



**EIILM UNIVERSITY**  
S I K K I M

## **FORENSIC PSYCHOLOGY**

**SYLLABUS**

Forensic Psychology: Introduction and overview, Historical Perspective, Fields of Forensic Psychology, Education and Training, Global perspective in the field of forensic science: - history, development, education and training

Organizational setup of forensic science lab and other national & international agencies: - FSL, CFSL, GEQD, FPB, NICFS, CID, CBI, Central Detective Training Schools, NCRB, NPA, Mobile Forensic Science Laboratories, IB, CPO, FBI, CIA, CSI, DAB, DEA, Bureau of Alcohol, Tobacco and Firearms.

Psychology and law, Understanding the role and duties of criminal investigators, qualification of a forensic scientist, Ethical Issues in Forensic Science: - defining ethics, professional standards for practice of criminalistics, code of conduct for expert witnesses, sanction against expert for unethical conduct, Expert witness, Civil commitment

Forensic Medicine: Global Medical Jurisprudence, Legal Procedure in India: - Police inquest, Magistrate's inquest, Coroner's inquest, Oath and affirmation. Documentary evidence: - Medical certificates, medical reports, dying declaration. Understanding laws and ethics of medical practice

**Suggested Readings:**

1. David Canter, Forensic Psychology, Oxford University Press
2. Alan M. Goldstein, Handbook of Psychology, Forensic Psychology, John Wiley & Sons
3. Curt R. Bartol, Introduction to Forensic Psychology: Research and Application, Sage Publications (CA)
4. Joshua Duntley, Evolutionary Forensic Psychology: Darwinian Foundations of Crime and Law, Oxford University Press

## **INTRODUCTION AND OVERVIEW [MH]**

### **Forensic psychology [h]**

Forensic psychology is the intersection flanked by psychology and the justice system. It involves understanding criminal law in the relevant jurisdictions in order to be able to interact appropriately with judges, attorneys and other legal professionals. A significant aspect of forensic psychology is the skill to testify in court, reformulating psychological findings into the legal language of the courtroom, providing information to legal personnel in a method that can be understood. Further, in order to be a credible witness, for instance in the United States, the forensic psychologist necessarily understand the philosophy, rules, and standards of the American judicial system. Primary is an understanding of the adversarial system. There are also rules in relation to the hearsay proof and most importantly, the exclusionary rule. Lack of a firm grasp of these procedures will result in the forensic psychologist losing credibility in the courtroom. A forensic psychologist can be trained in clinical, social, organizational, or any other branch of psychology. In the United States, the salient issue is the designation through the court as an expert witness through training, experience or both through the judge. Usually, a forensic psychologist is designated as an expert in a scrupulous jurisdiction. The number of jurisdictions in which a forensic psychologist qualifies as an expert increases with experience and reputation. Forensic neurophysiologists are usually asked to appear as expert witnesses in court to discuss cases that involve issues with the brain or brain damage. They also deal with issues of whether a person is legally competent to stand trial.

According to R.J. Gregory in *Psychological Testing: History, Principles, and Application*, the main roles of a psychologist in the court system are eight-fold:

- Evaluation of possible malingering
- Assessment of mental state for insanity plea
- Competency to stand trial
- Prediction of violence and assessment of risk
- Evaluation of child custody in divorce
- Assessment of personal injury
- Interpretation of polygraph data
- Specialized forensic personality assessment

Questions asked through the court of a forensic psychologist are usually not questions concerning psychology but are legal questions and the response necessity be in language the court understands. For instance, a forensic psychologist is regularly appointed through the court to assess a defendant's competency to stand trial. The court also regularly appoints a forensic psychologist to assess the state of mind of the defendant at the time of the offense. This is referred to as an evaluation of the defendant's sanity or insanity (which relates to criminal responsibility) at the time of the offense. These are not primarily psychological questions but rather legal ones. Therefore, a forensic psychologist necessity is able to translate psychological information into a legal framework.

Forensic psychologists give sentencing recommendations, treatment recommendations, and any other information the judge requests, such as information concerning mitigating factors, assessment of future risk, and evaluation of witness credibility. Forensic psychology also involves training and evaluating police or other law enforcement personnel, providing law

enforcement with criminal profiles and in other methods working with police departments. Forensic psychologists work both with the Public Defender, the States Attorney, and private attorneys. Forensic psychologists may also help with jury selection.

### **Professional Opportunities in Forensic Psychology[h]**

There are numerous professional positions and employment possibilities for forensic psychologists. They can be practiced at many different employment settings.

#### ***Academic Research [Sh]***

Academic forensic psychologists engage in teaching, research, training, and supervision of students, and other education-related activities. These professionals usually have an advanced degree in Psychology (most likely a PhD). While their main focus is research, it is not unusual for them to take on any of the other positions of forensic psychologists. These professionals may be employed at several settings, which contain colleges and universities, research institutes, government or private agencies, and mental health agencies. Forensic psychology research pertains to psychology and the law, whether it is criminal or civil. Researchers test hypotheses empirically and apply the research on issues related to psychology and the law. They may also conduct research on mental health law and policy evaluation. Some well-known psychologists in the field contain Saul Kassin, very widely-recognized for studying false confessions, and Elizabeth Loftus, recognized for her research on eyewitness memory. She has provided expert witness testimony for several cases.

#### ***Consultant to Law Enforcement [Sh]***

Forensic psychologists also assist with law enforcement. They work in collaboration with the police force or other law enforcement agencies. Law enforcement psychologists are responsible for assisting law enforcement personnel. They are regularly trained to help with crisis intervention, including post-trauma and suicide. Other duties of law enforcement psychologists contain development of police training programs, stress management, personnel management, and referral of departmental personnel as well as their families for specialized treatment and counseling. Of course, ethical issues may arise, such as the question of which the client is (the police officer referred or the department, in regards to confidentiality).

#### ***Correctional Psychologist [Sh]***

Correctional psychologists work with inmates and offenders in correctional settings. They serve both the role of an evaluator and a treatment

provider to those who have been imprisoned or on parole or probation. Correctional psychologists may also take on the role of researcher or expert witness.

### ***Evaluator [Sh]***

These forensic psychologists take on the role of evaluating parties in criminal or civil cases on mental health issues related to their case. For criminal cases, they may be described on to evaluate issues including, but not limited to, the defendants' competency to stand trial, their mental state at the time of the offense (insanity), and their risk for future violent acts. For civil cases, they may be described on to evaluate issues including, but not limited to, an individual's psychological state after an accident or the families of custody cases. Any assessment made through an evaluator is not measured a counseling session, and so whatever is said or done is not confidential. It is the obligation of the evaluator to inform the parties that everything in the session will be open to scrutiny in a forensic report or expert testimony. Evaluators work closely with expert witnesses as several are described into court to testify with what they have come to conclude from their evaluations. They have a diversity of employment settings, such as forensic and state psychiatric hospitals, mental health centers, and private practice. Evaluators usually have had training as clinical psychologists.

### ***Expert witness [Sh]***

Unlike fact witnesses, who are limited to testifying in relation to what they know or have observed, expert witnesses have the skill to express opinion because, as their name suggests, they are presumed to be "experts" in a certain topic. They possess specialized knowledge in relation to the topic. Expert witnesses are described upon to testify on matters of mental health (clinical expertise) or other areas of expertise such as social, experimental, cognitive, or developmental. The role of being an expert witness is not primary and it is usually performed in conjunction with another role such as that of researcher, academic, evaluator, or clinical psychologist. Clinical forensic psychologists evaluate a defendant and are then described upon as expert witnesses to testify on the mental state of the defendant. In the past, expert witnesses primarily served the court rather than the litigants. Nowadays, that very rarely happens and most expert witness recruitment is done through trial attorneys. But regardless of who calls in the expert, it is the judge who determines the acceptability of the expert witness. All ethical expert witnesses' necessity is able to resolve the issue of relating to the case and being an advocate. They necessity decide flanked by loyalty to their field of expertise or to the outcome of the case.

### ***Treatment Provider [Sh]***

Treatment providers are forensic psychologists who administer psychological intervention or treatment to individuals in both criminal and civil cases who require or request these services. In criminal proceedings, treatment providers may be asked to give psychological interventions to individuals who require treatment for the restoration of competency, after having been determined through the courts as incompetent to stand trial. They may be asked to give treatment for the mental illness of those deemed insane at the crime. They may also be described to administer treatment to minimize the likelihood of future acts of violence for individuals who are at a high risk of committing a violent offense. As for civil proceedings, treatment providers may have to treat families going through divorce and/or custody cases. They may also give treatment to individuals who have suffered psychological injuries due to some kind of trauma. Treatment providers and evaluators work in the same types of settings: forensic and state psychiatric hospitals, mental health centers, and private practice. Not surprisingly, their work may greatly overlap. And although not ethically encouraged, the same forensic psychologist may take on both the role of treatment provider and evaluator for the same client.

### ***Trial Consultant [Sh]***

Forensic psychologists often are involved in trial consulting. A trial consultant, a jury consultant, or a litigation consultant, are social scientists who work with legal professionals such as trial attorneys to aid in case preparation, which comprises selection of jury, development of case strategy, and witness preparation. They rely heavily on research. Trial consultants may also attend seminars directed at the improvement of jury selection and trial presentation skills. Becoming a trial consultant does not necessarily require a doctoral degree or even a bachelor's degree. All that is really needed is some level of training. Trial consultants are faced with several ethical issues. They are not only social scientists; they may be entrepreneurs as well, marketing their business and keeping fixed costs. This is a challenge to their ethical responsibilities as applied researchers who need to be following guidelines of ethical research. Trial consultants are hired through attorneys and conflicts may arise when each party has a different viewpoint on a certain issue, such as which prospective jurors should be excused, whether the jurors' preferences are appropriate for the case or not, etc. they necessity always keep in mind that they are employees of the attorneys and are not able to create the ultimate decisions concerning the case.

### **Distinction flanked by forensic and therapeutic evaluation [h]**

A forensic psychologist's interactions with and ethical responsibilities to

the client differ widely from those of a psychologist dealing with a client in a clinical setting.

