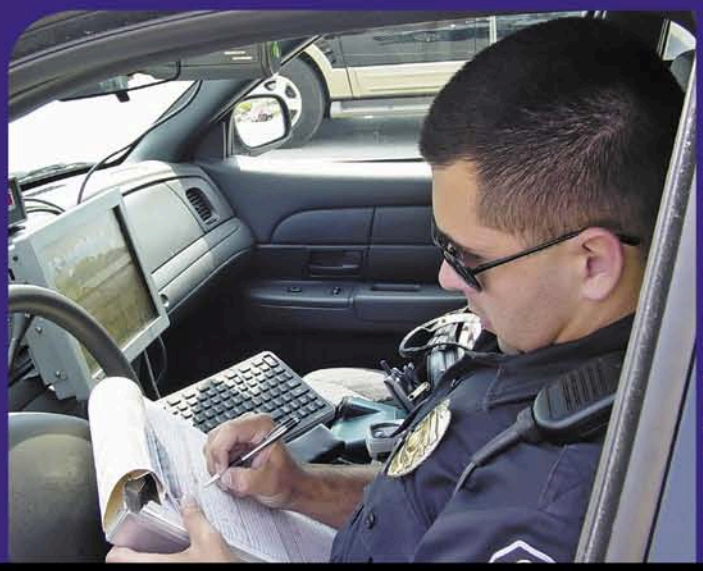

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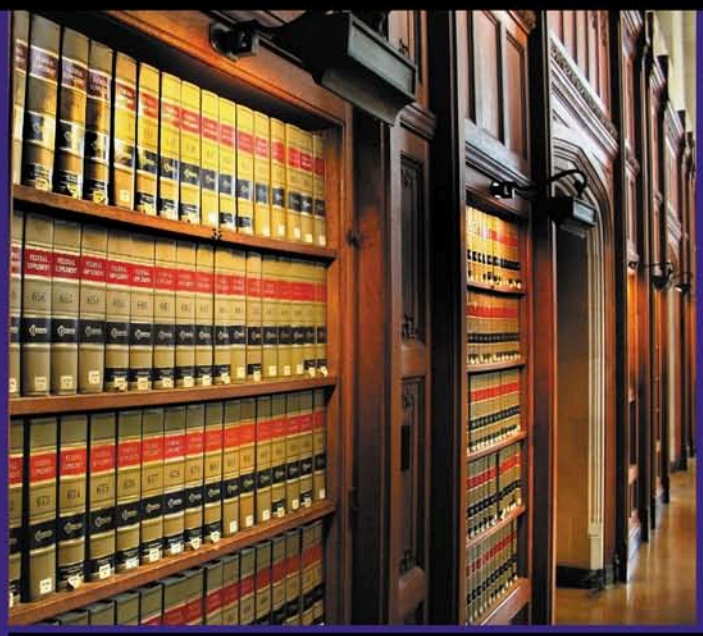

