



# CRIMINAL JUSTICE

Situations and Decisions

Howard C. Daudistel  
William B. Sanders  
David F. Luckenbill

# CRIMINAL JUSTICE

## Situations and Decisions

**Howard C. Daudistel**

University of Texas at El Paso

**William B. Sanders**

San Diego State University

Holt, Rinehart and Winston

New York Chicago San Francisco Dallas

Montreal Toronto London Sydney

## ACKNOWLEDGMENTS

Pages 197-200 reprinted from Abraham Blumberg, *Criminal Justice*, pp. 132-35. Copyright © 1967 by Abraham Blumberg and used by permission of the Publisher, Franklin Watts, Inc.

Excerpts on pages 220, 223, 241, 264, and 265 reprinted from Lynn T. Mather, "Some Determinants of the Method of Case Disposition: Decision-Making by Public Defenders in Los Angeles," *Law and Society Review* 8 (Winter 1973): 199-200, 204, 206-7. Used by permission of the copyright holder, The Law and Society Association.

Table 5-2, page 170, and Table 5-3, page 171, reprinted from Charles E. Ares, Anne Rankin, and Herbert Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pre-Trial Parole," *New York University Law Review* 38 (January 1963): 84,85. Used by permission.

Table, page 208, from Note, "Guilty Plea Bargaining: Compromises by Prosecutors to Secure Guilty Pleas," *University of Pennsylvania Law Review* 112 (April 1964): 901. Reprinted by permission of the *University of Pennsylvania Law Review* and Fred B. Rothman & Co.

Table 5-1, page 162, reprinted from Frederic Suffet, "Bail Setting: A Study of Courtroom Interaction," *Crime and Delinquency* 12 (October 1966): 321. By permission of the National Council on Crime and Delinquency.

Copyright © 1979 by Holt, Rinehart and Winston

All Rights Reserved

### Library of Congress Cataloging in Publication Data

Daudistel, Howard C

Criminal justice: situations and decisions.

Bibliographies.

Includes index.

1. Criminal justice, Administration of—United States. I. Sanders, William B., joint author. II. Luckenbill, David, F. joint author. III. Title. KF922.3.S22 345'.73'05 76-41970

**ISBN 0-3-033051-3**

Printed in the United States of America

890 039 987654321

To Our Fathers

# PREFACE

This text was written to provide a fresh approach to the study of criminal justice. We did not want to write an introduction to criminal justice that describes what is *supposed* to happen in police stations, courtrooms, and prisons. There are already several books that adequately describe the "due process ideal." These traditional texts tell us about the law as it is written, but while concentrating on the ideal they gloss over the actual ways in which our legal system achieves "justice."

We prefer to analyze the interpersonal transactions that constitute the criminal justice process. Because legal agents "do justice," this text will focus on them. For example, we shall discuss how policemen decide to investigate crimes and arrest suspects; how prosecutors decide what charges to file against defendants; how prosecutors and defense attorneys routinely settle cases; and how judges decide what sentences to give convicted offenders. While describing the nature of criminal justice decision-making we shall also discuss the impact these decisions have on the citizens caught in the criminal justice process. This latter concern is perhaps the most difficult to satisfy. Although most people demand uniformity in the application of the law, justice is highly individualized. Whatever our opinions may be, we cannot predict with any significant level of certainty what will happen to individuals caught in the arms of the law. We can, however, describe the kinds of things that are likely to happen to different types of persons who encounter the situations in which decisions about justice are made.

It is unfortunate that most students of criminal justice have little knowledge of how the criminal justice system actually operates. For example, even in law school very little is said about plea bargaining. Although policemen spend weeks learning the statutes codified in penal codes until they "hit the streets," few know much about real police work. Even though we are not specifically interested in teaching persons how to become policemen and lawyers, we hope those who are interested in criminal justice careers will gain a more intimate familiarity with the roles they will eventually play. Furthermore, persons who simply wish to know more about the legal system will find our



approach refreshing and informative. Likewise, social scientists will see how sociological studies can and have contributed to our overall understanding of criminal justice.

All textbooks are selective of the topics they address, and, of course, this book is no exception. But we feel that we have provided the kind of detailed sociological analysis that is often missing from other criminal justice texts. Rather than just talking about trial, for instance, we have elected to talk about first appearances, bail, arraignments, charging, plea negotiations, and sentencing. Additionally, throughout all of the chapters we have used material from a variety of scholarly books, articles, studies, and commentaries. Although the large number of references may be tedious for some, they will help others who are especially interested in pursuing the issues we address.

The "tradition," if there can be said to be a tradition, behind our approach lies in the work of "interpretive" sociologists. Nevertheless, we were less concerned with demonstrating loyalty to any particular theoretical approach than describing accurately what goes on in the criminal justice system. Much of what we have to say is a result of our own research and study in this field. Nevertheless, we have borrowed ideas from several sources and have attempted to identify all of the contributions made by others.

