The Courts

6

Learning Objectives

After reading this chapter, you should be able to:

- Understand the structure and function of the federal, state and local court system
- Identify the key actors in the courtroom and understand their importance and specific functions
- Identify the steps in the criminal justice system
- Understand the structure, functions, limitations, and key actors in the criminal justice court systems and how they interact with one another

Chapter Outline

Key Terms

Web Links

6.1 Introduction

Richard Jewell was working as a security guard during the 1996 Summer Olympics held in Atlanta. He was walking through Centennial Park when he discovered a suspiciou package lying on the ground. He immediately notified the police and began evacuating individuals from the area, including individuals inside a nearby building. The package contained three pipe bombs weighing in at 40 pounds. The bombs were surrounded by nails.

© Associated Press

Richard Jewell, a former security guard who was erroneously linked to the 1996 Olympic bombing, is questioned by the media as he returns to his Atlanta apartment.

At 1:20 in the morning the pipe bombs exploded, sending nails in all directions. One person was killed at once and another 111 were injured. Almost immediately, Richard Jewell was hailed as a hero for saving the lives of innocent spectators. Yet within hours, the FBI had labeled Jewell as a "person of interest" in the crime. That began a media frenzy which essentially convicted Jewell of the crime in the public's eyes. Numerous media sources, for example, reported that Jewell fit an FBI profile of a lone bomber, largely because he lived at home with his mother and aspire to be a police officer.

While Jewell was never arrested, his life was turned upside down by the intense media coverage. Every part of his l was publicly dissected; rumors and speculation were fueled by the constant media speculation. The FBI executed a search warrant and confiscated his weapons as well as, among other things, his collection of Disney movies. Everywhere Jewell went, he was followed by the media and an army of FBI agents. Eventually, however, it became clear that Jewell was not involved in the bombing and that his actions had indeed saved the lives of many. Ten year after the incident, the governor of Georgia at the time, Sonny Perdue, held a ceremony publicly thanking Jewell for what he had done. Jewell, however, never fully recovered emotionally or psychologically from the years of scrutiny.

Jewell was never arrested for a crime, nor was he ever formally charged. His tragic case highlights the dramatic impact that merely being suspected of a crime can have on a person's life. While this case was widely publicized, th same process plays out on a much smaller scale every day throughout the United States. For many people, the mere accusation of having violated the law can generate a host of emotional, financial, and professional consequences. Reputations can be lost, careers destroyed, families torn apart, and life savings consumed merely by being listed as a "person of interest" in a crime. Arrest and prosecution c generate much greater collateral consequences.

Few things in life are as serious as being accused of a crime, especially a serious crime or a sex-based offense. The Framers of the Constitution understood this, and they understood that a court system controlled by the government could not be relied on to be fair in its rulings or consistent in the application of law. For these reasons, the Fram created an independent judiciary—that is, a judiciary that was not subject to the political will of those in power. The president of the United States, members of Congress, elected officials, and even local police officers lack the legal ability to directly influence the decisions of judicial officers. They cannot compel prosecutors to charge citizens crimes, force judges to find a defendant factually guilty, influence appeals decisions, or prevent the Supreme Court of the United States from invalidating a law. It is an independent judiciary, as the quotation from *Amistad*, above, conveys, which protects the rights of the accused.

What happened to Richard Jewell was tragic, but in the end the system worked. A man was not arrested, charged, or convicted of a crime for which there was no evidence of his guilt. Without an independent judiciary, Mr. Jewell and thousands of others like him could easily find themselves deprived of their livelihoods and freedom. Mr. Jewell was entirely cleared when the real bomber, Eric Robert Rudolph, confessed to several bombings in his campaign of terror.

Stop and Think 6.1

What would be the possible consequences if powerful lawmakers could force the judiciary to bring charges against individuals suspected of violating the law? How do these possible consequences illustrate the importance of maintaining an independent judiciary?

In this chapter, we will examine the American judiciary. We will examine the structure of the American court system, with a focus on the responsibilities of each jurisdiction. We will examine the roles of each member of the court, including the prosecutor, the judge, the jury, and the defense attorneys. Moreover, we will examine what social scientists have found about how the judiciary works—that is, how courts across the country operate in a day-to-day fashion, how cases are processed, how individuals are adjudicated, how appeals are managed, and how laws get overturned by the courts. As you will see, the judiciary serves many important functions in our criminal justice syst and our society. Perhaps no other part of the American system of justice is as multifaceted, as insolated, and as powerful as the court system.

6.2 The Structure of the Court System

The American court system, like much of the rest of the criminal justice system, operates at different levels. There are 51 separate court systems in the United States. The fed government operates a court system, as do each of the 50 states. Each court system (state and federal) comprises different types of courts.

At the first level are **trial courts.** These courts are responsible for:

- Arraigning a defendant
- Impaneling a jury
- Hearing and evaluating evidence
- Determining the facts
- Pronouncing judgment
- Imposing a sentence

Trial courts are the first courts to hear a case, and their decisions usually affect only those involved in the case. Trial courts are "finders of fact," which makes them different from other courts.

At the second level are **appellate,** or **appeals courts**. These courts hear cases after a trial court has ruled on them. In general, individuals found guilty of a crime are allowed to appeal their conviction. However, appeals are built on matters of law and of procedural safeguards—they are not built on matters of fact. In other words, appeals courts make sure that the defendant received a fair trial and that the law was followed in convicting the individual. Appeals courts assume that the facts of a case have been established by the court. They ensure that the facts of the case were found fairly and by following legal standards. Appeals courts focus on attorneys and the process —that is, they do not weigh evidence but instead weigh matters of law and procedural justice. Unlike trial courts, where a single judge is responsible for the court, appeals courts are usually staffed by panels of judges.

© Associated Press

Trial courts are the first courts to hear a case.

Finally, the third level is the supreme courts. Each state has a supreme court, as does the federal system. The federal U.S. Supreme Court is the highest court in the land and is also known as the court of last resort. State supreme courts do not hear new evidence and do not conduct new trials. Similar to appellate courts, they examine legal issues involved in specific criminal cases, and they have the power to order new trials in situations where the errors of lower courts were so significant that the defendant may not have received a fair t State supreme courts also rule on the constitutionality of state laws and have the power to overturn or invalidate laws found to be unconstitutional. The U.S. Supreme Court a has the power to overturn laws created by Congress or by any state.

An important concept in understanding the American court system is **jurisdiction**, which is the statutory authority of a court to hear a case. Courts in Alabama, for instance, not have jurisdiction to hear cases originating in Minnesota. Similarly, appellate courts do not have the jurisdiction to act as trial courts, and no court has jurisdiction over the U.S. Supreme Court. At the state level, trial court jurisdiction often extends to criminal cases and depends on the location where the violation of law occurred. This location i also known as **venue**. The venue of a trial can be changed when there is a substantial likelihood that a defendant would not receive a fair trial where the crime took place. A court may approve a **change of venue** under these circumstances as long as the jurisdiction remains within the state. Defendants can also request a change of venue.

