

A close-up photograph of a wooden gavel with a smooth, polished handle and a tiered head, resting on a stack of thick, old books. The scene is dramatically lit from the side, creating strong highlights and deep shadows that emphasize the textures of the wood and the spines of the books.

DAVID W. NEUBAUER

# AMERICA'S COURTS AND THE CRIMINAL JUSTICE SYSTEM

A  
**Student  
Study Guide**  
is available for  
this book

FIFTH EDITION

FIFTH  
EDITION

# AMERICA'S COURTS AND THE CRIMINAL JUSTICE SYSTEM

DAVID W. NEUBAUER  
University of New Orleans



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FIFTH  
EDITION

AMERICA'S COURTS  
AND THE  
CRIMINAL JUSTICE  
SYSTEM

*To Jeff, Kristen, and Amy*

# ABOUT THE AUTHOR

David William Neubauer was born in Chicago, Illinois. He grew up in Aurora, Illinois, graduating from West Aurora High School in 1962. After receiving an A.B. in political science from Augustana College in Rock Island in 1966, he undertook graduate work at the University of Illinois, receiving a Ph.D. in 1971.

Neubauer has previously taught at the University of Florida and Washington University in St. Louis. He is now a professor at the University of New Orleans, where he chaired the department of political science from 1982 to 1986.

Neubauer is the author of *Judicial Process: Law, Courts, and Politics in the United States*

(1991), also published by Wadsworth. In the mid-1970s, Neubauer served as a consultant to the Federal Judicial Center on two court management projects. From 1978 to 1980, he worked with the American Judicature Society as principal investigator on a project (funded by the National Institute of Justice) concerning court delay reduction. Through the years, he has served on review panels for the National Institute of Justice, the Bureau of Justice Statistics, the National Science Foundation, the National Institute of Mental Health, and the National Center for State Courts.

# PREFACE

*America's Courts and the Criminal Justice System* examines the history, values, traditions, and philosophy underlying our system of justice as it is played out in the criminal court. In a complex, sometimes contradictory, and often fragmented process, defendants are declared innocent or found guilty, and the guilty are sentenced to prison or placed on probation. This book is about the defendants caught up in the process: the three-time losers, the scared young first offenders, and the business executives who are before the court to answer an indictment. But most of all, this book focuses on the prosecutors, judges, defense attorneys, and jurors who are involved in the daily decisions about guilt or innocence, probation or prison.

The impact of these decisions on crime and criminals is the subject of widespread controversy. Concern over how the courts handle criminal cases has been a staple of American political rhetoric since the 1960s. The nature of this public debate, as well as the solutions proposed to correct the problems, is an integral part of this book. To be sure, the last three decades have witnessed significant deep-seated changes and readjustments in the criminal justice system—given all the public posturing, one would hardly expect less.

This book is written for undergraduate courses that deal with America's criminal courts. Such courses (or parts of courses) are taught in various departments: criminal justice, political science, sociology, psychology, and social welfare. This book highlights not only the pivotal role of the criminal courts within the criminal justice system but also the courts' importance and impact on society as a whole.

*America's Courts and the Criminal Justice*

*System* focuses on the dynamics of the courthouse. Thus, it differs from casebooks, which use appellate court decisions to highlight the history, structure, and philosophy of the courts. Although these are important matters, casebooks often project a rather sterile image of courthouse justice and omit what courts do in practice, how they do it, and, most important, why they do it.

This book's emphasis on the dynamics of courthouse justice grows out of my own field research. Since the 1960s, I have spent considerable time in state and federal courts in all parts of the nation. I have interviewed numerous judges, jurors, prosecutors, defense attorneys, probation officers, jailers, police officers, and defendants. I have observed these officials in action and discussed with them their problems and their views of possible solutions. By the luck of the draw, I have also served on juries in state and federal court. Throughout this book, I have tried to convey to the reader the sense of being in the courthouse.

It is possible to emphasize the dynamics of courthouse justice because of the growing number of excellent studies of the criminal court process. Until the early 1970s, there was little interest in the criminal courts. Courts, like police and corrections, were given an "out of sight, out of mind" treatment. This is no longer the case. Social scientists, journalists, lawyers, and law professors now regularly probe the workings of these important governmental bodies. This book will provide students with an overview of the current research.

