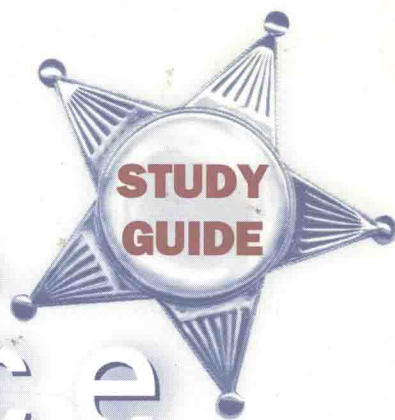
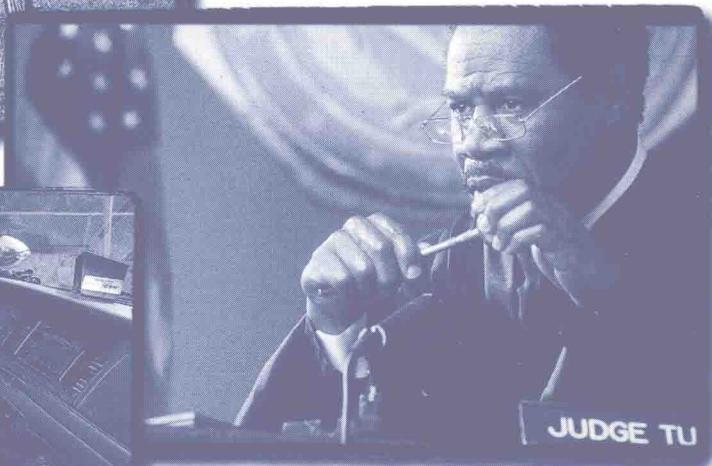
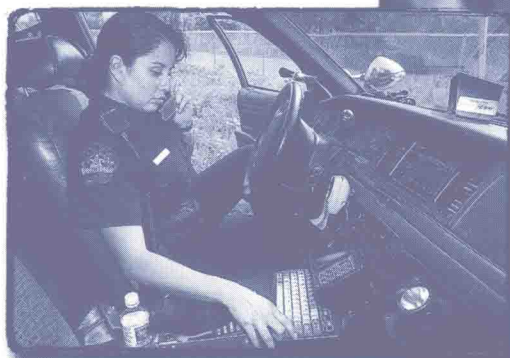


PREPARED BY ROBERT G. HUCKABEE

Criminal Justice



SIXTH EDITION



JAMES A. INCIARDI



Study Guide
to accompany
CRIMINAL JUSTICE

SIXTH EDITION

James A. Inciardi

University of Delaware

prepared by

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INTRODUCTION

If you are reading this, you have probably just enrolled in a course called something like “Introduction to Criminal Justice.” This is more than likely your first academic exposure to the material which will be covered in this course, and you will quickly find that there is not much similarity between the criminal justice you see on television and that which exists in reality. Buckle your seat belt! You are about to embark on a journey that will at times appear complicated, confusing, and contradictory, as well as entertaining, informative, and rewarding.

I hope that you enjoy taking this course as much as I have enjoyed teaching it for the past fifteen years. During this time, I have observed hundreds of students pick their way through the mysteries of the criminal justice system, and I have come to the conclusion that by following a few easy steps, this journey can be a very productive experience. This study guide represents a step in the right direction.

The study guide was written with you in mind. The primary principle that I followed in writing it is that reinforcement is critical to the learning process. The study guide follows the text and is intended to highlight and emphasize the material presented in the chapters. Each chapter is divided into five parts: Chapter Outline; Review of Key Terms, Concepts and Ideas; Documentation; Discussion; and Practice Exam (in all chapters except Chapter 1).

I recommend that you spend some time going over the chapter outline before you start reading the chapter. The outline will introduce you to the order in which the material is presented and will alert you to the important ideas that you should be looking for as you read the chapter. After reading the chapter, go over the outline again, then go on to the review of key terms, concept and ideas. A good idea here is to use flashcards to help you study. Write the key term, concept, or idea on one side of the card and the definition on the other. Trade off with a friend or simply go through the cards and write the definitions of each key term (without looking at the back of the card, of course), and then check yourself.

