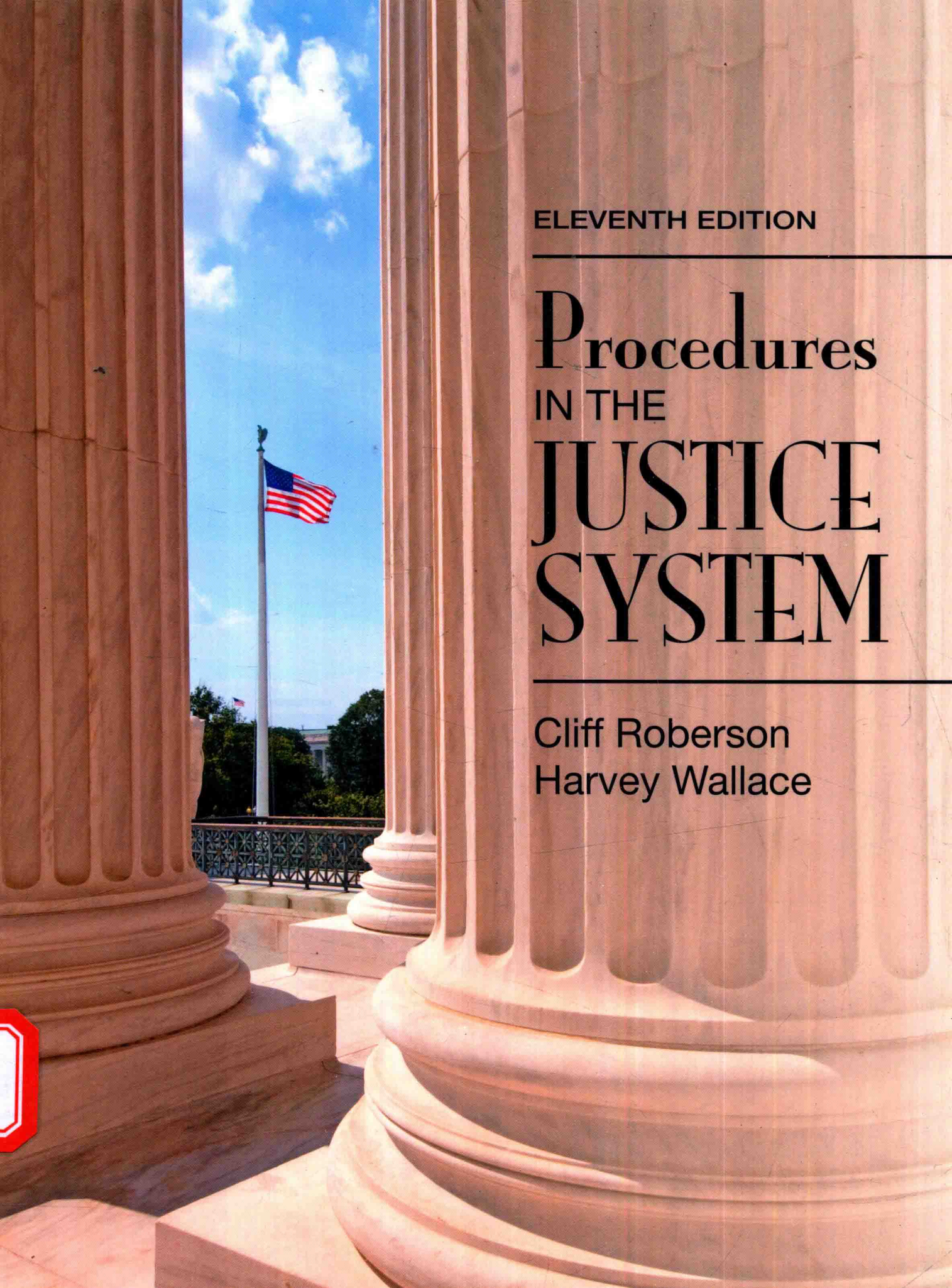




ELEVENTH EDITION

Procedures
IN THE
JUSTICE
SYSTEM

Cliff Roberson
Harvey Wallace

We the People

insure domestic Tranquillity, provide for the common Defence
and our Posterity, do ordain and establish this Constitution
Article I

ELEVENTH EDITION

PROCEDURES IN THE JUSTICE SYSTEM

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PEARSON

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The fourth through eighth editions have been dedicated to our colleague Gilbert Stuckey. This edition, like the tenth, is dedicated to my friend and colleague Paul Harvey Wallace. Harvey and I were fellow Marines, friends, and coauthors for sixteen years. We coauthored ten books together. I still miss him.

