Monument Introduction Articles

The following are helpful articles for your study of the resolution that was debated during the   
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***Resolved: The United States Federal Government should significantly reform its criminal justice system.***

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History of US Criminal Justice

“One in every 31 Americans is either in prison or jail, on probation or on parole, according to the Pew Center on the States, and there are 2.3 million people in prison.”

Pew Public Safety Performance Project

On March 5, 1770, Hugh White, a private in the British 29th Regiment, is standing watch on the streets of Boston. He is part of a contingent that has been sent there to enforce the unpopular Townsend Revenue Act of 1767. He is soon engaged in a conversation by a merchant regarding a different soldier’s unpaid bill, which gets heated. A crowd forms and throws ice, oyster shells and coal at him. He rouses the guard and seven more soldiers and their captain join him. The crowd becomes more agitated and throws more debris. A private named Hugh Montgomery is then hit in the chest with some type of stick and as he is on the ground someone yells, “Fire!” The British regulars do just that, and five people in the crowd fall and die.

You have just witnessed what some papers start calling “The Boston Massacre.” The commander of the troops, Captain Preston, is arrested, interrogated and thrown in jail. After a grand jury indicts him and the other eight soldiers, he is acquitted at trial because it cannot be proved he gave the order to fire. The eight enlisted soldiers are then tried and acquitted of murder, but two of them are found guilty of the lesser-offense of manslaughter. Those two, the aforementioned Hugh Montgomery and a private named Killroy, plead “the benefit of clergy”[[1]](#footnote-2) to reduce their punishment to branding.  They are branded on their right thumbs by the local sheriff on December 14, 1770.

Leading the defense of the soldiers was a 34-year-old American attorney named John Adams. Although it was very unpopular to do so (and the small fee of 18 guineas was paltry) Adams believed it was imperative for everyone to have a defense. Adams became one of the key architects of the United States Constitution, and he made sure this belief became one of the pillars of our current criminal justice system.

This year’s NCFCA debaters will be taking on an old, formidable, yet vulnerable US establishment, the criminal justice system:

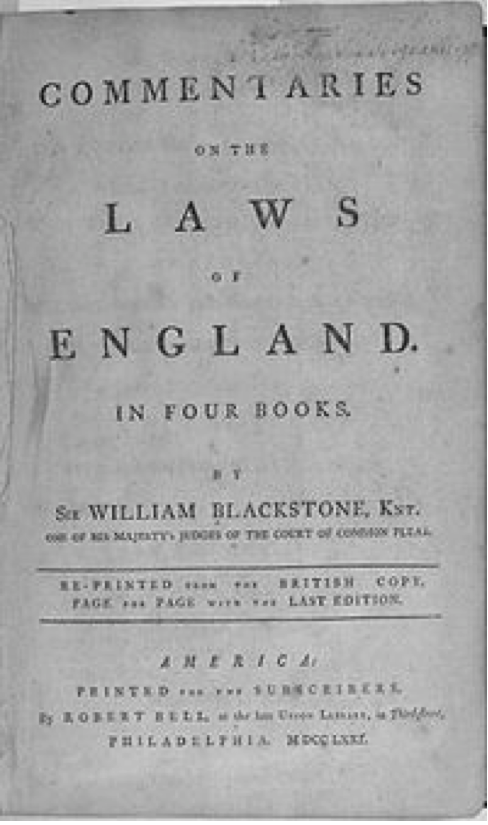
**Resolved: The United States Federal Government**   
**should significantly reform its criminal justice system.**

As with any established bureaucracy, before it is possible to envision a bold, new future for it, we must understand its creation.

Criminal Law Up to the Birth of the United States

The concept of the government being the arbiter of societal justice is, historically speaking, a relatively new one. In ancient Greece and Rome order was kept by the military or by groups of slaves. Investigating and punishing crime was considered a private matter. Under the reign of Augustus, Rome was divided into wards with men assigned to keep order. During the middle ages Europeans still settled things personally, hence the dueling culture that prevailed. With the rise of feudalism the need for the local lords to keep order (and limit the number of people killing each other) also rose. Communities sometimes employed a constable or sheriff to enforce laws and keep the peace. In ancient China, they developed a prefecture system that employed individuals for set terms with limited authority to perform civil duties, enforce the law and report to local magistrates.

America is the great melting pot of cultures, languages, traditions and histories. The Native Americans had their own systems of justice and each new colony (French, English, Dutch, etc.) relied upon their sponsoring government for municipal services, law and justice. Ultimately, our national government was formed by the thirteen predominantly English colonies, thus giving our justice history a decidedly English flavor.

English common law is the next stop on our tour. “Common law” is the concept of using previously decided cases to guide future proceedings, thus giving the impression that future similar cases will be decided in predictable ways. Sir William Blackstone was an English scholar who started writing these common law precepts down until he had developed his *Commentaries on the Laws of England*,[[2]](#footnote-3) which became the ultimate legal resource. The colonists brought the common law concept with them from England but left many of the practitioners, thus leading to local colonists filling legal roles and requiring somewhat more simplified proceedings. They relied heavily on the handy codification of the law of Blackstone’s epic tome, but the results were mixed. In large cities, most of the conventions were observed. In more rural areas, oftentimes the local magistrate alone decided if enough evidence existed to have a trial, over which the same magistrate would then preside. Very few people could afford to be represented by legal counsel and were at the mercy of the government for justice. Sentencing and punishment were still very much tied to personal, public concepts. Pillories, branding, public whipping and hanging were used regularly.[[3]](#footnote-4) At this point in time, jails were small places used to hold people before trial rather than as a punishment in and of itself.[[4]](#footnote-5)

This was a critical part of our history because many people developed very particular ideas of what was wrong with their previous system, a system that placed vast power in the hands of the oft absent government and possessed relatively few safeguards for the individual accused.

The Bill of Rights

The United States Constitution is a truly remarkable document on many levels, but what is particularly notable for the purposes of our discussion is its concept of *decentralizing power*. Separate branches of government, divided governing houses and a separate judiciary all make it more difficult for a few people to force their will upon the masses. While it may sound like common sense to us today, in its day it was a political struggle to get it ratified. It was done with the promise that it would be amended to include several specific provisions for enumerated personal rights.[[5]](#footnote-6) These rights were similar to the English bill of rights, but bore a strong resemblance to Virginia’s Declaration of Rights written by George Mason.

On December 15, 1791, the first ten amendments were approved and became the Bill of Rights we know today. Why is this so important? Most Americans take a great deal for granted. In most of the nations in the world today there is simply nothing approaching the rights we have as individuals vis-à-vis the government. Most of those rights, especially those that form the crux of what is commonly litigated as our current criminal justice system, extend from the Bill of Rights.

Keeping this historical perspective, let’s examine the gereral concepts of these rights, particularly those of the Fourth, Fifth, Sixth and Eighth Amendments. (The Seventh Amendment provides for a jury trial in *civil* cases. The right to a jury trial in *criminal* cases is provided by the Constitution in Article III Section 2.)[[6]](#footnote-7)

The Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[[7]](#footnote-8)

There are many ways that this amendment comes into play in criminal law. What constitutes a search? Good question. Here are some others that all relate to this year’s resolution:

* When does a TSA “pat-down” become a warrantless search?
* Does the government have a legitimate right to safeguard themselves against someone carrying a weapon?
* Do individuals have legitimate expectations of privacy in their cars, school lockers, bodily fluids, phone calls and emails?
* How do we define probable cause and balance it against the public’s interest in safety from crime?
* How do we provide a disincentive for the police to break this rule without eroding their ability to fight crime?

The Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.[[8]](#footnote-9)

In terms of criminal law, there are several key provisions here. You cannot be tried for a felony without an indictment being issued by a Grand Jury. The prosecutor has to convince a group of citizens that there is enough evidence against you to warrant taking you to trial. Of course, the Grand Jury is typically held in secret without any right by the defendant to present evidence or even be present. Ninety-nine percent of grand jury presentations result in an indictment.[[9]](#footnote-10)

The Fifth Amendment also contains the “double jeopardy” clause that provides you cannot be tried twice for the same offense. This protection prevents the government from continually retrying someone who is found not guilty to attempt to get the guilty verdict they want.

This is different from a “hung jury.” When a jury is not able to come to either a conviction or an aquittal, the jury is “hung” and the case can be retried or dismissed. Double jeopardy means a person cannot be retried. Double jeopardy only applies if a verdict of “guilty” or “not guilty” is rendered (and not later overturned).

It should also be pointed out that double jeopardy is strictly tied to the jurisdiction. Although the Fourteenth Amendment makes it binding between state and federal courts, it is possible to try a person for the same crime at the state or federal level and in military court or tribal court since they are “separate sovereigns.” You may also be tried for different offenses stemming from the same act, as the police officers in the Rodney King case found out. Although the officers were acquitted of assault at the state level, they were convicted of having violated his civil rights at a later federal trial.



Ask your parents about the Rodney King trial of 1991. The police officers appeared to be tried twice, but were really tried under two separate laws.

The next part of this amendment is the right against self-incrimination. This is where the notion of “taking the fifth” as a means of refusing to answer questions comes from. There are some exceptions to this rule, most notably when a defendant has been given full and formal immunity for anything they say.

This particular element has also created one of the more famous pieces of American jurisprudence in the form of “Miranda” rights. In a 5-4 decision the Supreme Court held that before a suspect can be interrogated they need to be informed of their right to remain silent and to have an attorney present during questioning. (*Miranda v. Arizona,* 384 US [436](http://supreme.justia.com/us/384/436/case.html) (1966)). This substantially changed the way police work was to be done in this country from that point forward.



Ernesto A. Miranda

The last part of this amendment is the “due process” clause. What this means in theory is that you cannot be convicted unless all substantive laws and rules have been followed. It is typically invoked when someone has honored the *letter* of the rule but violated the *spirit* of the letter to someone’s detriment. Law enforcement and prosecutorial personnel are very innovative and creative, and often work on the edges of the rules to get convictions. The due process clause is sometimes used to better define where those lines are in terms of criminal prosecution.

The Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.[[10]](#footnote-11)

This amendment is entirely about the criminal process. For the most part it seems completely intuitive to us that all of these measures would be followed. It should be noted, however, that throughout history and even today in many countries these are not rights that are afforded to the accused. Prisoners are sometimes locked away for months or years before they receive a trial—and some never get one at all. Being informed of the charges against you before trial is not always done. Being granted the right to present evidence or call witnesses is a powerful right.

Perhaps the most important right listed here is the right to have defense counsel. The Supreme Court has held that the Fourteenth Amendment makes the Sixth Amendment applicable to the states and that it is necessary to provide defense counsel for “serious” cases. (***Gideon v. Wainwright***, 372 US 335 (1963)). It is the right to have competent counsel representing you that brings all your other rights alive.

The Eighth Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.[[11]](#footnote-12)

All three parts of this amendment apply in the criminal law arena. Over the years there have been several cases litigating the element of cruel and unusual punishment, but by far the most important is its application to the death penalty, commonly referred to as “capital punishment.”

Capital punishment was a regular part of the American criminal justice process from its beginning. In 1972, the Supreme Court put a halt to it with a mixed decision in [Furman v. Georgia](http://en.wikipedia.org/wiki/Furman_v._Georgia) (408 US [238](http://supreme.justia.com/us/408/238/case.html) (1972)). Several years later the process was reinstituted with a slightly different format for trials. Since then the Supreme Court has used the Eighth Amendment to disallow the execution of mentally deficient prisoners and people under eighteen.

Recently there have been new calls for a moratorium on execution based upon the growing number of death row acquittals based upon DNA and other improved forensic testing. In addition, the federal government can and does impose the federal death penalty for federal crimes committed even in states and jurisdictions that have abolished the death penalty.

Other Constitutional Amendments

There have been seventeen more amendments to the constitution since the Bill of Rights. In light of this year’s resolution, the following deserve a brief discussion.

* The Eleventh Amendment limits the judicial power of the United States such that the states cannot sue each other nor can foreigners sue the United States or a state.
* The Thirteenth Amendment abolishes slavery “except as a punishment for crime whereof the party shall have been duly convicted.”
* The Fourteenth Amendment makes every citizen a citizen of the US and their state and as such their federal rights cannot be abridged by state law. The US Supreme Court has used this reference repeatedly to gain jurisdiction and spread uniformity of constitutional application of criminal law to all citizens regardless of the state law. This is also known as the “doctrine of federal supremacy.”
* The Sixteenth Amendment provides for the constitutional collection of income taxes by the Congress, thus providing the concomitant right to make the deliberate failure to pay income tax that is duly owed a federal crime.
* The Eighteenth Amendment made it illegal to make, sell or transport alcoholic beverages, better known as Prohibition. Since it did not make the *consumption* of alcohol illegal, it created an instant high demand for a product at high prices and virtually guaranteed an immediate increase in illegal activity to take advantage of the situation. It was repealed fourteen years later by the Twenty-first Amendment. There are some commentators who draw comparisons between Prohibition and the current war on drugs. (Matt Baker, two-time NCFCA finalist, references this in one of the *Blue Book* cases.)

