INTRODUCTION TO LAW - ONLINE

PRESENTED BY:

DPS – Law Enforcement Academy
Santa Fe, New Mexico

Date: ____________________
Class includes: Authority & Jurisdiction, Criminal Procedure, and NM Criminal Justice.

**GOALS**
- For students to have an overall understanding of the criminal justice system and the role of law enforcement officers within it.

**OBJECTIVES**
Upon completion of this course, students will be able to:
- List the most important parts of the US Constitution as it applies to law enforcement.
- Know the sources of law from the Constitution to the three branches of government: Executive, Legislature, and Judicial.
- Understand the differences between court systems in New Mexico.
- Explain the difference between a misdemeanor and felony.
- Be able to find a statute in the New Mexico state statutes.
- Know the rules of criminal procedure and how to find them.
- Know the different court systems in NM from municipal court to the Supreme Court.
- Define venue and jurisdiction.
- Explain what happens to a criminal case from arrest to conviction.
- Articulate what happens during a trial: the role of the Judge, defense, and prosecution.
- Articulate what happens post-conviction: the role of corrections, probation and parole officers.

**SOURCES**
- New Mexico Criminal and Traffic Manual
- New Mexico Statutes Annotated
- State and federal case law.

**ESTIMATED TIME**
Authority & Jurisdiction (6), NM Criminal Justice (2) = Eight hours
Criminal Procedure is included in Authority & Jurisdiction.

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Santa Fe, New Mexico

**DATE OUTLINE APPROVED**

**ACCREDITATION NUMBER**
INTRODUCTION

The purpose of this class is to give an introduction to the criminal justice system. Within the law block are a number of interesting areas: homicide, burglary, robbery, search and seizure, etc. Before we discuss these topics, however, we need to learn basic things that will help law enforcement officers better understand the criminal justice system.

For example:

- What is the difference between a felony and a misdemeanor?
- What do the different courts do?
- What is a Grand Jury?
- What happens between an arrest and a conviction?
- What is the difference between probation and parole?
- Why do we have plea bargaining?

SOURCES OF LAW

There are three major areas where our laws come from: 1) the US and New Mexico Constitutions, 2) the legislative branch, and 3) judicial case law.

SOURCE OF LAW: US AND NEW MEXICO CONSTITUTIONS

1. United States Constitution

- 1776.

Before the Constitution, there was the Revolution. The odds didn’t look too good. The British, the most powerful military in the world, had thirty thousand troops in New York City. That same month the Declaration of Independence was signed in Philadelphia. It is one of the most radical political documents in history. Portions of it follow:

DECLARATION OF INDEPENDENCE,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness - - That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed - - That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government . . .
• 1783
  It was the most successful revolution in history. Most revolutions end up with a concentration of power. The French Revolution gave us Napoleon, the German Revolution gave us Hitler, the Russian Revolution gave us Stalin, and the Cuban Revolution gave us Castro. But the American Revolution had a different idea: consent of the governed, a government by the people, of the people, for the people.
  
  The American people were pro-liberty, anti-government. Americans wanted a strong government but one that respected the rights of the people.

• 1787 - Constitutional Convention in Philadelphia.

• 1789 - US Constitution ratified.

The primary purpose of the Constitution was to set up a system of government. It established three branches of government to serve as a check and balance upon each other. The system was designed this way to avoid centralization of power in one person or one faction in order to protect the rights of the people.

**Three Branches of Government**

- Legislature - makes laws
- Judicial - interprets laws
- Executive - enforces laws

Many Americans didn’t feel the Constitution offered enough. They wanted something more, something to guarantee their individual rights in writing. To protect these rights, amendments – known as the Bill of Rights – were added to the Constitution. And so, looking at the Constitution, we see two main components: (1) the Constitution, and (2) the amendments.

**Lesson learned:**

Since 1776, a common theme in America has been the rights of the individual.

The Constitution set up a system of government. The Bill of Rights protects individual rights against the government. As police officers our main concern is with the Bill of Rights – this is where “constitutional rights” comes from.