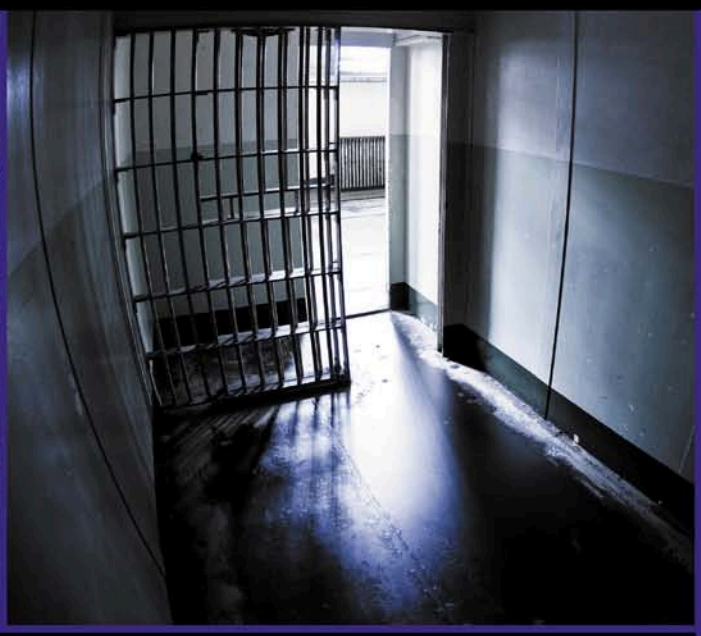

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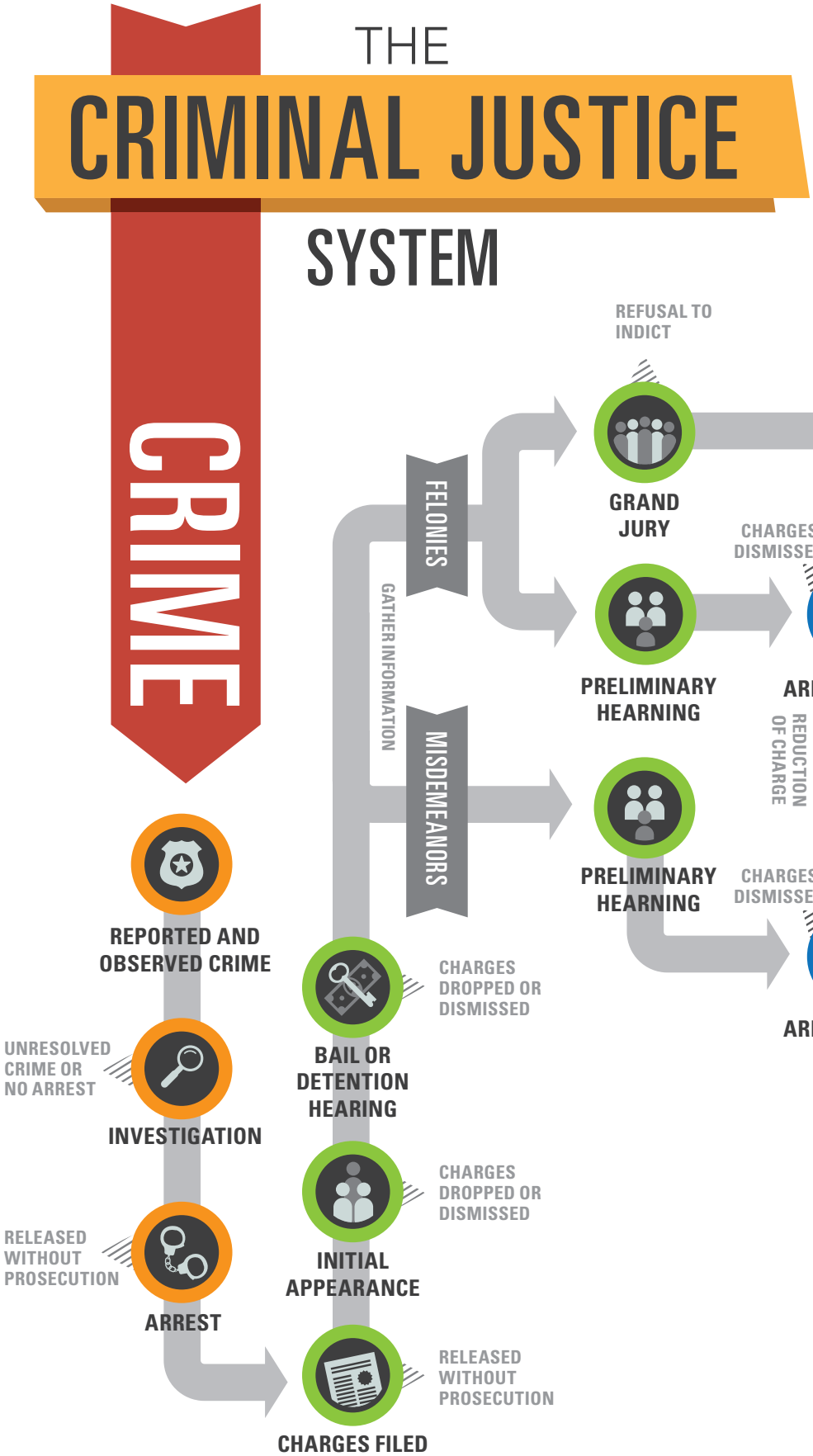

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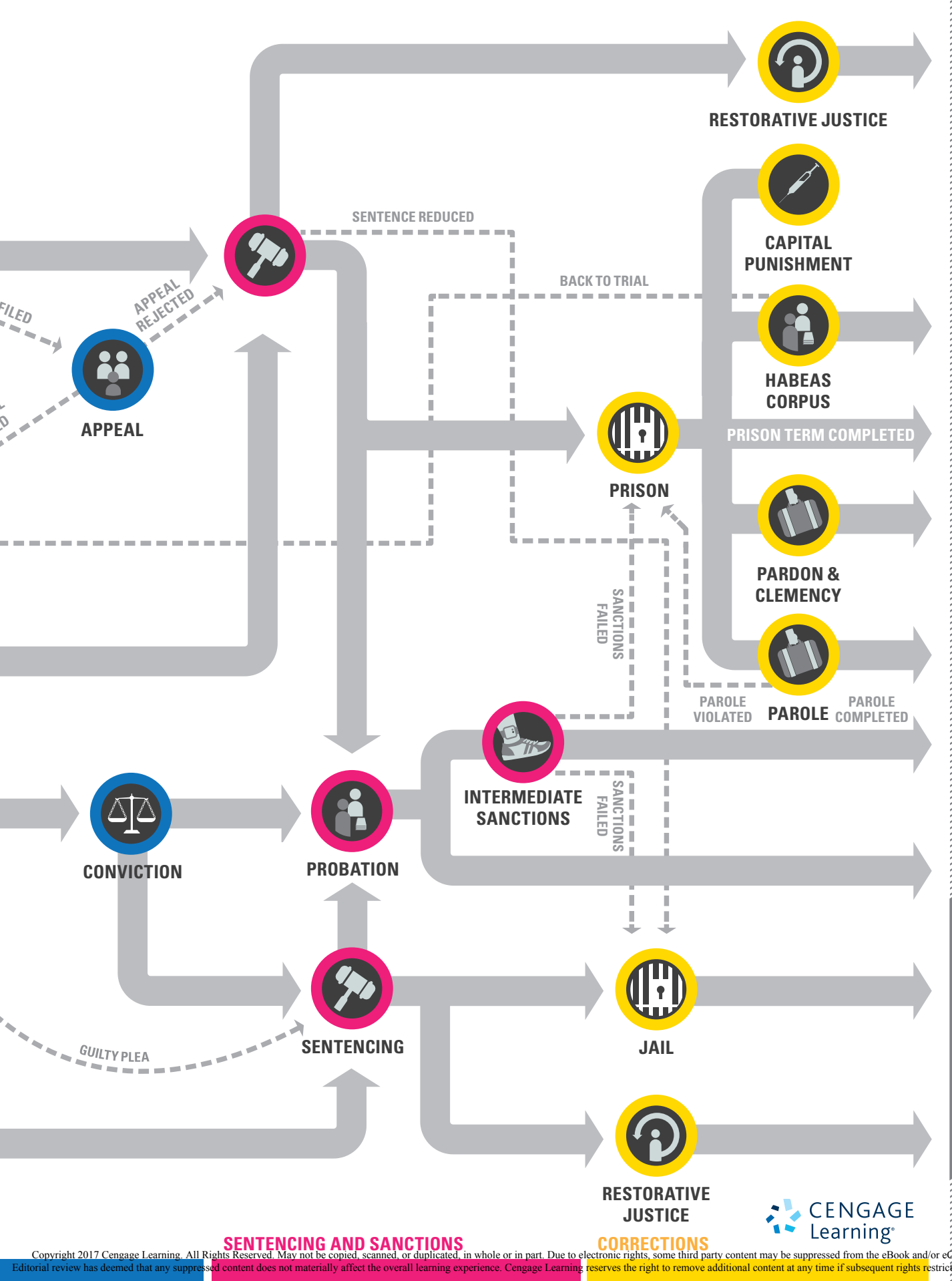

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This book is dedicated to the many graduate and undergraduate students and law enforcement personnel I have had over the years from whom I have learned so much.

—Rolando V. del Carmen

This book is dedicated to my wife and colleague, Mary K. Stohr, and to the many students I have had who have taught me so much.

