### INTRODUCTION

#### The Themes of the Book

- The Police Function: Social Control and the Use of Force
- Policing Within the Rule of Law: The Challenges of Discretion
- The Delicate Balance: Crime Control versus Due Process

#### The Levels of Law Enforcement

- Municipal Agencies
- County Agencies
- State Agencies
- Federal Agencies
  - Department of Justice
  - Department of Homeland Security
  - Department of the Treasury
  - U.S. Postal Service
- Tribal Agencies

### Chapter Outline

- LINKAGES IN LAW ENFORCEMENT: An Introduction to the Linkage-Blindness Phenomenon
- LINKAGES IN LAW ENFORCEMENT: Coordination and Information Sharing Between Law Enforcement and the Rest of the Criminal Justice System

### Chapter Objectives

- Describe the concept of linkage blindness and its importance in the criminal justice system.
- Understand the police role in maintaining social control.
- Explain why discretion is a necessary aspect of policing.
- Explain what is meant by the rule of law.
- Understand the role of law enforcement in the criminal justice system.
- Contrast the crime control and due process models.
- List the different levels of law enforcement.
- Explain how the events of September 11 changed the structure of law enforcement jurisdictions.
Following the cataclysmic events of September 11, many people asked themselves, “How did this happen?” Despite incidents such as the 1995 bombing of the Murrah Federal Building in Oklahoma City, most Americans have viewed terrorism as a problem somewhere over there, such as in Israel, Northern Ireland, or Rwanda. People in the United States have always taken pride in the immense individual rights and freedoms they possess and that often are viewed as the fundamental premises upon which this country was built. In fact, Americans have generally disapproved of extensive domestic efforts that intrude on the ease of their day-to-day activities, preferring, for example, express check-ins at the airport over complete baggage checks.

Prior to the attacks on the World Trade Center and Pentagon, neither the average American citizen nor the government was particularly concerned with the prospect of international terrorism on United States soil. This was the case even though a number of reports, such as the Hart–Rudman Commission on National Security in the Twenty-First Century, had concluded that the U.S. government had no organizational capacity to either prevent or respond to terrorist threats (Flynn 2001). Moreover, a 1999 government report intricately profiled the leading terrorists and terrorist groups around the world, specifying the kinds of risks that existed and how future acts might occur, demonstrating that the United States intelligence community was not completely blind to the potential threat of attack (Hudson 1999). However, in the wake of the destruction of September 11, all Americans are now faced with a sense of insecurity and vulnerability that will have an impact on the delicate balance the country has always known between order and individual freedoms. This affects all aspects of public and private life, including transforming the nature and function of how we view and conduct law enforcement, the subject of this book. Federal legislation, such as the USA PATRIOT Act of 2001 and the USA PATRIOT Improvement and Reauthorization Act of 2005, has formally acknowledged this shift by significantly widening the investigative authority of law enforcement agencies across the country. The USA PATRIOT Act is discussed in detail in Chapter 7. An abridged version of the Act is offered in Appendix B.

Despite federal, state, and local inquiries, law enforcement and criminal justice experts argue that blame for the failure to anticipate the September 11 attacks cannot be attributed to any single
agency. Given the complexity of both the intelligence and law enforcement communities and their many overlapping jurisdictions, it was inevitable that key information would slip through the cracks between agencies. The inability to analyze and link critical information across (or even within an agency) is referred to as linkage blindness and will be a major theme throughout this book. In part, the Homeland Security Act of 2002, the USA PATRIOT Act of 2001, and its reauthorization in 2005 were executive and legislative responses to the problem of linkage blindness by organizing diffuse and autonomous law enforcement agencies and strengthening the government’s abilities to obtain information. Stephen Flynn (2001) provides a useful illustration of this critical law enforcement problem, referring to the arrival of a hypothetical ship with questionable cargo and a crew on an intelligence watch list for potential terrorist ties:

The Coast Guard would be likely to know about the scheduled arrival of a tanker carrying hazardous cargo. The Customs Service might have some advance cargo manifest information. The INS might or might not know much about the crew, depending on the kinds of visas the sailors are holding and the timeliness with which the shipping crew faxed the crew list. None of the front-line inspectors in these agencies, meanwhile, are likely to have access to national security intelligence from the Federal Bureau of Investigation or the Central Intelligence Agency.² (p. 190)

Although Flynn was referring to linkage blindness prior to the governmental reorganization after September 11, this problem continues to exist. Because of the elusive nature of terrorism and the apparent ease with which terrorists can slip across U.S. borders, federal to local agencies are requesting increased law enforcement investigative authority. The September 11 attacks offered evidence that even with a threat of transnational origins, the front-line responders are local law enforcement and fire departments. Thus, terrorism is not simply within the domain of the federal government and military. What has been exposed is the need to build adequate mechanisms of information sharing across levels of government in an area that is traditionally rife with issues of territoriality and rivalry. This need led to the formation of the Department of Homeland Security, the largest government reorganization in over fifty years.
Many myths and stereotypes surround policing, including the ever-prevalent image of a law enforcement officer as crime fighter engaging in a “war on crime” (Bittner 1980). However, the average officer rarely makes a felony arrest, and most do not fire their firearms during their careers. However, by definition, the term law enforcement suggests that the enforcement of existing legislation or rules of society is central to the role of the police. This rather simplistic view of law enforcement ignores the tremendous complexities in agencies, missions, and functions across levels of government (federal, state, and local) or jurisdiction in the United States. More important, such a definition fails to take into account the evolving nature of policing as a strategy (Kelling and Moore 1989). This book explores the changing dynamics and nature of policing within its larger contexts. Although the terms are utilized interchangeably on occasion, the emphasis on law enforcement as opposed to policing reflects the larger scope and focus of the book.

A central theme of this text is the linkages across law enforcement jurisdictions and the struggle to develop a coordinated approach to information sharing and strategy development in the face of any crime, including terrorism. Additionally, the text explains the connections between law enforcement and the rest of the criminal justice system. Moreover, the importance of information sharing and collaboration across the criminal justice system agencies (and thus, the relevance of linkage blindness in this context as well) also is woven throughout relevant chapters of the book. New technologies to combat linkage blindness are highlighted in Chapter 13.

Another central theme of this text is the changing paradigm of policing throughout its history, highlighting the movement from reactive to proactive management models. A major philosophical and practical shift in the field of law enforcement came when Herman Goldstein (1979) pioneered the principles of problem-oriented policing. Law enforcement agencies continue to use problem-solving approaches in community-oriented policing to address quality-of-life concerns. This central element of problem solving and proactive policing is relating underlying causes to strategy, which is yet another theme revisited throughout the text.

This book is divided into four sections. The first section lays out the framework of the law enforcement field for the reader, establishing common definitions and tracing
The Police Function: Social Control and the Use of Force

Most of us are relatively familiar with the general operations of the three major components of the criminal justice process—police, courts, and corrections—as well as the important roles of federal and state governments in creating and modifying laws through the legislative process. What we are often unable to answer, however, is what it is about these institutions that makes them work as agents of social control. What is it about them that works (or does not work) in achieving order in society?

**Informal social control** refers to the influences of parents, families, peers, and the community in training individuals about the norms, rules, and customs of a locality in an attempt to compel conformity (this process also is called *socialization*). Informal social control occurs when the influential party reacts to **deviance**, or violations of social rules. Deviance can refer to a range of actions, from something minor, such as getting a tattoo, all the way up to acts of murder and rape (see Figure 1.1). Once an act of deviance occurs in which a law is

![Figure 1.1: Spectrum of Deviance](image-url)
broken, as in the case of murder, it is the responsibility of **formal social control** agents, such as law enforcement officers, to enforce the law.

Many criminal justice practitioners and scholars have argued that the use of force is the principal way in which order is achieved in society: “Institutions of law and government maintain order and control deviant behavior primarily through force, through the forcible apprehension and incarceration of others” (Eisenhower 1970, p. 6). Law enforcement usually is at the forefront when it comes to the application of force and apprehension.