Beyond the Constitution

In the United States, a person generally cannot be guilty of a crime unless they meant to do something criminal. This “guilty mind” is called *mens rea*. If a person can prove they did not have the mental capacity to know right from wrong, they can argue that they could not form the *mens rea* to commit a crime and thus should be acquitted.

In general, there are two types of crimes. First, there are things which we all know are wrong like murder, larceny, etc. that are *malum in se* — wrong in and of themselves. Second, there are *malum prohibitum* crimes — those actions which are not criminal unless there is a law passed that forbids it*.* The act of cashing a check is not criminal in and of itself, but if you do so knowing there are no funds in the account and for the express purpose of obtaining money that does not belong to you, then a crime has been committed.

Over the past two decades more and more laws are being passed without a specific *mens rea* element which removes one of the hardest elements to prove and one of the fundamental defenses people rely on. The classic case of this was the federal law making possession of child pornography a crime regardless of how it came to be possessed. Even if a hacker penetrates your firewall and places a picture on your hard drive completely without your knowledge, you are liable to be convicted of a crime. In *Osborne v. Ohio* (495 US 103 (1990), the Supreme Court held that the government’s interest in stopping child pornography outweighed individual rights, including the intent element. To what extent *mens rea* is better defined or required in the future is an important question for the US criminal justice system.

The Sources of Federal Law

There are actually many sources of law in this country — not all of them are federal — that debaters should be aware. The starting point is the US Constitution. It sets the parameters of which branches of government (executive, legislative, judicial) may do what, and it is their ultimate source of law. If a law is found to be unconstitutional, that law is voided entirely or amended to make it constitutional.[[12]](#footnote-13)

American federal common law exists in the decisions of the US Supreme court and the various federal courts. Under the principle of *stare decisis*, courts are bound to apply settled law unless there is an extremely good reason to overrule it. (This is very rare.) The Supreme Court’s decisions always apply.[[13]](#footnote-14) Lesser federal courts are limited in their jurisdiction and their decisions are only binding on other federal courts. These lesser courts are only advisory for state courts.

Federal laws are passed by Congress and become part of the United States Code (USC). Most of the criminal sections are found in Title 18, but there are various criminal parts of other laws scattered throughout. Under Article II Section 2 of the Constitution, the president is allowed to have a cabinet and they in turn have departments who promulgate regulations under the Administrative Procedure Act. Once proper procedure is followed, these regulations are codified into the Code of Federal Regulations (CFR) and have the force of law. There are many regulations found in the CFR that have criminal sanctions or impact the criminal justice system.

The United States military is also part of the federal government with its own laws (Uniform Code of Military Justice or UCMJ) and courts. Native American reservations are federal lands (with federal jurisdiction) and their administration is done through the Department of the Interior’s Bureau of Indian Affairs.

The majority of criminal justice in this country is done at the state or local level with state and local laws. They are, however, outside the purview of this year’s resolution.

The Trial Process

The criminal justice process starts with a crime. This can be a violation of a uniquely federal law or violation of the law that physically happens somewhere under federal jurisdiction. It is investigated by federal authorities, and if the evidence supports it, the alleged perpetrator is arrested and charged.

For lesser, misdemeanor crimes, there is an arraignment before a judge, a plea is entered, bail is set, and trial is scheduled. The evidence is developed by both sides through discovery. The trial is held and — if the defendant is convicted — there is a sentencing.

For more serious or felony crimes the case is taken by the prosecutor to the Grand Jury. If they believe enough evidence has been presented to warrant a trial, they return an indictment. (If they do not find enough evidence, they return a finding of “no true bill.”) The defendant is then arraigned and tried, and if found guilty is sentenced.

About 95% of criminal convictions in the United States happen because someone pleads guilty.[[14]](#footnote-15) The process involves standing in open court and confessing to having done the crime. The reasons for “pleading out” are numerous, but they usually involve an advantage to the defendant. Typically in criminal cases the government and defense will “plea bargain” to obtain a satisfactory result for both sides. For the government it means a guaranteed guilty verdict plus saving the expense of having a trial, bringing in witnesses, impanelling jurors, tying up resources, etc. For the defendant it usually means a sentencing agreement.

For example, in exchange for pleading guilty the prosecution will recommend a specific sentence or range of sentencing that the judge usually accepts, and which could be substantially less than the defendant would have received if he were tried and found guilty. Sometimes the defendant will agree to plead to a lesser offense if the more serious one is dropped. This is how sometimes “murder” becomes “manslaughter” (with a corresponding lighter sentence).

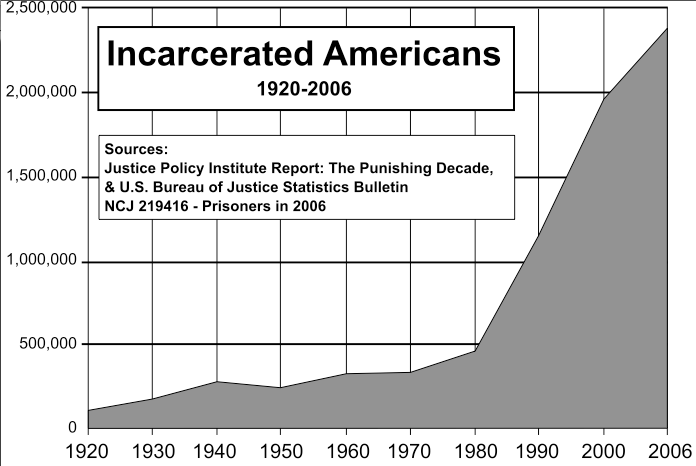
At this point in history, plea bargaining is what allows the US criminal justice system to reasonably work. If prosecutors and public defenders were required to try every single indictment, the court system would collapse.

Another important element of the current process is the sentencing guidelines. Research compiled in the 1970s showed a great deal of disparity in sentencing prisoners who had committed similar offenses. In an effort to standardize sentences, the Sentencing Reform Act of 1984 was enacted to remove inappropriate factors from consideration in the sentencing of felonies and Class A misdemeanors. The concept was to use a standardized table that rated the severity of the convicted offense and the offender’s criminal record. The law went into effect in 1987 but quickly drew criticism for being so vague that it was little better than its predecessor. The law was amended in 2003 but provided little relief for defendants in terms of *reducing* a sentence and in the eyes of some encouraged higher sentences. In 2005 the Supreme Court held that making a particular sentence mandatory violated the Sixth Amendment right to trial by jury and that the guidelines could be continued, but only in an advisory role.[[15]](#footnote-16) As it currently stands there are a large number of aggravating factors in play, which gives the prosecution great leverage in demanding that defendants plead guilty in order to have certain facts excluded from the record to allow a reduced recommendation for sentence under the guidelines.[[16]](#footnote-17) The federal guilty plea rate in 1983 was 83%. It has grown to over 95%, due in large part to the role of sentencing guidelines. As a result the prison population has also grown disproportionately since the imposition of the guidelines.

Criminal forfeiture is usually part of a sentence once an individual has been found guilty of a crime and typically involves restitution. Civil forfeiture of property is a relatively new thing that started in the US in the late 1980s. The concept is that the government is allowed to seize property that is considered the proceeds or instrumentality of a crime. Proceeds of a crime might be cash or drugs, but it can also be a house or yacht that was purchased with money stolen in a robbery or from selling drugs. An instrumentality of a crime might be a plane or car that was used to transport drugs. Because it is civil the government actually sues the *property,* not a person. The owner is considered an interested third party. The government must prove that it has probable cause (a relatively low standard) to believe that the property is subject to forfeiture. The owner then has to prove by a “preponderance of the evidence” (a much higher standard) that the property was not involved. It is not necessary for the owner to be found guilty of a crime for the government to move to seize the property.

Needless to say, most of the time the owner loses. Asset forfeiture is big business in law enforcement. The US Marshals Service manages $1 billion of DOJ forfeitures annually. It also provides yet another tool for prosecutors to use against defendants, since they can offer to discontinue a civil forfeiture in exchange for a guilty plea to a criminal offense they might otherwise have difficulty proving in a court of law. Many have begun to question whether this process truly serves the purposes for which it was enacted.

The Political Landscape of Criminal Law

American politics drives a great number of issues, and criminal law is no different. There are a number of aspects of our current justice landscape which have been heavily shaped by the desire to legislate for political advantage.

One the key battlefronts is America’s War on Drugs, which was started by President Nixon in June 1971. During the decade of the 1970s there was a strong movement to decriminalize possession of small amounts of marijuana.[[17]](#footnote-18) During the 1980s crack cocaine was developed which brought about strong retaliation from the US government in the form of the Anti-Drug Abuse Act of 1986. This law created mandatory minimum sentences for even small amounts of drug possession. It also had a disparity which punished possession of crack (the drug of choice for lower income and minority offenders) up to 100 times more harshly as powdered cocaine. (The Fair Sentencing Act of 2010 reduced the ratio to approximately 18:1.) The result is an increase of incarcerations by almost 500 percent! According to the Pew Center on the States, there are 2.3 million people in prisons. That’s 1 in 31 Americans in prison, in jail, on probation or on parole.[[18]](#footnote-19)

Clearly the costs of administering prisons and prison populations is a very real political and financial challenge that must be addressed soon. The use of prison as punishment is historically relatively new concept which is primarily due to the fact that it is the least politically offensive method of punishment available.

The combination of the politically-driven War On Drugs, Mandatory Sentencing Guidelines and the rise of the “get tough on crime” approaches have had the effect of creating a prison culture in this country. “While the U.S. contains roughly 5% of the world’s population, almost 25% of all the world’s prisoners are housed in U.S. prisons and jails. The vast majority of these individuals are in prison for non-violent crimes, often related to drugs and drug addiction.”[[19]](#footnote-20) This is the highest incarceration rate in the world. One of the results of prison overcrowding was the May 2011 decision by the Supreme Court to force the State of California to release as many as 37,000 inmates to bring their services to a constitutionally minimal standard.[[20]](#footnote-21)

Another consideration: the US prison population is not only growing, but aging. “The Bureau of Justice Statistics reports that between 1999 and 2007 the population of inmates aged 55 or older grew 76.9%.”[[21]](#footnote-22) Experts estimate the cost of maintaining a prisoner over 55 is almost three times as much and as a result, the medical and maintenance care costs per state are increasing exponentially.[[22]](#footnote-23) The US Bureau of Prisons falls under the Department of Justice and the expected BOP budget for 2012 is $8.3 billion.[[23]](#footnote-24) One of the options being discussed is the possibility of privatizing the prison system. While this may save on the financial end, it also creates many new issues of prisoner rights and treatment. Private corporations contracted for the job by governmental authorities already run a fair number of prisons.

Another political aspect to be considered is the issue of corporate criminal sanctions. Corporations are legally-created “persons” that exist to centralize and/or secure assets and to shield individuals from liability. There are a number of laws in place that make certain corporate conduct illegal (Clean Air Act, Clean Water Act, SEC laws, etc.), but to what extent does the current system truly affect conduct? Profit can be a powerful individual motivator, especially in light of the limitation of liability the corporate shield provides.

In 1985 two companies merged to form the ENRON corporation. Key corporate officers used loopholes, misled their board of directors, and deliberately withheld information about their losses to inflate their stock prices and make themselves rich. In 2001 the SEC started an investigation and Enron’s stock value plummeted, costing the investors and employees (whose pension plan was made up of Enron stock) over $74 billion by the time they declared bankruptcy. Although some were convicted under SEC laws, clearly they were not enough to dissuade criminal conduct. The Sarbanes-Oxley Act was created to try to increase accounting accuracy and the accountability of chief officers, but the penalties are still financial in nature. There are commentators who are suggesting mechanisms to “pierce the corporate veil” and subject individual corporate officers to personal criminal liability for their actions. Still others believe this would create an unwarranted dampening of corporate financial risk-taking that would be financially devastating in the current economy.

Conclusion

The United States criminal justice system provides a broad canvas upon which to draw reform. We use it to give us order and stability, for which we have agreed to sacrifice a certain amount of our personal freedom. We have a system that seeks to provide societal order by setting forth specifically-defined criminal behaviors and deterrence punishments. Those enumerated crimes and punishments are in turn subject to the politically driven motivations of our elected officials who in turn must answer to the electorate.

The keys to finding a productive case lie in researching the underlying history, discovering the purposes, and weighing the political parameters of any given part of the overall system.