Given the potential breadth of the material under discussion, I have had to focus on certain topics to the exclusion of others. First, this

book concentrates on the trial courts, not the appellate courts. Appellate courts are discussed, but only in the context of how their decisions affect the trial court process. Second, this book focuses on courts for adult offenders, not the juvenile courts. The structure, philosophy, and process of the juvenile courts are quite different from those of courts dealing with adult offenders, and so they are best left to a separate discussion.

Writing the fifth edition has been both gratifying and stimulating. It is gratifying to learn that numerous professors, and I hope their students as well, have found the book useful. It is stimulating because it involves closely examining recent changes in both scholarship and public dialogue. The fifth edition offers a current perspective on a continually evolving subject—the criminal court process. Toward this end, some new features have been incorporated. The introductory chapter has been completely rewritten to introduce more effectively the themes of the book. Chapter 2 is also significantly new, providing a single chapter that examines law both substantively and procedurally, as is Chapter 16, on appeals. The Epilogue has been completely rewritten to provide an extended treatment of crime and the courts as political issues. Finally, a glossary has been added.

Besides these major structural changes, some important updates have been made throughout the text. For those familiar with the fourth edition, here is what you can expect to find incorporated in the fifth edition: discussions of where the courts fit in the criminal justice system (Chapter 1), the growing shortage of defense lawyers (Chapter 6), diversity and the judiciary (Chapter 7), and pretrial drug testing (Chapter 10); expanded discussion of the Supreme Court and exclusionary rules (Chapter 11); presentation of recent Supreme Court decisions on scientific evidence and gender neutrality in jury selection (Chapter 13); examination of recent death penalty decisions (Chapter 14); an overview of the continuing travails of the federal sentencing guidelines and updated look at the

literature on gender discrimination in sentencing (Chapter 15); and a focused discussion of Supreme Court policymaking on criminal justice (Chapter 16). Continued from the fourth edition are many “Close-Up” sections that focus on one of the nation’s largest cities—Philadelphia. Throughout the updating and revising of the fifth edition, however, the basic thrust and organization of the book have remained unaltered.

## Acknowledgments

Writing the fifth edition has been made easier by the assistance and encouragement of people who deserve special recognition. As always, colleagues from a number of schools and institutions have offered valuable critiques. They include George Cole (University of Connecticut) and Paul Wice (Drew University). Petra Schickmair (University of New Orleans) provided valuable research assistance.

Thanks are also due to the reviewers of this edition: Bill Clements, Norwich University; Frederick Van Dusen, Palm Beach Community College; Joseph Hanrahan, Westfield State University; Michael Hazlett, Western Illinois State University; James Maddex, Georgia State University; Larry Myers, Sam Houston State University; Jose Texidor, Penn State University; and Sheryl Williams, Jersey City State College.

The author is interested in hearing from users of this book—professors and students alike. You may write care of:

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As in the previous editions, my wife and children deserve a special note of thanks for their love and support. I dedicate the book to my children in response to their bemusement at the idea that Daddy was busy writing a book.

—DAVID W. NEUBAUER



# TO THE READER

## Law and Structure

The starting point of this text is to provide readers with a working knowledge of the major structures and basic legal concepts that underlie the criminal courts. In deciding guilt or innocence and determining the appropriate punishment, the courts apply the criminal law through a complicated process termed *criminal procedure*. The structure of the courts, the nature of the criminal law they apply, and the procedures followed all have important consequences for how the courts dispense justice. But to understand the legal system, one needs to know more than the formal rules. One must also understand the assumptions underlying these rules, the history of how they evolved, and the goals they seek to achieve. A discussion of the assumptions, history, and goals makes clear that America's criminal justice process is not monolithic but consists of a number of separate and sometimes competing units. It also points out conflicts over the goals the criminal courts are expected to achieve.

America's criminal court process is complicated, but it is useful to focus on three essential issues. When presented with someone alleged to have violated the law—a defendant—the court process seeks to answer three questions. First, is the defendant guilty? That is, did the defendant violate the legal rules? If the defendant is found guilty, the court must then confront a second question: What penalty should be applied to the wrongdoer? The third question often precedes the first two: Have the governmental officials—police and prosecutors, primarily—followed the rules for investigating crimes and convicting defendants? If the courts determine that the defendant's rights have been violated, they may either penalize the law enforcement officials di-

rectly (which is rarely done) or penalize them indirectly by letting the defendant escape punishment. This book will examine how the various stages of the criminal process are geared to provide answers to these three basic questions.