According to Manning (1977), **policing** literally means “controlling, monitoring, tracking, and altering, if required, public conduct” (p. 27). Given the many competing expectations of the police, Klockars (1985) has argued that the meaning of **police** can be found in what they are supposed to do rather than on what exactly is done in a given situation. An officer writing traffic citations is still a police officer, as is another speaking at a community meeting. To Klockars (1985), the core of policing is identified by its relation to the potential use of force.

However, in the examples just given (i.e., traffic citation, community meeting), force is not an element of the policing function. How then can **coercive force** be the defining feature of policing? Egon Bittner’s (1970) classic work argues that it is the fact that the police are authorized to use force in a number of social situations in response to a variety of social problems that forms the basis of our interactions with police.

Returning to our examples, although a citizen may be equally capable of writing traffic citations, only a police officer will be able to force an individual
to comply, if necessary (e.g., if the vehicle’s operator had failed to pull over, and so on). Similarly, community residents often involve the police in community meetings discussing even minor quality-of-life issues (e.g., noise disturbances, littering), because they will ultimately be able to resort to force if all other options of problem resolution are not successful.

Although the importance of force in defining policing is clear, it alone cannot achieve the public order to which the police often are held accountable. Because the police cannot possibly be omnipresent, enforcing all deviations from the law, there must also be both a commitment and willingness on the part of the majority of citizens to respect the laws and institutions of society. Without this culture of lawfulness, law enforcement would be inundated and unable to carry out its functions effectively (Godson 2000). To achieve this, the average citizen must recognize the legitimacy of the law and its enforcement as an effective means of controlling the behavior of all members of society, from the richest government official to the poorest laborer. Much of this respect will come from the degree to which the government operates within the rule of law and decisions are not arbitrarily made at the hands of its officials or enforcers, a topic we turn to now.

Policing Within the Rule of Law: The Challenges of Discretion

Agents at every level of the criminal justice system have a significant level of individual discretion, particularly law enforcement officers. Agents are said to have discretion when they have the freedom to make decisions—legal or otherwise—based on their own judgment and are not bound by formal, inflexible rules. It was in the 1950s, when the American Bar Foundation (ABF) conducted the first field observations of police work, that the central role of discretion in law enforcement was first “discovered” (Walker 1992). Many studies have since validated the significance of discretion in the criminal justice system, but at no point has it ever been officially “recognized” with legislation acknowledging its functional role in police decision making.

Matters such as arrest and charge are, for example, subject to varying degrees of police discretion, as are issues relating to the collection and presentation of evidence. Officers do not receive “official” training on how to use discretion, but legal factors provide a guide in some instances. For the most part, discretion exists to ensure that agents within the criminal justice system are free to respond to the particular circumstances and challenges presented by each new case and each new crime. Because each offense is different, flexibility is needed to ensure that justice prevails. Moreover, it is not possible for officers to enforce every violation they encounter, making discretion a practical and necessary reality in law enforcement.

In many instances, however, the decisions of individual police officers are not transparent or open to scrutiny. The police are not monitored 24 hours a day or required to justify themselves every time they stop someone on the street or in their car. As a consequence, there is a danger that agents within the criminal justice system may make decisions that are not in full accordance with the law or that infringe upon the rights of suspects, offenders, or prisoners.
How can we be sure then that two individuals who committed similar crimes would not be treated differently by separate officers or because of extra-legal factors (factors outside of the legal parameters of an offense), such as differences in skin color or socioeconomic status? It is because of the perception of inequality in law enforcement that discretion can play a divisive role in the community. Discretion can be the result of numerous community, organizational, and individual influences outside of the formal legal codes, a subject we will return to in Chapter 9.

Although there is no simple way to ensure that discretion is exercised fairly in each and every case, principal decisions made by individuals within the criminal justice system are meant to be governed by a set of ideals known as the rule of law. Developed over many years through case law, statutes, and scholarly writings, the rule of law can be stated simply as follows (National Strategy Information Center 1999):

- All people in society have the opportunity to participate in establishing the law;
- The rules apply equally to everyone; and
- The rules protect individuals as well as society.

The rule of law was developed in an effort to constrain kings and rulers who regarded themselves as above the law. At its heart is a commitment to the fundamental idea that equality before the law and justice are inseparable. Regardless of their position or responsibilities, all agents within the criminal justice system are bound by the rule of law, and they are required to exercise their discretion according to the limits it prescribes. Of course, in practice not every decision meets the high standards required by the rule of law. Much of its significance, however, derives from its status as an ideal; it is a standard which guides individuals and agencies within the system, and which—in theory at least—binds them together through a shared commitment to justice and the law.

The Delicate Balance: Crime Control versus Due Process

Although the “delicate balance” between public safety and individual freedoms has always been a struggle for law enforcement, these issues are particularly salient in the post-September 11 climate. During a lecture immediately following the September 11 attacks, then U.S. Supreme Court Justice Sandra Day O’Connor remarked that “we’re likely to experience more restrictions on our personal freedom than has ever been the case in this country” (Greenhouse 2001, B5). Despite protestations otherwise by former Attorney General John Ashcroft that “we’ll not be driven to abandon our freedoms by those who would seek to destroy them,” some fear the potential “slippery slope” of giving expansive powers to law enforcement (Hentoff 2001).

One of the most influential frameworks for explaining the differing views and values of justice has been the crime control/due process model first expounded upon by the sociologist Herbert Packer in the 1960s. According to
Packer (1968), agents within the criminal justice system can be broadly divided into two camps depending on the strength of their support for either strong law enforcement or protection of civil liberties. For those who see the criminal justice system in terms of crime control, the overriding aim is to ensure that suspects are processed as quickly and efficiently as possible. Typically, advocates of this approach emphasize the importance of attempting to distinguish between the innocent and the guilty at the precharge stage. Though the adversarial system is based on the assumption that an individual is innocent until proven guilty, advocates of the crime control model assume that once a suspect has been formally charged, the suspect can be processed on the basis of an informal “presumption of guilt.” Guilty pleas are preferred over lengthy hearings and trials, and informal methods of disposal are preferred over legalistic procedures. Perhaps unsurprisingly, the police and other law enforcement agencies are the most vocal supporters of a crime control approach to criminal justice. Extensive police powers, limited rights for suspects, and greater emphasis on pretrial processes are all seen as vital to the effective functioning of the system. The danger lies in the extent to which this favoring of crime control undermines the rule of law, and thus potentially the legitimacy of law enforcement and the criminal justice system in society (Skolnick 1994).

In contrast, supporters of a due process approach argue that the criminal justice system must strive to protect the rights of the innocent and ensure that only the guilty are punished. Although recognizing that the primary aim of the system is to reduce and prevent crime, adherents of the due process model maintain that safeguards are necessary to protect individual rights and to ensure that the number of wrongful convictions is kept to a minimum. “Better that ten guilty men go free than one innocent man be punished” is an idea that is central to the due process approach. Advocates of this model favor considerable restrictions being placed on the police, are suspicious of informal processes, and view the criminal trial as the most reliable method of determining guilt. With the due process model, the civil rights and liberties of citizens outweigh the information needs of law enforcement. Key features of both models are summarized in Table 1.1.