- Scope. Rather than the broad set of issues a psychologist addresses in a clinical setting, a forensic psychologist addresses a narrowly defined set of events or interactions of a non-clinical nature.
- Importance of client's perspective. A clinician places primary importance on understanding the client's unique point of view, while the forensic psychologist is interested in accuracy, and the client's viewpoint is secondary.
- Voluntariness. Usually in a clinical setting a psychologist is dealing with a voluntary client. A forensic psychologist evaluates clients through order of a judge or at the behest of an attorney.
- Autonomy. Voluntary clients have more latitude and autonomy concerning the assessment's objectives. Any assessment usually takes their concerns into account. The objectives of a forensic examination are confined through the applicable statutes or common law elements that pertain to the legal issue in question.
- Threats to validity. While the client and therapist are working toward a common goal, although unconscious distortion may occur, in the forensic context there is a considerably greater likelihood of intentional and conscious distortion.
- Relationship and dynamics. Therapeutic interactions work toward developing a trusting, empathic therapeutic alliance, a forensic psychologist may not ethically nurture the client or act in a "helping" role, as the forensic evaluator has divided loyalties and there are substantial limits on confidentiality he can guarantee the client. A forensic evaluator necessarily always is aware of manipulation in the adversary context of a legal setting. These concerns mandate an emotional aloofness that is unlike a therapeutic interaction.
- Pace and setting. Unlike therapeutic interactions which may be guided through several factors, the forensic setting with its court schedules, limited resources, and other external factors, place great time constraints on the evaluation without opportunities for reevaluation. The forensic examiner focuses on the importance of accuracy and the finality of legal dispositions.

### **Forensic psychology practice [h]**

The forensic psychologist views the client or defendant from a different point of view than does a traditional clinical psychologist. Seeing the situation from the client's point of view or "empathizing" is not the forensic psychologist's task. Traditional psychological tests and interview procedure are not enough when applied to the forensic situation. In forensic evaluations,



it is significant to assess the consistency of factual information crossways multiple sources. Forensic evaluator's necessity is able to give the source on which any information is based. While psychologists infrequently have to be concerned in relation to the malingering or feigning illness in a non-criminal clinical setting, a forensic psychologist necessity is able to recognize exaggerated or faked symptoms. Malingering exists on a continuum so the forensic psychologist necessity is skilled in recognizing varying degrees of feigned symptoms.

Forensic psychologists perform a wide range of tasks within the criminal justice system. Through distant the largest is that of preparing for and providing testimony in the court room. This task has become increasingly hard as attorneys have become sophisticated at undermining psychological testimony. Evaluating the client, preparing for testimony, and the testimony itself require the forensic psychologist to have a firm grasp of the law and the legal situation at issue in the courtroom, using the Crime Classification Manual and other sources. This knowledge necessity is integrated with the psychological information obtained from testing, psychological, and mental status exams, and appropriate assessment of background materials, such as police reports, prior psychiatric or psychological evaluations, medical records and other accessible pertinent information.

### ***Malingering [Sh]***

An overriding issue in any type of forensic assessment is the issue of malingering and deception. A defendant may be intentionally faking a mental illness or may be exaggerating the degree of symptomatology. The forensic psychologist necessity always keeps this possibility in mind. It is significant if malingering is suspected to observe the defendant in other settings as it is hard to maintain false symptoms uniformly over time. In some cases, the court views malingering or feigning illness as obstruction of justice and sentences the defendant accordingly. In *United States v. Binion*, malingering or feigning illness throughout a competency evaluation was held to be obstruction of justice and led to an enhanced sentence. As such, fabricating mental illness in a competency-to-stand-trial assessment now can be raised to enhance the sentencing level following a guilty plea.

### ***Competency evaluations [Sh]***

If there is a question of the accused's competency to stand trial, a forensic psychologist is appointed through the court to examine and assess the individual. The individual may be in custody or may have been released on bail. Based on the forensic assessment, a recommendation is made to the court whether or not the defendant is competent to proceed to trial. If the defendant is measured incompetent to proceed, the report or testimony will contain recommendations for the interim period throughout which an effort at restoring the individual's competency to understand the court and legal

proceedings, as well as participate appropriately in their protection will be made. Often, this is an issue of commitment, on the advice of a forensic psychologist, to a psychiatric treatment facility until such time as the individual is deemed competent.

As a result of *Ford v. Wainwright*, a case through a Florida inmate on death row that was brought before the Supreme Court of the United States, forensic psychologists are appointed to assess the competency of an inmate to be executed in death penalty cases.

### ***Sanity evaluations [Sh]***

The forensic psychologist may also be appointed through the court to evaluate the defendant's state of mind at the time of the offense. These are defendants who the judge, prosecutor, or public defender considers, through personal interaction with the defendant or through reading the police report, may have been significantly impaired at the time of the offense. In other situations, the protection attorney may decide to have the defendant plead not guilty through cause of insanity. In this case, usually the court appoints forensic evaluators and the protection may hire their own forensic expert. In actual practice, this is rarely a plea in a trial. A plea for insanity is actually used in only 1 in 1000 cases. Assessments that would be used can contain the Mental State at time of Offense (MSO), an assessment that judges the individual's mental state when the offense was committed, helping to decide whether they should be held liable for the crime. The individual can also plea 'Not Guilty through Cause of Insanity' (NGRI) or 'Guilty but Mentally Ill' (GBMI), cases where the individual will start their sentence in a mental health facility and then complete it in a correctional facility. Usually any judgments in relation to the defendant's state of mind at the time of the offense are made through the court before the trial process begins.

### ***Sentence mitigation [Sh]***

Even in situations where the defendant's mental disorder does not meet the criteria for a not guilty through cause of insanity protection, the defendant's state of mind at the time, as well as relevant past history of mental disorder and psychological abuse can be used to effort a mitigation of sentence. The forensic psychologist's evaluation and report is a significant element in presenting proof for sentence mitigation. In *Hamblin v. Mitchell*, 335 F.3d 482, the Sixth Circuit Court of Appeals reversed the decision of a lower court because counsel did not thoroughly investigate the defendant's mental history in preparation for the sentencing phase of the trial. Specifically, the court stated that such investigation should contain members of the defendant's immediate and extended family, medical history, and family and social history (including physical and mental abuse, domestic violence, exposure to traumatic events and criminal violence). This issue was further addressed in *Wiggins v. Smith* and *Bigby v. Dretke*.

### ***Other evaluations [Sh]***

Forensic psychologists are regularly asked to create an assessment of an individual's dangerousness or risk of re-offending. They may give information and recommendations necessary for sentencing purposes, grants of probation, and the formulation of circumstances of parole, which often involves an assessment of the offender's skill to be rehabilitated. They are also asked questions of witness credibility and malingering. Occasionally, they may also give criminal profiles to law enforcement.

Due to the Supreme Court decision upholding involuntary commitment laws for predatory sex offenders in *Kansas v. Hendricks*; it is likely that forensic psychologists will become involved in making recommendations in individual cases of end-of-sentence civil commitment decisions.

### ***Ethical implications [Sh]***

A forensic psychologist usually practices within the confines of the courtroom, incarceration facilities, and other legal setting. It is significant to keep in mind that the forensic psychologist is equally likely to be testifying for the prosecution as for the protection attorney. A forensic psychologist does not take a side, as do the psychologists described below. The ethical standards for a forensic psychologist differ from those of a clinical psychologist or other practicing psychologist because the forensic psychologist is not an advocate for the client and nothing the client says is guaranteed to be kept confidential. This creates evaluation of the client hard, as the forensic psychologist needs and wants to obtain all information while it is often not in the client's best interest to give it. The client has no control over how that information is used. Despite the signing of a waiver of confidentiality, most clients do not realize the nature of the evaluative situation. Furthermore, the interview techniques differ from those typical of a clinical psychologist and require an understanding of the criminal mind and criminal and violent behavior. For instance, even indicating to a defendant being interviewed that an effort will be made to get the defendant professional help may be grounds for excluding the expert's testimony.

In addition, the forensic psychologist deals with a range of clients unlike those of the average practicing psychologist. Because the client base is through and large criminal, the forensic psychologist is immersed in an abnormal world. As such, the population evaluated through the forensic psychologist is heavily weighted with specific personality disorders.

The typical grounds for malpractice suits also apply to the forensic psychologist, such as wrongful commitment, inadequate informed consent, duty, and breach of duty, and standards of care issues. Some situations are clearer cut for the forensic psychologist. The duty to warn, which is mandated through several states, is usually not a problem because the client or defendant has already signed a release of information, unless the victim is not clearly recognized and the issue of the identifiability of the victim arises. Though, in

general the forensic psychologist is less likely to encounter malpractice suits than a clinical psychologist. The forensic psychologist does have some additional professional liability issues. As mentioned above, confidentiality in a forensic setting is more complicated than in a clinical setting as the client or defendant is apt to misinterpret the limits of confidentiality despite being warned and signing a release.

## **HISTORICAL PERSPECTIVE [MH]**

### **Key People In The History Of Forensic Psychology [h]**

#### ***J. McKeen Cattell – Studied the psychology of testimony. [Sh]***

Throughout these experiments, he asked 56 students a series of questions that are similar to the types commonly used in a trial setting. After giving respondents 30 seconds to think in relation to their answers, Cattell asked them how confident they were in relation to their answers. Despite the fact that eyewitness testimony was already whispered to be unreliable, Cattell admitted that he was surprised through the amount of inaccuracies there were among participating students

#### ***Hugo Munsterberg – Often described the first Forensic Psychologist [Sh]***

Professor Hugo Munsterberg, in this book “On the Witness Stand,” in which is composed a series of magazine articles previously published through him, pointed the method to rational and scientific means for probing facts attested through human witnesses, through the application of Experimental Psychology to the administration of law. Psychology had been classified as a pure science. Experimental methods, to the development of which Munsterberg, made notable contribution, have lifted this branch of knowledge into the classification of applied sciences. Applied Psychology can be employed in several fields of practical life — education, medicine, art, economics, and law. Experience has demonstrated that “certain chapters of Applied Psychology” are sources of help and strength for workers in several practical fields, but, says Professor Munsterberg — “The lawyer alone is obdurate. The lawyer and the judge and the juryman are sure that they do not need the experimental psychologist . . . They go on thinking that their legal instinct and their common sense supplies them with all that is needed and somewhat more . . . Just in the line of the law it so seems necessary not to rely simply on the technical statements of scholarly treatises, but to carry the discussion in the most popular form possible before the wider tribunal of the general reader.”

