Chapter 15

Section 3

* ***Criminal law*** is the most direct method for controlling crime because it defines criminal acts and spells out punishments for them.
* In criminal law cases, the government charges a person with a crime. The government is *always* the prosecutor and the defendant is the person charged.
* A ***crime*** is an act that breaks the law and harms someone or society in general. *Not* doing something can also be defined as a crime (example: not reporting child abuse).
* Most crimes in the U.S. break state laws and are tried in state courts, but there has been an increase in the number of federal criminal cases, such as tax fraud, selling narcotics, counterfeiting and kidnapping.
* The ***criminal justice system*** is the system of state and federal courts, judges, lawyers, police and prisons responsible for enforcing criminal law.
* Types of crimes:
  1. ***Petty offences*** are minor crimes such as parking illegally, littering, disturbing the peace, minor trespassing and driving over the speed limit.
     + The punishment for a petty offense is usually a citation (ticket) with a fine.
  2. ***Misdemeanors*** represent more serious crimes such as vandalism, stealing inexpensive items, writing bad checks for modest amounts of money, or being drunk and disorderly.
     + Punishments for misdemeanors can be fines or jail sentences, usually for a year or less. (If a person has committed the same misdemeanor several times, it can be treated like a felony.)
  3. ***Felonies*** are serious crimes like burglary, kidnapping, arson, rape, fraud, forgery, murder, or *manslaughter* (killing someone but less serious than murder, for example, if it occurs in the heat of passion or through recklessness).
     + For a felony, someone can be imprisoned for a year or more. In the case of murder, the penalty could be death (capital punishment).
     + People convicted of felonies might lose their basic rights to vote, possess a firearm, or serve on a jury.
* There are several steps in criminal cases:
  1. ***Investigation and arrest*** occurs when police begin to investigate what appears to be a crime. The goal of the police is to gather enough evidence to convince a judge to issue a warrant to arrest a suspect. A valid *arrest warrant* lists the suspect’s name and the alleged crime. Police can arrest a person without a warrant if they catch them committing a crime.
     + After arrest a suspect is taken to a police station and the charges are “booked” or recorded. The suspect may be photographed, fingerprinted, placed in a line up and give a handwriting sample. None of these violate the suspect’s constitutional rights and may be done without a lawyer. However, a suspect may request a lawyer be present before answering any questions.
  2. ***Initial Appearance-***whenever someone is arrested, he or she must be brought before a judge as quickly as possible to be charged—usually within 24 hours. The judge explains the charges to the defendant and reads the person his or her rights.
     + If the charge is a misdemeanor, the defendant can plead guilty and the judge can issue punishment. If the defendant pleads not guilty then a trial date is set.
     + For a felony, the defendant is not usually asked to enter a plea. Instead, the judge sets a date for a preliminary hearing, and the process of determining if the charges have merit begins. The judge will decide if the person is “a good risk to return,” meaning the suspect has officially recognized the duty to return to court, then the suspect is released. If the person is not a good risk, the judge will require *bail*, a sum of money the accused leaves with the court until he or she returns. If the defendant is likely to flee the country, bail may be denied.
  3. ***Preliminary Hearing or Grand Jury***-a grand jury is a group of citizens who review the charges to determine whether there is enough evidence to call for an *indictment*, a formal criminal charge.
     + *Grand Jury* hearings are conducted in secret defendants are not entitled to have an attorney to represent them.
       - Convening a grand jury is time-consuming and expensive. Today, in misdemeanor cases and in many felony cases, courts use an *information* rather than a grand jury. An information is a sworn statement by the prosecution asserting that enough evidence exists to go to trial.
     + In a *preliminary hearing*, the prosecution presents its case to a judge. The defendant’s lawyer may also present certain kinds of evidence. If the judge believes there is a reason to believe the defendant committed the crime, the case moves to the next stage. If the judge decides the prosecution does not have enough evidence then the charges are dropped.
  4. ***Plea Bargaining***-in about 90% of all criminal cases, the process comes to an end with a guilty plea. In this pretrial process, the prosecutor, defense lawyer and police work out an agreement through which the defendant pleads guilty in return for a lesser punishment.
     + Supporters of the process claim that it is efficient and saves the state the cost of a trial in situations where guilt is obvious.
     + Opponents argue “copping a plea” allows criminals to get off lightly. Others say it encourages people to give up their rights to a fair trial.
     + In several cases the Supreme Court has approved the process as constitutional. In *Santobello v. New York*, 1971, the Court said plea bargaining was an essential component of the administration of justice.
  5. ***Arraignment and Pleas***-at the arraignment, the judge reads the formal charge against the defendant in court. The defendant is represented by his or her lawyer. During this process the judge may ask the defendant questions to make sure the person understands everything about the charges and the process. The judge asks whether the person pleads guilty or not guilty and the defendant then enters one of four pleas:
     + Not guilty
     + Not guilty by reason of insanity
     + Guilty
     + No contest (only available in some states)
       - The no contest plea means that the defendant indirectly admits guilt, but this is not recorded as a guilty plea. With this plea, the defendant is giving up the right to a defense and the judge decides the punishment.
  6. ***Trial***-if the defendant pleads “not guilty,” the next step is a trial.
     + Defendants accused of a felony have the right to choose between 2 types of trials:
       - *Bench trial*-a judge only hears all of the evidence and determines guilt or innocence. (Experience shows judges are more likely to find defendants guilty than juries.)
       - *Jury trial*
         * A *jury* is a group of citizens who hear evidence during a trial to decide on guilt or innocence.
         * How is a jury chosen?