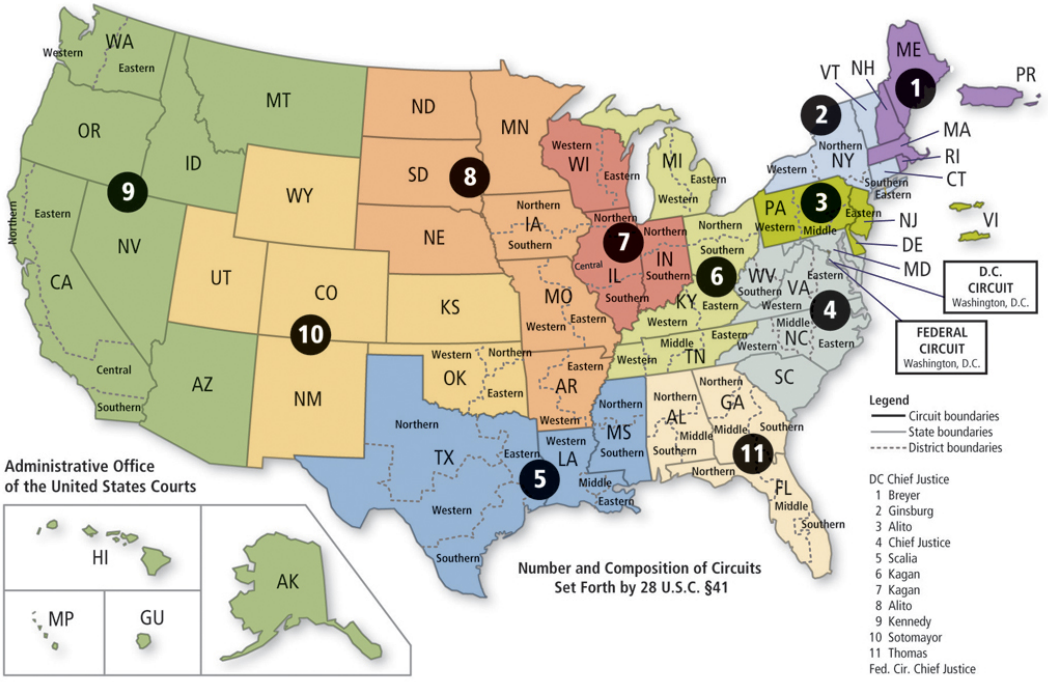
The Federal System

The Constitution established the U.S. Supreme Court as a coequal branch of the federal government. Federal courts have jurisdiction when federal laws are violated. Trial cou in the federal system are known as **U.S. district courts**. These courts are responsible for determining facts of alleged violations of the federal law. There are 94 district court all, 89 in the United States and the rest in U.S. territories and Washington, DC. Most states have at least one federal district court, while others, such as California, have mor

There are 678 U.S. district court judges. Judges are nominated by the president and are then confirmed by the Senate. Once confirmed, they are essentially allowed to serve o the bench for life. This type of job protection is thought to encourage judicial independence and to help isolate judges from the political forces that could influence their deci making.

Figure 6.1: Geographical Boundaries of United States Courts of Appeals and United States District Courts

Each circuit spans one or more states.



U.S. Department of Justice

Federal district courts handle a limited range of criminal cases. In 2011, district courts processed 103,274 criminal cases. Most criminal cases handled by the federal system a drug offenses (30,728 in 2011), immigration offenses (29,530), and theft and fraud offenses. While important, these numbers are small in comparison to the 20 million crimin cases processed by the states in 2009.

Appellate courts in the federal system are known as **U.S. courts of appeals**, or **U.S. circuit courts**. There are 13 circuits, with each circuit spanning one or more states. The Sixth Circuit Court of Appeals, for example, spans Tennessee, Kentucky, Ohio, and Michigan, while the Seventh Circuit Court spans Illinois and Wisconsin. Appeals court judges are nominated by the president and confirmed by the Senate. There are 179 federal appeals court judges. Each circuit has between 6 and 29 judges to handle the casel

Circuits handle appeals from individuals convicted by district courts within the circuit. In 2011, a total of 55,753 appeals were lodged with the federal appeals courts. Of thes 12,377 were appeals related to a federal criminal conviction, and almost 15,000 were from prisoners—meaning that petitions from prisoners constitutes almost half of all fed criminal appellate cases.

The Supreme Court

The Supreme Court of the United States is the most powerful court in the nation. It has jurisdiction over all federal cases, disputes between states, and all matters of federal a constitutional law. For the court to hear a case, however, a federal question has to be involved or a question regarding the applicability of the Constitution. Supreme Court decisions have affected every part of the criminal justice system, from the rights extended to criminal defendants, to the limits placed on police, to how evidence can be collected. These decisions become precedent, or guiding legal doctrine, that all other courts have to follow.

© Stock Connection/SuperStock

The Supreme Court has jurisdiction over federal cases, state disputes, and issues involving federal and constitutional law.

For the most part, the Supreme Court is an appellate court and reviews cases from federal circuit courts and from state supreme courts. Under very rare circumstances, the court can act as a trial court—for example, when states have disputes with the federal government. Again, these cases are exceedingly rare. The vast majority of cases managed by the court are appellate cases from lower courts. Each year, the court receives over 10,000 appellate requests. It grants review in about 100 of these cases and issues full opinions on 80 to 90 of them. Thus the likelihood of a case making it to the Supreme Court is rather small.

It would be impossible for the nine justices that compose the Supreme Court to hear every appellate request. Instead, the court selects cases for review through what is known as a **writ of certiorari**. The writ grants a review of a case settled by a state supreme court or by a federal circuit court. The writ is essentially a command for a lower court to provide the Supreme Court with the records of the case. For a writ to be granted, four justices have to vote to approve it. Th is known as the **rule of four.** In general, the court looks for cases that involve unsettled law or important constitutional or legal questions or that provide an opportunity to clarify the meaning of a law. The actual facts of the case usually matter less than the broader legal and constitutional issues involved.

Once a case is chosen for review, the justices take time to research the legal issues involved. They then listen to oral arguments from the attorneys, read the legal briefs subm by the attorneys, and eventually vote on the matter in a case conference. A simple majority (more than half) wins the vote. Once the vote is complete, majority and dissentin opinions are crafted and the decision is published.

Advocating for Justice

Finding purpose on the job can be difficult to find. But in a career of defense, protecting clients on trial is a tangible way attorneys contribute to society.

Things to Consider:

- Why does Jessica enjoy her job?
- Who are her heroes?
- How does Jessica see her role as providing a "check" on injustice?

The Supreme Court is composed of eight associate justices and one chief justice. Each justice is nominated by the president of the United States and is confirmed by the Sen Given the importance and power that comes from a lifelong position on the Supreme Court, public nomination hearings are held. Most of the time nominations are confirmed

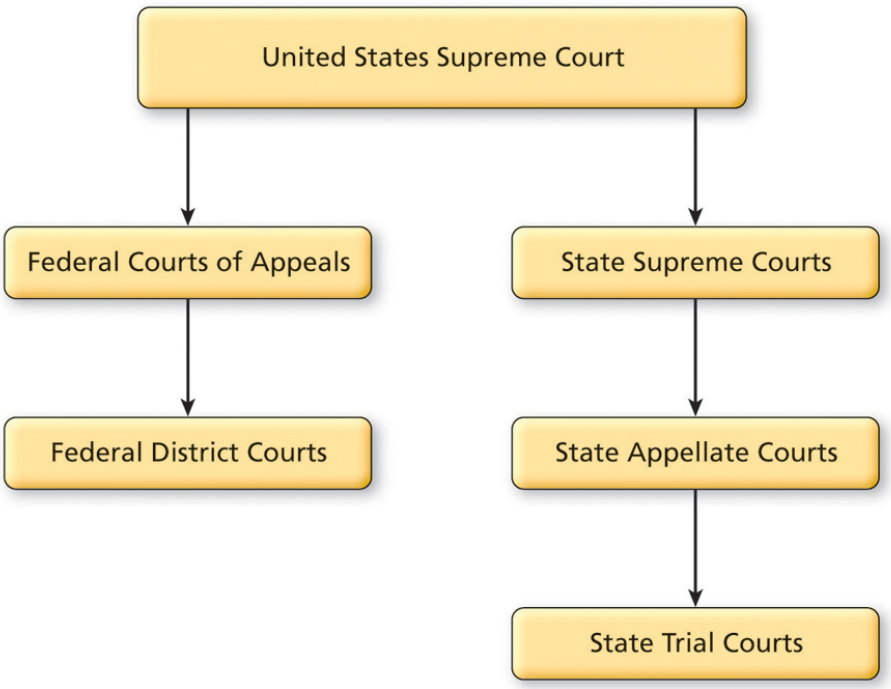
The State System

States are home to a diverse number and arraignment types of courts. While each state has a criminal court system, embedded in most states are any number of local, city, an county courts. These courts are typically funded by local or county governments, and they can hear a wide range of cases.

State trial courts can be defined by their jurisdiction. Courts of **general jurisdiction**, for example, differ from courts of **limited jurisdiction**. Courts of limited jurisdiction—a known as **inferior courts, lower courts**, or **municipal courts**—hear only certain types of cases. Many, for example, hear misdemeanor crimes, traffic cases, and cases that involve infractions of local laws. Limited jurisdiction courts also include specialized courts, such as mental health courts, family courts, and drug courts. Moreover, they are usually charged with arraigning defendants and conducting preliminary and bail hearings for cases that may be transferred to general jurisdiction courts. As you can see, limit jurisdiction courts manage many of the day-to-day problems that arise in the United States. Data from the National Association of State Courts (2012) show that slightly over 13,500 limited jurisdiction courts handle over 70 million cases a year, the majority of which are traffic cases. This represents an increase of about 10 percent since 2000 but a about a 1 percent change in the rate of cases per 100,000 residents. Limited jurisdiction courts handled 66 percent of all court cases in 2009. Of these cases, 43 percent were traffic violations while only 14 percent were violations of the criminal law.