Historically, considerable tension has existed between these two different approaches to crime and the criminal justice process. During the 1960s, the civil

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Key Features of the Crime Control and Due Process Models

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<th>Crime Control Model</th>
<th>Due Process Model</th>
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<tr>
<td>Suppression of crime is the overriding aim of the criminal justice system.</td>
<td>Justice and fairness are the overriding aims of the criminal justice system</td>
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<tr>
<td>Cases need to be disposed of quickly and efficiently, even if this means ignoring suspects’ rights.</td>
<td>Cases need to be dealt with according to formal procedures that protect suspects’ rights.</td>
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<tr>
<td>Emphasis is on pretrial processes and encourages guilty pleas.</td>
<td>Emphasis is on the trial process and the determination of legal guilt.</td>
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<td>Authority of the criminal justice system derives from the legislature.</td>
<td>Authority of the criminal justice system derives from the judiciary.</td>
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rights movement helped to increase public awareness of individual rights and placed considerable pressure on the criminal justice system to expand basic due process protections. Responding to the mood of the times, the Supreme Court under Justice Warren—in cases such as Escobedo v. Illinois (1964),3 Miranda v. Arizona (1966),4 and Terry v. Ohio (1968)5—moved to specify the powers of the police, emphasizing the need for the criminal justice system to recognize and protect the rights of suspects. Due process concerns also were addressed in the landmark case of Gideon v. Wainwright (1963),6 which extended the right to counsel to indigent individuals who would otherwise have been unable to exercise their Sixth Amendment rights.

As crime rates began to rise through the 1970s and 1980s, however, there was a gradual but significant shift toward an emphasis on crime control. Although the largest increase in crime was for the possession and sale of drugs, the rate of serious violent crime—including murder, rape, and robbery—also increased dramatically during this period. In the eyes of many policy makers and the general public, the criminal justice system was clearly failing. Proponents of the crime control model argued that the rise in crime was the direct result of an overemphasis on suspects’ rights and called for increased police powers and an easing of due process restrictions on law enforcement agencies.

Throughout the 1990s, the crime control model continued to dominate policy making in the United States. Mandatory sentencing for repeat offenders, zero-tolerance policing, and the gradual lowering of the age of criminal responsibility for juveniles all grew from a desire to make the criminal justice system more efficient and effective. At the same time, however, several high-profile incidents of police brutality,7 police corruption,8 and racial profiling9 helped to remind the public of the need for due process protections and the respect for civil liberties.

In the first decade of the twenty-first century, crime control values still prevail, yet there is a continuing tension between the two models first identified by Packer in the 1960s. In light of the past fifty years of criminal justice history, as well as the U.S. government’s war on terrorism, there can be little doubt that the struggle between advocates of crime control and due process will continue to shape the development of criminal justice policy throughout the coming century.

The Levels of Law Enforcement

The current system of law enforcement in the United States is as complex as it is varied, in many ways reflecting the tensions between the crime control and due process models, as well as an overriding fear of too much power being placed in the hands of a centralized, federal law enforcement entity. Representing the largest segment of the criminal justice system, with over 1 million employees in 1996 (Reaves and Goldberg 1998), contemporary law enforcement agencies operate on a variety of levels within local, state, and federal jurisdictions, or areas of responsibility. Although the boundaries across levels would appear to be straightforward, since each enforces the laws of its respective level, in practice the boundaries often are more of a gray tint than a black-and-white tone. There is no direct order of authority with respect to these jurisdictions. For example, in most cases federal law enforcement cannot exert authority over local matters un-
The Levels of Law Enforcement

Municipal Agencies

The United States had 12,656 municipal police jurisdictions in 2003 (Bureau of Justice Statistics 2006a), varying in size from large city departments [e.g., New York Police City Police Department with 40,435 officers in 2000 (Bureau of Justice Statistics 2004)] to local departments with a few officers (the majority). In 2000, there were 501 municipal police departments with 100 or more full-time sworn personnel, but of these, only 60 (11 percent) had 1,000 or more full-time sworn personnel that included 500 or more officers responding to calls for service (Bureau of Justice Statistics 2004). Most departments have a small number of officers who have jurisdiction over largely rural or suburban landscapes.

Municipal police departments unquestionably represent the greatest number of law enforcement officers in the United States and will thus be the primary focus of this text. In 2000, large municipal departments (those with at least 100 officers) employed 312,201 full-time employees, compared with 31,945 in county departments, 154,384 in sheriff’s departments, and 87,028 in state law enforcement agencies (Bureau of Justice Statistics 2004).

Large local law enforcement agencies often are responsible for investigating serious violent and property crimes in their jurisdictions, compared to half of state agencies (Bureau of Justice Statistics 2000). Local agencies also are more likely to handle fingerprint processing (81 percent); however, state agencies often provide the needed support for crime lab services and ballistic testing (Bureau of Justice Statistics 2000).

The city government is usually responsible for appointing police chiefs, who are responsible for running departments with general law enforcement authority within its boundaries. Most police chiefs are appointed at the discretion of the mayor or city manager and lack contracts protecting them from unjustified termination. As a result, the average tenure of most police chiefs is only three to six years (Swanson et al. 2001).

Although for the most part similar in nature to municipal police departments, township police departments can vary greatly with regard to law enforcement powers and authority. Well-developed townships often operate with responsibilities close to those of municipal police departments. The United States has approximately 1,600 township police departments (Bureau of Justice Statistics 2004).

County Agencies

Although the primary agency at the county level is the sheriff’s office, with 3,061 sheriff’s departments across the country (Bureau of Justice Statistics 2006b), in some jurisdictions this office is dissolved into a county police force that functions much the same as municipal police. County police departments usually surface in areas where the workload is too large for the sheriff’s department. The local context greatly influences the nature and scope of responsibilities for the sheriff’s department. In some jurisdictions, the sheriff’s office is entirely law enforcement focused, with no other responsibilities, whereas in
others the principal responsibilities involve carrying out court orders and summons or operating the county jail. The majority of sheriff's departments involve some combination of all three responsibilities (Brown 1979). In large cities with populations of over one million, the sheriff's office will only serve correctional functions; those serving very small populations usually are the chief law enforcement agents of that jurisdiction (Senna and Siegal 2001).

In all but two states, sheriffs are elected for a two- to four-year term. Because they are elected, sheriffs often have a degree of freedom from local city officials, unlike the relationship between the police chief and mayor or city manager in many large cities. However, because it is an elected term, additional forms of accountability and scrutiny can transform the dynamics of the role.

In some jurisdictions, there are county-level courts that maintain limited jurisdiction as described by statute in civil matters, such as the performance of marriages and hearings for minor criminal offenses. Referred to as Justice's courts, they are under the responsibility of justices of the peace, or magistrates of lesser rank than in the higher courts. It should be noted, however, that the trend has been to dissolve the Justice’s courts and transfer their power to other municipal courts of limited jurisdiction (Nolan and Nolan-Haley 1990).

State Agencies

Most states have police agencies in addition to agencies within specific municipalities, townships, or counties. The first state to establish a police agency was Texas in 1835, with the creation of the Texas Rangers. Massachusetts implemented a state police agency shortly thereafter in 1865, though this is often credited as the first modern state law enforcement agency. The state agency in Pennsylvania is credited with being a model agency for other states, viewed as the archetype of modern policing when it was created in 1905.

The power of most state agencies includes the ability to arrest an individual for an offense committed in the presence of the officer, as well as the ability to execute a search warrant. In addition to the state police, some states have established a Highway Patrol with jurisdiction over traffic laws on interstate roads. These patrols have the authority to enforce traffic laws as well as investigate traffic accidents on highways and freeways. Hawaii is the only state without a state law enforcement agency.

Federal Agencies

The first federal agency to be established by the U.S. government was the U.S. Marshall Service, which was founded in 1789. Since that time, the U.S. government has created eight additional government departments with twenty-one agencies dealing with issues of law enforcement. Additionally, several of these eight departments contain dozens of smaller offices and bureaus. It is important to note that federal agencies only have the power to enforce federal laws and mandates. The Attorney General, for example, cannot simply call a governor to dictate a certain policy on the part of the state police unless a constitutional violation of some kind has occurred. Otherwise, the Tenth Amendment of the Constitution reserves powers over local matters to the various local law enforcement agencies. Prior to September 11, two federal departments were most involved in law enforcement: the Department of Justice (DOJ) and the Department of the Treasury. The Homeland Security Act of 2002 reorganized many
federal law enforcement agencies under the new Department of Homeland Security (DHS). Presently, the DHS and the DOJ are the two most important federal departments involved with law enforcement. However, other federal departments (e.g., the Food and Drug Administration) have certain law enforcement functions within their mandates.