—Cliff Roberson

Preface

The judicial procedures involved in a criminal case are complex and interesting. The text, *Procedures in the Justice System*, is designed to cover the judicial procedures involved in a criminal case from arrest to conviction and sentencing. It is also designed with an appropriate amount of material that covers the key issues, yet is concise enough to allow the material to be covered in a one semester course. As noted by the numerous television shows and movies involving the issues, the path is exciting and in many cases, real life is stranger than fiction. Accordingly, the many examples used in the text to illustrate different points were all taken from actual court cases and are not works of fiction.

The eleventh edition of *Procedures in the Justice System* continues the tradition of providing the reader with a thorough understanding of our justice system from the time of arrest through the sentencing of the criminal offender. Legal rules of procedure are presented in language that is easy to understand. The high crime rate continues to be one of society's major problems not only in the United States, but also throughout the world. It is the primary responsibility of those directly connected with the justice system, such as members of law enforcement agencies, the courts, and correctional officers, to fight crime. Yet, to effectively curb crime, society needs the assistance of every law-abiding person.

By studying history, we often see the mistakes of the past and thus can make efforts not to repeat those mistakes in the future. One past mistake was the failure to recognize that the members of the justice system are a team who must work together. Yet, to work as a team, it is necessary for each member to understand his or her own responsibility as well as that of each of the other members.

This book was written for those interested in our justice system, particularly police and correctional science students. It explains the duties and responsibilities of the law enforcement agencies, courts, and correctional departments in relation to law violators from the time of accusation until completion of the sentence. Criminal justice students should, however, study more than just judicial procedures. They should have some knowledge of why we have laws and why those laws are broken, should be cognizant of the constitutional rights of an accused, and should have a better understanding of the philosophy of correctional endeavors. Thus, material on these subjects is incorporated in the text. The information in this book will help the student, as well as others, attain a more thorough knowledge of our justice system and of the role that each member must play to achieve, through teamwork, law and order for all.

Special thanks to the following reviewers for their hard work and assistance on this edition: Lisa W. Clayton, College of Southern Nevada; Brian Donnelly, Raritan Valley Community College; James D. Elshoff, Texas State University; and Theodore P. Skotnicki, Niagra County Community College. The invaluable assistance of editor Gary Bauer, editorial assistant Lynda Cramer, and Jessica Sykes, production project manager, was necessary to accomplish this extensive revision to the text.



A warm and special thanks to the supplements author Harrison Watts, Washburn University. Lastly, a special thanks to Jogender Taneja and Sanchita Massey for preparing the manuscript into a printable form.

Suggestions for improvement, corrections, and other comments are invited and may be forwarded to Cliff Roberson at cliff.roberson@washburn.edu.

► New to the Eleventh Edition

In addition to updating legal issues and cases, there have been numerous changes made to the tenth edition. These include:

- Two new chapters, Chapter 4, dealing with street encounters between the police and citizens, and Chapter 5, dealing with the law of interrogations, have been added.
- Discussion on the roles of prosecutors and state attorneys has been added.
- Material asking the students how they would rule on a contested issue has been added.
- Discussions on the primary duty of a prosecutor have been added.
- Discussions on the search of an arrestee have been added.
- Expanded discussion on frisking for weapons.
- Expanded discussions on self-incrimination and interrogations.
- Expanded discussions on pretrial procedures in the criminal justice system.
- Expanded discussions on trial procedures.

—Cliff Roberson, LLM, Ph.D.
Emeritus Professor of Criminal Justice,
Washburn University;
Professor of Criminology (Retired),
California State University, Fresno

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KEY TERMS

Abstract goals
Court rules
Due process
Jurisdiction
Orientation goals
Pragmatic goals
Standards
Venue

We the People
insure domestic Tranquility, provide for the common defence,
and our Posterity, do ordain and establish this Constitution for
Article 1
Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.
Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.
No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.
Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and including Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the House of Representatives, and within every subsequent Term of ten Years, in which Enumeration they shall be increased or decreased as they shall be found to have increased or decreased.

1 An Introduction to the Justice System

A Constitution is not intended to embody a particular economic theory . . . It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar, or novel, and even shocking, ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States.