Status Quo of US Criminal Justice

Although it may seem unusual to start a treatise of modern justice with a discussion of philosophy, it is necessary to understand and develop cases in this year’s topic. Justice is ultimately about balance. We balance the rights of the individual against the needs of the group to maintain peaceful existence. Out of the balance comes order. Order allows us to take our safety and security for granted and focus our lives on becoming more: more productive, more wealthy, more educated, etc. It is critical to our way of life.

Justice has come to be symbolized by the statue of the blindfolded goddess Themis carrying a scale and a double-edged sword. The blindfold symbolizes the unbiased way justice should be carried out, playing no favorites. The scale symbolizes balance and fairness. The sword indicates that justice will cut both ways as necessary, and that it will be sharp in its swing. This is what we strive for. We do not always get there. Keep this in mind as you look for ways to reform the system: your suggested reform should secure that balance.

As it exists today, US Criminal Justice falls into predominantly three areas of operation:

1. **Policing:** investigating crimes, gathering evidence, preparing cases for trial and securing indictments.
2. **Trials:** admissibility of evidence, pleas, habeus corpus, standards of review, sentencing, capital cases.
3. **Incarceration:** computation of good time, parole, clemency, pardons, drug treatment/sentencing alternatives, home arrest, prisoner maltreatment/mental health, rehabilitation, work while incarcerated and privatization.

Each has its own challenges and presents many opportunities for reform.

Policing

In ancient Greece the term *πολισσόος (polissoos)*, referred to a person who was “guarding a city.” This term comes from the noun *πολισ (polis)* which means “city” or in this case the citizens of a city and the verb *σῴζω (sōizō)*, “I save, I keep” or “bring one safe to.” Originally the police were on hand only to keep order. Eventually their duties expanded to include other duties like revenue collection and arresting outlaws, but never strayed far from being soldiers of the state. The role of the police changed substantially in 1829 with the establishment of the London Metropolitan Police force. The mission of the “Bobbies” was primarily one of deterring urban crime and violence.[[24]](#footnote-25) In the twentieth century the role of detection in crime-solving began to rise to prominence, most notably with the US Federal Bureau of Investigation (FBI) under J. Edgar Hoover. This also brought improvements in the science of detection or forensics, such as fingerprints, ballistics and DNA testing.

Today’s television crime-fighting force is on the cutting edge of forensic science, super-skilled and money is no object. The actual reality is that lifting fingerprints, testing trace evidence and DNA are all extremely difficult skills that are not uniformly mastered and that carry a large price tag. Forensic policing brings with it four very important issues to be discussed here: untested evidence, non-standard science, false positives and improper eyewitness testimony and/or confession.

Gathering the Evidence

Television shows glamorize police work while giving the impression they have unlimited budgets. The hard reality is that forensic testing like DNA is expensive and many jurisdictions do not routinely test samples. Once they have an eye-witness and/or a confession, many investigators close the books and move on to the next case. In a current case, the State of Texas refused to test a crime scene DNA sample against a man convicted of murder and on death row. The US Supreme Court granted him an opportunity to force the testing, but the opinion is limited. (*Skinner v. Switzer*, US 2011.) The questions the case brings up are whether expensive scientific testing should be required, under what circumstances, and who would pay for it?

Non-standard scientific techniques play a key role in forensic investigation as well. “According to the Innocence Project, of the 252 DNA exonerations since 1989, half the convictions were based at least partly on ‘unvalidated or improper forensic science.’ The surprise is that the rate isn't higher: a 2009 report by the National Academy of Sciences found that, in contrast to DNA matching, ‘for many other forensic disciplines—such as fingerprint and toolmark analysis—no studies have been conducted’ to determine how many shoes, teeth, fibers, sand grains, or anything else ‘share the same or similar features’ and so might be linked to the wrong person. As a result, invalid forensic science “may have” helped convict innocent people.”[[25]](#footnote-26)

And it is not just local police jurisdictions doing it. Starting in the 90s the FBI criminal lab began testifying that their extensive studies of bullet-making technology allowed them to isolate and identify bullets based upon the exact composition of trace elements which allowed them to testify based solely upon a bullet fragment where the ammunition was manufactured, on what day and sometimes even the very box of bullets it came from. In 2003 a former ballistics expert admitted that this “science” was simply not reliable, and after a CBS “60 Minutes” exposé, so did the FBI. How could anyone fall for this kind of testimony? In short, we have become accustomed to accept the word of otherwise believable scientific experts who are very skilled at convincing us of almost anything. “We all have assumed the scientists are telling the truth because they do it with authority and tests. And as a result FBI scientists have gotten away with voodoo science.”[[26]](#footnote-27)

Excellent testimony can also sway people on legitimate scientific evidence as well. The science of blood serology is very sound and has been accepted as evidence for a long time. For example, rape kits that test blood types are routinely collected after sexual assaults. (This testing is much faster and less expensive than DNA testing.) Scientists can and do testify routinely about these results and what percentage of the population has the type found, etc. In some cases, however, the scientists fail to notice or disclose that the victim’s blood may mask that of the alleged perpetrator making it impossible to testify accurately about the blood type of the accused—yet, that is exactly what happens.[[27]](#footnote-28)

The other key issue is *false positives*. While it may seem like everything that happens in a lab is routine, the truth is that whenever human beings are involved there is a margin for error. Assume DNA is recovered from a crime scene and two suspects are found. A comparison is made and one suspect is identified as a match. Based upon the certainty of the evidence, he is convicted. Four years later DNA is recovered at a crime scene that is a match for that of the incarcerated man. It turns out a simple human-error switch of the samples in the lab matched the DNA sample to the wrong suspect. While lab procedures are constantly evolving and improving, it remains a key area of concern in the US criminal justice system.

Outside of the crime dramas on television, experts estimate that there is testable biological evidence in only 5-10% of all criminal cases. So, where does the evidence come from to convict criminals? Fingerprints are still relatively safe and reliable, but again, they are not always found. A large number of convictions still rely upon eye-witness testimony and custodial confessions, which present their own sets of problems.

“Eyewitness misidentification is the single greatest cause of wrongful convictions nationwide, playing a role in more than 75% of convictions overturned through DNA testing. While eyewitness testimony can be persuasive evidence before a judge or jury, 30 years of strong social science research has proven that eyewitness identification is often unreliable. Research shows that the human mind is not like a tape recorder; we neither record events exactly as we see them, nor recall them like a tape that has been rewound. Instead, witness memory is like any other evidence at a crime scene; it must be preserved carefully and retrieved methodically, or it can be contaminated.”[[28]](#footnote-29)

Because it is inextricably intertwined with the human element, eyewitness identification is the easiest to manipulate and predict, very cheap to produce and extremely persuasive to a jury. For these reasons police prefer to use and rely on this type of evidence for convictions. Of course the most powerful tool in a conviction is a confession. A confession introduced in court is completely convicting. It is also much easier and cheaper to produce. Sometimes, however, it can be completely erroneous.

“In about 25% of DNA exoneration cases, innocent defendants made incriminating statements, delivered outright confessions or pled guilty. These cases show that confessions are not always prompted by internal knowledge or actual guilt, but are sometimes motivated by external influences…. Regardless of the age, capacity or state of the confessor, what they often have in common is a decision – at some point during the interrogation process – that confessing will be more beneficial to them than continuing to maintain their innocence.”[[29]](#footnote-30)

Sometimes government officials bring powerful motivational tactics to bear: the threat of the death penalty if convicted without confessing and securing a plea deal; promise to drop trumped up charges in exchange for a confession and plea deal; the threat of deportation of illegal immigrant family members; the offer of witness protection for family members if there is a confession; lying about co-conspirators’ confessions; lying about evidence which implicates the suspect; duress of questioning; threat to seize assets (like family home and cars) through forfeiture; and/or threat of torture of a suspect. Many believe that these tactics are necessary to level the playing field where criminals have too many rights. Others believe that our system is designed around the individual’s rights and when they are subverted we become no better than a police state. Once again the key question is: how do you change the status quo to achieve a better balance between individual liberty and governmental interest in maintaining law and order?

As discussed in the last chapter, one of the ways that law enforcement has materially changed in the last three decades is in the use of asset forfeiture. Civil forfeiture has become an increasingly important tool for police departments because it provides an independent way to secure assets for crime detection and forensic testing outside of increasing the government budget with attendant political ramifications. It is also a very easy, inexpensive way to generate revenue because it can be done without a suspect even being convicted and has a very low threshold of legal justification. The result is that it can skew the way law enforcement prioritizes their police work and how they spend their resources.[[30]](#footnote-31)

Victims

Until this point we have discussed the rights of the government and its citizens and the rights of the accused, but there is another important group of unwilling participants who should be discussed as well: *victims*. The US criminal justice system from the victim’s perspective can be a nightmare: traumatized by the crime, questioned by police and accused criminals’ attorneys, forced to testify against someone in open court and be cross-examined about sometimes private details, little hope of restitution for property damage and/or physical trauma and the frustration of not being able to control or even know about most of the process.

The Crime Victims Rights Act (CVRA) of 2004 sought to change some of these issues. These rights include:

* The right to be present at important public proceedings and to be heard in matters involving plea, habeas corpus, competency, jury selection, release, sentencing and parole
* The right to full and timely restitution under some other law
* The right to be safe from the accused
* The right to sue the government for application of these rights.

The GAO did a study in 2008 and found that most victims were unaware they had any rights and were not afforded them.[[31]](#footnote-32) In cases where victims were awarded, many have found that the application of the law is very narrow and courts are reluctant to hold against government offices.[[32]](#footnote-33) A proposal to make this process more effective for the victim is the concept of victim-offender mediation. “One such program – the Victim-Offender Reconciliation Program (VORP), founded by North Carolina attorney Marty Price – ‘bring(s) offenders face-to-face with the victims of their crimes with the assistance of a trained mediator, usually a community volunteer.’ ‘Crime is personalized as offenders learn the human consequences of their actions, and victims (who may be ignored by the criminal justice system) have the opportunity to speak their minds and their feelings to the one who most ought to hear them, contributing to the healing process of the victim.’”[[33]](#footnote-34)

Another aspect of victims’ rights, specifically restitution, is provided by the Victims of Crimes Act of 1984 which provided for a fund made up of criminal fines, forfeited bail bonds, penalties, and special assessments collected by federal prosecutors and courts around the country. These entities provide funding for restitution, counseling, and assistance programs to help victims.[[34]](#footnote-35) Perhaps this program could be expanded to include the concept of funding victim-offender mediation, or other cutting-edge projects to give real impact to victims’ rights under the federal criminal justice system.

War on Drugs

In the last chapter we discussed the large impact upon police the so-called “War on Drugs” has had. There is an important political aspect to be touched upon initially, specifically that it is popular to be detaining and prosecuting members of the drug culture. From a criminal justice standpoint, there is a substantial advantage brought about by minimum sentencing requirements because they give the police leverage to induce defendants to plead guilty in order to secure lesser sentences and dropped charges. A guilty plea saves the government a vast amount of money and gives police a guaranteed confession. In addition, the rise of the use of civil forfeitures discussed above provides an independent source of revenue and an incentive to go after lower-level drug offenders because their assets offer both plea-deal leverage and income without lengthy investigation time or funds being expended.

Of course, there are many who advocate an alternate political path to deal with low-level users: *drug legalization*. The argument here is that low-level users who possess small amounts of drugs for personal use are not violent offenders or dealers, so expending resources on them is a misuse of government funds. Furthermore, because of mandatory sentencing, they fill up our prison system and clog the legal docket costing taxpayers a disproportionate amount of funds compared to serious felons.

Besides, there are those who argue that legalizing marijuana in particular means the government can collect revenue from the sale, regulation, taxation, etc. of a legal product.[[35]](#footnote-36) Some states have decriminalized marijuana. “State laws regulating marijuana use can be divided into two categories: decriminalization laws and those that authorize medical use of marijuana. Decriminalization refers to the reduction of penalties for possession of small amounts of marijuana for personal use. Decriminalization statutes do not legalize possession, but treat it as a civil offense that subjects an offender to a monetary fine, instead of incarceration.”[[36]](#footnote-37)

Currently, the federal government has not decriminalized the use of any scheduled substances, including marijuana. That means that in spite of any state’s law, the federal government can choose to prosecute anyone that violates the law. In 2009 the Department of Justice issued what has become known as the Ogden memo which essentially says that due to limited resources the federal government will not prosecute those who are ostensibly not violating their state law with their drug activity. In July 2011 the DOJ issued what has become the Cole memo.