## Dynamics of the Process

Many books leave the false impression that an understanding of the formal law and major structures of the court is all that one needs to know about the criminal courts. This kind of analysis provides only a limited view of how the courts administer justice. The law is not self-executing. It is a dynamic process of applying abstract rules to concrete situations. In making decisions about charges to be filed, the amount of bail to be required, and the sentence the convicted person will receive, judges, prosecutors, and defense attorneys must make choices for which the formal law provides few precise guidelines. Thus, the second objective of this book is to examine law in action—the dynamics of the criminal court process.

An examination of law in action reveals a gap between how the law is supposed to operate and how it is actually applied. For example, the law in theory suggests that the guilt of defendants should be decided by a jury trial. In practice, however, trials are rare—most defendants plead guilty without one. Asking why there is a gap between the law on the books and the law in action is a major step toward understanding the dynamics of courthouse justice.

## Problems

No treatment of the criminal courts would be complete without a discussion of the problems

confronting the courts. Are the courts too slow? Are judges too soft in sentencing? Does the criminal court process discriminate against the poor? These are just a few of the questions about the operations of the criminal courts that this book will consider.

The numerous problems confronting the criminal courts can be grouped under three general propositions. One goal of the courts is to protect society. To some, the courts are not properly fulfilling this role because they hamper efforts to fight crime. A second goal of the courts is to protect individual rights. To some, the courts have failed to provide fair and impartial justice by discriminating against the poor and members of minority groups. Finally, many contend that the courts are so poorly managed that justice is delayed and unjustifiable inconveniences are experienced by witnesses, jurors, victims, and others.

## Reform

Many organizations, groups, and individuals have probed the problems facing the criminal courts and proposed reforms. The fourth objective of this book is to discuss and analyze the reforms that have been suggested for what ails the courts.

Not everyone agrees on the types of changes needed. Some argue that certain reforms will produce greater difficulties without solving the original problems. This book will examine competing perspectives on the changes and reforms that are being proposed.

## Organization of the Book

This book employs a spiral approach, beginning from a core of information and working outward to cover a wider range of relevant perspectives. I have begun with basic building blocks of knowledge and then proceeded to use them for a deeper analysis. Within each chapter, the initial emphasis is on the basics; the later material deals with more complicated issues.

The introductory chapter examines the con-

troversies surrounding the criminal courts. The rest of the book is divided into five parts.

Part I provides an overview of the legal basis of the criminal courts, with separate chapters on law and the organization of courts.

Part II introduces the legal actors—judges, prosecutors, and defense attorneys—who must make the decisions every day. The emphasis is on how the working relationships among these actors structure their exercise of discretion.

Part III follows the stages criminal cases pass through, from arrest to the determination of guilt or innocence. Why cases are removed from the process and why cases are bargained out are prime concerns of Part III.

Part IV focuses on what happens after conviction. Often the most important question in a criminal case is: What sentence should be given to the guilty? Although most media attention and legal analysis center on the question of legal guilt or innocence, the dynamics of the courthouse are geared to sentencing. After sentence is imposed, some defendants contest their guilt by appealing.

Part V identifies problems with the system and discusses several key aspects of reforming the criminal court process. Should the lower courts be abolished? Are the courts too slow?

## Special Features

A number of special features will help make this introduction to the criminal court process more informative and enjoyable.

**1. Key Terms.** Any text should introduce the reader to the basic terminology of a particular field. This task is particularly important for a book on the criminal process, because the law has a vocabulary all its own. To aid the reader, key terms are highlighted throughout the text in boldface type.

**2. Glossary.** A new feature of this edition is the addition of a glossary. Numerous students have commented that this book needs one. Indeed, one of my own students once commented that the book has lots of “foreign” words, foreign not because they originated in another

country but foreign because they were so unfamiliar. To accommodate these concerns I have provided a glossary of many of the most commonly used legal terms.

**3. Graphics.** Throughout the book, tables, figures, and charts focus on important material and present it in a lively way. Since readers are often interested in particular states, special effort has been made to provide important legal information for all fifty states.

**4. Boxed Quotations.** Scattered throughout the text are boxed quotations that express a perspective, provide historical background, or offer an interpretation. They are intended to round out the discussion in the text.

**5. Controversy.** How fairly, effectively, and efficiently the courts administer justice is a hotly debated topic. I have tried to capture varying viewpoints in sections labeled “Controversy.” No attempt has been made to provide pro and con positions for every issue, but throughout the text as a whole I have tried to balance “liberal” and “conservative” viewpoints. I don’t agree with all of the opinions expressed; neither should you. But understanding why people disagree

about such matters as plea bargaining and the death penalty is an important part of understanding how courts operate in mediating between conflicting points of view.

