossly disproportionate, but has upheld California's three-strikes law, which allows the third strike to be a non-violent felony.

Reasons: Accept any reasoned response.

## TEST FOR UNIT 5

- (1) T
- (2) T
- (3) T
- (4) E
- (5) C
- (6) B
- (7) F
- (8) D
- (9) A
- (10) c
- (11) e
- (12) a
- (13) a
- (14) d
- (15) A hearing to determine whether a juvenile should be tried as an adult.
- (16) The doctrine that the state takes the role of parents in supervising children.
- (17) An offense, such as running away from home, that would not be an offense if it were committed by an adult.
- (18) Students should answer with two of the following:  
Juvenile detention centers: Facilities where juveniles are first brought.  
Training schools: large reform schools.  
Small, secure residential facilities: Holding few juveniles and equal numbers of staff.  
Camps and ranches: Secure facilities in rural areas.  
Boot camps: Similar to Army basic training.  
Wilderness programs: Rigorous outdoor programs which build self-esteem and teamwork.  
Group homes or halfway houses: Group homes with counseling and house rules.  
Substance-abuse treatment centers: Residences focusing on treating drug and alcohol abuse.

Foster homes: Families take juveniles into their homes.

In-home placement: Juveniles return to their homes.

Day treatment programs: Juveniles live at home but attend programs for a specific length of time.

Intensive probation: Probation officers meet frequently with juveniles.

Probation: Probation officers supervise juveniles.

Summary probation: Juveniles released under parental supervision as long as they behave.

- (19) Violation #1: Charges not mentioned in petition.

Violation #2: Sam compelled to testify.

Violation #3: No opportunity to cross-examine his accuser (the officer testified in place of the neighbor).

Violation #4: The evidence against Sam was not beyond a reasonable doubt — it was just the preponderance.

- (20) Differences: A “lock ‘em up” approach locks more juveniles in secure training schools. Missouri’s approach has been to close down the training schools, place violent offenders in small secure facilities, and place other offenders in community placements.

Problems: Locking up juveniles may result in hardened criminals. Missouri may risk releasing dangerous juveniles into the community.

Make sure students support their conclusions.

- (21) State of law: The Supreme Court has ruled that juveniles under 18 may not be executed.

Reasons supporting and opposing: Accept any reasonable responses.

Make sure students support their opinion.

## TEST FOR UNIT 6

- (1) F
- (2) T
- (3) T
- (4) T
- (5) F
- (6) e
- (7) d
- (8) c
- (9) Accept any well-reasoned answer.
- (10) 2. State appeals court  
3. State supreme court
- (11) The need for national security: The nation needs to protect itself from attacks from other nations and terrorist groups. Order is necessary for freedom.

The value of individual freedom: Freedom lets people express themselves, choose how they live, and exchange ideas. It is one of the fundamental values of our society.

Examples of conflicts between national security and freedom: Students should give at least two examples, e.g., the right to be protected from unreasonable searches may conflict with the national security need to find a bomb; the right to refuse to talk with police may conflict with national security needs to extract information from suspects.

The balance between the two: Students should express reasoned opinions on how to balance the two, particularly the examples they have given.

- (12) Gun-control laws attempt to reduce violent crime.

Reasons for supporting or opposing: Accept any reasonable responses. Make sure students support their opinions.

## FINAL TEST

- (1) T
- (2) T
- (3) T
- (4) F
- (5) F
- (6) F
- (7) F
- (8) F
- (9) F
- (10) T
- (11) T
- (12) T
- (13) T
- (14) T
- (15) T
- (16) F
- (17) T
- (18) F
- (19) F
- (20) T
- (21) T
- (22) T
- (23) T
- (24) F
- (25) T
- (26) community (or community-based, or community-oriented)

