



CRIMINAL JUSTICE IN AMERICA

FIFTH EDITION

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Developed by

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INTRODUCTION

No matter who you are, crime affects your life. As a student, your school might be vandalized or your wallet stolen. Statistically, chances are good that sometime in your life you will be a crime victim. As a taxpayer, you will be required to contribute money in the fight against crime or to repair the damage it does. As a voter, you will be asked to choose candidates based in part, at least, on their views about solutions to crime. Everyone agrees that crime is a serious problem. Few agree about its causes or solutions.

Although the debate over the causes and solutions to crime will probably never end, society has evolved a criminal justice system for dealing with crime. Two areas of jurisprudence are essential to understanding this system: criminal law and criminal procedure.

Criminal Law

Criminal law focuses on defining crime itself. For what type of conduct does our society punish people? After all, if society had no standards for human behavior, we would not have any crime, let alone a crime problem.

Today, our criminal law is contained in a wide array of statutes and ordinances enacted by federal, state, county, and city government. Each law spells out the elements of the crime in question and the punishment for those who break it.

The process of defining and applying criminal law never stops. Legislatures repeal out-of-date laws, modify existing laws, and enact new ones. Criminal trial courts interpret the meaning of various laws and apply them to particular cases. Criminal appeal courts review the decisions of trial courts and set precedents for trial courts to follow. Thus, the body of criminal law keeps changing.

Criminal Procedure

Criminal procedure comes into play when police start investigating a particular crime. It focuses on the steps taken and decisions made in the investigation, accusation, trial, verdict, and sentencing of a criminal defendant. It is the process by which we decide the what, when, where, how, and who questions of criminal justice.

Criminal procedures also are designed to protect a defendant from being falsely accused or convicted of a crime. The U.S. Constitution requires “due process of law,” offers protection from “unreasonable searches and seizures,” and forbids “cruel and unusual punishment.” These, and many other constitutional provisions, have done much to shape our criminal procedure.

Criminal procedure has other functions also. Court rules attempt to assure an orderly and consistent decision-making process. Rules of evidence are designed to ensure that the

facts of the case presented to a jury are relevant, accurate, and not overly prejudicial. There are also rules of conduct for judges, lawyers, and juries.

Like criminal law, criminal procedure is ever-changing. Legislators enact new laws, judges and courts adopt new rules, and the Supreme Court interprets and applies the Constitution.

Criminal Justice

This book will have a lot to do with criminal law and procedure. They are important parts of criminal justice. Yet, there is much, much more to consider. Criminal justice also raises vital questions for each of us about fairness, security, and rights in a free society.

As you explore the selections in this book, you will meet the people who investigate crime and enforce our laws. You will learn about judges and courts and their struggle to protect individual rights while determining guilt or innocence. You will see the darker side of the criminal justice system and find out how society deals with people after they have been found guilty beyond a reasonable doubt. You will visit prisons and prisoners, guards, and parole officers, and in doing so you will discover the problems they face on a daily basis.

The Problem of Crime

Beyond criminal law and procedure and the system that investigates, apprehends, and punishes lawbreakers, you will study crime itself. Social scientists who engage in this study are called **criminologists**. They try to find answers to some difficult questions. Why do people become criminals? How serious is our crime problem? How can crime be reduced? Although you won't be a professional criminologist after studying this book, you will have a much better understanding about important issues of criminal justice.

Unit 1

CRIME



Friday evening, 9:30 p.m. . . .

In an underground parking garage downtown, a young man staggers to a pay phone on the wall and leans against it to hold himself up. Finally he gets the strength to call 911. A few seconds later, a voice comes on the line.

“Emergency services.”

“My name is Sam Peterson,” the man stammers. “I’ve just been robbed.”

Meanwhile, in a middle-income residential area, a young husband and wife arrive home from a movie. They notice that the glass in the back door has been smashed in. Inside, they find a horrible mess, with furniture tipped over and china broken on the floor. The television and DVD player are gone. They both start to tremble. A place that they believed was private and safe had been torn open and violated.

A major crime happens somewhere in America every few seconds. But this isn’t just a statistic. Behind each crime are people: victims who are hurt, criminals who often live violent and destructive lives, and those who must deal with the aftermath – the police, social workers, attorneys, judges, and legislators.

In this unit, we will look at criminal acts, defenses to criminal charges, criminals, and crime victims. What acts does our society, through its laws, define as crimes? What must be proved before a person is convicted of a crime? Who are the criminals and why do they do it? What is it like to have your life changed in an instant by someone else’s wrongdoing? By considering these questions, you will learn a lot about crime and its consequences. And you will be able to take an intelligent part in a great debate going on in our society: What should we do about crime?

CHAPTER 1

CRIMES

Crime is a sociopolitical artifact, not a natural phenomenon. We can have as much or as little crime as we please, depending on what we choose to count as criminal.

– Herbert L. Packer, professor of law, *The Limits of the Criminal Sanction* (1968)

THE BASICS OF CRIME | ELEMENTS OF A CRIME | MURDER | THEFT | INCHOATE CRIMES
CRIMES AGAINST THE JUSTICE SYSTEM | HATE CRIMES | CYBERCRIME

The Basics of Crime

Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear.

– Justice Oliver Wendell Holmes Jr., *McBoyle v. U.S.* (1931)

Criminal cases differ from civil cases. In most civil cases, individuals sue one another seeking compensation for injuries done to them. In criminal cases, the state prosecutes individuals for injuring *society*. Instead of seeking compensation from defendants, the state seeks to punish them. A criminal case focuses on whether a defendant has committed a crime against society and what sentence is appropriate to punish the defendant for the crime.

But what conduct should society outlaw? In many instances, this question is easy to answer. Almost everyone would agree that murder, rape, and arson should be prohibited. Debates arise, however, over other acts. Should prostitution or the use of drugs be made criminal? What about gambling or private sexual activity? What conduct should society prohibit? These debates raise questions about where criminal laws come from in the first place.

The Sources of Criminal Law

Our criminal laws spring from two major sources, laws passed by legislatures and what is called **common law**. Common law is judge-made. Instead of being created by a legislature, it is based on legal precedents — court decisions — set by judges in earlier cases. English common law is an important root of our current legal system. Originally, the criminal laws in England were mostly unwritten. If a judge heard a case

and believed that certain conduct was anti-social, he made it a crime and punished the offender accordingly.

Definitions of crimes and defenses developed in the decisions of the English courts. These later became part of the common law adopted in early America. In turn, American courts began contributing to the common law. Over the years, a rather unwieldy body of law developed.

Common law has one serious problem. If it isn't written down in some simple way, how do people know if they are breaking the law? William Penn, the founder of Pennsylvania, made this point when he was tried in London in 1670 for unlawful assembly. (He had attended a Quaker meeting.)

Penn: I desire you would let me know by what law it is you prosecute me

Judge: Upon the common law.

Penn: Where is that common law?

Judge: You must not think that I am able to run up so many years, and over so many adjudged cases, which we call common law, to answer your curiosity. . . .

Penn: It is too general and imperfect an answer, to say it is the common law, unless we knew both where and what it is. For where there is no law, there is no transgression

All states and the federal government today have written criminal codes. Most jurisdictions have replaced common-law crimes with written statutes. Some states still recognize the power of the courts to punish common-law crimes when no criminal statute exists, but this power is rarely exercised. Most states and the federal government deny courts this power. In these jurisdictions, only conduct expressly forbidden by a criminal statute is a crime.

Thus, the primary source of criminal law today is legislative enactment. By the second

half of the 19th century, legislatures had seen the problem of relying on common law and had begun to enact comprehensive criminal codes. Many of these codes included all of the elements of the old common law.

An influence on modern codes is the American Law Institute's *Model Penal Code*. Written by prominent judges, lawyers, and legal scholars, it is an attempt to improve criminal law by producing a code that is clearer, simpler, and more up-to-date than the common law. Many states have enacted parts of the *Model Penal Code* into law. A few states (New Jersey, New York, Pennsylvania, and Oregon) have adopted almost all of it.

Classification of Offenses

The common law divided crimes into two categories — felonies and misdemeanors. Common law felonies were murder, manslaughter, rape, sodomy, mayhem, robbery, arson, burglary, and larceny. All other crimes were misdemeanors.

Under modern criminal law, the distinction between felonies and misdemeanors is spelled

out by statute. Most states define a felony as any crime punishable by death or by imprisonment in a state prison. A crime punishable by time in a local jail is a misdemeanor. Other states distinguish by length of imprisonment, not place of imprisonment. For example, a felony is often defined as a crime punishable by one year or more in prison.

FOR DISCUSSION

1. What characteristics distinguish criminal from civil cases?
2. What are the two sources of criminal law? How are they different?
3. Today, most states have done away with common-law crimes. Only acts specifically defined in statutes as illegal can be punished. What would happen if some criminal managed to find a loophole? What if an individual did something obviously harmful to others that was not specifically outlawed by statute? Should the courts be allowed to recognize a new crime to fill the gap? Explain your answer.

CLASS ACTIVITY

Felony or Misdemeanor?

In this activity, students evaluate whether certain actions should be crimes, and if so, whether they should be felonies or misdemeanors.

1. Form pairs. Each pair should:
 - a. Read and discuss **Criminal Acts?** below. Each of the persons described is an adult.
 - b. Answer the following questions for each act:
 - Should the act described be a crime? Why or why not?
 - If so, should it be a felony or misdemeanor? Why?
2. Reconvene as a class and share group answers.

Criminal Acts?

- a. Margaret tells the police that an officer who stopped her on the street was verbally abusive to her. She is lying.
- b. Sam sees a young boy struggling in a pond and calling for help. Sam does nothing and the boy drowns.
- c. Dick is married to Suzanne and Mary.
- d. Ruby promises to give Harry \$1,000 if he graduates from college. He graduates and she refuses to give him the money.
- e. Robert holds a toy pistol to Ashley's head and demands all of her cash and jewelry. She believes it's a real gun and hands over the goods.
- f. Pedro calls a local pizza parlor and orders five pizzas to be delivered to a phony address.
- g. Jane's country is at war. She shoots and kills an enemy soldier.
- h. John lets his dog run wild around the neighborhood, even though he knows that the dog scares young children and constantly knocks over garbage cans looking for food.

Elements of a Crime

In any case of injustice, it makes a great difference whether the wrong is done on impulse or whether it is committed deliberately and with premeditation; for offenses that are committed on impulse are less culpable than those committed by design and with malice.

– Cicero (106–43 B.C.), Roman statesman, On Duties

The criminal justice system carefully defines exactly what a crime is. The system also takes care in defining what must be proven to convict a person of a crime. Almost every crime has four basic elements:

- 1. A prohibited act.** At common law, this was called the *actus reus* (Latin for “guilty act”). The law does not punish people for having criminal thoughts alone. There must be an act, which is today almost always defined by a statute. In murder, for example, the act is killing someone. In a few rare cases, *failing to act* is a crime when a person has a legal duty to act. For example, if a parent lets a child die of a long illness without seeking medical help, it can be a crime.
- 2. Criminal intent.** At common law, this was called *mens rea* (Latin for “guilty mind”). This can be the most difficult element to prove. It will be discussed in more detail below.
- 3. Concurrence of the act and the intent.** The person has to intend the act when it is committed. For example, Sluggo wants to kill Nancy. Then he changes his mind and forgets all about it. A month later, he accidentally drives his car into her and kills her. This is not legally murder because the intent to kill is not linked to the act.

- 4. Causation.** The act has to cause the harmful result. For example, Marge, intending to kill Homer, puts poison in a doughnut. As he reaches for the doughnut, Homer slips, hits his head, and dies. Marge cannot be found guilty of murder because she did not cause Homer’s death.

Criminal Intent

Criminal laws generally punish only those who have criminal intent, a guilty mind. But what constitutes a guilty mind, the so-called *mens rea*, depends on the crime. The criminal intent required for most crimes usually falls into one of four categories:

- 1. Specific intent.** This is the easiest type to define. It means the person intended just the result that happened. The person did it on purpose. Certain crimes, such as theft, require specific intent. To convict John of theft, for example, the prosecution must prove not only that John took Mary’s car, but also that he did not intend to return it.
- 2. General intent.** This means that the person either knew the result would happen or consciously disregarded the extreme likelihood that it would happen. For example, John picks up a gun on New Year’s Eve and shoots it toward a crowd of people. A bullet hits Mary and kills her. He didn’t kill Mary on purpose, but he must have known he would kill, or was likely to kill, someone. This would meet the general intent requirement of second-degree murder.
- 3. Criminal negligence.** This means that a person does an act unintentionally but with an extreme lack of care. For example, John is drag racing down a city street when Mary, a pedestrian, steps in front of his car. Mary is killed.

A crime is made up of:

Criminal Act	Criminal Intent	Concurrence of Act and Intent	Causation
Conduct prohibited by law	KINDS 1. Specific 2. General 3. Criminal Negligence 4. Strict Liability	Act and intent must be linked.	Result must be caused by the act.

4. Strict liability. This means no mental state is required at all. Anyone doing the act is guilty regardless of intent. Almost all common-law crimes required some mental state. But bigamy is an example of a common-law crime that required no intent. For example, if John mistakenly

believes he has divorced his first wife and he marries Mary, he can be convicted of bigamy. Other examples of strict liability crimes include most health, safety, and traffic offenses. For example, if Joe runs a red light, he is guilty whether or not he saw the light.

CLASS ACTIVITY

Did They Commit Crimes?

In this activity, students analyze five cases to determine whether criminal conduct has taken place.

1. Form groups of four. Each group should:
 - a. Read and discuss the five cases that follow.
 - b. Refer to the explanations above of the four basic elements of a crime — (1) act, (2) intent, (3) concurrence of act and intent, and (4) causation.
 - c. Assign one element of a crime to each person in the group. Have that person say whether that element is present in each case, and then discuss whether the whole group agrees. To find the definition of a crime, refer to the glossary (at the back of the book).
 - d. When the discussion is completed, assign one case to each student for reporting back to the whole class. Be prepared to explain and discuss each element.
2. Reconvene as a class and share the answers.

CASE 1: Tim

Marcos and his friends, Tim and Jill, were having a beer together at their local bar. When Tim went to the jukebox to play more music, Marcos asked Jill to dance. Tim became jealous and punched Marcos in the face. Tim has been charged with battery.

CASE 2: Karen

Karen told everyone that she hated Emily for stealing her boyfriend. Karen said she wanted to hurt Emily. Two months pass and Karen nudges a flowerpot off her second-floor patio as Emily stands below. The flowerpot hits Emily and gives her a concussion. Karen swears that she forgot all about her threats and didn't mean any harm. Karen is charged with battery.

CASE 3: Ray

Mr. Ray Anderson sat on his front porch cleaning his rifle. Many children were playing on the sidewalk in front of his home. When Anderson turned the gun over, it went off, killing one of the children in the crowd. He has been charged with involuntary manslaughter.

CASE 4: Susan

Susan was shopping in her favorite department store. She saw a sweater that she liked, stuffed it into her book bag, and ran out of the store. A security guard caught her. Susan has been charged with shoplifting.

CASE 5: Gayle

Gayle shoots Mary in the big toe. Mary goes to the hospital to have her toe examined and treated. One week later, Mary dies of blood poisoning that she got from an unsterilized medical instrument. Gayle is charged with murder.



Murder

Murder most foul . . . most foul, strange and unnatural.

– William Shakespeare (1564-1616), poet and playwright, *Hamlet*

No crime seems to fascinate people more than murder. Religions teach the basic tenet, “Thou shalt not kill.” Yet throughout the ages, storytellers have told and retold tales of murder — Cain and Abel, the Greek tragedies, Shakespeare’s *Macbeth*, and thousands of mystery novels, movies, and crime TV shows. In our country, the most severe penalty our society can inflict — death — is reserved for murderers.

Like all crimes, murder is made up of particular elements. These must be proved before a person can be convicted.

Murder at common law and under many modern statutes is the unlawful killing of a human being with *malice aforethought*. Malice aforethought is the intent, or *mens rea*, element of this crime. It doesn’t mean what you might expect it to. Malice aforethought is sometimes defined as an *actual or implied intention* to kill with no provocation by the victim.

Actual intent is found when the defendant consciously meant to cause another’s death. Implied intention exists when the defendant *either*:

- (1) intended to cause great bodily harm or
- (2) should have known that the act would result in death or great bodily harm.

Consider some examples:

- If Barbara hates Michael, decides to kill him, and picks up a knife and does so, malice aforethought is present. In this case, Barbara’s malice aforethought was an *actual* intent to kill Michael and she could be charged with murder.
- If Barbara decides to hurt Michael badly, stabs him in the chest and kills him, malice aforethought is also present. This time the intent to kill is *implied*, because she did not specifically intend to kill, but only cause great bodily harm.
- If Barbara hates Michael, decides to scare him, pushes him in front of oncoming traffic at a street corner, and Michael dies as a result, malice aforethought is also established. In this case, though Barbara didn’t intend to kill or even seriously injure Michael, she should have known her actions would cause him to die or suffer great bodily harm. Under the law, Barbara had *implied* intent to kill Michael.

Degrees of Homicide

Over the years, the law has developed degrees of criminal homicide. The punishment a convicted person may receive depends on the degree of the homicide. The worst degrees of homicide are commonly called murder and the lesser degrees, manslaughter.

First-degree murder is a deliberate and premeditated killing done with malice aforethought.

This is a cold-blooded murder. “Deliberate” means it was done with a cool mind, capable of reflection. “Premeditated” means the person actually reflected on the murder before committing it. And “malice aforethought,” of course, means that the killer had the intent to kill. It takes all three elements — deliberation, premeditation, and malice aforethought — to establish the *specific intent* for first-degree murder.

Second-degree murder is a killing done with malice aforethought, but without deliberation and premeditation. This covers all murders that are not in the first degree.

Felony murder is any killing done while a person is committing a felony. If the killing is done while committing certain felonies, such as robbery, rape, arson, or burglary, it is classified as first-degree murder. Killings done while committing other felonies are considered second-degree murder.

Voluntary manslaughter is an intentional killing committed without malice aforethought. The killer must:

- be seriously provoked by the victim,
- act in the heat of the anger, *and*
- not have had an opportunity to cool off.

The provoking act does not excuse the killing, but it makes the crime a lesser degree than second-degree murder.

Involuntary manslaughter is an unintended killing that takes place during a crime that is a misdemeanor (“misdemeanor manslaughter”). It can also be a killing caused by criminal negligence.

Vehicular homicide is a crime recognized by many states. It covers killings from automobile accidents when the driver is criminally negligent.

FOR DISCUSSION

1. The penalties for these forms of homicide in every state are increasingly harsh: *Involuntary Manslaughter — Voluntary Manslaughter — Second-Degree Murder — First-Degree Murder*. If one person is killed in each of these cases, why do you think the punishments get harsher? Is this fair? Explain.
2. Howard tries to murder someone, but fails and harms no one. Fred is guilty of involuntary manslaughter when he accidentally kills a person. Which person should be punished more harshly — Howard or Fred? Why?

CLASS ACTIVITY

Death in the School Halls

In this activity, students examine a hypothetical killing and determine what crime was committed.

1. Divide into groups of four and read the following case:
One day in gym class, Adam made fun of the way Rick was shooting a basketball. Rick told Adam to shut up or else he would take care of him. Adam couldn’t help making another comment on the way Rick was shooting. Rick grabbed Adam and beat him up.
Adam ended up with a broken nose and a black eye, and he decided to get even. He dug his father’s pistol out of the attic, loaded it, and headed off to school to find Rick. He waited at Rick’s locker for almost an hour, but Rick never showed up. Adam became impatient. Nervously he checked the gun again to make sure that all the chambers were loaded. Just then the school bell rang out, startling Adam into firing the gun by accident. The bullet ricocheted off a locker and hit a student who was walking out of class. She was killed instantly.
2. In each group, assign one person to each of the following crimes: murder, felony murder, voluntary manslaughter, and involuntary manslaughter. Each person should:
 - Decide whether the crime described above fits the crime assigned to him or her.
 - Be prepared to explain why or why not.
3. Discuss the case in your group. Go through the crimes, one by one, and the person responsible for that crime should explain whether the case fits that crime or not. Discuss why or why not.
4. Reconvene as a class and compare each group’s findings.

Theft

All bad men are not thieves, but all thieves are bad men.

– Aristotle (384–322 B.C.), Greek philosopher, *Rhetoric*

Stealing is one of the most commonly committed crimes. The law recognizes many forms of stealing. The differences depend on how the stealing is done.

Larceny is the usual legal word for theft. It means taking without permission someone else's property and intending not to give it back. For example, if someone walks by your desk and takes your wallet, that person has committed larceny. There are usually two categories of larceny, or theft:

1. **Grand theft** means stealing property worth over a certain amount. The amount varies from state to state, but it is usually around \$500. Grand theft is a felony. If your wallet contained \$1,000, stealing it would be grand theft.
2. **Petty theft** means stealing property worth less than the grand theft amount. Petty theft is a misdemeanor.

Burglary is the unlawful entry into any building with the intent to commit a crime, usually theft. At one time in common law, burglary meant breaking into a home at night to steal. That definition has been expanded to include illegally entering any building at any time of day to steal or commit any crime. Some states have expanded it to include breaking into cars. If a thief broke into your office to steal your wallet, the crime would be burglary.

Robbery, unlike burglary, is a crime against the person. It is forcible stealing — the taking of a person's property by violence or by threatening violence. If someone grabs you, demands your wallet, and then takes it and runs away, that person has committed robbery.

Armed robbery means using a dangerous weapon to take something from a person. Even pretending to have a weapon is considered armed robbery in most states. If someone pulls a knife on you and steals your wallet, that person has committed armed robbery. Armed robbery is a more serious offense than simple robbery, and it carries a stiffer penalty.

Other Forms of Stealing

Larceny, burglary, and robbery are the three main categories of stealing. But as the common law developed in England and America, courts and legislatures added additional categories.



Embezzlement is when people take property they have been entrusted with. For example, you give John \$200 to hold for you while you go swimming, and he decides to keep it. He has embezzled the money. Embezzlement differs from larceny in that the person takes possession of the property legally.

Fraud is knowingly misrepresenting a fact to get property from another person. For example, John tells you a worthless coin is gold (which he knows is false) and sells it to you for \$100. John has defrauded you of \$100. Fraud is sometimes a crime in itself and more often an element of other crimes, such as larceny by trick, false pretenses, forgery, and writing bad checks.

Extortion is making a threat with the intent of getting property (usually money) from another person. One form of extortion is blackmail. For example, Elsa threatens to tell your friends that you spent time in jail unless you pay her \$1,000. She is extorting money from you.

An extortionist can threaten violence. For example, if Elsa says she will kill you unless you give her \$1,000 by Friday, she has committed extortion. But if the threat is of immediate harm, the crime is robbery. For example, if she points a gun at you and demands money, she is committing robbery, not extortion.

Receiving stolen property is against the law in every state. The crime requires that the person knows or should have known that the property is stolen. For example, Sam goes over to his neighbor Ed's house and sees Ed filing the serial numbers off five brand-new high-definition TVs in his garage. Ed generously gives Sam one of the televisions. Sam is guilty of receiving stolen property.

ASK AN EXPERT

Invite a criminal lawyer to your class to explain the elements of different crimes.

even if Ed never told Sam the television was stolen. Sam should have known they were stolen.

Today, a number of states have classify embezzlement, fraud, extortion, and receiving stolen property under a general law against theft. Others retain them as separate laws against stealing.

FOR DISCUSSION

1. The penalties for these forms of stealing in every state are increasingly harsh: *Theft* — *Burglary* — *Robbery* — *Armed Robbery*
2. If a wallet containing only \$20 is stolen in each of these cases, why do you think the punishments get harsher? Is this fair? Explain.
3. What is the difference between robbery and extortion? Between larceny and embezzlement?
4. Why do you think states outlaw receiving stolen property? Do you think they should? Explain.
5. Do you think a robber who uses a realistic-looking toy gun should be charged with armed robbery? Why or why not?

ACTIVITY

What's the Crime?

In this activity, students analyze a hypothetical to determine what crimes have been committed.

1. Divide into pairs.
2. Each pair should:
 - a. Read **Thievesville, U.S.A.**, below.
 - b. Imagine that the state in which Thievesville, U.S.A., is located has laws against **larceny**, **burglary**, **robbery**, **armed robbery**, **embezzlement**, **fraud**, **extortion**, and **receiving stolen property**.
 - c. Determine which of these crimes, if any, each person committed. Review the article for information on each crime.
 - d. Write down the offender, which law the offender broke, and why.
 - e. Prepare to report the answers to the whole class.
3. The pairs should report, and the class should discuss the answers.

Thievesville, U.S.A.

Amy, Bob, Carol, Dave, Eden, Frank, and Gina all live in separate houses in the same neighborhood. Determine which laws, if any, each of these persons broke.

Early every morning Amy goes from house to house stealing newspapers. She gets about 20 every day.

She takes them to the corner newsstand run by Bob and sells them to him for a nickel apiece.

She takes the dollar she earns and deposits it in the bank. She always goes to her favorite teller, Carol. Carol has a policy of taking 5 cents of every deposit for herself. She only makes a few dollars a day (all in nickels), but over the years the money has added up to \$1,200. She doesn't dare put it in the bank. She keeps it at home under her mattress.

One day Dave is out searching for his newspaper when he sees that Carol has left one of her bedroom windows open. He seizes the opportunity, crawls in, finds the bulging mattress, and steals her money.

As Dave crawls out the window, Eden sees him. She writes Dave a note, "I saw you. If you don't pay me \$1,000, I'll tell the police."

Dave thinks he better pay Eden off. Late at night, he takes \$1,000, puts it in a bag, and walks toward Eden's house. But Frank is lurking in the bushes. Frank sneaks behind Dave and jabs his finger in Dave's back, saying, "I've got a gun. Just drop the bag on the ground and leave. Don't turn around." Dave does as he's told.