“The Cole Memo reiterates the position of Ogden in light of jurisdictions that have ‘considered approving the cultivation of  large quantities of marijuana, or broadening the regulation and taxation of the substance.’ The memo notes the ‘increase in the scope of commercial cultivation, sale, distribution, and use of marijuana for purported medical purposes,’ and that “within the past 12 months, several jurisdictions have considered or enacted legislation to authorize multiple large-scale, privately-operated industrial marijuana cultivation centers. Some of these planned facilities have revenue projections of millions of dollars based on the planned cultivation of tens of thousands of cannabis plants.’ The Cole Memo reminds prosecutors that ‘The Ogden Memorandum was never intended to shield such activities from federal enforcement action and prosecution, even where those activities purport to comply with state law.’”[[37]](#footnote-38)

The Cole memo has placed several states in the difficult position of having approved some large scale operations that may now be subject to federal interdiction. Many governmental organizations have sued for a declaratory judgment about the legality of their marijuana operations, including the state of Arizona and the City of Oakland. Those cases are pending. There is also talk of introducing a bill in Congress to exempt cities and states from prosecution under the federal law but that is a long way from being passed. The bottom line is that there is a possibility of arguing reform of the current federal system to bring about cost savings, less crowded prisons and migrating police focus back to “more serious” crimes that should be taken into account by NCFCA teams this year.

Illegal Immigration

As a final note, we should discuss the disparate treatment of illegal immigrants under the US Constitution. Detecting, investigating, trying and deporting of illegal aliens is actually a civil law matter, not a criminal one. Unfortunately, after September 11, 2001, the US has been steadily increasing penalties and raising the bar on enforcement of illegal immigration to the point that the majority of federal criminal cases have become immigration-related.[[38]](#footnote-39)

Why? There are several reasons. First of all, it has become politically popular in many areas to root out immigrants who may be committing crimes. That fact is coupled with the reality that immigrants do not share the same constitutional guarantees that full US citizens have, so they are an easier target from a criminal justice point of view.[[39]](#footnote-40) The question is whether this is an issue of failure on the part of the current US criminal justice system, and if so, which mechanisms to employ to bring about fair and meaningful reform.

Now that we have discussed some of the major issues confronting how crime is detected, investigated and enforced and the political issues intertwined with them, we can move to the issues of dealing with those who are passing from this point in the process to the court system.

Courts

In the last chapter we touched upon the fact that one of a defendant’s most important rights is the right to competent defense counsel. The concept is very simple: a good lawyer can protect his/her client from shoddy police work or circumstantial forensics by excluding evidence or mitigating its impact upon the jury. Unfortunately, this is also a problem in the current US justice system.

“The exoneration and release of Jimmy Ray Bromgard from Montana prison provides a sobering view of the effects of inadequate or incompetent counsel. Bromgard, arrested when he was 18, spent 15 years in prison for the brutal rape of an eight-year-old girl, a crime post-conviction DNA testing proved he did not commit. Bromgard’s trial attorney performed no investigation, filed no pre-trial motions, gave no opening statement, did not prepare for closing arguments, failed to file an appeal, and provided no expert to refute the fraudulent testimony of the state’s hair microscopy expert. Other than the forensic testimony and the tentative identification, there was no evidence against Bromgard.”[[40]](#footnote-41)

Finding the Guilty

While it may make for good drama to show a high-priced defense counsel coming to the aid of an indigent or immigrant defendant, the truth is that the best criminal defense is purchased at a premium price. The “counsel appointed for you free of charge” that is promised by Miranda warnings is almost always an over-worked, underpaid, understaffed and inexperienced public defender who has zero budget for investigation, forensic testing, expert witnesses or travel available to them. When a counsel is able to demonstrate competence, they usually leave the public defender role for more lucrative private practice where their skills are out of reach of most defendants. It is not a coincidence that the vast majority of those convicted in this country are financially disadvantaged.

This begs the question: Why is this happening in the United States of America? Politically, it isn’t popular to advocate for any reform that benefits alleged criminals—especially if it involves spending taxpayer money. Legally, the exposure of privilege and the standard of review are set in a manner that favors the government. If a defendant believes that he was wrongfully convicted because of incompetent defense counsel, they raise the issue on appeal of their conviction as ineffective assistance of counsel. Many times this issue is not raised because doing so immediately removes attorney-client privilege and the trial defense counsel can and usually is interviewed by the government appeals lawyer to secure incriminating information about the defendant and support for why the defense failed to pursue obvious angles of defense. (i.e. “The defendant told me in confidence that he was guilty so I did not call or interview any witnesses for fear they would corroborate his guilt.” Whether or not that is the truth, it is very damaging in a statement.)

The other reason this issue is often not even raised is because the standard of review is very high. First of all, defense counsel is *presumed* competent. To win on appeal the defense must show that the trial defense counsel’s performance fell below an objective standard of reasonableness *and* that there is a reasonable likelihood that the outcome (verdict, sentence or appeal) would have been different but for the incompetence.[[41]](#footnote-42) Thus if the government can help the trial defense counsel make out virtually any plausible theory of strategy for their alleged incompetent action or inaction, the appeals court will not find ineffective assistance. This is almost always the case and ineffective assistance is very rarely found except in the most egregious of cases. It is very difficult to argue prejudice to the defendant without independently securing evidence that would show the possibility of an alternative outcome. Such investigation is virtually impossible without access to resources for investigators, testing and/or expert witnesses, and indigent defendants (and their pro bono appellate attorneys) typically have even fewer resources on appeal than they did at trial.

Many feel there is no problem with the system. The court system operates as it should with little or no chance for an appeal by an indigent defendant to be overturned. There are many critics of the current system who argue that it is skewed against the economically disadvantaged and minority defendants. Possible methods for change could involve changing the rules to remove attorney-client privilege in ineffective assistance cases, providing access to government funding for investigation on appeal, funding pro bono appellate advocacy programs that might lure in more experienced and competent counsel, etc.[[42]](#footnote-43) Another possibility is to change the rules on appeal for this issue to allow the trial record to be reopened. On appeal, attorneys are generally limited to the facts of the case as presented at trial and new testimony or evidence is disallowed by rule except in the most extreme cases. By reopening the record and allowing in new testimony on the issue of ineffective assistance the defendant could much more easily reach the Strickland standard for showing ineffective assistance.[[43]](#footnote-44)

Admitting Guilt

Once an individual is arrested for a federal crime, particularly a felony, the process can be seen to be stacked against the accused. That arrest is almost automatically going to yield an indictment at grand jury, there will be a great deal of pressure applied to secure a guilty plea and sentencing is potentially going to have multiple mandatory minimums which, in turn, put even more pressure upon the individual to plead guilty. To go to trial on a felony charge, an individual must be indicted by a grand jury. This is a safeguard provided by the Fifth Amendment to the US Constitution, but its effect has been eroded. Although originally designed to be a check on the government’s power to indiscriminately charge individuals without evidence, today’s grand jury is clearly a prosecutorial tool. The process itself is secret, there are few rules, there are no rights for the accused to testify or present evidence or question the prosecution’s evidence. In fact, the evidence need not be admissible in a later court of law to be considered in a Grand Jury.[[44]](#footnote-45) Little wonder that virtually every case taken to the Grand Jury returns a true bill to indict.[[45]](#footnote-46)

Not only does virtually every case going to the Grand Jury get indicted, but 96% of all federal criminal cases feature some type of guilty plea. The concept is simple: an accused agrees to give up virtually every right they have at trial in exchange for something they feel provides them with a benefit. The government saves substantial dollars in court and trial costs, may get a second conviction by forcing one accused to testify against the other, and gets a guaranteed conviction. But this isn’t an equitable exchange. The government typically holds all of the cards in a guilty plea offer. They can dictate terms and apply pressure to get the accused to accede to their demands.[[46]](#footnote-47) Typically the accused pleads guilty to secure an improved situation at trial like having certain charges dropped (which could have been specious or overcharged by the government in the first place), a specific sentencing recommendation from the prosecution which is virtually always followed by the judge (or to have a sentencing multiplier dropped from the proceeding), or it could be a deal to not seize the family home and cars in civil forfeiture.

The ultimate result of the system, however, is that there are a certain number of people who are intimidated into pleading guilty when they have done nothing wrong. It simply looks bad enough that they cannot risk a really high sentence so they plead guilty (commit perjury) and take their chances on appeal. The other key to understanding this is that for some it is setting them up to fail: “Many of these people are poor. They're destitute. They have no money at all, and yet they're going to be told to pay a fine. They're going to be told to pay a fee to a probation officer every month—I mean, all sorts of consequences that are going to flow. And perhaps the one that's least understood is that the failure to meet these payments and meet the conditions of probation is going to bring that person right back into court, and they're going to face probably more time in prison than they did originally because now they're going to be punished for violating their probation.”[[47]](#footnote-48)

Probation is certainly not the same as being acquitted. It allows the government to force specific behavior on an individual to include who they can talk to, where they can work, mandatory drug testing, payment of fees and fines and if they have a single violation they can end up going to prison and serving a lengthy term. Remarkable as it may seem, changing the circumstances under which a plea can be done, limiting the terms that can be used or banning them altogether may be alternatives which lead to better justice for our criminal justice system.

Once Convicted

For those who are convicted, we enter the final trial phase of sentencing. In the case of Class A misdemeanors and felonies, the recommendations of the sentencing guidelines come into play. (I discussed the origins of the guidelines in the preceding chapter.) As noted there, it is not a coincidence that the federal guilty plea rate went from 83% to 95% after the imposition of sentencing guidelines. The guidelines supposedly take into account the circumstances of the crime committed and the criminal history of the offender. The process is dominated by the prosecutor who can steer the case by how it is charged and which facts are admitted as “multipliers” with regard to criminal history.

In addition some federal cases are now governed by mandatory minimum sentence provisions of federal law, notably drug and gun offenses, but these have been expanded to include identity fraud, sex crimes and certain violent crimes. In 1988 co-conspirators were included for sentencing, which means that someone who plans a crime that is carried out by someone else and turns unexpectedly violent can be sentenced to a mandatory minimum sentence the same as the individual who actually committed the act. These laws are separate from so-called “three strikes” laws which are enacted by states to provide mandatory 25 years to life sentences for offenders who have committed three crimes as defined under the statute. The latter are not federal, but similar types of laws have been proposed.

Reform ideas for federal sentencing varies. Here are some ideas:

* Eliminate mandatory minimums for conspirators.
* Create alternatives to incarceration like home detention, residential drug treatment programs or community service.
* Eliminate the 18:1 disparity in sentencing for crack vs. powdered cocaine.
* Provide judges more factors to consider for in sentencing defendants.
* Expand the criminal history provision under the sentencing guidelines from 1 point to multiple points to give judges more flexibility.
* Eliminate the distinction between Zone B and C of the sentencing table to allow judges to treat more non-violent offenders as first-time offenders.

The final issue to consider with regard to trial and sentencing is the death penalty. There has been a federal death penalty from the inception of our government under the Constitution. “The United States federal death penalty was first used on June 25, 1790, when Thomas Bird was hanged for murder in Maine. Since then, according to studies by the Capital Punishment Research Project, 336 men and 4 women have been executed under federal auspices. Of these inmates, 134 (39%) were white; 118 (35%) black; 63 (19%) Native American; and 25 (7%) were Hispanic or unknown. In the 20th Century, 61% of federal executions were of minority defendants.”[[48]](#footnote-49) There have been several main criticisms of its use over the years: it is used disproportionately on minority defendants; the costs of litigating such cases to an execution are staggering; and the possibility always exists of executing an innocent person with no recourse to rescind it.

There are relatively few federal capital cases each year, but when the ultimate goal is extinguishing human life, there is a significant amount on the line so long as the death penalty exists. There have been a number of changes in the application of trial and sentencing standards, but the statistics about race seem to stay relatively consistent over time. Although certain avenues of appeal of death penalty cases have been streamlined over the last 10 years or so, the trial costs keep going up, perhaps due to increased attention or merely inflation. As the rise of DNA retesting has come to prominence in the last decade, so too have the list of death row reprieves of innocent defendants. (See Forensic testing, earlier in this chapter.) Despite these issues, there are many who argue that the mere existence of the death penalty is a deterrent to some actors, and thus a savings of life is found just by having it on the books.

Prisons

Probation is a way of holding a sentence in abeyance for a set period of time pending good behavior. Fines and restitution are used as a means of financial punishment, and for some capital crimes the death penalty is imposed. Imprisonment, however, is far and away the most often imposed penalty for wrongdoing. There are several ways of evaluating imprisonment as a societal tool: punishment, segregation from society, ending drug addiction, and the opportunity to educate and rehabilitate. When seeking to reform this aspect of criminal justice, it is important to understand which techniques your plan is reinforcing and which it might be reducing or ending.