Figure 6.2: Court Hierarchy

The different levels of courts have different jurisdictions.

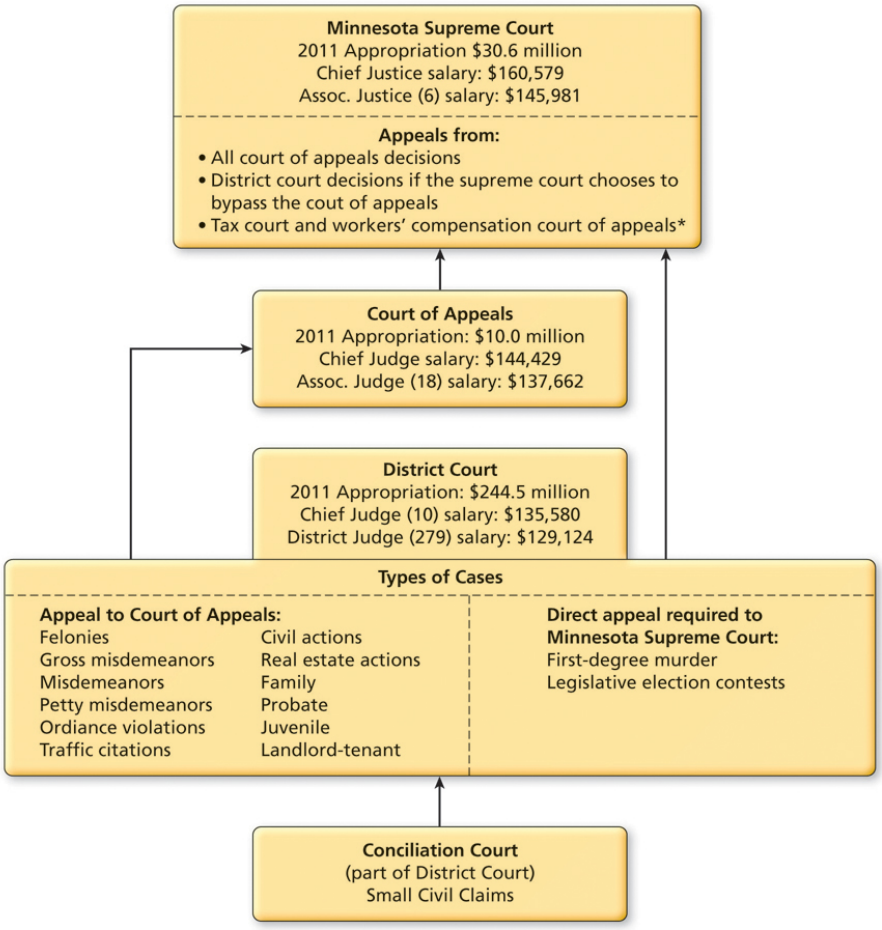


Courts of general jurisdiction—also known as **superior courts, district courts,** or **circuit courts**—are tasked with handling relatively severe felony criminal cases, although general jurisdiction court can usually hear any felony case. General jurisdiction courts can also review cases from limited jurisdiction courts. In 2009, there were about 2,000 these courts in the United States. These courts handled 17 percent of the total 106 million cases heard by state courts. Of these cases, 3.8 million were for criminal cases not involving traffic offenses. The number of criminal cases handled by these courts has risen 6 percent since 2000. However, the rate of criminal cases (per 100,000) heard by courts of general jurisdiction has declined by 7 percent since 2006.

State appellate courts also take a variety of names, but they all have one overriding purpose: to ensure that defendants have received fair trials. As a reminder, appellate court not generally examine matters of fact but instead examine matters of law. Every defendant is entitled to a fair trial. However, each trial brings with it a unique set of circumstances. Recognizing this, appeals courts try to make certain the convicted person's trial was fair, not perfect. The vast majority of appeals are turned down by appeals courts. An appeals court can affirm the decision of the lower court or it can reverse the decision. In rare instances, an appeals court can order a new trial.

Figure 6.3: 2011 Statistics of the Minnesota Court System

Salaries and types of cases of Minnesota's Supreme Court, Court of Appeals, and the District Court.



Sixty-three percent of all appeals are **appeals by right**, where the legislature has guaranteed a convicted person the right to an appeal. Appeals courts must hear these cases. **Appeals by permission**, where a convicted person asks an appellate court for review, account for only 21 percent of all cases. Death penalty cases constitute less than 1 percent of all appeals and are usually automatic upon conviction.

Stop and Think 6.2

Suppose that in order to save money, Congress passed a law creating a single U.S. court. What would be some of the potential consequences of such an act? What would be some of the benefits?

6.3 The Courtroom Work Group

Across the United States, courts work daily to manage a wide range of criminal cases. Managing a large number of criminal cases, with all the legal complexities tied to each case, is no small task. To coordinate these efforts requires a system where all the people involved in the system know the formal and informal rules and work collaboratively process cases. Collectively, the various actors within the courtroom are known as the **courtroom work group** (Eisenstein & Jacob, 1977).

The primary task of any courtroom work group is to process cases. Obviously this requires cooperation between all the actors and an implicit agreement on how best to manage the workload. This image of the cooperative courtroom is very different from what the public commonly assumes and what our adversarial system advances. People are sometimes shocked to see exactly how most courts in America actually operate. It is not uncommon to see large groups of people being called into court all at once and processed. Defense attorneys may see their clients for a few minutes before they are called by the prosecutor. In most jurisdictions, justice looks very much like an assembly line. For the most part, the criminal trials you see on television are not at all representative of how the court system works most of the time.

Assembly-line justice is the rule in lower courts. This is especially true in traffic courts and other courts of limited jurisdiction, especially those in larger municipalities. Given the high number of arrests, about 14 million per year, many courts face staggering caseloads (LaFountain et al., 2011). The large number of cases that need to be processed influences conditions inside America's courts, where expediency and efficiency in case processing become priorities. Without these priorities, the American court system would collapse under the weight of all the cases it has to process. The courtroom work group helps to move cases through the system because the actors share the same values of cooperation and efficiency, they take steps to minimize conflict, and they share in the decision-making process.

Courts across America process cases daily. This means that courts have substantial experience in processing **normal crime**, or categories of crimes that the courts see on a regular basis. While the facts about each case may be somewhat unique, they also share many commonalities. Courtroom work groups may thus see all robberies as pretty much the same, and similarly, they may see all minor assaults the same, unless there were specific circumstances surrounding the case, such as if someone was seriously harmed. Some crimes, however, are not as frequent and/or the circumstances stand out. These crimes may be processed differently by the work group.

The presence of a courtroom work group does not mean that our system of justice always reflects an assembly line. When trials take place, they are usually well-managed events. More importantly, when trials take place, the standard practices and priorities of the work group may change, especially in trials of serious crimes. In these rather limited instances, the more traditional adversarial system operates.

So who are the actors in American courtrooms? In the next few sections we examine the roles of each judicial actor.

Careers in Criminal Justice: Criminal Defense Attorney

The world of private criminal defense.

Things to Consider:

- Would you have any issues engaging clients in prison as their attorney?
- Did the job of criminal attorney meet your expectations and is this a position you would be interested in pursuing?

The Judge

The judge is the primary officer of the court who is responsible for protecting the rights of a defendant and, at the same time, listening attentively to the state's allegations of criminal offenses. Judges make decisions about various aspects of trials, including making rules on legal issues, managing legal objections, ruling on the admissibility of evidence, and providing juries with instructions. Judges keep order in their courtrooms and generally do not allow either the prosecutor or the defense attorney to step outside their roles in ways that would compromise the legitimacy of the court.

Judges have unique personalities and particular ways in which they want trials to be conducted. Some judges, for example, are known to be very strict in what they will allow in court, while others are known to allow attorneys greater latitude in how they work. The point is that judges often vary in unique ways, so the operations of their courts vary. Nonetheless, the central job of the trial court judge is to make certain that the trial follows procedural rules and is fair.

© Associated Press

Judges have many roles in the court room, including: ruling on legal issues, managing objections, evaluating evidence, giving juries instructions, and maintaining order.