**Department of Justice** The Department of Justice (DOJ) was established in June 1870 and is headed by the Attorney General (AG) of the United States. As of the writing of this text, Alberto Gonzalez is the Attorney General. The AG is appointed by the president and represents the United States in legal matters. The AG is also responsible for supervising and directing the administration and operation of the offices, boards, divisions, and bureaus that make up the DOJ, as well as assisting the president, the president’s cabinet, and the heads of the executive departments and agencies of the federal government in legal matters.

The DOJ is the federal agency responsible for conducting and coordinating investigations, both those by the DOJ as well as those being conducted by other departments. The DOJ has thirty-eight components, and those most relevant to law enforcement are described in the following sections. The primary responsibilities of the agency are enforcing U.S. law; protecting citizens against criminals; ensuring healthy competition among business; safeguarding consumers; enforcing drug, immigration, and naturalization laws; and protecting citizens through effective law enforcement (U.S. Department of Justice 2001).

**U.S. Marshal Service.** The passage of the Judiciary Act in Congress in 1789 established the first formal law enforcement agency under the federal government, the office of the United States Marshal. The current structure of the **U.S. Marshal Service (USMS)** was established in 1969. The USMS has a variety of duties, including the execution of warrants for the federal courts and the handling of federal suspects and prisoners (i.e., transporting them, arresting fugitives).

**Federal Bureau of Investigation.** The **Federal Bureau of Investigation (FBI)** is the main investigative agency in the federal government. It currently has over 10,000 agents. The agency was created in 1908, and by 1909 was named the Bureau of Investigation, with its present name designated by Congress in 1935. The principal responsibility of the FBI is to investigate violations of federal criminal law and to assist local agencies in investigations. The FBI has jurisdiction over particular offenses, such as kidnapping, auto theft, organized crime, civil rights violations, and internal security (espionage). It also has the authority to locate and apprehend fugitives who have violated specified federal laws.

The U.S. Attorney General designated the FBI as primary agency in charge of investigating acts of domestic and international terrorism. Coordination of information exchange has become a priority given this role. **Joint Terrorism Task Forces (JTTFs)** were established in FBI field offices prior to 2001. By 2004, the number of JTTFs had increased from 36 to 84. These task forces, which are located within FBI field offices, are composed of representatives of local and state law enforcement, FBI agents, and teams from other federal agencies. A report by the RAND Corporation found that 95 percent of state law enforcement agencies had coordinated with a JTTF. However, only one-third of local law enforcement agencies had coordinated with the FBI (Riley et al. 2004).
In addition to its investigative responsibilities, the FBI also has responsibility for publishing the Uniform Crime Reports (UCRs) (U.S. annual crime statistics, discussed in Chapter 3) and the Law Enforcement Bulletin. It is also responsible for conducting personnel investigations (background checks) for those applying for employment within the DOJ and other government agencies, as requested.

The FBI has developed training programs for law enforcement personnel at the local, state, federal, and international levels in order to assist others in the development of new approaches and law enforcement techniques. Several departments within the FBI, such as the FBI Crime Lab, can aid in criminal investigations or provide technical assistance in mass disasters.

**Drug Enforcement Administration.** In an attempt to control the supply of dangerous drugs, the Harrison Narcotics Act was passed in 1917. At the time, it was established as a branch of tax law, and as such fell under the responsibility of the Department of the Treasury. In 1930, the Treasury Department created the Bureau of Narcotics, which was reorganized in 1968 to become the Bureau of Narcotics and Dangerous Drugs under the DOJ.

The Drug Enforcement Administration (DEA) as we know it today was created in 1973 with the merging of the Bureau of Narcotics and Dangerous Drugs, the Office for Drug Abuse Law Enforcement, the Office of National Narcotics Intelligence, some U.S. Customs officials, and the Narcotics Advance Research Management Team. The DEA, which is responsible for investigating both domestic and international drug violators and traffickers, uses both control and prevention techniques to stop the flow of drugs from their manufacture through sales.

The primary responsibility of the DEA is to investigate and prepare evidence for the prosecution of major violators of controlled substances laws both domestically and internationally. It is also involved in the collection and analysis of information regarding drug use and trafficking and is responsible for developing strategic plans aimed at eliminating such activities. It has the authority to use nonenforcement methods of drug elimination, such as crop eradication, and it also has the authority to seize assets that are in any way related to drug trafficking.

**U.S. Bureau of Alcohol, Tobacco, and Firearms.** The U.S. Bureau of Alcohol, Tobacco, and Firearms (ATF) is primarily concerned with the licensing, investigation, and control over its three components as well as explosives. However, it was originally established as a tax-collecting agency, which is why it is located in the Treasury Department rather than the DOJ. Employees of the ATF include many forensic experts as well as law enforcement experts, including chemists, document analysts, latent print specialists, and firearms and tool-mark examiners who are trained in forensic skills relating to arson, explosives, and criminal-evidence examination. The ATF works closely with the FBI in federal investigations requiring both areas of expertise. A well-known case that came to the attention of the public was the involvement of the two agencies with David Koresh’s Branch Davidian cult in Waco, Texas. It was the ATF that was originally called to the Koresh compound, beginning the standoff that led to the death of 71 individuals.
The FBI/ATF standoff at Waco, Texas, raised important issues regarding the use of force in crisis situations.

**Department of Homeland Security**  On July 26, 2002, the U.S. Congress approved the creation of the **Department of Homeland Security (DHS)** in the largest government reorganization of federal agencies in fifty years (Firestone 2002). The aim of this reorganization was to better coordinate the intelligence and law enforcement resources of the U.S. government in the war on terror by attempting to eliminate the problems of linkage blindness. DHS assumed many of the law enforcement functions previously performed by the Department of the Treasury and other federal agencies. DHS’s twenty-two domestic agencies employ about 180,000 people, making it one of the largest federal departments. DHS includes over 87,000 different governmental jurisdictions at the federal, state, and local levels, with the overall goal of developing a connected system of information exchange and law enforcement with an emphasis on combating terrorism (DHS 2007a). After the formation of DHS, President Bush selected former Pennsylvania Governor Tom Ridge as the first Director of Homeland Security, though he has since been replaced.

In addition to the twenty-two agencies, DHS is composed of five **directorates** and other agency components that fulfill a myriad of responsibilities. Each directorate is a large oversight body in charge of fundamental and broad elements of the department’s old and newly formed federal agencies. The five directorates are (1) Preparedness, (2) Science and Technology, (3) Management, (4) Office of Policy, and (5) the Federal Emergency Management Agency (DHS 2007b). Figure 1.2 shows the current structure of the DHS.

**Immigration and Customs Enforcement.** The Department of Homeland Security reorganization effort transferred the U.S. Customs Service functions
FIGURE 1.2

Department of Homeland Security Organizational Chart

SECRETARY

DEPUTY SECRETARY

Chief of Staff

Executive Secretariat

Military Advisor

MANAGEMENT

Under Secretary

Chief Financial Officer

SCIENCE & TECHNOLOGY

Under Secretary

NATIONAL PROTECTION & PROGRAMS

Under Secretary

POLICY

Assistant Secretary

GENERAL COUNSEL

Assistant Secretary

LEGISLATIVE AFFAIRS

Assistant Secretary

PUBLIC AFFAIRS

Assistant Secretary

INSPECTOR GENERAL

HEALTH AFFAIRS

Assistant Secretary/Chief Medical Officer

INTELLIGENCE & ANALYSIS

Assistant Secretary

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from the Department of the Treasury and the former Immigration and Naturalization Service’s enforcement functions from the Department of Justice to the newly created **Immigration and Customs Enforcement (ICE)** agency. This agency is the largest investigatory branch of the DHS. ICE is responsible for enforcing immigration and customs laws and protecting the United States from terrorist activity. ICE also targets gang organizations by disrupting their movement across U.S. borders. The agency seeks out illegal workers in critical areas such as power plants or airports to prevent potential terrorist activity. ICE detects and investigates fraudulent immigration documents and investigates those who produce them. ICE also investigates the illegal export of U.S. munitions and technology and cross-border human trafficking. The agency is also responsible for the management of deportation. ICE also attempts to find and close illicit channels for the movement of money by organized crime (ICE 2007).