Serving Time

People sentenced to prison do not necessarily serve all of the sentence. There are a number of ways that their terms are reduced, many of them linked to incentives for good behavior. The first reduction is something that has come to be known as “good time.” Under 18 USC § 3624 federal prisoners have the possibility of computation of good time if they are serving a sentence of more than one year. They can earn “up to 54 days at the end of each year” subject to the Bureau of Prison’s (BOP) “determination . . . that, during that year, the prisoner” has behaved in an exemplary fashion.[[49]](#footnote-50) The higher your sentence the more days you can earn. These days are added up and when they are equal to the amount of time left in the sentence, the prisoner can be released. They are held and can be amended if the behavior does not stay uniform throughout the sentence.

Besides good behavior, the BOP “shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent degree.”[[50]](#footnote-51) The BOP has chosen to compute the good time by applying it as they go. A prisoner who earns 54 days at the end of the first year then has to wait until the end of the second year plus 54 days before the next 54 days of good time can be awarded, and so on. Over the course of a long sentence, this adds up. This method of computation was challenged and the Supreme Court upheld the BOP methodology with a split decision.[[51]](#footnote-52) In his dissent, however, Justice Kennedy points out that this is not only unfair but has a wider impact on the system: “[T]he Court’s interpretation—an interpretation that in my submission is quite incorrect—imposes tens of thousands of years of additional prison time on federal prisoners according to a mathematical formula they will be unable to understand. And if the only way to call attention to the human implications of this case is to speak in terms of economics, then it should be noted that the Court’s interpretation comes at a cost to the taxpayers of untold millions of dollars.”

Not all prisoners are equal, either. “According to the U.S. Bureau of Justice Statistics, between 1999 and 2007 the number of people 55 or older in state and federal prisons grew 76.9 percent, from 43,300 to 76,600, and the number of those ages 45 to 54 grew 67.5 percent.”[[52]](#footnote-53) Because aging people tend to have more health issues, it is estimated that prisons spend 2-3 times as much to maintain older prisoners. Currently, many states have geriatric early release programs, but they are substantially underutilized—often because of political issues. This is unfortunate because this group is particularly suited to early release. “Older offenders are less likely to commit additional crimes after their release than younger offenders. Studies on parolee recidivism find the probability of parole violations also decreases with age, with older parolees the least likely group to be re-incarcerated.”[[53]](#footnote-54)

Another way a prisoner could be released early from prison is parole. Parole is not available for all sentences, but where it is it essentially amounts to being able to serve the remainder of a sentence outside of prison. Parole standards vary, but the concept is that a prisoner who can show that they are ready to rejoin society on the government’s terms and under its supervision may be granted that privilege. Most prisoners do so by demonstrating they have become more educated, controlled their addiction to narcotics, have secured gainful employment and living situations and have friends and family for support. They can also be ordered to take classes, attend counseling, participate in drug testing, avoid contact with their victims, known criminals and/or previous acquaintances of bad character, etc. This can also include home detention, house arrest, wearing a tracking device, etc. If conditions of parole are violated, a prisoner can be forced to serve the remainder of the term in prison. (Interestingly, a prisoner’s failure to pay mandatory restitution to a victim, even when they have no money or job, can be considered a violation of parole and return the individual to prison—further delaying the chance a victim might receive restitution at all.)

The state of Wisconsin has had some success with reducing their prison population by altering their parole program with emphasis on helping prisoners find jobs and stable environments.[[54]](#footnote-55) Another alternative is to have a parolee on house arrest. As a condition of parole the individual agrees[[55]](#footnote-56) to be at home except for approved movement like work, counseling, doctor appointments and family visits. This is sometimes monitored electronically with an ankle bracelet, and can even include a home installed breathalyzer to test daily sobriety. Although there is a one-time investment in technology, this is a substantially cheaper alternative to incarceration which also allows the convict to participate in the economy by working, paying taxes and victim restitution.[[56]](#footnote-57)

Understand, however, that parole is a feature of state court systems and is being (has mostly been) phased out in the federal system. “The U.S. Congress eliminated parole in 1984 for offenses that occurred after November 1, 1987.  The U.S. Parole Commission (the “parole board” for federal inmates) is still in existence, however, for federal offenders that are eligible for parole for offenses committed before 1987, certain other offenses, military offenders, and offenders who are in the federal witness protection program. Defendants sentenced for offenses committed on or after November 1, 1987, serve “determinate terms” under the federal sentencing guidelines and are not eligible for parole, but each sentence will likely include a “supervised release” component, provided as a separate part of the sentence under the jurisdiction of the court.”[[57]](#footnote-58)

Shakespeare said: “The quality of mercy is not strain'd, It droppeth as the gentle rain from heaven, Upon the place beneath. It is twice blest: It blesseth him that gives and him that takes.”[[58]](#footnote-59) It is possible for the government to show mercy and shorten or remove a punishment if the circumstances warrant. There is a right to apply for clemency or pardon, but there is no right to have it awarded. Article II, Section 2 of the US Constitution gives the president the power to “grant reprieves and pardons for offences [sic] against the United States.” It has always been a lightning rod for controversy, starting with Washington’s pardon of the Whiskey Rebellion leaders. Today it is just as politically charged, which leads to its general disuse except as a way to create a photo op. Pardon requests are handled by the Office of the Pardon Attorney, lead by the Pardon Attorney (currently Ronald L. Rodgers) who is appointed by the Attorney General and works in the US Department of Justice. This presidential power to pardon, commute sentences, grant reprieves, etc. for federal crimes, however, could be a very powerful tool if a proper way could be found to alter the manner in which requests are considered and establish apolitical guidelines that rewarded specific behavior or took into account specific circumstances (i.e. prisoner age, non-violent drug possession offenses, prisoners who have served most of long sentences for non-violent crimes, etc.).

Adjusting how good time is earned, which prisoners to target for reduced sentence or perhaps using it as a way to secure prisoner cooperation in education or other proven techniques to reduce prisoner violence and/or recidivism could all be part of an affirmative plan this year.

Surviving the Sentence

*EDITOR’S NOTE: Prisoners are typically in prison for heinous crimes, some uncomfortable to talk about. Debaters may opt to avoid such topics as murder, rape, or violence when debating at local tournaments. Be aware that children under 12 typically serve as timers at tournaments, and sometimes these topics are too offensive to even adults or, worse, your judge. That said, crime is crime, and ignoring the realities of our criminal justice system isn’t necessarily a good alternative. Sometimes topics covered in the league’s resolution will be uncomfortable. We encourage you to always seek your parent’s council when issues become difficult to bear. And in the debate round, handle such topics with maturity.*

Another substantial area of reform discussion is the idea of reducing inappropriate treatment of prisoners who are in detention. In 2009 officials estimated that 60,000 prisoners were raped each year while in prison.[[59]](#footnote-60) These include men and women, some who were only in jail a single night. Aside from the obvious fact that these are crimes, why is this an issue? Because this leads to higher prison medical bills, the spread of AIDS and other STDs, expensive lawsuits against the government and a higher recidivism rate. “The Prison Rape Elimination Act of 2003, 42 U.S.C. 15601 et seq., requires the Attorney General to promulgate regulations that adopt national standards for the detection, prevention, reduction, and punishment of prison rape.”[[60]](#footnote-61) This created the National Prison Rape Elimination Commission which made its recommendations and disbanded in 2009.[[61]](#footnote-62) In January 2011 the Department of Justice proposed new rules based upon that report that they hope will cut down on the number of assaults in prison.[[62]](#footnote-63) These standards raise new issues about spending in a down economy, as well as questions about whether this is the right approach, or whether the real source of the problem is prison overcrowding and substandard facilities. It is clearly a politically-charged issue that could be addressed under this year’s topic.

It has been estimated that as many as 45% of prisoners in federal prisons have some form of mental illness.[[63]](#footnote-64) Prior to the 1950s the general practice was to institutionalize people with mental illness. In the late 50s and into the 60s there was a movement to integrate people into society and community-based health care. The problem was that while the people were moved back to the community, the money saved by closing the facilities was not reinvested in providing local support or services. With the dramatic rise in the costs of health care, coupled with the increase in mandatory sentencing, many mentally ill people end up in prison. “’Unfortunately, I do believe that some of the mental health treatment that we provide in prisons is better than what one might get in the community,’ says Dr. Reginald Wilkinson, the head of the Ohio prison system. ‘I've actually had a judge mention to me before that, 'We hate to do this, but we know the person will get treated if we send this person to prison.' When you know the courts are more apt to send a person to prison because they are going to get treated, there's something disconcerting about that.”[[64]](#footnote-65)

Because they tend to have more difficulty following the rules or getting parole, mentally ill inmates tend to spend on average 15 more months in incarceration.[[65]](#footnote-66) A disproportionate number of them also end up spending large amounts of time in solitary confinement. *The Mentally Ill Offender Treatment and Crime Reduction Reauthorization and Improvement Act of 2008* was designed to award federal grants to correctional facilities to support identification and treatment of mentally ill inmates, but it is not enough to deal with the scope of the problem. Another approach might be to find a way to keep them from entering the system in the first place. Some jurisdictions are experimenting with Mental-Health Courts which can secure and require treatment in exchange for lighter criminal sentences.[[66]](#footnote-67) Either way, this is a serious aspect of the topic which could provide a very viable affirmative plan.

Who’s Minding the Store?

It is also important to note that there are private industry alternatives to our current federal prison system. “Over the past 15 years, the number of people held in all prisons in the United States has increased by 49.6 percent, while private prison populations have increased by 353.7 percent, according to recent federal statistics.”[[67]](#footnote-68) Private prisons are big business, however, and private companies are lobbying state legislatures to get more and more facilities to run at a profit—and more “clients” to fill them. “While the number of inmates over the past decade has risen 16 percent, the number in private federal facilities has risen 120 percent and the number in state facilities has risen 33 percent. Meanwhile, the two largest private prison operators, Correction Corporations of America and GEO Group (formerly Wackenhut), raked in a combined $2.9 billion in revenue in 2010.”[[68]](#footnote-69) The method varies, but in Florida they allowed a private company to staff a new prison with hand-picked, less-violent offenders and gave them the mandate to run it 7% cheaper than the state. Cost-cutting and staff reductions led to a riot in their juvenile female detention center.[[69]](#footnote-70) “Research has shown that private prisons do not save taxpayer dollars and can in fact cost taxpayers more than public prisons. Additionally, privatizing prisons may undermine cost effective sentencing reforms and increase recidivism rates. Despite these well-documented concerns, private prison companies continue to promote policies that put money in their pockets and people behind bars.”[[70]](#footnote-71)

So why would we privatize prisons? In a word: money. As prison expense continues to climb, legislatures are looking for ways to unload budget items that are high and rising. Privatization allows for a fixed cost for a fundamental governmental service. How can private prisons afford to operate more cheaply: cheaper operating costs and cheap labor. “Economic theory implies that if there were better markets to buy, sell and rent prison cells, the problems of funding and efficiently allocating prison space would decrease. The privatized prison system is based in such a way as to exploit these opportunities by introducing factories behind bars, reducing their own costs and allowing for prisoners to earn and pay their own way, whilst also putting back into the society they effected with their initial actions. Public prisons to a degree already do exactly this through such industries as plate making for motor vehicles, but by no means to the extent of privatized prisons. In 1997, the American private sector prison industry had nearly 100 private firms employing two thousand four hundred inmates manufacturing goods ranging from circuit boards to bird feeders, allowing for prisons to retain fifty six percent of all earned to cover room and board, taxes, victim restitution and family support. Any skills that convicts acquire from this kind of work can later be used to ease their process of re-integrating back into society.”[[71]](#footnote-72)

A final issue of privatization is one of civil rights. Federal civil rights claims are predicated on government action. With a private contractor, there is a question whether jurisdiction for a cause of action exists. The Supreme Court has agreed to decide this issue during this term.[[72]](#footnote-73) Ultimately the US seems committed to prison as a primary means of punishment and that carries a very high price tag.

Case Summaries

*Blue Book* is stocked with 12 solid debate cases, the core cases that you may hear a lot about throughout the season. Even if you branch off on your own and create a case unique to any of these, it would be wise to familiarize yourself with these 12, for they likely will pop up in debate rounds at your tournaments. All cases are written by Vance Trefethen unless otherwise noted.

1. Victims of Circumstance: The Case for Reversing *In Re Antrobus*

(Case written by Matthew Baker.)

In 2004, Congress created a ‘bill of rights’ for federal crime victims in the form of the Crime Victims Rights Act (CVRA).  In pact, the CVRA guarantees crime victims the right to be heard in court, the right to restitution, the right to be given notice of release or escape of the accused, and the right to privacy and respect for their dignity.  To enforce these rights the CVRA provides that through a writ of mandamus the federal appellate courts will “take up and decide” any appeal of a district court’s decision within 72 hours.