When Dave gets home, he realizes he has to raise some cash fast to pay off Eden. He calls his neighbor Gina, who he's heard is an investment wizard. He tells her he only has \$200 and needs \$1,000 soon. She says, "No problem. I've got an investment paying 5-1, guaranteed. It's a sure thing." Dave gives Gina \$200. She puts it with all the other "investments" she's received recently and flies to Rio to live where none of her "investors" can find her.

Inchoate Crimes

inchoate (in κ_ it) *adj.* Incomplete, in the beginning stages. From the Latin word “*inchoare*,” to begin.

Imagine that Sylvia plans a bank robbery and assembles a team to commit it. According to plan, Greg drives John to the bank. John enters the bank, armed with a gun, and robs the bank. When he leaves, Greg drives them away. They will meet with Sylvia later. Who can be charged with bank robbery?

Under the common law, the answer was John and Greg. John would be the **principal in the first degree**, the person who carried out the crime. Greg would be the **principal in the second degree**, who was at or near the crime scene and helped commit the crime. Sylvia would be charged with the inchoate, or incomplete, crime of **accessory before the fact**, because she didn’t take part at the crime scene but helped prepare for the crime.

Today, in most jurisdictions, these distinctions are gone. All three would be charged with bank robbery. John is the principal, and Sylvia and Greg are his accomplices. An accomplice is someone who aids another in committing a crime. The person may help before the crime, for example, by planning the crime. Or the person may help during the crime, for example, by driving the get-away car.

An accomplice is just as guilty of committing the crime as the principal, the person who actually carries out the crime. The U.S. Code reads: “Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.”

Most states have adopted similar laws. The inchoate crime of accessory before the fact has disappeared in most states. But other inchoate crimes still exist.

Accessory After the Fact

An accessory after the fact is someone who helps a felon after the crime has been committed. Imagine that right after the bank robbery, Greg swings by David’s house, and asks David to store the money bags for him. Greg then goes to Bill and asks if he can hide out at his house. If David or Bill agrees, they can be accessories after the fact.

Several things must be proven for the crime of being an accessory after the fact. First,



In 2005, rapper Lil’ Kim was tried for conspiracy, perjury, and obstruction of justice for lying to a federal grand jury about what she knew about her friends’ involvement in a shootout. She was convicted of conspiracy and perjury, but acquitted of obstruction of justice.

the defendant must help the criminal avoid getting caught or convicted. Second, the felony must have already been committed. The defendant must help Greg *after* the bank robbery. (If it is before, the person may be an accomplice to the crime.) Third, the defendant must know about the crime and intentionally help the criminal.

Attempt

An attempt is an inchoate crime consisting of three elements. First, a person must intend to commit a crime. Second, the person must take steps toward committing the crime. Third, the person must not actually commit the crime.

Imagine that Hugo sees Chuck leave his bicycle unlocked. When he grabs the bike, Chuck’s friend Phil stops him from taking it. To convict Hugo of attempted theft, it must be shown that he intended to take the bike and not give it back. This is the intent required for theft. The second and third elements, that he took steps to steal

the bike and that he failed to steal it, are clear in this case.

The law of attempt raises many questions. One is how close the person must go toward committing the crime. The common law rule was that the person must have done everything he could to commit the crime. The reason the person did not commit the crime was out of his control. Most courts today require far less. Some ask: Would a reasonable person, seeing what the accused did, believe he was trying to commit a crime. Others require that the person took a “substantial step toward committing the crime.” Still others require that the accused’s actions strongly corroborate his “criminal purpose.”

Another question involves impossibility. Is it attempted murder if a man points a gun at another’s head, pulls the trigger, and then discovers the gun is unloaded? Is it attempted smuggling if a woman takes baby powder, which she wrongly believes is cocaine, and carries it into the United States? What if instead of “cocaine,” she carries coffee in the mistaken belief it is also against the law? Questions such as these have perplexed courts and led to different conclusions.

Courts often look to the purpose of attempt laws when deciding difficult cases. The major purpose of attempt laws is to prevent crime. People disposed to commit crime pose a danger. Letting the police act before a crime is committed can prevent much harm. Punishing those who try and fail to commit a crime recognizes that these people have tried once and may try again.

In addition to attempt laws, most states have passed specific laws aimed at people preparing to commit crimes. For example, most states outlaw the possession of explosive devices, burglary tools, and master keys to vehicles.

Conspiracy

Another inchoate crime is conspiracy. A conspiracy is an agreement between two or more people to commit a crime. Like other crimes, it has an act and intent requirement.

The act is the agreement. Some jurisdictions also require that at least one of the conspirators do an overt act in furtherance of the conspiracy. Thus if John and Mary agree to kidnap Sally, some jurisdictions also require an overt act. For example, John may send Mary an

e-mail telling her when Sally leaves for work and comes home. This is enough to qualify as an overt act. Unlike attempt, conspiracy does not require a substantial step toward committing the crime.

The intent required for conspiracy consists of two things. First, the conspirators must understand what they are agreeing to. Second, the conspirators’ purpose must be to achieve the goal of committing the crime.

Like attempt laws, one purpose of conspiracy laws is to punish people disposed to commit crimes. Another, more important purpose is to punish criminal enterprises. In the 1961 case of *Callanan v. U.S.*, the U.S. Supreme Court explained why criminal conspiracies are so dangerous:

[C]ollective criminal agreement — partnership in crime — presents a greater potential threat to the public than individual delicts [offenses]. Concerted action both increases the likelihood that the criminal object will be successfully attained and decreases the probability that the individuals involved will depart from their path of criminality. Group association for criminal purposes often, if not normally, makes possible the attainment of ends more complex than those which one criminal could accomplish. Nor is the danger of a conspiratorial group limited to the particular end toward which it has embarked. Combination in crime makes more likely the commission of crimes unrelated to the original purpose for which the group was formed. In sum, the danger which a conspiracy generates is not confined to the substantive offense which is the immediate aim of the enterprise.

In 1970, the federal government passed an important conspiracy law aimed at curbing organized crime. RICO, the Racketeer Influenced and Corrupt Organizations Act of 1970, makes it illegal for anyone

employed by or associated with any enterprise . . . to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity

In other words, the person must be connected to an “enterprise.” The enterprise may be a criminal organization, or it may be a legitimate organization. (Lawmakers were particularly concerned about organized

crime infiltrating legitimate businesses.) The person must conduct the enterprise's affairs through a "pattern of racketeering." For a pattern to exist, the person must commit at least two crimes related to racketeering within a 10-year period. The act lists a number of crimes related to racketeering. Among them are kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscenity, drug trafficking, bribery, counterfeiting, embezzlement, fraud, obstruction of justice, and human trafficking. The crimes must be related to one another and pose a threat of continued criminal activity.

A defendant convicted under RICO stands to serve a long prison term, pay a large fine, and lose his interest in the enterprise and all his ill-gotten gains (which are forfeited to the government).

Federal prosecutors strongly favor RICO. They believe it has put a dent in organized crime. Critics see RICO as unnecessary. If someone commits crimes, that person can be prosecuted under other laws for those crimes. If the crimes happen to be part of a criminal enterprise, the persons in the criminal enterprise can be (and often are) prosecuted under existing conspiracy laws.

Others criticize RICO as federalizing law enforcement. They believe most of the crimes prosecuted under RICO should be left to state and local authorities.

Solicitation

Imagine that Harry wants to rob a bank, but does not want to carry it out himself. He tells Jill he will plan the robbery if she will go to the bank with a gun. Let's look at several possibilities:

- Jill agrees and is caught as she enters the bank. Jill and Harry are guilty of attempted bank robbery (and conspiracy to rob a bank).
- Jill agrees and stakes out the bank. Jill and Harry are guilty of conspiracy to rob a bank.
- Jill agrees, and she robs the bank. Jill and Harry are guilty of bank robbery (and conspiracy to rob a bank).
- Jill refuses. Jill is innocent, but Harry is guilty of solicitation.

Solicitation is an inchoate crime that consists of asking, ordering, or encouraging another to commit a crime. The person making the solicitation must intend that the other person commit the crime.

The Doctrine of Inchoate Crimes

The following four general rules, known as the doctrine of inchoate crimes, apply to the inchoate crimes discussed (attempt, conspiracy, accessory after the fact, and solicitation):

- To commit an inchoate crime, a person must do something.** Thinking about committing the crime is not enough. Attempt requires the most action: a substantial step toward actually committing the crime. Solicitation requires the least: a request that a crime be committed. Conspiracy requires just a little more: an agreement and an overt act.
- Inchoate crimes require intent.** Conspiracy and attempt require the intent to do the crime. Solicitation requires the intent to have someone else do it. Accessory after the fact requires the intent to aid and abet the crime.
- With the exception of conspiracy, people cannot be convicted of an inchoate crime if they are convicted of the actual crime.** For example, John helps Lou rob a bank and hide out. If John is convicted of the bank robbery, he cannot be convicted of being an accessory after the fact in the same robbery. He can, however, be convicted of bank robbery and conspiracy to commit bank robbery.
- Inchoate crimes usually carry lesser penalties than those for the actual crime.** In some cases, however, they carry the same penalty.

FOR DISCUSSION

- What are inchoate crimes? How do they differ from most crimes? Explain.
- What crimes have people in the boldface type committed in the examples below?
 - Sam, Pam, and Cam** agreed on a plan to rob a bank and split their take among the three of them. Cam scouted the bank to determine the best way to rob it.
 - After shooting a man, Alan ran to Herman's house and told him what he had done. **Herman** hid Alan's gun in his house.
 - Robin** decided to kill Chester. Police caught her as she was planting a bomb in his car.
 - Roy** offered Michael \$10,000 to kill David. Michael turned him down.

- e. **Susan** worked in a warehouse. When she left one night, she turned off the burglar alarm, which allowed her boyfriend to enter the building and steal thousands of dollars worth of goods.
3. Do you think accomplices should be treated as having committed the crime? Or do the old common-law distinctions make sense? Explain.
4. In your opinion, which of the following people has committed the worse crime? Why?
 - a. Sam intends to burn down a house but is stopped by police just before he starts the fire.
 - b. Jane carelessly throws away her cigarette into a yard and accidentally burns down a house.
5. Wilma, Xavier, Yolanda, and Zeno agree to and do rob several banks. They are charged with three counts of bank robbery. Do you think they should be charged with one or three counts of conspiracy to rob a bank? Explain.
6. Imagine that Ann and Betty, the only conspirators, are charged with conspiring to rob a bank. Can the jury convict Ann but not Betty of conspiracy? Explain.
7. Under the Model Penal Code, a person convicted of attempt receives the same punishment as a person who completed the same crime. Do you think this should be the law in your state? Explain.

ACTIVITY

An Attempt or Not?

States typically do not write an attempt law into every crime. Rather, they craft one law of attempt that applies to all crimes. Because the one law must fit many different crimes, the law is usually quite general. The courts decide how it applies to specific crimes. For example, below is Georgia's law on criminal attempt:

Georgia Code: Crimes and Offenses: 16-4-1. Criminal attempt. A person commits the offense of criminal attempt when, with intent to commit a specific crime, he performs any act which constitutes a substantial step toward the commission of that crime.

In this activity, students act as judges, decide six cases, and determine whether each amounts to an attempt under Georgia law.

1. Form groups of three or five students.
2. Each group should:
 - a. Read and discuss each case below.
 - b. Using the reading on attempt, decide whether or not each case is an attempt.
 - c. Be prepared to report to the class its decisions and reasons for them.
3. The groups should report and the class should discuss each case.

CASE 1: Staples. Edmund Staples planned to break into a bank and steal its money. He rented an office in the same building as the bank, but a floor above. He knew that the bank's vault was directly below his office. He brought in drilling tools, acetylene gas tanks, and a blow torch, and on Saturday when he knew no one was going to be in the bank, he drilled holes in the floor. But he did not drill all the way through. Instead he stopped, realizing that his idea of robbing a bank was absurd. He returned periodically to the office with the intent to finish the heist, but he changed his mind every time. Eventually, the landlord became suspicious, went into the office, saw the holes, and called the police. Staples was arrested and charged with attempted burglary of the bank. (*California v. Staples*, 1970)

CASE 2: Mandujano. Undercover police officer Cavalier met Roy Mandujano in a bar. Pretending to be a drug trafficker, Cavalier asked him for a one-ounce sample of heroin. Mandujano agreed to supply a sample, but said his regular drug shipment had not yet arrived,

(Continued on next page.)

ACTIVITY (Continued)

so he needed \$650 to buy it from another source. Cavalier supplied the money, and Mandujano went off while Cavalier waited at the bar. Mandujano eventually returned empty-handed, stating he couldn't find his contact. He returned Cavalier's money and told him to call him back at 6 p.m. when his regular shipment was due. When Cavalier called back, Mandujano did not answer. Mandujano was later arrested and charged with attempt to distribute heroin. (*U.S. v. Mandujano*, 1974)

CASE 3: Kordas. Police received a Harley-Davidson motorcycle “for educational purposes.” They altered its vehicle identification number and other things to make the motorcycle appear stolen. Working undercover, a police officer then sold the motorcycle to Michel Kordas, who believed it was stolen. Kordas put the motorcycle in his van and drove away. Police arrested Kordas and charged him with attempt to receive stolen property. (*Wisconsin v. Kordas*, 1995)

CASE 4: Rizzo. Charles Rizzo and three other men were planning on robbing a bank employee who was supposed to be carrying a company's payroll worth \$1,200 from the bank to the company. Rizzo was to identify the bank employee, and the others were to hold him up. The day of the robbery, the four men drove from the bank to the different locations of the company, looking for the bank employee. Rizzo never spotted the bank employee. By the time the men reached their last stop, the police were following them. When Rizzo went inside to see if the bank employee was there, the police arrested him. He and the others were charged with attempted robbery. (*New York v. Rizzo*, 1927)

CASE 5: Wilson. Wilson had a check for \$2.50. The check was stamped with the words “Ten Dollars or Less.” Even so, instead of depositing the check as is, Wilson wrote a “1” in front of the “2.50” and tried to pass it off as \$12.50. Wilson was charged with attempt to commit forgery. (*Wilson v. Mississippi*, 1905)

CASE 6: Jackson. Vanessa Hodges, Robert Jackson, and two others planned to rob a bank. They planned to enter the bank when it opened on Monday, grab the weekend deposits, and leave. On the day of the robbery, the group drove to the bank, but arrived late. The bank was already open and filled with too many bank patrons and other potential witnesses. The group decided to rob the bank the following week. A day or two later, however, Hodges was arrested on unrelated charges and revealed the group's plan to the police. In response, FBI agents staked out the bank. When the group (minus Hodges) arrived, one of the members spotted an FBI agent, and the car left the scene. FBI agents pursued and arrested the group. Inside the car, agents found a suitcase with guns and masks. One of the charges against members of the group was attempted bank robbery. (*U.S. v. Jackson*, 1977)



A major political scandal followed the 1972 break-in at Democratic headquarters in the Watergate Office Complex in Washington, DC. The insert shows President Nixon at right and from left to right his aides H.R. Haldeman, Dwight Chapin, and John Ehrlichman. The main scandal involved attempts to cover up what happened through perjury and obstruction of justice.

Crimes Against the Justice System

Though the bribe be small, yet the fault is great.
– Edward Coke (1552-1634), English judge, politician, and legal scholar, *Third Institute*

The criminal justice system trusts police officers, attorneys, judges, jurors, witnesses, and other officials to act honestly and without improper interference from others. It has laws to punish those who act to betray that trust.

Contempt of Court

Courts have long had the power to cite people for contempt when they show disrespect, disrupt the courtroom, or fail to follow a court order. Contempt can be civil or criminal.

Civil contempt normally involves court orders. The court may, for example, order a party to pay alimony or to turn over evidence. If the party refuses, the court may hold the person in contempt. This may mean the court will fine the person for each day the person fails to comply. Or the court may jail the person until the person complies with the order. The purpose of civil contempt is not to punish the person but to get the person to follow the court order.

When people are jailed for civil contempt, they usually quickly agree to comply with the

court order, but not always. In 1992, a divorce court in Pennsylvania ordered H. Beatty Chadwick to turn over \$2.5 million. He refused and fled. When he was caught in 1995, he was jailed for civil contempt. He could have gotten out of jail by turning over the money, but he refused to do so. In 2002, he asked a federal appeals court to order his release. In *Chadwick v. Janecka*, the court ruled that his detention did not violate the U.S. Constitution:

Because the state courts have repeatedly found that Mr. Chadwick has the present ability to comply with the July 1994 state court order, we cannot disturb the state courts' decision that there is no federal constitutional bar to Mr. Chadwick's indefinite confinement for civil contempt so long as he retains the ability to comply with the order requiring him to pay over the money at issue.

Chadwick was not freed until 2009, when a Pennsylvania court ruled that holding him in jail any longer would not serve any purpose.

Unlike civil contempt, criminal contempt is a crime, and its purpose is to punish those who disrupt or attack the integrity of the courts. The U.S. Code declares that federal courts have the “power to punish by fine or imprisonment, or both” the following:

- (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
- (2) Misbehavior of any of its officers in their official transactions;
- (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

States also have laws against criminal contempt. For example, article 215 of the New York Penal Code goes on for more than a page listing acts that amount to criminal contempt of court. Among them are “disorderly, contemptuous, or insolent behavior,” “refusal to be sworn as a witness,” refusing to answer questions, and “disobedience or resistance to the lawful process.”

Probably the most famous cases of criminal contempt occurred at the 1969–70 “Chicago Seven” trial. At the height of the Vietnam War, rioting had broken out on the streets of Chicago during the Democratic National Convention of 1968. The seven (initially eight) defendants were charged with conspiracy and intent to start a riot. During the federal trial, the defendants engaged in acts of silliness (e.g., blowing kisses to the jury, wearing judicial robes to court), disrespect (e.g., not standing when the judge entered), and outright hostility (e.g., yelling insults at the judge). While the jury was deliberating, the judge found the defendants and their two lawyers guilty of 159 counts of criminal contempt and sentenced them to years in prison. On appeal, the contempt convictions were reversed. The appeals court agreed that a judge had the power to punish a person on the spot for criminal contempt committed in the judge’s presence. But the court held that because these sentences were longer than six months, the defendants deserved a jury trial on the contempt charges.

Perjury

Another crime important to the criminal justice system is perjury. Imagine Peter is on trial for robbing a liquor store. Peter’s wife, Judith, takes the stand and tells the jury that on the night of the robbery, Peter was home watching a movie with her. Judith is lying. Peter was not at home that evening, but believing that Peter would never commit robbery, she wants to be Peter’s alibi to prevent a conviction.

By lying under oath, Judith has committed perjury. All states and the federal government have laws against perjury. Under the U.S. Code,

perjury occurs when a person takes an oath in cases that “a law of the United States authorizes an oath to be administered” and willfully makes statements that he believes or knows to be untrue.

The U.S. Supreme Court in the 1973 case of *Bronston v. U.S.* addressed the question of whether misleading, evasive, or unresponsive testimony can amount to perjury if the statements themselves are factually true. Samuel Bronston, the owner of a movie production company, was testifying in his company’s bankruptcy case. He was asked these questions:

Q. Do you have any bank accounts in Swiss banks, Mr. Bronston?

A. No, sir.

Q. Have you ever?

A. The company had an account there for about six months, in Zurich.

The issue surrounded his answer to the second question. The answer was true, but it failed to fully answer the question. It was later discovered that Bronston had maintained a large personal Swiss account, which was closed before he testified. Prosecutors believed that Bronston’s answer to the second question, though factually true, was intentionally misleading. Bronston was tried and convicted of perjury.

A unanimous Supreme Court reversed Bronston’s perjury conviction. The court held that the perjury statute did not cover evasive truthful answers. When a witness evades answering, the lawyer should ask specific questions. The perjury statute cannot be invoked simply because a wily witness succeeds in derailing the questioner — so long as the witness speaks the literal truth. The burden is on the questioner to pin the witness down to the specific object of the questioner’s inquiry. If a witness evades, it is the lawyer’s responsibility to recognize the evasion and to bring the witness back to the mark, to flush out the whole truth with the tools of adversary examination.

A related crime is the **subornation of perjury**. Returning to our example of Peter and Judith, imagine that Peter had asked Judith to lie. By persuading Judith to commit perjury, Peter has committed subornation of perjury. Under the U.S. Code, a person can be convicted of suborning perjury if he persuades another

FAMOUS PERJURY CASES

1950: Alger Hiss. This State Department official was tried and convicted of perjury for statements he made under oath to the House Un-American Activities Committee, which was investigating allegations of espionage.

1975: Watergate Scandal. During the 1972 presidential election, police caught burglars connected to the Committee to Re-Elect President Nixon trying to enter the Democratic National Committee's headquarters. An investigation ensued, and a number of high-ranking members of the Nixon administration were convicted of trying to obstruct the investigation. Among those convicted of perjury were former Attorney General **John Mitchell**, Assistant to the President **John Ehrlichman**, and several others.

1977: Richard Helms. As director of the CIA from 1966 to 1973, he honored a request from President Nixon to support a military coup against Chilean President Salvador Allende. During the public hearings before Congress, he denied the CIA's involvement in the covert operations. He was convicted of perjury.

1987: Michael Deaver. President Reagan's former deputy chief of staff, Deaver was convicted of perjury for statements he made under oath to Congress and to a federal grand jury investigating his lobbying with the administration.

2002: Chris Webber. This NBA player was charged with lying to a grand jury about receiving money from a University of Michigan basketball program booster. Webber pleaded guilty to one count of criminal contempt for lying.

2005: Lil' Kim. The rapper was convicted of three counts of conspiracy and one count of perjury for lying to a federal grand jury about her friends' involvement in a 2001 shooting outside a radio station in New York City.

2007: Lewis Libby. A former adviser to Vice President Dick Cheney, Libby was convicted of two counts of perjury, one count of obstruction of justice in a grand jury investigation, and one count of making a false statement to federal investigators for his involvement in leaking the identity of a CIA operative.

2011–2012: Major League Baseball Steroid Scandal. Two star players were charged with perjury in the recent scandal over the use of steroids. **Barry Bonds** was charged for his testimony before a federal grand jury. The jury deadlocked on the perjury charge, but convicted him of obstruction of justice. **Roger Clemens** faced six felony counts involving perjury, false statements, and obstruction for testimony he made before Congress. A mistrial was declared in his first trial, but a jury acquitted him of all charges when he was retried.

person to perjure herself and she actually commits perjury.

In 1934, Congress passed the False Statements Act, which created a new perjury-like federal crime. As amended in Title 18, § 1001 of the U.S. Code, the act currently makes it a crime to lie to the FBI and certain representatives of other government agencies even if the person making the statement did not take an oath.

Perjury laws and the False Statements Act require that the falsehood be "material." A statement is material if it has any tendency to influence or sway the outcome of a case. Thus someone lying about his age would not be material unless the person's age was important to the case.

Witness Tampering

Imagine that Kendall, an eyewitness to a murder, is set to testify against the alleged murderer. Since cooperating with the investigator, Kendall has been receiving anonymous phone calls and letters, threatening her if she testifies.

The anonymous caller has committed witness tampering, which is against federal and state law. For example, the U.S. Code outlaws, among other things, using physical force or the threat of physical force to get a witness not to testify.

In a 2009 federal case, Robert Simels, a prominent defense attorney, was convicted of witness tampering. Simels was recorded telling a government informant that he wanted to

“eliminate” or “neutralize” witnesses against his drug kingpin client (who was also convicted of witness tampering and drug charges). Simels was sentenced to 14 years in prison.

Jury Tampering

Imagine that Gary and Leon, attorneys for a defendant being tried for murder, stood outside the courtroom when the trial broke for lunch. Knowing that they were in the presence of jurors, Gary and Leon discussed evidence showing that their client was not at the crime scene on the morning of the murder. Have Gary and Leon done anything wrong?

All states and the federal government have laws against jury tampering. Similar to witness tampering, jury tampering can occur in various manners. The U.S. Code forbids anyone who “corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petite” jurors from carrying out their duties. It also outlaws any acts that are intended to “influence, obstruct, or impede, the due administration of justice,” such as influencing the outcome of a jury trial by deliberately disseminating information within the earshot of the jurors, (as in the case of Leon and Gary).

Obstruction of Justice

Black’s Law Dictionary defines obstruction of justice as any “interference with the orderly administration of law and justice.” This means that obstruction of justice can encompass many of the crimes we have already discussed. In fact, jury tampering and witness tampering are in the part of the U.S. Code titled “Obstruction of Justice.” This part of the code lists specific acts as obstruction of justice, such as stealing court records. Aside from these specific acts, this part of the U.S. Code also has what is known as an “omnibus clause.” This clause punishes anyone who “corruptly . . . influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice.” According to a federal court,

The omnibus clause was intended to ensure that criminals could not circumvent the law’s purpose by devising novel and creative schemes that would interfere with the administration of justice but would nonetheless fall outside the scope of . . . [the law’s] specific prohibitions. (*U.S. v. Tackett*, 1997)

To prove obstruction of justice under the omnibus clause, the government must establish that (1) a judicial proceeding is pending,

WITNESS PROTECTION PROGRAMS

An intimidated witness must make a difficult decision. The witness can refuse to testify and face contempt of court or even obstruction of justice charges. Or, the witness can choose to testify and risk being harmed or killed. The police can provide temporary protection, which is normally all that is necessary. Witness intimidation usually ends once the witness testifies. But in some cases, more permanent protection may be needed. A witness protection program can meet this need.

Set up by the Organized Crime Control Act of 1970, the federal witness protection program provides protection for witnesses of serious or organized crimes. Witnesses and their families are relocated, given new identities, and provided housing, medical care, basic living expenses, and employment training. The program allows witnesses to testify and be safe. In exchange, however, the witnesses must give up their existing lives and move, cutting off contact with friends and loved ones. The U.S. Marshals Service runs the program.

Several states also offer their own witness protection programs. The California witness protection program, for example, reimburses local police departments for expenses incurred in protecting and relocating witnesses. It has spent more than \$10 million protecting witnesses in recent years.