2. **State Constitution**

New Mexico has a state constitution. Judges on the state level may give more rights than Judges on the federal level but not fewer rights.

**SOURCE OF LAW:** THE LEGISLATURE BRANCH
1. **Congress of the United States** - Federal laws

   All crimes must be written so that people have notice that certain behavior is criminal. Congress passes laws which are heard in federal courts.

2. **New Mexico State Laws**

   An example of how laws have different names follows:

   - State legislature - state statutes
   - County commission - county ordinance
   - City council - city ordinance

   The state legislature enacts state laws known as state statutes. Law enforcement officers are primarily concerned with statutes in the following two chapters:

   - 30 - Criminal offenses
   - 66 - Traffic offenses

   It’s easy to find a statute

   Example: Robbery

   - Suppose we want to find the offense of robbery in the statutes. We would do it this way:

     Chapter 30 - Criminal Offenses
     There are 51 articles or criminal offenses in this chapter.

     Article 16 - Article 16 is Larceny.
     There are numerous sections: larceny, robbery, burglary, fraud, etc.

     Section 2 - Section 2 is Robbery

     The robbery statute will read as follows: NMSA 1978, Section 30-16-2.

   NMSA – New Mexico Statutes Annotated

   - Almost every year the state legislature adds, amends or deletes laws. Every so often there are so many new laws that the state legislature will update and renumber them. This happened in 1953 and 1978. That’s why on criminal complaints, where statutes are cited it says . . . contrary to Section _____, NMSA 1978, as amended.

   The legislature meets in Santa Fe every January. The length of the session varies; one year it’s a thirty day session and the next year it’s a sixty day session. Almost all statutes that
are passed go into effect the following July 1\textsuperscript{st} (including state pay raises).

\textbf{ANOTHER SOURCE OF LAW: CASE LAW}

\textbf{Case law}

Judges interpret the law to determine whether it satisfies constitutional requirements.

1) judge-made law

An appellate judge (Supreme Court or Court of Appeals) will issue a decision. Lawyers and other judges who are under the jurisdiction of the appellate judge will use the decision as guidance for their cases.

2) Law is based upon precedent

One can think of our case law as building blocks. A written decision is made by an appellate court judge. This case will remain law until another appellate decision is made that modifies, changes, or reverses it.

3) The driving force behind the Constitution and many court decisions is to protect the rights of citizens.

Judges have been important in protecting our rights.

- Miranda rights
- Search & Seizure cases
- Segregation cases

Our oath to the Constitution, which every officer must take, includes a commitment to follow judicial decisions that interpret the Constitution.

\textbf{DIFFERENT CRIMINAL SYSTEMS}

\textbf{Criminal v. Civil - What is the difference?}

- In criminal cases, the state is prosecuting someone and wants a fine or incarceration. In civil cases it’s normally one person suing another, usually for money.

\textbf{Adult v. Juvenile - What is the difference?}

- The juvenile system is different from the adult system. Juveniles are booked in different facilities and also serve their sentences in different facilities.

- What is the age limit that separates a juvenile from an adult? (18)

- Until the 1990’s the most a juvenile could be incarcerated for was two years. Age limit has since been lowered for certain violent crimes and a juvenile may be tried as an adult.
Administrative Courts

This is a subcategory of the civil system which includes administrative hearings. Examples include revocation hearings, forfeiture hearings, etc.

CLASSIFICATION OF CRIMES

Definition of Crime

An act or omission forbidden by law and for which, upon conviction, a sentence of either death, imprisonment, or a fine is authorized. NMSA 1978, Section 30-1-4.

- An example of how an omission can be a crime: failure to report child abuse.

Definition of Felony - NMSA 1978, Section 30-1-6

A crime is a felony if it is so designated by law or if upon a conviction thereof a sentence of imprisonment for a term of one year or more is authorized.