Appellate judges have a different role. Because appeals courts are interested primarily in matters of law, they rarely challenge evidence or trial court findings of fact. That said, appellate judges examine the decisions of trial court judges with an eye to making sure that the process was fair and free of any procedural or substantive errors.

Judges in general jurisdiction courts and in appellate courts are almost always licensed practicing lawyers. The same is not always true in limited jurisdiction courts, where judges do not always

have to hold law degrees or even have any knowledge of the law. Most of these types of judges handle traffic cases or minor disputes.

Judges are sometimes appointed to the bench by political leaders, sometimes they must win an election, and sometimes they must meet special standards. Judges in the federa system are appointed by the president and confirmed by the Senate. At the state level, governors sometimes have the right to appoint judges within the state. Other times, however, a judge must win an open election to become a judge or to continue serving as a judge. Both of these mechanisms often invite politics to influence judicial selectio Because of this, some states have adopted a plan put forth by the Missouri Bar, known as the **Missouri Plan**. It requires judicial candidates to undergo a vetting process by a judicial committee. Once they have been vetted, a governor then advances their names for appointment. After judges have served their time, they may run unopposed for reelection. The public then can either elect the judge or request that another judge be nominated.

The Prosecutor

The prosecutor is the representative of the state and wields tremendous power. At the state level, prosecutors are almost always elected for a period of 4 years. There are abo 2,300 prosecutors throughout the United States and over 25,000 assistant district attorneys. Assistant district attorneys are hired by prosecutors to help prosecute cases. They work full time or, in many jurisdictions, part time.

At the federal level, prosecutors are known as **U.S. attorney**s. They are appointed by the president and confirmed by the Senate. Their period of service is typically 4 years. There are currently 93 U.S. attorneys.

Prosecutors hold law degrees, are practicing attorneys, and belong to the bar association of their state. Their job is to uphold the law by pressing criminal charges in cases wh they believe a crime has occurred, the evidence points to an individual's guilt, and they believe they can sustain a conviction. At trial, a prosecutor will submit evidence of a defendant's guilt, cross-examine defense witnesses, and argue that the criminal defendant is factually guilty. Upon a defendant's conviction, the prosecutor will recommend a sentence to the judge.

In many jurisdictions, prosecutors also advise police departments on matters of law. This is not true in every jurisdiction, but it is not uncommon for prosecutors to help polic departments build solid criminal cases against defendants. However, situations sometimes develop where prosecutors have to bring criminal charges against police officers. Th may include officers they have worked with extensively in the past. Because of the possible close connection between prosecutors' offices and police departments, special prosecutors may be brought in to investigate cases where an appearance of impropriety would be given if the local prosecutor's office examined the case. The same process is used when assistant prosecutors and even judges are charged with crimes.

Prosecutors wield tremendous power in the criminal justice system largely because they have wide latitude in whether criminal charges will be filed against an individual as w as the type and level of charges to be filed. This is known as **prosecutorial discretion** and it is critically important to the administration of justice. Prosecutorial discretion allows prosecutors the ability to weigh unique aspects of each case, such as whether or not a defendant admitted guilt, accepted responsibility, or showed remorse. Similarly, discretion allows prosecutors to tailor the charges to each defendant. In serious crimes, for example, prosecutors may file criminal charges that include aggravating circumstances. Recent legislative restrictions have been placed on judges and their ability to impose criminal sentences. This has given even more authority to the prosecutor. When sentencing guidelines are used, the criminal charge carries significantly more weight in the final sentence.

The power to charge another with a crime is substantial. It is a power that has to be entrusted to a person who understands his or her ethical and legal responsibilities and is committed to fairness and due process of law. Unfortunately some prosecutors abuse their discretion. When they do, the consequences can be far-reaching and even life-alteri For example, in 2003, federal prosecutors began investigating allegations of corruption in Alaska. In 2008, prosecutors secured a jury conviction against Republican Senator T Stevenson for taking over $250,000 in illegal gifts and contributions. Immediately after his conviction, Stevens, who had served in the Senate longer than any other Republic lost his bid for reelection. However, only 5 months after Stevens was convicted of public corruption, the Department of Justice under Attorney General Eric Holder, Jr., announced that it would seek to vacate Steven's conviction. A federal judge, Emmett Sullivan, then took the unusual step of ordering an investigation into the federal prosecutor's behavior. After almost 2½ years, the investigative report found that federal prosecutors had, on multiple occasions, hidden evidence, known as **exculpatory evidence**, that could have supported Stevens's claims of innocence; it was also found that they had allowed a prosecutorial witness to give false information to a jury. In othe cases, however, innocent people have been convicted and guilty people have been allowed to walk free because of the unethical actions of some prosecutors.

Despite that, most prosecutors are ethical, hard-working public servants. They prosecute cases based only on the law, and they pursue justice in a way that seeks to respect th rights of defendants. Because of the power they hold, however, prosecutors have to abide by special ethical rules that, if violated, can lead to disbarment. They cannot withhc evidence from a defense attorney, allow a witness to knowingly lie to a court, or argue for guilt when they know the defendant is not guilty. Even so, as a general rule, prosecutors enjoy immunity from prosecution when they violate these rules.

The Defense Attorney

The Sixth Amendment to the Constitution guarantees each defendant access to a qualified defense attorney. However, it was not until *Gideon v. Wainwright* (1963) that the U Supreme Court ruled that state courts had to provide defense attorneys to indigent clients. Prior to this, the Supreme Court had interpreted the Sixth Amendment to mean that states could not bar defendants from using a defense attorney. Over time, the Supreme Court ruled that in death penalty cases, defendants had to be provided with defense lawyers. With *Gideon*, however, the right of indigent clients to a lawyer was extended to all states. Since *Gideon*, the Supreme Court has settled a series of cases further specifying when a defense lawyer is necessary and when and how the services of a defense lawyer can be waived.

Unfortunately, no other person in the courtroom workgroup is as misunderstood, or even as despised, as the defense attorney. There are generally two public images of defen

© Associated Press

A defense attorney questions a prosecution witness during Dr. Conrad Murray's trial in the death of pop star Michael Jackson.

attorneys. The first is the common belief that defense attorneys employ any method or capitalize on any "technicality" to get their guilty client "off the hook." The second image is that of the fier defender of liberty. Under this image, the criminal defense attorney works to make sure the rights of his or her clients are protected and that the state plays by the rules.

Regardless of the public image, the defense attorney plays a critically important role in courts across America. As an advocate, it is the defense attorney who represents the defendant's legal interests at all stages of the criminal justice process. It is the defense attorney who helps to make sure the state does not violate a defendant's constitutional rights. It is the defense attorney who communicates with the prosecutor to help arrange plea bargains, serves as the defendant's voice i criminal proceedings, and files appeals for those who are convicted. Moreover, while many peopl assume that the job of the defense attorney is to obtain an **acquittal** for their client at trial, in reality most defense work involves handling large numbers of clients and obtaining the best possible deals for them. "The best possible deal" can mean many things. It can m that the client was acquitted at trial, that the client was spared the death penalty, that the client received a period of confinement less extensive than what was possible, or tha their client received probation instead of a jail or prison sentence. The point is that defense work involves much more than simply going to trial, and it is not always clear wl constitutes "success" for defense lawyers.

IN DEPTH: Discussion From a Criminal Defense Attorney

Looking through criminal justice textbooks, it often seems to me that defense lawyers are poorly understood. The Sixth Amendment provides that the criminally accused "shall have the assistance of counsel." At the time this amendment was drafted, there were few lawyers or laws in the United States, and the laws that existed were relatively simple. As a result, people often handled their own criminal defense. In 2007, however, the American Council of Chief Defenders issued a statement detailing how the role of defense counsel has evolved over time. Specifically, legal and procedural developments have now made defense work a specialized practice that requires a high degree of expertise. For instance, during the "get tough on crime" movement, defense counsel had to confront entirely new practice areas at the stroke of a legislature's pen, such as sexually violent offender commitment proceedings, or reevaluate the stakes of cases due to persistent offender ("three strikes") statutes that created the possibility of life imprisonment because a client in a routine matter had a record. Moreover, the report describes the specialized knowledge needed to perform defense work in juvenile and capital cases and the need for defense counsel to be aware of the many collateral consequences of conviction that can impact a client's ability to seek employment or housing. In short, although there may not have been much defense work at the time the Sixth Amendment was drafted, there is much to be done now. And although we often hear about how defense counsel (particularly those that represent indigent defendants) must struggle to deal with high caseloads and a lack of resources, I'm not sure that everyone appreciates how intellectually challenging defense work has become.