**6. Close-Up.** Within each chapter, a “Close-Up” section gives an in-depth treatment of a topic. These sections are designed to capture real-life experiences by looking at the people who make the decisions in the courthouse. Many of these “Close-Up” sections are drawn from “Courting Chaos,” a special report of the *Philadelphia Daily News*. More than fifty reporters spent a day in Philadelphia’s criminal courts, and their reports provide a unique “Close-Up” on the problems and frustrations of the criminal courts in one of the nation’s largest cities. I am grateful to the *Philadelphia Daily News* for allowing me to reprint so many of their articles.

**7. Other Student Aids.** Each chapter ends with a conclusion, references, and suggestions for further reading. The book also contains a detailed index, which includes authors, subjects, and all the Supreme Court decisions discussed in the text.

# CONTENTS

## CHAPTER 1 THE CRIMINAL COURTS IN CONTROVERSY 1

- The Courts and the Criminal Justice System 1
- Crime, Courts, and the Public* 5
- Debate over the Courts 6
- Law on the Books and Law in Action 7
- The Dispositional Process 9
- Conclusion 13
- References 13
- For Further Reading 14

## PART I THE LEGAL SYSTEM 15

## CHAPTER 2 LAW AND CRIME 17

- The Basis of Law 17
- The Common Law Heritage 18
- The Adversary System 20
- Rights of the Accused 21
- Civil Law 24
- Criminal Law 25
- Elements of a Crime 25
- Burglary: Then and Now 27
- Insanity and Other Legal Defenses 31
- Criminal Law: Constant and Changing 33
- Consequences for the Criminal Courts 35
- Conclusion 37
- References 37
- For Further Reading 38

## CHAPTER 3 FINDING THE COURTHOUSE: THE CONFUSING STRUCTURE OF AMERICAN COURTS 39

- Courts 39
- How Courts Grew 40
- Basic Principles of American Courts 43
- Federal Courts 46
- State Courts 50
- Court Unification 54
- The Politics of Court Reorganization 56
- Consequences of Court Organization 57
- Conclusion 60
- References 60
- For Further Reading 61

## PART II THE LEGAL ACTORS 63

## CHAPTER 4 THE DYNAMICS OF COURTHOUSE JUSTICE 65

- Assembly-Line Justice and Excessive Caseloads 65
- Discretion 67
- The Courtroom Work Group 70
- Conclusion 76
- References 77
- For Further Reading 78

## CHAPTER 5

### THE PROSECUTOR 79

- Structure and Organization 79
- The Prosecutor at Work 82
- Assistant District Attorneys 84
- Prosecutors and Courtroom Work Groups 87
- Police and Prosecutors 89
- Conclusion 95
- References 95
- For Further Reading 96

## CHAPTER 6

### DEFENSE ATTORNEYS 97

- The Right to Counsel 97
- Defense Attorneys at Work 99
- Defense Attorneys and Courtroom Work Groups 103
- The Criminal Bar 106
- Providing Indigents with Attorneys 109
- Lawyers and Clients 114
- Conclusion 116
- References 116
- For Further Reading 118

## CHAPTER 7

### JUDGES 119

- Judges at Work 119
- Judges within the Courtroom Work Group 122
- Quality and Qualifications of Judges 124
- Varying Roads to a Judgeship 125
- The Consequences of Judicial Selection 128
- Learning to Be a Judge 131
- Judging the Judges 132
- Conclusion 135
- References 135
- For Further Reading 137

## CHAPTER 8

### DEFENDANTS, VICTIMS, AND WITNESSES 138

- The Defendant 138

- Victims and Witnesses 140
- Aiding Victims and Witnesses 144
- Conclusion 149
- References 149
- For Further Reading 150

## PART III

### IS THE DEFENDANT

### GUILTY? 153

## CHAPTER 9

### AFTER THE ARREST:

### CASE ATTRITION 155

- Crime, Arrests, and Court Cases 155
- Police Screening 159
- Filing of Charges 159
- Preliminary Hearing 163
- Grand Juries 165
- Funneling Effect 168
- Why Attrition Occurs 169
- The Criminal Justice Wedding Cake 172
- Conclusion 174
- References 174
- For Further Reading 176