The documentation section presents material which should reinforce and even expand your knowledge of some aspect of the chapter. This information is generally taken from reports published by organizations such as the U.S. Justice Department, the United Nations, and various special commissions. Following the documentation section, you will find the discussion section. Here, I have attempted to present you with some “food for thought”, challenges, and opportunities to express your feelings on important issues. Again, the key is reinforcement.

Finally, you will find a practice exam which covers the main ideas, terms, and concepts. Treat this practice exam as though it is the real thing. After grading your exam, go back over the questions you miss (assuming there are any) and double check the correct answers.

In closing, I would like to make one last recommendation. If there is one factor which I find to consistently correlate with learning in the classroom (and grades), it is class attendance. GO TO CLASS! You cannot learn what is being covered in class unless you are there. This means that you have to be mentally as well as physically present. Pay attention, take good notes, and ask questions when you do not understand. Be an active, not a passive, learner.

Your education is your responsibility. You have a golden opportunity awaiting you—don't blow it! Enjoy your journey through the criminal justice system.

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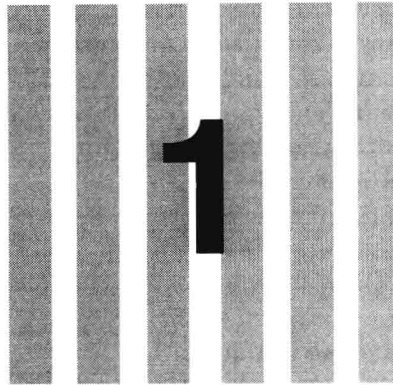
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CHAPTER



“Criminal Justice” in America

CHAPTER OUTLINE

- I. The Emergence of Criminal Justice
 - A. Definition—the structure, function, and decision processes of those agencies that deal with the management of crime—the police, the courts, and corrections
 - 1. criminology
 - 2. criminal law
 - 3. criminal procedure
 - 4. constitutional law
 - B. “Law and Order” and the “War on Crime”
 - 1. the 1960s—a decade of violence
 - 2. political assassinations
 - 3. appeals for “law and order”
 - 4. “nationalization” of the Bill of Rights
 - 5. President Johnson’s “war on crime”—President’s Commission on Law Enforcement and Administration of Justice
 - C. The President’s Crime Commission
 - 1. *The Challenge of Crime in a Free Society*
 - 2. recommendations—seven specific objectives and more than 200 specific recommendations
 - 3. focus on the relationship between poverty and crime

- D. Criminal justice as a “system”
 - 1. an orderly flow of managerial decision making that begins with the investigation of a criminal offense and ends with the offender’s reintegration into the free community
 - 2. the alternate view—criminal justice as a “nonsystem”
- E. The Omnibus Crime Control and Safe Streets Act of 1968
 - 1. the unique place that the year 1968 holds in America
 - 2. the search for the causes of crime
 - 3. provisions of the act; responses to the act
- F. The Law Enforcement Assistance Administration
 - 1. created to fund improvements in state criminal justice systems
 - 2. early criticisms
 - 3. funding for criminal justice education

II. Organization of This Book

III. Models of Criminal Justice

- A. Criminal justice, criminology, and the U.S. Supreme Court—the Warren Court
- B. The Due Process Model stresses protection of procedural rights
- C. The Crime Control Model emphasizes efficiency—the Burger Court

IV. Key Factors in Criminal Justice Today

- A. The war on drugs
- B. Women, crime, and criminal justice

V. International and Cross-Cultural Perspectives

VI. Summary

REVIEW OF KEY TERMS, CONCEPTS, AND IDEAS

- 1. Burger Court—the Supreme Court under the leadership of Chief Justice Warren Burger
- 2. crime control model—the model of the criminal justice system that reviews the repression of criminal conduct as its most important function
- 3. criminal justice—the structure, functions, and decision processes of the agencies that deal with the management of crime—the police, the courts, and corrections
- 4. due process model—the model of the criminal justice system that emphasizes the protection of procedural rights over system efficiency