Intellectual challenges are not just found in cases that involve so-called street crime. I spent time in the trial unit of the Boston division of the Securities and Exchange Commission (SEC) that worked with the U.S. Attorney's office to prosecute accounting fraud cases before moving to a private firm that handled civil and criminal defense for large corporate clients. Such clients often operate in a highly regulated environment, making it necessary to develop a working knowledge of regulatory and administrative law. Cases for such clients can span multiple jurisdictions (or countries) and involve complex and conflicting laws. Defendants in these crimes frequently face unique reputational injuries that must be considered when evaluating defense strategies. Corporate clients are also required to be cost-conscious, thus, even though they may need counsel to perform complex work, they may also need that work to be performed very quickly. Or, with the advent of technology that makes everyone accessible at all times, they may need that work performed at a moment's notice.

I mention these intellectual challenges because some textbooks seem to focus exclusively on the routine nature of criminal processing, even going so far as to suggest that plea bargaining has created a system of "assembly-line justice." That may sometimes be the case—but not always. Certainly, my practice has been anything but routine. The work was rigorous and demanding, but it was also intellectually stimulating and exciting. Thus, it is probably fair to conclude that defense counsel plays both a vital and a varied role.

The job of the defense attorney is, by any standard, difficult. It is difficult for a variety of reasons. First, defendants often talk to the police without an attorney present. Wher they do this, they have a tendency to implicate themselves in crimes and to provide police with evidence that can later be used against them. This strengthens the prosecutor's case and further limits the options available to the defense. Second, defense attorneys often handle so many cases that it is simply impossible for them to understand the deta of each case. To manage the large number of criminal cases they are responsible for, defense attorneys often have little choice but to spend only a few minutes with each defendant and to base their legal recommendations on the information they receive from their clients and the prosecutor's office. Third, most of the defendants in the criminal justice system are from the lower socioeconomic classes. These defendants sometimes do not fully understand their legal rights, nor do they have resources to hire expert witnesses or to investigate the evidence obtained by the police and prosecutor's office. Finally, criminal defense attorneys are often paid only a fraction of what they could ea from noncriminal cases. Where many attorneys can charge from $150 to $300 per hour for basic legal services, defense attorneys are often paid substantially less.

Paying for the services of a lawyer in a criminal matter can be very expensive. In high-profile cases that involve star athletes, powerful politicians, or wealthy actors, a crimi defense can cost millions of dollars. For the average person, the cost of a private defense lawyer could bankrupt a family. Not surprisingly, almost 90 percent of all criminal

cases involve the use of a defense attorney whose fees are paid by the state (Bureau of Justice Statistics, 2005).

States have created several mechanisms for providing indigent clients with counsel. The first is called **assigned counsel**. In this system, private lawyers who volunteer to participate in the defense of indigent clients are placed on a list. When an individual is arrested and qualifies for indigent defense, a judge will assign a lawyer from those available on the list. The lawyer's fees are paid by the jurisdiction responsible for the case, often at a substantially reduced rate. The second system is a **contract system**. Use infrequently and mainly in sparsely populated areas, the contract system pays lawyers in private practice to defend indigent clients. Law firms that employ multiple attorneys may be contracted on a per case or per hour basis.

The final system, and the system used most frequently in the United States, is the **public defender** system. This system creates a government office responsible for the defense of indigent clients. Many public defender systems are operated by the state. Others are operated by counties or other jurisdictions. The federal government, for example, operates a public defender system. In any event, public defenders are paid government employees who are not allowed to practice law outside of the public defender's office.

© Justin Carver

Public defenders often work for low salaries compared to lawyers who work in private practice.

State and local public defender systems have been chronically plagued by high caseloads and by limited budgets. It is not uncommon in large jurisdictions for public defenders to handle 600 to 1,000 cases per year. The Los Angeles public defender system, for example, employs over 700 attorneys and hundreds of other staff and investigators and has a reported budget of $165 million dollars. One report indicates that the Los Angeles Public Defenders office had a caseload of 90,000 felony cases, over 400,000 misdemeanors, and 40,000 juvenile cases each year (Albert-Goldberg, 2009).

Stop and Think 6.3

Many people are surprised to learn that courts operate like an assembly line—treating similar cases similarly without getting into the details of each case. In your opinion, should we continue this practice?

People are often concerned that public defenders are second-rate lawyers or that they are not committed to the defense of their clients. Research into the effectiveness of public vs. private defense attorneys, however, has found that the type of attorney used has almost no bearing on the outcome of the case (Hanson & Chapper, 1991). Part of the reason for this likely rests on the fact that the vast majority of criminal cases never go to trial because they are plea-bargained. Moreover, as mentioned earlier, courts that process a large number of cases often handle similar cases similarly—that is, they see "normal crimes" daily and treat them much the same. In these instances, there is often very little a defense attorney can do to alter the outcome of the case.

6.4 Pretrial, Bail, Plea Bargaining, and Trial

Arrest for a crime, especially a serious felony, sets in motion the criminal justice system. The system, however, takes time to process the abundance of paperwork that typical is attached to each case. While each jurisdiction is different, the general processes are largely the same.

Booking

Once a suspect has been arrested by the police, he or she is usually taken to a central location for booking. However, it is noteworthy that not all criminal suspects are immediately arrested by the police and brought to booking. For some, an arrest warrant is issued and they are allowed to turn themselves in to the authorities. Sometimes, knowing that a warrant is going to be issued, a defendant's lawyer will work with prosecutors to arrange for an individual to turn himself in and to be processed with an attor present. While rare, this does sometimes happen.

© Associated Press

An inked thumb pressed against a fingerprinting record sheet.

At booking, defendants are typically searched for weapons and contraband, such as drugs. Their identity is confirmed and their fingerprints are taken. Copies of fingerprints are then sent to the state as well as to the FBI to be entered into their national database. Pictures of the defendant's face are also taken and submitted.

The advent of DNA technology has transformed the criminal justice system. DNA evidence can become very important if the case goes to trial, so many police departments now routinely collec DNA from arrested individuals. The DNA is usually collected by way of a simple mouth swab. The sample is then placed in a sealed container and sent to a lab for processing. Ultimately the DNA will be entered into the FBI's CODIS database. CODIS stands for "Combined DNA Index System." It was designed to allow forensics labs across the United States to enter DNA information into the system and, more importantly, to search for matching DNA found at crime scenes. The CODIS database is swept weekly to look for matches provided by local labs. If a match is found, it can be used as probable cause to secure an arrest warrant.

Apart from DNA, fingerprints, and pictures, information about the defendant's medical history, family background, and employment can be taken as well. The defendant's criminal history is also accessed and recorded. This information then follows the defendant through the rest of the process.

Preliminary Hearings

In general, because there are many differences between jurisdictions, the next step in the process is called the **initial appearance.** This is where a defendant is brought befor judge or judicial officer. The defendant is informed of the charges, read his or her rights, and asked if a lawyer is needed. If the defendant was arrested without a warrant, so jurisdictions also use the preliminary hearing to make sure there was probable cause to make the arrest. If these jurisdictions do not use the preliminary hearing to ascertain probable cause, then probable cause will be established by a separate hearing with a magistrate or court officer. Probable cause must be reviewed within 48 hours after arrest. The legal threshold to establish probable cause for an arrest is relatively low. All the state has to show at the initial appearance is that a crime likely occurred and that there i reason to believe that the person apprehended committed the crime.

Preliminary hearings usually take place within 48 to 72 hours of an arrest. This varies by local law and policy, but most jurisdictions allow up to 72 hours. However, if an arrest occurs immediately before a holiday or over a weekend, a person can spend up to 5 days in custody before seeing a judge. Again, this does not happen on a regular basis, but it can happen and it is perfectly legal.

If an arrest warrant was issued prior to the defendant's physical apprehension, some states allow the court to bypass the preliminary hearing and the defendant is immediately arraigned. It is assumed that probable cause was established to issue the warrant. In these situations, therefore, the probable cause requirements are satisfied.

© Colleen Cahill/Design Pics/Corbis

Many jurisdictions have programs that allow defendants to leave custody after the preliminary hearing.