A writ of mandamus is an order by a superior court requiring another entity to perform an official duty.  Traditionally, a writ of  mandamus is granted only when the right to the writ is “clear and indisputable.”  However, the “take up and decide language” seems to suggest a totally new standard equivalent to regular appelate review under the abuse of discretion standard.  *In Re Antrobus* rejected the abuse of discretion standard and instead adopted the traditional “clear and indisputable”right standard which is more restrictive making it less likely that crime victims rights will be preserved.  The plan will use the U.S. Supreme Court to reverse *In Re Antrobus*, provide clarity to the circuits, and reiterate that the CVRA contemplates a nondiscretionary mandamus standard.

Overturning *In Re Antrobus* will protect crime victim’s rights under the CVRA.  These rights are important because victims function to promote the checks and balances of the judicial system and participation by victims in court proceedings can serve a therapeutic role for victims.  In addition, overturning *In Re Antrobus* would arguable preserve the legislative intent of the CVRA upholding the value of democracy.

2. Policing for Profit: The Case for Asset Forfeiture Reform

In America, we expect that people are innocent until proven guilty, and that the government can’t come in the night and take your property if you haven’t been convicted of a crime. Affirmatives will argue that both of these principles are violated today by the common practice of “Asset Forfeiture.”

Asset Forfeiture happens when law enforcement officials accuse someone of a crime involving property (cash, car, boat, plane, etc) — for example, a drug dealer with a stash of currency in a car. The government seizes the car and the cash at the time of the arrest and puts it into a fund that supports the law enforcement budget. They may or may not ever actually charge the individual with a crime — in fact 80% of the time, they don't. The property owner must then file a lengthy legal claim to prove his innocence and get the property back. Such a process turns basic civil rights on its head, when a citizen has to prove his innocence in order to reverse a punishment that has already been handed down upon him for a crime he was never charged with. But it happens every day.

There is a legal distinction between “civil” asset forfeiture and “criminal asset forfeiture,” although both are arguably part of the criminal justice system. Criminal forfeiture happens after a suspect is arrested, charged with a crime, found guilty, and as part of his punishment he loses the ill-gotten gains that came from the crime for which he was convicted. The bank robber loses his getaway car or the drug dealer loses his stash of cash.

Criminal forfeiture happens after conviction for a crime. Civil forfeiture happens when they suspect that certain property was used in the commission of a crime, regardless of whether its owner was ever charged with that crime or not.

The Federal government and most of the states use this process to augment law enforcement budgets. Studies indicate that it drives law enforcement priorities toward chasing down asset jackpots instead of actually fighting crimes that affect the everyday safety of law-abiding citizens.

Taken to the extreme, imagine a police department with limited resources deciding whether put manpower onto solving a murder case or going after a rich non-violent drug dealer. There's a good chance they'll prioritize the drug dealer because they'll get to confiscate his drug profits, regardless of whether or not he's ever convicted of any crime. The murderer, if caught, likely offers no profit opportunity.

Much of the state asset forfeiture is driven by legal provisions that let the states piggy-back onto federal asset forfeiture through joint operations, allowing states to seize assets even when state law would not have allowed it. Some states have strict limits on it, because they know how abusive it can be, but those limits go out the window when the local cops team up with the feds, because then the federal rules apply. Thus, even though the Affirmative case mandates only change to federal asset forfeiture (because that's all the resolution allows), it nonetheless achieves reductions in state misbehavior as well, since the federal program is what's driving a lot of what goes on at the state level.

3. Wanted Dead or Alive:  The Case for Abolishing the Federal Death Penalty

(Case written by Rob Parks.)

The federal government currently has a very long list of federal crimes for which those convicted can receive a death sentence. There are over 50 prisoners currently on federal death row. This case argues that the death penalty is harmful to justice, expensive, and we'd be better off without it.

Speaking only of the monetary costs, while many people believe it's cheaper to simply execute someone rather than pay for a lifetime of incarceration, surprisingly it isn't. The federal death penalty (and state death penalties too, for that matter, but they aren't changed by this plan) is actually very expensive to administer. There are extra costs for investigation, appeals, etc. that make death-penalty cases as much as eight times more expensive than other similar cases.

But the aspects of justice that are violated should be our primary concern. Even if the death penalty were less expensive, it would still be a bad idea. Federal juries in death penalty cases are comprised of a different pool of citizens than state juries are, leading to more racial bias in federal death sentence outcomes. Simply put, your chances of getting the federal death penalty for a crime are noticeably greater if you're black than if you're white.

On top of that, prosecutors use the threat of the death penalty to negotiate unfair bargains with defendants. Sometimes even innocent defendants are motivated to plead guilty rather than risk going to trial and being executed for a crime they didn't commit. Constitutional rights go out the window when overzealous prosecutors start plea bargaining with scared defendants.

And that, of course, leads to the best reason for abolition: We simply can't risk executing innocent people. The shocking number of DNA exonerations in the last 2 decades, some of which came out of death rows across the nation, prove that our justice system has gaping holes that need to be addressed before we execute any more prisoners.

4. Say Goodbye to Hollywood: The Case for Reduced DNA Sampling

If you watch any of the forensic crime shows on TV, you’ve seen how the good guys collect the samples in the morning, analyze the DNA in the afternoon, and lock up the bad guys that night. Unfortunately, this is a Hollywood fairy tale that couldn’t be farther from reality. Real investigators and real victims wait years, not hours, for DNA results, and the reason is that we collect too many DNA samples.

While DNA testing can be a fantastic way to positively identify the perpetrator in certain situations, the federal government and the states have gone overboard by mandating in many cases that anyone arrested for any reason gets their DNA sample taken. Notice, not just those convicted of violent crimes, but anyone arrested or detained. This includes hundreds of thousands of illegal immigrant detainees, people suspected but never charged with a crime, etc. The result is a huge backlog of DNA samples waiting to be analyzed and cataloged. And while resources are expended processing that backlog, the DNA of actual felons is sitting on the shelf - a potential match to a crime scene, but no one has time to test it because they're too busy working the huge backlog of unlikely suspects.

Too, universal or near-universal DNA testing can be arguably a threat to civil rights. DNA contains vital information about who and what you are. A huge database with all that information is a civil rights disaster waiting to happen. Even demanding that people hand over that information without a search warrant is in itself arguably a weakening of the 4th Amendment's guarantees against warrantless search and seizure.

5. Smuggler’s Blues: The Case for Drug Legalization

(Case written by Matthew Baker.)

Forty years after Richard Nixon declared a war on drugs, it is clear that our drug policy has failed.  Arresting hundreds of thousands of average Americans (often racial minorities) has failed to significantly abate drug use. Through the plan, the federal government would remove marijuana from Schedule I of the Controlled Substances Act and prohibit federal agencies from prosecuting, prohibiting, disrupting, or punishing the manufacture, distribution, or possession of marijuana.  However, both the federal government and the states would be able to tax and regulate marijuana as long as such measures do not constitute *de facto* prohibitions.

Marijuana legalization flirts with nontopicality under this year’s resolution, however this case relies on a definition of the criminal justice system that includes criminal law, literature from the field, and the concept that drug legalization creates most of the problems in the criminal justice system to justify its adoption.

Threats of federal prosecution have already discouraged several states and localities from legalizing medical marijuana. The Federal government should take the lead on marijuana legalization because 50 different state regimes would be complicated and confusing.  In addition, the resolution specifies the federal government as the affirmative agent of reform. However, many states also prohibit marijuana through state laws.  Nevertheless, states generally follow the federal government’s lead on scheduling drugs and federal action on marijuana would trigger a series of administrative reviews across the states in accordance with the Uniform Substance Control Act (USCA).

Legalizing marijuana nationally would produce billions of savings and revenue nationally.  First, legalization would allow marijuana to be taxed and, second, legalization would allow law enforcement to conserve or  reallocate scarce resources.   Legalization could also deal a deathblow to Mexican drug cartels who are responsible for massive violence across the Southwest.  Finally, legalization would counterintuitively facilitate drug treatment.   Legalization would remove the threat of criminal sanctions and allow addicts to come out the closet and face their demons in a supportive environment.

6. Kicking the Habit: The Case for Drug Treatment

(Case written by Matthew Baker.)

Illegal narcotics abuse can be highly addictive and difficult to shake.  Throwing non-violent drug offenders in prison does little to address the root problem.  In addition prison sentences impose a horrible badge of infamy on regular people that will forever ruin their lives and possibly create an unbreakable pattern of recidivism.

Enter drug courts.  Drug Courts are special dockets which allow judicially supervised treatment often in exchange for a guilty plea which is waived if the offender completes the program.  Failure to follow the program may result in judicially imposed sanctions including, possibly, jail time.   Supported by Federal grants to the states, drug courts have proven to be  highly successful in treating drug addiction and have expanded rapidly over the last couple years.  However, many nonviolent drug offenders who would otherwise be eligible to participate are unable to benefit from these programs due to a lack of funding.  In an era of state budge shortfalls, drug courts are often the first to be cut.

The plan takes $15 billion from the Department Housing and Urban and Development (an agency which the CATO Institute does more economic harm than good) and provides grants for state and federal courts to provide a drug court option to every eligible offender.  Federal funding has traditionally been a highly effective mechanism for encouraging state action.  In addition, states simply lack the resources to implement such a course of action on their own.   Studies show that such a plan would dramatically reduce recidivism, produce significant cost savings, and improve employment and family functioning.

7. The Eyes Have It: The Case for Eyewitness Testimony Reform

The wisest man of all time, King Solomon, said it best 3000 years ago in Proverbs 17:15 “Acquitting the guilty and condemning the innocent--the LORD detests them both.” While we rightly focus great effort on making sure we catch the guilty, our system today overlooks the other half of the equation: Making sure we don’t condemn the innocent.

The number one cause of wrongful convictions in the United States today is mistaken eyewitness testimony. It's not malicious or intentional, simply a large number of cases where victims or witnesses to a crime mistakenly identify the wrong person in a photo or a police lineup. Of the convictions that have been overturned since DNA testing began exonerating innocent prisoners around 20 years ago, at least 75% were convicted on the basis of eyewitness testimony.

It's very hard to find anyone who doesn't think we need reform of the way we handle eyewitness testimony in criminal cases today. There are a number of procedural and structural flaws in the way law enforcement agents handle lineups, and the Supreme Court's guidance on this issue has long since been outdated and discredited. A number of states have begun implementing reforms to their state criminal justice system, and an experiment with several police departments in Minnesota proved that these reforms reduce false identifications.

Reforms recommended by numerous experts include:

1. Using a “sequential” lineup (where the proposed individuals appear one at a time) instead of a simultaneous lineup (the traditional one you see on police shows, where the witness looks at 5 or 6 people standing together and picks one of them).
2. Administration by a “blind” law enforcement official - someone who does not know which of the lineup members is the suspect, so that the official cannot intentionally or accidentally give clues to encourage the witness about his choice. Such encouragement (for example, “Great, you identified the suspect!”) may falsely assure a witness and turn an uncertain identification (”It could have been him”) at the time of the lineup into a falsely certain identification at trial (”I was absolutely sure it was him when I saw him in the lineup.”)
3. 3) Recording the entire lineup process. This preserves a record that the defense attorney can review in order to identify and object to problems later on.

8. Runaway Jury: The Case for Grand Jury Reform

Bruce Nicholson and Kyle O’Dowd said it best in 2011: “In the words of William J. Campbell, a former federal chief judge in Chicago, ‘[t]he grand jury is the total captive of the prosecutor, who, if he is candid, will concede that he can indict anybody, at any time, for almost anything before any grand jury.’ “ Violations of justice and civil rights by the federal grand jury system are the motivation for advocating the resolution in this case.

Federal Grand Juries are panels of 12 to 23 (it varies by circumstances) members whose job is to investigate and determine if there is a likely case against someone for violating a federal criminal law. Their job is not to decide guilt or innocence, only to decide if it is appropriate to put the “target” of the investigation on trial for the alleged crime.

These juries are nothing like you have seen on any of the crime or court shows on TV. Grand juries meet secretly, they are not open to the public. And there is no judge presiding over them. The only outside official who normally interacts with the grand jury is the prosecutor. Neither the target of the investigation nor any of the witnesses are allowed to have an attorney present with them in the room while being questioned, although at any time they can step out to confer with counsel if they desire. You can imagine that with the prosecutor being the only official in the room, grand juries quickly become tools of the prosecutor, since there is no judge to regulate him and no defense attorney to object or oppose him. The prosecutor is allowed to introduce any evidence he wants, including hearsay, rumor, speculation, illegally seized materials, and other evidence that would be thrown out if it were a trial jury. And the subject of the investigation has no right to testify or present his own version of the story, nor to put on any defense. It's 100% prosecutor all the time. No wonder that grand juries give indictments in 99% of the cases they hear. Imagine how many Affirmative ballots would be given if Negative teams weren't allowed to give any speeches.