## CHAPTER 10

### FREEDOM FOR SALE 177

- The Monetary Bail System 177
- The Context of Bail Setting 179
- The Process of Bail Setting 181
- Bail Setting and the Courtroom Work Group 184
- Bail Bondsmen 185
- Effects of Bail 188
- Toward Bail Reform 193
- Conclusion 197
- References 197
- For Further Reading 199

## CHAPTER 11

### PREPARING FOR TRIAL 200

- Discovery 200

The Exclusionary Rule and the Supreme Court	202
Confessions	203
Search and Seizure	205
The Exclusionary Rule and the Courtroom Work Group	208
Costs of the Exclusionary Rule	212
Conclusion	213
References	213
For Further Reading	214

## **CHAPTER 12**

### **NEGOTIATED JUSTICE AND THE PLEA OF GUILTY 216**

The Many Faces of Plea Bargaining	216
The Context of Plea Bargaining	219
Bargaining and Courtroom Work Groups	222
Dynamics of Bargaining	226
Copping a Plea	230
But Is This Justice?	232
Abolishing/Reforming Plea Bargaining	235
Conclusion	237
References	237
For Further Reading	239

## **CHAPTER 13**

### **TRIAL 240**

History and Function	240
Jury Selection	243
The Prosecution Presents Its Case	249
The Defense Presents Its Case	251
The End of the Trial	255
The Jury Decides	257
Trials as Balancing Wheels	259
Prejudicial Pretrial Publicity	260
Cameras in the Courtroom?	261
Conclusion	262
References	263
For Further Reading	264

## **PART IV**

### **AFTER CONVICTION 267**

## **CHAPTER 14**

### **SENTENCING: THE LEGAL BASIS OF JUDICIAL DISCRETION 269**

Why Do We Sentence?	270
Sentencing Structures	274
Forms of Punishment	279
The Death Penalty	286
Conclusion	292
References	294
For Further Reading	295

## **CHAPTER 15**

### **CHOOSING BETWEEN PRISON AND PROBATION 297**

Courtroom Work Groups and the Sentencing Process	297
Factors in Sentencing	300
Discrimination in Sentencing?	304
Sentencing Disparities	311
Increasing the Predictability of Sentencing	314
Increasing the Severity of the Penalty	320
Conclusion	324
References	324
For Further Reading	328

## **CHAPTER 16**

### **THE APPELLATE PROCESS 330**

Nature of the Appellate Process	330
Appellate Court Procedures	332
Criminal Appeals	333
Post-Conviction Review	336
Caseloads and Expedited Processing Techniques	339
State Supreme Courts	344
The U.S. Supreme Court and Criminal Justice Policy	346

Conclusion	349
References	349
For Further Reading	351

**PART V**

**WHAT IS WRONG**

**HERE?** 353

**CHAPTER 17**

**THE LOWER COURTS:**

**RAPID, ROUGH JUSTICE** 355

Problems of the Lower Courts	356
Justice of the Peace Courts	357
Municipal Courts	361
Reducing the Caseload	368
Conclusion	371
References	371
For Further Reading	372

**CHAPTER 18**

**ADMINISTERING THE COURTS** 374

The Problem of Delay	374
----------------------	-----

Conventional Wisdom about Court	
Delay	377
Delay and the Dynamics of Courtroom Work	
Groups	378
Paperwork	382
Managing the Courts	383
Speedy-Trial Statutes	385
Conclusion	388
References	389
For Further Reading	390

**EPILOGUE**

**COURTS, CRIME, AND POLITICAL**

**RHETORIC** 391

Crime as a Political Issue	391
Crime and the Fear of Crime	392
Media Portrayal of Crime	394
Crime as an Empty Vessel	395
Consequences of Political Rhetoric for the	
Criminal Courts	398
Conclusion	401
References	402
For Further Reading	403

**GLOSSARY** 405

**INDEX** 417

# THE CRIMINAL COURTS IN CONTROVERSY

Crime has been a pressing national concern for over three decades. Newspapers headline major drug busts. Local television news provides graphic footage of the latest murder scene. Not to be outdone, the national media offer tantalizing details on yet the latest sensational crime and/or prominent criminal. Meanwhile, official government statistics document record murder rates and unofficial pollsters report that Americans believe that crime stands at an all-time record high. These concerns prompt governmental response. Candidates for public office promise that, if elected, they will get tough on criminals. Governmental officials, in turn, announce bold new programs to eradicate street crime, reduce violence, and end the scourge of drugs. Yet, despite all the attention and promises, street crime remains “a volatile, persistent, and intractable issue in American politics” (Scheingold, 1991).