—Craig Hemmens

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Preface to the Tenth Edition

THIS BOOK WAS written in an effort to demystify the law and court decisions so they can more effectively guide the conduct of law enforcement officials and in the process properly protect the rights of their constituency. Policing a free society is difficult because it sometimes involves a highly charged situation between the police and a member of the public. That encounter can be nasty and, sometimes, deadly. In a few seconds, the officer may be faced with a life-or-death situation for her or him and the person being confronted. A decision, wrong in hindsight but blurred at that moment, can lead to serious consequences for both parties. In a few instances, there is no margin for error. Police officers must know and understand the law so they become more fully aware of what they can do legally in the course of their high-risk and sometimes dangerous work. Mistakes cannot be eliminated, but are easier for the public to accept when made by the officer in good faith. Students of criminal justice, and all citizens, must understand how the law governs police-citizen encounters.

ORGANIZATION AND CHANGES TO THE TENTH EDITION

The tenth edition retains the format and chapter sequence of the ninth edition. A decision was made early on, after comments were received from the reviewers, that the book's structure and sequence be preserved. Thus, there are no major changes in structure and content in this edition. Reviewers indicated they liked the chapter sequencing and that there were no major topical areas missing. Thus, there are no major changes in structure and content in this edition. There are no chapters added or deleted. One minor change to the organization is the addition of sections: the fifteen chapters are divided into six sections, each containing two to four chapters. We thought this might assist instructors in organizing their presentation of the material and give them a clearer sense of how much time should be spent on each section.

The majority of changes to this edition are designed to update case coverage and related procedural issues. We have also spent considerable effort adding or enhancing coverage of cutting-edge issues such as bail, the use of force, special needs searches, voir dire, stop and frisk, racial profiling, seizures of text and e-mail messages, the use of technology in law enforcement, and much more—all of which we hope results in a more relevant, current, and engaging textbook. We discuss all the recent Supreme Court cases through the most recent (2014–2015) term of the U.S. Supreme Court.

In addition to updating the content in each chapter, we have updated the pedagogical material, including the Chapter Outline, Key Terms, and Top 5 Cases at the beginning of each chapter, and added a new feature, Learning Objectives; the Review Questions, Test Your Understanding, and Recommended Reading at the end of each

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chapter; and the In Action and Highlight boxes, as well as the margin notes and term definitions. We have also updated Figures and Tables throughout as needed.

Below we note the content changes/updates in each chapter:

Chapter 1 discusses the court system, court cases, and sources of rights. Knowledge of criminal procedure starts with understanding how state and federal courts are structured and work. The student at this early stage must be familiar with the U.S. Constitution and other sources of rights that set boundaries in policing. We have clarified the discussion of incorporation and jurisdiction.

Chapter 2 presents an overview of the criminal justice process, which familiarizes the reader with the entire criminal justice process, from initial contact with the police to the imposition of sanctions after conviction. It is the foundation of understanding subsequent chapters that deal with the specifics of how criminal procedure works. We have added a discussion of recent cases dealing with jury selection and appeals.

Chapters 3 and 4 discuss probable cause, reasonable suspicion, and the exclusionary rule, important terms/concepts in criminal procedure which reoccur throughout the subsequent chapters. We have added a discussion of recent Supreme Court cases dealing with probable cause and reasonable suspicion, and clarified some of the discussion of probable cause.

Chapter 5 discusses stop and frisk and stationhouse detention. Chapter 6 deals with arrests and the use of force during an arrest. These two chapters probe the extent and boundaries of the power of the police when dealing with people, as opposed to things. We have added recent Supreme Court cases on stop and frisk and reasonable suspicion.

Chapters 7, 8, and 9 address searches and seizures of things. This is an important part of policing, but not as crucial as the previous two chapters on searches and seizures of persons. Unless properly organized and separately discussed, this aspect of the Fourth Amendment can be confusing. Some textbooks discuss arrests of persons and searches and seizures of things together—we think this is a major mistake, and something that sets our textbook apart from the competition. Confusion also results if searches and seizures of things, covered in Chapter 7, are discussed together with seizures of motor vehicles, discussed in Chapter 8. These two types of searches (of things and of motor vehicles) are both covered by the Fourth Amendment, but have different rules and are best addressed separately. A discussion of searches and seizures that are not fully protected by the Fourth Amendment, covered in Chapter 9, closes this topic area. These types of searches are best discussed in this section, but deserve a separate chapter because they do not come under the full umbrella of Fourth Amendment protection and are governed by different rules. This chapter includes a discussion of related topics, such as eyewitness testimony and DNA identification that recently have been the subjects of increased discussion and debate. We have added recent Supreme Court cases in these areas, and updated some of the material on arrest, use of force, and third-party searches.

Chapter 10 covers lineups and other means of pretrial identification, and Chapter 11 covers confessions and admissions and *Miranda v. Arizona*. These go together because they are closely related (although their sequence can be interchanged; confessions and admissions can precede pretrial identifications). *Miranda v. Arizona* is arguably the most recognizable case ever decided by the U.S. Supreme Court in any field of law, not just in criminal procedure. It forms the core of any discussion on the admissibility of confessions and admissions and virtually defines day-to-day

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police work, particularly out in the field. Chapter 11 analyzes that case and cases subsequently decided that refine the various aspects of admissions and confessions. We have added a discussion of recent Supreme Court cases dealing with interrogations and confessions, and clarified some of the discussion of the post-*Miranda* decisions.

Chapter 12 covers five major constitutional rights of the defendant at trial. We have added material on voir dire and jury selection.

Chapter 13 covers sentencing, the death penalty, and other forms of punishment. Although clearly not a part of day-to-day police work, sentencing and punishment give the reader a complete picture of the criminal justice process and represent the ultimate formal result of police work. We have updated the chapter with recent Supreme Court cases dealing with the death penalty, in particular the restrictions on to whom it can be applied.

Chapter 14 covers legal liabilities of public officers and merits a separate chapter because it affects the totality of the police experience and presents a downside in policing. Lawsuits filed against law enforcement agents and agencies have influenced modern-day policing and have led to changes in law enforcement policies and practices. We have added a discussion of recent Supreme Court cases dealing with law enforcement officer liability.

Chapter 15 covers electronic surveillance and the war on terror. Electronic surveillance has been a part of policing for a long time, but what can be done or cannot be done has undergone changes in recent due to legislation and Court refinement of constitutional rules. We have updated this chapter with a discussion of the recent Supreme Court cases dealing with electronic surveillance, as well as current issues in the area. Electronic surveillance and the war on terror are discussed in the last chapter because some courses in criminal procedure include them, whereas others do not.