Many persons, too numerous to name, were instrumental in our instruction and background, and still others let us into the inner sanctum of criminal justice agencies to study the process of their organizations. Several anonymous reviewers are due credit for correcting the many flaws in early drafts, and any oversights in this book cannot be attributed to their lack of scrutiny.

Svein Arber, Jim Bergin, and Herman Makler showed a good deal of patience and offered much needed help to complete the book. Our wives, Sandy, Eli, and Diane, were always understanding and willing to cope with our bizarre work schedules. We are grateful to them for their support.

It is customary to relieve those who we have acknowledged from any faults the book may have, and we do so, for we were the final judges of what would be included and omitted. However, instead of accepting joint responsibility for any of the book's shortcomings, each of us will blame the other two.

H.C.D.  
W.B.S.  
D.F.L.

# CONTENTS

## PART ONE THE STUDY OF CRIMINAL JUSTICE

### 1 A Situational Approach to Criminal Justice 3

What Is Criminal Justice? 4

Basic Rights 9

The Criminal Justice System 12

The Situational Approach to Criminal Justice  
13

Doing Justice 19

The Documentary Method of Interpretation  
21

Knowing the Law 24

Normal Forms of Crime 27

Summary 37

### 2 The Social Organization of Criminal Justice 41

The Legal System 42

The Operation of the Legal System 45

Two Models of Society 49

Perspectives on Organizations	55
Law Enforcement for Whom?	60
Summary	67

## PART TWO INITIAL ENCOUNTERS WITH CRIMINAL JUSTICE

### 3 The Police: Occasions of Contact with the Criminal Justice System 77

Police Decisions	78
Citizen Discretion in Application of the Law	79
Proactive Patrol	85
Reactive Patrol	98
Reactive Detective Work	107
Proactive Detective Work	113
Summary	117

### 4 Charging 123

The Formal Process	124
The Character of Court Decisions	127
Charging	129
Summary	142



PART THREE PROSECUTION AND  
ADJUDICATION

5 First Court Appearance and  
Formal Case Screening 149

First Appearance 150

The Preliminary Hearing and the Grand Jury  
Proceeding 176

Summary 188

6 Arraignment and Plea Negotiation  
193

Arraignment 193

The Negotiated Guilty Plea 203

Explanations of the Negotiated Guilty Plea  
205

The Process of Plea Negotiation 217

Acquittal of the Guilty 227

Summary 229

7 Trial 234

The Stages of Trial 234

The Value of the Petit Jury 247

Sentencing 250

Summary 266

## PART FOUR CORRECTIONS

### 8 Probation and Parole 275

Probation 276

Parole 290

Summary 300

### 9 Prisons 304

Incarceratories 305

The Goals of Incarceration 306

The Inmate World 311

Prison Identities 313

The Staff World 318

Prison Violence 321

Modalities of Prison Treatment 324

Summary 334

## PART FIVE A SEPARATE JUSTICE

### 10 Juvenile Justice 341

What Is a Juvenile? 342

The Development of Juvenile Justice 344

The Police and Juveniles 349

The Juvenile Court: Official Informality	360
Going to Court	365
Juvenile Corrections	367
Incarceratories for Juveniles	370
Changing Patterns in Juvenile Justice	375
Summary	376

## Epilogue 379

Name Index	385
Subject Index	391



part one



# THE STUDY OF CRIMINAL JUSTICE



# 1 a SITUATIONAL APPROACH to CRIMINAL JUSTICE



*The institution of criminal justice is a special kind of formalized social control. Intended to be a force to control crime and guard civil rights, the criminal justice system is actually a receptacle of all kinds of social problems that people encounter in their daily lives requiring intervention by an outside control mechanism. In addition to maintaining order and enforcing the law, police are expected to help locate lost children, escort pregnant women to hospital, and assist stranded motorists. Prosecutors are called upon to charge religious groups with brainwashing young adults even though the United States Constitution guarantees religious freedom. Correctional agencies are asked to "straighten out" children who have broken no laws, as well as to rehabilitate convicted felons.*

*Typically, people can control situations through informal means. Even in situations where a crime has been committed or order has broken down, they often prefer to handle problems themselves. However, when a situation comes to be defined as one in which the participants cannot resolve the problems without outside help, control is sought through the criminal justice system. As such, we can treat the criminal justice*

## WHAT IS CRIMINAL JUSTICE?

The study of criminal justice must begin with some understanding of what we shall be talking about in this book. Commonsense understandings of criminal justice include everything from a highly idealized image of Perry Mason rushing to the defense of innocent defendants to a critically cynical view of prisoners shackled in dungeons. The news media thrill us with a vivid newspaper account or live television coverage of a shoot-out between bank robbers and the police, or we are shocked to learn that the Attorney General of the United States has been indicted on criminal charges. We hear that the criminal justice system is hopelessly ineffective in the United States at the same time as we hear that it is the most just and democratic. Such dramatic events or arguments are the stuff that popular television shows and what some might consider good journalism are made of, but they really tell us little of the actual day-to-day operation and structure of criminal justice. Moreover, such perceptions tend to cloud the important issues and create contradictory realities of criminal justice.