***Alfred Bient – His work in psychological testing served as a basis of several modern assessments [Sh]***

Inspired through Cattell's work, Alfred Binet replicated Cattell's research and studied the results of other psychology experiments that applied to law and criminal justice. His work in intelligence testing was also significant to the development of forensic psychology, as several future assessment tools were based on his work.

***William Stern [Sh]***

Psychologist William Stern also studied witness recall. In one experiment, students were asked to summarize a dispute they witnessed flanked by two classmates. Stern exposed that errors were common among the witnesses, concluding that emotions decrease the accuracy of witness recall. Stern sustained to study issues nearby testimony and later established the first academic journal devoted to applied psychology.

***William Marston [Sh]***

William Marston created not only her lasso of truth but also the systolic blood pressure test that is the predecessor to the modern lie detector. Marston was a graduate in psychology and a law degree holder. He got the thought for a lie discovery machine based upon blood pressure after his wife, Elisabeth, suggested to him that "When she got mad or excited, her blood pressure seemed to climb." Marston eventually created his systolic blood pressure test, and according to Marston, he and his colleagues tested a total of 100 criminal cases in Boston criminal court, and his systolic blood pressure test led to correct determinations in 97 of them. Dr. Marston soon thereafter either coined the phrase "lie detector" himself or adopted it from a reporter to whom he described the wonders of his device.

After World War I, Marston pursued an academic career, and he appeared as an expert witness in the now well-known 1923 *Frye* case, in which the protection unsuccessfully attempted to introduce his expert testimony as to the innocence of the defendant on the basis of his systolic blood pressure test. Frye was accused of murder in the District of Columbia and, after first denying all knowledge of the event, confessed and provided police with correct details of the killing. A few days later, Frye recanted the confession, claiming that he admitted to the crime because he had been promised a share of the reward for his own conviction. Marston then gave Frye his deception test in a D.C. jail and found his claim of innocence to be entirely truthful. When Marston was introduced as an expert witness at trial, the presiding judge excluded the proof on the grounds that the test had been administered in jail 10

days before Frye testified in court and that it was irrelevant to the veracity of his testimony. Frye was convicted of murder. The case was appealed on the ground that the trial judge erroneously excluded Marston's testimony.

### **Early Research In Forensic Psychology [h]**

The birth place of Forensic Psychology is the Leipzig in Germany. The world's first psychological laboratory was founded in Leipzig through Wilhelm Wundt. At Leipzig laboratory sensory and behavioral phenomena were both measured and subjected to experimental manipulation. Wundt urbanized experimental psychology in his laboratory with both theories oriented and applied goals. His refined techniques and the instruments that he devised helped his students a lot. His students spread through Europe and equipped with his techniques and instruments began to demonstrate the applications of psychology to day to day life including matters affecting the law. Other students came from the Old and New Worlds to study under Wundt and on return they made lasting contributions of relevance to jurists. Cattell as mentioned earlier examined experimentally the nature of testimony and revealed the effects of situational and individual differences. Cattell's early experimental work into human testimony in 1893 generated considerable interest among researchers including Binet.

Cattell posed a series of questions to students at Colombia University, asking them to give a response and rate their degree of confidence in their answer. Cattell's results indicated a surprising degree of inaccuracy, which generated interest among other psychologists who went on to conduct experiments on eyewitness testimony. Inspired through Cattell's work, Alfred Binet replicated Cattell's research in France and studied the results of other psychology experiments that applied to law and criminal justice. His work in intelligence testing was also significant to the development of Forensic Psychology, as several further assessment tools were based on his work. Alfred Binet (1857 – 1911) helped to found the first psychological laboratory in France at Sorbonne, Paris in 1889. Having studied both medicine and law, he was well placed to apply psychology to legal problems, and his work greatly influenced French legal thinking.

Like Cattell he was initially interested in the psychological nature of testimony, but later turned to the study of intellectual assessment for which he is better recognized. In collaboration with Theodore Simon he is credited with developing the world's first intelligence test as psychometric instrument. This was intended specifically for identifying children of "defective intelligence", a purpose which gained considerable forensic importance in the UK in the second half of the 19th century. The undoubted value of the Binet - Simon test for several educational purposes created a wide spread demand through out the Western world and had wide-reaching forensic implications. One of the first

people to study Forensic Psychology was William Stern in 1901. This study was the foundation for research into the reliability of eyewitness testimony in court cases. Stern determined from his study that in general, recall memories are inaccurate; the more time flanked by seeing the picture and being asked to recall it, the more errors were made.

People especially recalled false information when the experimenter gave them a leading question such as, "Did you see the man with knife?" The person would answer "yes", even if there was no knife present. Leading questions are often used in police interrogations and in questioning witnesses. Stern sustained to study issues nearby testimony and later established the first academic journal devoted to applied psychology.

### **Forensic Psychology In The Courts [h]**

Throughout this time, psychologists were also beginning to act as expert witnesses in criminal trials throughout Europe. In 1896, a psychologist through the name Albert von Schrenck-Notzing testified at a murder trial in relation to the effects of suggestibility on witness testimony. Hugo Munsterberg's ardent belief that psychology had practical applications in everyday life also contributed to the development of Forensic Psychology. In 1908, Munsterberg published his book '*On the Witness Stand*', advocating the use of psychology in legal matters. Munsterberg was usually disliked through several of his peers in psychology and through much of the legal community. Despite these dislikes, Munsterberg sustained to advance the frontiers of Forensic Psychology, introducing hypnosis into the courtroom, and conducting experimental work directed at contemporary problems of proof. Munsterberg followed Cattell back to the USA in 1892. He setup a psychological laboratory at Harvard and actually attempted to introduce applied psychology into the American courtrooms.

After Munsterberg's death in 1916, his place in experimental psychology was taken through Judd, a student of Wundt. He established a laboratory at Yale and invented refined experimental techniques and devised instruments for contributing to Forensic Psychology. In 1911 another of Wundt's pupils, Professor Karl Marbe, created legal history through demonstrating in court the phenomenon of reaction time in a civil action, proving to the court's satisfaction that the engine driver assumed to be responsible for a railway accident could not have stopped train in time to avert disaster. Marbe was the first psychologist to testify at a civil trial. He also testified in a criminal trial. The first published case where an American psychologist qualified as an expert witness was in 1921. The psychologist had been conducting research into the juvenile delinquency and concluded that the twelve year old attempted rape victim in the case was a '*moron*' and could not be whispered. The psychologist testimony was rejected through the court which noted, 'It is yet

to be demonstrated that psychological and medical tests are practical, and will detect lies on the witness stand’.

This court rejection of the psychological proof may have discouraged other psychologists from testifying. It was not until the late 1940s or early 1950s that psychologists began to testify regularly in the American courts. Though, according to Valciukas, psychologists in the USA were not admitted as expert witnesses on mental disorder until 1962 and on issues of competency until two decades later. An American version of the Binet-Simon test was prepared and issued as the Stanford-Binet test, and later updated through the Terman and Merrill (1937) version of that test. Translated into several other languages, it became the standard test of juvenile intelligence until the introduction of the Wechsler Intelligence Scale for Children. The latter was based on a totally different system and was easier both to use and to explain to the juvenile courts. But in the UK, school medical officers sustained to use the Terman-Merrill version of the Stanford-Binet Test in carrying out their legal responsibilities under the 1944 Education Act for many decades of the post-war period.

The usefulness of Binet-type psychometrics was so well established that the American Psychological Association (APA) was asked to devise tests for use in recruitment for the armed forces. The result was that there appeared the first group tests of intelligence, the Alpha for literates and Beta for both literates and persons unable to understand English language. The Alpha Test alone was used on almost 2 million recruits, and retained for Army use postwar. Gray cites the several benefits which accrued to applied psychology from the use of the so described Army Tests. They enabled the practical usefulness of psychological tests to become widely recognized to the general public. Because group testing was so economical compared with individual testing, several of the private schools, smaller institutions, commercial companies, and other organisations could afford to adopt them for their scrupulous use. They initiated a rapid growth of new group tests. The group tests were devised through those who contributed to the original APA test items. The need for the standardization and validation of the new tests required new statistical techniques. This established statistics as a necessary subject in all psychology courses.

Although Munsterberg had introduced the first vocational test as early as 1910, it was the success of the Army Tests (Army Alpha & Army Beta) in selecting men and women for specific functions within the armed services which expanded group testing nationwide. Such a national test movement made the judiciary to become aware of it. Ultimately this awareness made it possible in due course to introduce test results into the courtroom with an acceptance. One other pioneer of Forensic Psychology who deserves mention is William Marston. He was a student of Munsterberg. In 1922 he became the first American Professor of legal psychology. As a student of Munsterberg, he maintained the custom established through Wundt. He sustained Wundt’s experimental work on the physiological effects of deception. In 1917, Marston



found the systolic blood pressure had strong correlation to lying. In lie discovery this polygraph is used even today.

Marston testified in 1923 in the case of *Frye vs. United States.*: This case is important because it established the precedent for the use of expert witness in Courts.

### ***Forensic Psychology in the Armed Force Services [Sh]***

Throughout the interwar years no important advance in Western Forensic Psychology appears to have taken place. But the Second World War created an unprecedented demand for applied psychologists. (A special innovation was the development of military psychology). The military psychologists were needed for selection programmes as well as for operational research. They were also occupied in criminal investigation for ultimate purpose of prosecution of war criminals. This wartime experience made the courts more favorably inclined to see the relevance of psychological proof.