(2) the defendant knows about the judicial proceeding, and (3) the defendant acted in such a way intending to corruptly influence or impede the proceeding. Notice that the person does not have to succeed in influencing the case.

People have been convicted under the omnibus clause for hiding witnesses and altering, destroying, or hiding evidence. More controversial have been convictions for evasive testimony. In 2011, baseball player Barry Bonds was tried for perjury and giving evasive testimony to a grand jury investigating steroid use. A jury could not agree on the perjury charges, but did convict him of obstruction of justice under the omnibus clause for his evasive testimony. Below is Bond's evasive testimony. It is an answer to a question about his trainer, Greg Anderson.

- Q. Did Greg ever give you anything that required a syringe to inject yourself with?
- A. I've only had one doctor touch me. And that's my only personal doctor. Greg, like I said, we don't get into each others' personal lives. We're friends, but I don't — we don't sit around and talk baseball, because he knows I don't want — don't come to my house talking baseball. If you want to come to my house and talk about fishing, some other stuff, we'll be good friends. You come around talking about baseball, you go on. I don't talk about his business. You know what I mean?

Bribery

A final crime important in protecting the criminal justice system is bribery. According to Black's Law Dictionary, bribery occurs when a person gives something of value, such as gifts or money, to public officials with the intention of influencing such officials. The crime includes those offering the bribe as well as those receiving it. In the criminal justice system, bribery cases can involve judges, jurors, witnesses, police, lawyers, and others.

Below is a sampling of recent bribery cases:

- In March 2011, a Texas judge pleaded guilty in federal court to receiving \$257,300 in bribes to secure favorable rulings. One bribe kept a child molester on the streets.
- In separate cases in 2011, three Memphis, Tennessee, police officers pleaded guilty in federal court to receiving thousands of dollars in bribes from nightclub owners to warn them of undercover investigations.
- In April 2010 in Colorado, a juror returned to his seat in the jury box and found a note that said, "Please don't find me guilty. I will pay \$5,000. I am very frightened. Please don't give this to anyone." The defendant disappeared, and a warrant for her arrest has been issued for attempting to bribe a juror.

To establish a bribery case, the government must prove that the person offering the bribe intended to influence an official action. The government does not have to prove that the official accepted the bribe. (In some states, if the bribe is not accepted, then the person is only guilty of attempted bribery.) In the case of the person receiving the bribe, the government must show that person took it with the "corrupt intent" of it influencing the person's public duty.

States have enacted similar law against bribery. A few states have separate laws for those offering the bribe and those receiving the bribe.

FOR DISCUSSION

1. Courts often say that a person held in civil contempt "has the keys to the cell." What does this mean? Do you agree with the federal court's decision in *Chadwick v. Janicka*? Explain. What is the difference between civil and criminal contempt? Which do you think is the better remedy?
2. What is obstruction of justice? Do you think Barry Bonds should have been convicted of obstruction of justice for the statement he made? Explain.
3. What are perjury and subornation of perjury? Do you agree with the Supreme Court's decision in *Bronston v. U.S.*? Explain. Do you think lying to an FBI agent should be a crime?
4. If you witnessed a violent gang crime and were called to testify, what fears would you have? Would you accept an offer to go into the witness protection program? Explain.
5. What is the purpose of all the laws discussed in this article? Which of these laws do you think is the most important in upholding this purpose?

CLASS ACTIVITY

Section 1001

The federal crime of lying to federal officials is the newest and most controversial of the crimes against the justice system. Unlike perjury, this crime does not require that the person made the statement under oath. Below is the statute.

18 U.S. Code § 1001. Statements or entries generally

(a) . . . [W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully — . . . (2) makes any materially false, fictitious, or fraudulent statement or representation; . . . shall be fined under this title, imprisoned not more than 5 years . . . , or both.

In this activity, students role play appeals courts and decide some actual cases dealing with this statute.

1. Divide into small groups.
2. Each group should:
 - a. Read and discuss each of the three cases, below.
 - b. Decide whether each defendant is guilty under the statute.
 - c. Be prepared to report its decisions and reasons for them to the class.
3. Ask the groups to report their decisions. Hold a discussion on each case.

Brogan. Brogan was an officer in the union representing the employees of JRD Management Corporation. Investigating Brogan for taking bribes, FBI agents knocked on his door and asked him if he had ever accepted cash or gifts from the company. Brogan lied and denied doing so. Brogan was later convicted of bribery and of violating § 1001 by lying to the agents. On appeal, Brogan argued that Congress did not intend § 1001 to apply to a simple denial of guilt. (*Brogan v. U.S.*, 1998)

Turner. Turner directed the Division of Physical Services in Illinois from 1999 to 2005. During that time, Turner actively covered up that three of his employees were falsifying their time cards and getting paid for time that they didn't work. Eventually, the FBI investigated and persuaded one employee to turn over recorded conversations and other evidence. Acting on this evidence, FBI agents asked Turner if he had been covering for these employees, Turner denied any coverup, and even after recorded conversations were played for him, he still denied the allegations. Turner was convicted of embezzlement and violating 18 U.S.C. § 1001. On appeal, Turner argued that because the FBI already knew that he participated, his denial was not material, as it could not persuade the agents conducting the investigation, and therefore he was not guilty of violating § 1001. (*U.S. v. Turner*, 2008)

Yermian. Working for a defense contractor, Yermian needed access to classified information to do a particular job for the contractor. He was required to fill out a security questionnaire provided by the Department of Defense to obtain a security clearance. In response to a question about whether he had ever been charged with any crime, Yermian did not mention that he had been convicted of mail fraud. He was charged with violating § 1001. At trial, Yermian argued that he thought the questionnaire was going to his employer, not the federal government. The trial court ruled it was irrelevant whether he knew it was going to the federal government. Yermian appealed, claiming § 1001 required such knowledge. (*U.S. v. Yermian*, 1984)

Hate Crimes

In our culture, cross burning has almost invariably meant lawlessness and understandably instills in its victims well-grounded fear of physical violence.

– Clarence Thomas, U.S. Supreme Court justice, dissenting in *Virginia v. Black* (2003)

- In 2010, two young men in Pennsylvania were convicted of beating an illegal immigrant to death. While beating him, they repeatedly yelled at him, “This is America. Go back to Mexico.”
- In 2009, a white supremacist and Holocaust denier went to the U.S. Holocaust Memorial Museum in Washington, D.C., and opened fire with a rifle, killing a security guard.
- On Election Night 2008, four men in New York City, angry at the election of Barack Obama as president, went on a rampage against people of color. They beat a teenage Muslim with a pipe and bat, assaulted a mentally disabled man, and ran down with their car a white man who they mistakenly believed was black.

Each of these brutal crimes had one thing in common: They were motivated by hate. These incidents and others around the country have drawn increased attention to the problem of hate crimes.

Currently the federal government and 45 states have hate-crime laws. Some of these laws define a hate crime as any crime committed against a person or a person’s property motivated because of the person’s race, religion, nationality, or ethnicity. Others also prosecute

crimes motivated by bias against gender, sexual orientation, and disability as hate crimes.

In 2010, according to the FBI’s Uniform Crime Reports, almost 8,000 hate crimes were reported around the United States. About half were motivated by racial bias. Prejudice against religion, sexual orientation, and ethnicity or nationality accounted for about 1,000 incidents apiece. Crimes against persons, such as assault or threats and intimidation, made up about 60 percent of the reported offenses. Most of the remaining incidents were property crimes, particularly vandalism.

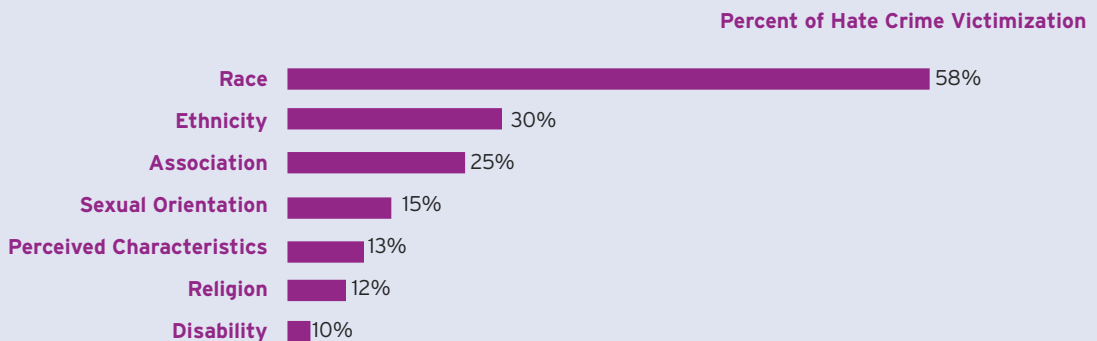
It is difficult to accurately compare one year with another or to study trends in hate crimes. The federal government has only been collecting statistics on these crimes since 1991. Some places do not report hate crimes as a separate type of crime, but each year more agencies have started reporting them. From 1995 to 2008, hate-crime reports increased substantially. In 2009, reports dropped slightly and remained about the same in 2010. A lively debate exists over the trend in hate crimes.

R.A.V. v. City of St. Paul (1992)

Some critics of hate-crime legislation argue that these laws violate the First Amendment’s protection of free speech. This amendment gives every American the right to express opinions or hold ideas even if they are racist or bigoted. On several occasions, the U.S. Supreme Court has been asked to determine whether hate-crime laws violate the Constitution.

In 1989, St. Paul, Minnesota, passed a city ordinance making it a crime to place on public or private land a hate symbol, such as a burning cross or Nazi swastika. About a year later,

Victim’s Account of Suspected Hate Crime Motivation, 2003-2009



Notes: Detail does not sum to 100% because victims may have reported more than one type of bias motivating the hate crime.

Source: “Hate Crime, 2003-2009,” Bureau of Justice Statistics (2011)

police arrested a group of white juveniles for a series of cross burnings. In one instance, the youths taped chair legs together into a crude cross and set it ablaze inside the fenced yard of a black family.

In an appeal that reached the U.S. Supreme Court, attorneys for the juvenile defendants argued that the St. Paul law violated the First Amendment. The city responded that by prohibiting such acts as cross burnings, the ordinance served “a compelling governmental interest” to protect the community against hate-motivated threats.

In June 1992, a unanimous Supreme Court agreed with the juvenile defendants. Writing the opinion for the court, Justice Antonin Scalia stated that although government may outlaw activities that present a danger to the community, it may not outlaw them simply because they express ideas that most people or the government find despicable.

Scalia also pointed out that other laws existed to control and punish such acts as cross burnings. In this case, the city could have prosecuted the juvenile offenders under laws against trespassing, arson, vandalism, and terrorism. (*R.A.V. v. City of St. Paul*)

Virginia v. Black (2003)

In 2003, the Supreme Court decided a case involving a Virginia law against cross burning. The law made it a felony “for any person . . . , with the intent of intimidating any person or group . . . , to burn . . . a cross on the property of another, a highway or other public place.” It further stated: “Any such burning . . . shall be prima facie evidence of an intent to intimidate a person or group.” (This meant that if the prosecution proved the defendant burned a cross, the prosecution had shown that the defendant intended to intimidate a person or group. The defense would have to bring evidence proving otherwise.)

The court considered together the cases of three defendants convicted under the Virginia law. One defendant was Barry Black. Leading a Ku Klux Klan rally of about 30 people, Black burned a cross. The rally was on private property, was held with the permission of the landowner, and was relatively isolated. It took place about 300 to 350 yards from a highway.

The other two defendants were Richard Elliott and Jonathan O’Mara. They had driven a truck onto the property of an African-American

family, put up a cross about 20 feet from the house, and set it on fire.

The Supreme Court noted that the Virginia law was different from the St. Paul ordinance in *R.A.V.* The latter made it a crime to put a hate symbol on public or private land. These symbols are protected by the First Amendment. The Virginia law forbid cross burning *with the intent to intimidate people*.

The court noted that the First Amendment does not protect all speech. For example, it does not protect “true threats.” The court explained that:

“True threats” encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. . . . Intimidation . . . is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.

The court pointed out that burning a cross can “convey a message of intimidation . . . And when a cross burning is used to intimidate, few if any messages are more powerful.” The First Amendment does not protect threats and intimidation.

But the court also noted that cross burnings are not always intended to intimidate someone. The cross burning may simply convey a message of hate. This message, though despicable, is protected by the First Amendment.

The court ruled that the law must distinguish between cross burnings that are meant as threats and those that are not. It therefore struck down as unconstitutional the part of the Virginia law that made cross burnings alone evidence of intimidation. The court said that the prosecution must prove that the cross burning was intended to intimidate someone.

The court therefore overturned the conviction of Black. His rally was not meant to intimidate anyone, but to instill a message of hate in his audience. The First Amendment protects his right to spread this message.

But the court returned the cases of Elliott and O’Mara to the trial court. They could be retried and convicted under the Virginia law if the prosecution proved they intended to intimidate the family.



President Obama meets with relatives of murdered hate-crimes victims after the passage of the 2009 Hate Crimes Prevention Act.

Wisconsin v. Mitchell (1993)

Other hate-crime laws are different. Instead of creating special hate crimes, these statutes add extra penalties for any crime committed out of hate. For example, Wisconsin’s hate-crime statute increases the maximum penalty for an offense whenever a criminal “intentionally selects the person against whom the crime . . . is committed . . . because of the race, religion, color, disability, sexual orientation, national origin or ancestry of that person. . . .”

On October 7, 1989, Todd Mitchell, 19, and a group of other young black men violated the law in Kenosha, Wisconsin. After seeing the movie *Mississippi Burning*, which concerns Ku Klux Klan terrorism against blacks in the South during the 1960s, they decided to attack a 14-year-old white boy, Gregory Reddick. Mitchell asked his friends, “Do you feel hyped up to move on some white people?” He then pointed to Reddick and said, “There goes a white boy. Go get him!”

About 10 members of the group, but not Mitchell himself, ran across the street, beat up Reddick, and stole his tennis shoes. Severely beaten, Reddick remained in a coma for four days and suffered permanent brain damage.

As the instigator of the attack, Mitchell was tried and convicted of aggravated battery, which normally carries a penalty of two years in prison. But the jury found that Mitchell had

selected his victim because of his race. Consequently, the judge applied Wisconsin’s hate-crime enhancement law and added two more years to Mitchell’s sentence.

Mitchell appealed his sentence, claiming that the state’s enhancement law violated the First and 14th amendments. Since the enhancement law is based on a criminal’s motives, Mitchell argued that motives are based on thoughts and beliefs, which are protected by the First Amendment. Mitchell further argued that the law violates the 14th Amendment’s guarantee of equal protection because it treats criminals who are motivated by prejudice differently from criminals not so motivated, even though their crimes are identical.

Attorneys for the state argued that the law in this case differed from the one in *R.A.V. v. City of St. Paul*. This law did not prohibit specific speech, symbols, or beliefs. It only applied to criminal acts (i.e., selecting a victim), which are not protected by the First Amendment. They pointed out that during sentencing, judges commonly consider many things, including a criminal’s motives. Further, they claimed that the state had a “compelling governmental interest” in eliminating prejudiced criminal behavior.

In 1993, the U.S. Supreme Court upheld the Wisconsin hate-crime penalty-enhancement law. Writing for a unanimous court,

Chief Justice William Rehnquist ruled that a criminal's prejudiced motives may be used in sentencing, although "a defendant's abstract beliefs, however obnoxious to most people, may not be taken into consideration by a sentencing judge." The chief justice also stated that "the statute in this case is aimed at conduct unprotected by the First Amendment." (*Wisconsin v. Mitchell*)

In 2000, the Supreme Court decided another case that limited how enhancement penalties could be used. The court struck down a New Jersey hate-crime law that allowed a trial judge to extend a maximum prison term if the judge found by a *preponderance of the evidence* that the crime was a hate crime. The Supreme Court ruled that the Sixth Amendment required a jury to make such a determination *beyond a reasonable doubt*. (*Apprendi v. New Jersey*)

As the cases show, the line between punishing hate and protecting speech and free thought can be difficult to draw. On one side, our Constitution seeks to assure tolerance and equal protection for all citizens no matter what their race, ethnicity, religion, or gender. On the other hand, our Constitution contains protections for individual beliefs, no matter how distasteful they might be. As the U.S. Supreme Court has determined, the state may not make the expression of hate a criminal matter, but it can punish criminal acts motivated by hate more harshly.

The Debate Over Hate Crimes

Now that the Supreme Court has set guidelines for hate-crime legislation, states and the federal government are considering adopting more such laws. In 1968, Congress passed the first federal hate-crimes law, outlawing violence based on the victim's race, color, religion or national origin. In 2009, it expanded the law to include gender, sexual orientation, and disability.

Supporters see these laws as extremely important in our diverse society. They believe hate crimes deeply hurt all levels of the community — individuals, families, groups, and society at large. Hate crimes intentionally send a message that minorities are unwelcome and unsafe. Supporters argue that hate-crime laws will help prevent much violence and will convey our society's intolerance for these crimes.

Opponents view hate-crime legislation as well-meaning but unnecessary and even

counterproductive. They argue that anyone who commits a serious crime is already punishable under current state laws. These laws protect everyone equally. They see no reason to pass laws that set up special classes of victims. Further, they contend that hate-crime laws will primarily affect those who commit lesser crimes by sending more of them to prison. They believe that sending someone to prison is likely to make them more racist, because many prisons harbor racist gangs. Thus, they say, the law may actually increase hate crimes.

In addition, opponents see no need for federal intervention into an area of law that states have traditionally handled. In recent years, the federal government has enacted much crime legislation. Opposition has grown to this federalization of criminal law. And the Supreme Court recently has struck down a number of federal crime laws.

The Constitution limits the powers of Congress. Congress can only enact laws based on those powers given to it in the Constitution. Federal crime laws are usually based on Congress' power to regulate interstate commerce. For most of the 20th century, the Supreme Court liberally interpreted what constituted "interstate commerce," allowing laws to be passed regulating the environment, the work place, and civil rights.

In recent years, however, a divided court has refused to go along with this interpretation. The justices have started overturning federal laws based on the commerce clause if they find the law is only remotely related to interstate commerce. Thus the court has struck down the Gun-Free School Zones Act (*U.S. v. Lopez*, 1995) and part of the Violence Against Women Act (*U.S. v. Morrison*, 2000). These opinions leave doubt as to whether the court will find federal hate-crime legislation constitutional. In the words of the court majority opinion in *Morrison*, the "Founders denied the National government and reposed in the States . . . the suppression of violent crime and vindication of its victims."

It should be noted that following the *Lopez* decision, Congress and the president re-enacted the Gun-Free Schools Act. To get around the Supreme Court's objection, it made the law apply only to guns that have moved in interstate commerce (which practically all guns have).

FOR DISCUSSION

1. What are hate crimes? Why is it difficult to determine if they are increasing or decreasing? How serious do you think the problem of hate crimes is in the United States? Explain.
2. The article mentions three different hate-crime laws ruled on by the Supreme Court. What are these laws? How are they different? How did the Supreme Court rule on each? Do you agree with the decisions? Why or why not?
3. Do you think the federal government should have hate-crime laws? Explain.

CLASS ACTIVITY

Hate-Crime Bill

In this activity, students role play a legislative session on a proposed hate-crime law.

1. Imagine that the following law is being proposed in your state:
Anyone who intentionally selected the victim of the crime because of the victim's race, gender, religion, color, disability, sexual orientation, national origin, or ancestry shall have his or her sentence increased by 30 percent over the normal sentence.
2. Divide into groups of three. Every student in each triad should have one of these three roles: state legislator, supporter of the bill, opponent of the bill.
3. The legislators, supporters, and opponents should meet separately to prepare for the role play. The supporters and opponents should think up their best arguments and the legislators should think of questions to ask each side.
4. Regroup into triads and begin the role play. The legislator should let the supporter speak first and then have the opponent speak. The legislator should ask questions of both. After both sides present, have the legislators move to the front of the room, discuss the proposed law, and vote. Each legislator should individually state his or her opinion on the bill.
5. Debrief by asking what were the strongest arguments on each side.

Cybercrime

There has . . . been [a] noticeable increase in account takeovers. This can be directly related to the continued rise of the Zeus Trojan and other malware variants created to capture login credentials to financial websites. These account takeovers result in fraudulent transfers from the victim's account to an account under the control of the perpetrator.

– Verizon's 2011 Data Breach Investigations Report

The Internet keeps growing. More people from around the world go online every day. People send e-mail, chat, use social media, play games, and conduct business with people on the other side of the world. People also commit crimes.

In many ways, the Internet provides a perfect place to commit a crime. Criminals can remain anonymous and prey on victims far away. Police have no crime scene to search for clues and they may have to track criminals halfway around the world.

If police do manage to find the criminal, problems may arise. Although many traditional crimes like fraud and theft occur on the Internet, new crimes, exclusive to the Internet, also take place. The United States has developed laws against these crimes, but many places haven't.

An international treaty against cybercrime exists. In 2001, the Council of Europe, a group of European nations, created a Convention on Cybercrime. The convention does not make specific acts against international law. Instead, it spells out types of computer misconduct. Countries that sign and ratify the treaty agree to create national laws criminalizing this misconduct and to investigate these crimes. The council has invited all nations in the world to join the treaty. So far more than 30 European nations have signed and ratified it. The United States is the only country outside of Europe that has ratified it, and its laws criminalize the misconduct suggested by the treaty.

Many nations have not yet signed the treaty and have not enacted criminal penalties for cybercrimes. Thus a person could work at a computer in a faraway place, hurt many people around the world, and that country may not even outlaw what the person did.

Hacking

Hacking is electronically breaking into or disrupting computer systems. Once inside a system, hackers do different things.

Some hackers steal. The thefts can involve almost anything — from money to credit card numbers to intellectual property like books, music, art, and computer code. Five hackers in Ukraine infected the computers of companies, churches, cities, and individuals with malware called Zeus. The malware captured bank account numbers, passwords, and other bank login information. More than \$70 million was transferred from accounts to about 3,000 “mules,” people in the United States recruited to send the funds to the hackers. In 2010, the FBI announced that Ukrainian authorities had arrested the hackers and the FBI had so far arrested 39 of the mules.

In 2004, hackers broke into many computer networks of corporations and the U.S. government. The hackers got into systems that were supposed to be highly secure and got “root” or “super-user” access. That meant they controlled the system and could do anything they wanted. One corporation, Cisco Systems, reported that a hacker stole programming code for software that controls traffic on the Internet. The hacker posted the code on the Internet so that other hackers could find vulnerabilities in the code. The only suspect is from Sweden, was 16 years old when the attack took place, and Swedish authorities convicted him of other computer crimes.

Malware can do many harmful things. Some programs take over large numbers of computers and send out spam from them. “Click-jacking” malware misdirects Internet users to phony sites. “Scareware” announces that the computer is infected with a virus, but by making a payment (using a credit card), the virus can be removed.

In 2011 in England, three teenagers and a 21-year old were convicted and sentenced to serve up to five years in prison each for operating the Ghostmarket web site. The site sold malware, Social Security numbers, and login information and passwords to PayPal and bank accounts. It was believed to be the largest English-language criminal hacker site on the Internet.

Hackers often vandalize and destroy. Some spread computer viruses, worms, and Trojan horses, which can erase files on computers. For



Companies spend billions of dollars on computer security each year.

example, the “IloveYou” virus appeared on people’s computer’s as an e-mail attachment from someone they knew. When a person opened the attachment, the virus erased files on the person’s computer and sent the “IloveYou” attachment to everyone in the person’s e-mail address book. In this manner, the virus quickly spread to computers around the world, causing millions of dollars in damage. Other hackers vandalize by breaking into web sites and leaving “graffiti.” For example, hackers placed hardcore, violent pornographic images on many people’s Facebook pages.

Still others try to shut down web sites. Using so-called “denial of service” attacks, which overload a site’s computers, hackers have managed to shut down such popular sites as Twitter, Yahoo, e-Bay, and E*Trade. An even more dangerous threat would be an attack that shuts down a power grid. This has not yet happened, but experts are worried about such acts of cyberterrorism.

Other hackers do nothing except enter the site and look around. Even this, however, is illegal. The federal government’s Computer Fraud and Abuse Act outlaws entering without authorization any computer system run by government, banks, or those involved in interstate commerce, such as those on the Internet. It also bans viruses and computer attacks. For a first of-

fense, an unauthorized person entering a computer system without intending to cause harm can get one year in prison. Those intentionally damaging computers or stealing information for commercial gain can get five years. Every state has similar laws.

Hackers fall into three categories — often called “white hats,” “black hats,” and “gray hats.” The white hats do nothing illegal. They are hired by companies to improve computer security. They try to infiltrate a company’s computer system and expose security lapses. “A white hat does it when asked, under contract, with a ‘get out of jail free’ card,” explained Charles Palmer, manager of network security and cryptography at IBM Research.

“We’ll do the job, evaluate it, and tell the customer what we’re doing.” On the other extreme are the black hats, who are clearly criminals. They steal, vandalize, and disrupt.

In the middle are the gray hats. These are the hackers of computer folklore. They follow a so-called “hacker ethic.” This ethic bans stealing and vandalism. But it allows accessing computers without permission, which is illegal. They also push the borders of illegality by publishing on the Internet hacking programs and security holes they find in computer systems. In fact, the denial of service attacks that shut down Yahoo and other sites used a program called Tribal Flood created by a gray-hat computer hacker in Germany nicknamed Mixter.

10 TIPS FOR SAFEGUARDING YOUR DATA

Hackers often steal data from individuals’ computers. Hackers exploit vulnerabilities in computers and install malware, capable of tracking keystrokes and sending account numbers back to them. Below are steps that experts recommend you take to keep your data safe.