Degrees of Felonies - NMSA 1978, Section 30-1-7

<table>
<thead>
<tr>
<th>Degree of felony</th>
<th>No Death</th>
<th>Death</th>
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<tbody>
<tr>
<td>Capital felony</td>
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<td>Death penalty</td>
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<tr>
<td>1st degree felony</td>
<td>9 years</td>
<td>Life = 30 years</td>
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<tr>
<td>2nd degree felony</td>
<td>3 years</td>
<td>15 years</td>
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<tr>
<td>3rd degree felony</td>
<td>18 months</td>
<td>6 years</td>
</tr>
<tr>
<td>4th degree felony</td>
<td>18 months</td>
<td>18 months</td>
</tr>
</tbody>
</table>

- The death penalty was repealed in New Mexico in 2009.

Definition of Misdemeanor - NMSA 1978, Section 30-1-6

A crime is a misdemeanor if it is so designated by law or upon conviction thereof a sentence of imprisonment in excess of six months, but less than one year is authorized.

“six months to 364 days”

Definition of Petty Misdemeanor - NMSA 1978, Section 30-1-6

A crime is a petty misdemeanor if it is so designated by law or upon conviction thereof a sentence or imprisonment for six months or less is authorized.

“six months or less”

CRIME - MISDEMEANORS AND FELONIES - SOME MORE DIFFERENCES

MISDEMEANOR

- Maximum of 364 days.
- Sentence served in local jail.
- Case heard in Metro Court.

FELONY

- One year or more.
- Sentence - State Penitentiary.
- Loses right to certain occupations.
Cannot carry a firearm for 10 years.
No voting while serving sentence
Case heard in District Court.
Habitual Offender Act.

Can a person convicted of a felony vote again in New Mexico? Yes, once their sentence is served. The law changed in 2001. NMSA 1978, Section 31-13-1.

- There is a federal law that says if you’re convicted of domestic violence, misdemeanor or felony, you cannot carry a firearm for life.

**COURTS IN NEW MEXICO**

- What crime you commit will determine which court you go to.
- What court you go to will determine where you do your time.
- We will use Bernalillo County as a model since it is the only county that has a federal court and metro court in New Mexico.

<table>
<thead>
<tr>
<th>STATE</th>
<th>FEDERAL</th>
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<tbody>
<tr>
<td>Supreme Court</td>
<td>Supreme Court</td>
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<tr>
<td>Court of Appeals</td>
<td>Court of Appeals</td>
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<tr>
<td>District Court</td>
<td>District Court</td>
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<tr>
<td>Metro Court</td>
<td>Magistrate Court</td>
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<tr>
<td>- Santa Fe</td>
<td>- Washington, D.C.</td>
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<tr>
<td>- Santa Fe</td>
<td>- Denver</td>
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<td>- Albuquerque</td>
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**THE STATE COURT SYSTEM**

- Trials are heard in the lower courts: Magistrate, Municipal, Metro, and District Court.
- A case can be appealed to the Court of Appeals and the Supreme Court. Once these courts issue an opinion, it is binding throughout New Mexico.

**Municipal v. Magistrate**

**Municipal Court** - NMSA 1978, Section 35-14-1.
- Generally refers to the City.
- Established in each incorporated municipality.
- Will hear violations of city ordinances.
- Petty Misdemeanors only.

**Magistrate Court** - NMSA 1978, Section 35-3-1
Generally refers to the County.
Will hear violation of county ordinances and state misdemeanor statutes. (Section 35-3-4)

So what is Metropolitan Court?

The City of Albuquerque used to have a Municipal Court and the County of Bernalillo had a Magistrate Court. The two courts combined in 1980 and subsequently became known as Metropolitan Court.

Metropolitan Court - NMSA 1978, Section 34-8A-1
- Established in counties with a population of more than 200,000 people.

District Court
- Hears felonies.
- Each Judicial District in New Mexico has a district courthouse.
  There are thirteen (13) judicial districts in New Mexico.
- Misdemeanor cases may be appealed to District Court.

Court of Appeals
- Reviews cases on appeal from District Court.