## **FIELDS OF FORENSIC PSYCHOLOGY [MH]**

### **Clinical Psychology And Its Relation To Forensic Psychology [h]**

Clinical Psychology is an integration of science, theory, and clinical knowledge for the purpose of understanding, preventing, and relieving psychologically based distress or *dysfunction* and to promote subjective *well-being* and personal development. Central to its practice are *psychological assessment* and *psychotherapy*, although clinical psychologists also engage in research, teaching, consultation, forensic testimony, and programme development and administration. In several countries, clinical psychology is a regulated *mental health profession*.

The field is often measured to have begun in 1896 with the opening of the first psychological *clinic* at the *University of Pennsylvania* through *Lightner Witmer*. In the first half of the 20th century, clinical psychology was focused on psychological assessment, with little attention given to treatment. This changed after the 1940s when World War II resulted in the need for a large augment in the number of trained clinicians. Since that time, two main educational models have urbanized – the *Ph.D. science-practitioners model* (focusing on research) and the *Psy. D., practitioner-scholar model* (focusing on clinical practice). Clinical psychologists are now measured experts in providing psychotherapy, and usually train within four primary theoretical orientations – *psychodynamic, humanistic, behaviour therapy / cognitive behavioral, and systems or family therapy*.

### ***Clinical Psychology and Forensic Psychology [Sh]***

Within the general field of psychology there are a wide range of different disciplines. Two such disciplines are Clinical Psychology and Forensic Psychology. *Clinical Psychology* differs from Forensic Psychology in that the general purpose of Clinical Psychology is to diagnose and treat psychological dysfunction, whereas the purpose of Forensic Psychology is to give the psychological assessments in legal situations. A clinical psychologist is bound through an oath of confidentiality to the patients that he sees and is motivated through a desire to help those patients find accurate diagnosis and appropriate treatment for any emotional or mental issue that is disrupting their lives. A Forensic Psychologist acts in the capability of an expert witness in psychological matters as they relate to criminal proceedings.

Clinical Psychology and Forensic Psychology both got their start in the same general time period, the late 1800s. The first true clinical psychologist was Lightner Witmer, who was a former student of Wilhelm Wundt, the 'Father of Psychology'. Witmer was the head of the Psychology Department at the University of Pennsylvania when he began this ground breaking work with a boy that had trouble spelling. His tireless work was the first time that psychological research was applied in the therapeutic setting, and led to him opening the first psychological clinic in 1896 as has already been mentioned. The first recognized use of the *Forensic Psychology* came when Albert von Schrenk-Notzing testified at a murder trial on the negative impact of publicity on the memories of the witness accounts. He was the first to suggest, in court, that too much press nearby an event could lead to a "retroactive memory falsification". Essentially, his view was that the witness would have a hard time distinguishing what they actually seen from what had been reported in the press. This very issue is still at the heart of several legal battles today. It is motivating to note that Hugo Munsterberg, who was another student of Wundt, opened a clinic in 1892 with the goal of introducing psychology to the courtroom. He was largely laughed at but sustained championing his cause for several, several years.

In order to practice either form of psychology, one necessity *obtain a graduate degree in psychology* from an accredited university. A clinical psychologist will work to obtain either a Ph.D., which is geared more toward research or a PsyD, which is geared toward treatment of patients. A Forensic Psychologist would also pursue a Ph.D. but would need to augment this education with a legal background in order to become an expert witness.

### ***Clinical-Forensic Psychology [Sh]***

Clinical forensic psychology is the subfield that most people are familiar with, even though they are not even aware of it. There is a diversity of things to do with this area. Just like a clinical psychologist, *Clinical-forensic Psychologists* are mainly interested in assessing and treating people suffering

from some form of mental illness. The difference is that the people being treated are also being assessed because they are somehow involved in the criminal justice system, mainly because of conviction for some offense. Most people in the subfield decide to create treatment and assessment the focus of their career in life. Offenders can be forcibly treated while in prisons, corrections facilities, as a requirement of parole/ probation, or in a hospital. Alternatively, offenders could see a Clinical-forensic Psychologist who operates in private practice. This type of psychologist can work as an expert witness in both criminal and civil court cases for the defendant and /or the party filing the civil lawsuit. Several people in American society look down upon expert witnesses. People often consider expert witnesses are saying what is demanded to receive compensation, especially when testifying in relation to the *competency* to stand trial and *sanity* of defendants. Clinicalforensic Psychologist may be involved in evaluating jury selections, the mental health of persons in criminal and civil cases, or the validity of an insanity protection, police confessions, or eyewitness testimony.

In the civil arena, expert witnesses often testify in relation to the whether a person was competent in making some decision, such as in writing his/her will. As witnesses, psychologists can also provide their opinion in workman's compensation cases (e.g., to establish if a defendant was really harmed psychologically from a work injury). Child custody is a major issue in the civil arena. The Clinical-forensic Psychologist can provide his/her opinion on which parent should be the legal guardian and on parental visitation guidelines. Psychologist here can also choose to create a career out of doing research. This is a very lucrative field if one is successful; it is mainly accessible in universities and colleges to those with the doctoral degree. One of the motivating topics regularly researched is the effectiveness of different types of therapies for convicted criminals. There is constant advancement in this area. Before a Clinical-forensic Psychologist can actually pursue his/her desired specialty, additional training and volunteer work may be needed, even after getting a doctoral degree. The best method to do this is through externships and mentoring programmes. Working closely with others teaches a person how to go in relation to the working in a field.

When a clinical psychologist conduct psychotherapy, he does not accept supervised care, and so he always assume that client paying him out of their own pockets really want help and so are not deliberately lying to him. Psychotherapy, after all, depends on honesty. Nevertheless people do lie, for a diversity of reasons – shame, guilt, fear, etc. – and the lies have to be dealt with as therapeutic issues. In such cases, clients essentially pay him for the privilege of resisting treatment. But everything changes if a person commits a crime and then wants to create a legal protection based on his/her mental condition; is ordered through the judicial system to be psychologically evaluated, tested, or diagnosed; is ordered through the judicial system to receive psychotherapy; sues someone on the grounds of psychological damages. In cases such as these, there are strong motives for deception which

can cast the shadow of doubt on everything that is said in psychotherapy. Here are some points to consider.

### *Insanity [SSh]*

Pleading “*not guilty due to a mental condition*” is recognized as an insanity protection. *Insanity* is a legal term, not a psychiatric term, and so it doesn’t imply anything in relation to the nature of the underlying disorder. Just in relation to the any major psychiatric disorder – a psychotic disorder (e.g. schizophrenia), a mood disorder (e.g. major depression), or an anxiety disorder (e.g. PTSD) – could be used as the basis for an insanity protection. In years past, drunk drivers who caused major vehicle crashes used to argue that they were not responsible for their behaviour because they were under the influence of alcohol. But eventually the legal system saw through the foolishness of this argument. If the person drinks willingly, and gets into a car willingly, then the resulting crash is not an “accident”, it is the final event in a long string of international behaviours.

So, just as the “*under the influence of alcohol*” excuse was abused in the past, the insanity protection is often abused today as a method to “*wiggle out of personal responsibility*” for one’s behaviour. In its most charitable purpose, the insanity protection should simply be a method to recognize when a person’s judgment is impaired through psychological factors beyond his or her personal intention. In such a case, the person can be sent to mandated mental health treatment, rather than to prison.

- *Faking*: Some people will go to any lengths to avoid responsibility – and punishment – for their behaviour. Some people will also do just in relation to the anything to get rich quickly. Whenever a crime has been committed, or compensation is sought for psychological damages, a clinician would be a total fool not to consider the possibility that a mental disorder could be out right fakery – clinically recognized as *malinger*ing.
- *Exaggeration and Lying*: Even in cases involving genuine mental disorders, things may not be as simple as they seem on the surface. Symptoms can be consciously *exaggerated* in order to get extra attention, special privileges, momentary compensation, or sympathy.

Just because a person has mental disorder does not mean that he or she is always telling the truth. This can really complicate things, even to the point of making it seem that the whole disorder is faked. For instance, a person may have a genuine case of Dissociative Identity Disorder (DID), also recognized as multiple personalities, but if one of the personalities lies in relation to the just one aspect of the case, it might arouse enough suspicion that all the other facts in relation to the case lose credibility. *Complications to Psychotherapy*: If a person who has been victimized attempts to find healing through

psychotherapy while litigation is still in process, there will always be some part of the person that unconsciously desires to remain disabled in order to “prove” the legal case. For this cause, true psychotherapy will be hindered, if not impossible. Vengeance may feel satisfying, but real psychological healing can happen only if the person provides up the pride of victim anger.

*What is “Truth” anyway? [SSh]*

With so much of our lives influenced through unconscious motivation, it can be almost impossible to determine just why a person did anything. Whatever conscious cause a person provides for his or her actions, a dozen unconscious reasons could be in the background. So who is to say what is the legal “truth”? Considering all this, it can be said psychologically that *no matter how much we try to tell the truth, we are always lying*. In fact, as long as anyone has something to gain there is cause for deception. In effect, the legal presentation of proof amounts to nothing more than a person *showing* the court what he/she *wants* the court to see.

### **Cognitive Psychology And Its Relation To Forensic Psychology [h]**

Cognitive Psychology is a discipline within *psychology* that investigates the internal mental processes of thought such as visual processing, memory, thinking, learning, feeling, problem solving, and language. The school of thought arising from this approach is recognized as *cognitive* which is interested in how people mentally represent *information processing*. It had its foundations in the work of *Wilhelm Wundt*, Gestalt psychology of *Max Wertheimer*, *Wolfgang Köhler*, and *Kurt Kofka*, and in the work of *Jean Piaget*, who provided a theory of stages/phases that described children’s cognitive development. Cognitive psychologists use *psychophysical* and experimental approaches to understand, diagnose, and solve problems, concerning themselves with the mental processes which mediate flanked by incentive and response. Cognitive theory contends that solutions to problems take the form of *algorithms* – *rules* that are not necessarily understood but promise a solution, *heuristics* – *rules* that are understood but that do not always guarantee solutions. In other instances, solutions may be found through insight, a sudden awareness of relationships. Modern cognitive psychology has been deeply influenced through the work of *Noam Chomsky*, *Albert Bandura*, and *Ulric Neisser*.