1. **Use security software and a firewall.** Keep them up to date and make sure you have real-time protection against viruses and spyware. In case your smart phone is stolen, make sure you have installed apps that can let you remotely wipe all data, lock it, and track where it is.
2. **Update all your software.** Hackers exploit security holes in all types of software, which updates fix.
3. **Use strong passwords.** Avoid using actual words like “password” and sequential numbers such as “123456.” Use random upper and lowercase letters, numbers, characters, and punctuation marks. The longer, the better (at least 10 characters). A simple way to create memorable passwords is to use the first letter of each word in a song or poem you know. Don’t use the same password everywhere.
4. **Check your credit reports.** Each year you can get a free report from one of the three credit reporting agencies. Every four months, visit www.AnnualCreditReport.com and download a report.
5. **Beware of phony links.** This is particularly a problem with e-mail and with shortened URLs used in Twitter and Facebook. Check these links using anti-virus software or an on-line link scanner.
6. **Don’t reveal private information.** Don’t put it on Facebook. Don’t respond to e-mails asking (or that lead you to web sites asking) for your Social Security number, account numbers, PIN numbers, passwords, birthdate, mother’s maiden name, or other personal information. Keep this information secure.
7. **Avoid public WiFi.** Hackers can see everything you do, and you are in danger of getting malware installed on your computer. If you have WiFi at home, select the highest security option and change the default password to a new, strong password.
8. **Only log on to secure pages.** They are marked **https** or **shttps**, not http. Your browser may also show a lock symbol to indicate high security.
9. **Keep paper documents private.** Don’t let identity thieves get their hands on your bills, account statements, and credit card solicitations. Shred what you throw away. Keep the rest locked away.
10. **Monitor your accounts.** Check your accounts online. When bills and statements arrive, look at them right away.

Mixer and other gray hats believe they are performing a public service by posting such programs on the Internet. They say that they are exposing security flaws and giving everyone an equal chance to come up with countermeasures. Mixer argued: "It would be unfair to provide them to just a small circle of security experts who would possibly only consult some few elected companies. The only fair way is getting the information out to everyone, because generally, everyone on the Net can be affected by security issues." He criticized those who used his program to shut down the sites, calling the attacks "stupid and pointless." But he also thought the attacks were "an inevitable price to pay to be able to develop countermeasures and fixes."

Many disagree that gray hats are performing a public service by breaking into computer systems or posting hacking programs, like Mixer's Tribal Flood, on the Internet. John C. Dvorak of *PC Magazine* compares a web site to a business and the Internet to "a road leading to that business. My business unlocks the doors during the day and keeps them locked at night. If people break in at night, they are considered

burglars and are prosecuted as such. Breaking into computer systems is similar, and people are now prosecuted for breaking into them. In many states, you can also be prosecuted for owning burglary tools" (like lock picks). Dvorak compares posting hacking programs to designing and giving away a new lock pick that can open most door locks. Few, he says, would consider this a public service.

These are just a few examples of crime on the Internet. Other current concerns about the Internet include fraud, hate crimes, child pornography sites, and chat rooms in which adults lure underage children into sex. As the Internet grows, the list of crimes will also grow. The web may be a virtual world, but the crime on it is real.

FOR DISCUSSION

1. What do you think are the greatest dangers of cybercrime? Why?
2. Do you think that an international treaty on cybercrime is important? Explain.
3. What are the differences between white-, gray-, and black-hat hackers? Do you think that what gray-hat hackers do should be against the law? Explain.

CLASS ACTIVITY

Free Speech?

Some people think that the Internet should be a bastion of free speech and that anything should be allowed. Others agree that free speech is important, but say that it has limits. They point out that the U.S. Supreme Court has upheld some limits on freedom of speech. In this activity, students look at some examples of material on the Internet and decide whether they think it is free speech that should be allowed on the Internet.

1. Form small groups. Each group should:
 - a. Discuss each of the **Six Examples of Material on the Internet**.
 - b. Decide for each whether it should be protected as free speech.
 - c. Prepare to report its decisions and the reasons for them to the class.
2. Regroup as a class and have groups report back.
3. Debrief the discussion using the questions below.

Examples of Material on the Internet

1. Instructions for making a bomb
2. Racist remarks
3. Sexually explicit photographs
4. A threat to kill a person
5. The code for a highly destructive computer virus
6. Downloadable illegally made copies of a new movie

Debriefing Questions

1. Why is freedom of speech important?
2. Do you think some speech should not be protected by the First Amendment? Explain.

CHAPTER 2

DEFENSES

[T]he Constitution guarantees criminal defendants “a meaningful opportunity to present a complete defense.”

– Justice Sandra Day O’Connor, *Crane v. Kentucky* (1986), quoting *California v. Trombetta* (1984)

AN OVERVIEW OF DEFENSES | SELF-DEFENSE | THE INSANITY DEFENSE | ENTRAPMENT

An Overview of Defenses

An Oklahoma man, charged with armed robbery, elected to defend himself. He handled his case well until the store manager identified him as the robber, at which point the defendant leaped to his feet, accused the woman of lying, and exclaimed, “I should have blown your . . . head off.” He then paused, sat down, and muttered, “If I’d been the one that was there.”

– Rodney R. Jones, attorney, and Gerald F. Uelman, law professor, *Supreme Folly* (1990)

In our criminal justice system, persons accused of a crime are innocent until proven guilty beyond a reasonable doubt. In our system, defendants do *not* have to prove they are innocent.

During a trial, the criminal defendant and the defense lawyer do everything they can to prevent the prosecutor from proving guilt. Most defenses consist of raising reasonable doubt about the prosecution’s case. A defense attorney will cross-examine a prosecution witnesses. The attorney may bring out inconsistencies or contradictions in a prosecution witness’s story, raise doubts about a witness’s believability, or show that a witness’s identification of the defendant is not reliable. The prosecution must establish to a jury or judge every element of the crime beyond a reasonable doubt. If the defense can keep the prosecution from doing this, the defense wins.

The defense may call its own witnesses, including the defendant, to poke holes in the prosecution’s case. It may also call experts to testify, for example, that a bullet did not come from the defendant’s gun, the tire tracks were not from the defendant’s car, or the DNA did not belong to the defendant. The defense may present an **alibi** for the defendant, showing that the defendant was nowhere near the crime scene on the day in question.



The defense tries to raise reasonable doubt about the prosecution’s case. In some instances, it may put on an affirmative defense.

Defendants in our society also have further protections. Our criminal law recognizes some special legal defenses, known as **affirmative defenses**. If the defendant successfully establishes one of these defenses, it does not matter whether the prosecution can prove the elements of the crime or not. The defendant is not guilty. Affirmative defenses are usually grouped under two categories: justifications and excuses. Justification means that the act was not wrong: It was justified under the circumstances. An excuse defense argues that although the act was wrong, the defendant had a good excuse.



The legality of carrying pepper spray for self-defense varies from state to state.

Justification Defenses

Self-Defense. This is the most important justification defense. If Bob attacks Jose, Jose has the right to defend himself. This defense is explained in a separate article on page 40.

Necessity. If someone burns a patch of weeds on public land to stop a raging forest fire, that person may raise the defense of necessity against a charge of arson. The person has broken the law, but has done so to prevent a greater evil. The defense of necessity requires that the defendant (1) did not intentionally cause the circumstances surrounding the illegal act, (2) could not accomplish the same objective using a better (and legal) alternative, and (3) chose the lesser evil. Thus the defense would fail if the defendant had started the forest fire, or if he had a large tank of water available to stop the fire, or the forest fire was about to die out and his fire started a new forest fire.

Excuse Defenses

Duress. If a bank robber puts a gun to a friend's head and forces the friend to help him rob the bank, the friend may raise the defense of duress. To be successful in this defense, defendants must show that they (1) were under an immediate threat of serious bodily harm or death, (2) had a well-grounded belief that the threat would be

carried out, and (3) had no reasonable chance to escape or frustrate the threat.

This defense was raised in the trial of Patty Hearst, an heir to Hearst newspaper fortune. While a student at the University of California, Hearst in 1974 was kidnapped by a terrorist group, the Symbionese Liberation Army. According to Hearst, she was kept blindfolded in a closet for two months and was sexually and physically abused. After two months of torment, she was forced, she said, to join the group and take part in a bank robbery. She was captured in September 1975 along with other members of the group. Tried for bank robbery and felonious use of firearms, she raised the defense of duress. The prosecution, however, offered evidence that she had had access to loaded firearms and opportunities to escape. She was convicted and sentenced to seven years in prison. In 1979, President Jimmy Carter commuted her sentence, and she was released from prison.

Insanity. Bob is insane and has a delusion that he is swatting flies. In fact, he is attacking people on the street. At his trial for assault, he may raise the defense of not guilty by reason of insanity. Definitions of legal insanity vary, and the defense is highly controversial. In the most common definition, people are criminally insane if,

as a result of mental illness, they did not know what they were doing or that it was wrong. The insanity defense is discussed in a separate article on page 43.

Entrapment. If the police induce John to commit a crime he would not have committed otherwise, he may raise the defense of entrapment. This defense is explained in a separate article on page 45.

Ignorance of the law. The common law rule is that “ignorance of the law is no excuse.” This rule still applies to most crimes. For example, if a bank robber says that he did not know that robbing a bank was a crime, it would not matter. He would still be guilty. Everyone is supposed to know that robbing a bank is illegal. Society demands that people understand what is against the law.

The problem arises with laws that few people know about or understand. In modern times, the number of criminal laws has greatly increased, and the laws are more complex. Even so, the general rule has remained in place. But some decisions have backed away from strictly applying the rule.

In 1994, the U.S. Supreme Court decided *Ratzlaf v. U.S.* The case involved a man, Ratzlaf, who owed a gambling debt of \$160,000 to a Reno, Nevada, casino. When Ratzlaf came with \$100,000 in cash, the casino told him it had to report all cash transactions of \$10,000 and above to state and federal authorities. The casino also informed him that if he gave the casino a cashier’s check, it would not have to report it. The casino supplied him with a limousine and an employee to go to a bank. The

bank informed him that it had the same reporting requirements. So Ratzlaf had the limousine drive him from bank to bank so that he could deposit just under \$10,000 in each bank and withdraw the amount in cashier’s checks. He gave these checks to the casino. Ratzlaf was charged, convicted, and sentenced to prison for violating the Money Laundering Control Act of 1986. This act stated, in part, that “No person shall for the purpose of evading the reporting requirements . . . structure . . . any transaction with one or more domestic financial institutions.” The act punished those who “willfully” violated this provision.

Ratzlaf argued that he did not know what he had done was illegal. The trial court and appeals court said his ignorance was no excuse as long as he knew about the reporting requirements. The Supreme Court, however, ruled that to willfully violate the provision, Ratzlaf had to know that what he did was illegal. The court stated: “We do not dishonor the venerable principle that ignorance of the law generally is no defense to a criminal charge.” But the court went on to say that when Congress added the requirement of willfulness, it made ignorance of the law an excuse to that crime.

Mistake of fact. If Jay’s girlfriend at a party asks him to get her purse and Jay grabs the wrong purse, he could raise the defense of mistake of fact against a charge of theft. Jay had no intent to steal. But if Jay’s mistake was that he thought he was stealing Maria’s purse instead of Karen’s, Jay would not have a defense of mistake of fact. Jay intended to steal. He just got the wrong purse.

MISSISSIPPI STATUTE OF LIMITATIONS

Mississippi Code Section 99-1-5

The passage of time shall never bar prosecution against any person for the offenses of murder, manslaughter, aggravated assault, kidnapping, arson, burglary, forgery, counterfeiting, robbery, larceny, rape, embezzlement, obtaining money or property under false pretenses or by fraud, felonious abuse or battery of a child . . . , touching or handling a child for lustful purposes . . . , sexual battery of a child . . . , or exploitation of children A person shall not be prosecuted for conspiracy . . . or for felonious assistance program fraud . . . unless the prosecution for such offense be commenced within five (5) years A person shall not be prosecuted for any other offense not listed in this section unless the prosecution for such offense be commenced within two (2) years Nothing contained in this section shall bar any prosecution against any person who shall abscond or flee from justice, or shall absent himself from this state or out of the jurisdiction of the court, or so conduct himself that he cannot be found by the officers of the law, or that process cannot be served upon him.

Intoxication. A person may get intoxicated from drugs or alcohol and do something the person would not do if sober. The general rule is that intoxication is no excuse for a crime. If a person knowingly drinks alcohol or ingests drugs, that person has taken the risk of going out of control.

The exception is when the person unknowingly ingests drugs or alcohol. Involuntary intoxication is a defense. It applies to people who are forced to take an intoxicant, who are slipped the intoxicant without their knowing it, or who take prescribed medication without knowing of the risks.

Statute of Limitations Defense

Another affirmative defense is neither a justification nor excuse defense. The statute of limitations bars prosecution of criminal defendants if legal action starts too long after the commission of the crime. Legal action must be brought within a period that begins from the date of the criminal act, or defendants can raise this defense and bar the criminal proceedings against them.

The limitations period differs based on the crime and jurisdiction. Most misdemeanors have statutory periods of two or three years. More serious felonies, such as rape and robbery, may have longer statutory times of six to 10 years. Some jurisdictions do not have any statute of limitations for serious felonies. No jurisdiction has a statute of limitations for murder.

The reason for the defense is fairness. The passage of time may obscure evidence and turn eyewitness accounts into distant faded memories. Supporters of statutes of limitations argue that it would be unfair to charge a defendant with a crime based on old and stale evidence.

A couple of things can stop the statute of limitations from running out. If the defendant flees the jurisdiction, the statute does not run while the defendant is in hiding. If a charge is brought against the defendant within the statutory period, the statute is stopped.

DNA evidence has also affected the statute of limitations defense. Law regarding DNA evidence is still in its infancy, but because DNA

evidence does not fade over time, as eyewitness accounts do, it is viewed as reliable even many years after the crime. Under Title 18, Section 3297 of the U.S. Code, a defendant cannot raise the statute of limitations defense if he is identified by DNA testing. Instead the limitations period restarts from the date the test identifies the defendant.

Under California law, the statute of limitations stops running when an arrest warrant is issued that “names or describes the defendant with the same degree of particularity required for [a] complaint.” In the 2010 case of *California v. Robinson*, the California Supreme Court ruled that an arrest warrant that described the defendant solely by his DNA profile was sufficient to stop the statute of limitations.

FOR DISCUSSION

1. What are some ways that a defense attorney can try to establish reasonable doubt?
2. What is an affirmative defense? What are the main justification defenses? The main excuse defenses?
3. In these situations, do you think each of the following affirmative defenses would work? Should it work? Explain.
 - a. Brad is an accountant. He learns that the FBI is investigating a client for fraud. The client calls and orders him to shred his files. Brad does not know it is against the law to shred the documents. Charged with obstruction of justice, he makes the defense of ignorance of the law.
 - b. Emily has never had a drink of alcohol. Friends take her to a bar for her 21st birthday. She gets drunk and punches another woman. Charged with battery, she makes the defense of intoxication.
 - c. Ethan is a schizophrenic. With medication his disease is under control. One day he decides not to take the medication, and he becomes delusional and robs a bank. He does not know what he is doing and that it is wrong.
4. Do you think serious felonies should have a statute of limitations? Explain.

CLASS ACTIVITY

Which Defense Is Valid?

In this activity, students look at hypothetical situations and decide which defense might be raised in the situation.

1. Divide into pairs. Each pair should:
 - a. Read each of the hypothetical situations below.
 - b. Decide which of the defenses mentioned in the article best applies to each situation.
 - c. Discuss and decide whether you think the defense should work in that situation.
 - d. Be prepared to explain your decisions and the reasons for them.
2. Reconvene as a class and compare the findings from each group.
3. Debrief the activity using the debriefing questions, below.

Hypothetical Situations

- a. Ned is at a church social and drinks what he believes is non-alcoholic punch, but someone has spiked the punch with vodka. Ned gets drunk and walks home late at night singing loudly. He is arrested for disturbing the peace.
- b. Jack, a federal agent, knows that Sam, a terrorist, has planted a nuclear weapon somewhere in an American city. The bomb will detonate in one hour and kill thousands unless it is found and defused. Jack tortures Sam until he tells Jack where it is. The bomb is found and defused. Jack is arrested for assault and battery.
- c. Sylvia has been gambling for years. In five years, she won more than \$400,000 playing poker. She did not declare this money when filing her tax returns because she did not know she had to. She is charged with income tax evasion.
- d. Officer James, in plain clothes, approaches Keri on the street and offers to sell her a “hot” radio for a cheap price. Keri at first refuses, but the officer persuades her to buy it. He arrests Keri for receiving stolen property.
- e. Mark, who has been in and out of mental hospitals for years, hears a voice ordering him to kill Satan, who is disguised as his next door neighbor Phil. Mark kills Phil and is charged with murder.
- f. Fred goes next door to his neighbor and asks for half a cup of flour. The neighbor, a drug dealer, thinks Fred means he wants cocaine and gives him half a cup. When Fred leaves his neighbor’s house, he is stopped by a police officer and charged with possession of cocaine.
- g. Peter was walking down the street. Without warning, a man began hitting him with a rolled-up newspaper. Peter pulled out a gun and shot him. Peter is charged with assault with a deadly weapon.
- h. Nelson tells Lisa, a saxophone player, that he will “make sure she never plays the saxophone again” unless she shoplifts a portable digital audio player. She is caught and charged with shoplifting.

Debriefing Questions

1. Which of the affirmative defenses seems most reasonable? Why?
2. Do think any of them should be eliminated as defenses? Explain.

Self-Defense

It is difficult to the point of impossibility to imagine a right in any state to abolish self defense altogether, thereby leaving one a Hobson's choice of almost certain death through violent attack now or statutorily mandated death through trial and conviction of murder later.

– Judge Francis D. Murnaghan Jr., *Griffin v. Martin* (1986)

Imagine that you are alone in your apartment asleep at 3 a.m. You wake up and realize your bedroom window is sliding open inch by inch. A tall shadowy figure steps into the room. In terror, you pick up a lamp by your bed and hurl it. The lamp shatters against the man's head and he slumps to the floor.

Can you be charged with battery? Yes, it's possible, but it's not likely. Even if you were prosecuted for battery, you would have a strong claim of self-defense. This is the most important justification defense.

Defense of Self

Generally, you have a right to use whatever force is necessary to defend yourself from an unlawful attack. For a proper claim of self-defense, you must establish three things:

1. You reasonably believed that the force was required for your own protection — even if that belief turns out to be mistaken.
2. The threatened harm was about to happen and the attacker was willing and able to injure you. (The threat was an imminent threat.)
3. The force used in self-defense was reasonable — that is, no more than was necessary to prevent the victim from inflicting harm.

The law is much stricter about using *deadly* force in self-defense. Deadly force may only be used when you reasonably believe, based on the circumstances, two things:

1. The attacker was about to kill you or inflict great bodily harm.
2. The deadly force was the only way of preventing the harm.

The law of self-defense was first developed before police forces existed, when people were expected to provide for their own physical safety. Even so, people confronted with deadly force were expected to attempt to reach a safe location prior to defending themselves. They were obligated to “retreat to the

wall of the castle” or to some other point that prevented them from retreating further. A minority of jurisdictions still require a person to attempt to withdraw from a conflict, though even in these states, retreat is never required unless it can be made in complete safety. There is, further, a longstanding rule that people are never required to retreat when attacked in their own homes.

Defense of Others

Imagine that Max sees Peter hitting Sam. Can Max come to Peter's defense? In general, defending others is the same as defending yourself. But a few states say you only have the same right of defense as the person you are defending. So if Peter is defending himself from Sam's attack, Max would have no right to defend Sam. Sam was the aggressor and he therefore has no right to self-defense. In these states, Max could not claim self-defense either. The common law referred to this as the “alter ego” rule.

Most states, however, do not follow the “alter ego” rule. Max can claim self-defense if he has a reasonable (but mistaken) belief that Paul was under attack *and* the force he used was reasonable under the circumstances.

Defense of Property

Imagine that Max is not trying to defend a person. Instead, he is trying to stop Rob from stealing his bicycle. As long as Max reasonably believes that Rob is stealing his bike, he can use whatever force is necessary, up to deadly force. He cannot use deadly force unless Rob is threatening him with deadly force. In other words, he must be acting in self-defense.

Defense of Home

The rules about deadly force change when people are defending their home. A home is a sanctuary, a “castle.” An old common law rule was that people could use deadly force if they believed the force was necessary to prevent an imminent and unlawful entry into their home. So if a burglar was breaking into Jasmine's home, she could shoot him. She could also shoot a drunken neighbor who mistook her house for his house and tried to enter. She could even shoot the drunken neighbor if she knew who he was if she reasonably believed it was the only way to stop him from entering.

Most states do not follow the old rule. Most now allow people to use deadly force in



Most states limit when people can use deadly force on intruders.

defense of a home only if they reasonably believe that (1) the intruder is about to unlawfully enter the home, (2) the intruder intends to commit a felony or injure an occupant of the home, and (3) deadly force is necessary to stop the intruder.

Domestic Abuse as a Defense

Questions about self-defense often arise in cases involving domestic violence. Domestic abuse can occur over a period of years. Some husbands beat their wives, go to bed, and threaten to beat them some more when they wake up. If a woman in such a situation attacks her husband in his sleep, can she validly claim self-defense? Most states say no. The threat is no longer imminent. It ended when he fell asleep.

The issue of appropriate force is also problematic. If a woman uses deadly force to stop her husband from beating her, has she used too much force? The law requires that the attacker

be about to kill her or inflict great bodily harm.

Most courts allow defendants to introduce evidence of abuse. But defendants still must show they had the right to use deadly force in self-defense.

FOR DISCUSSION

1. What is required for a valid argument of self-defense? Why are the rules tougher for the use of deadly force? Do you think they should be? Explain.
2. What is the alter-ego rule? Do you think it should be the law? Why or why not?
3. What was the common law rule for defending your home? What is the modern rule? Which do you think is better? Why?
4. What problems do victims of domestic abuse face in arguing self-defense? Do you think the law of self-defense should be changed for victims of domestic abuse? Explain.

CLASS ACTIVITY

Stand Your Ground?

In 2005, Florida enacted a new self-defense law called “Stand Your Ground.” The law contained several controversial provisions, including the two sections discussed below.

One section of the law removed the duty of retreat when people are attacked *outside their homes*. This duty previously existed in Florida law. As long as the person is not engaged in illegal behavior and has a right to be in that place, the person “has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.” Thus this section lets people use deadly force even if they can safely leave the situation or can otherwise protect themselves.

Another section involved the use of deadly force by a person lawfully in a *home or vehicle*. It allows such a person to use deadly force if the person “knew or had reason to believe” that an intruder was making or had made “an unlawful and forcible entry” into the “dwelling, residence, or occupied vehicle.” This is the only requirement. It does not require a showing that the person feared harm or that the deadly force was necessary.

The proponents of this law say that they are going to get every state legislature in the nation to pass a similar law. So far, they have managed to get more than 20 other states to pass similar laws.

Imagine that this law has been proposed in your state. You are members of a legislative committee deciding on this law. **You are considering only the two sections of the law dealing with the use of deadly force outside the home *and* in a home or vehicle.**

1. Form groups of five or six. Each group will serve as a legislative committee.
2. Each committee should:
 - a. Reread the article, especially the **Defense of Self** and **Defense of Home** sections.
 - b. Discuss the pros of the proposed new law.
 - c. Discuss the cons of the proposed new law.
 - d. Decide whether or not to adopt each section of this law.
 - e. Be prepared to present its decision and the reasons for it.
3. The committees should report to the class.
4. Hold a class discussion and then vote on the two sections.

The Insanity Defense

The insanity defense is a key part of our criminal justice system, which is founded on the belief that [people] normally choose whether or not to obey the law. Certain people . . . cannot make that choice, however, either because they are too young or because of severe mental retardation or mental illness.

– Elyce Zenoff, professor of law, from an interview in *U.S. News & World Report* (1982)

Defendants will be acquitted if they can prove that when they committed the crime, they were legally insane. This defense has existed for hundreds of years and has always been controversial.

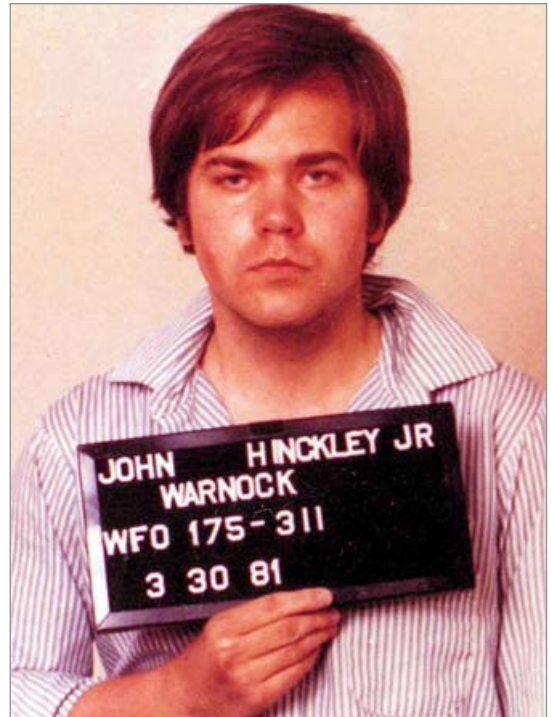
But public debate intensified after President Ronald Reagan was shot in 1981, and his attacker was found not guilty by reason of insanity. The defendant in that case, John Hinckley Jr., purchased a gun and stalked the president for some time. He wrote a letter to a famous actress telling her what he planned to do. Millions of Americans watched in horror as videotapes of the shooting played over and over again on national television. “How could this person be found not guilty?” they demanded.

For criminal law, “insanity” has a special meaning. Even in this context, legal scholars and lawmakers have disagreed about what constitutes insanity for a defense to a criminal charge. Over the years, several different legal tests for determining insanity have been developed, but none has been universally accepted as valid.

1. The *M’Naghten* Rule. Under this traditional approach, defendants must show that because of their mental illness, either they did not know what they were doing or they did not know it was wrong (*M’Naghten Case*, 1843). About half of the states and the federal courts use the *M’Naghten* rule.

Critics of the *M’Naghten* rule point out that it does not protect defendants who cannot control themselves. Thus defendants can be convicted under the *M’Naghten* rule even if they cannot avoid committing the crime because of mental illness.