ANCILLARIES

For the Instructor

MindTap for Criminal Justice from Cengage Learning represents a new approach to a highly personalized, online learning platform. A fully online learning solution, MindTap combines all of a student's learning tools—readings, multimedia, activities, and assessments into a singular Learning Path that guides the student through the curriculum. Instructors personalize the experience by customizing the presentation of these learning tools for their students, allowing instructors to seamlessly introduce their own content into the Learning path via "apps" that integrated into the MindTap platform. Additionally MindTap provides interoperability with major Learning Management Systems (LMS) via support for industry standards and fosters partnerships with third-party educational application providers to provide a highly collaborative, engaging, and personalized learning experience.

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Changes in the tenth edition reflect written comments and suggestions by the reviewers and editors of the ninth edition. These reviewers are:

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James Kellogg, Missouri Baptist University
Greg Plumb, Park University
Gary L. Neumeyer, Arizona Western College

To these colleagues we express thanks for all they have done for this book. They have improved this book in ways too many to list.

All of the reviewers of the tenth and previous editions are highly respected colleagues who teach or have taught courses in criminal procedure. The reviewers of the eighth and other previous editions include Kelly D. Ambrose, Marshall University; Kevin Behr, Coastal Bend College; Beth Bjerregaard, University of North Carolina

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at Charlotte; Don Bradel, Bemidji State University; Jerry Burnette, New River Community College; William Castleberry, University of Tennessee at Martin; Susan Coleman, West Texas A&M University; Edward Donovan, Metropolitan State College of Denver; Robert Drowns, Metropolitan State University; Catherine Eloranto, Clinton Community College; Jack Enter, Georgia State University, Atlanta; Lorie Fridell, Florida State University; James Hague, Virginia Commonwealth University; Robert Hardgrave, Jr., University of Texas at Austin; William Head, Texas Christian University; Thomas Hickey, Castleton State College; Louis Holscher, San Jose State University; Tom Hughes, University of Louisville; Martrice Hurrah, Shelby State Community College; William D. Hyatt, Western Carolina University; W. Richard Janikowski, University of Memphis; Judith Kaci, California State University at Long Beach; Raymond Kessler, Sul Ross State University; Dave Kramer, Bergen Community College; James Miller, Columbia College; Pamela Moore, University of Texas at Arlington; Patrick Mueller, Stephen F. Austin State University; Gary Neumeyer, Arizona Western College; Robert Pagnani, Columbia-Greene Community College; Robert Peetz, Midland College; Robert Reinertsen, Western Illinois University; Ray Richards, San Jacinto College; Steve Rittenmeyer, Western Illinois University at Macomb; Clifford Roberson, California State University at Fresno; Leo Rowe, Troy University; Lore Rutz-Burri, Southern Oregon University; Joseph Schuster, Eastern Washington State College at Cheney; Pamella Seay, Edison Community College; Caryl Lynn Segal, University of Texas at Arlington; Mark Stevens, North Carolina Wesleyan College; Eric Stewart, Community College of Aurora; Greg Talley, Broome Community College; Roger Turner, Shelby State Community College; Segrest N. Wailes, Jackson State University; Frank Ziegler, Northeastern State University; and Alvin Zumbrun, Catonsville Community College. Their suggestions have guided the revision of this book and have doubtless shaped this book's format and content. We want these esteemed colleagues to know we are deeply and truly grateful.

This tenth and the previous editions would not have been possible without the help of friends and colleagues. Thanks are due to the following for their contributions: Mary K. Stohr of Washington State University, Michael S. Vaughn, Jerry Dowling, and Phillip Lyons of Sam Houston State University; John Scott Bonien, senior assistant attorney general of the state of Washington; Jeffery Walker of the University of Alabama-Birmingham; David Carter of Michigan State University; Tom Hickey of Castleton State University; and Judge James W. Bachman of Bowling Green State University.

The hundreds of undergraduate and graduate students we have had the pleasure of teaching over the years inspired the writing of this book. From them we learned so much about how legal material can best be learned by students and colleagues in the criminal justice field. There are too many to list, but we want them to know how much I value their contributions.

Some of the case briefs in this book are taken, with modification, from the book *Briefs of Leading Cases in Law Enforcement*, by Rolando V. del Carmen and Jeffery T. Walker, which is now in its seventh edition. I thank the publishers of that book for allowing the use of those briefed cases.

Special and sincere thanks to the personnel at Cengage Publishing Company, all tested and highly experienced professionals. They improved this book beyond measure, in both content and format. They are: Carolyn Henderson Meier, Christy Frame, Valerie Kraus, Kara Kindstrom, Andrei Pasternak, Judy Inouye, and Brittani Morgan.

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This book derives its strength from the efforts of many people, but the authors stand alone in accepting blame for its shortcomings. Continuous and critical feedback from readers is always welcome and deeply appreciated. As previous editions have shown (and as is true of all written work), feedback from readers ensures better future editions. To all who have provided solicited or unsolicited feedback for the ninth and past editions, thank you for your help.

A TEXT FOR A NATIONAL AUDIENCE

This text is written for a national audience, not just for readers in a few states. Policing in the United States is mainly a state and local concern; thus it is not enough for police officers to know the content of this text. Knowledge of specific state law, court decisions, or agency policy is a must in law enforcement in the United States. In case of doubt and where an actual case is involved, users of this text are strongly advised to read their own state laws or consult a knowledgeable lawyer for authoritative guidance.

TOWARD A DEMYSTIFICATION OF THE LAW

This text aims to help demystify law and court decisions so they can more effectively guide the conduct of the police and in the process protect citizens' constitutional rights even more effectively. It is hoped that this book contributes in some small way to achieving that goal—in the interest of society and for the benefit of law enforcement officers who risk their lives daily so the rest of us can enjoy safety and peace.

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CHAPTER 1

The Court System, Sources of Rights, and Fundamental Principles

LEARNING OBJECTIVES

1. Differentiate between the federal and court systems.
2. Explain the dual court system.
3. Explain the effect of a court's decision upon territorial jurisdiction.
4. Distinguish which criminal acts can be prosecuted in both federal and state courts.
5. Contrast the legal concepts of jurisdiction and venue.
6. Describe the sources of legal rights within the United States.
7. Define the legal concept of judicial review.
8. Describe the concept of "Rule of Law."
9. Identify the components of a case brief.
10. Construct a case brief when given a case.