A good deal of the political rhetoric about crime focuses on the criminal courts. Judges and defense attorneys—much more so than police chiefs and prison wardens—are blamed for high crime rates. Prosecutors are viewed as being too ready to engage in plea bargaining. Judges are accused of imposing unduly lenient sentences. Appellate courts are blamed for allowing obviously guilty defendants to go free on technicali-

ties. Meanwhile, the police complain that Supreme Court decisions handcuff the fight against crime. Victims of crime become frustrated by lengthy trial delays. Witnesses protest wasted trips to the courthouse.

The purpose of this chapter is to build on public perceptions of the criminal courts by focusing on a few basic topics. We will begin by discussing where the courts fit in the criminal justice system. Next, attention shifts to public concern over crime and the courts. As we will see, debate over the courts reflects fundamental disagreements about what the judicial process should do. We will then introduce the approach of this book, which stresses that we need to know not only law on the books but law in action. The law-in-action approach is then used to provide an overview of the dispositional process, beginning with arrest and ending with appeal.

---

## THE COURTS AND THE CRIMINAL JUSTICE SYSTEM

Fighting crime is a major societal activity. Every year local, state, and federal governments spend 75 billion dollars to apprehend, convict, and punish criminals (Lindgren, 1992). These tax



dollars support an enormous assortment of criminal justice agencies who in turn employ a large (and growing) number of employees; roughly 1,750,000 people earn their living working in the criminal justice system. These governmental officials are quite busy; every year the police make more than 14 million arrests and every day correctional personnel supervise 4 million people. Yet as large as these figures are, they still underestimate societal activity directed against crime. A substantial number of persons are employed in the private sector either directly (defense attorneys and bail bondsmen) or indirectly (locksmiths and security consultants). There are, for example, more private security guards than public law enforcement officers in the United States (Cunningham, Strauchs, and Van Meter, 1991).

The numerous public agencies that are involved in implementing public policy concerning crime are referred to as the **criminal justice system**. Figure 1-1 visualizes the criminal justice system as consisting of three overlapping circles: Law enforcement is responsible for apprehending criminals; adjudication is responsible for deciding if those arrested are legally guilty and, if so, determining the sentence; corrections is responsible for carrying out the penalty imposed on the guilty.

The major components of the criminal justice system do not make up a smoothly functioning

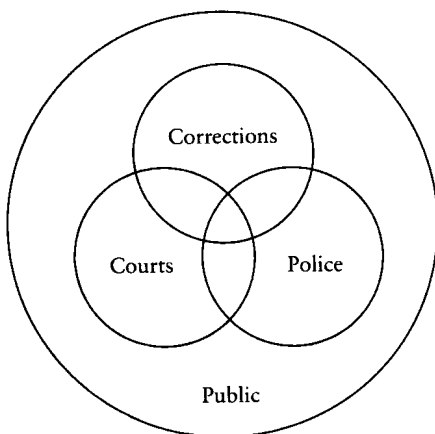


FIGURE 1-1 The overlapping circles of the criminal justice system

and internally consistent organization. Rather, the criminal justice system is both interdependent and fragmented.

## An Interdependent Criminal Justice System

Viewing the various components of criminal justice as a *system* highlights the fact that these different agencies are interdependent and interrelated (Walker, 1992). Police, courts, and corrections are separate governmental institutions with different goals, histories, and operating procedures. Though separate, they are also tied together because they must interact with one another.

The courts play a pivotal role within the criminal justice system because many formal actions pertaining to suspects, defendants, and convicts involve the courts. Only the judiciary can hold a suspect in jail prior to trial, find a defendant guilty, and sentence the guilty to prison. Alternatively, of course, the courts may release the suspect awaiting trial, find him not guilty, or decide to grant probation.

The decisions that courts make (and how they make them) have important consequences for other components of the criminal justice system. Judges' bail policies, for example, immediately affect what happens to a person arrested by the police; likewise, corrections personnel are affected because the bail policies of the judges control the size of the local jail population. If the decisions made by the courts have important consequences for police and prisons, the reverse is equally true: The operations of law enforcement and corrections have major impacts on the judiciary. The more felons the police arrest, the greater the workload of the prosecutors; and the more overcrowded the prisons, the more difficult it is for judges to sentence the guilty.

## A Fragmented Criminal Justice Nonsystem

The system's approach to criminal justice dominates contemporary thinking about criminal