Supreme Court
- Final appeal in New Mexico.
- A case appealed from here goes to the US Supreme Court.

THE FEDERAL COURT SYSTEM

- Cases heard in federal court include immigration cases, cases from Indian reservations, crimes occurring across state lines, violation of federal law, federal civil rights lawsuits, etc.

Venue
- The geographic location in which a case is tried. Venue usually is in the city or county where the crime occurred. Either party may request a change of venue in order to avoid prejudice. This usually occurs in high profile cases. NMSA 1978, Section 30-1-14.

Jurisdiction
- The authority of a particular court to act. Magistrate, Municipal, and Metro Court have jurisdiction over misdemeanors, district court has jurisdiction over felonies, federal court over federal crimes.

THE CRIMINAL CASE - FROM ARREST TO CONVICTION

We will look at three different areas: 1) Before trial, 2) the trial process, and 3) after trial.
BEFORE TRIAL

Crime committed

Arrest v. non-arrest

a. Felony - generally, not always, will be an arrest.
b. Misdemeanor - must be in the presence of an officer when committed.
   a few exceptions: domestic violence, shoplifting, etc.

First Appearance Arraignment

Initial appearance - within forty-eight hours.
   Court reads charges and decides if jailhouse bond should be changed.
   Court decides if complaint has sufficient probable cause.
   Some jurisdictions use a Statement of Probable Cause.
   Court advises defendant of charges and potential punishment.

Felony - If in jail must take to Grand Jury within 10 days. Otherwise, the person is released from jail.

Misdemeanor - Must go to trial in 182 days unless there is a defense continuance. Known as the “six months rule.”

Bail

Bail serves two purposes: first, it ensures the appearance of the accused in court when summoned. Second, it allows persons who haven’t been convicted to remain free.

The Eighth Amendment to the United States Constitution prohibits excessive bail. Courts look at many factors when considering bail. The defendant’s ties to the community are important. His/her prior criminal history is considered. The nature of the offense is also considered. Does the defendant pose a danger to the community? Has defendant ever failed to appear?

District Attorney Screening

Options for the District Attorney’s office:

- PPP (Pre-Prosecution Probation) or a diversion program.
- District Attorney dismissal (also known as Nolle Prosequi or Nolle Pros)
  This is done for a number of reasons:
    1. insufficient evidence.
    2. Too old to prosecute.
3. Legal issues – search & seizure problems, Miranda, etc.
4. A felony offense needs to be refilled as a misdemeanor.

**Grand Jury & Preliminary Hearing** - Applies to felonies only

- A major difference between a felony and a misdemeanor is that a felony has a Grand Jury or Preliminary Hearing. This is where a Judge or Grand Jury decides if there is sufficient probable cause to go to trial. Some counties use a Grand Jury and some use a Preliminary Hearing.

**Grand Jury**

To indict or not to indict has the same importance as to arrest or not to arrest. The Grand Jury is a constitutional right provided by the Fifth Amendment. It has some unique features.

What does it mean to be indicted by a Grand Jury?

- Suspected criminals must be formally charged in writing. In the case of felonies, the written accusation signed by the Grand Jury is known as an **indictment**. In medieval times, this was known as “bills of indictment.”

- If the Grand Jury finds there is probable cause, they will write **true bill** on the indictment. If there isn’t probable cause, the Grand Jury will write **No Bill**. Once a Grand Jury votes true bill (8 out of 12 people are needed to vote for probable cause), the foreperson of the Grand Jury will sign the **Indictment**.

1. A Grand Jury decides if there is enough probable cause to go to trial.
2. Not open to the public.
3. Testimony in the Grand Jury is recorded.
4. Only people in the Grand Jury courtroom are prosecutors, witnesses (usually police officers), jurors and a recording secretary.
5. Defense attorneys may be present if their client testifies but only to advise their client.