Forensic Psychology is tied closest to the cognitive perspective. The cognitive perspective was urbanized through George Miller, Jerome Bruner, and Ulrich Neisser throughout the 1990s. It focused on identifying the process of thinking, language, and dreams, with the main thought that perceptions and

thoughts influence behaviour. Forensic psychologists not only offer their expert opinion at trials, but can also be found helping a witness identifying a murderer in a line of suspects. They sometimes hypnotize subjects to help them keep in mind things or interview potential jury members to eliminate those who may be biased. These tasks relate to the cognitive activities of thinking, memory, and perceptions. Other times, they provide their own expert testimony at trials which could result in an individual being confined to a mental institution, receive vast monetary awards, obtain custody of a child, or lose his or her life. Legal psychologists play a big role in the justice system.

Forensic psychologists often work within the judicial system in such diverse areas as determining an inmate's readiness for parole; evaluation of rehabilitation programmes; clinical competency; tort liability and damages; proof; jury selection; and police training. The evaluations of the mental state of individuals also communicate the cognitive perspective. They may also be employed in other areas of jurisprudence, including patent and trademark disputes, divorce and custody cases, product liability, and taxation. Psychologists advise their clients in many methods, including diagnostic appraisals, which may determine the capability of the client to stand trial. They are also described to give clinically based opinions on a wide diversity of issues arising from their diagnoses. Sometimes they obtain hospital records, police reports, witness statements, and give relevant research. Beside submitting these and other findings, they are often required to testify in court. Forensic Psychologist may be hired through a protection attorney to evaluate the defendant's mental processes. They administer personality and intelligence tests after being briefed on the circumstances of the crime and examining records detailing the mental or emotional problems and treatment.

Forensic psychology can also be tied to ideas of structuralism. That is, structure of conscious experience (such as witnessing a crime); objective sensation – seeing, touching, testing, hearing; and subjective feelings like memories and thoughts. Legal psychologists are regularly consulted in child custody cases. Both parents necessarily be evaluated beside with the children and other relevant family members. It may involve visits to the home of each parent to find out additional information on the relationship flanked by the parent and child and the living environment. They want to determine the best interests of the child. They may train police officers to handle diverse situations like domestic abuse, suicide threats, hostage crisis, and how to control crowds. If the police have a thought of the mental processes of those they are involved with, they can do their jobs better. Clinicians who enter the forensic areas seek to uncover truth whatever the implications may be. Forensic Psychologists determine whether or not people are telling the truth with the use of polygraph machines. The machine records a person's physical response to questions. The lie detector measures blood pressure, breathing, electrical conductivity of the skin, pulse and perspiration in order to tell if a person is lying or not. This aspect of forensics especially ties back to the cognitive perspective and conscious thoughts. If the enquired party does not

give accurate answers, then their body's reaction provides them absent.

Forensic or legal psychology is most directly related to the cognitive perspective because most of this profession deals with mentality, memories, and conscious thoughts. Psychologists assess witnesses and suspects for accuracy in objective thoughts and help enhance memories to uncover the truth and put absent the bad guys.

## **Developmental Psychology And Its Relation To Forensic Psychology [h]**

Developmental Psychology also recognized a *human development*, is the *scientific* study of systematic *psychological* changes that occur in *human* beings over the course of their life span. Originally concerned with *infants* and *children*, the field has expanded to contain *adolescence*, *adult development*, *aging*, and the whole life span. This field examines change crossways a broad range of topics including *motor skills* and other psycho-physiological processes; cognitive development involving areas such as *problem solving*, *moral understanding*, and *conceptual understanding*; *language acquisition*; social, personality, and emotional development; and self-concept and *identity formation*.

Developmental psychology comprises issues such as the extent to which development occurs through the gradual accumulation of *knowledge* versus stage like development, or the extent to which children are born with innate mental structures versus learning through *experience*. Several researchers are interested in the interaction flanked by personal characteristics, the individual's behaviour, and environmental factors including *social context*, and their impact on development; others take a more narrowly focused approach. Developmental Psychology informs many applied fields, including: *educational psychology*, *child psychopathology*, and *forensic developmental psychology*. Developmental Psychology complements many other basic research fields in *psychology* including *social psychology*, *cognitive psychology*, *ecological psychology*, and *comparative psychology*.

Recent developments in the field of forensic developmental psychology challenge traditional conceptions in relation to the reliability of children's reports. The areas sheltered involve the disclosure patterns of sexually abused children, the nature of suggestive interviews, developmental differences in suggestibility, and the amount of suggestion required to produce false reports and beliefs. Forensic Developmental Psychology is a field that has appeared over the past two decades. The term was urbanized through Brooke and Poole and comprises autobiographical memory, memory distortion, eyewitness identification, narrative construction, personality, and attachment as topics sheltered through this field of research. Forensic Developmental Psychology is oriented toward children's actions and reactions in forensic contexts. The research is grounded in a developmental framework, and is emerging either

from previous studies in basic developmental science or from related research in the adult literature. The major topics in this field of research contain the circumstances that precipitate false reports, the psychological status of false reports, and developmental trends in false reports.

There are four misconceptions in relation to the children's disclosures. (i) Sexually abused children do not disclose their abuse because of shame, guilt, and fear. (ii) The second misconception is that suggestive interviews can be indexed through the number of leading questions. (iii) Suggestibility is primarily a problem for preschoolers and (IV) Multiple suggestive interviews are needed to taint a report. Research in regard to these indicate that there should be greater concern that interviews with possible victims of child abuse are mannered using scientifically validated methods and less concern that true victims will deny that they were abused.

### **Social Psychology And Its Relation To Forensic Psychology [h]**

Social Psychology studies the nature and causes of social behaviour. *Social Psychology* is the study of social behaviour and mental processes, with an emphasis on how humans think in relation to the each other and how they relate to each other. Social psychologists are especially interested in how people react to social situations. They study such topics as the influence of others on an individual's behaviour (e.g. *conventionality*, *persuasion*), and the formation of beliefs, *attitudes*, and *stereotypes* in relation to the other people. *Social cognition* fuses elements of social and cognitive psychology in order to understand how people process, keeps in mind, and distort social information. The study of *group dynamics* reveals information in relation to the nature and potential optimization of leadership, communication, and other phenomena that emerge at least at the *micro-social* level. In recent years, several social psychologists have become increasingly interested in *implicit* measures, mediation models, and the interaction of both person and social variables in accounting for behaviour.

Social Psychology is the *scientific study* of how people's *thoughts*, *feelings*, and *behaviours* are influenced through the actual, imagined, or implied attendance of others. Through this definition, *scientific* refers to the *empirical* method of investigation. The conditions *thoughts*, *feelings*, and *behaviours* contain all of the *psychological* variables that are *measurable* in a human being. The statement that others may be *imagined* or *implied* suggests that we are prone to social influence even when no other people are present, such as when watching television, or following internalized *cultural norms*.

Social psychologists typically explain human behaviour as a result of the interaction of *mental states* and immediate social *situations*. In *Kurt Lewin's* well-known heuristic formula, behaviour can be viewed as a function of the person and the environment,  $B = f(P, E)$ . In general, social psychologists have



a preference for *laboratory* based, empirical findings. *Social Psychology Theories* tend to be specific and focused, rather than global and general. Social Psychology is an interdisciplinary domain that bridges the gap flanked by *psychology* and *sociology*. Throughout the years immediately following World War II, there was frequent collaboration flanked by psychologists and sociologists. Though, the two disciplines have become increasingly specialized and isolated from each other in recent years, with sociologists focusing on “macro variables” (e.g. social structure) to a much greater extent. Nevertheless, *sociological approaches* to social psychology remain a significant counterpart to psychological research in this area.

In addition to the split flanked by psychology and sociology, there has been a somewhat less pronounced difference in emphasis flanked by *American* Social Psychologists and *European* Social Psychologists. As a broad generalization, American researchers traditionally have focused more on individual, whereas Europeans have paid more attention to group level phenomena. A psychology degree in Social Psychology will enable you to study how society influences the method people behave. You may advise lawyers and courts on matters of witness credibility, jury selection and how external factors can affect eyewitness memory. Periodically, social psychologists act as trial consultants or offer counsel concerning legal policy.

Social psychologists have learned that persons who confess or who give information as a result of being subjected to abuse do not necessarily give reliable information. The psychology of the false confessions has attracted considerable research interest in recent years, with the realization that a surprising number of suspects confess to crimes they did not commit. Forensic Psychologists consulting with law enforcement may be able to offer interrogation strategies that will protect the rights of suspects and minimize the likelihood that a false confession will occur.

## **EDUCATION AND TRAINING [MH]**

### **Needed Skills, Abilities, and Knowledge [h]**

Those with a desire to work in Forensic Psychology necessity be patient, adaptable, comfortable working with others, and enjoy doing research. Often, one necessity is a good speaker because several people who do work in this field work as expert witnesses at some point throughout their career. An expertise is abnormal, motivational, clinical, and social psychology is also key to being successful in this field.

## **GLOBAL PERSPECTIVE IN THE FIELD OF FORENSIC PSYCHOLOGY [MH]**

## **Development Of Forensic Psychology In The Uk [h]**

Two statutes of performed social significance made a great impact upon the development of Forensic Psychology in the UK. These were the Education Act, 1944 and the National Health Service Act, 1946. The Education Act 1944 provided school medical officers with the services of educational psychologists while the National Health Service Act, 1946 provided consultant psychiatrists with the services of clinical psychologists. Since both types of medical practitioners had statutory duties concerning court proceedings, clinical and educational psychologists found themselves regularly providing proof for courts albeit vicariously, as part of their routine duties. The psychologist's quantitative data on persons appearing in court, commonly embodied in a subjective report through the medical witness, added a new dimension on which judicial decision were made.

### ***Hearsay Problems [Sh]***

Initially psychologists were not allowed to present their reports to the court separately and independently. Psychologist's report was embodied in the subjective report through the medical witness. Medical reports tended to contain only those facts selected from the psychologist's findings that supported the medical view of the case. But sometimes the psychological findings were inconsistent with medical opinion and in those cases psychological reports were misrepresented. This really needed that psychologists present their report independently. And after a long thrash about early in 1958, psychologist was described as a 'medical witness' in his own rights in UK.