Many crimes involve no physical harm to victims or limited if any monetary loss. People who commit these crimes, moreover, often present little risk to the community. Recognizing this, most jurisdictions have created programs that allow defendants to leave custody after the preliminary hearing. Known as a **pretrial diversion** or **pretrial release**, these programs usually involve a court-appointed officer that evaluates a defendant for release. Nonviolent first-time offenders are typical candidates for pretrial release.

Pretrial release is important for several reasons: First, it reduces the costs associated with keeping a person in jail. Second, it gives criminal justice officials a flexible mechan with which to control the number of people in jail. Finally, pretrial release enables a defendant to go back to work and take care of other responsibilities as the case winds through the system.

Preparing a Case

Though narcotic cases are often simple, preparing a case for trial can be a lengthy and complex process for prosecutors.

Things to Consider:

- What aspects of the position of District Attorney intrigued you?
- Based on a review of this clip, would you be interested in pursuing a career as a District Attorney? Why?

There are some individuals, however, for whom pretrial release is not warranted. Offenders who pose a serious risk of flight, meaning that they may not return to face charge released, are not good candidates. Individuals who have a history of violence, of domestic abuse, or are alleged to have committed a sexual offense are also usually barred fr pretrial release.

Bail may be another option if an offender is not eligible for pretrial release. The bail system is used widely in the United States. A judge or judicial officer will determine if defendant is eligible for bail, and if so how much bail will be required to secure release from custody. Bail is either money or secured property that the defendant provides to court. Present-day practices often allow defendants to pay 10 percent of their total bail to secure their release. If, for example, bail is set at $5,000 with 10 percent allowed, t defendant would be required to post $500. Sometimes the full amount of bail is required, and depending on the alleged crime, bail amounts can be substantial. In these circumstances, defendants sometimes have to use property they may own as collateral, to borrow money from relatives, or to use the services of a bail bondsman. For a fee, l bondsmen work with the courts to put up the bail needed to get a person out of custody.

One of the chief concerns with the use of bail is whether or not the person will return to court to face prosecution. The use of bail helps to increase the likelihood that the pe will return because he or she will otherwise lose the posted bail. If a bail bondsman was used by the defendant, the bondsman's company may hire a bounty hunter to locate, apprehend, and return the individual who has skipped bail.

While the use of bail is widespread, actual practices vary widely across states. Some states, such as California, use a uniform bail system. In this system, a general amount is outlined for each crime where bail is possible. This helps to reduce disparate treatment of individuals accused of similar crimes. It also provides continuity and predictability the way that cases are managed. However, it is important to note that bail cannot be used as a punishment and cannot be so excessive that it violates the Eighth Amendment the Constitution, which prohibits excessive bail.

Across most states and the federal government, bail is allowable for almost all crimes. However, in 1984, Congress restricted the use of bail to situations where the defendant was charged with a violent crime, posed a flight risk, is charged with certain drug crimes, or is a repeat offender. Prior to 1984, the law focused primarily on the degree to w a defendant posed a serious flight risk. However, the 1984 law allowed courts to also take into account the danger posed by the defendant. In other words, it allowed the cou deny bail to a person the court believed posed a serious threat to the community. Most states now also follow similar guidelines.

Critics of bail note that it is often easier for a wealthy person to secure bail than it is a poor person. This basic inequity in the system can lead to situations where individuals remain in police custody simply because they do not have the financial means to secure bail. That said, many jurisdictions also allow some defendants to leave custody with nothing more than their signature promising that they will return. This is known as being "ROR'ed," or **released on own recognizance (ROR)**. If a person fails to show who been ROR'ed, an arrest warrant will be issued.

Individuals released on bail are also sometimes subject to other court-ordered restrictions on their liberty. Depending on the criminal charges, some defendants may be placed house arrest or on electronic monitoring or they may have to stay in contact with the police, and some may have to submit to random drug tests.

Grand Jury

There are two types of juries: grand juries and trial juries. Trial juries decide on the guilt of an accused person, while grand juries conduct investigations and make formal criminal accusations.

Grand juries are placed on a panel by the court for a specific period of time. Many are impaneled for 3 months, but the court has the ability to extend that time for up to 36 months. Grand juries may meet only once a week or only a few times a month for the duration of their terms. Grand juries can vary in size from 6 to 20 citizens.

In theory, grand juries exist to check the power of the government to bring unwarranted criminal charges against individuals. In this way, the grand jury is designed to help preserve the integrity of the criminal justice system and protect individual rights. However, grand juries work in secret and are controlled by the prosecutor, who presents witnesses and other evidence to the grand jury and acts as a legal guide for it. Witnesses who testify in front of a grand jury do not have the right to an attorney, nor do crim suspects have the right to be heard by a grand jury.

If a grand jury believes the state has sufficient evidence to warrant a criminal charge, the jury will issue a **true bill**, also known as an **indictment**. An indictment from a gra jury means that at least half of the jurors believed the state had sufficient evidence to justify holding the individual in custody and filing criminal charges. If a grand jury find that the state had insufficient evidence to prosecute a suspect, it can issue a **no bill**.

The use of grand juries varies substantially across states. Four states use grand juries only in capital cases, 14 require a grand jury in felony cases, but most use a grand jury as an option.

Grand juries can also conduct investigations. They have the power to issue **subpoenas**, or legal documents that require individuals to testify in front of the jury or to provide other evidence. In limited situations, grand juries can offer immunity from prosecution. Immunity allows a witness to admit to crimes during testimony in exchange for not be prosecuted.

In reality, grand juries almost never issue no bills. Recall that the prosecutor essentially controls the grand jury, the evidence, and the witnesses deemed important by the prosecutor. The state, moreover, has no legal requirement to present evidence that could exonerate a criminal suspect. Grand juries often spend only a few minutes per case before taking a vote. While some cases require grand juries to meet regularly, listen to witnesses, and issue subpoenas, most do not. In states where grand juries are not used are optional, prosecutors officially charge an individual criminal suspect through an **information**, which is a sworn legal complaint that the alleged person has violated the la

Arraignment

Once indicted by a grand jury or once an information has been filed, the criminal defendant is brought to court for arraignment. During the arraignment, the defendant hears t charges, defense lawyers notify the court of their representation, and the defendant is allowed to enter a plea. Pleas generally take one of three forms: **guilty**, which means th the defendant admits to the crime; **not guilty**, where the defendant denies the criminal charges; and **nolo contendere** (no contest). A "nolo" plea means that the defendant de guilt but accepts the criminal sanction. However, a nolo plea cannot be used as evidence of guilt in a civil case.

A judge does not have to accept a guilty or nolo plea. Before a judge accepts such a plea, he or she must make certain that the defendant understands his or her constitutiona rights and that the plea is offered voluntarily—that is, was not coerced by threat or fear. A defendant may change his or her guilty plea at any point prior to the court accepti the plea and prior to criminal sentencing. If a defendant refuses to issue a plea, the court will usually enter a not guilty plea.

Notice that criminal defendants are not allowed to enter a plea of innocence. This is because the burden of proof in a criminal trial falls to the state. If the state can prove be a reasonable doubt that the person committed the crime, a jury can issue a finding of guilty. However, if the state cannot prove beyond a reasonable doubt that the person committed the crime, the jury may issue a finding of not guilty. A finding of not guilty is not the same thing as "innocence." *Not guilty* simply means that the state did not p the case. The defendant may be factually guilty but the state's case may not have been strong enough to convince a jury.

Plea Bargaining

While every person may be entitled to their day in court, the reality of the criminal justice system is that criminal trials are very rare. The vast majority of all criminal cases instead handled through a process called **plea bargaining**. Plea bargaining represents an informal system of justice where criminal defendants agree to plead guilty in exchan for certain concessions from the prosecution. Plea bargaining is widespread, with over 95 percent of all criminal cases handled though plea negotiations (Devers, 2011). In a recent Supreme Court case, Justice Kennedy wrote that the criminal justice system is a "system of pleas" and that plea bargaining determines "who goes to jail and for how l It is not some adjunct to the criminal justice system. It is the criminal justice system."