**Preliminary Hearing**

1. Used in many counties in New Mexico.
2. A Judge hears evidence in open court to determine if probable cause exists to believe a person has committed a crime.
3. If probable cause exists, the Judge will “bind over” the defendant to stand trial.
4. The majority of cases are indicted or bound over. This is because the District Attorney Doesn’t want to prosecute weak cases. Also, a lower legal standard of probable cause is used.

**Motion hearings**
Normally defense attorneys file motions. If a confession or evidence can be suppressed, it helps their case.

Examples of motion hearings:

- Motion to change venue (used in high profile cases)
- Motion to suppress evidence (Example: search & seizure issues)
- Motion to suppress confession (Example: Miranda rights not read)
- Discovery issues (to get police reports or witness interviews)

Discovery means each side provides the other side with their materials. No ambush, no surprises. Each side must give the other a witness list of whom they intend to call.

Both sides can interview witnesses of the other side with one exception: the State does not have the right to interview the defendant.

After the motion hearings, the DA has to decide what to do next

Motion hearings often decide what the District Attorney (or any other prosecutor) is going to do with a case. The District Attorney has numerous options

- Dismiss case. (because key evidence was suppressed)
- Plea Agreement.
- Go to trial.

**Plea bargaining** - A fact of life

The great majority of cases, perhaps 95 to 98%, are plea bargained. Advantages of plea bargaining for the prosecutor:

- to use testimony of one defendant against another.
- saves courtroom time.
- is a conviction.

Advantages of plea bargaining for the defendant:

- Legally binding guarantees on sentencing.

**THE TRIAL PROCESS**

**TRIAL**

Trials are probably the most fascinating aspect of the criminal justice system, especially when a jury is involved. Who is telling the truth? Trials are governed by the Rules of Criminal Procedure and the Rules of Evidence. The Rules of Evidence decides whether something is admissible or not.
Legal principles of the Criminal Justice System

One theme seen throughout the legal system is a focus on individual rights. This theme, strongly noted in the Bill of Rights, guides our Judges in their decisions and is also the basis of many of our legal principles. Some of these principles follow:

The “Big Picture” - Judge, Prosecutor and Defense Attorney

- **Role of the Judge** - to be impartial.
- **Role of Prosecutor** - to seek justice, represents state.
- **Role of Defense Attorney** - to zealously represent his or her client

The role of defense attorneys is to challenge the State, to make sure the State has met its burden of proof. Some people question defense attorneys and ask how they can defend people they know are guilty.

But that’s the wrong question. It’s not the role of defense attorneys to decide the guilt or innocence of their clients. Their role is to make sure the State has provided sufficient evidence to meet its burden of proof.

Burden of Proof

The State has the burden of proof – the burden of bringing forth evidence to prove a defendant is guilty. The State must bring in witnesses and evidence to prove a defendant is guilty. The defendant does not have to prove he or she is not guilty or didn’t do the crime. The burden is on the State to prove guilt.

Presumed Innocent

A criminal defendant at trial is presumed innocent. This presumption remains until the State presents evidence to refute this.

The Jury System

The Constitution guarantees a jury trial for most criminal cases.

Beyond a Reasonable Doubt

This is the highest burden of proof in the legal system. There is an old saying that goes like this: Better a hundred guilty people go free than one innocent person convicted. Our legal system places a high priority on protecting the rights of the individual.
**Rules of Criminal Procedure**

Different courts - Metro, Magistrate, District - have different rules of criminal procedure. These rules govern how a case proceeds in the courts, from start to finish. They cover everything from the filing of a criminal complaint to discovery requirements. Many cases that are lost or dismissed prior to trial fail because of some violation of the rules of procedure. (Failure to provide discovery, failure to start a trial within six months, etc.).

Rules of Procedure govern many things. For example, District Court Rules of Criminal Procedure, Rule 5-211 deals with search warrants. It states: “A search warrant shall be executed within ten (10) days after the date of issuance.” Failure to do so, to follow this rule, may result in suppression of evidence seized by a search warrant.