5. law and order—a political ideology (philosophy) that sought a return to the morality and values of earlier times and rejected the growing permissiveness in government and social affairs; a popular slogan which expressed this idea
6. Law Enforcement Assistance Administration (LEAA)—a federal bureaucracy created to involve the national government in local crime control by supplying funds (money) to the states for training criminal justice personnel and upgrading criminal justice agencies
7. Omnibus Crime Control and Safe Streets Act—a federal law that was viewed by many people as a political maneuver aimed at allaying (easing) fear of crime rather than bringing about criminal justice reform
8. President’s Commission on Law Enforcement and Administration of Justice—a series of task forces appointed by President Johnson to study crime and justice in the United States and to make recommendations for change
9. Warren Court—the Supreme Court under the leadership of Chief Justice Earl Warren

DOCUMENTATION

The President’s Commission on Law Enforcement and Administration of Justice is discussed in Chapter 1. The final product of the Commission’s work was a report titled *The Challenge of Crime in a Free Society*. The material which follows has been excerpted from this report.

There is much crime in America, more than is ever reported, far more than is ever solved, far too much for the health of the Nation. Every American knows that. Every American is, in a sense, a victim of crime. Violence and theft have not only injured, often irreparably, hundreds and thousands of citizens, but have directly affected everyone. Some people have been impelled to uproot themselves and find new homes. Some have been made afraid to use public streets and parks. Some have come to doubt the worth of a society in which so many people behave so badly. Some have become distrustful of the government’s ability, or even desire, to protect them. Some have lapsed into the attitude that criminal behavior is normal human behavior and consequently have become indifferent to it, or have adopted it as a good way to get ahead in life. . . .

The most understandable mood into which many Americans have been plunged by crime is one of frustration and bewilderment. For “crime” is not a single simple phenomenon that can be examined, analyzed and described in one piece. It occurs in every part of the country and in every stratum of society. Its practitioners and its victims are people of all ages, incomes and backgrounds. Its trends are difficult to ascertain. Its causes are legion. Its cures are speculative and controversial. An examination of any single kind of crime, let alone “crime in America,” raises a myriad of issues of the utmost complexity. . . .

The underlying problems are ones that the criminal justice system can do little about. The unruliness of young people, widespread drug addiction, the existence of much poverty in a wealthy society, the pursuit of the dollar by any available means are phenomena the police, the courts, and the correctional apparatus, which must deal with crimes and criminals one by one, cannot confront directly. . . . (p.1)

The system of criminal justice America uses to deal with those crimes it cannot prevent and those criminals it cannot deter is not a monolithic, or even a consistent, system. It was not designed or built in one piece at one time. Its philosophic core is that a person may be punished by the Government if, and only if, it has been proved by an impartial and deliberate process that he has violated a specific law. . . . Parts of the system—magistrates' courts, trial by jury, bail—are of great antiquity. Other parts—juvenile courts, probation and parole, professional policemen—are relatively new. . . . Every village, town, county, city, and State has its own criminal justice system, and there is a Federal one as well. All of them operate somewhat alike. No two of them operate precisely alike. (p. 7)

DISCUSSION

I. Criminal Justice—System or Nonsystem?

In the text, you will find a discussion of criminal justice as a system and as a nonsystem. A system is usually described as a series of interrelated components working together for a common goal. Further, a system must have the following three elements: input, process, and output. For example, an automobile engine is a system. It is made up of many individual parts (components) which all work in harmony to produce the goal of performing work (transportation). Gasoline is placed into the engine (input), the engine burns the gasoline (process), and power is expelled out of the engine (output).

The people who argue that criminal justice is a system see the police, the courts, and the correctional agencies as components which work together to fight crime. In the system model, the police provide the input (in the form of persons arrested), the courts provide the process (converting suspects into convicted criminals), and the correctional agencies provide the output (holding the convicted criminals until they are returned to society).