The attorneys from both sides choose jurors from a pool of residents in the court’s jurisdiction.

During the selection process, each attorney can ask potential jurors questions and decide whether they might be favorable or unfavorable to the defense or prosecution. (Both sides try to avoid jurors who are unfavorable to their side.)

* 1. ***The Decision***-the last step is the decision, or *verdict*.
     + After the closing arguments, the judge instructs the jurors on legal procedures and on the law they must apply to the evidence. Then jury then goes to a room where they deliberate, or discuss, the case. Their discussion is secret and has no time limit. During this time the jury may ask the judge questions and may ask to review evidence.
     + To hand down a guilty verdict. The jury must find the evidence convincing beyond a reasonable doubt. Criminal cases require a unanimous vote for a guilty verdict. If the jury cannot agree on a verdict there is a *hung jury*, and the court usually declares a mistrial.
  2. ***Sentencing***-if the verdict is guilty, the judge determines a *sentence*, punishment for the offender. In a few states, jurors have a role in sentencing, particularly in cases that involve the death penalty as a possibility.
     + The law usually sets minimum and maximum penalties for a crime, but what decides whether someone received the minimum or maximum sentence? Or something in between?
     + A judge might decide that the person’s background or the particular circumstances of the crime should affect the severity of the sentence.
     + A judge can also hold hearings to consider how to weigh these factors. In death penalty cases, the Constitution requires such a hearing.
     + Beginning in the 1990s, citizens became frustrated with the short sentences serious criminals were receiving as well as the large number of repeat offenders. So, states began passing the “three-strikes” laws. These laws typically impose an automatic minimum sentence of 25 years or life imprisonment when a person is convicted of a serious crime for the third time.
       - Opponents of the three-strike laws say that they can be unfair. For example, what if one of the three offenses is serious but not violent? (A violent felony would be murder, rape or robbery.)
       - Supporters argue the states that have adopted three-strikes laws have seen a drop in serious crimes.
       - *Ewing v. California*, Gary Ewing stole 3 golf clubs from a pro shop in El Segundo, CA. Because of Ewing’s many previous crimes, the judge said this was his third strike. The Supreme Court agreed that the three-strikes law was constitutional and Ewing was sentenced to 25 years in prison.