Plea bargaining is multifaceted: In return for a guilty plea, prosecutors can agree to reduce charges, sometimes from a felony to a misdemeanor. This is referred to as **charge bargaining**. Defendants can also agree to plead guilty in return for a reduced sentence, known as **sentence bargaining**, or they can sometimes plead guilty to only one or a f counts instead of all the criminal counts lodged against them. Either way, plea bargaining often serves both the prosecution and the defendant. For example, plea bargaining helps the prosecutor efficiently process large numbers of criminal cases, allows them to do so without incurring the costs (in time and money) associated with a criminal trial and lets them tailor the criminal penalty based on the nature of the crime. Moreover, plea bargaining can help the defendant by speeding up the processing of the case, lower the possible penalties associated with conviction for a serious crime, and reducing the amount of time served in jail or prison.

The system of pleas allows the criminal justice system to dispense justice efficiently. There are times, however, where plea bargaining can be viewed as coercive because it assumes the guilt of the defendant. For example, prosecutors sometimes "overcharge" defendants, knowing that they will reduce the charges during plea bargaining. But when criminal defendants are faced with multiple serious charges that could result in several years or decades of incarceration, they may be more likely to plead guilty even if the state's case is relatively weak and even if they are innocent of the charges. The risk of going to trial and being found guilty is usually weighed against the costs of pleading guilty.

Many defense attorneys advise their clients to accept plea bargains. They do this for a variety of reasons: First, many criminal defendants are guilty of the crimes of which th are accused, and the state has sufficient evidence to prove guilt (witnesses, video footage, DNA evidence). A plea usually benefits their clients in some way. Second, local judicial norms encourage plea bargaining. Judges may, for example, sometimes help in the plea process. Thus defense attorneys who violate local judicial norms may be view as "problems." Third, defense attorneys often encourage their clients to "cop a plea" because they understand that the potential costs to their clients—in terms of money, reputation, and even their freedom—may be substantially greater if they go to trial.

The Criminal Trial

Of all criminal cases, only a handful will result in a jury trial. Less than half of all murder charges, for example, result in a criminal trial. And for the most part, trials for oth types of crimes occur in less than 2 percent of all cases (Ostrom et al., 2004). Trials occur most often when the defense and the prosecution have failed to obtain a negotiated plea or after a defense attorney has advised the defendant to accept a plea.

If just 10 percent of all cases ended in a trial, the criminal justice system would come to an abrupt stop. Trials take time, sometimes extending months and even years into th future, and they can be very expensive. The state, for example, may seek and use outside scientific experts to test evidence. It may submit hundreds of pieces of evidence and present dozens of witnesses. The defense, too, may use its own scientific witnesses, take days to cross-examine witnesses, and challenge every piece of evidence submitted by

the state. Judges have to maintain order in the courtroom; they also have to rule on multiple defense and state motions, on matters of law, and on objections raised by both si Last, jurors, who usually have jobs and families, sometimes have to spend days, weeks, and even months listening to technical evidence, to conflicting reports, and to the nuanced legal arguments offered by the prosecution and defense. Sometimes they are **sequestered**, and their freedom is restricted to a hotel or other facility for the duration c trial. The point is that there are many reasons why individuals in the criminal justice system do what they can to avoid having a case go to trial.

Individuals who choose to go to trial run a serious risk—that the penalty if convicted may be substantially greater than if they had elected to take a plea. This is sometimes c a **trial penalty**. Recent evidence indicates that individuals convicted at trial receive substantially longer sentences than those who accepted a plea bargain. A study by Ulmer Bradley (2006) found that the odds of being incarcerated if convicted by a judge were 2.2 times higher than had the defendant pled guilty. The odds of being incarcerated aft jury trial was 2.7 times higher than had the defendant accepted a plea. Moreover, individuals convicted by a jury received sentences that were 57 percent longer than the sentences they would have received. For bench trials, which are trials before the judge without a jury, sentences were 22 percent longer.

Nonetheless, criminal trials represent the heart of the adversarial process. The prosecution tries to prove that a crime was committed and that the evidence points to the defendant's guilt. The defense questions prosecutorial evidence, puts forth alternative theories of the crime, and tries to introduce reasonable doubt. The judge makes sure the trial is fair. However, the most important actors in a criminal trial are the citizens who will evaluate the evidence, determine the credibility of the witnesses, and ultimately determine the defendant's guilt. The most important players in the criminal trial are the jurors.

© Jim Arbogast/Getty Images

The process of interviewing and selecting the jury candidates is called voir dire.

A jury is composed of citizens who have been called before the court. To determine who is eligible for jury duty, many jurisdictions use voter registration rolls and select individuals randomly from these rolls. When drawn, individuals are sent a **summons** to appear for jury duty on a given date and time. However, receiving a summons does not mean that a person will serve on a jury. Many people are excluded from jury duty for a variety of reasons, including having a felony conviction. Once citizens show up in court, they may be excluded for other reasons, including the process of **voir dire**. Voir dire is the process where the prosecution, the defense, an even the judge interview potential jurors and rule out individuals who may not be suitable to sit c a specific case. Some individuals may not be able to be fair in their deliberations, while others may hold beliefs that could jeopardize the state's case or the defendant's right to a fair trial.

Defendants are presumed innocent of the charges against them; thus the burden of proof is on the state. Because of this, the state is allowed to present its case to the jury first. Note that in some cases a defendant can waive the right to a jury trial and can ask for a **bench trial,** where the jud will make a determination of guilt. The prosecution can present evidence of the defendant's guilt. This evidence can be anything from the testimony of witnesses to the crime, the testimony of expert witnesses, to physical evidence, such as blood, hair, and DNA analyses. Evidence can be **direct** or **circumstantial**. Direct evidence is evidence where no inferences ne to be made about the fact. When, for example, a bank teller identifies the person responsible for a bank robbery, no inference of fact is necessary. Circumstantial evidence, however, requires an inference of fact to be made. Many trials rely on circumstantial evidence, such as DNA evidence, fingerprint evidence, and even hair evidence. For example, in rape cases, DNA, hair, and fingerprints evidence may be available, but they do not prove directly that sex without consent necessarily occurred.

After the prosecution rests its case, the defense is allowed to present its case. The defense can cross-examine prosecutorial witnesses, call into question the strength of the prosecutor's evidence, and offer legal defenses. Much of the defense attorney's effort is not directed to proving their client's innocence but rather to introducing enough reasonable doubt that jurors will not be able to convict the defendant. Defense lawyers can also offer their own witnesses and scientific experts, but the prosecution can call rebuttal witnesses after the defense closes its case.

Once both the prosecution and defense rest, each concludes with a **closing argument**. The prosecution usually leads off closing arguments, which provide to the jury a broad overview of the facts of a case. After the prosecution has completed its closing argument, the defense has its turn. Again, the defense then presents a broad overview of its ca with an eye toward introducing reasonable doubt. After both sides have given their closing arguments, the judge provides the jury with instructions about the defendant's righ the law, and the process used to determine guilt.

After receiving their instructions, juries must deliberate until a verdict is determined. Jury deliberations are secret and are often held in a secure room inside a courthouse. A foreman, usually someone elected by the jurors, acts as the jury leader. The foreman will help the jury organize discussions, examine evidence, and take preliminary votes.

It usually takes a unanimous vote of 12 jurors to convict a defendant. Sometimes, however, juries cannot reach a verdict. When this happens, it is called a **hung jury**. A hung jury will inform the judge of their difficulties in reaching a decision. At that point, many judges will instruct the jury to try again to reach a verdict. If the process fails and the jury simply cannot make a determination of guilt, the judge may declare a **mistrial**. When a mistrial is declared, the defendant is entitled to a new trial. Jury deliberations can take hours, days, and even weeks.

About 80 percent of the time, juries issue a guilty verdict (Ostrom et al., 2002). While many criticize jurors and their decisions, especially in widely covered cases, interviews with jurors and trial judges show that most of the time, jurors take their duty very seriously. Juries, for example, find individuals not

Stop and Think 6.4

Imagine that a state legislator sponsored a bill limiting the practice of plea bargaining. What would be some of the foreseeable consequences? Would you support such a bill? Why or why not?

guilty about 20 percent of the time and in many instances report that they personally believed the defendant to be guilty but that the state simply did not prove the case (Ostr et al., 2002).

6.5 Chapter Summary

In many ways the courts are the hub of the criminal justice system. Every other part of the system—the police, prosecutors and defense attorneys, and corrections—depends the courts for the administration of justice. Because of the critical role courts play in the administration of justice, they must be independent of political and social forces that could taint the outcomes of criminal cases. Moreover, within the court system itself there is a system of appellate courts that review lower court rulings to make sure the defendant received a fair trial and that the courts have followed the law.