- **Rule 5** - Rules of Criminal Procedure for District Court.
- **Rule 7** - Rules of Criminal Procedure for Metropolitan Court.

**NOTE:**

These rules can be found in the New Mexico Criminal and Traffic Law Manual.

**OUTLINE OF A TRIAL**

This topic will be covered extensively in another class (Trial testimony, Peace Officer as Prosecutor).

Every trial, whether a DWI or murder, has the following format:

1. Voir Dire.  (Jury Selection)
2. Opening argument.
   - Each side gives an outline of what they believe the evidence will show.
3. Direct examination.
5. Closing argument.
   - state
   - defense
   - state

**A HUNG JURY**

Sometimes jurors fail to reach a decision. This is known as a hung jury. A Judge will declare a **mistrial**. The prosecutor will decide whether to retry the case or not.

**VERDICT**

1. Guilty.
2. Not guilty.
3. Not guilty by insanity.

Note the verdict says not guilty instead of innocent. The jury may feel the person did the crime but that the prosecution failed to meet its burden in finding the defendant guilty beyond a reasonable doubt. In some jurisdictions the verdict forms read GUILTY or NOT PROVEN.

There used to be another possible verdict called Guilty but Mentally Ill but this was eliminated in 2010.

**AFTER TRIAL**

Sentencing - Sentencing is done by the Court.

**PROBATION AND PAROLE**

- Instead of jail or prison, a person is given probation.

- Parole is given to a person being released from prison. It’s to help a person adjust or reintegrate with the community.

**COURTS & CORRECTIONS**

What court you go to will determine where you do your time.

(Juvenile – Juvenile facility, misdemeanor – local jail, felony – penitentiary)

**ADULT CORRECTIONS SYSTEM** - **FELONY**

Department of Corrections can classify inmates to determine where to send them.

1) Penitentiary of New Mexico - Santa Fe (the maximum prison).

2) There are also private correctional facilities.

3) Female inmates are in a separate prison.

**THE LAW ENFORCEMENT TEAM**

Dispatch - Field Officer - Detective - ADA = TEAM

1) Dispatch - Radio will dispatch officers.
2) Field Officer - Apprehend offenders, initiate investigation.
3) Detective - Follow up investigation.
4) ADA - Prosecute cases.

People may specialize in different areas but we’re all part of the law enforcement team. It’s important to work together and respect one another. Our ultimate goal is justice.

THE LAW ENFORCEMENT FAMILY

One thing that surprises new officers is how extensive the law enforcement family is. There are many different agencies. We need to make every effort to work with each agency, to share credit and respect the other person, and remember that our duty and responsibility is to serve the public. Some of the agencies follow:

The Prosecution

Prosecutors have different names depending on which agency they work for:

<table>
<thead>
<tr>
<th>Level</th>
<th>Title</th>
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</thead>
<tbody>
<tr>
<td>City</td>
<td>Assistant City Attorney</td>
</tr>
<tr>
<td>County</td>
<td>Assistant County Attorney</td>
</tr>
<tr>
<td>District</td>
<td>Assistant District Attorney</td>
</tr>
<tr>
<td>State</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Federal</td>
<td>Assistant US Attorney</td>
</tr>
</tbody>
</table>

- The Attorney General represents the State in civil or criminal actions against the state. The AG also acts as a legal advisor to state agencies and provides investigative assistance to local agencies.

Federal and Tribal Agencies

To name a few: FBI, BIA, IRS, Postal Inspectors, DEA, US Forest Service, ATF, US Marshall, military police, and many others.

State Agencies

To name a few state agencies: Game and Fish, Livestock Inspectors, State Parks, Board of Pharmacy, state regulatory agencies, and many others.

Department of Public Safety

Under the Department of Public Safety (DPS) we have three major agencies: the State Police, the Special Investigations Division (SID), and the Motor Transportation Division (MTD). Also under DPS is the nationally recognized and highly respected Law Enforcement Academy.

CONCLUSION

What has been presented is an introduction to a complex subject. The Criminal Justice system is a fascinating area.