This strange system is so unfair that the country that invented and gave us the grand jury, England, has abolished it. So have a number of US states. But the Fifth Amendment requires indictments for federal felonies to be given by a grand jury, so the federal government cannot abolish them without a constitutional amendment.

This case implements 10 grand jury reforms for federal grand juries that come straight from the SMART ON CRIME report referenced in the 1AC. They are basic civil rights protections that we should have implemented long ago: blocking inadmissible evidence; letting the target testify in his own defense; having a defense attorney present, etc. Some states that still have grand juries have implemented reforms like these successfully, so we know they are workable solutions to the abuses currently prevalent in the grand jury system.

9. Promises to Keep: The Case for Closing Guantanamo

In 2007, presidential candidate Senator Barack Obama said: “As president, I will close Guantanamo, reject the Military Commissions Act and adhere to the Geneva Conventions.” But now long into his term of office, we are actually farther away from closing Guantanamo than when Obama was inaugurated. Senator Obama had it right even if President Obama doesn’t live up to it.

Guantanamo Bay is a US naval base on a small territory on the southest end of Cuba, leased from Cuba under a long-term lease that long pre-dates the current Communist regime there. (Cuba would shut it down tomorrow if they could.) Pres. G.W. Bush used the base as a prison camp for detainees captured overseas in the “War on Terror.” He wanted a location where the detainees would be securely under US control but would not be in the United States, where pesky human rights advocates or federal judges might insist that such prisoners should receive trials and civil rights like other federal prisoners. Some have been given military trials and have been either sentenced or processed out and returned to their home countries or some third country. Some are being held indefinitely because no one has decided what to do with them.

“Guantanamo” is commonly used among our enemies, and sometimes our allies, to embarass the United States by calling attention to its hypocrisy. It's tough to advocate a foreign policy of freedom and human rights when we reserve the right to accuse people of terrorism and hold them indefinitely without trial. Military tribunals are not good enough for our own citizens accused of crimes, so it's hard to see why they would be accepted here. To make matters worse, an Obama Defense Department spokesman testified before Congress that if a Guantanamo detainee were put on trial and acquitted, they would still keep him locked up indefinitely. In that case, why bother?

Pres. Obama promised to close Guantanamo within one year of taking office, and he even signed an executive order to make it happen. Unfortunately, it didn't happen. For one thing, Obama backtracked on his promise to stop using the military tribunals to try these prisoners. For another, Congress blocked his plan to purchase the Thomson Correctional Facility in Illinois and to use it to relocate the Guantanamo detainees. The Affirmative reactivates the Thomson facility plan, and requires that every detainee either be set free, or else put on trial in federal court and have the results of the trial accepted and implemented. All detainees will be sent home or to third countries whenever their results are finalized or their justly rendered sentences are served.

10. Serious Reservations: The Case for Indian Justice Reform

In 1896, the US Supreme Court ruled in the case of Plessy v. Ferguson that public facilities (in this case, train cars) could be segregated by race as long as the accomodations were “separate but equal.” In the landmark 1954 decision Brown v. Board of Education, the Court finally refersed itself and ruled that racial segregation in public facilities was unconstitutional and had to stop. Except in one case: American citizens who happen to also be Native American Indians. For them, the criminal justice system is separate and highly UNequal, compelling the justification for this case.

The system of jurisdiction for criminal law on Indian reservations is very complex. But let's do a quick boiled-down summary. There are three sovereigns involved in the enforcement of criminal law on Indian reservations: the Indian tribes, the States, and the Federal government. And there are three classes of people who may be involved in committing or being victimized by a crime on a reservation: an Indian of the tribe that lives on the reservation, an Indian from some external tribe, and a non-Indian.

In 1885, the Federal government asserted (with no constitutional foundation) jurisdiction over certain classes of crimes committed on Indian reservations by passing the Major Crimes Act. In the years that followed, Congress and the Supreme Court imposed even further restrictions on the types of cases and judgements that could be adjudicated in Indian tribal courts. Congress also created “Public Law 280,” an authorization for states to take jurisdiction over some crimes in some cases, but not all the states participate in it. (Sharp Negatives might counterplan by running an alternative where all the States join PL-280 and substantially increase their resource commitments to law enforcement in Indian country. Sharp Affirmatives will research against this possibility by finding evidence that the states are broke and can't afford it.)

In 1978, the Supreme Court ruled in the case of Oliphant v. Suquamish Indian Tribe that a crime committed by a non-Indian on an Indian reservation could not be prosecuted in an Indian tribal court, even though the victim was a tribal member. In a later case, the Supremes ruled the same for an Indian who is from a foreign tribe committing a crime on another tribe's reservation. Such cases would have to be managed in federal courts. What the Indians were left with was a system where their tribal courts can hear only cases involving minor offenses committed by their own tribal members where the victim was also one of their own tribal members.

The problems start when the victim first calls for help. Since the governing authority depends on the race of the victim and the race of the perpetrator, we have to determine those facts before we know who should be called and who should respond and investigate. If you thought the days of race-based government facilities ended a generation ago, think again. Next, when the arrest is made and the perpetrator is brought to court, the battle begins anew. He will either assert or deny his status as an Indian in order to tangle up the court proceedings or move the case to a different court.

Next, consider the problem of resources. “Indian country” is spread out and sparesely populated (though over a million American Indians live there in total, plus lots of non-Indians). The federal government has only a few agents to cover vast amounts of territory over which they are expected to act as the local cops. On top of that, there are currently no federal courthouses located on any Indian reservation, so access to the courts is difficult for citizens affected by crime, and Indians on trial in federal court are hardly ever judged by a jury of their peers.

Finally, the outcomes of the trial are separate and unequal. The federal justice system has no parole, so Indian perpetrators sentenced under federal criminal law serve longer sentences than for the same crime committed by their non-Indian neighbor on the same reservation. Juvenile Indian offenders are sent into the federal system with far greater chances of being judged as adults, with harsher penalties, than juveniles in state courts for the same crime in the same state.

This plan proposes to fix these issues by giving Indian tribes the option to have their tribal courts assert full jurisdiction over crimes on Indian reservations, so they can function just like state courts do elsewhere. It builds federal courthouses on Indian reservations and provides more funding for law enforcement in Indian country, assuring that the justice system for Indians finally moves away from separate and unequal.

11. Knock Knock: The Case for Reversing *INS v. Lopez-Mendoza*

Professor Bill Hing at the Univ. of California-Davis in 2004 explained the background of our case when he said: “...in 1984, the Supreme Court made it quite clear that the Fourth Amendment's protection against illegal search and seizure was not available to aliens fighting deportation, even if INS officials acted illegally.” In this landmark 1984 case, the Immigration & Naturalization Service (now known as ICE, Immigration & Customs Enforcement) sent agents to a car repair shop to look for illegal immigrants. They asked the shop owner if they could go inside and look around, and he refused permission. One agent went in anyway and discovered Adan Lopez-Mendoza, an illegal Mexican immigrant, and took him into custody.

Lopez-Mendoza appealed his deportation order all the way to the Supreme Court (which is surprising, since the Supreme Court dislikes hearing immigration cases and rarely does so). He lost a close decision, in which Justice Sandra Day O'Connor wrote that even though his arrest violated the 4th Amendment, there would be no consequences for his case and the deportation order would stand. Essentially, the Court ruled that even though he was right, he still lost. Normally, evidence collected during an illegal search would be dropped from the case and could not be used. But the majority ruled that because deportation is a civil, not criminal, issue, the regular rules don't need to apply as strictly. However, O'Connor left the door open to future reform by writing that if it turned out that violations of the 4th Amendment by immigration officials were widespread, the decision should be reconsidered.

In fact, that's exactly what happened. The decision opened the floodgates for more bad behavior by immigration agents, because they know there will be no consequences. Midnight raids, kicking down doors, warrantless searches, roundups and arrests of anyone in the house or workplace who might possibly be an illegal immigrant means that even if you don't care about the human rights of illegal immigrants, lots of US citizens have their rights violated at the same time. Some US citizens have even been deported, because the arresting agents simply rounded up everyone and did not have arrest warrants for named individuals.

In addition, illegal immigration changed over the decades since 1984 from a purely civil matter into a criminal justice matter. A large percentage of illegal immigrants are not only processed through the civil deportation procedure, but they are also criminally prosecuted for illegal entry or other associated crimes that are part of federal criminal law, but used to be rarely enforced, since the matter was handled by merely deporting them. Now, they often go to jail first to serve a federal criminal sentence before being deported. It's a little known fact that immigration cases are over half of the total criminal caseload in federal courts today. No subject could possibly be more topical under this year's resolution, given those numbers.

Having the federal courts reverse the Lopez-Mendoza decision would go a long way toward fixing the problem. It would force federal agents to get warrants before they search or arrest, or else their evidence will be thrown out in court. Immigration officials should play by the rules, and the 4th Amendment protection against illegal searches is in the big rule book. What part of “illegal” does I.C.E. not understand?

12. Deal With the Devil: The Case Against Plea Bargaining

Law Professor Jennifer Mnookin summed up the status quo in 2005 when she said: “The proportion of criminal cases dispensed with through plea agreements is staggering. As Robert Scott and Bill Stuntz wrote some years ago, plea bargaining ‘is not some adjunct to the criminal justice system; it is the criminal justice system.’ This case argues that plea bargaining has hijacked and corrupted our system of justice and needs to stop.

On TV you always see the prosecutor and defense attorney battling out the fate of the defendant in front of a judge and jury in the courtroom. But in 96% of all federal cases, the defendant never has that day in court. That's the proportion of cases that are resolved by guilty pleas, where the defendant agrees to waive his right to a trial in exchange for reduced charges and lower punishment. The prosecuter wins because he never has to go to the trouble of proving his case beyond a reasonable doubt, and he can clear several cases in the time it would have taken to bring one case to trial. The defendant wins because he doesn't have to take the risk of the big sentence he would get if he were found guilty by a jury and sentenced on the original charges. It seems like everyone wins.

Unfortunately, the entire system is intended to circumvent the constitutional rights guaranteed to all the accused in this country. Prosecutors don't want to be forced to prove someone guilty beyond reasonable doubt, where rules of evidence would require him to use only lawfully obtained materials to provide that proof. Prosecutors may look at a case where there is weak evidence against the defendant (possibly because he's not really guilty) and make a decision what to do with it. If they had to go to trial, they would drop the case. But because they can plea bargain, they can threaten the possibly-innocent defendant with losing at trial and the resulting big prison sentence, hoping that he will take the deal for reduced charges under an immediate guilty plea. Many innocent defendants, afraid of long sentences, will plead guilty under those circumstances. In all cases, the plea bargaining process is a system of coercion where the defendant is threatened with more severe punishment if he exercises his constitutional rights. It shouldn't be that way.

Many fear that a ban on plea bargaining would create a huge backlog, because those 96% of cases that are plea bargained today would all end up in court with trials, consuming huge court resources. But such a ban would force prosecutors to only file charges they believe they could actually prove in court. What would happen instead is that prosecutors would pick stronger cases and let the weak ones drop - the very ones where the defendant is more likely to be innocent. Alaska tried a ban on plea bargaining in the late '80s-early '90s with good results. Those same results could happen in the federal system with this plan.

Lesson for Teaching

***Understanding what we are debating.***

1. News Discussion

Begin class discussing the issues of the previous week's news. When you do the same, attempt to relate issues with the very things the students are learning in class. Be prepared with the articles that were emailed to you via Google News Alerts from the previous week (hopefully the students have read some of the same) and relate them to the lessons of the first few weeks.

2. Review

Have the students take out their completed assignments and work through the questions and answers together as a class. Depending on the size of your class, you could have students exchange papers to correct. You will collect the assignments after review.

Spend the most time on the review of the first case from *Blue Book.* Students will review one case every week for the remainder of the class, each week answering a couple questions on the assignment handout. Encourage the debaters to read the case summaries in Chapter 7 *before* diving into the case. It'll help make things more understandable.

Point out that every case is approximately 4-5 pages long. "This case can be read in its entirety within the 8-minute 1AC." Students should be able to read to this proficiency. It is not uncommon to have students who are lacking in reading skill. No worries; encourage these students as much as possible. Do explain, though, that the activity of debate will require them to read well, and it will also teach them to read well.

Optional Activity: Read the this first case aloud. Have a timer run through its length. Have students read along in their *Blue Book* and underline words that (a) they do not know their meanings, or (b) they did not know how to pronounce. You may spend some time discussing the words they had trouble with.

3. Lecture: US Policy Toward the Topic

This lecture will attempt to load a lot of information into the students' minds. You may or may not want to teach this portion of class. In the 1-2 hours, you need to review the data in Chapters 4 and 5 of *Blue Book* (history and status quo of the topic).