—OLIVER WENDELL HOLMES, JR. (1841–1935)

ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES IN HIS
DISSENTING OPINION IN *LOCHNER V. NEW YORK*, 198 U.S. 45, 76 (1905)

CHAPTER OUTLINE

Overview

Goals of the Justice System

Common Law

Modern Criminal Law

What Constitutes Justice?

Rule of Law

Classification of Crimes and
Punishment

Justice System

Court Structures

State Court System

Federal Court System

Venue

Jurisdiction

Criminal Law Administration

Summary

LEARNING OBJECTIVES

After completing this chapter, you should be able to:

- ① Summarize the constitutional basis for criminal procedure.
- ② Describe the concept of judicial guidance.
- ③ List the goals of the justice system. Explain that the criminal law of the various states is a written set of regulations that is largely the result of legislative action.
- ④ Describe what constitutes justice. Explain the concept of "rule of law."
- ⑤ Describe the classifications of crimes and punishments.
- ⑥ Describe the impact of the Bill of Rights on criminal procedure.
- ⑦ Summarize the history and legal foundations of criminal procedure.
- ⑧ Explain the importance of precedent.
- ⑨ Describe the public order (crime control) and individual rights (due process) perspectives of criminal justice and how criminal procedure balances the two.
- ⑩ Outline the structure of the court system, including the responsibilities and jurisdictions of each level.
- ⑪ Explain why venue is an important factor in criminal prosecutions.
- ⑫ Describe criminal law administration processes.

► Overview

Our justice system is not fixed in stone, but is ever changing and flexible.

Former Supreme Court Justice Oliver Wendell Holmes once stated that the law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics (Oliver Wendell Holmes, *The Common Law*, 1881). As we begin our review of the American justice system the approach should be that this study should be viewed not as a set of rules for memorization. The study should be viewed as a cluster of ideas, principles, and values about which reasonable people can and do disagree.

Understanding our concept of justice requires a thoughtful comprehension of the historical background, social values, moral standards, and political realities that give direction to our system.

The major issue facing our state and federal court systems is their ever-increasing case loads. Criminal courts are the heart of criminal justice system. A criminal court has three primary missions:

- To administer justice in a fair and impartial manner;
- to protect the individual rights of persons accused of crimes; and
- to provide an authority for controlling crime.

In the United States, there are two separate court systems in each state, the federal system and the state system. Generally, federal courts are involved only in matters concerning federal issues and state courts are involved in the other matters. The court systems of the federal and state governments in the United States operate on an adversarial system in that the prosecution or plaintiff is opposed by the defense with the judge and jury operating as the decision-makers.

Both the state and federal governments have enacted statutes to regulate the administration of the criminal justice system. The primary state regulatory statute is the state code of criminal procedure that regulates procedure in state courts. The primary federal statute that governs the trial of criminal cases in federal court is Title 18 of the U.S. Code. Except for constitutional issues, federal procedural rules apply only to federal criminal cases. State procedural rules apply only to state cases.

Courts are established either by the U.S. Constitution, state constitutions, or legislation. If the court is established under a constitution, it is considered as a constitutional court. Those established by a state or federal legislation are considered as legislative courts. According to Section 1, Article III, of the U.S. Constitution:

The Judicial Power of the United States shall be vested in one Supreme Court and in such inferior Courts as Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at Times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Judicial Guidance

Judicial Opinions

Judicial opinions construe the constitutionality, meaning, and effect of constitutional and statutory provisions. The court decisions included in each chapter of this text provide examples of the importance of judicial opinions in the justice system.

Court Rules

Court rules consist of the various standard procedures used by the courts that were developed as the result of a court's inherent supervisory power over the administration of the criminal justice system. Court rules regulate the guilt-determining process of the courts in the areas not regulated by other rules. Most students of the justice system fail to consider the importance of court rules in the trial of criminal cases.

Example of court rules that have an impact on the courts follow.

U.S. District Court (Eastern District California) Rule 5a:

(1) The trial of a defendant held in custody solely for purposes of trial on a federal charge shall commence within 90 days following the beginning of continuous custody.