The ICE’s **Law Enforcement Support Center (LESC)** assists in the provision of information and assistance to federal, state, and local law enforcement. The primary beneficiaries of the LESC are state and local law enforcement officers seeking information about foreign nationals they encounter in their jurisdictions.

**U.S. Customs and Border Protection.** U.S. Customs and Border Protection (CBP) is a combination and unification of the former U.S. Customs Bureau, functions of the U.S. Immigration and Naturalization services, the Animal and Plant Health Inspection Service, and the U.S. Border Patrol. The agency guards over 7,000 miles of land border that the U.S. shares with Canada and Mexico as well as 2,000 miles of coastal waters around California and Florida (CBP 2007b). In 2005, the agency arrested over 1.1 million illegal aliens and seized around 1.7 billion dollars worth of drugs (CBP 2007a). The CPB is also responsible for the inspection and collection of tariffs for over 1.4 trillion dollars worth of imported goods, including cargo moved by sea container, representing most of the material goods moved in and out of the United States. The CPB shares responsibility for the security of U.S. ports with the **U.S. Coast Guard** (also under DHS) and the local or state port authority who manages or maintains the seaport, airport, or bus terminal (CBP 2007c). The CBP screens visitors by air using law enforcement databases that “verify identity, determine admissibility and prevent terrorists from entering the country” (CBP 2007b).

**Transportation Security Administration.** The **Transportation Security Administration (TSA)** was transferred to DHS from the Department of Transportation, where it was placed after its creation in September of 2001. The TSA is responsible for the security of all modes of U.S. transportation. It is responsible for security officers for all commercial airports and for the screening of luggage for explosives. The primary law enforcement entity within the TSA is the **Federal Air Marshal (FAM) Service**. Several thousand Air Marshals ensure the safety of U.S. domestic and international flights. Air Marshals fly an average of 5 hours a day and 900 hours per year (TSA 2007).

**U.S. Secret Service.** The **U.S. Secret Service** was transferred to the DHS from the Department of the Treasury on March 1, 2003. Although the Secret Service was originally established to suppress counterfeit currency, by 1901 its duties were modified to include protecting the president, the vice president, and the families of each. Congress believed that this was necessary in light of the
assassination of President William McKinley. By 1902, the Secret Service assumed full-time responsibility for protection of the president. Presidents who were elected into office prior to January 1, 1997, receive lifetime protection from the Secret Service; however, those elected after this time will receive Secret Service protection for 10 years. The Secret Service is also responsible for the investigation of all access device fraud, financial-institution fraud, identity theft, computer fraud, and computer-based crimes involving the U.S. financial, banking, and telecommunications infrastructure (Secret Service, 2001).

Federal Law Enforcement Training Center. Another agency of the DHS is the Federal Law Enforcement Training Center (FLETC). The FLETC is an interagency law enforcement training organization, serving over 80 different federal agencies. It provides training to state, local, and international law enforcement agencies. Under the direction of DHS, the FLETC trains federal officers from the Department of Justice and the DHS. It trains personnel from the following agencies: ATF, FBI, U.S. Marshals, U.S. Border Patrol, U.S. Coast Guard, U.S. Immigration and Customs Enforcement, and the U.S. Secret Service.

Additional Programs Under DHS. The Joint Regional Information Exchange System (JRIES) enables the exchange of law enforcement information over the Internet. Through this system, the Department of Defense has access to information pertinent to terrorist activity on U.S. citizens, resident foreigners, and others that is collected by local and state police agencies. This program was created by the Defense Intelligence Agency (DIA) in 2002 and then moved to the DHS in 2004. Many members of the law enforcement community sit on the executive board, including representatives from DHS and from police departments in New York City, New York state, Washington D.C., Pennsylvania, and Louisiana. Some police officials have characterized the JRIES as more effective than the local JTTFs. Some concerns have been raised by the collection of information on political, nonterrorist, groups (Rood 2004).

The Office of State and Local Government Coordination (SLGC) facilitates and coordinates DHS programs with state, local, and tribal governments. The program enables DHS to exchange information with state, local, and tribal homeland security personnel. The DHS identifies homeland security practices and processes at the federal, state, local, or regional levels and uses this information to ensure that opportunities for improvement of information sharing (DHS 2007).

The DHS’s Commercial Equipment Direct Assistance Program (CEDAP) has provided $32 million in material to “rural and smaller communities” for hardware such as weaponry and heavily armored transport vehicles (DHS 2006).

Department of the Treasury The Treasury Department has traditionally had several important law enforcement functions, most of which have now been transferred to the DHS or DOJ. Now, the primary law enforcement agency of importance within the Department of the Treasury is the Internal Revenue Service (IRS).

Internal Revenue Service. The Internal Revenue Service (IRS) is the largest agency within the Treasury Department. Its roots date back to 1862,
when President Abraham Lincoln and Congress decided to enact an income tax to pay for expenses related to the Civil War. Though the income tax was ruled unconstitutional ten years later, Congress once again enacted an income tax in 1913 after the states ratified the Sixteenth Amendment. The IRS was established in 1862 and is designed to regulate compliance with tax laws and investigate tax evasion and fraud.

The IRS has many divisions, including Appeals, Chief Counsel, Communications and Liaison, and Criminal Investigation. Though most people associate criminal investigations with the FBI, the IRS’s Criminal Investigation division is responsible for, among other things, enforcing tax laws and identifying money laundering individuals and organizations. The IRS is the primary agency responsible for enforcing the Racketeer Influenced and Corrupt Organizations (RICO) statutes. In fact, was the IRS was responsible for investigating and convicting organized crime figure Al Capone.

U.S. Postal Service In the past, the average person reading this text might have questioned why the U.S. Postal Service (USPS) would be included in a listing of federal law enforcement agencies. However, following the series of anthrax attacks in the United States in the fall of 2001, most would now appreciate the significance of law enforcement activities related to USPS functions. The approximately 2,200 postal inspectors stationed throughout the United States are responsible for the enforcement of over 200 federal laws affecting the U.S. mail and postal system (USPS 2002).

Postal inspectors are law enforcement officers; they can carry firearms, make arrests, and serve federal search warrants and subpoenas (USPS 2002). The Inspection Service also maintains five forensic crime laboratories stationed throughout the United States to carry out its investigative functions. Some examples of laws under Postal Service enforcement jurisdiction include:

- Assaults or robberies of postal service employees
- Bombs
- Distribution of child pornography
- Distribution of controlled substances
- Money order crimes
- Theft of mail

Tribal Agencies

At present, 556 tribal entities in 31 states are recognized by the Bureau of Indian Affairs (BIA) as Native American tribes. More tribes are located in the Southwest than any other area of the United States, and the largest of these is the Navajo Nation in Arizona. Native American tribes are unique in that they are self-governed. Although they must abide by federal regulations, they have their own sovereignty. Tribal agencies face many problems that are either more extreme or unique to tribal entities. For instance, tribes have a higher rate of unemployment, a lower level of educational achievement, and a higher rate of suicide than states. They also have an extremely high crime rate, particularly in terms of substance abuse. Because most tribes live in remote areas and are small
An Introduction to the Linkage-Blindness Phenomenon

One of the consequences of having a complex and interlocking system of laws and law enforcement institutions is the problem of linkage blindness. When different institutions operate within overlapping areas of specialization and jurisdiction, they inevitably duplicate information amongst themselves and become interested in the same individuals, organizations, and problems. For example, a suspect wanted by the FBI for drug offenses may also be the subject of a local police investigation for an entirely different offense. Because these two institutions may not readily share information, however, it is possible that evidence held by the FBI and crucial to the particulars of the police investigation is never made available to officers on a local level, and vice versa.