KEY TERMS

Bill of Rights
case-by-case incorporation
case citation
case law
common law
double jeopardy
dual court system
dual sovereignty
due process clause
en banc
incorporation controversy
judicial precedent
judicial review
jurisdiction
original jurisdiction
rule of four
rule of law
selective incorporation
stare decisis
statutory law
total incorporation
total incorporation plus
venue

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CHAPTER OUTLINE

THE U.S. COURT SYSTEM
The Federal Court System
The State Court System
WHERE JUDICIAL DECISIONS APPLY
STATE DECISIS AND JUDICIAL PRECEDENT
FEDERAL VERSUS STATE CRIMINAL TRIALS
JURISDICTION VERSUS VENUE
SOURCES OF RIGHTS
Constitutions
Statutory Law
Case Law versus Common Law
Court Rules
THE JUDICIAL REVIEW DOCTRINE
THE RULE OF LAW
THE INCORPORATION CONTROVERSY
Background
Approaches to Incorporation
A Summary of the Four Approaches to Incorporation
Fundamental Right as the Test for Selective Incorporation
Rights Not Incorporated
The Result of the Incorporation Controversy: "Nationalization" of the Bill of Rights
COURT CASES
Case Citation
HOW TO BRIEF A CASE

IN THIS CHAPTER, we first focus on the structure of federal and state court systems in the United States.

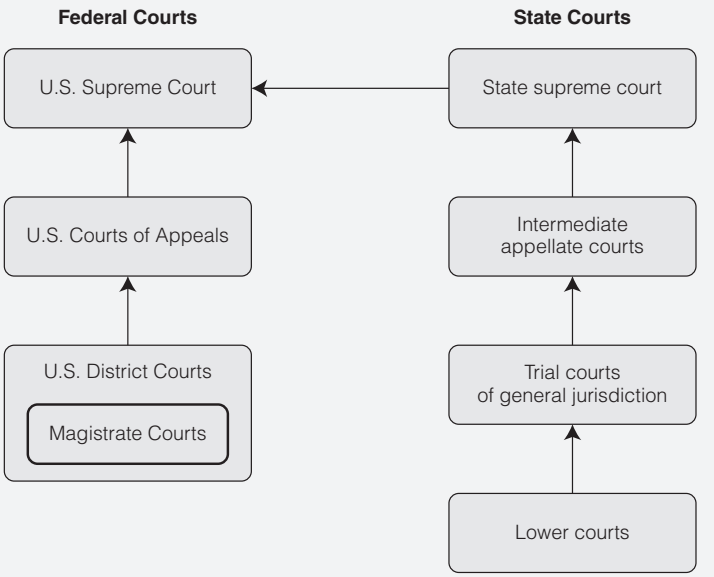
Criminal cases in the United States may be tried in federal and state courts if the act constitutes violation of the laws of both jurisdictions. However, most criminal cases are tried in state courts, because maintaining peace and order is primarily the responsibility of state and local governments. Important topics covered in this chapter include the territorial effect of judicial decisions, the principle of judicial precedent based on stare decisis, the extent of federal and state jurisdiction, the principle of dual sovereignty, the legal concepts of jurisdiction and venue, and the various sources of individual rights. The chapter discusses the incorporation controversy—how it developed and what role it plays in determining which constitutional rights now also extend to an accused in state prosecutions. It ends with a discussion of the rule of law.

THE U.S. COURT SYSTEM

The United States has a **dual court system**, meaning that there is one system for federal cases and another for state cases (see Figure 1.1). The term *dual court system* is, however, misleading. In reality, the United States has fifty-two separate judicial systems, representing the court systems in the fifty states, the federal system, and the courts of Washington, D.C. But because these systems have much in common, they justify a general grouping into two: federal and state.

dual court system
the United States has two court systems: one for federal cases and another for state cases.

FIGURE 1.1 The Dual Court System



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The Federal Court System

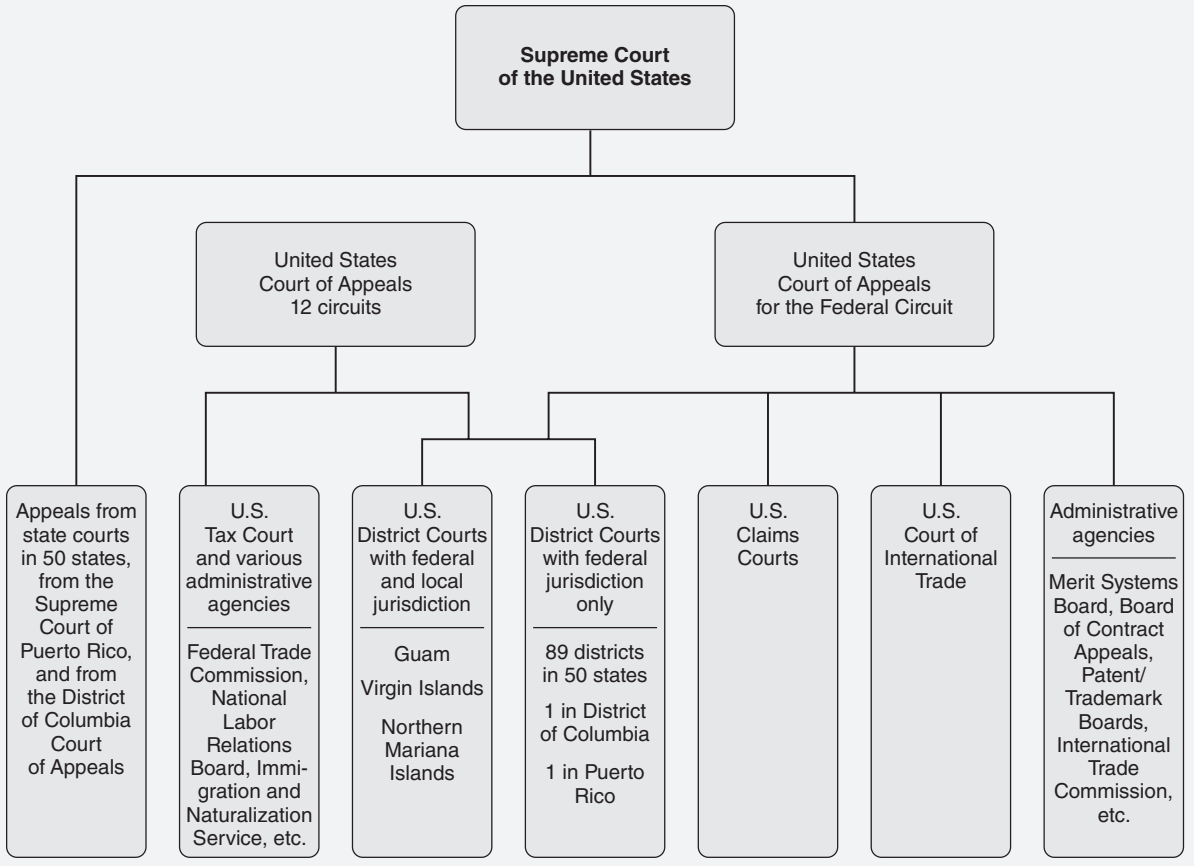
Article III, Section 1 of the U.S. Constitution provides that