► Goals of the Justice System

Most experts on the justice system agree that the most basic goal of the system is to protect society from crime. Beyond that, there is little agreement. There are several competing philosophies concerning the purposes of the justice system, each with its own specific goals. To help us understand some of the more commonly accepted goals of the justice system, the goals are classified as **orientation goals, pragmatic goals, abstract goals, or standards.**

Orientation Goals

Criminal justice professionals generally are oriented in one of two opposite directions—law and order or individual rights. The law and order orientation stresses the need to solve the crime problem. The individual rights orientation stresses the need to protect an individual's rights and considers this need greater than the need to punish offenders. Too great an emphasis on individual rights will restrict law enforcement and allow offenders to escape punishment. Arbitrary

police practices that may occur under the law and order orientation may infringe on human and constitutional rights. As Chief Justice Earl Warren stated in *Miranda v. Arizona*:

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

Pragmatic Goals

The pragmatic goals of the justice system include:

Preventing Crime. This goal includes providing potential criminals with conventional opportunities for success before they start a career of crime, building stronger social control units such as the family, providing guidance and counseling in our schools, and developing better environmental conditions in the neighborhoods that foster law-abiding behavior.

Diverging Offenders. This refers to the efforts to remove offenders from the system and place them in nonpunitive treatment programs. The purpose of this effort is to correct offenders without placing the stigma of a criminal conviction on them.

Deterring Crime. The justice system attempts to deter crime by making potential criminals believe that the punishments received for criminal behavior outweigh any potential benefit (i.e., crime does not pay).

Controlling Criminals. The system attempts to control the behavior of known criminals by incarcerating the more serious offenders and placing the less serious ones in community correction programs.

Rehabilitating Offenders. An objective of the system is to provide rehabilitation treatment to offenders in order to reduce the likelihood of future involvement in criminal behavior. The goal of rehabilitation was very popular in the 1960s. During the 1980s, it was discounted because of the popular belief that existing rehabilitation programs were not effective. Today, rehabilitation is not a popular objective in most states.

Abstract Goals

Abstract goals are the underlying principles upon which our justice system is based. The most common abstract goals include:

Fairness. The justice system should ensure that all persons involved in the criminal justice system are treated fairly and humanely. More specifically, socioeconomic status, ethnicity, and other factors should not determine the type of treatment or form of punishment one receives from various criminal justice agencies.

Efficiency. The system should be organized and managed in a manner to ensure maximum utilization of personnel and resources.

Effectiveness. The justice system should operate in an effective manner.

Justice. Justice is considered as the ideal goal of all governments and the disposition of a criminal matter in such a manner that the best interest of society is served. It is not measured solely by its application to the accused. Justice is the

broad concept of reward and punishment currently accepted as proper by a society. A state court judge in an early Texas case defined justice as follows:

Justice is the dictate of right, according to the common consent of mankind generally, or of that portion of mankind who may be associated in one government, or who may be governed by the same principles and morals.

Standards

Organizations such as the American Bar Association and the American Correctional Association have developed detailed goals to improve the justice system. These goals are called standards. For the most part, standards are designed to protect individual rights and promote the efficiency of the justice process. (Note: Standards are goals, not binding rules.) Selected standards on criminal justice are as follows:

AMERICAN BAR ASSOCIATION STANDARDS RELATING TO PROSECUTION FUNCTION

1.4 Duty to Improve the Law

It is an important function of the prosecutor to seek to reform and improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to his or her attention, he or she should stimulate efforts for remedial action.

2.7 Relations with the Police

- a. The prosecutor should provide legal advice to the police concerning police functions and duties in criminal matters.
- b. The prosecutor should cooperate with police in providing the services of his or her staff to aid in training police in the performance of their function in accordance with the law.

National Advisory Commission on Criminal Justice Standards and Goals

4.11 Priority Case Scheduling

Cases should be given priority for trial where one or more of the following factors are present:

- a. The defendant is in pretrial custody;
- b. The defendant constitutes a significant threat of violent injury to others;
- c. The defendant is a recidivist;
- d. The defendant is a professional criminal;
- e. The defendant is a public official.

6.5 Further Review

After a reviewing court has affirmed a trial court conviction and sentence, or after the expiration of a fair opportunity for a defendant to obtain a review with the aid of counsel, the conviction and the sentence generally should be final and not subject to further review in any state or federal court. Further review should be available only in unusual circumstances.

► Justice System Structure and Process

We refer to the justice system as a system as if it were a formal system. It would be more accurate to refer to it as a nonsystem. The term system refers only to the interrelationship among all those agencies concerned with the prevention of crime in society. The systems approach to criminal justice sees a change in one part of the system affecting change in all the others. It implies that a closely-knit, coordinated structure of organizations exists among the various components of the system.

The justice system, however, is not a close-knit, coordinated structure of organizations. It is actually three separate elements: police, courts, and correction institutions. Each operates almost independently of the others. In many cases, the goal