Other people are not so optimistic as to accept the system model as presented above. They instead see criminal justice as a nonsystem actually made up of three independent systems represented by the police, the courts, and the correctional agencies. Under the nonsystem model, each component has its own needs, problems, goals, and agendas, and not only do not work together for a common goal, but often work in opposition to each other. When you add to this the President's Commission's observation that every "village, town, county, city, and State has its own criminal justice system, and there is a Federal one as well" (p. 7), it is easy to understand why criminal justice may be better described as a nonsystem than a system.

Think about what criminal justice might be like if there were only one set of rules that governed everyone. Instead of each state having its own laws, what if there were a national law that applied equally to everyone regardless of where they lived? There would be one set of laws establishing speed limits, legal drinking age, whether there is or is not a death penalty (and for what crimes), procedures for selecting judges, the hiring of police officers, etc. There would be a national police force, a national court structure, and a national correctional agency. Would one criminal justice system be preferable to the many systems

(or nonsystem) that we have now? What are the advantages and disadvantages of a single system of criminal justice? Take a few minutes and write a short essay in which you:

1. argue that criminal justice is either a system or a nonsystem (support your position).
2. discuss the advantages and disadvantages of one single criminal justice system that would govern throughout the entire country.

II. Crime—Yesterday and Today

Remember that *The Challenge of Crime in a Free Society* was published in 1967 (several years before most of you were born). From the excerpts above what do you feel was the mood of the Commission when it wrote its report? Was the mood optimistic or pessimistic? Given what you understand about crime in America today, would you say that the comments of the Commission are still relevant? Have things changed much since 1967? If so, how? Write a short essay in which you agree or disagree with the following statement, and why you feel this way:

The observations of the President's Commission about crime in the 1960s are still very true about crime in America today.

CHAPTER



Crime and the Nature of Law

CHAPTER OUTLINE

I. Introduction

- A. Public perceptions of crime and criminals as a product of television dramas, movies, and selected news reports
- B. Crime is a broad concept; the commonly recognized street crimes such as murder, robbery, and burglary represent only part of the crime picture
- C. Crime also includes white-collar crime, victimless crimes, and corruption
- D. Crime definitions vary from state to state and from country to country

II. The Nature of Crime

- A. Crime as drama, as sin, and as violation of natural law
- B. May be viewed as a social construction; the sociology of deviance; crime is not an absolute concept, but rather a definition created by persons in power and used against other persons who threaten the social order
- C. Crime and moral crusades
 - 1. Howard S. Becker
 - 2. Prohibition movement
- D. Crime and deviance; not all deviant behavior is criminal; not all criminal behavior is deviant
- E. Crime as a legal definition; removes the uncertainty surrounding questions of natural law and social deviance; criminal law reflects the values and social judgements of a community

- F. The Paul W. Tappan legal definition of crime: Crime is an intentional act or omission in violation of criminal law (statutory and case law), committed without defense or justification, and sanctioned by the state as a felony or misdemeanor
1. act or omission; a crime may be something that a person does (robbery) or something that a person does not do which is required by law (misprision of felony)
 2. criminal intent—*mens rea* or the guilty mind
 - a. specific
 - b. general
 - c. vicarious liability
 3. violation of criminal law—deals with offenses committed against the safety and order of the state (society as a whole)
 - a. civil law deals with private rights and liberties and the resolution of conflicts between individuals
 - b. types of criminal law; statutory law, case law, common law
 4. defense or justification—either the accused did not have intent or that the behavior should be overlooked or forgiven
 - a. defense; allows a person to be excused from criminal responsibility or mitigates (reduces the severity of) the criminal responsibility—examples include insanity, mistake of fact, and duress
 - b. justification; a cause or excuse for the commission of an act which would otherwise be a crime
 5. sanctioned by the state
 - a. there can be no crime without a punishment
 - b. the law must be specific
 - c. only the offender can be punished
 6. felonies and misdemeanors
 - a. *mala in se* and *mala prohibita*
 - b. felony and misdemeanor—distinguished by severity of penalty