> The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their continuance in office.

The highest court in the federal court system is the U.S. Supreme Court (see Figure 1.1). (*Note:* Whenever the word *Court* is used with a capital *C* in this text, the reference is to the U.S. Supreme Court. The word *court* with a lowercase *c* refers to all other courts on the federal or state level.) It is composed of a chief justice and eight associate justices, all of whom are nominated and appointed by the president of the United States with the advice and consent of the Senate (see Figure 1.2).

A federal law passed in 1869 fixed the number of U.S. Supreme Court justices at nine, but this number can be changed by law. Supreme Court justices enjoy life tenure and may be removed only by impeachment, which very rarely occurs. The

FIGURE 1.2 The Federal Court System



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en banc
as one body.

Court is located in Washington, D.C., and always decides cases **en banc** (*as one body*), never in division (small groups or panels). The votes of five justices are needed to win a case. The Court meets to hear arguments and decide cases beginning on the first Monday in October and continues sessions usually through the end of June of the following year. Court cases are argued and decisions are announced during this time, although the Court holds office throughout the year. Members of the U.S. Supreme Court are called justices. All others, from the U.S. Court of Appeals down to the lower courts, are called judges.

Exhibit 1.1 • A Brief Overview of the Supreme Court

The Supreme Court of the United States

The Supreme Court consists of the chief justice of the United States and such number of associate justices as may be fixed by Congress. The number of associate justices is currently fixed at eight (28 U.S.C. §1). Power to nominate the justices is vested in the president of the United States, and appointments are made with the advice and consent of the Senate. Article III, §1, of the Constitution further provides that "[t]he Judges, both of the supreme and inferior Courts, shall hold their Offices during good behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."

Court officers assist the Court in the performance of its functions. They include the administrative assistant to the chief justice, the clerk, the reporter of decisions, the librarian, the marshal, the court counsel, the curator, the director of data systems, and the public information officer. The administrative assistant is appointed by the chief justice. The clerk, reporter of decisions, librarian, and marshal are appointed by the Court. All other Court officers are appointed by the chief justice in consultation with the Court.

Constitutional Origin. Article III, §1, of the Constitution provides that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." The Supreme Court of the United States was created in accordance with this provision and by authority of the Judiciary Act of September 24, 1789 (1 Stat. 73). It was organized on February 2, 1790.

Jurisdiction. According to the Constitution (Art. III, §2):

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

"In all Cases affecting Ambassadors, other public ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

Appellate jurisdiction has been conferred upon the Supreme Court by various statutes, under the authority given Congress by the Constitution. The basic statute effective at this time in conferring and controlling jurisdiction of the Supreme Court may be found in 28 U.S.C. §1251 et seq., and various special statutes.

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Rule-Making Power. Congress has from time to time conferred upon the Supreme Court power to prescribe rules of procedure to be followed by the lower courts of the United States. See 28 U.S.C. §2071 et seq.

The Building. The Supreme Court is open to the public from 9 A.M. to 4:30 P.M., Monday through Friday. It is closed Saturdays, Sundays, and the federal legal holidays listed in 5 U.S.C. §6103. Unless the Court or the chief justice orders otherwise, the clerk's office is open from 9 a.m. to 5 p.m., Monday through Friday, except on those holidays. The library is open to members of the bar of the Court, attorneys for the various federal departments and agencies, and members of Congress.

The Term. The term of the Court begins, by law, on the first Monday in October and lasts until the first Monday in October of the next year. Approximately 8,000 petitions are filed with the Court in the course of a term. In addition, some 1,200 applications of various kinds are filed each year that can be acted upon by a single justice.

Source: The Supreme Court of the United States, "About the Supreme Court," *http://www.supremecourtus.gov/about/briefoverview.pdf*. Modified by the author.

The Court has **original jurisdiction**, meaning the case is brought to the Court directly instead of on appeal, over certain cases as specified in the Constitution. The vast majority of cases, however, reach the Court either on *appeal* or on a *writ of certiorari*. A third way—by certification—is rarely used; and a fourth method—through a writ of error—was discontinued in 1928.[1] The Court reviews cases on appeal because it must. In reality, however, the Court does not have to consider a case on appeal on its merits, because it can avoid full consideration by saying that the case "lacks substantial federal question" to deserve full consideration by the Court.

original jurisdiction
the case is brought to the court directly instead of on appeal.

The Court generally has discretion to decide what cases it wants to hear. Most cases (about 85 percent) get to the Supreme Court from the lower courts on a *writ of certiorari*, which is defined as "an order by the appellate court which is used when the court has discretion on whether or not to hear an appeal."[2] In writ of certiorari cases, the **rule of four** applies, meaning that at least four justices must agree for the Court to consider a case on its merits. If the case fails to obtain four votes for inclusion in the Court docket, the decision of the court where the case originated (usually a federal court of appeals or a state supreme court) prevails.

rule of four
at least four justices must agree for the court to consider the case on its merits.

About 10,000 cases reach the Supreme Court each year from various federal and state courts, but the Court renders written decisions on only a limited number (75 cases during the 2011 term, 78 cases during the 2012 term, and 72 cases during the 2013 term). The rest are dismissed *per curiam*, meaning that the decision of the immediate lower court in which the case originated (whether it was a state supreme court, a federal court of appeals, or any other court) is left undisturbed.