2. The *Irresistible Impulse* Rule. In some states, defendants will be acquitted if they can prove that the crime was committed



Controversy arose over the insanity defense following its successful use in the trial of John Hinckley Jr., who attempted to kill President Ronald Reagan.

because of an insane impulse that controlled their will. This test of insanity often supplements the *M’Naghten* approach. (*Parsons v. Alabama*, 1887)

3. The *Durham* Rule. To prove insanity under this rule, defendants must show that the crime was “the product of mental disease or mental defect” of some sort. Because of the vagueness of this rule, only one state follows it today, New Hampshire. (*Durham v. U.S.*, 1954)

4. *Model Penal Code* Test, also known as the substantial capacity test. A much stricter rule than *Durham*, this test is used in almost half the states. This was the test used in the Hinckley case. Under the *Model Penal Code* approach, defendants are insane if because of a mental disease or defect, they:

- lacked substantial capacity to appreciate the criminality of their conduct, or
- lacked substantial capacity to conform their conduct to the requirements of the law (*Model Penal Code* Sec. 4.01 [1]). Some jurisdictions omit this second part of the test.

Under any of these tests, defendants who are successful with this defense will be found not guilty by reason of insanity. Often this means the defendants will be committed to mental hospitals. They will not be released in many jurisdictions until they can prove beyond a reasonable doubt that they are sane or that they no longer pose any threat to society.

In Hinckley's case, since 1982 he has been confined in a mental hospital in Washington, D.C. He has received psychiatric treatment and anti-psychotic drugs. He is currently off medication, and doctors report his mental condition is greatly improved. In 1999, he was allowed to leave the hospital grounds on supervised visits. Since that time, judges have allowed him to visit his mother's house under her supervision, and the periods he has been allowed at her home have increased over time.

The insanity defense is rarely used. One study showed that only 1 percent of all defendants at trial raised the defense. It also revealed that the defense was successful in just one-quarter of these cases. In other words, defendants were found not guilty by reason of insanity in about 0.25 percent of all cases taken to trial.

Guilty But Mentally Ill

At least 20 states have developed a new verdict — **guilty but mentally ill**. The meaning of this verdict varies.

In most of these states, “guilty but mentally ill” means the defendant was *not* legally insane, but was mentally ill when committing the crime. It means that the defendant's defense of insanity has fallen short, but the jury recognizes that the defendant has mental problems. These jurisdictions have not replaced the insanity defense.

In a few states, guilty but mentally ill *replaces* the verdict of not guilty by reason of insanity. The verdict in these states means that the defendant was legally insane when committing the crime.

The effect of the verdict is the same in most states. The defendant will receive a standard prison sentence, but may serve it in a mental hospital. If the person recovers from the mental illness, the person will serve the remainder of the sentence in prison.

A few states have entirely eliminated all insanity defenses. It is no longer a valid defense in Idaho, Kansas, Utah, and Montana. In these states, however, the defense can introduce evidence showing that the defendant did not have the state of mind (*mens rea*) required for the crime.

CLASS ACTIVITY

The Insanity Defense

In this activity, students apply the four insanity tests to a hypothetical case.

1. Divide into groups of four. Each group should:
 - a. Assign each person in the group one of the insanity tests described in the preceding section.
 - b. Read **Mark's Statement**, below.
 - c. Have each person apply his or her assigned insanity test to Mark to see if it fits.
 - d. Have the whole group discuss whether each test fits.
2. Reconvene as a class and compare the findings from each group.

Mark's Statement

During his trial for murdering a friend, defendant Mark made the following statement: I knew that it was wrong, but I couldn't help myself. During the night of April 30, Beelzebub, grand duke of Hell, came to me with biddings from the master. He told me to kill my friend. I resisted, but his will was too strong and finally I had to do what I was told.

Debriefing Questions

1. Which insanity tests fit Mark's case? Which do not?
2. If Mark's statement reflects his actual belief, do you think he should be found not guilty by reason of insanity? Why or why not?
3. Which insanity test, if any, do you think is best? Why?

FOR DISCUSSION

1. Which of the definitions of legal insanity do you think is best? Why?
2. What purpose would it serve to punish criminally insane persons? Do you think they deserve punishment?
3. Do you think the law should permit a verdict of not guilty by reason of insanity? Why or why not? If not, what should the law do about people who are criminally insane? Explain.

CLASS ACTIVITY

Debate on Insanity

Choose a pro or con position on the following statement:

The insanity defense should be abolished.

Research this issue. On the Internet, a good place to start is Constitutional Rights Foundation's Research Links or *Criminal Justice in America* Links. (Both are at www.CriminalJusticeInAmerica.org.) At your school or community library, do an online search through their periodical index. Write a two-or three-page essay supporting your opinion. These can be used for a class discussion or debate.

Entrapment

The first duties of the officers of the law are to prevent, not to punish crime. It is not their duty to incite to and create crime for the sole purpose of prosecuting and punishing it.

– Judge Walter H. Sanborn, *Butts v. U.S.* (1921)

A defendant can be acquitted if the defense proves the police entrapped the defendant into committing the crime. The first U.S. Supreme Court case upholding an entrapment defense took place during Prohibition. An undercover federal agent was invited to the home of Randall Sorrells, a North Carolina factory worker. The men talked for a couple of hours, learning that they had served in the same infantry division in World War I. The agent asked Sorrells if he could get him a jug of whiskey. Sorrells declined, saying he “did not fool with whisky.” The agent persisted and finally Sorrells relented. He left his house and returned a half hour later with a jug. When Sorrells handed over the whiskey in exchange for \$5, the agent arrested him for violating the National Prohibition Act. At trial, Sorrells raised the defense of entrapment, but the trial court did not let the jury decide the issue of entrapment. Sorrell was convicted, and he appealed.

In *Sorrells v. U.S.* (1932), the Supreme Court ruled that Sorrells should have been allowed to show that he was “a person otherwise innocent whom the government is seeking to punish for an alleged offense” induced by “the creative activity of its own officials.”

Over the years, two separate tests for entrapment have developed. The **subjective test** is used by federal and most state courts. It requires that the police lure the defendant into committing the crime *and* the defendant was **not** predisposed to commit the crime. It is subjective because it inquires into the defendant's predisposition.

A few states use the **objective test** for entrapment. It requires that the police lure the defendant into committing the crime by doing something that creates a “substantial risk that such an offense will be committed by persons other than those who are ready to commit it.” This test does not look at whether the defendant was predisposed to commit the crime.

Several famous cases have featured the issue of entrapment. The federal government's **Abscam** operation in the early 1980s is an example of an entrapment defense that failed. The FBI invented a phony Arab sheik, Kambir Abdul Rahmen, to



Automobile entrepreneur John DeLorean poses with one of his sports cars. In 1983, DeLorean stood trial for trafficking in cocaine. He claimed the police entrapped him, and the jury acquitted him.

try to bribe one U.S. senator and seven representatives. The FBI filmed the sting operation and used the films as evidence in the trials for accepting bribes. The defendants argued that the FBI had entrapped them, but this defense failed. Why?

The FBI had received reliable information that these particular congressmen were corrupt. “Sheik Rahman” did not approach just any congressmen. He chose ones who were reported to show criminal intent already. The FBI, said the courts, had merely given them an opportunity to do something they already had the intent to do.

On the other hand, the **John DeLorean** case at about the same time, demonstrates an entrapment defense that succeeded. DeLorean was an auto company executive who left Ford in the late 1970s to set up his own sports car company in Northern Ireland. His new gull-wing DeLorean sports car, named after himself, came out during a gasoline crisis and did not sell well. It was well known that his company was in deep trouble.

FBI agents claimed that an informant told them DeLorean was searching for illegal ways to keep the company afloat. In an elaborate sting operation, similar to Abscam, undercover oper-

ators approached him with a scheme to import \$24 million in cocaine. They videotaped him accepting the deal and brought him to trial in 1983.

DeLorean’s lawyers argued that he had a clean record, that the government’s witnesses were unreliable, and that the FBI had lured and entrapped him into the crime. Despite the videotape, the jury found him not guilty. One juror said, “The way the government acted in this case was not appropriate.”

In a similar development in 1992, the Supreme Court threw out the conviction of a man they felt had been entrapped. Postal inspectors thought that a Nebraska man named **Keith Jacobson** was predisposed to buying child pornography. They sent him an offer in the mail and he did not respond. For the next 26 months, they repeatedly sent him offers to buy child pornography. Finally, he bought two magazines, and they arrested him. He was convicted, but the Supreme Court on a 5–4 vote overturned the conviction. The court said that the government had “overstepped the line between setting a trap for the ‘unwary innocent’ and the ‘unwary criminal’ . . . and . . . failed to establish that [Jacobson] was

COMMON STING OPERATIONS

A sting is an undercover police operation that sets up a situation to catch criminals in the act. Most of these operations require video and audio surveillance. Some of the most common stings are:

Prostitution and drugs. Police pose as prostitutes to catch clients or pose as clients to catch prostitutes. Similarly, police act as drug dealers or buyers to catch drug users and dealers.

Fake pawnshops. Police open a pawnshop to catch people selling stolen property.

Decoy cars. Police place and stake out a car in a place known for auto theft. Some decoy cars have tracking devices or even lock, trapping the thief, when the thief enters them.

Fake web sites. Police create web sites offering child pornography.

Phony ads. Police place an ad listing a number of people as winners of the lottery. The list is actually of people with outstanding warrants for their arrest. When the people arrive to collect their winnings, they are arrested.

independently predisposed to commit the crime.” (*Jacobson v. U.S.*)

A more recent entrapment case involved the war on terrorism. **Hemant Lakhani**, 69, a British citizen, was caught in an international sting operation by Russian, British, and U.S. intelligence services. A clothing merchant, Lakhani was approached by agents claiming to be Russians who could supply weapons and agents claiming to be Somalis interested in buying shoulder-launched missiles to shoot down U.S. airliners. He was arrested in New Jersey after receiving a missile (a dud) from an agent. He was charged with providing material support to terrorists and selling arms without a license. His lawyer at the trial argued that Lakhani had been entrapped. He pointed out that Lakhani was the only person in-

involved who was not an agent. He said to the jury: “Ask yourself, would any of this have occurred without the government?” The government’s witnesses described Lakhani as eager to take part. In 2005, a jury rejected his entrapment defense and convicted him of all the charges.

FOR DISCUSSION

1. What are the differences between the Sorrells, Abscam, DeLorean, Jacobson, and Lakhani cases. Do you think each of the cases was decided properly? Explain.
2. What is the difference between the objective and subjective tests for entrapment? Which do you think is better? Why?
3. Do you think the defense of entrapment makes sense? Why or why not?

CLASS ACTIVITY

Were They Entrapped?

In this activity, students decide several entrapment cases.

1. Form small groups.
2. Each group should:
 - a. Read and discuss the cases below.
 - b. Decide whether or not the defendant in each case has been entrapped.
 - c. Decide which test for entrapment is better: the subjective or objective test.
 - d. Be prepared to report its decisions and reasons for them to the class.
3. Reconvene the class, groups should report their decisions, and the class should discuss them.

CASE #1: An undercover federal agent offered to supply a hard-to-obtain chemical necessary for making methamphetamine, an illegal drug. He asked for half of the drugs produced. The defendants, who had manufactured meth in the past, agreed to the deal. After manufacturing the meth, defendants were arrested by the agent. (*U.S. v. Russell*)

CASE #2: Lively had used cocaine at age 14, but stopped. At 18, she drank to excess and tried to stop by attending Alcoholic Anonymous / Narcotics Anonymous meetings where she met Desai, a police informant. (The police paid for his apartment, utilities, car, and living expenses.) According to Lively, Desai and she began a romantic relationship, and she moved in with him. She alleged that Desai pressured her for two weeks to buy cocaine for “Rick,” an undercover officer. She made two deliveries to him and was arrested. The defendant had no previous drug arrests. (*Washington v. Lively*)

CASE #3: Sherman met Kalchinian, a government informant, at a doctor’s office where they both were being treated for drug addiction. They kept running into each other at the doctor’s office or the pharmacy and began talking about their struggles with drugs. Over time, Kalchinian began complaining that his treatment was not working. He repeatedly asked Sherman to get drugs for him. Sherman refused and said he was trying to stay clean. Eventually, however, Sherman agreed after hearing Kalchinian’s stories about how he was suffering. Kalchinian found a drug source, and Sherman bought drugs and sold them to Kalchinian. (Sherman kept some for himself and began using again.) Kalchinian then went to the Bureau of Narcotics and told agents that he had found another seller. They gave Kalchinian money, and he bought more drugs from Sherman. Sherman was arrested, tried, and convicted of selling narcotics. For his efforts, Kalchinian received a lighter sentence on a pending drug charge against him. (*Sherman v. U.S.*)

CHAPTER 3

CRIMINALS

Every society gets the kind of criminal it deserves.

– John F. Kennedy (1917-1963), U.S. president

HISTORY OF VIOLENT CRIME IN AMERICA | HOW MUCH CRIME IS THERE?

YOUTH, GANGS, AND VIOLENCE | WHITE-COLLAR CRIMINALS | SWINDLERS AND CON ARTISTS

History of Violent Crime in America

When I was young, I could play in the park at night. Now it's all drug dealers. You could leave all your doors unlocked. Now you can't walk down your own street without getting robbed.

For 30 years beginning in the 1960s, crime rates rose in America. Then in the 1990s, crime rates began to drop, and they have continued to fall. Many view the decrease as a trend toward a normal low rate of crime. Many older people look back on their past as a time when streets were safe and crime happened somewhere far away. Indeed, statistical evidence shows that the decades from the 1930s through the 1950s were less crime-ridden. Yet those decades may be exceptions in American history. If you take a careful look back into our history, you will find that violent crime has played a large role in American life.

During the 1700s, robbery and other violent crimes were already troubling the English colonies of America. Land was growing scarce. The English were fighting a series of wars and demanding high taxes from colonists to pay for them. In turn, the colonies suffered high rates of unemployment and poverty. Crime flourished in this environment.

Adding to the crime problem, criminals from England's jails, both men and women, were deported to America as indentured servants. Before the American Revolution, more than 50,000 of these lawbreakers had arrived. Some ran away immediately and joined the growing criminal population.

Philadelphia, one of America's first important cities, was known as the "crime capital of the colonies" during the early 1700s. Robbery, rape, murder, and arson occurred with frightening regularity.

By the mid-1700s, New York City was challenging Philadelphia for the dubious title of

"crime capital." Its population was exploding. Along with the increasing population, came a rise in violent crime. A New York newspaper editorial complained, "It seems to have now become dangerous for the good People of this City to be out late at night without being sufficiently strong or well armed."

In the countryside and on the frontier, gangs of thieves and robbers preyed on farmers. Gangs in the North Carolina backwoods provoked citizens to take the law into their own hands. In 1767, citizens formed the first American vigilante group, which attacked and punished gang members.

Crime in the 1800s

During the 1800s, many American cities grew rapidly. Workshops and new industries attracted immigrants from England and Northern Europe. By 1800, New York had passed Philadelphia and Boston to become the biggest city in the country, with 60,000 people. Further waves of immigrants came to escape famines and wars in Europe. With the rise of heavy industry and mining in New England and the industrial Midwest, many companies actively recruited in Europe for laborers.

Many of the new immigrants had to squeeze into crowded tenements in urban areas. Cities like New York gained a reputation for overcrowding and criminal violence. In the decade before the Civil War, more than 3,000 homeless children roamed the streets of New York. Many of them became pickpockets and street robbers. One civic leader wrote in 1842: "Thronged as our city is, men are robbed in the streets . . . The defenseless and the beautiful are ravished in the daytime and no trace of the criminals is found."

Before the Civil War, few cities in America had anything like a police department to keep order. Boston had a night watch, but it was mainly a fire lookout. Watchmen were afraid to enter many neighborhoods at all. In some



An 1857 engraving depicts a battle between two rival gangs – the Dead Rabbits and the Bowery Boys – in New York City.

places, vigilantes were the only organized resistance to criminals.

More murders took place in New York than London, a far bigger city. One English traveler wrote, “Probably in no city in the civilized world is life so fearfully insecure.” The same fear plagued other cities. In Philadelphia during the mid-1800s, bands of robbers began to prey on wealthy citizens, stripping them of their cash.

In the West, men often wore guns wherever they went. Horse and cattle theft became a major problem. Los Angeles was only a sleepy village of about 8,000, but in one 15-month period in the 1850s, 40 murders occurred. In much larger San Francisco to the north, there were entire neighborhoods where few dared go after dark.

Ethnic Urban Gangs

In many cities, jobless immigrants formed violent gangs in ethnic slum neighborhoods. In Philadelphia, lower-class Irish and black groups formed gangs. With names like the Bleeders, Garroters, Rangers, Tormentors, and Killers, the gangs sometimes fought bloody battles on a spot known as the Battle Ground. Gang members as young as 10 carried clubs, knives, brass knuckles, and pistols. They attacked lone pedestrians, younger children, or members of other ethnic groups.

In New York, well-organized adult street gangs controlled the immigrant areas of Five Points and the Bowery. Made up mostly of young Irish immigrants, gangs called the Dead Rabbits, Plug Uglies, and Shirt Tails grew famous for mugging people. In the nearby Fourth Ward, the Daybreak Boys murdered 20 people between 1850 and 1852. Political parties recruited squads of toughs from these gangs to intimidate voters.

Probably the most violent New York street gang at this time was called the “Whyos.” The Whyos came from Mulberry Bend, another slum neighborhood. They robbed people and burglarized homes and stores throughout the city. At one time, the Whyos had more than 500 members, all of whom supposedly had killed at least one person. Dandy Johnny Dolan, the gang’s leader, invented a copper device for gouging an eye out and kept an eye as a trophy.

In cities of the Northeast, urban rioting broke out often from the 1830s through the 1850s. The pressures on the urban slums boiled over. There were ethnic riots, labor riots, election-day riots, anti-black riots, and anti-Catholic riots. In that period, Baltimore alone had 12 major riots, Philadelphia had 11, and New York had eight. This burst of lawlessness spurred the development of police forces in most cities.

Post-Civil War Violence

More than 600,000 people died in the Civil War. This is more than any other war in our history. The passions that gave rise to the war also left a legacy of hatred and violent revenge following the war. The most vicious and widespread postwar violence targeted blacks. During the period of Reconstruction, freed slaves served in state legislatures in the South. Former slaves educated themselves, voted, and many started businesses or began farming their own small fields. In response to these developments, some Southern whites created the Ku Klux Klan and other groups to terrorize blacks and help end the social changes of Reconstruction. In a reign of terror in Louisiana in the 1870s, a group called the White League killed more than 3,500 blacks, many by **lynching** — a form of mob violence that executes an

accused person without a legal trial. Most of the lynchings were hangings.

The Klan engaged in lynchings of poor blacks and their supporters for decades. In incidents all over the country, almost 2,000 African Americans were lynched and murdered from 1882 to 1903.

Outlaws in the West

After the Civil War, violence in the West took a new turn. The Reno brothers of Indiana were the first train robbers, and dozens of small gangs followed their example. The most famous robbers were the James brothers — Jesse and Frank. They had been Confederate guerrillas, and after the war they turned to robbing trains and banks, terrorizing Union states from Missouri to Minnesota. They killed 16 people.

In the 1870s, Billy the Kid, who was born in a New York slum tenement, roamed the Southwest, gambling, killing, and hiring out as a cattle rustler. Sheriff Pat Garret finally tracked him down and shot him. According to legend, Billy the Kid had killed 21 men, one for each year of his life. The actual number was probably smaller.

John Wesley Hardin from Texas killed his first victim at age 15. The victim was a black teen who had beaten him at wrestling. He went on to kill more than a dozen others, including one because he had badmouthed Texas. Hardin was shot and killed in 1895 and became another outlaw legend, though today we would probably think of him as a psychopathic serial murderer.

Even more violent were the range wars. Throughout the Western states, cattle and land barons hired armies of gunmen to guard or expand their private empires. In some cases, the cattlemen had the law squarely on their side. But often their gunmen fought battles and used violence to settle scores. Texas had the Sutton-Taylor feud, the Horrell-Higgins feud, the Jaybird-Woodpecker feud, and several others. Montana had the Johnson County War, which pitted European immigrant homesteaders against a cattle baron. Arizona had the worst range war of all. In the Pleasant Valley War, the cattle-raising Grahams fought the sheep-raising Tewkesburys with hired armies. The conflict raged for six years and was fought literally “to the last man.”

Racial Violence

The end of the century marked the beginning of a long era of race riots. As early as 1871, a white mob in Los Angeles went on a

rampage and hanged 20 Chinese workers from street lamps. Near the turn of the century, mobs in Eastern cities began descending on black neighborhoods to lynch any black man unlucky enough to be caught. Major race riots against blacks erupted in Atlanta in 1906, Springfield, Illinois, in 1908, and in many other cities.

Prohibition and Organized Crime

The 20th century saw the rise of organized crime. In 1920, the 18th Amendment to the Constitution made the manufacture, transport, or sale of alcoholic beverages illegal. The era of Prohibition, one of this country’s most violent crime periods, extended from 1920 until the 18th Amendment was repealed in 1933. Prohibition created the conditions for thriving illegal businesses.

In Chicago, gangsters set up illegal beer-brewing and distribution businesses, plus a network of bribed police and politicians to protect them. The business proved so lucrative that rival gangs fought for control. Between 1923 and 1926, the Chicago beer wars killed more than 200 people. By 1927, the mobster Al Capone had come out on top. His beer business took in over \$60 million a year, which would be well over \$1 billion in today’s dollars.

During the early 1930s, various crime organizations sought to form alliances to control gambling, prostitution, narcotics, and other illegal money-making activities. Gangster rivalry and greed, however, led to many underworld murders.

Depression and World War II

Near the beginning of the Great Depression, violent crimes reached a peak. In 1933, the murder rate was 9.7 murders for every 100,000 Americans. The murder rate would not be this high again until the late 1970s.

A curious thing happened as the Depression worsened and unemployment skyrocketed: The crime rate went down. Despite widespread news coverage of Depression-era bank robbers like John Dillinger, “Pretty Boy” Floyd, and Bonnie and Clyde, violent crime actually declined. The murder rate, for example, dropped 50 percent between 1933 and the early 1940s. Other serious crimes fell by a third.

Why did crime decrease during a time of great hardship for almost all Americans? According to some historians, the Depression

IS THERE MORE CRIME THAN THERE WAS A YEAR AGO, OR LESS?

	MORE	LESS	SAME	NO OPINION
	%	%	%	%
2010	66	17	8	9
2009	74	15	6	5
2008	67	15	9	9
2007	71	14	8	6
2006	68	16	8	8
2005	67	21	9	3
2004	53	28	14	5
2003	60	25	11	4
2002	62	21	11	6
2001	41	43	10	6
2000	47	41	7	5
1998	52	35	8	5
1997	64	25	6	5
1996	71	15	8	6
1993	87	4	5	4
1992	89	3	4	4
1990	84	3	7	6
1989	84	5	5	6

NATIONAL POLL OF PEOPLE IN THE U.S.

Source: Gallup Poll

brought Americans closer together, because almost everyone was in the same boat. In addition, the birthrate had dropped in the 1920s, which meant that the youth population — 18 to 29 year olds — declined in size. Younger adults commit the most crimes, especially violent crimes. World War II unified Americans even more.

The Postwar Years

Following World War II, many people started families. The “baby boom,” which lasted from 1946–1964, produced a huge increase in the birth rate.

The 1950s stayed relatively calm, but the turbulent 1960s saw an increase in many kinds of violence. A dozen civil-rights activists were murdered in the South, and the Vietnam War caused thousands of anti-war activists to take to the streets in demonstrations that sometimes turned violent. In the mid-1960s, major urban riots exploded in African-American communities in Los Angeles, Newark, Detroit, and other cities where urban problems had been festering.

Street crime also began to increase. The children of the baby boom were growing up.

The 18–29 age group grew rapidly. Many crime experts believe that this surge of young people in the population contributed significantly to the increase of crime in the 1960s and 1970s.

In the early 1980s, the sudden appearance of crack cocaine caused a tremendous rise in drug addiction and associated crimes. Drug-dealing gangs plagued many Latino and African-American communities. With unemployment and homelessness rising, reports of street crime skyrocketed. Crime so concerned ordinary citizens that it spawned whole communities barricaded with walls, barred windows, and burglar alarms.

Then in the early 1990s, crime started plummeting. By the end of 2010, the crime rate had dropped to its lowest point in 40 years. Part of the explanation is that the population is growing older. Experts have advanced other reasons for the decline: More police on the streets, more criminals behind bars, and better policing. These factors may account for some reduction in crime, but crime fell in parts of the country that didn’t have more police, more prisoners, or better policing. Some experts believe the booming economy caused the drop. But others point out that the economy and the crime rate both soared in the 1960s, and the crime rate did not go up when the economy plunged into recession in 2008. Some experts believe that the dwindling use of crack cocaine produced the drop. Two researchers have even put forth a controversial theory that the legalization of abortion in 1973 caused crime to drop two decades later. They argue abortions stopped many unwanted children, who are more likely to turn to crime, from being born. But others respond that abortion was illegal when crime was low in previous decades.

Since the percentage of 18–29 year olds in the population is projected to fall, some Americans think the crime rate will continue to drop. Others predict the future will bring greater violent crime. No one knows for sure. But one fact remains: Violent crime has almost always existed at a high level throughout American history.

FOR DISCUSSION

1. Why do you think that violent crime has existed at such a high level throughout American history?
2. Why do you think American outlaws like Jesse James and Billy the Kid have so often been portrayed as heroes? Is there anyone like them today who is portrayed as a hero?

3. How do you account for so much mob violence directed against African Americans throughout our history?
4. Why did the crime rate go down in the 1930s? Why did it go up again in the 1960s? Why do you think it began falling in the 1990s? What direction do you think it is heading today? Why?
5. List as many causes of crime in American history as you can. Discuss the list and select the five most important. Explain your reasons.