- (27) Eighth
- (28) rehabilitation
- (29) entrapped
- (30) Fourth
- (31) exclusionary
- (32) Miranda
- (33) arraignment
- (34) beyond a reasonable doubt
- (35) vigilantes
- (36) training
- (37) capital
- (38) Felonies
- (39) Patriot Act (or USA Patriot Act)
- (40) adjudicatory
- (41) An affirmative defense, if proved, will prevent a guilty verdict even though the prosecution proves every element of the crime. Examples: insanity, self-defense, entrapment, necessity, duress, ignorance of the law, mistake of fact, intoxication.
- (42) Meaning: The exclusionary rule bars illegally obtained evidence from use in criminal trials. E.g., if a police officer makes an illegal search of Sam's house and finds a gun, the gun cannot be introduced as evidence at Sam's trial. The defense attorney will make a motion to suppress the evidence.
- (43) The objection should be two of the following and defined:
  - Hearsay
  - Irrelevant
  - Beyond the scope of direct examination
  - Lack of personal knowledge
  - Badgering the witness or argumentative
  - Leading question
  - Opinion
  - Lack of foundation
  - Character not an issue
- (44) These are sentences that judges impose. A determinate sentence marks a set amount of time in prison, e.g., five years. An indeterminate sentence gives a range of years, e.g., one to five years and the parole board determines when the prisoner will be released.
- (45) Due process guarantees fair procedures. Students should give eight examples from the following: Rights from the Constitution: writ of habeas corpus, protection from bills of attainder, protection against ex post facto laws. Rights from the Bill of Rights: Fourth Amendment (protection against unreasonable searches or seizures), Fifth Amend-

ment (right to judicial determination of probable cause [grand jury for federal cases], protection from double jeopardy, and protection against self-incrimination), Sixth Amendment (right to a speedy trial, a public trial, an impartial jury, notice of any accusation, confront witnesses, compel witnesses to testify, an attorney), Eighth Amendment (protection against excessive bail, excessive fines, cruel and unusual punishments, and the 14th Amendment (the right to equality under the law). Traditional due process principles: a person is considered "innocent until proved guilty" and the prosecution must prove a defendant "guilty beyond a reasonable doubt."

- (46) Make sure students explain the problem in detail and support their solution.
- (47) A. Make sure students give two examples of restrictions on police behavior, reasons supporting and opposing the restrictions, and support their conclusion.
  - B. Mandatory minimum sentences remove judicial discretion and require prison terms for certain crimes or criminals. Reasons for: Sentences consistent; assure punishment. Reasons against: Can be unfair; do not take individual and situation into account. Make sure students support their opinion.
  - C. Make sure students identify two problem areas, give reasons supporting and opposing racism as the cause, and support their viewpoint.

# LANDMARKS

## Historic U.S. Supreme Court Decisions



### Grades 9-12

U.S. Supreme Court cases have greatly affected U.S. history. Let your students discover some of the most important cases. Each reading in the student text focuses on one case, giving historical background, outlining the decision, and explaining its significance.

A separate teacher's guide contains lesson plans for each reading. The plans include focus activities, discussion questions with suggested answers, step-by-step instructions for interactive activities, and debriefing questions and suggestions.

The student text begins with a reading on how the Supreme Court works. The book continues with readings on these important cases:

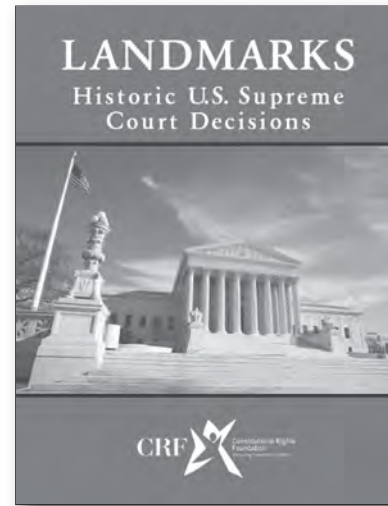
*Marbury v. Madison* (1803), *McCulloch v. Maryland* (1819), *Gibbons v. Ogden* (1824), *Dred Scott v. Sandford* (1857), *Plessy v. Ferguson* (1896), *Schenck v. U.S.* (1919), *Palko v. Connecticut* (1937), *Brown v. Board of Education* (1954), *Mapp v. Ohio* (1961), *Gideon v. Wainwright* (1963), *Miranda v. Arizona* (1966), *U.S. v. Nixon* (1974), *Regents of UC v. Bakke* (1978), *Texas v. Johnson* (1989), *Bush v. Gore* (2000).

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