Linkage blindness arises, in part, from the failure of different institutions to recognize areas of mutual interest (Egger 1990)—they are in effect blind to the important connections between them. One of the key challenges for law enforcement agencies in the United States in the twenty-first century is to find ways of overcoming this problem and making the best use of all available information in their efforts to reduce and prevent crime. Linkage blindness surfaced as a visible problem following the terrorist attack on the United States on September 11, 2001. Section 4 of this text will provide technological advances and strategies designed to address the problem of linkage blindness.

QUESTIONS

1. How might linkage blindness affect domestic terrorism (i.e., blowing up an abortion clinic)?
2. How might linkage blindness affect international terrorism?
3. How might linkage blindness affect the following crimes: kidnapping, distribution of child pornography, burglary?

in number, they often are required to enforce the law on their own relatives. All of these issues create challenges for tribal police agencies.

The goal of law enforcement services for Native American tribes is to provide quality investigative and police services and technical expertise specifically designed for Native American tribes. Tribally operated law enforcement programs receive assistance from the BIA’s law enforcement program. The BIA aims to create a system of training for criminal investigators specific to the needs of the tribal entities, as well as an internal tracking process to monitor the efficiency of police responses to incidents on tribal land. Few monitoring systems exist to assess the quality and rate of completion of investigations, nor the maintenance of a professional and cooperative working relationship with tribal and federal prosecutors and other law enforcement agencies.

A number of programs train tribal law enforcement personnel, such as the Indian Police Academy in Artesia, New Mexico. Such programs are designed to teach Native American police recruits and other law enforcement personnel the basics of policing, investigative techniques, and justice administration principles to law enforcement personnel who will be working in Native American communities.
Coordination and Information Sharing Between Law Enforcement and the Rest of the Criminal Justice System

Communication is an important issue within and across law enforcement jurisdictions; it is also important for the rest of the criminal justice system. Broadly speaking, the criminal justice system is a collection of agencies and institutions that enforce criminal law and work to reduce and prevent crime. In the United States, the criminal justice system consists of three main components: the police and other law enforcement agencies; the courts; and correctional services, such as prison and probation programs. Each of these institutions plays a role in the criminal justice process and has particular areas of responsibility, as determined by law. The police, for example, are entrusted with the task of investigating crimes and apprehending criminal suspects. They do not—in theory at least—make decisions about an alleged offender’s guilt or innocence or hand down punishments. Instead, these functions are carried out by the courts. Equally, the courts do not play a role in the gathering of evidence, but instead rely on the police to bring cases before them.

The police, the courts, and the correctional services are collectively referred to as the criminal justice system because they are organizationally linked and serve a common purpose. In an ideal world, all three would work in harmony, apprehending suspects, determining guilt, and punishing offenders efficiently and in full accordance with the law. In practice, however, the criminal justice system does not always operate in a smooth or structured fashion. In part, this is due to the fact that each branch works according to its own distinct rules, organizational culture, and history. Although the police, the courts, and correctional services are required to work together as partners, different organizational styles or institutional priorities can make interagency cooperation difficult. For instance, information possessed by police is not always readily available to other law enforcement agencies; correctional services may not have the resources to implement recommendations made by the courts; and efforts to implement system-wide changes may be undermined by the desire of each branch to maintain existing working practices.

In addition to these institutional and cultural factors, decisions made by individuals also affect the workings of the criminal justice system and in some instances may undermine the distinction between its different branches. The police and other law enforcement agencies do not, for example, always restrict themselves to investigating crimes or apprehending suspects. Summary punishments in the form of physical beatings or unwarranted detention in police cells are all examples of the police going beyond their boundaries and assuming the powers of the courts and the correctional service. It is not just the police, however, who at times exceed their authority within the criminal justice system. For instance, in the judiciary, prosecutors may overcharge a suspect in order to encourage the suspect to accept a plea bargain (thus reducing the charge to the original act committed). In the correctional system, prison officials—through the granting or restriction of informal privileges—may influence the way in which an inmate’s sentence is carried out, or even its eventual length. Although the powers and responsibilities of agents within the system are defined by law, at every stage of the criminal justice process individuals make decisions that affect how the system operates in practice. As a consequence, in order to understand how the criminal justice process works, it is important to remember that although the system has a formal structure, much of its operation depends on the values, informal rules, and decision making that characterizes each of its component parts.

The criminal justice process, which can be broken down into a series of distinct, but interrelated, stages, begins with the initial police investigation and concludes with an inmate’s release from correctional services. As individuals move through the process, they are gradually transformed—from
suspect to defendant to offender—as the police, the courts, and correctional services each discharge their particular responsibilities. Figure 1.3 outlines the formal structure of a typical state criminal justice process. In addition to demonstrating the flow of cases through the system, the chart highlights relevant issues facing law enforcement at each stage.

**FIGURE 1.3**

The Criminal Justice Process

- **Incident**
  - Victim doesn't report
  - Police observe incident
- **Investigation**
  - Allegation and disclosure
    - Victim reports
    - Police observe incident
- **Arrest decision**
  - Arrest
  - Booking
    - Fingerprint
    - Photos
    - Information
- **Do not pursue allegation**
  - Victim recants
  - Voided arrest (no probable cause)
  - Probable cause but no evidence
- **Pretrial retention (jail)**
  - Initial appearance
    - Initial charges read
    - Constitutional rights read
    - Pretrial release decision made
  - Pretrial release
    - ROR
    - Conditional discharge
    - Third party release
- **Preliminary hearing**
  - No probable cause to formally charge
- **Arraignment**
  - Formal charges read
  - Plea entered (guilty, not guilty, no contest, insanity)
  - Plead guilty
  - Plead guilty; no contest
  - Plead not guilty
- **Indictment (true bill)**
  - Can also indict on lesser charges
- **Grand jury**
- **Information**
- **Dismissed**
- **Charges drafted**
  - No charges drafted
  - Victim recants
  - Voided arrest (no probable cause)
From Suspect to Charge: The Role of the Police

The police are responsible for investigating crime, apprehending and arresting suspects, taking them into custody, and charging them. Once a crime has been committed, it generally comes to the attention of the police in one of two ways: either a member of the public reports it or the police themselves observe it. Although the police undertake...
regular patrols and carry out various forms of surveillance, most of their information about crime in the community comes from the public. As a result, despite the fact that police officers occupy a unique position in society, they rely heavily on the support and cooperation of the public.

When police observe a crime taking place, they can immediately arrest those they have cause to believe are responsible and take them into custody for questioning. In those instances in which a crime is reported by a member of the public, however, depending on the plausibility of the report and the seriousness of the alleged offense, the police can choose either to simply record the report or begin a criminal investigation. The purpose of a criminal investigation is to identify those responsible for the commission of a crime and to gather evidence that proves their guilt. In most cases, once the police have identified a likely suspect they can either ask the person to come to the police station in order to answer questions or—when a suspect is unwilling to cooperate or is believed to be dangerous—arrest the person and hold him or her in custody while a case is prepared.

Because the police possess limited powers of arrest, in certain situations it is necessary for them to obtain a warrant of arrest from a magistrate or a judge. In such circumstances, it is necessary for the police to demonstrate probable cause. Probable cause exists when the police have evidence capable of convincing a reasonable person that a crime has been committed and that the person they intend to arrest is responsible for that crime. In principle, the requirement of probable cause serves to restrict the power of the police, ensuring that they do not abuse their powers of arrest. In practice, however, the need for probable cause does not always prevent the police from using arrest as a means of exercising authority over individuals and controlling suspect populations.