State and federal courts manage many thousands of cases each year. To process the large number of cases, courtroom work groups—composed of judges, prosecutors, and defense attorneys—create informal rules and processes to help the court process cases efficiently. Courtroom work groups value cooperation, which is different from the imag of the courtroom where adversaries battle it out.

One way that courtroom work groups process large numbers of cases is through the practice of plea bargaining. Plea bargaining is common and represents a process whereby defendants agree to plead guilty to a crime in return for a reduced sentence or reduced charges. The practice of plea bargaining saves time and money; however, it can create conditions where innocent individuals agree to plead guilty, and it gives the prosecutor tremendous power in the criminal justice system.

Because over 95 percent of cases are handled through a plea arraignment, criminal trials remain rare events. When they occur, the adversarial system emerges and the prosecution and defense are each given the opportunity to put on their case, to use and cross-examine witnesses, and to submit and review evidence. Trials can be lengthy in and can be very costly. Around 80 percent of the time, defendants in criminal trials are found guilty by juries. When they are found guilty, research shows that they are likely receive a substantially longer sentence than if they had plea-bargained their case.

The American court system is thus a complex tapestry of actors that work together to administer justice, determine guilt, and hold those found guilty accountable.

Critical Thinking Questions

1. Why does the United States maintain separate federal and state court systems? What are some of the costs and benefits associated with having separate court systems?
2. How do the day-to-day operations of the court system differ from the way they are portrayed in the media?
3. What are the costs and benefits of our system of plea bargaining?

Key Terms

Click on each key term to see the definition.

Acquittal
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A trial outcome where the charges against the accused are dismissed.

Appeals by permission
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Appeals where convicted offenders petition the appellate court for a review.

Appeals by right
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Appeals guaranteed by the legislature as a right of the convicted offender.

Appellate/appeals courts
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Courts that hear and review cases after a trial court has ruled on them. These courts focus on the legality and fairness surrounding the actors and procedures of the court.

Assigned counsel
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Private lawyers who volunteer to defend indigent clients and whose fees are paid for by the jurisdiction responsible for the case.

Bail
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

An amount of money or property value required to release an arrested person from custody. This is in place to help ensure that such a person returns for his or her court date release.

Bench trial

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Trial in which judge makes determination of guilt instead of a jury.

Change of venue

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

This refers to a circumstance where a trial is moved from the scheduled venue to another location owing to unfair or biased attitudes in the area of the original venue.

Charge bargaining

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Negotiations between the prosecution and defense where the defendant agrees to plead guilty in exchange for a reduced charge or fewer charges from the prosecution.

Circuit/district/superior courts

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Courts of general jurisdiction that can handle all felony cases and have the power to review cases from inferior/lower courts. These courts typically deal with serious felony cases.

Circumstantial evidence

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Evidence admitted in court that requires the inference of facts and does not in itself prove the defendant guilty.

Closing arguments

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

The final statements from the prosecution and defense at the end of a trial.

Contract system

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A system for providing indigent clients with defense counsel where private law firms or solo defense lawyers are hired as contractors, often on a case-by-case basis, to repres indigent clients.

Courtroom work group

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A name for the collective group of various actors in the courtroom such as the judge, attorneys, clerks, etc.

Direct evidence

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Evidence admitted in court that is taken as fact. It may stand alone and does not require the inference of fact.

Exculpatory evidence

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Evidence that can clear a defendant of guilt in a criminal trial.

General jurisdiction

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

The authority of a court to hear all types of cases.

Guilty plea

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

The admission by a defendant that he or she is guilty of the charges against him or her.

Hung jury

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A jury that cannot agree on a disposition or verdict.

Indictment/true bill

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A formal legal statement that a person has committed a crime.

Inferior courts/lower courts/municipal courts

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Courts of limited jurisdiction that deal with specific types of cases. Many hear only misdemeanors and traffic offenses. These courts may also include specialized courts, such drug court. They often hear preliminary and bail hearings for cases later transferred to higher courts.

Information

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A sworn legal complaint that the alleged offender has committed a crime. This is used by the prosecution in states that do not use grand juries.

Initial appearance

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

The beginning of the legal process where the defendant appears before a judge and is read his or her charges and rights and is asked if defense counsel is needed.

Jurisdiction

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

The statutory authority of a court to hear a case.

Limited jurisdiction

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

The authority of a court to hear only certain types of cases.

Missouri Plan

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A method for the selection of judges based on merit. This usually involves a commission that reviews applications and conducts interviews of judicial candidates; it is intend to help select the most qualified judges.

Mistrial

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A trial that is regarded as invalid. It is thrown out, and the defense is then entitled to a new trial.

No bill

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

This applies to the situation where a grand jury decides that the state did not have sufficient evidence to make an arrest.

Nolo contendere (no contest plea)

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A defendant does not admit guilt of the charges but accepts the conditions and sanctions that the judge assigns.

Normal crime

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Categories of crimes that the courts deal with on a daily basis.

Not guilty plea

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

The defendant does not admit guilt of the charges against him or her and wishes to contest the conditions and sanctions dictated.

Plea bargaining

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Negotiations between the prosecution and defense where the defendant pleads guilty and receives a reduction of some sort from the prosecution, often in charges, accounts, o sentencing.

Pretrial release/diversion

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A program where an appointed court officer evaluates an arrested individual and decides whether he or she should be released from custody.

Prosecutorial discretion

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

The latitude or freedom of prosecutors to decide whether to press charges. Which or what kind of charges are brought is often based on the specific circumstances surroundir case.

Public defender

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A defense lawyer paid by the government who is publicly appointed specifically to defend indigent clients.

Release on own recognizance (ROR)

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A condition where an arrested individual is released from custody on good faith that he or she will return for his or her court date. This often requires a signature for a stater that the accused will return for court.

Rule of four

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A qualification that requires at least four supreme court justices to vote for approval of a writ of certiorari before it is granted.

Sentence bargaining

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Negotiations between the prosecution and defense where the defendant agrees to plead guilty in exchange for more lenient sentencing.

Sequestered

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A condition of isolation for members of a jury throughout the duration of a trial.

Subpoena

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A writ from the court that legally compels a witness to testify or provide information about a case.

Summons

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A legal notice compelling an individual to appear for jury duty at a certain time and place.

Trial courts

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

The first level of court where a case is originally heard. This court is responsible for determining and ruling on the facts of a case.

Trial penalty

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

This refers to the idea that many individuals who choose to go to trial rather than enter into a plea bargain agreement run the risk of receiving more serious sanctions in trial.

U.S. attorney

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A prosecutor at the federal level that is appointed by the president and confirmed by the Senate.

U.S. courts of appeals/U.S. circuit courts

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Federal appellate/appeals courts that handle cases from offenders convicted in U.S. district courts within each specific circuit.

U.S. district courts

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Federal trial courts that determine facts surrounding a case involving federal law.

Venue

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

The location where a crime took place and where a trial is expected to take place.

Voir dire

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Meaning "to speak the truth," this is the process of jury selection. The prosecution, defense, and sometimes the judge summon citizens and question them in order to select ju members for a case going to trial.

Writ of certiorari

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A legally granted command to a lower court to provide the U.S. Supreme court with records from a case.

Web Links

Current information about the U.S. Supreme Court: **http://www.supremecourt.gov/ (http://www.supremecourt.gov/)**

A link to the National Center for State Courts: **http://www.ncsc.org/ (http://www.ncsc.org/)**

Information about the U.S. courts: **http://www.uscourts.gov/Home.aspx (http://www.uscourts.gov/Home.aspx)**

The Association of Prosecuting Attorneys forum for discussion: **http://www.apainc.org (http://www.apainc.org)**

A link to the National District Attorneys Association: **http://www.ndaa.org/ (http://www.ndaa.org/)**

U.S.A. Today reports of prosecutorial misconduct: **http://projects.usatoday.com/news/2010/justice/cases/ (http://projects.usatoday.com/news/2010/justice/cases/)**

Information about the National Association of Criminal Defense: **http://www.nacdl.org/ (http://www.nacdl.org/)**

An organization acting as the voice of the defense bar and providing information and resources for defense counsel: **http://www.dri.org/ (http://www.dri.org/)**

A website providing information about the advancement of criminal justice through DNA technology: **http://www.dna.gov/ (http://www.dna.gov/)**