CLASS ACTIVITY

Now and Then

The problem of crime in America varies from place to place and from generation to generation. In this activity, students interview a parent or older person and compare this person's experience with crime growing up to their own.

1. All students should:
 - a. Read and answer for themselves the **Interview Questions**, below, on a sheet of paper.
 - b. Find a parent or older person to interview. Ask the same questions and record the person's answers on another sheet of paper.
 - c. Write a two or three paragraph essay comparing their responses to those of the person they interviewed.
 - d. Staple all the pages together to be turned in.
2. Before students turn in their papers, they should share their findings with the class.

Interview Questions

1. When were you born?
2. As a young person, where (did, do) you live?
3. (Did, do) you feel safe in your neighborhood? Describe crimes, if any, that took place in your neighborhood.
4. (Did, do) you feel safe at school? Describe crimes or major incidents of misbehavior that took place in your school.
5. What crime story from the media most impressed you when you were growing up?
6. Do you think it was safer then or now? Why?

How Much Crime Is There?

People's fear of crime doesn't come from looking over their shoulders. It comes from looking at their television screens.

– Robert Lichter, director of the Center for Media and Public Affairs, *Los Angeles Times* (1994)

How do we know how many murders, rapes, robberies, burglaries, and other crimes there are each year? Where do crime statistics come from? There are two main sources: (1) the Uniform Crime Reports (UCR) and (2) the National Crime Victimization Survey (NCVS).

Since 1930, police departments from across the country have sent crime data to the Federal Bureau of Investigation for inclusion in its Uniform Crime Reports. The UCR lists eight so-called index crimes — four violent crimes and four property crimes. They are homicide, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. Almost every police department in the United States reports its crimes for inclusion in the UCR.

The UCR has at least two built-in weaknesses. First, it does not attempt to account for all crime — only for crime reported to the police. If someone does not report a crime, it cannot possibly get included in the UCR. Second, it relies on police departments to relay the information accurately. This may not always happen.

To get a fuller picture of crime, the Department of Justice started an annual National Crime Victimization Survey in 1973. (Until 1991, it was called the National Crime Survey.) Twice a year, the survey polls 42,000 households, representing about 75,000 people over age 12. Following a detailed questionnaire, poll takers ask individuals if they have been victims of rape, robbery, assault, larceny, burglary, or car theft. Unlike the UCR, the NCVS reflects both reported and unreported crimes.

But the NCVS has problems also. First of all, it doesn't track some crimes. It cannot count homicides because murder victims cannot be interviewed. It doesn't include crimes against businesses, such as robberies and burglaries, because it only interviews households. It only interviews people over age 12, so it doesn't count crimes against young children. Of the crimes it does count, the interview could be flawed.

The Trend of Crime

Since the UCR and NCVS measure different data, they come up with different numbers for most crimes. As would be expected, the NCVS consistently reports far higher numbers than UCR, except for auto theft. NCVS reports only slightly higher numbers of auto thefts than the UCR.

What do the UCR and NCVS say about the trend of crime? Is it increasing, decreasing, or staying the same? Is it worse than in previous years or better? If 10 years ago, fewer robberies took place than today, would it mean that crime got worse during this period? Not necessarily. The population today is greater than it was 10 years ago. To make comparisons between two different times, you need to know the **crime rates** — the amount of crime per person. The UCR calculates these rates as the number of crimes for every 100,000 persons. The NCVS usually calculates them for every 1,000 persons age 12 or older (for violent crimes) or for every 1,000 households (for property crimes).

The NCVS shows that the rate of violent crime has fallen sharply in the last 10 years. In 1973, the rate of violent crime was 47.7 per 1,000. It reached a peak of 52.3 per 1,000 in 1981, declined to 42.0 in 1986, rose steadily to 51.2 in 1994. Then it began plummeting. By 2009, it had fallen to 17.1.

The UCR paints a slightly different picture. It shows crime rising almost steadily

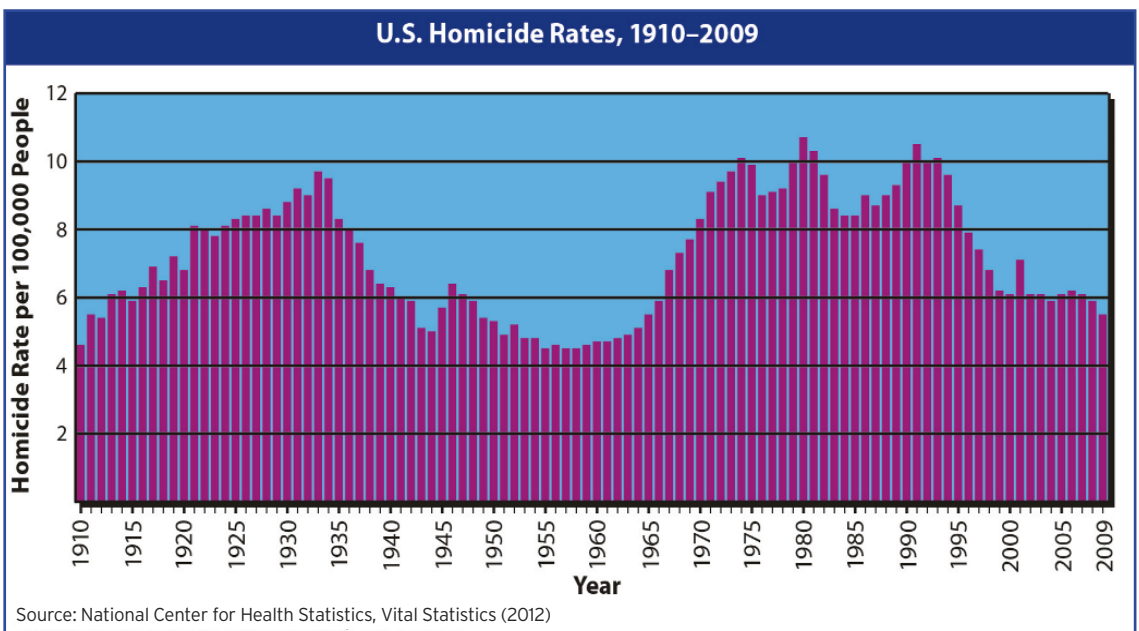
from 1973 to 1992. From that point, the crime rate starts declining.

Most experts tend to trust crime trends from the NCVS over the UCR. But experts also believe the UCR statistics for homicide are highly accurate. The NCVS does not cover homicide. The UCR homicide statistics follow almost the same pattern as the NCVS statistics for other violent crimes. They rise to a peak of 10.2 homicides per 100,000 in 1980, drop to 7.9 in 1985, rise to 9.5 in 1993, and then start declining. By 2000, the rate had dropped to 5.5. It hovered around that rate until 2008 when it began dropping again. In 2009, the rate had fallen to 5.0. Other homicide studies back up these figures.

Although crime has been falling for about 30 years, most of the public does not know it. For many years, the Gallup Poll has asked Americans whether there is more or less crime in the U.S. today than a year ago. Almost without exception, they have responded there is more crime (see “Is there more crime than there was a year ago, or less?,” page 51).

FOR DISCUSSION

1. What are the differences between the Uniform Crime Reports and the National Crime Victimization Survey? Which do you think more accurately paints a picture of crime in America? Why?
2. Why do you think the UCR and NCVS report similar numbers of car thefts each year? Why do you think the other crimes are not similar in number?



3. Why do you think experts believe UCR homicide statistics are so accurate?
4. What do you think could account for the difference in the UCR's and NCVS's trends in violent crime since 1973? Which do you think is more accurate? Why?
5. Even when crime is declining, why do you think most Americans believe crime in the U.S. is getting worse?

CLASS ACTIVITY

Crime Victim Survey

How has crime affected the people who live in your community? In this activity, students survey people to find what experiences members of the community have had with crime.

1. Form small teams.
2. Each team should:
 - a. Prepare several copies of a crime victim survey using the suggested questions below as a guide. Leave room for brief responses for each question.
 - b. Have each student on the team target a person with a different occupation in the community, e.g., a storekeeper, homemaker, religious leader, business supervisor, fast-food employee. Students should survey the targeted persons.
 - c. Summarize and compare the responses from the surveys. Try to account for any differences, based on different occupations.
3. All the teams should compare their surveys and list results on the board. Do you find similarities among the answers given by people with similar occupations? Why or why not? Do you find similarities based on other factors?

Crime Victim Survey

1. Have you ever been a victim of a crime such as bike theft, burglary, assault, etc.?
2. Have any members of your family been victims of crime?
3. Have any nearby neighbors ever been victims of crime?
4. Do you feel unsafe alone at night in your own neighborhood?
5. Do you believe a crime problem exists at the local schools?
6. Have the people in your family been forced to change how they lead their lives because of crime?
7. Do you think the police in your community are doing an adequate job of protecting you and other citizens from crime?
8. Compared to one year ago, do you think the crime problem in your community has gotten worse, stayed the same, or improved?

Debriefing Questions

1. Were there any surprises in the results? How do you explain the surprises?
2. Make a list on the board of the kinds of crimes reported in the survey. Do you think other areas in your town or other towns would have a different list? Why or why not?
3. Discuss ways your family and neighbors attempt to protect themselves from crime. For example, you might consider special locks, bars on the windows, watchdogs, guns in the home, neighborhood patrols, etc.
4. What crimes occur most frequently at school? What could be done to prevent them?
5. What are the police in your area doing to prevent crime? What should they be doing?

Youth, Gangs, and Violence

Most gang homicides are not random, nor are they only disputes over drugs or some other crime. The vast majority of violent incidents involving gang members continue to result from fights over turf, status, and revenge.

– Violence Prevention Coalition of Greater Los Angeles, "Violence Prevention Fact Sheet" (2007)

About 40 percent of all people arrested are under the age of 25. About three-fourths of those arrested are males. In fact, males account for more than 80 percent of all violent-crime arrests.

One of the most common violent criminals is the street robber. In his book *Criminal Violence, Criminal Justice*, Charles Silberman described the typical street robber as a male minority teenager or young adult from a poor family. This type of robber takes money from people impulsively if the opportunity arises. Rarely does he plan a holdup.

Sometimes street robbers steal because they want money for drugs, food, or goods. Sometimes they just need to impress someone. At other times, the street robber acts out of boredom. The victims of street robbers are often weak or vulnerable. They could be an old person walking alone or a drunk who has passed out on a park bench. Almost always they belong to the same ethnic group as the robber.

Youth Gang Violence

Youth gangs are not new to our cities. Throughout American history, gangs of young men have come together in immigrant and poverty areas of cities. In the late-19th and early-20th century, Eastern cities such as Boston, New York, and Philadelphia saw the rise of numerous gangs. Their members usually came from newly arrived or first-generation groups — Irish, Jewish, and Italian. In the early 1900s, the sociologist Frederick M. Thrasher studied the youth gangs of Chicago and found over 1,000 of them. These early gangs mainly took part in street crime. Later some developed ties to political machines and formed the basis of organized crime in America.

The Latino street gangs of Los Angeles arose in the 1920s during a huge wave of Mexican immigration from poor rural farms. In the 1930s and 1940s, these early gangs solidified into the *pachuco* lifestyle. They wore special clothes, called zoot suits, had nicknames, and spoke their own slang, called *Calo*. Feeling shut out of American society, they became heavily territorial, each defending a small neighbor-

Estimated U.S. Gang Population, 2009

Estimated Gang Population	731,000
Race of Gang Members	
Hispanic	50.2%
Black	31.8%
White	10.5%
All Other	7.6%

Source: *National Youth Gang Survey*,
Nation Gang Center (2012)

hood or *barrio*. They acquired names like Los 39s and Clarence Street Locos. Many of these groups have survived in the same area for more than 80 years. Puerto Rican youths in New York formed similar gangs, as portrayed by the Sharks in the popular 1961 film *West Side Story*.

To some degree these gangs were social clubs, but they also took part in street crime, drugs, and long-running turf warfare. In fact, by the 1970s, this turf warfare had given rise to the characteristic gang crime — the drive-by shooting. Gang members as young as 13 would lean out the windows of cars to avenge some wrong by shooting at an enemy gang member. Often the shots hit the wrong target, a guest at a wedding party or a tiny child playing on a lawn.

Outlaw motorcycle gangs developed in some poor white communities in the 1950s. As shown in the 1950 film *The Wild One*, these bikers were less interested in defending turf than in appearing like a marauding band of pirates. Later, motorcycle gangs became associated with drug trafficking and other crimes.

Outlaw motorcycle gangs were often marked by a vicious anti-black, anti-Latino racism. In the 1970s and 1980s, some impoverished white communities saw the development of similar groups who called themselves skinheads. They modeled themselves on British punk gangs who shaved their heads. Often identifying with punk music and voicing overt racism, the skinhead groups produced an embittered subculture of hatred and violence.

African-American youth gangs had a different history. They arose in the 1950s to protect local turf, much like the Latino gangs. In the period of political protest of the 1960s, some of these gangs turned to radical politics. The Blackstone Rangers in Chicago became Black P. Stone (the "P" stood for power). After the Watts riots of 1965, the Slausons became the nucleus for the Los Angeles Black Panthers. These politicized groups did not survive long into the 1970s. Black P. Stone,

Childhood Risk Factors For Joining a Gang

Factors predicting that children ages 10-12 will join a gang between ages 13 and 18

Risk Factor	Number of times more likely to join a gang
Neighborhood	
Availability of marijuana	3.6
Neighborhood youth in trouble	3.0
Low neighborhood attachment	1.5
Family	
Family structure	
One parent only	2.4
One parent plus other adults	3.0
Parental attitudes favoring violence	2.3
Low bonding with parents	ns
Low household income	2.1
Sibling antisocial behavior	1.9
Poor family management	1.7
School	
Learning disabled	3.6
Low academic achievement	3.1
Low school attachment	2.0
Low school commitment	1.8
Low academic aspirations	1.6
Peer group	
Association with friends who engage in problem behaviors	2.0
Individual	
Low religious service attendance	ns
Early marijuana use	3.7
Early violence	3.1
Antisocial beliefs	2.0
Early drinking	1.6
Externalizing behaviors	2.6
Poor refusal skills	1.8

Notes: (1) To clarify the meaning of the chart using the first risk factor, youth from neighborhoods where marijuana was most available were 3.6 times more likely to join a gang compared with other youth. (2) "ns" means the factor was not a significant predictor. (3) "Externalizing behaviors" mean aggression, oppositional behaviors, and inattentive and hyperactive behaviors.

Source: "Early Precursors of Gang Membership: A Study of Seattle Youth," OJJDP (2001)

for example, changed again and eventually became a drug-dealing gang called El Rukn.

In the early 1970s, Los Angeles saw the beginning of a new federation of gangs called the Crips. Unlike other gangs, the Crips spun off subgroups called "sets" in many areas around Southern California. An archrival group called the Bloods also developed, spinning off its own sets, until many Los Angeles neighborhoods became a patchwork of gang territories. The two super-gangs sported official colors — blue for the Crips, red for the Bloods — and each set had a hand sign, like a letter of the deaf alphabet, to

identify itself. Gang members, known as gang-bangers, also used pro football and basketball jackets to announce their identities.

The black gangs might have settled into the pattern of earlier gangs — street crime, turf wars, and petty vendettas. But in the early 1980s, crack cocaine hit the streets. The normal powdered form of cocaine cost about \$100 a gram. Crack, however, could be bought as cheaply as \$5. This cheap and highly addicting drug instantly transformed cocaine use into a widespread and deadly problem. With millions of dollars to be made overnight, many sets of the Bloods and Crips turned themselves into drug-dealing networks to rake in the profits.

This flood of cash plus ties to Latin American drug suppliers brought along a huge increase in violence. Gang members now used automatic weapons like the Uzi or AK-47. Some sets of the Crips and Bloods started sending out exploration parties to set up business in cities across the country. The drug network spread.

On the Eastern seaboard, Jamaican immigrants formed similar crack-dealing gangs called posses, and they too started to spread outward from Boston, New York, and Washington, D.C. The Untouchables from Miami and El Rukn from Chicago did the same. By the late 1980s, gangs of second-generation Vietnamese, Cambodian, and Chinese immigrant youth were also jumping into the crack trade.

Crack addiction created many social problems. With more addicts searching for small amounts of ready cash to buy crack, reports of street crime and theft continued to rise. The number of drug- and gang-related murders increased. Crack addiction also increased prostitution rates and the use of injected drugs like heroin. These were major factors in the spread of AIDS.

By 2000, the crack epidemic had slowed and the number of gang-related killings dropped. But the number of transnational gangs increased. A transnational gang is one that operates across national boundaries. Many of these gangs formed when members, not legally in the U.S., were convicted of crimes and deported to Mexico and Central America. They had learned about gangs in the United States and used their knowledge to set up gangs in other countries.

Two such gangs are the 18th Street Gang and the Mara Salvatrucha 13 (MS-13), both originally formed in Los Angeles. The 18th Street gang is primarily Latino, but includes members from all

racial and ethnic groups. The MS-13 is mainly composed of those with Central American ancestry. The two gangs combined are estimated to have about 40,000 members across the nation and in other countries, most of them in many separate, independent *clikas*, or cliques. The gangs engage in robbery, kidnapping, murder, and trafficking humans, weapons, and drugs across the border.

Young people join gangs for different reasons. For some inner-city youths, it may seem safer to be in a gang (although statistics show that gang members are at least 60 times more likely to be killed than those in the general population). For others, the gang offers a way to make money (although studies have shown that even in the most successful drug gangs, most gang members, aside from those at the top, make little money). For many, gangs provide a substitute for a functioning, supportive family.

One researcher has classified gangs into three types: corporate, territorial, and scavenger. Corporate gangs try to make money. These gangs tend to be highly organized and almost everything they do concerns making money. Territorial gangs are less organized and focus on protecting their turf. They may respond with violence to anyone who intrudes on their area. Scavenger gangs are the least organized. The members who band together are usually low achievers and violence prone. Most outbursts of gang violence tend to be driven by vendettas and revenge.

In the worst neighborhoods, the fear is pervasive, even among gang members. David M. Kennedy, who has advised troubled communities across the nation, says:

Even the *gang* kids are scared to death. They get shot at, they get shot, their friends have been shot, they've got real enemies out there. . . . The fear . . . makes them join gangs, it makes them get guns, it makes them carry guns, it makes them use violence to show they shouldn't be messed with.

FOR DISCUSSION

1. List some of the factors that might push a young male toward violence. Do these factors also affect young females? Why do you think young males, as a group, are more violent than young females?
2. Does gang activity exist in your community? How has it changed in recent years?
3. What do you think should be done to stop gang violence? Explain.

White-Collar Criminals

White collar crime may be defined approximately as a crime committed by a person of respectability and high social status in the course of his occupation. Consequently, it excludes many crimes of the upper class, such as most of their cases of murder, adultery, and intoxication, since these are not customarily a part of their occupational procedures. Also, it excludes the confidence games of wealthy members of the underworld, since they are not persons of respectability and high social status.

— Edwin H. Sutherland, criminologist, *White Collar Crime* (1949)

The average loss from a street crime — a burglary or mugging or theft from a car — is less than \$500. White-collar criminals, however, take far more from their victims. White-collar crime refers to acts like bank and securities fraud (such as obtaining credit on a false basis, selling stocks with false information, putting false entries in accounting records).

White-collar criminals don't rely on violence or breaking and entering. They take advantage of their positions of power and violate the trust of others. They steal money and property and also endanger the trust people have in our economic system.

Enron

One major fraud involved Enron, a corporation based in Houston, Texas. Enron began in 1985 as a natural gas pipeline company. But as states and the federal government deregulated energy utilities, Enron became an energy trading company. If a utility company needed energy (natural gas or electricity), Enron found another utility that could supply it.

As its stock price rose, Enron decided to branch out and trade in many other things, some of them extremely risky investments. When these deals did not go well, Enron went into debt. To cover up the debt, it created offshore partnerships with companies that held the debt for Enron. It also falsified financial records on many of its trades, claiming much greater revenue than it actually received. The apparent revenue increases made Enron's stock appealing to investors.

Every company that offers its stock to the public must report its financial statements to the Securities and Exchange Commission (SEC), a federal regulatory agency. Financial

statements must be audited by an independent company certifying their validity and accuracy. Enron's dealings were shady, but its auditor, Arthur Andersen, the nation's largest accounting firm, did not uncover the massive frauds. Enron not only paid Andersen \$25 million a year to perform audits, it also paid Andersen \$27 million a year for other accounting services.

Enron kept reporting rising profits, and its stock price soared. It was the nation's seventh largest company in 2000, reporting more than \$100 billion in business that year.

The next year was far different. A deal fell through to distribute movies over the Internet. It was revealed that a bankrupt energy company owed Enron more than \$500 million. The Securities and Exchange Commission began investigating Enron's offshore deals. As Enron's shaky financial condition was revealed, its stock price plummeted. By the end of 2001, Enron declared bankruptcy.

Thousands of employees lost their jobs. Many had invested their pensions in now-worthless Enron stock. In fact, many individual investors, mutual funds, and pension funds had invested in the stock.

Some Enron executives were charged, tried, and convicted of violating federal fraud statutes. Kenneth Lay, Enron's founder was convicted of six counts of wire and securities fraud, but died before being sentenced. Jeff Skilling, Enron's chief operating officer, was convicted of 19 counts of fraud and sentenced to 24 years in prison.

Many other Enron executives pleaded guilty, including Andrew Fastow, the chief financial officer and architect of most of the fraudulent deals. He was sentenced to 10 years in prison.

The accounting firm of Arthur Andersen was charged with obstruction of justice. Its executives admitted directing employees to shred Enron documents in accordance with its document retention policies after learning of the SEC's investigation of Enron. More than two tons of paper were shredded. The firm was charged under a statute that makes it a crime to "knowingly" and "corruptly" persuade another person to "withhold" or "alter" documents to be used in an "official proceeding." The trial judge instructed the jury that even if Andersen's executives believed their conduct was lawful, the jury could still convict the firm. The

jury found the firm guilty, and the firm went out of business.

In 2005 in *Andersen v. U.S.*, a unanimous Supreme Court ruled that the judge's instruction was wrong and reversed the conviction. Writing for the court, Chief Justice William Rehnquist stated: "Only persons conscious of wrongdoing can be said to 'knowingly ¼ corruptly persuad[e].'"

Other major financial institutions were implicated in the scandal. Four bankers from Merrill Lynch were convicted of fraud for one of Enron's offshore deals.

In response to the Enron scandal, the federal government passed the Sarbanes-Oxley Act in 2002. The act set up a new agency to regulate firms that audit corporations and made it against the law for firms to audit a corporation's books *and* perform other accounting work for the same corporation. It also set strong penalties for anyone who "knowingly" destroys, alters, or falsifies documents to "impede, obstruct or influence" a federal "investigation" or bankruptcy. Finally, it requires chief executive officers and chief financial officers to certify the accuracy of their financial statements. Anyone who certifies a statement knowing that it is not true faces penalties up to 20 years in prison and \$5 million in fines.

Bernard Madoff

Another, more recent fraud was committed by Bernard "Bernie" Madoff. Just before it was exposed in December 2008, Madoff's company claimed to have \$65 *billion* in assets, double the amount of assets on the books of financial giant Goldman Sachs.

The reason Madoff's fraud grew so large was that people trusted and respected him. He was seen as an innovator and visionary on Wall Street.

In the early 1960s, he had set up a small brokerage house, Bernard L. Madoff Investment Securities LLC. (LLC stands for "limited liability company." It is not a corporation.) Wall Street then had two major stock exchanges, the New York and American, which traded major stocks. Madoff's company specialized in trading "over the counter" stocks, those of companies not listed on the two exchanges.

Madoff began trading after hours, when the two major exchanges closed. His company developed software for conducting trades quickly and efficiently.



Bernard Madoff, center, was sentenced to 150 years in prison for fraud.

When NASDAQ, the first electronic stock exchange, opened in the early 1970s, it used the software Madoff's company had developed. Madoff even later served as the chairman of NASDAQ, an honorary position.

Aside from trading, Madoff's company also created a fund for people to invest in. It was this fund that became the fraud. Madoff claims his fraud began in the early 1990s, but many believe it began long before. Nobody knows why Madoff turned to fraud. He was proud of being considered a financial genius, capable of getting returns for his fund even in bad times. The fraud probably began during a bad time with him fudging numbers at first, and it later turned into a huge Ponzi scheme.

A Ponzi scheme works by taking money from investors, promising them a high rate of return. When investors want their profits, they get paid by money from newer investors. To work, the scheme requires a constant flow of new money into the fund. (The name Ponzi comes from Charles Ponzi, who defrauded people using this method in the 1920s.)

When people invested money in Madoff's fund, he put their money into his personal bank account. There was no fund. He devel-

oped software that could show investors and regulators where the fund's money was supposedly invested. It allowed him to send out thousands of monthly statements to investors.

Madoff's scheme differed from most Ponzi schemes in two ways. First, he did not promise investors outlandishly high returns. His returns were high, but most important, they were consistent. Madoff made it seem like his fund was a safe investment, always going up. Second, he did not pursue investors. He made his fund seem like an exclusive club, and investors came looking to invest in it.

Madoff managed to get charitable foundations, university endowments, mutual funds, and hedge funds to invest in his fund. He seemed to have an endless amount of new money coming in until the stock market collapsed in 2008.

When the market fell, mutual funds, hedge funds, and other large investors wanted their money from Madoff because they needed to pay people who were withdrawing money from their funds. Much more money was going out of Madoff's fund than coming in. Madoff realized he was done. He told his sons what he had been doing and that he was going to consult an attorney and eventually turn himself in. But the sons consulted their own attorney and were told they could not wait for their father to turn himself in because the fraud was ongoing. They went to the authorities, and Madoff was arrested the next day, December 11, 2008.

In March 2009, Madoff entered a guilty plea to all the charges against him — 11 federal felonies (among them, securities fraud, wire fraud, and mail fraud). He admitted to the court that he had committed a massive fraud and implausibly stated he was had acted alone. Three months later, the judge sentenced him to 150 years in prison.