**Look at State Prison Populations on P. 434**

**Writing Support on P. 435**

Section 4

* Dealing with crime and criminals is one of the biggest challenges in a democracy. On the one hand, the government’s first duty is to protect the people. On the other hand, in a nation committed to individual rights, the government must protect those rights. *Justice in a democracy means protecting the innocent from police power as well as punishing the guilty.*
* In the Constitution and the Bill of Rights, the Founders attempted to meet this challenge by setting out principles that would guard the rights of the accused as well as the rights of society.
* The police need to provide *evidence* to accuse people of committing crimes, but getting evidence often requires searching people or their property. To protect the innocent from searches, the 4th Amendment protects from “unreasonable searches and seizures.” But what constitutes unreasonable searches and seizures? Because there is no precise definition, the Court deals with this issue on a case-by-case basis.
* Before 1980, more than 20 states had allowed police to enter a home and search without a warrant if they had reason to believe the occupant had committed a felony. In *Payton v. New York*, 1980, the Supreme Court ruled that, except in life-threatening emergencies, the 4th Amendment forbids searching a home without a warrant.
* In *Florida v. J.L.,* 2000, the Court strengthened Fourth Amendment protections further by ruling that an anonymous tip that a person is carrying a gun does not give police the right to stop and frisk that person.
* Certain situations do not require warrants. The police do not need one to search and arrest someone breaking the law (even minor laws). In *Whren v. United States*, 1996, the Court held that the police could seize drugs found in a suspect’s vehicle that was stopped for a traffic violation.
* In *Atwater v. City of Lago Vista*, 2001, the Court found that the Fourth Amendment did not prevent the police from arresting a woman who was driving her children in a car in which no one was wearing a seat belt.
* The police also do not need a warrant to search garbage placed outside a home for pickup, as was decided in *California v. Greenwood*, 1998.
* The exclusionary rule excludes illegally obtained evidence from trial. This rule was first for federal courts in *Weeks v. United States*, 1914. The rule was not applied to state courts until *Mapp v. Ohio*, 1961.
  + Some people question the exclusionary rule, asking whether criminals should get off simply because the police made a mistake in collecting evidence. In *United States v. Leon,* 1984, the Court ruled that as long as the police act in good faith when they ask for a warrant, the evidence they collect may be used in court even if the warrant turns out to be flawed.
  + In *Nix v. Williams*, 1984, the Court approved another exception to the exclusionary rule called inevitable discovery. Here the Court held that evidence obtained in violation of a defendant’s rights can be used in trial if the prosecutor can show that the evidence would have eventually been discovered by legal means.
  + In *Hudson v. Michigan*, 2006, the Court held that evidence seized at a home could be used in a trial even if the police entered the home without knocking and announcing their presence. The Court said that the exclusionary rule did not apply as long as the police had a valid search warrant.
* In *California v. Acevedo,* 1987, the Supreme Court overturned an earlier decision and set a new precedent for automobile searches. The case involved the police search of a car driven by Charles Acevedo, whom police witnessed leaving a drug house. Acevedo’s attorney argued that the marijuana found in the car could not be used as evidence since the police had no warrant, but the trial court disagreed. The case went to the SC, which ruled that the police were free to “search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained.”
* In the high school setting, courts have ruled that the Fourth Amendment protections can be limited. In *New Jersey v. T.L.O.*, 1985, the Supreme Court ruled that school officials do not need warrants or probable cause to search students or their property. This case arose when an assistant principal searched the purse of a student he suspected had been smoking tobacco in the bathroom. The search turned up cigarettes and marijuana. The student was suspended from school and prosecuted by juvenile authorities. The Court probably would have ruled in favor of the student if a police officer had conducted the search (Why? Because there was no probable cause.), but school officials are not under the same restraints when they has a reasonable suspicion of misconduct.
  + In *Vernonia School District v. Acton,* 1995, the Court further limited privacy protections in high schools where drug use was at issue. Here the Court upheld the ruling that all students in competitive school athletics could be required to have drug tests even if there was no specific reason to suspect the use of drugs.
* One of the most important constitutional rights related to criminal procedure is the writ of habeas corpus (Latin for you have the body”). This writ is a court order that directs an official who has a person in custody to bring the prisoner to court and explain to a judge why the person is being held. A prisoner must be released unless sufficient cause can be shown to detain him or her. Article I, Section 9 of the Constitution guarantees this right and says it cannot be suspended except in cases of rebellion or invasion. (President Lincoln suspended this at one point in the South during the Civil War.)
* The Supreme Court first dealt with the right to counsel in *Powell v. Alabama*, 1932. Nine black boys were convicted of assaulting 2 white girls and they were sentenced to death. The Court reversed the decision, ruling that the state had to provide a lawyer in cases involving the death penalty.
* In *Betts v. Brady*, 1942, the Court held that states did not have to provide a lawyer in cases that did not involve the death penalty. The Court said that the appointment of counsel was not a fundamental right to a fair trial, except in cases of illiteracy and mental incompetence. For 20 years the *Betts* decision was the precedent. Then in 1963, Clarence Earl Gideon won a landmark case that ended the *Betts* rule.
* *Gideon v. Wainwright* (1963): Gideon was charged with breaking into a pool hall with intent to commit a crime (a felony). Because he was too poor to hire a lawyer, he asked for a court-appointed attorney but the court denied his request and he was convicted and sentenced to 5 years prison.
* In jail, Gideon studied law books. He appealed his own case to the Supreme Court with a hand written petition, “I requested a lawyer and the court refused.” He won the case with a unanimous verdict and *Betts v. Brady* was overturned. Gideon was released, retried with the help of a lawyer and acquitted. Hundreds of other Florida prisoners who had been convicted without counsel were also released. The Court has extended the *Gideon* decision stating that whenever a jail sentence is of 6 months or more is possible, the accused has a right to a lawyer at public expense. This right applies from the time of arrest through the appeals process.
* In 1963, Ernesto Miranda was arrested for the rape and kidnapping of an 18 year old girl. During questioning, Miranda was not told he could remain silent or have a lawyer so he was not clear on his rights. Miranda confessed to the crime and signed a written confession and was convicted.
* In *Miranda v. United States* (1966), the Supreme Court reversed the conviction, ruling that the 5th Amendment requires police to clearly inform suspects of their rights before questioning them. Unless they are informed, none of their statements may be used in court. (This is why police must read you your “Miranda Rights” upon arrest!)
* Double jeopardy means a person may not be tried for the same crime twice, thus protecting them from harassment.
* A key case involving double jeopardy was *United States v. Halper* (1989), in which the Court ruled that a civil penalty could not be imposed after a criminal penalty for the same act.
* Note that DJ does not apply in all situations. If a crime violates both a state and federal law then it can be tried at both levels of government. Also, if a single act involves more than one offense, DJ does not apply. (Ex: stealing a car and then selling it involves theft and the sale of stolen goods.)