### ***Changes in Forensic Psychology Practice [Sh]***

The postwar years have seen a number of important changes in Forensic Psychology practice. The expansion of Forensic work, the introduction of specialized and forensic training courses, the recognition of a career structure etc. prove the changes. Of scrupulous professional significance, though, is the widening of the problems presented through scrupulous cases and the techniques adopted in findings solutions for them. Last few decades have seen a number of forensic issues, which have exercised the mind of lawyers and psychologists, come into prominence. These issues contain problems arising from recovered memories of child sexual abuse, disputed confessions, and post-traumatic stress disorders (PTSD).

### ***The Pornography Phase [Sh]***

The sexually permissive attitudes which evolved after the Second World War resulted in a rapid augment in pornographic material. The proposition that explicit sexual material was corrupting was unchallengeable in the court, making any proof to the contrary inadmissible. Though, British Parliament acknowledged that in some cases the assumed corruption could be mitigated through the material having some artistic, literary, or scientific merit. Effective use was made of this Section 4 protection in *Penguin Book Case* (1961), when twenty-three expert witnesses testified on the literary merits of *Lady Chatterley's Lover* and secured an acquittal. The 'public good' defense enabled psychologists to be brought in as expert witnesses. At first there were clinicians who used sexual materials for therapeutic purposes for treating sexual disorders. Later, psychological expertise was widened as more bases for the public good defense became apparent. The public good defense enabled psychologists to dispel sexual ignorance, to some extent, through educating the court from the witness box. The effective lowering of sexual prejudice did much to boost the acquittal rate.

### ***The Phase of Investigative Hypnosis [Sh]***

The clinicians had been using hypnosis routinely as part of their forensic activities since the early 1950s. In the beginning, there were requests from medical practitioners to reduce anxiety of witnesses through hypnosis. These were the cases where reducing anxiety through medication deemed inappropriate for the medical condition of the witnesses. This followed an already established practice of anxiety-reduction through hypnosis, using post-hypnosis suggestions, for candidates taking the driving test or other types of examination. From this urbanized the notion of using hypnosis with other witness to assist recall of important facts. This was later extended to victims, accused persons, and parties to civil action. Bryan provides a general account of the use of forensic hypnosis, which aroused much controversy within the profession. At the peak of its popularity with the UK constabularies, Haward hypnotised seventeen potential witnesses in one week. Reiser and Udolf refer to a large number of USA cases which involved the use of hypnosis, and McConkey and Sheehan showed that there was a substantial augment in the use of hypnosis in Australia flanked by 1981 and 1987.

Through the late 1980s police interest in hypnosis had dissipated. This was due to a number of factors which came to prominence at in relation to the same time. In the USA, proof derived through hypnosis was being barred through its failure to meet the Frye Rule. This Rule stated that the proof derived from scientific tests is inadmissible unless usually recognized as reliable for the purpose through the appropriate scientific community. Hypnosis is not usually recognized as a reliable means of retrieving information. More importantly, the use of the hypnosis has in the USA

resulted in a number of cases of miscarriage of justice. This led to several states of USA prohibiting its use for evidential purposes. In the UK, the Home Office issued guidelines concerning the use of hypnosis through the police which effectively discouraged its use through constabularies.

Wagstaff provides a well-reasoned discussion of the Home Office Circular. More recently, McConkey and Sheehan discuss some of the dangers of using hypnosis in police investigation and give detailed and helpful guidelines for practitioners in relation to its use. A constant view among the scientific community is that hypnosis should only be practiced through clinical psychologists and medical practitioners. They, in addition to their professional qualifications, have had specific training and experience in the use of hypnosis and are knowledgeable in relation to the police procedures and investigative interviewing. For formal investigations and enquiries where those involved are not required to testify in a criminal court, fewer objections to the use of investigative hypnosis has been made. The technique has proved to be of value in selected cases, although forensic application of hypnosis is limited.

### ***Cognitive Interview [Sh]***

In relation to the twelve years ago, new interviewing techniques have been urbanized which overcome the legal and practical problems encountered with investigative hypnosis. Recognized as the 'Cognitive Interview', the techniques can also be used with children and persons with learning disability. This is a considerable advantage over the use of investigative hypnosis. The Cognitive Interview is now commonly being used through police forces in the UK to elicit memory recall of witness and victims. Sometimes this is also used in case of cooperative suspects. There are fewer objections to police officers utilizing the technique than has been the case with hypnosis. It is likely that in the future the Cognitive Interview will replace the need for investigative hypnosis, except in cases of psychogenic amnesia. In future, Forensic Psychologists may be increasingly described upon to train police officers in Cognitive Interview techniques. In complicated cases, they may be requested through the police to conduct the interview themselves.

### **Post World War II Growth In Usa [h]**

Important growth in American Forensic Psychology did not happen until World War II. Psychologists served as expert witnesses, but only in trials that were not perceived as infringing on medical specialists, who were seen as more credible witnesses. In the 1940 case of the People vs. Hawthorne, the courts ruled that the standard for expert witness was in the extent of knowledge of a subject, not in whether or not the witness had a medical degree. In the landmark 1954 case of Brown vs. Board of Education, many

psychologists testified for both the plaintiffs and the defendants. Later, the courts gave support to psychologists serving as mental illness experts in the case of Jenkins vs. United States.

### ***Current State [Sh]***

Forensic psychology has grown and evolved beside with the development of new technologies, precedents, and assessments. Forensic Psychology is in rising demand among graduate students, and many colleges and universities in USA offer dual degree programmes in law and psychology. In 2001, Forensic Psychology was recognized as a specialization within psychology through the American Psychological Association.

### **REVIEW QUESTIONS [MH]**

- What were the two statutes of profound social significance that made a great impact upon the development of Forensic Psychology in the UK?
- When was it that a psychologist was described as a ‘medical witness’ in his own right in UK?
- What led to a rapid augment in pornographic material?
- What is Frye Rule?
- Describe Developmental Psychology.
- What is Forensic Developmental Psychology?
- Describe Social Psychology.
- State the Kurt Lewin’s well-known heuristics formula.

## **ORGANIZATIONAL SETUP OF FORENSIC SCIENCE LAB AND OTHER NATIONAL AND INTERNATIONAL AGENCIES**

### **STRUCTURE**

- Learning objectives
- FSL
- Central Forensic Science Laboratory (CFSL)
- Criminal Investigation Department
- Central Bureau of Investigation
- Central Detective Training School
- National Crime Records Bureau
- Mobile forensic science laboratories
- IB

- CPO
- FBI
- CIA
- *CSI*
- DEA
- Bureau of Alcohol, Tobacco, Firearms
- Review Questions

## **LEARNING OBJECTIVES**

After reading this chapter, you should be able to:

- Explain the setup of forensic agencies like :
  - FSL
  - Central Forensic Science Laboratory (CFSL)
  - Criminal Investigation Department
  - Central Bureau of Investigation
  - Central Detective Training School
  - National Crime Records Bureau
  - Mobile forensic science laboratories
  - IB
  - CPO
  - FBI
  - CIA
  - *CSI*
  - DEA
- Explain the Bureau of Alcohol, Tobacco, Firearms

## **FSL**

### **Infrastructure**

The buildings of State Forensic Science Laboratory, Himachal Pradesh, and Junga have sheltered area of in relation to the 28000 square feet. The work is in progress for planned expansion of additional divisions /specialities in the State FSL.

There are six scientific Divisions:

- Biology & Serology Division.
- Chemistry & Toxicology Division.
- Physics & Ballistics Division.
- Documents and Photography Division.
- Narcotics & Drugs Psychotropic Substances Division
- DNA Profiling Division

Biology & Serology; Chemistry & Toxicology Divisions are fully functional since 1990. In Physics and Ballistics Division, examination of some physics cases has started in 1999, though, for Ballistics work examination of cases started throughout the year-2002 and the division is fully functional. As regards Documents and Photography Division, the division is fully functional since October 2000. The analysis of narcotics drugs and psychotropic substances started in November 2006. Also in changing crime scenario measures are being taken to address new challenges of modernized crimes timely and objectively through adopting innovations of science and technology in the Forensic Sciences. The State FSL has seventy four sanctioned posts of scientific and supporting staff.

Filling up of vacant staff positions is actively under process and the vacant positions are required to be filled up immediately so as to keep pace with the ever-increasing workload.

The police staffs are temporarily doing the reception and administrative work concerning crime cases in the SFSL at present.

The state Government also created two Local Forensic Science Laboratories on each at Mandi and Dharmshala in the year 2006, which have been setup in rented buildings at both the places throughout the financial year 2008-09. The laboratories have become partially functional throughout the year and shall become fully functional throughout the after that financial year after the recruitment of staff which is under active progress.

## **Forensic Science**

With the origin of man on the earth crime came into being and was committed through the members of the society since the formation of primary social groups. Simultaneously, the methods of prevention and control of crime persisted in the society in one form or the other. Before the enactment of laws and origin of law enforcement agencies in the world social order was maintained in the primitive societies through method of social sanctions, taboos or in other words do's and don'ts as framed through man in the society at that time. The physical force generated the ides of "Might is Right". The physical necessities of life for their attainment generated quarrels and feuds among different human groups living in a specific geographical territory. For hunting and gathering of food, weapons were devised with the help of stones, bones, and wood materials and ultimately in the metal age the spears, harpoons, swords and the weapons of other types were manufactured for personal safety and prevention of crime. This was in fact the use of preliminary technical developments in the primitive society in the absence of police or law enforcement agencies whose work was taken up through the members of the society or the heads of several social groups in the society.