Others in Madoff's company have pleaded guilty to fraud charges. His accountant, who supposedly singlehandedly audited Madoff's "huge" fund since 1991, pleaded guilty to nine federal felonies. Madoff's second in command also pleaded guilty.

Exactly two years after Madoff's arrest, his son Mark committed suicide. Several investors also committed suicide. Pension funds, university endowments, and charities lost huge amounts of money. Some charities were forced to close down. Many thousands of investors lost their savings.

As early as 1999, one financial analyst had reported Madoff to the SEC. The analyst stated he could tell that something was wrong with Madoff's company within five minutes of examining its records. Madoff's returns always went up, never down. The analyst repeatedly tried to get the attention of the SEC, the media, and others in the financial industry. But he was ignored.

FOR DISCUSSION

1. At the time, Enron's fraud was called the "corporate crime of the century." Describe the fraud.
2. At Enron and other companies accused of massive fraud, chief executives, paid millions of dollars a year to run the companies, have claimed they knew nothing about the fraud. Do you think it is likely to be true? If it were true, should the executives be held accountable somehow? Explain.
3. What role did the accounting firm Arthur Andersen play in the Enron scandal? Do you agree with the Supreme Court's decision in *Andersen v. U.S.* decision? Explain.
4. What is a Ponzi scheme? Why do you think Madoff's scheme was so successful?
5. Why didn't the Sarbanes-Oxley Act apply to Madoff's firm? If it had, do you think it would have made a difference? Do you think greater regulation could reduce the amount of white-collar crime? Explain your answers.
6. Do you think the criminal justice system should treat white-collar criminals less harshly than violent criminals? Explain.
7. Do you think tighter economic regulations help prevent white-collar crime or is there little that can be done to prevent it? Explain.

Swindlers and Con Artists

Fraud and deceit abound in these days more than in former times.

— Edward Coke, English judge, politician, and legal scholar, *Twynes Case* (1602)

Not all swindles involve banks and huge sums of money. Smaller swindles — called con games, scams, or buncos — cost Americans billions of dollars each year. Con games can vary from small schemes that take a few dollars from schoolchildren up to elaborate plots to steal large sums from the rich.

P.T. Barnum, the great showman, said, "There's a sucker born every minute." In fact, almost any of us could be suckered at one time or another. Con artists tend to be bright, articulate people. They are clever actors and patient at waiting for the right moment to strike. In addition, they often work in groups to help bamboozle their victims. Often someone called a "shell," who seems to be an innocent bystander, begins the process of drawing in the victim. Complex con games can involve several other people called "cappers" who also pretend to be innocent. In fact, they are all part of the swindle team.

Some con games prey on people's desire to help and be good neighbors. In one such scam, a person pretends to be your new neighbor who has locked his keys inside his house and needs to call a cab to get to an important

Some Con Game Slang

big store an elaborate confidence game involving a fake office and many people. The film *The Sting* shows a good example.

blowoff the last move in a con game.

capper an apparent bystander who is actually an accomplice of the swindler. Also, a steerer.

fish the victim. Also the mark, the pigeon, the customer.

green a naive victim.

hang paper to write a fraudulent check.

hurrah the point in a con game where the victim is totally committed.

red inking the threat to eliminate the victim from some elaborate scheme just as he or she gets greedy.

salt a mine placing a few real gems in a worthless mine, or something similar.

squeeze a crooked wheel game such as roulette.

stall the point in a swindle where the victim is momentarily delayed in order to increase his or her greed.

touch the money taken from a victim.

appointment across town. You loan “cab fare” to the “neighbor” and never see him again.

Most con games, however, rely on the victim’s desire to get something for nothing. The swindler offers huge rewards at some later date in exchange for some of your money right now. Dallas police investigator W.E. Orzechowski once said, “Con men basically are using the same old schemes, time after time, and they still work.” The best bet to avoid a con game is to remember: If it seems too good to be true, it almost certainly is. Everyone should say no to schemes suggested by strangers.

The following section describes several classic swindles, and a few new ones developed for the telephone and Internet age. To help you keep the bad guys straight, in each case we will call the swindler “Bunco” and the accomplice “Capper.”

Pigeon Drop

Mr. Bunco approaches a well-dressed elderly woman named Ms. Green at a bus stop. While chatting in a friendly way, Mr. Bunco spots an envelope on the sidewalk. He peeks into the envelope and says it contains \$6,000. Now Ms. Capper arrives and joins the conversation. Mr. Bunco asks both women what they should do with the money. Soon they all agree to share the money, but Ms. Capper recommends that Mr. Bunco go to a nearby lawyer for advice.

Mr. Bunco returns and says the lawyer told him the three should share the \$6,000. But Mr. Bunco reports that the law requires a neutral party to hold the money for six months. He says the lawyer has agreed to hold the \$6,000 if they will each put up \$1,000 to show good faith.

The minute poor Ms. Green adds her \$1,000 to the envelope, the swindlers find a way to go off with it. They may even leave her with the original envelope — full of worthless paper.

Bank Examiner Swindle

Mr. Bunco visits Maria, a young housewife, and identifies himself as a bank examiner. He picked her out as a victim by watching her fill out a deposit slip at the bank. Mr. Bunco tells Maria that he believes one of the tellers at the bank is embezzling money. He asks Maria to help him trap the teller and offers her a reward of \$500. After she agrees, Mr. Bunco asks Maria to withdraw a large sum of money from her account. “Bring the money home,” he says.

“One of our security people will come by and pick up the bills to examine the serial numbers.” Maria withdraws the money, but of course it is picked up by Ms. Capper, who disappears with it.

Phony Prize or Sweepstakes Offers

This is a common telemarketing, or telephone, fraud. Mr. Bunco telephones Henry and informs him he has won second prize in a sweepstakes or lottery. His prize is \$250,000, but before Henry can receive it, he must pay \$10,000 in taxes. When Henry wires him the money, Mr. Bunco calls Henry with even better news. The first place winner has been disqualified and Henry now can win the \$1 million grand prize. All he has to do is pay \$70,000 more in taxes. Henry wires more money, and he never hears from Mr. Bunco again.

Other Telemarketing Scams

Telemarketing swindles like the luxury tax scam have become big business, stealing billions of dollars a year. Often a room full of callers work these swindles. When authorities begin to investigate, the whole operation can move on easily. Here are some common telemarketing schemes that either steal money directly or offer a service at hugely inflated prices:

- Schemes to fix bad credit or get a credit card for a fee
- Phony offers of educational grants for a fee
- Magazine subscriptions that are overpriced or never appear
- Work-at-home offers that promise huge incomes
- Fake offers of loans for a fee paid in advance
- Phony travel and vacation offers
- Fake calls from bank or credit card company to get personal information

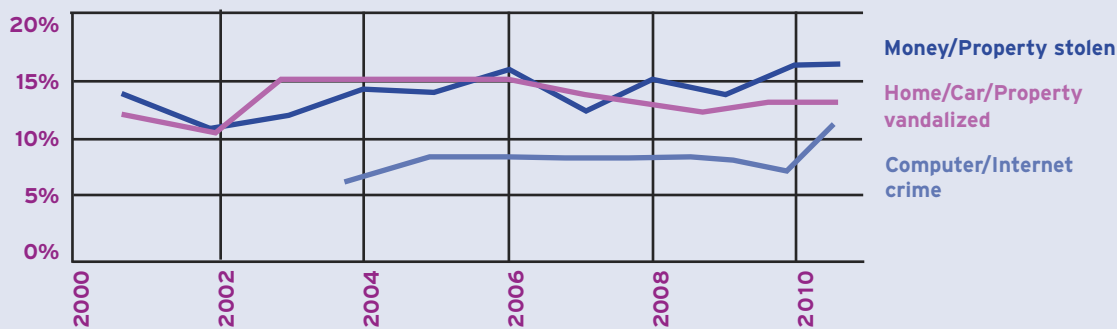
If you are approached by a caller like this, try to get an address or telephone number and then call the police, the district attorney’s office, a local consumer protection agency, or the National Fraud Information Center at (800) 876-7060.

ASK AN EXPERT

Invite a police officer from the bunco squad to discuss with your class different con games and swindles.

Top Three U.S. Crimes

Top Three U.S. Crimes Based on Self-Reports



Internet Fraud

With the growth of e-commerce, many telemarketing scams have moved to the Internet. Scammers set up web sites and telephone banks and send bulk e-mail, known as spam, asking people to contact them. Just like telemarketing fraud, scammers offer phony merchandise, prizes, magazine subscriptions, and investment opportunities. In addition, the Internet offers con artists new opportunities. Here are a few common Internet frauds:

Auctions. The Federal Trade Commission reports more fraud from auctions than anywhere else on the Internet. Mrs. Bunco offers to sell a new television on an auction web site. She gives a mail drop as her address. When the money arrives, Mrs. Bunco never sends a television.

In more than 90 percent of all Internet fraud cases, payment is made offline — by check or money order. “Requesting cash is a clear sign of fraud,” said Susan Grant, director of the Internet Fraud Watch. “Pay the safest way. If possible, pay by credit card because you can dispute the charges if there is a problem.”

Phishing. Mr. Bunco sends out spam claiming to be from a bank, credit card company, or In-

ternet service provider. The e-mail has a phony link to the company’s web site. It is actually to Mr. Bunco’s web site, which is designed to look like the real company’s site. When people click on the link, the web site tells them that their accounts need updating (particularly passwords and credit card information). When customers respond, Mr. Bunco goes on a spending spree with their credit card numbers.

Nigerian money scam. Ms. Bunco sends spam in which she claims to be an official of a foreign government who needs help getting a huge sum of money (or diamonds) out of the country. She offers to give a share of the money to the person who helps her. She has pictures and documents galore. When people respond, she acts desperate, saying she needs money for some purpose, perhaps to bribe an official. She always needs a little more money. People send it thinking they are going to get a share of a fortune.

FOR DISCUSSION

1. Are you familiar with any of these swindles? Which ones seem most tempting to victims? Why?
2. Why do victims fall for swindles? How can they avoid them?

ACTIVITY

More Cons

There are many more con games and swindles than have been mentioned in this book. In this activity, students find and report on different schemes. Each student should:

1. Research and find a different con game or swindle. To find one, talk to people, go to the library, or research on the Internet. A good place to start on the Internet is at *Criminal Justice in America* Links (www.CriminalJusticeInAmerica.org).
2. Write a one-page paper describing the con game, how it works, and who its victims are.

CHAPTER 4

CRIME VICTIMS

Americans are fascinated by murders and murderers but not by the families of the people who are killed — an amazingly numerous group, whose members can turn only to one another for sympathy and understanding.

– Eric Schlosser, “A Grief Like No Other” in *The Atlantic* (1997)

WHO ARE THE VICTIMS? | VICTIMS OF VIOLENT CRIMES | VICTIMS OF PROPERTY CRIMES
HELPING VICTIMS OF CRIME | THE PUSH FOR VICTIMS’ RIGHTS

Who Are the Victims?

Broad studies have revealed certain trends within crime and victimization patterns. Adolescents are most likely to be victimized. Men become crime victims more often than women do, and blacks experience more crime than other racial groups.

– National Institute of Justice web site, “Victims and Victimization” (2012)

Suzanne Rossetti, 26, was driving home from the theater at Arizona State University in Phoenix. On the way, she stopped at the market, where she accidentally locked her keys inside her car. Two young men got the door open for her with a coat hanger and then asked her for a lift. She agreed, but once in the car, they turned vicious almost immediately.

The young men forced Suzanne to drive them to her apartment. There they beat and raped her for several hours. Then they drove her into the desert and threw her off a cliff. When they heard her moans down below, they climbed down after her. She pleaded with them to leave her alone.

“I’m dying anyway,” she begged.

“Damn right you are,” one of them growled. He picked up a rock and crushed her skull.

Shocking stories like these have frightened most of us. *The streets just aren’t safe at night. I’ve had my third car stereo stolen. I hate putting bars on my windows, but what choice do I have?* Opinion polls consistently show that Americans express great concern over the crime rate and the effectiveness of the criminal justice system.

Down through the years, this concern has sparked many studies of the causes of crime and many proposals for possible solutions. In recent decades, attention has shifted to the *victims* of crime. Who are they? How can we help them through the tangle of the legal system? What can be done to protect them? And what can be done

to help them recover from the effects of the crime?

First, who are the victims? They come from all walks of life and all age groups. But studies show that the most common victim of violent crime is a black male teenager from a low-income family. And the most common victim of theft is a white male teenager from a low-income family. Most studies show that criminals tend to victimize members of their own race.

Being a victim can be deeply disturbing. It can take years to recover, and some victims never recover. This is not just true of violent crime. Fraud can wipe out a victim’s life savings. A bank swindle can take away a home that an elderly couple worked all their lives to pay for.

Crimes against property like fraud, burglary, and theft are the most common crimes in the United States. Violent crimes such as murder, rape, and robbery are less common. But they probably cause more anxiety and fear. Violent crime can leave a victim crippled, physically or emotionally. It’s hard to imagine the effect if it hasn’t happened to you. Some victims never want to leave the safety of their homes again.

In the following sections, we will examine some victims of violent and property crimes. First we will find out what **victimology** — the study of victims — tells us about victims of these crimes. Then we’ll listen to some victims describe the effect crime had on their lives.

Victims of Violent Crimes

Without warning, Silva pulled out a hunting knife and began moving about the room with demonic speed, stabbing six people in a matter of seconds. Among these were Martin, stabbed in the thigh and the arm, the woman behind the counter, stabbed in the chest and abdomen while phoning the police, and Anna, stabbed in the side as we pulled each other toward the door. I had gone no more than a few steps down the sidewalk when I felt a hard punch in my back followed instantly by the unforgettable sensation of skin and muscle tissue parting. Silva had stabbed me about six inches above my waist, just beneath my rib cage. Without thinking, I clapped my hand over the wound before the knife was out, and the exiting blade sliced my palm and two fingers.

– Bruce Shapiro, “The Violent Politics of Crime” in *Harper’s Magazine* (1995)

Violent crimes, such as murder, rape, robbery, and assault, are also known as **crimes against the person**. In these crimes, the criminal either uses force or threatens to use force against the victim. Below, we will take a closer look at victims of two kinds of violent crime — robbery and domestic violence.

Average Annual Rate of Violent Victimization Per 1,000 Persons, 1993-2008

	Percentage of Population	Victimization Rate
Sex		
Male	48.8%	15.7
Female	51.2	14.2
Race		
White	67.9%	13.6
Black	11.9	20.8
Hispanic	14.0	15.6
American Indian or Alaskan Native	0.5	42.2
Asian or Pacific Islander	4.7	6.3
Two or more races	1.0	52.6
Age		
12-14	4.7%	27.5
15-17	4.8	23
18-20	5.1	33.9
21-24	6.5	26.9
25-34	16.3	18.8
35-49	24.7	12.6
50-64	22.7	10.9
65 or older	15.1	2.4

Source: “Crimes Against Persons Age 65 or Older, 1993-2008,” Bureau of Justice Statistics (2010)

The Robbery Victim

In a robbery, the criminal takes property by force or by threat of force. In this scary crime, victims can lose their property, suffer injuries, and even die. Statistically, the chances of being killed are small: Almost 99.8 percent of all robbery victims survive. About one-third of all victims suffer injuries, mostly minor. Only two percent receive wounds serious enough to stay overnight in a hospital. Strangely, victims are most likely to be hurt by unarmed robbers, probably because these robbers often attack their victims to establish control in the robbery. Victims are most likely to be killed, however, by robbers armed with guns. Victims who resist are more likely to be injured or killed than those who do not resist.

The most likely victim is a male between the ages of 12 and 24. As a person’s age increases, the likelihood of being robbed declines. People over 65 make up the age group least likely to be robbed.

What is it liked to be robbed? The following is excerpted from a robbery victim’s statement.

Harry’s Story

“My dad and I were walking to meet my brother at a cafe where we went to lunch a lot. As we walked up, we saw the owner down the street waving and jumping up and down. We waved back. Later, we found out he was trying to warn us not to go in. He had been in the bathroom when the robbery started and had climbed out a window and run down the street.

“When my dad opened the cafe’s door, a guy grabbed him and pulled him in. I turned and started to walk away, but a guy came out, pointed a sawed-off shotgun at me, and ordered me into the cafe. I did what he said. Inside, he threw me on the ground and pressed the shotgun against my head. All the customers in the cafe — about 25 people — were lying on the ground. There were seven robbers, all with guns. They went around from person to person grabbing wallets and jewelry. One man didn’t like how they had talked to his wife. When he objected, a guy hit him with his gun. I lay there thinking, ‘I hope the cops don’t come until these guys get outside.’ I was afraid of being taken hostage.

“They took my wallet, refused my old watch, and tried and failed to get my ring off. It stuck on my finger. They didn’t want to spend any more time in the cafe, so they left. We had come in near the end of the robbery.

“The next day I had a large knot on my head. I don’t understand why. The guy had just pressed his gun against my head. He didn’t hit me. My dad had lost a ring he had owned his whole life. My brother to this day has never gone back to the cafe. The robbery shook up the owner so much that he sold the cafe to someone else.”

The Domestic Violence Victim

Typically, when people use the phrase “domestic violence,” they are referring to spousal abuse (also known as intimate partner violence), which can be committed by spouses, ex-spouses, boyfriends and girlfriends. The term also has a broader definition that includes family violence, child abuse, elder abuse, and abuse by residents of the same household.

Much violent crime takes place at home and is committed by family members or intimates. Half of all 911 calls are related to domestic violence. In most cases, however, nobody calls the police and the incident goes unreported. Of the more than 1.3 million Americans suffering from intimate partner abuse each year, about 75 percent of those victims are women. If victims decide to leave their abusive partners, they remain at risk of suffering serious or lethal violence. One study showed that 65 percent of all murdered female abuse victims were separated from their abusers at the time of death.

Domestic violence is a terrifying crime, violating a person’s most basic zone of safety — the home. The following is an excerpt from a statement made by a survivor of domestic violence.

Denise’s Story

“When I met Al, he was handsome, polite, and totally charming. I fell for him immediately. He was divorced and had a 4-year-old daughter, who lived with his ex-wife. I didn’t know that he had broken his previous wife’s jaw and she had a restraining order against him.

“We went out for a year and then we got married. We had a son the next year and a daughter the following year. Al was fine at first. But things gradually grew worse. When he’d get upset, he would tell me I was fat (I’ve always been thin) or that I was disgusting or stupid. Sometimes when he didn’t like the food I’d serve him, he’d throw it out the window or feed it to the dog. At his daughter’s 7th birthday party, I had ordered two pizzas. When Al saw them, he got mad. They weren’t the right

ASK AN EXPERT

There are many rape and domestic-violence crisis centers around the country today. And many police departments have specially trained officers to deal with victims of rape and domestic violence. Invite a representative from one to visit your class. Have the guest speaker explain how rape or domestic-violence victims are treated and what special services are available in your community.

kind. In front of all the kids, he threw the pizzas on the ground and started swearing at me.

“This was just the beginning. I became afraid whenever he got upset. He would often strike out. He’d grab the kids and spank them. Sometimes he would twist my arm behind my back. Other times he hit me. But after hurting me or the kids, he always apologized — sometimes spending lots of money on trips for the family or special gifts. I began to believe his outbursts were my fault and tried harder to be a better wife and mother.

“In the time we were married, I had many broken fingers, a broken arm, and numerous stitches. I wore dark glasses and makeup to cover black eyes. It got so bad that I started missing work. Although I was trying to hide it, people knew what was going on. My boss told me, “If you don’t get help, you’re going to lose your job.”

“I started seeing a counselor. This helped. One day, after eight years of marriage, I bundled up the kids, went to a shelter, and got a restraining order. We lived in the shelter for three months. After that, I got a new job in another city. I haven’t seen Al in five years.”

FOR DISCUSSION

1. Why do you think many women do not report rapes or instances of domestic violence? Would you if you were a victim of these crimes? Why or why not?
2. What do you think would help victims of violent crimes recover from the crimes? Explain.
3. Victims of violent crimes sometimes report that witnesses do not call the police or try to help them. Why do you think people might not respond when they hear screams or see crimes?

Victims of Property Crimes

Lower income households were more likely than higher income households to experience property crime.

– Bureau of Justice Statistics, *National Crime Victimization Survey* (2011)

Property crimes, such as theft, burglary, and fraud, involve stealing property. They differ from violent crimes because the criminal *neither* uses force *nor* threatens to use force. If the criminal uses force, the crime is a violent crime — a crime against the person — not a property crime.

According to FBI statistics, losses from property crime add up to more than \$15 billion a year. Every family in the country suffers — some from direct loss, some from high insurance rates, and some just from fear and insecurity. In the following sections, we will take a closer look at victims of two kinds of property crime — burglary and identity theft.

The Burglary Victim

Burglary is the unlawful entry into a building with the intent to commit a crime, normally theft. Almost 4 million burglaries occur every year, resulting in reported losses of \$3.5 billion. Crime surveys reveal that victims report about half of all household burglaries to the police. Although not a violent crime, burglaries often greatly upset the victims, because the criminal has intruded into the privacy of the home. The following story is excerpted from a statement given by a burglary victim.

Helen's Story

"I was coming home from work on a Monday. My front door was unlocked. I walked in, and the first thing I noticed was my new tablet computer was missing. I thought, 'How dare she (my younger sister) take it out of this apartment without asking me!' Then I noticed clothes scattered in the hallway and thought, 'She must be doing the laundry, but why does she have to dump it in the hallway?' It wasn't until I walked into the bedroom that it dawned on me that we had been burglarized. The stuff in our nightstands was scattered on the bedroom floor. I ran into the living room to look for my TV and DVR. They were gone. I ran around the apartment — anything and everything of value they took. I was in shock and felt so helpless. When I called the police, I had



Every state today offers an assistance program for crime victims.

to repeat everything twice because I was crying and talking at the same time.

"The burglars had picked the lock to enter the apartment. So I replaced my deadbolt lock with a new one, which, according to the police, was 'practically unpickable.' I replaced the tablet computer, TV, and DVR. A month later on another Monday, I came home to find my apartment burglarized again. They had not picked my unpickable lock. They had broken down the door with a crowbar. They took everything I had replaced and looked through places they had missed the first time. The police took fingerprints both times and came up with a suspect. But they haven't caught him yet.

"After the second burglary, I no longer felt safe. The thought of being invaded a third time was too much. So within a month, my sister and I moved to a new apartment in a different neighborhood."

The Identity Theft Victim

Identity theft is a type of fraud. A criminal steals a person's credit card or Social Security number, assumes the victim's identity, and quickly spends as much money as possible. The criminal may pay for goods, get loans, apply for new credit cards, rent houses, get a job, and even declare bankruptcy — all in the victim's name. This crime was rare just a decade ago. Now, more than 11 million people fall victim to it each year.

Unlike most fraud, the victim never meets the criminal. The victim doesn't discover anything is wrong until it is too late. A credit card company may call asking about unusual activity on the account. Or the victim may be

denied credit because of all the bills the criminal has accumulated.

The victim is not responsible for most of these debts. But payment will be demanded. The victim must spend countless hours contacting and convincing merchants that the person who ran up the bills was not the victim. Identity theft leaves victims' credit in shambles. It may take years for them to restore it. This is one victim's story:

Maureen's Story

"On a Sunday afternoon we received a phone call questioning an unusual pattern of activity on our credit card. Neither my husband nor I had authorized or made the charges to the account. I was told our credit card would be canceled. Two months later we received a phone call from J.C. Penney's credit department advising us that an account had been opened using my husband's name and Social Security number. We were advised by J.C. Penney's to immediately contact the three major credit reporting bureaus [Trans Union, Experian, and Equifax] to place fraud alerts on our credit reports.

"In speaking to the three credit bureaus, I discovered there had been 25 inquiries into our credit report in the previous 60 days. I requested that each credit reporting agency send me a copy of our credit reports, and I spent the next three days frantically making phone calls to the merchants who had made inquiries. I also contacted the Federal Trade Commission's Identity Theft Hotline, which assigned a reference number to our case."

[Subsequently, Maureen learned that several different suspects were fraudulently using

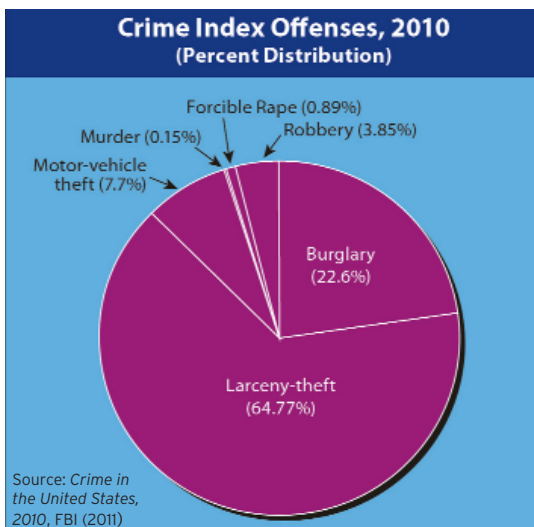
her and her husband's personal information and had gotten a cell phone account, two new cars, and three bank loans totaling \$45,000.]

"Our efforts to restore our good names and good credit have been extensive. I have made hundreds of phone calls. I've sent dozens of notarized letters to the merchants. We have submitted numerous affidavits, notarized statements, and notarized handwriting samples. We have filled out over 20 different sets of forms and statements in order to comply with the merchants requests for further information. It's like filling out your income tax return 20 different times, using 20 different forms, and following 20 different sets of instructions.

"I have logged over 400 hours of time trying to clear our names and restore our good credit. The impact of being a victim of Identity Theft is all encompassing. It affects you physically, emotionally, psychologically, spiritually and financially. We now have adverse ratings on our credit reports. We are also receiving phone calls from collection specialists wanting to know why we are overdue on the payments for our two new cars. I try to nicely explain to these collection specialists that we are victims of Identity Theft and we did not purchase these vehicles. Once you become a victim of Identity Theft your life is forever changed. We do not know how many more accounts may still be outstanding, we do not know if a collection specialist is calling when our phone rings, we do not know if our good names and financial reputations will ever be truly restored."