Not accepting a case does not mean that the Supreme Court agrees with the decision of the lower court. It simply means that the case could not get the votes of at least four justices to give it further attention and consider it on its merits. The public perception that only the most important cases are accepted and decided by the Supreme Court is not necessarily true. Cases generally get on the Supreme Court docket because at least four justices voted to include the case. The standard used for inclusion is left to individual justices to decide.

MYTH vs. REALITY

MYTH **Anyone can appeal their case to the Supreme Court.**

FACT The Supreme Court only accepts cases that involve a federal statute or a "significant federal question." Many lawsuits do not involve these subjects and so are not eligible for review by the Supreme Court.

The Federal Courts of Appeals Next to the Supreme Court in the federal judicial hierarchy are the U.S. courts of appeals, officially referred to as the U.S. Court of Appeals

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Table 1.1 The Justices of the U.S. Supreme Court

Name	Born	Age at appt.	Appt. by	Senate conf. vote	First day/ Length of service	Previous positions
John Roberts (Chief Justice)	January 27, 1955 (age 57) in Buffalo, New York	50	George W. Bush	78–22	September 29, 2005/6 years, 4 months	Circuit Judge, Court of Appeals for the D.C. Circuit (2003–2005); Private practice (1993–2003); Professor, Georgetown University Law Center (1992–2005); Principal Deputy Solicitor General (1989–1993); Private practice (1986–1989); Associate Counsel to the President (1982–1986); Special Assistant to the Attorney General (1981–1982)
Antonin Scalia	March 11, 1936 (age 75) in Trenton, New Jersey	50	Ronald Reagan	98–0	September 26, 1986/25 years, 4 months	Circuit Judge, Court of Appeals for the D.C. Circuit (1982–1986); Professor, University of Chicago Law School (1977–1982); Assistant Attorney General (1974–1977); Professor, University of Virginia School of Law (1967–1974); Private practice (1961–1967)
Anthony Kennedy	July 23, 1936 (age 75) in Sacramento, California	51	Ronald Reagan	97–0	February 18, 1988/23 years	Circuit Judge, Court of Appeals for the Ninth Circuit (1975–1988); Professor, McGeorge School of Law, University of the Pacific (1965–1988); Private practice (1963–1975)
Clarence Thomas	June 23, 1948 (age 63) in Pin Point, Georgia	43	George H. W. Bush	52–48	October 23, 1991/20 years, 3 months	Circuit Judge, Court of Appeals for the D.C. Circuit (1990–1991); Chairman, Equal Employment Opportunity Commission (1982–1990); legislative assistant for Missouri Senator John Danforth (1979–1981); employed by Monsanto Company Inc. (1977–1979); Assistant Attorney General in Missouri under State Attorney General John Danforth (1974–1977)
Ruth Bader Ginsburg	March 15, 1933 (age 78) in New York City	60	Bill Clinton	96–3	August 10, 1993/18 years, 5 months	Circuit Judge, Court of Appeals for the D.C. Circuit (1980–1993); General Counsel, American Civil Liberties Union (1973–1980); Professor, Columbia Law School (1972–1980); Professor, Rutgers University School of Law (1963–1972)
Stephen Breyer	August 15, 1938 (age 73) in San Francisco, California	56	Bill Clinton	87–9	August 3, 1994/17 years, 5 months	Chief Judge, Court of Appeals for the First Circuit (1990–1994); Circuit Judge, Court of Appeals for the First Circuit (1980–1990); Professor, Harvard Law School (1967–1980)
Samuel Alito	April 1, 1950 (age 61) in Trenton, New Jersey	55	George W. Bush	58–42	January 31, 2006/6 years	Circuit Judge, Court of Appeals for the Third Circuit (1990–2006); Professor, Seton Hall University School of Law (1999–2004); U.S. Attorney for the District of New Jersey (1987–1990); Deputy Assistant Attorney General (1985–1987); Assistant to the Solicitor General (1981–1985); Assistant U.S. Attorney for the District of New Jersey (1977–1981)
Sonia Sotomayor	June 25, 1954 (age 57) in New York City	55	Barack Obama	68–31	August 8, 2009/2 years, 5 months	Circuit Judge, Court of Appeals for the Second Circuit (1998–2009); District Judge, District Court for the Southern District of New York (1992–1998); Private practice (1984–1991); Assistant District Attorney, New York County, New York (1979–1984)
Elena Kagan	April 28, 1960 (age 51) in New York City	50	Barack Obama	63–37	August 7, 2010/1 year, 5 months	Solicitor General of the United States (2009–2010); Dean of Harvard Law School (2003–2009); Professor, Harvard Law School (2001–2003); Visiting Professor, Harvard Law School (1999–2001); Associate White House Counsel (1995–1999); Deputy Director of the Domestic Policy Council (1995–1999); Professor, University of Chicago Law School (1995); Associate Professor, University of Chicago Law School (1991–1995)

Source: Biographies of Current Justices of the Supreme Court, http://www.supremecourt.gov/about/biographies.aspx

for a particular circuit (see Figure 1.3). These courts have 179 judgeships located in thirteen judicial "circuits." Of these thirteen circuits, twelve are identified by region, including one solely for the District of Columbia. The Thirteenth Circuit is the Court of Appeals for the Federal Circuit, which has jurisdiction throughout the country on certain types of cases based on subject matter. Each circuit (other than that for the District of Columbia and the Federal Circuit) covers three or more states and hears cases from these states. For example, the Fifth Circuit covers the states of Texas,