## **CENTRAL FORENSIC SCIENCE LABORATORY (CFSL)**

The Central Forensic Science Laboratory (CFSL) is a wing of the Indian Ministry of Home Affairs, which fulfills the forensic requirements in the country. It houses the only DNA repository in South and Southeast Asia. There are four central forensic laboratories in India, at Hyderabad, Kolkata, Chandigarh, and New Delhi. CFSL Hyderabad is centre of excellence in chemical sciences, CFSL Kolkata (oldest laboratory in India) in biological sciences and CFSL Chandigarh in physical sciences. These laboratories are under the control of the Directorate of Forensic Science (DFS) of the Ministry of Home Affairs. The laboratory in New Delhi is under the control of the Central Bureau of Investigation (CBI) and investigates cases on its behalf. DR. V K Kashyap is Director DFSS, New Delhi. Dr. Bhattacharya is dir of CFSL Kolkata. Dr S K SHUKLA is currently director of CFSL Chandigarh

## **CRIMINAL INVESTIGATION DEPARTMENT**

The Criminal Investigation Department (CID) is the branch of all Territorial police forces within the British Police and several other Commonwealth police forces, to which plain clothes detectives belong. It is therefore separate from the Uniformed Branch and the Special Branch.

In 1854, with an increasing amount of detective work to be done, Nottingham Borough Police set up the county's first CID section.

The Metropolitan Police Service CID, the first such organisation, was set up on 7 April 1878 through C. E. Howard Vincent. Originally, it was under the direct command of the Home Secretary, but since 1888 has been under the authority of the Commissioner.

### **Organisation**

CID officers are required to have had at least two years as a uniformed officer before applying to transfer to the branch and receive further training when they do so. While training they are referred to as a Temporary Detective Constable (TDC) and after completing the national Initial Crime Investigators' Development Programme, typically taking approximately 2 years, they become a fully fledged Detective Constable (DC). CID officers are involved in investigation of major crimes such as rape, murder, serious assault, fraud, and any other offences that require intricate discovery. They are responsible for acting upon intelligence received and then building a case

In the United Kingdom, smaller police stations usually have more uniformed officers than CID officers, typically five Detective Constables (DC) with a Detective Sergeant (DS) in overall command. In superior stations several DCs, DSs, and Detective Inspectors will be present under the overall responsibility of the Detective Chief Inspector.



Aims:

- The unrelenting investigation of crimes
- Securing convictions for criminals
- Aftercare of witnesses

### ***Ranks***

Contrary to practice in police forces of several other nations, detectives are not automatically senior to uniformed officers and hold the same ranks. The head of the CID in most police forces is a Detective Chief Superintendent.

These ranks are common to most forces.

- Detective Constable (DC or Det Con)
- Detective Sergeant (DS or Det Sgt)
- Detective Inspector (DI or Det Insp)
- Detective Chief Inspector (DCI or Det Ch Insp)
- Detective Superintendent (DSI or Det Supt)
- Detective Chief Superintendent (DCS or Det Ch Supt)

The prefix 'Woman' in front of female officers' ranks has been obsolete since 1999. Members of the Criminal Investigation Department (CID) up to and including the rank of Chief Superintendent prefix their ranks with 'Detective'. Detective ranks are abbreviated as DC, DS, DI, etc., and are equivalent in rank to their uniform counterparts.

### **Special Investigations Branch**

Although the British Armed Forces Military Police have an investigations department, it is not described "CID". All three service police forces operate Special Investigation Branches (SIB) which fulfills much the same role as the civilian CID. The Army SIB has regular sections and one Territorial Army section made up of civilian CID officers and ex-regulars to assist them in major cases.

### **In other countries**

#### ***Burma (Myanmar)***

The CID is headed through the Police Brigadier General of Burma. CID responsibility is to do a very hard crime investigation (murder, robbery, firearm, and major theft).

## ***Malaysia***

The Criminal Investigation Department of the Royal Malaysian Police is involved with the investigation, arrest and prosecution for crimes that afflict humans (*e.g. murder, robbery with firearms, rape, and injury*) and property crime (*e.g. theft and house-breaking*). Modelled on the British police, this department enforces laws concerning gambling, "sin" and the triad in Malaysia.

Functions:

- To investigate and detect crime
- To arrest offenders
- To enforce laws

Branches:

- D3 - Naziran Divisions
- D4 - Part Of The Statistics Record Unit
- D5 - Prosecution and Law Divisions
- D6 - Technical Assistance Division
- D7 - Triad Part / Gambling / Sin
- D8 - Investigation Division / Planning
- D9 - Special Investigation Divisions
- D10 - Forensic Laboratory Divisions
- D11 - Sexual Investigation Divisions
- D12 - National Centre Bureau-Interpol Divisions
- Criminal Investigation Division is led through a Commissioner of Police (CP).

## ***Pakistan***

The Criminal Investigation Department in Pakistan are a special unit of the provincial and metropolitan police departments responsible for carrying out investigations into crimes, including terrorism, murders, organized crime and sectarianism. The Special Branch of CID in Asia Division (CIDA) was a division of this department, but is currently not operational. It had only 12 members, the names of which are not accessible because of security issues.

## ***Sri Lanka***

The Criminal Investigation Department of the Sri Lanka Police Service is responsible for accepted out investigations into crimes, including murders and organized crime. It was established in 1870.

## ***Singapore***

The Singapore Police Force Criminal Investigation Department (CID) is the agency for premier investigation and staff authority for criminal

investigation matters within the Singapore Police Force. It is led through the Director of CID and assisted through 2 Deputy Directors. CID has a staff of over 450 officers: Senior Officers, Police Officers and Civilian Officers. There are a total of 9 divisions in CID, namely:

- Major Crime Division
- Specialized Crime Division
- Technology Crime Division
- Bombs and Explosives Investigation Division
- Intelligence Division
- Investigation Support and Services Division
- Criminal Records Office
- School of Criminal Investigation
- Operations and Investigation Policy Division

### ***India***

Crime Branch CID (Crime Investigation Department) (sometimes recognized as Investigation Branch) is a specialized wing in several state police forces in India of their Crime Investigation Department (CID). Personnel attached to this wing essentially work in plain clothes or *Mufti*. Other branches of the CID are, State Crime Investigation Bureau, Finger Print Bureau and Scientific Section. Like their counterparts in the Law and Order police, Crime Branch has its own ranks right up to the level of Additional Director General of Police or Special Commissioner of Police. Crime Branch has senior officers like Superintendents, Inspectors, Sub Inspectors and the constabulary. Officers and men attached to this wing usually add the prefix 'Detective' before their regular rank (e. g.: Detective Inspector). Crime Branch's tasks are to investigate criminal cases, which spans crossways multiple districts or even states. The CB CID may also take up complicated cases like communal riot cases, circulation of counterfeit currency, or very complicated murder cases. The local police beside with their normal duties would find it tough to allot men to these complicated cases. Crime Branch investigation is ordered either through a judicial court, through the Director General of Police, or the government. Crime Branch officers can be transferred to the law and order police, and also vice versa. Crime Branch is different from Crime Detachment or Crime Sq. Crime Detachment and Crime Sq s, are a group of regular law and order police men (who usually would wear the uniform) specifically detailed through the Police Inspector to work in plain clothes to keep a tab on local hoodlums, prostitutes, petty thieves and other habitual offenders.

### ***Bangladesh***

Check 123 In Bangladesh the headquarters of Crime Investigation Department (CID, Bangladesh) is in Malibagh, Dhaka.

### ***Irish Free State***

The Criminal Investigation Department (Ireland) operated in the Irish Free State in 1922 and 1923 for the purposes of counter-insurgency throughout the Irish Civil War. It was disbanded in 1923.

### **CENTRAL BUREAU OF INVESTIGATION**

The Central Bureau of Investigation (CBI) is the foremost investigating police agency in India, an elite force which plays a role in public life and ensuring the health of the national economy. It is under the jurisdiction of the Government of India. The CBI is involved in major criminal probes, and is the Interpol agency in India. The CBI was established in 1941 as the Special Police Establishment, tasked with domestic security. It was renamed the Central Bureau of Investigation on 1 April 1963. Its motto is "Industry, Impartiality, Integrity".

Agency headquarters is in the Indian capital, New Delhi, with field offices situated in major cities throughout India (including Mumbai). The CBI is overseen through the Department of Personnel and Training of the Ministry of Personnel, Public Grievances and Pensions of the Union Government, headed through a Union Minister who reports directly to the Prime Minister. While analogous in structure to the FBI, the CBI's powers and functions are limited to specific crimes through Acts (primarily the Delhi Special Police Establishment Act, 1946). The current CBI director is Ranjit Sinha.

### **History**

#### ***Special Police Establishment (SPE)***

The Central Bureau of Investigation traces its origins to the Special Police Establishment (SPE) established in 1941 through the government. The functions of the SPE were to investigate bribery and corruption in transactions with the War and Supply Department of India, set up throughout World War II with its headquarters in Lahore. The superintendent of the War Department and the SPE was Khan Bahadur Qurban Ali Khan, who later became governor of the North West Boundary Province at the creation of Pakistan. The first legal advisor of the War Department was Rai Sahib Karam Chand Jain. After the end of the war, there was a sustained need for a central governmental agency to investigate bribery and corruption through central-government employees. Rai Sahib Karam Chand Jain remained its legal advisor when the department was transferred to the Home Department through the 1946 Delhi Special Police Establishment Act.

The SPE's scope was enlarged to cover all departments of the Government of India. Its jurisdiction extended to the Union Territories, and could be further extended to the states with the consent of the state governments involved. Sardar Patel, first Deputy Prime Minister of free India and head of the Home

Department, desired to weed out corruption in erstwhile princely states such as Jodhpur, Rewa and Tonk. Patel directed Legal Advisor Karam Chand Jain to monitor criminal proceedings against the dewans and chief ministers of those states.

The SPE acquired its current name through a Home Ministry resolution dated 1 April 1963, and the bureau was consolidated. With the 1968 bank nationalization, banks and their employees also fell within the remit of the CBI.

### ***CBI takes shape***

The CBI established a reputation as India's foremost investigative agency with the resources for complicated cases, and it was requested to assist the investigation of crimes such as murder, kidnapping and terrorism. The Supreme Court and a number of high courts in the country also began assigning such investigations to the CBI on the basis of petitions filed through aggrieved parties. In 1987, the CBI was divided into two divisions: the Anti-Corruption Division and the Special Crimes Division.