FOR DISCUSSION

1. Many victims speak of not being the same person after being victimized. Why do you think this is so? What has changed for them?
2. Many victims of burglary describe the crime as an invasion of their privacy. What do you think they mean by this?
3. Have you ever had anything stolen? If so, how did it affect you? Do you worry that it may happen again?
4. States make receiving stolen property a crime. Do you think it should be? Why or why not?
5. What sorts of crimes do you think people are most likely to report to the police? Least likely? Why do you think some people don't report crimes to the police?



Helping Victims of Crime

The victim of a robbery or an assault has been denied the “protection” of the laws in a very real sense, and society should assume some responsibility for making him whole.

– Arthur J. Goldberg, secretary of labor, Supreme Court justice, and ambassador, *New York University Law Review* (1964)

Some ancient legal codes called for compensating crime victims. The Code of Hammurabi (c. 1750 B.C.), for example, forced the criminal to pay as much as five times the value of the damage caused. If the criminal couldn't be caught, the state would compensate the victim.

Early English and American law forced criminals to make direct payments, called **restitution**, to victims. Gradually, however, criminal law shifted away from helping victims and focused exclusively on punishing lawbreakers. The only way for a victim to get restitution was to sue under civil law. Unfortunately, this was usually impossible. Either the criminal had escaped or the criminal was poor and couldn't pay the victim.

It was only in the 1960s that we again began looking for ways society could help crime victims directly. In 1963, New Zealand passed the first victim-compensation legislation. This pioneering act set up a board to pay cash awards to crime victims. In an influential 1964 *New York University Law Review* article, former Supreme Court Justice Arthur J. Goldberg wrote that “Government compensation of victims of crime . . . is long overdue” The idea spread quickly to England in 1964 and then to California in 1965. Today, every state has a victim-compensation program.

One State's Model

During a street mugging, a man is assaulted and hit several times in the face. The mugger takes the man's wallet with \$35 in it and flees. Bruised, scared, and with broken glasses, the man is taken to a nearby emergency room for treatment. The New York Office of Victim Services (OVS) would pay for the replacement of the eyeglasses, the lost cash, and the emergency room bill if the man did not have insurance.

A young woman, age 16, sitting in the park becomes the victim of a random shooting. Rushed to the hospital, she dies after several days. OVS would pay for any unreimbursed medical expenses, funeral costs up to \$6,000, and counseling for her parents and brothers and sisters.

The state of New York offers monetary aid to families who have suffered financially from violent crime. Crime victims, their dependents, or immediate family members can apply for compensation. OVS will pay for medical expenses, mental health counseling, job retraining, funeral or burial expenses, lost earnings, and loss of support. It will also compensate for losses of cash or essential personal property if the victim has suffered a personal injury. The limits on the amounts of the awards are as follows:

Medical expenses	unlimited
Counseling.....	unlimited
Vocational rehabilitation	unlimited
Funeral or burial.....	\$6,000
Lost earnings	\$30,000 (\$600/week)
Loss of support	\$30,000 (\$600/week)
Crime-scene cleanup.....	\$2,500
Loss of cash or essential personal property	\$500 (\$100 for cash)
Attorney fees	\$1,000
Emergency	\$2,500

The New York plan compensates for losses caused by crimes of violence, such as assault, rape, murder, and hit-and-run. It also compensates elderly or disabled crime victims. The board will not pay for losses that have already been covered by insurance.

The New York plan also requires the victim to cooperate with the police and prosecution. And the board checks to make sure that the victim did not contribute to the incident in some significant way. This is particularly important in cases involving drugs or substance abuse.

These are the main standards that the New York Office of Victim Services checks before making an award:

- (1) a violent crime occurred, resulting in an injury (or an uninjured victim is disabled or over 60 or under 18 years of age);
- (2) the victim cooperated with authorities; and
- (3) the victim did not contribute to the crime.

The main problem with the New York plan and other victim compensation programs is money. Many state compensation boards are behind in the settlement of claims because of lack of funds and inadequate staffing. In fact, many programs would be overwhelmed if every eligible person applied for benefits. With increased public awareness of the programs, more funds will be needed in order for them to meet their goals.



Other Victim Programs

Cash payments aren't the only way victims can be assisted. Government agencies and private organizations offer many other services: shelters for battered women, rape counseling, crisis intervention programs, child-abuse intervention, and medical counseling.

In many cities, the prosecutor's office or a private help organization has a unit to aid victims when they first come into contact with the criminal justice system. This service is aimed at comforting victims, notifying them of court dates, and even helping them find transportation to court.

Many communities have programs that offer crime victims free or low-cost legal advice, psychological counseling, or employment assistance. And some agencies provide help in replacing items stolen or destroyed in crimes. It can be a great comfort to a crime victim to have someone's help in as simple a task as replacing a stolen ID or a broken door lock. The primary goal of most victim assistance programs is to help the victim get through the crisis with dignity and get back to as normal a life as possible.

Restitution

In addition to compensation programs, court-ordered restitution has made a comeback. Today every state and the federal government give courts the authority to order a convicted defendant to pay restitution to the victim. Courts can, for example, order offenders to pay for the items they stole, the property they damaged, and the medical expenses the victim incurred.

Restitution serves several purposes. It helps compensate the victim and places that

burden on the person responsible for the harm, the offender. It also helps the offender recognize what he has done and take responsibility for it. One study even found that offenders who paid restitution were less likely to offend again.

Courts frequently order defendants to pay restitution for property crimes, when defendants are not sent to prison, and when defendants can afford to pay. Some states require a restitution order in all criminal cases.

A 2011 report from the National Center for Victims of Crime, however, found that many offenders ordered to pay restitution fail to do so.

A study released in 2005 by the Government Accountability Office examined five high-dollar white collar financial fraud cases and found that only about seven percent of the restitution ordered in those cases was collected, up to eight years after the offenders' sentencing.

The experience at the state level is equally discouraging. In Iowa, for example, outstanding court debt, including restitution, amounted to \$533 million as of 2010. . . . In Texas, a 2008 examination found that more than 90 percent of offenders discharged from parole between 2003 and 2008 still owed their victims restitution.

FOR DISCUSSION

1. What is the difference between state victim compensation and restitution for victims? Which do you think is better? Why?
2. Do you think courts should order restitution in all cases? Explain.

CLASS ACTIVITY

Crime Victims Board

In this activity, students role play members of a Crime Victims Board similar to the New York model. It is their responsibility to review applications for crime victim compensation and decide which, if any, should be approved.

1. Form small groups of four students each.
2. Each group should:
 - a. Review the standards used for making awards in New York on page 68.
 - b. Read each of the cases below and decide, based on the standards, whether compensation should be awarded.
 - c. For each case, write down the following:
 - (1) The case number.
 - (2) Whether the group approves or denies an award of compensation.
 - (3) The reasons for the decision.
 - (4) The total amount of the award.
 - (5) The amount of award money allocated to medical expenses, vocational rehabilitation, funeral or burial, lost earnings, loss of support, and loss of cash or essential personal property.
 - d. Be prepared to discuss and support its recommendations.

Case No. 1

William Hall was at the Shady Oak Bar playing a game of pool with the suspect, Ken Ross. William had a \$50 bet on the game. He lost the pool game, and the two men began arguing over the bet. According to witnesses interviewed by police, William threw a punch at Ken and missed. Ken picked up the pool cue and struck William in the mouth, causing him to lose several teeth.

William claims that he did not try to strike Ken and that they had no argument.

The District Attorney's office refused to prosecute Ken because of insufficient evidence.

William is claiming \$1,500 in medical damages and \$600 in lost wages.

Case No. 2

Robert Samuelson, owner of the Valley Drug Store, was shot and killed during a robbery of the store. His widow, Ruth, is claiming a wage loss of \$50,000 per year for five years due to her husband's death. Funeral expenses totaled \$7,000.

Ruth will receive her husband's estate, which is valued at \$100,000. In addition, she receives Social Security benefits of \$900 per month.

Case No. 3

Rocky Pineda was playing with his two children at Allstone Park, when he was approached by two young men. One of them had a gun and demanded money. Rocky attempted to explain that he could not speak much English. He tried to take his children and run when one of the young men shot him in the back. He died a few moments later from the gunshot wound. The suspects were never found.

The funeral expenses were \$7,000, to be paid by Maria Pineda, his widow. She is eight months pregnant and has no health insurance to cover her medical expenses. She is claiming a \$30,000 wage loss due to her husband's death.

Case No. 4

Susan Jones was sitting in the Whaling Ship Bar with two of her girlfriends. They were listening to music and having a drink. Three men sat down at their table and began to talk. After a while, they all started dancing and continued drinking.

One of the men, Mike, offered Susan a ride home. She accepted. When they arrived at her apartment, she invited him in for coffee. He followed her into the kitchen, grabbed a knife, and then forcibly raped her and cut her several times with the knife.

Her medical insurance covered her hospital bills. She stayed away from work for three weeks because of the psychological trauma. She is claiming \$3,000 for seeing a psychiatrist and \$1,800 in lost wages.

Debriefing Questions

1. Which claims did groups deny? Why?
2. Are the standards for awarding compensation fair? Why or why not? How would you change the standards?
3. If you could write your state's law regarding compensating victims, what would your laws provide?
4. Although most states do not, a few require serious financial hardship for compensation awards. Do you think the requirement makes sense? Why or why not?
5. What are the benefits of victim compensation laws? What are their drawbacks? Do you think states should have such laws? Why or why not?

The Push for Victims' Rights

Over the last 20 years, more than 30,000 victim-related laws have been passed at the state and national level. . . . [Many] states have even gone so far as to pass amendments making victims' rights part of their constitutions.

– Justice Solutions web site, "Implementing Victims' Rights" (2012)

Since the 1960s, concern has grown about how the criminal justice system treats crime victims. Citizens have banded together to form groups to represent crime victims and their families.

These groups have often complained that crime victims are injured twice — first by the criminal and then by an insensitive criminal justice system. They claim that too often victims have been ignored or even subtly blamed for the crime. Many victims have found themselves caught up in police investigations and judicial proceedings that they don't really understand. They have been moved from hearing to hearing at the convenience of attorneys or judges or the police. In the early 1980s, the President's Task Force on Crime said, "Somewhere along the way, the system began to serve lawyers and judges and defendants, treating the victim with institutionalized disinterest."

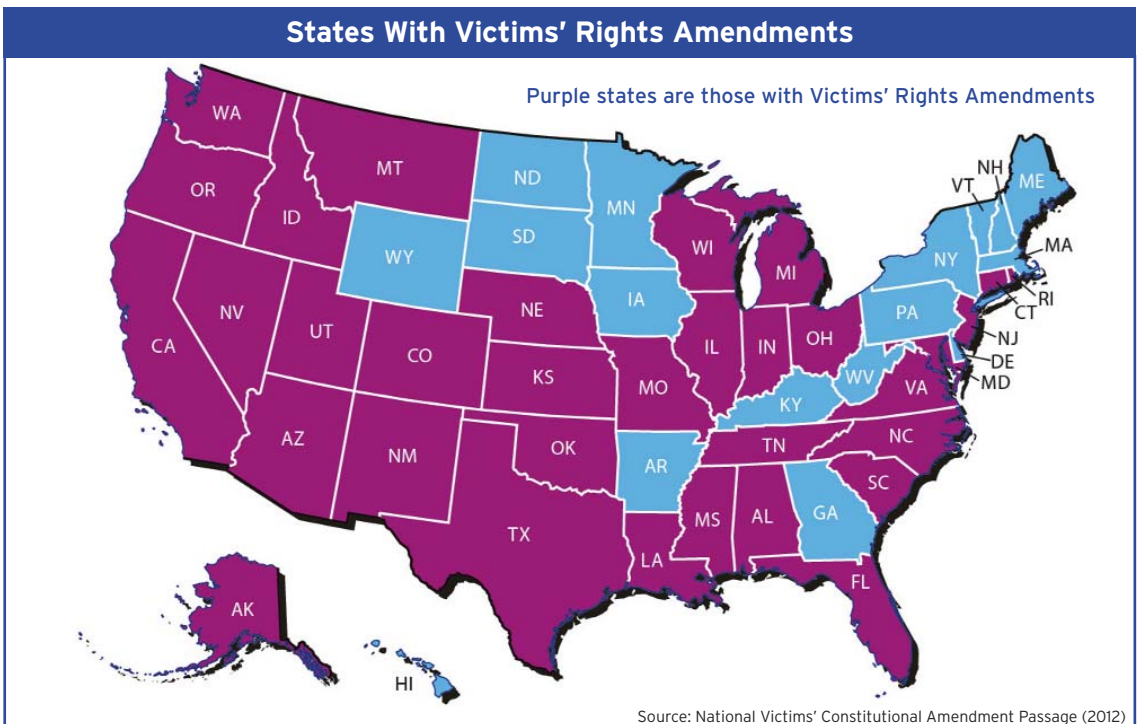
Advocates of crime victims have pressed for reforms in the criminal justice system. They have been joined by many groups, including women's groups interested in helping victims of rape and domestic violence. They have met with remarkable success.

Federal Programs

The federal government has passed several acts designed to address the needs of crime victims. In 1982, Congress enacted the Victim and Witness Protection Act. In addition to protecting crime victims and witnesses, the act was meant to serve as a model for legislation for state and local governments and to ensure that the federal government helps victims and witnesses without infringing on anyone's constitutional rights. The following are some specific features of the act:

- The crime's impact on the victim should be considered in deciding penalties.
- Anyone threatening or harming a witness should be punished severely.
- Court orders should be used to restrain anyone from harassing a witness.
- A victim is entitled to restitution from the criminal.

In 1984, Congress passed the Victims of Crime Act of 1984. This act set up a Crime Victims Fund, which provides grants to local victim



ASK AN EXPERT

Does your state have a victims' bill of rights? A victims' compensation board? What does your state do for crime victims? Invite a prosecutor or public defender to your classroom to discuss these questions.

compensation programs. Today, it supplies almost 40 percent of the funds in these programs. The money comes from fines and forfeitures paid by federal criminals. Government payments to individual crime victims now range from \$100 to \$50,000 or more. The majority of the grant money goes to victims of rape and family violence.

In 1990, Congress enacted the Victims' Rights and Restitution Act. It set into law basic rights for victims of federal crimes. The Victims Rights Clarification Act of 1997 made clear that victims could attend trials and testify at sentencing hearings.

Responses from States

Many states have passed what are called **victims' bills of rights** into law. These laws focus on procedures within the criminal justice system. They attempt to make the victim an important part of the process. Michigan, for example, in 1988 passed a constitutional amendment. It gave crime victims rights such as the right to:

- Keep the accused's trial from being unnecessarily delayed.
- Be protected from retaliation.
- Be notified of court proceedings.
- Attend all court proceedings that the accused has the right to attend.
- Confer with the prosecution.
- Make a statement to the court at sentencing.
- Get restitution.
- Receive information about the sentence and release of the accused.

By the year 2012, 33 states had adopted victims' rights amendments to their state constitutions.

Although almost everyone favors helping crime victims, some amendments have drawn fire when they intrude on the rights of criminal defendants. For example, crime victims no longer have to testify at preliminary hearings in California. This was approved by voters in 1990 as part of Proposition 115, California's Crime Victims Justice Reform Act. Investigating police officers may read what the victims said in the police report. This means defendants no longer have the opportunity to cross-examine their accusers at preliminary hearings. (These hearings determine whether the prosecution has enough evidence to hold the defendant for trial.) Some critics argue that denying criminal suspects the right to see and contradict their accusers may well result in unjust prosecutions. They point out that more than 90

percent of all criminal cases end in plea bargains and never go to trial. The preliminary hearing is the only formal presentation of evidence in most cases. They say that the idea of using unchallenged accusers goes against the grain of the entire Anglo-American judicial system. Supporters of the law point out that the police report is only read at the preliminary hearing — not at trial where defendants can still cross-examine their accusers. They believe that it's important to spare the victim from making any unnecessary court appearances. This law was upheld on appeal in California courts. (*Whitman v. Superior Court*, 1991)

Another controversy involves victim-impact statements made at sentencing hearings. After a defendant is convicted, courts often conduct sentencing hearings. These are required in death-penalty cases when the court must weigh mitigating and aggravating factors in the crime. Victim-impact statements allow victims (and their families) to tell the court how they suffered from the crime. Critics have argued that courts should not consider these statements. They say that the victim is not on trial and that the victim's character should not be either an aggravating or mitigating factor.

The U.S. Supreme Court has grappled with this issue. In 1987 in *Booth v. Maryland*, the court ruled that victim-impact statements in death-penalty cases violated the Eighth Amendment's ban on cruel and unusual punishments. The court said the statements inflamed juries and led to erratic results. But four years later in *Payne v. Tennessee*, the court reversed itself. The court stated that sentencing hearings had always examined the harm done by defendants. "Victim-impact evidence," said the court, "is simply another method" for the court to get this information.

Proposed Constitutional Amendment

For the last several sessions of Congress, lawmakers have proposed a victims' rights amendment to the U.S. Constitution. It would

require passage by two-thirds of both houses of Congress and ratification by three-fourths of the state legislatures. The amendment if passed would give victims of violent crimes the right to:

- Be given notice of and to attend any public hearing.
- Be heard at the hearings and to submit statements at any hearing determining release from custody, a negotiated plea, a sentence, or parole.
- Notice of any release or escape from custody.
- Not have unreasonable delays in the trial.
- Restitution from the convicted offender.
- Consideration for the safety of the victim in determining any release from custody.

Supporters of the amendment believe it will finally enshrine in the Constitution basic rights for victims of crime. These will be rights that no state may deny. They view the amendment as restoring the balance between the rights of criminal defendants and victims.

Critics of the amendment think it provides nothing that most states don't already guarantee by law. Most troubling to the critics is that the law forces *all* states to comply. Others worry about the amendment's vagueness and how courts will have to interpret what these rights mean.

FOR DISCUSSION

1. Do you agree with California's policy of permitting police officers at preliminary hearings to read what the victims said in the police reports instead of having the victim testify? Explain.
2. Some victims' rights groups propose that statements made by victims during post-crime counseling sessions should not be used in court or made available to the defense. Do you agree with this policy? Why or why not?
3. The Supreme Court has ruled that victim-impact statements may be used at death-penalty hearings. Can you see any dangers in doing this? Would you support stronger penalties for killing a nun as opposed to killing a prostitute? Why or why not?
4. Make a list of the problems that crime victims face. How can society address these problems?
5. What is the proposed victims' rights amendment to the U.S. Constitution? What are some arguments in favor of it? What are some arguments opposing it?

CLASS ACTIVITY

Victims' Rights Amendment

In this activity, students role play state legislatures deciding on a proposed amendment to the U.S. Constitution.

1. Imagine that Congress has passed the victims' rights amendment to the U.S. Constitution described in the article. Three-fourths of the state legislatures must now ratify this amendment.
2. Form pairs. Each pair will represent a state legislature considering the victims' rights amendment. Each pair should:
 - a. Discuss the amendment's pros and cons.
 - b. Decide how its state will vote (if the pair cannot agree, the vote is "no").
 - c. Prepare to present its position to other "state legislatures."
3. Regroup as a class and different pairs should present pro and con arguments on the amendment.
4. Vote and conduct a discussion using the debriefing questions, below.

Debriefing Questions

1. What do you think were the strongest arguments in favor of the amendment? The strongest arguments against it?
2. Do you think the amendment, as proposed, is a good idea? Explain.

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Unit 2

THE POLICE



Police officers do not have an easy job. When enforcing the law, they deal with society's problems – quarreling spouses, drug and alcohol addiction, serious traffic accidents, and senseless violence. They must face danger and make lightning-quick decisions.

To be effective, the police need community support. Many of their contacts with the public help build this support – the police find a child, solve a crime, return stolen property to its owner. But other contacts may erode public support. Some of us have received traffic tickets or had other minor unpleasant encounters with the police. We grumble and go on our way. Others of us report serious problems of police misconduct, including harassment, beatings, and other abuses of authority.

When abuses do occur – whether through error, indifference, or overzealous enforcement – the criminal justice system must act to correct them. In a democracy, part of enforcing the law is upholding the constitutional rights of all citizens. Police authority cannot go unchecked. What that authority should be and whether it is properly used in particular situations are issues that can make police work difficult and sometimes controversial.

In this unit, we go behind the badge to explore law enforcement in our society. In doing so, you will encounter interesting questions: What might it be like to be a police officer responding in the line of duty? What are people's attitudes about the police and how might that affect police work? How do our laws affect police investigations and arrests? What are the proper limits of police authority? This unit will give you a better picture of police in our society.

CHAPTER 5

POLICE AND SOCIETY

The police are the public and the public are the police.

– Sir Robert Peel (1788–1850), British prime minister and the “father of modern policing”

FROM VOLUNTEERS TO PROFESSIONAL POLICE | LOCAL POLICE

From Volunteers to Professional Police

Though citizens can do a great deal, the police are plainly the key to order maintenance. For one thing, many communities . . . cannot do the job by themselves. For another, no citizen in a neighborhood, even an organized one, is likely to feel the sense of responsibility that wearing a badge confers.

– George L. Kelling and James Q. Wilson, “Broken Windows” in *The Atlantic*, March 1982

Nearly every civilization has had some form of law enforcement. Anthropologists have discovered written records of laws and law enforcement more than 5,000 years old.

Citizen Volunteers in England

In early English history, it was considered each citizen’s duty to defend king and country from foreign invaders and local lawbreakers. In some cases, citizens received rewards for capturing criminals. Individuals or even entire villages could be fined for not assisting the king in enforcing the laws of the land.

As English towns grew in size, the need arose for regular law-enforcement officers. Able-bodied men began to take turns looking out for the safety of their neighbors. These volunteers, called constables, depended heavily on other citizens to help them.

Over the years, towns were grouped into counties, or shires. Each shire had a shire reeve, or sheriff, responsible for getting the citizens of the shire to enforce the law properly.

During the 1300s, large towns and cities organized citizen-volunteer groups to protect the streets at night. This form of policing, called the night watch, was eventually adopted in the American colonies.

City Police Forces in the U.S.

From colonial times until the 1800s, citizen volunteers enforced the law in most American

cities. Often, volunteer night watchmen carried rattles or noisemakers to warn off criminals. According to jokes at the time, the rattling noise was caused by the night watchmen themselves who shivered and shook with fear.

In 1829, Sir Robert Peel organized a force of paid law-enforcement officers, called peelers or bobbies, to patrol London. About 10 years later, Boston established the first round-the-clock police force in the United States. In 1844, New York City formed a 24-hour professional police department. By 1870, most American cities had police forces patterned after those organized in Boston and New York.

While U.S. cities organized police departments, rural areas were also developing law-enforcement agencies. Rural police forces followed the form of the old English shire-reeve system. In many parts of the country, they evolved into agencies headed by county sheriffs.

The need for law enforcement on the frontier led to the establishment of the first *state* police force, the Texas Rangers. Later, other states established their own statewide police forces. Today, state law-enforcement agencies include highway patrols, bureaus of narcotics, fish and game departments, and civil defense bureaus. Each of these agencies responds to different law-enforcement needs.

The *federal* government has developed various agencies to handle its law-enforcement responsibilities. The Internal Revenue Service investigates tax evasion. The Bureau of Alcohol, Tobacco, and Firearms monitors these products. These agencies fall under the control of the Treasury Department. The newly formed Department of Homeland Security oversees agencies such as Immigration and Customs Enforcement, U.S. Coast Guard, and the Secret Service (which, among its other duties, investigates counterfeiting and protects the life of the president).

The Department of Justice, headed by the attorney general of the United States, directs



On the far right is legendary lawman John Reynolds Hughes (1855–1947). A Texas Ranger, he pursued outlaws throughout the state.

such agencies as the Drug Enforcement Administration and the Federal Bureau of Investigation (FBI).

The FBI operates throughout the nation. But it may only investigate *federal* law violations. For example, the FBI investigates kidnappings, bank robberies, civil-rights violations, and crimes committed on federal territory and property. Most law enforcement in the United States, however, is handled by state and local police.

Policing Today

Unlike most countries in the world today, the United States does not have a national police agency that enforces the laws throughout the country. Rather, more than 40,000 independent law-enforcement agencies exist at the local, state, and federal levels of government. Each agency has its own special function and enforces specific laws in a well-defined geographical area. For example, fire inspectors enforce local fire codes, and health department inspectors enforce a city or town's health and sanitation ordinances. Sheriff deputies patrol counties to enforce county ordinances and state law. Local police enforce a state's and city's criminal laws.

Today, the public often views the police primarily as crime fighters. In reality, although the police do fight crime, they also spend substantial time on many other tasks within the community. They settle disputes, monitor public protests, control traffic, respond to medical emergencies, and handle many forms of social work (such as dealing with crime victims and

their families, meeting with community members, and directing people to agencies that can help them).

To understand the police, it helps to consider the pressures and fears affecting officers. Their duties have become more dangerous and more complex in recent times. Many factors have contributed to this: the increase in the availability of dangerous weapons, a more critical news media, a more critical general public, and budgetary problems, including a lack of funds to hire enough officers. Police must cope with the realities of law enforcement in a democratic society. Under law, they must protect the constitutional rights of the public. In enforcing the law, they must also obey the law.

FOR DISCUSSION

1. How does the organization of police forces in the United States differ from most other countries? Why do you think these differences exist?
2. Could our crime problem be better handled if there were one large police agency to enforce all criminal laws throughout the United States? What would be the advantages of having such a force? What would be the disadvantages? Do you think the United States should have this kind of police force? Why or why not?
3. Read the **Police Officer's Oath** on page 81. It describes the ideals of law enforcement. Do you agree with these ideals? If not, what would you change? Why?

CRIMINAL JUSTICE IN AMERICA

FIFTH EDITION

Criminal Justice in America is the most comprehensive and interactive introductory text available on criminal justice. It consists of six units:

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