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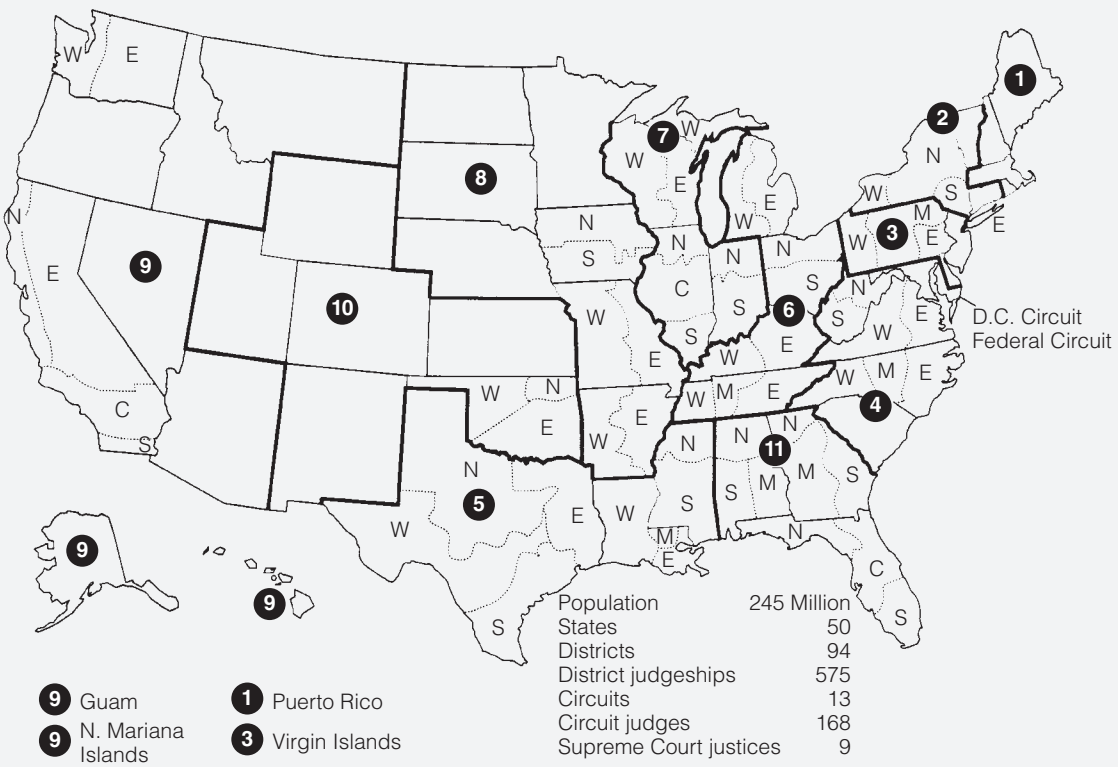
Mississippi, and Louisiana, whereas the Tenth Circuit includes the states of Utah, Wyoming, Colorado, Kansas, New Mexico, and Oklahoma.

Each court has six or more judges, depending on the circuit's caseload. The First Circuit has six judges, whereas the Ninth Circuit has twenty-nine. Judges of the courts of appeals are nominated and appointed by the president of the United States for life, with the advice and consent of the Senate, by a majority vote, and can be removed only by impeachment. Unlike the Supreme Court, courts of appeals may hear cases as one body (en banc) or in groups (in divisions) of three or five judges.

The Federal District Courts Occupying the lowest level in the hierarchy of federal courts are the district courts, the trial courts for federal cases. The federal government has 677 federal judgeships located in ninety-four judicial districts in the United States, Guam, Puerto Rico, and the Virgin Islands. Each state has at least one judicial district, but some states have as many as four. Judges are nominated and appointed by the president of the United States for life, with the advice and consent of the Senate, and can be removed only by impeachment. In practice, the senior U.S. senator from the state makes the recommendation for the appointment if he or she belongs to the president's political party.

FIGURE 1.3 **Geographical Boundaries of the U.S. Courts of Appeal and District Courts**



Source: *Russell Wheeler and Cynthia Harrison*, Creating the Federal Judicial System, 2nd ed. (*Washington, D.C.: Federal Judicial Center, 1996*), p. 26.

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The Federal Magistrate Courts Also under the federal system are the U.S. magistrate courts, established primarily to relieve district court judges of heavy caseloads. They are presided over by U.S. magistrates and have limited authority, such as trying minor offenses and misdemeanor cases in which the possible penalty is incarceration for one year or less. They are also empowered to hold bail hearings, issue warrants, review habeas corpus petitions, and hold pretrial conferences in civil and criminal cases. Unlike other federal court judges, whose offices are created by Article III (the judiciary article) of the Constitution, the offices of federal magistrates were created by the Congress of the United States. Magistrates are appointed by federal court judges in that district and are not guaranteed life tenure. As of 2014, there were 551 magistrate judge positions. U.S. magistrate courts do not constitute a separate court in the federal courts system. Instead, they are part of the federal district court system.

The Federal Courts and the Public

With certain very limited exceptions, each step of the federal judicial process is open to the public. Federal courthouses are designed to inspire in the public a respect for the tradition and purpose of the American judicial process, and many courthouses are historic buildings.

A citizen who wishes to observe a court in session may go to a federal courthouse, check the court calendar, which is posted on a bulletin board or television monitor, and watch any proceeding. Anyone may review the file and papers in a case by going to the clerk of court's office and asking to review or copy the appropriate case file. Increasingly, court schedules, dockets, judgments, opinions, and pleadings are being made available to the public in electronic format through the Internet. Unlike most of the state courts, however, the federal courts do not permit television or radio coverage of trial court proceedings.

The right of public access to court proceedings is partly derived from the Constitution and partly from court and common law tradition. By conducting their judicial work in public view, judges enhance public confidence in the courts, and they allow citizens to learn firsthand how our judicial system works.

In a few, limited situations the public may not have full access to court records and court proceedings. In a high-profile trial, for example, there may not be enough space in the courtroom to accommodate everyone who would like to observe. Access to the courtroom also may be restricted for security or privacy reasons, such as the protection of a juvenile or a confidential informant. Finally, certain documents may be placed under seal by the judge, meaning that they are not available to the public. Examples of sealed information include certain types of confidential business records, certain law enforcement reports, juvenile records, and cases involving national security issues.

Source: *The Federal Court System in the United States: An Introduction for Judges and Judicial Administrators in Other Countries*, 3rd ed, p. 11.

The State Court System

The structure of the state court system varies from state to state. In general, however, state courts follow the federal pattern. This means that most states have one state supreme court, which makes final decisions on cases involving state laws and provisions of the state constitution. Texas and Oklahoma, however, have two highest courts—one for civil cases and the other for criminal cases (see Figure 1.4a and Figure 1.4b). State courts decide nearly every type of case but are limited by the provisions of the U.S. Constitution, their own state constitution, and state law.

Below the state supreme court in the state judicial hierarchy are the intermediate appellate courts. Only thirty-five of the fifty states have intermediate appellate courts.

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