Once arrested, the suspect is taken into police custody, booked, and interrogated. Booking refers to the process of recording a suspect's entry into detention after arrest. At this time, the police record the suspect's personal details (name, birth date, address, etc.) and take his or her photograph and fingerprints. The suspect is also required to sign a form stating that his or her constitutional rights have been read and they are understood.

Prior and subsequent to arrest, the police are responsible for conducting an investigation to gather evidence about the crime and the suspect. This is one of the most important steps in the criminal justice system, because evidence gathered at this time is used throughout the pretrial and adjudication processes. The police often are required to conduct a search, and strict constitutional standards must be adhered to for this procedure (these standards are discussed in detail in Chapter 5). There are different types of searches; the least intrusive is a stop and frisk, where the police can pat down an individual if there is reasonable suspicion that the person is in possession of a weapon or is carrying drugs. Reasonable suspicion is a lower legal standard than probable cause, and probable cause is required for any full-scale search of persons, their residence, their automobile, or their personal possessions.

The Fourth Amendment is perhaps the most important safeguard of individual rights against police powers because it protects individuals from illegal searches and seizures. Several landmark cases have established safeguards for individual rights by limiting the powers of the police at this stage of the criminal justice process. These safeguards are detailed in Chapters 4 and 5.

### Determining Guilt: The Role of the Courts

Once the suspect has been booked and informal charges have been pressed, the police are required to bring the suspect before a court for an initial appearance. In order to ensure that the police do not hold suspects in custody without due cause, the police must ensure that an initial appearance takes place within 24 hours or risk being held liable for false imprisonment. During the initial appearance, the defendant is informed of his or her rights by the judge and formal charges are considered. At this stage, the individual ceases to be a suspect and becomes a defendant. In addition, at the initial appearance an attorney is assigned to indigent defendants if desired or needed and a pretrial release decision is made. In deciding whether to release the defendant on bail or re-
mand him or her in custody, the judge will typically consider such factors as the nature and seriousness of the crime, the likelihood that the defendant will voluntarily return for trial, and the safety of the general community.

Bail concerns can seriously affect the level of confidence in the police and a corresponding willingness to report crimes to the police in some high-crime neighborhoods. For example, during one of the author’s tours of a high-gang-density housing project in Knoxville, Tennessee, many residents informed him that they would not report gang members or activity because “they are just going to get right back out again.” The fear for personal safety, even when formal charges have been laid against an offender, can severely hamper the criminal justice process given the importance of victim testimony in the successful resolution of many cases (Grant 1996).

After the initial appearance, formal charges are then filed against the defendant. At this time, the case is given to the prosecutor, who in most jurisdictions is the District Attorney (DA). The prosecutor has the discretion to determine whether there is probable cause to formally charge the defendant and, if so, what the charges are going to be. Policing practices and enforcement standards can be impacted greatly by a prosecutor’s enforcement policies, because the two initially come into contact during the formal complaint process. If a department feels that certain types of violations are consistently not pursued, they will very likely divert their enforcement resources to other areas (Swanson et al. 2001).

If the prosecutor decides to proceed, the case will be brought before either the grand jury or the bench (in a preliminary hearing) to determine whether there are grounds for a trial. Whether there is a preliminary hearing or the case is brought before the grand jury depends on the jurisdiction and the crime committed, although both produce the same result: a formal charge against the defendant and committal for trial. As Swanson et al. (2001) point out, relations between the prosecutor and police can be severely weakened whenever the prosecutor’s office chooses to formally charge a local law enforcement officer.

During the preliminary hearing, the defendant has the option of attending the preliminary hearing with counsel or waiving the hearing and allowing it to continue in the defendant’s absence. Unlike the grand jury, the preliminary hearing is open to the public and the press, and the defendant has the right to the use of hearsay evidence. When both a grand jury and a preliminary hearing are available, the prosecutor has the discretion to decide which is more appropriate in the particular case. Generally, more serious offenses are brought before the grand jury; misdemeanors and less serious felonies tend to be brought before the bench in a preliminary hearing. In some jurisdictions, a preliminary hearing occurs prior to the grand jury proceeding.

The testimony of the investigating police officer will often be crucial in this stage of the process, requiring the presence of the officer or even the subpoena of the officer’s field notes. The importance of strong field notes will be apparent to the officer the first time he or she is on the stand and is required to remember specifics rather than simply generalities (Adams 2001).

Once there is a formal charge, the defendant enters the first stage of the adjudication process, the arraignment. At this stage, the formal charges against the defendant are read and the defendant enters a plea.

The decision of the judge to suppress evidence during pretrial motions can lead to an extreme frustration on the part of an individual officer or an entire department. This is particularly true in cases where the suppressed evidence is perceived to be an unjustifiable technicality that could damage the entire case. As with the case of the prosecutor discussed above, if judges make it clear the courts are voiding certain categories of arrest continually, decisions may be made to no longer enforce those specific types of offenses.

If the defendant elects to have a jury trial—which is available for more serious crimes that carry a potential sentence of six months or more imprisonment—then jurors must be selected prior to the trial. Defendants who choose not to exercise their Sixth Amendment right to a trial by jury can have a bench trial, the outcome of which is decided by a judge.

At the trial, it is the responsibility of the prosecutor to prove beyond a reasonable doubt that the defendant committed the crime in question, otherwise the defendant must be acquitted. If
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the prosecution can prove the case, then the accused is found guilty and the case moves on to the sentencing phase of the adjudication process. Occasionally, juries cannot come to a unanimous or a majority decision, in which case a **hung jury** is declared. In such circumstances, the prosecutor has the discretion to retry the case or dismiss it. Because trials are costly and time consuming, the majority of cases that result in a hung jury are dropped.

Although the trial is the cornerstone of the criminal justice system, the majority of criminal cases never actually come to trial. Instead, approximately 90 percent of cases are resolved through the process of plea bargaining at the arraignment stage of the process. **Plea bargains**, which are arranged between the prosecutor, defense attorney, the defendant, and the judge, are negotiations of guilty pleas in exchange for reduced charges or lenient sentences.

Historically, the police have been strongly opposed to plea bargaining. Having spent time and valuable resources apprehending the suspects and collecting evidence against them, the police often feel that plea bargaining devalues their work and provides offenders with an opportunity to “escape justice.” Indeed, plea bargaining is one of the key sources of tension between the police and the courts within the criminal justice system. Despite these problems and concerns, because it provides a mechanism for disposing of cases quickly and efficiently, plea bargaining remains a vital part of the criminal justice process.

Offenders who plead guilty or are found guilty at trial continue on to the sentencing phase of the adjudication process. Before making a determination of an appropriate sentence for the offender, a **presentence investigation (PSI)** is conducted by the office of probation to investigate the offender’s background, which helps the judge to determine what type of sentence is appropriate, within legislated parameters.

Although the corrections stage of the criminal justice process begins after sentencing, sentencing does not necessarily mark the end of the adjudication stage. The offender can appeal either the decision of the trial court or the conditions of custody by filing a **writ**, or a formal document requesting an appeal. If the decision is appealed, the facts of the case are not retried, but the legal procedures and decisions from arrest through the trial are reviewed by the appellate court. Although each state has a different appellate court system, most states have an intermediate appellate court and a “court of last resort.” The highest appellate court for any case, on a state or federal basis, is the U.S. Supreme Court. Offenders can appeal to have their case reviewed by the Supreme Court by filing a **writ of certiorari**; however, the Court is very selective about cases it reviews. Generally, only cases that raise serious constitutional or human rights issues are reviewed at this level.