In order to provide a clearer view of what we will be dealing with, it will be necessary to define our topic, explain how we are going to examine it, and, then, throughout the rest of the book, carry out our examination.

To begin our definition we must clearly identify the two basic components of criminal justice, namely, *criminal* and *justice*. The term criminal has its roots in the term crime, and so it is necessary to spell out exactly what a crime is, and then show how we are using "criminal" in the context of this book. Basically, *a crime is any act that violates the criminal law* (Sutherland and Cressey, 1974). While all crimes must be defined in criminal laws, not all laws refer to crimes; that is, some laws are "civil" and involve "torts" instead of crimes. Other laws involve everything from administrative procedures to the writing of contracts.

Legally defined, a "crime" is an offense against the state punishable by fine, imprisonment, or some other penalty (Kerper, 1972:30). The important aspect of this definition is that the act is considered to be *against the state and punishable by the state*. This distinguishes a crime from a tort in that a tort is *against an individual*, and any legal action taken against the defendant is in the name of the individual and not the state. Some may wonder why the complainant is the state when most crimes are, in effect, against individuals. For instance if Jones robs Smith's store, why isn't the case cited as *Smith v. Jones* instead of say, *Texas v. Jones*? After all, it wasn't the state of Texas that was robbed. The state is the plaintiff because the robbery is considered



harmful to the entire society, not just to Smith. A crime is defined as a *public wrong* whereas a tort is a *private wrong*; therefore, when Jones robbed Smith, he committed a public wrong. But still, does the fact that the robbery was against Smith not make the robbery a private wrong as well as a public one? Of course it does. Not only could Jones be charged with a crime, but Smith could also take him to court on civil charges and sue him for the problems created by the robbery. Thus, Jones is responsible for both a crime and a tort. Typically, criminal defendants are only brought to court on criminal charges for a criminal offense, even though a victim of a crime could, in most cases, bring civil charges against a criminal.

If "crime" can be defined as any violation of the criminal law, then what is the criminal law? Sutherland and Cressey (1974:4) argue that the criminal law can be defined "as a body of specific rules regarding human conduct that have been promulgated by political authority, which apply uniformly to all members of the classes to which the rules refer, and which are enforced by punishment administered by the state." Four ideal features or elements of the criminal law set it off from other forms of rules regarding human conduct. These characteristics constitute ideals, and as we shall see throughout the book, what appears to be a neat, firm, unequivocal law is much more complex when it is applied in an actual situation. This does not mean that these ideals are irrelevant and unimportant. On the contrary, we find that criminal justice agents take them seriously. For example, even though it is often a struggle to decide what acts are crimes, policemen and prosecutors argue consistently that their decisions are prescribed by law. An act is a crime because the law specifically describes it as such. On close examination we will find however, that the ideal of specificity is accomplished by criminal justice agents. Thus, specificity is a quality attributed to laws rather than inherent in them.

Since the criminal law, as opposed to other forms of law (as well as other social norms), is technically the phenomenon we shall examine, we should understand something of the differences between them in a formal sense. In this way, even though we may show that the formal features do not exist in practice, at least we can differentiate criminal law from other law-like social phenomena. *Thus, we can define a criminal law as a specific rule whose infraction is against the society as a collective and is uniformly sanctioned in the name of the state by the state.*

First, is the feature of *politicality*, the fact that the rules are constructed by the "state" as a corporate body. Any rule or law that is not made by the state or enforced in the name of the state is not a law. For example, the Comanche Indians did not take action as a collective against members of their group who committed homicide (Hoebel, 1954:140). If a Comanche was murdered, the member's family was obliged to take action against the killer, not the tribe as a collec-



A criminal act is taken to be against society as a whole rather than a single individual even though most crimes involve specific individual victims. (© 1976 by Fred W. McDarrah)

tive. Therefore, among the Comanche, killing was not a crime. This is not to say that vengeance was not taken against the killer or even that the Comanches thought that killing fellow Comanches was not wrong. Rather, because the action was taken to be against an individual and the response to the act was not in the name of the collectivity, it was not a crime. In fact, among the Comanche, the only thing that could be considered a crime in terms of politicality was excessive sorcery, since that action was considered a threat to the collectivity and sanctions against it were taken in the name of the collectivity.

A second ideal feature of criminal laws that distinguish them from other norms is that of *specificity*. Many norms and mores are vague, and we have only a general understanding of their exact meaning. In contrast, criminal laws are characteristically more precise in stating what must be done or not done if an act is to be a crime. Such specificity characterizes only certain types of acts as crimes. For example, during the development of modern mercantilism the laws defining larceny specifically stated that a person had to be in the possession of money legally before someone could steal it from him (Cressey and Ward, 1969:65). When more and more businesses began hiring clerks (trusted servants) to handle money in financial transactions, the money did not legally come into the owner's possession until it was turned over to him by a clerk. Thus, when clerks began taking money entrusted to them, the law did not define it as a crime since it was not in the owner's possession (Hall, 1952:35).