III. Criminal Law

- A. Definitions of law
- B. Origins of law
- C. The English Common Law; based on customs and common practices; provides the foundation and basic principles of the U.S. legal system
- D. Early American law
- E. Other sources of criminal law
 1. U.S. Constitution and state constitutions
 2. federal and state statutes (statutory law)
 3. administrative law

IV. Summary

REVIEW OF KEY TERMS, CONCEPTS, AND IDEAS

1. administrative law—a branch of public law that deals with the powers and duties of government agencies

2. case law—law that results from court interpretations of statutory law or from court decisions where rules have not been fully codified (made law in written form) or have been found to be vague or in error
3. civil law—the body of principles that determines private rights and liabilities
4. common law—customs, traditions, judicial decisions, and other materials that guide courts in decision making but have not been enacted by the legislatures into statutes or embodied in the Constitution
5. conspiracy—concert in criminal purpose; when two or more persons plan and take steps to carry out a crime
6. constitutional law—the legal rules and principles that define the nature and limits of governmental power, and the duties and rights of individuals in relation to the state (society as a whole)
7. crime—an intentional act or omission in violation of criminal law, committed without defense or justification, and sanctioned by the state as a felony or misdemeanor
8. criminal law—the branch of jurisprudence that deals with offenses committed against the safety and order of the state
9. defense—any number of causes and rights of action that serve to excuse or mitigate guilt in a criminal offense
10. deviance—conduct that the people of a group consider so dangerous, embarrassing, or irritating that they bring special sanctions to bear against the persons who exhibit it
11. Durham Rule—legal standard by which an accused is not held criminally responsible if he or she suffers from a diseased or defective mental condition at the time the unlawful act is committed
12. entrapment—the inducement of an individual to commit a crime not contemplated by him or her
13. felony—a crime punishable by death or by imprisonment in a federal or state penitentiary (usually for more than one year)
14. *Lambert v. California*—mistake (ignorance) of the law may be a defense against crime if the law has not been made reasonably well known
15. *mens rea*—criminal intent; a person's awareness of what is right and wrong under the law with an intention to violate the law
16. misdemeanor—a crime punishable by no more than a \$1000 fine and/or 1 year of imprisonment, typically in a local institution (jail)

17. misprision of felony—the concealment of a felony committed by another
18. M’Naghten Rule—the “right or wrong” test of criminal responsibility
19. natural law—general principles that determine what is right and wrong according to some higher power
20. *Robinson v. California*—1962 U.S. Supreme Court ruling that narcotic addiction is a sickness, and that a state may not make it (addiction) a punishable offense any more than it could any other form of sickness
21. statutory law—law created by statute, handed down by legislatures
22. vicarious liability—the doctrine under which liability is imposed upon an employer for the acts of employees that are committed in the course and scope of their employment

DOCUMENTATION AND DISCUSSION

I. A Look at Statutory Law

Chapter 2 introduces you to some of the fundamental concepts of crime and criminal law. In order to understand and fully appreciate the meaning of crime and criminal law, you must become familiar with terms such as statutory law, act and omission, felony and misdemeanor, and insanity. As you go over each of the following statutes (statutory law) taken from the Indiana Code, answer these questions:

1. Is this a felony or a misdemeanor? Why would the Indiana General Assembly (legislature) choose to make this crime a felony or a misdemeanor? Note that in Indiana, felonies and misdemeanors are classified from A (most serious) to D (least serious). Sanctions are applied according to the classification of the crime.
2. Is this crime an example of a crime by act or omission?
3. What are the sanctions (punishments) attached to this crime?
4. How is intent (*mens rea*) defined?
5. How is the guilty act (*actus reus*) defined?

IC 35-42-5-1. Robbery

A person who knowingly or intentionally takes property from another person or from the presence of another person:

- (1) By using or threatening the use of force on any person; or
- (2) By putting any person in fear; commits robbery, a class C felony. However, the offense is a class B felony if it is committed while armed with a deadly weapon or results in bodily injury to any person other than a defendant, and a class A felony if it results in serious bodily injury to any person other than a defendant.