Administering Punishment and Reforming the Offender: The Role of Corrections

Once a defendant has been found guilty, a variety of sentencing options are available to the courts, including the death penalty, prison, jail, split sentences, boot camp, probation, residential centers (halfway houses, furloughs), house arrest, electronic monitoring, community service, fines, and restitution. Typically, the most significant decision made by the judge during the sentencing process is whether to hand down a community sentence (usually probation) or a sentence of imprisonment. Some offenses require mandatory prison sentences; for example, the Rockefeller drug laws in New York require that any person convicted of selling two ounces of a narcotic or in possession of four ounces of the narcotic receive a minimum prison sentence of fifteen years to life (Lindesmith Center 1999). Nonetheless, in the vast majority of cases the judge has discretion as to the type of sentence and its length.

Offenders can be incarcerated or given a community sentence irrespective of whether they commit a felony or a misdemeanor. If incarcerated for a misdemeanor, the offender will be sentenced to a year or less in jail. **Jail** is a local county or city institution for temporary detention of persons who are awaiting indictment, arraignment, trial, or sentencing, or for people serving short-term sentences for misdemeanors. Offenders incarcerated for felonies will be sentenced to **prison**, which is a...
state or federal correctional facility that houses offenders serving sentences of a year or more.

There are three main ways in which offenders can be released from prison. They can serve their entire sentence in prison, or max out, at which time the state is required to release them. Offenders who abide by the prison rules and receive only positive reports from correctional services may be released prior to their maximum sentence with good time. Offenders in most states may also be released early with parole, which allows for supervision from a field agent once the offender is living in the community for the remainder of the sentence. Some states have abolished parole, whereas others have abolished parole for violent offenders and recidivist, or repeat, offenders, typically on the grounds that parole undermines the judicial stage of the criminal justice process and leads to inconsistency in the administration of punishment.

Alternative sanctions, also called subincarcerative sanctions or community corrections, are sentences in which the offender serves part or the entire sentence in the community (e.g., probation, intensive supervision probation, house arrest and electronic monitoring, and community service). All of these forms of alternative sanctions are cost-effective, help to reduce the problem of overcrowding in prison, and result in similar rates of recidivism as for offenders who were incarcerated. Some, such as intensive supervision probation (ISP), even result in lower rates of recidivism. However, there are problems with these sanctions that need to be addressed. As technologies such as electronic monitoring become more sophisticated, so do the offenders who are supervised in such a way.

For community corrections to be effective, the various criminal justice agencies involved must cooperate. This is one example of how the system functions successfully with an interdependence of agencies involved. The recent successes of police probation partnerships in Boston (Berren and Winship 1999) and Baton Rouge, Louisiana (Sheppard et al. 2000), demonstrate how increased information sharing and collaboration between law enforcement and corrections can lead to reductions in recidivism through a combination of increased surveillance and a greater understanding of the needs of the probationer, and thus an ability to place the probationer into needed services. The importance of increased communication related to sex offender registration will be detailed in the final section of the text.

QUESTIONS
1. Where do you think linkage blindness occurs most in the criminal justice process?
2. Should information about suspects, defendants, and offenders be available to all actors in the criminal justice system? Why or why not?
the law, they should have the freedom to make a decision based upon the circumstances of a particular case. Also, it is impossible for an officer to respond to every violation of the law; therefore, discretion is a necessary component of law enforcement.

- The rule of law refers to the ideal that equality and justice are inseparable and that laws are applied equally to everyone. It is a standard that is used to guide decision making throughout the criminal justice system.

- All of the agencies within the criminal justice system are interlocked and must work together to ensure justice. The three components of the criminal justice system are the police, the courts, and corrections. The police are the first agents within the criminal justice process. Once a crime occurs, the police are in charge of taking a report, investigating the crime, arresting a suspect, and booking the suspect. The methods by which the police investigate crimes will have an impact on whether and how the case proceeds through the criminal justice system and often whether there is a conviction in the case.

- The crime control model emphasizes the support for law enforcement over individual rights. Advocates of this approach emphasize extensive police powers, limited rights for suspects, and a quick and speedy process. The due process model emphasizes individual rights with restrictions on police power. It focuses on civil liberties and the quality of arrests over the quantity of arrests.

- The six levels of law enforcement are federal, state, county, municipal, township, and tribal. The largest is municipal, with nearly 13,000 municipal jurisdictions.

- In the aftermath of the terrorist attacks on September 11, 2001, the federal government restructured many agencies so that they could better coordinate intelligence and law enforcement resources in the war on terrorism. This reorganization resulted in the formation of the Department of Homeland Security and a restructuring of the agencies within the Department of Justice and the Department of the Treasury.

**Linking the Dots**

1. What are the benefits of the government’s reorganization of departmental agencies within the Department of Justice, the Department of Homeland Security, and the Department of the Treasury? Are there any drawbacks?
2. Should the police be bound by due process constraints when investigating terrorism?
3. What role does the police ability to use force play in their interactions with the community?
4. Do the police curtail their discretion according to the ideal of the rule of law? Explain.
5. How might information sharing be enhanced within and across law enforcement jurisdictions? With the rest of the criminal justice system?

**Key Terms**

- Alternative sanction 29
- Arraignment 27
- Arrest 26
- Beyond a reasonable doubt 27
- Booking 26
- Coercive force 8
- Commercial Equipment Direct Assistance Program (CEDAP) 20
- Crime control 11
- Criminal justice system 23
- Culture of lawfulness 9
- Defense Intelligence Agency (DIA) 20
REFERENCES

denf.htm.


### NOTES

1. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Public Law 107-56).

2. Although this quote is useful in illustrating the concept of linkage blindness, it should be noted that there have been changes in the structure of governmental agencies since the time that Flynn made this statement.


7. The case of Rodney King is an example of this. This incident involved the beating of a black man by four white officers after a car chase. It would not have come to the attention of the public had a citizen not been videotaping the incident.

8. An example of this is the Rampart CRASH officers scandal in the Los Angeles Police Department, which involved a number of officers engaging in
criminal misconduct, including working off-duty for Death Row Records, robbing banks, stealing cocaine, falsifying testimony, and beating suspects. At the height of the scandal, two officers shot, framed, and testified against a known gang member. The gang member was rendered paralyzed from the shooting.

9. An example of this is the investigation of New Jersey State Troopers, sparked by an incident in 1998 where two state troopers stopped a van of African American men on the New Jersey Turnpike. During the stop, the van began rolling backwards. The state troopers thought that the driver was trying to run them over, so they began shooting the passengers. Three of the men were wounded. This incident led to a full investigation of state troopers in New Jersey, and a board found that the troopers regularly practiced racial profiling in their stops.

10. The Bureau of Customs was created as a response to the need for revenue shortly after the United States declared independence and was nearly bankrupt. It was established after the passage of the Tariff Act of 1789, which authorized the collection of duties on imported goods. The primary duty of Customs was to ensure that all imports and exports complied with U.S. laws and regulations. It collected and protected the revenue, guarded against smuggling, and was responsible for investigation of these activities. It had the authority to interdict and seize contraband, detect and apprehend any person who circumvented Customs and related laws, and protect intellectual property rights.

11. The Bureau of Immigration was first established in 1891 within the Treasury Department, but by 1903 it was transferred to the Department of Commerce and Labor. In 1906, this organization became known as the Immigration and Naturalization Service (INS), which was transferred to the Department of Justice in 1940. The primary responsibility of the INS was to determine the admissibility of persons seeking entry into the country, ensure appropriate documentation at entry, and control the status of aliens in the country during their stay. It was also responsible for accepting and processing applications from any person petitioning for naturalization or citizenship. The INS worked to both control and reprimand those who were in the country illegally and prevent future acts of illegal entry.


13. In most jurisdictions, defendants charged with serious offenses can choose between a jury trial and a bench trial, though some states require that all defendants who can receive 6 months or more imprisonment are subject to a jury trial.