A great way to do this is to view Blue Disk together as a class. Blue Disk is a DVD of either Coach Vance Trefethen (Stoa) or Coach Rob Parks (NCFCA) presenting the history and status quo issues, and it comes with the slides. This product is not a required resource for students, but an incredibly helpful one. Both coaches spent a great deal of time preparing sessions for students attending Debate Camp through Training Minds Ministry in August. The DVDs are “content downloads” of sorts. You won't be able to finish the entire thing, but by previewing it before class you may be able to supplement for the tight schedule. (Product information: http://www.monumentpublishing.biz/Blue\_Disk\_p/123.htm).

This will likely be the most demanding lecture time for you this entire curriculum. You are required to take the most important features of the historical timeline (Chapter 4) and the most important features of the status quo (Chapter 5) and present it. The important thing to teach on is the relationship between the US and the league-specific topics.

Get ready for a robust discussion. The best way to engage the class is to read up on the topic yourself. Here are some preparatory ideas:

1. Read through Chapters 4-5 in *Blue Book*. Highlight the keys facts you *didn’t* know. These can be questions you will ask the students, “Did you know this?”
2. Print the expanded topical glossary that comes with every Blue Book download. Study the glossary terms and know their definitions or background. These words will become important throughout the year of debate.
3. Print up key articles that came up in the news that relate to the *Blue Book* cases. Highlight ahead of time some paragraphs that could be used as evidence in a debate round, paragraphs that either affirm or negate the case theses.
4. Print visual aids. Use Google Images with the topic terms to print visuals of key figures of your discussion. The images used in *Blue Book* chapters 4-5 are good examples of imagery used to make the discussion more memorable.
5. Class guest. Is there an expert in the topic in your area? Diplomats or other experienced individuals are usually very eager to come and speak on what they know best.

4. Class Activity: Relating Significance

By the time you're done lecturing, you should have a whiteboard filled, and student notes should be packed with information. Next week's lesson will delve into case construction, but for now, look back at the heading from Chapter 4. These are all headings of historically significant times of the topic. Ask the following questions:

1. Why were these historically significant?
2. What changes in the status quo at the time?
3. Were the changes good or bad?
4. How did the historical changes affect the topic today?

Use the rest of your class time to discuss the history and status quo before handing out the assignment.

5. Assignment

Hand out the assignment due the next class session. The assignment reinforces what the students were exposed to today.

Worksheet

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. What is common law?

2. What does the Fourth Amendment have to do with criminal justice?

3. How does a Grand Jury work?

4. Why is incarceration such a problem in America?

5. Match the Constitution Amendments with the explanations.

\_\_\_\_\_ 1) Fourth Amendment

\_\_\_\_\_ 2) Fifth Amendment

\_\_\_\_\_ 3) Sixth Amendment

\_\_\_\_\_ 4) Eighth Amendment

\_\_\_\_\_ 5) Eleventh Amendment

\_\_\_\_\_ 6) Thirteenth Amendment

\_\_\_\_\_ 7) Fourteenth Amendment

\_\_\_\_\_ 8) Sixteenth Amendment

\_\_\_\_\_ 9) Eighteenth Amendment

\_\_\_\_\_ 10) Twenty-first Amendment

* 1. Ensures accused criminals are given a quick and public trial.
  2. Abolishes slavery.
  3. Explains what a lawful search is.
  4. Allowed Congress the right to collect income taxes without regard to census populations.
  5. Forbids one state from suing another state.
  6. Explains that you cannon be tried twice for the same crime.
  7. The Amendment that made it illegal to make, sell or transport alcoholic beverages.
  8. The Amendment that is often cited to condemn capital punishment.
  9. Extends federal law for all US citizens, regardless of state laws.
  10. The Amendment that repealed the Eighteenth Amendment.

6. What three areas of operation do US criminal justice fall into? Give a brief explanation of each.

ACTIVITY:  
Take the time to register for Google News Alerts. This is an easy way for you to be notified of current events that happen surrounding federal criminal justice. Follow these steps:

1. Make sure you are logged into their Google account.
2. Go to <http://www.google.com/alerts>.
3. Type in search terms that are appropriate to the year’s topic.
4. Select the criterion you would like to receive email notifications.

In the space below, list the search terms you used for federal criminal justice. Be ready to share these with class next week.

Answer Key

1. Common law is the concept of using previously decided cases to guide future proceedings, thus giving the impression that future similar cases will be decided in predictable ways. (p. 33)

2. The Fourth Amendment explains what government officials can search or seize. Examples of how it relates to the resolution can be found on page 34-35.

3. Prosecutors have to convince a group of citizens (the Grand Jury) that there is enough evidence against a criminal to warrant taking you to trial. (p. 35)

4. The number of incarcerations has grown significantly since 1980, making prisons difficult to maintain. (p. 43)

5. 1) c  
2) f  
3) a  
4) h  
5) e  
6) b  
7) i  
8) d  
9) g  
10) j

6. The three areas of operation are *policing, trials* and *incarceration.* Descriptions of each of these can be found on pages 47-48.

1. “Benefit of Clergy” is an English custom derived from the separation of secular and ecclesiastical courts after the death of Thomas Becket in 1170. It became custom to try to avoid the harsher penalties of secular court by claiming to be a member of the clergy. This was sometimes proven by demonstrating literacy. Later it evolved into a device to allow first-time offenders to seek leniency. It became the custom to brand the thumb of one who received this benefit to prohibit them from ever profiting from its employment again. [↑](#footnote-ref-2)
2. The treatise was originally published by the [Clarendon Press](http://en.wikipedia.org/wiki/Clarendon_Press) at [Oxford](http://en.wikipedia.org/wiki/Oxford), 1765-1769. The work is divided into four volumes: the rights of persons, the rights of things, private wrongs and public wrongs. The fourth book dealt with what we would today call criminal law. It is here that we find the famous quote: “[It is better that ten guilty persons escape than one innocent suffer.](http://en.wikipedia.org/wiki/Blackstone%27s_formulation)” [↑](#footnote-ref-3)
3. It was the Quakers who brought about the concept of imprisonment in a “penitentiary” – a place where the sinner could become “penitent” for his crimes while having a lengthy time to reflect on them. The view of corporal (but not capital) punishment as barbaric and imprisonment as enlightened sets up the modern need for a vast government-financed “industry” of facilities to warehouse convicted criminals. [↑](#footnote-ref-4)
4. The Law of Moses, given to ancient Israel ca. 1500 B.C. likewise contained no provision for imprisonment as a punishment, only for holding until trial, followed by a corporal, capital, or monetary penalty. [↑](#footnote-ref-5)
5. There are only three personal civil rights enumerated in the text of the Constitution itself: habeas corpus, ex post facto, and bills of attainder. All the others are in the Amendments. [↑](#footnote-ref-6)
6. In this context, “civil” cases are lawsuits between private parties for damage caused by one to the other, while “criminal” cases are ones where the government has arrested someone for a crime and will punish them if they are convicted. Medical malpractice, for example, is a civil case. Murder, for example, is a criminal case. [↑](#footnote-ref-7)
7. Cornell University Law School, “United States Constitution: Bill of Rights.” <http://topics.law.cornell.edu/constitution/billofrights> [↑](#footnote-ref-8)
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9. Suzanne Roe Neely. *American Criminal Law Review*. Winter, 2002, 39 Am. Crim. L. Review 171. [↑](#footnote-ref-10)
10. Cornell University Law School, “United States Constitution: Bill of Rights.” <http://topics.law.cornell.edu/constitution/billofrights> [↑](#footnote-ref-11)
11. *Ibid*. [↑](#footnote-ref-12)
12. Non-topical to the resolution is state law. It should be pointed out that states may grant their citizens *more* rights than are found in the US Constitution, but not less. [↑](#footnote-ref-13)
13. There are 3 ways that a Supreme Court decision could be changed. First, the Court could later change its mind, go against *stare decisis,* and overrule its earlier decision when another similar case comes up. Though rare, this does happen (*Brown v. Board of Education,* 1954, for example). Second, a new Amendment could change the text of the Constitution that was the basis of the Court’s ruling. (The 16th Amendment was specifically written to reverse a Supreme Court decision that found the income tax unconstitutional.) Third, when a Court decision is made that merely interprets what a law means (rather than deciding whether it is constitutional or not), Congress can amend the law to clarify its meaning to be different from what the Court thought it meant. [↑](#footnote-ref-14)
14. U.S. Sentencing Commission, 2005-2009. [*http://www.ussc.gov/Data\_and\_Statistics/Annual\_Reports\_and\_Sourcebooks/2009/FigC.pdf*](http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2009/FigC.pdf) [↑](#footnote-ref-15)
15. US v. Booker, 543 US 220 (2005). [↑](#footnote-ref-16)
16. It should also be noted that there are a much higher number of laws on the books now that have their own mandatory sentencing components. i.e. The Anti-Drug Abuse Act of 1986. [↑](#footnote-ref-17)
17. Keep in mind that illegal drugs can be “illegal” at two different levels: state and federal. While some states may increase, decrease, or eliminate state penalties for small quantities of drugs, or for “medical” marijuana, the federal government continues to prosecute those who traffic it, regardless of state law. Even if your stash of drugs is legal under the law of the state where you live, you could still be a felon under federal law. [↑](#footnote-ref-18)
18. Smart On Crime Project, *The Constitution Project,* [*http://www.besmartoncrime.org/pdf/Complete.pdf*](http://www.besmartoncrime.org/pdf/Complete.pdf), 2011 p. 120. [↑](#footnote-ref-19)
19. Ibid, p. 166. [↑](#footnote-ref-20)
20. James Vicini. “Supreme Court orders California prisoner release.” *Reuters.* May 23, 2011. [*http://www.reuters.com/article/2011/05/23/us-california-prisons-court-idUSTRE74M3DQ20110523*](http://www.reuters.com/article/2011/05/23/us-california-prisons-court-idUSTRE74M3DQ20110523) [↑](#footnote-ref-21)
21. Smart On Crime Project, p. 129. [↑](#footnote-ref-22)
22. Ibid. [↑](#footnote-ref-23)
23. U.S. Department of Justice Overview. [*http://www.justice.gov/jmd/2012summary/pdf/fy12-bud-summary-request-performance.pdf*](http://www.justice.gov/jmd/2012summary/pdf/fy12-bud-summary-request-performance.pdf) [↑](#footnote-ref-24)
24. Sir Robert Peel was the British Home Secretary responsible for reforming the police, the criminal acts and jail system of England in the early 19th century. It is because Robert instituted the new police that they came to be known as “Bobbies” in England and “Peelers” in Ireland. [↑](#footnote-ref-25)
25. Sharon Begley. “But It Works on TV!” NEWSWEEK, April 1, 2010. <http://www.newsweek.com/2010/03/31/but-it-works-on-tv.html> [↑](#footnote-ref-26)
26. Lawrence Goldman, president of the National Association of Criminal Defense Lawyers, http://www.cbsnews.com/stories/2003/03/17/national/main544209.shtml [↑](#footnote-ref-27)
27. “Unvalidated or Improper Forensic Science.” Innocence Project.

    <http://www.innocenceproject.org/understand/Unreliable-Limited-Science.php> [↑](#footnote-ref-28)
28. “Eyewitness Identification: Getting It Right.” Innocence Project. <http://www.innocenceproject.org/understand/Eyewitness-Misidentification.php> [↑](#footnote-ref-29)
29. “False Confessions.” Innocence Project. <http://www.innocenceproject.org/understand/False-Confessions.php> [↑](#footnote-ref-30)
30. Dr. Williams, Dr. Holcomb and Dr. Kovandzic 2009. ( Dr. Marian Williams PhD; assistant professor in the Department of Government and Justice Studies at Appalachian State University ; Dr. Jefferson Holcomb, PhD; professor at Appalachian State Univ Dept of Political Science and Criminal Justice; Dr. Tomislav Kovandzic; PhD, professor at School of Economic, Political and Policy Sciences at Univ. of Texas-Dallas)”Policing for Profit”

    [http://www.ij.org/index.php?option=com\_content&task=view&id=3117&Itemid=165](http://www.google.com/url?q=http%3A%2F%2Fwww.ij.org%2Findex.php%3Foption%3Dcom_content%26task%3Dview%26id%3D3117%26Itemid%3D165&sa=D&sntz=1&usg=AFQjCNGWg32KNvuWGL8TFxyWdxvgPuq6cw) [↑](#footnote-ref-31)
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32. Jeffri Wood. “The Crime Victims’ Rights Act of 2004 and the Federal Courts.” Federal Judicial Center, June 2, 2008. <http://www.scribd.com/doc/8763732/The-Crime-Victims-Rights-Act-of-2004-and-the-Federal-Courts> [↑](#footnote-ref-33)
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