### ***D. P. Kohli***

The founding director of the CBI was D. P. Kohli, who held the office from 1 April 1963 to 31 May 1968. Before this, Kohli was Inspector-general of police for the Special Police Establishment from 1955 to 1963 and held law-enforcement positions in Madhya Bharat (as chief of police), Uttar Pradesh and local central-government offices. For distinguished service, Kohli was awarded the Padma Bhushan in 1967.

Kohli saw in the Special Police Establishment the potential to rising into a national investigative agency. He nurtured the organisation throughout his long career as inspector general and director and laid the foundation on which the agency grew.

### **Organizational structure**

The CBI is headed through a director, an IPS officer with a rank of Director General of Police or Commissioner of Police (State). The director is selected based on the CVC Act 2003, and has a two-year term. Other ranks in the CBI which may be staffed through the IPS or the IRS are special director, additional director, joint director, deputy inspector general of police, senior superintendent of police, superintendent of police, additional superintendent of police, deputy superintendent of police, sub-inspector, assistant sub-inspector, head constable, senior constable and Constable.

The CBI is subject to five ministries of the Government of India:-

- Ministry of Home Affairs: Cadre clearance
- DoPT: Administration, budget and induction of officers

- Union Public Service Commission: Officers above the rank of Deputy SP
- Law and Justice Ministry: Public prosecutors
- Central Vigilance Commission: Anti-corruption cases

### **Selection committee**

According to the CVC Act 2003, the committee recommends a panel of officers for director of the CBI. It consists of:

- Chief Vigilance Commissioner – chairperson
- Vigilance Commissioners – members
- Secretary, Home Ministry – member
- Secretary (Coordination and Public Grievances) in the Cabinet Secretariat – member

When making recommendations, the committee considers the views of the outgoing director. Final selection is made through the Appointments Committee of the Cabinet from the panel recommended through the selection committee.

### **Infrastructure**

CBI headquarters is a ₹186 crore (US\$28 million), state-of-the-art 11-story building in New Delhi, housing all branches of the agency. The 7,000-square-metre (75,000 sq ft) building is equipped with a modern communications system, an advanced record-maintenance system, storage space, computerized access control and an additional facility for new technology. Interrogation rooms, cells, dormitories and conference halls are provided. The building has a staff cafeteria with a capability of 500, men's and women's gyms, a terrace garden and bi-level basement parking for 470 vehicles. Advanced fire-control and power-backup systems are provided, in addition to a press briefing room and media lounge.

The CBI Academy in Ghaziabad, Uttar Pradesh (east of Delhi) began in 1996. It is in relation to the 40 kilometres (25 mi) from the New Delhi railway station and in relation to the 65 kilometres (40 mi) from Indira Gandhi International Airport. The 26.5-acre (10.7 ha) campus, with fields and plantations, houses the administrative, academic, hostel and residential buildings. The CBI then relied on state police-training institutions and the Sardar Vallabhbhai Patel National Police Academy in Hyderabad for basic training courses for deputy superintendents of police, sub-inspectors and constables.

The Academy accommodates the training needs of all CBI ranks. Facilities for specialized courses are also made accessible to the officials of the state police, central police organisations (*CPOs*), *public-sector vigilance*

*organisations, bank and government departments and the Indian Armed Forces.*

### **Jurisdiction, powers and restrictions**

The legal powers of investigation of the CBI are derived from the DSPE Act 1946, which confers powers, duties, privileges and liabilities on the Delhi Special Police Establishment (CBI) and officers of the Union Territories. The central government may extend to any area (except Union Territories) the powers and jurisdiction of the CBI for investigation, subject to the consent of the government of the concerned state. Members of the CBI at or above the rank of sub-inspector may be measured officers in charge of police stations. Under the act, the CBI can investigate only with notification through the central government.

### ***Relationship to state police***

Maintaining law and order is a state responsibility as "police" is a State subject, and the jurisdiction to investigate crime lies with the state police exclusively. The CBI being a Union subject may investigate:

- Offenses against central-government employees, or concerning affairs of the central government and employees of central public-sector undertakings and public-sector banks
- Cases involving the financial interests of the central government
- Breaches of central laws enforceable through the Government of India
- Major fraud or embezzlement; multi-state organized crime
- Multit-agency or international cases

### ***Recommendations and Proposed amendments***

The Estimates Committee 1991-92 recommended in its 13th Report to the Lok Sabha on April 6, 1992, the "enactment of a new law laying down the organizational structure of the CBI, functions to be discharged through it, types of offences which it can investigate and providing for conferment of powers of Police laid down in Criminal Procedure Code, 1973, on the members of the CBI." It also recommended a constitutional amendment to give for extension of the CBI to any State without the consent of its government. A draft Constitution Amendment Bill and a draft Bill on the CBI were sent to the Home Ministry on June 12, 1990.

### ***High Courts and the Supreme Court***

The High Courts and the Supreme Court have the jurisdiction to order a CBI investigation into an offense alleged to have been committed in a state without the state's consent, according to a five-judge constitutional bench of

the Supreme Court (in Civil Appeals 6249 and 6250 of 2001) on 17 Feb 2010. The bench ruled:

- Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed through Part III in general and under Article 21 of the Constitution in scrupulous, zealously and vigilantly.—Five-judge constitutional bench of the Supreme Court of India,

The court clarified that this is an extraordinary power which necessity be exercised sparingly, cautiously and only in exceptional situations.

### **Right to Information (RTI)**

CBI is exempted from the provisions of the Right to Information Act. This exemption was granted through the government on 9 June 2011 (with similar exemptions to the National Investigating Agency (NIA), the Directorate General of Income Tax Investigation and the National Intelligence Grid (Natgrid)) on the basis of national security. It was criticized through the Central Information Commission and RTI activists, who said the blanket exemption violated the letter and intent of the RTI Act. The exemption was upheld in Madras High Court.

### **Criticism**

#### ***Corruption***

Because of the CBI's political overtones, it has been exposed through former officials such as Joginder Singh and B. R. Lall (director and joint director, respectively) as engaging in nepotism, wrongful prosecution and corruption. In Lall's book, *Who Owns CBI*, he details how investigations are manipulated and derailed. Corruption within the organisation has been revealed in information obtained under the RTI Act, and RTI activist Krishnanand Tripathi has alleged harassment from the CBI to save itself from exposure via RTI.

#### ***Political interference***

Normally, cases assigned to the CBI are sensitive and of national importance. It is standard practice for state police departments to register cases under its jurisdiction; if necessary, the central government may transfer a case to the CBI. The agency has been criticized for its mishandling of many scams. It has also been criticized for dragging its feet investigating prominent politicians, such as P. V. Narasimha Rao, Jayalalithaa, Lalu Prasad Yadav, Mayawati and Mulayam Singh Yadav; this tactic leads to their acquittal or



non-prosecution.

#### *Bofors scandal*

In January 2006 it was exposed that the CBI had quietly unfrozen bank accounts belonging to Italian businessman Ottavio Quattrocchi, one of those accused in the 1986 Bofors scandal which tainted the government of Rajiv Gandhi. The CBI was responsible for the inquiry into the Bofors case. Associates of then-prime minister Rajiv Gandhi were connected to alleged payoffs made throughout the mid-1980s through Swedish arms firm AB Bofors, with US\$40 million in kickbacks moved from Britain and Panama to secret Swiss banks. The 410 howitzers purchased in the US\$1,300 million arms sale were reported to be inferior to those offered through a French competitor.

The CBI, which unfroze ₹21 crore (US\$3.2 million) in a London bank in accounts held through Bofors, accused Quattrocchi and his wife Maria in 2006 but facilitated his travel through asking Interpol to take him off its wanted list on 29 April 2009. After communications from the CBI, Interpol withdrew the red corner notice on Quattrocchi.

#### *Hawala scandal*

A 1991 arrest of militants in Kashmir led to a raid on hawala brokers, revealing proof of large-scale payments to national politicians. The Jain hawala case encompassed former Union ministers Ajit Kumar Panja and P. Shiv Shankar, former Uttar Pradesh governor Motilal Vora, Bharatiya Janata Party leader Yashwant Sinha. The 20 defendants were discharged through Special Judge V. B. Gupta in the ₹650-million cases, heard in New Delhi.

The judge ruled that there was no *prima facie* proof against the accused which could be converted into legal proof. Those freed incorporated Bharatiya Janata Party president L. K. Advani; former Union ministers V. C. Shukla, Arjun Singh, Madhavrao Scindia, N. D. Tiwari and R. K. Dhawan, and former Delhi chief minister Madan Lal Khurana. In 1997 a ruling through late Chief Justice of India J. S. Verma listed in relation to the two dozen guidelines which, if followed, would have ensured the independence of the investigating agency. Sixteen years later, successive governments circumvent the guidelines and treat the CBI as another wing of the government. Although the prosecution was prompted through a public-interest petition, the cases concluded with no convictions. In *Vineet Narayan & Others v Union of India* AIR 1996 SC 3386, the Supreme Court ruled that the Central Vigilance Commission should have a supervisory role over the CBI.

#### *Priyadarshini Mattoo murder case*

In this case Santosh Kumar Singh, the alleged murderer of a 22-year-old law student, was acquitted for what the judge described "deliberate inaction"

through the investigating team. The accused was the son of a high-ranking officer in the Indian Police Service, the cause for the CBI's involvement. The 1999 judgment noted that "the influence of the father of the accused has been there".

Embarrassed through the judgment, CBI Director R. K. Raghavan appointed two special directors (P. C. Sharma and Gopal Achari) to study the judgment. The CBI appealed the verdict in Delhi High Court in 2000, and the court issued a warrant for the accused. The CBI applied for an early hearing in July 2006; in October the High Court found Singh guilty of rape and murder, sentencing him to death.

#### *Sister Abhaya*

This case concerns the 27 March 1992 death of a nun who was found in water well in the Saint Pius X convent hostel in Kottayam, Kerala. Five CBI investigations have failed to yield any suspects.

#### *Sohrabuddin case*

The CBI has been accused of supporting the ruling Congress Party against its opposition, the BJP. The CBI is investigating the Sohrabuddin case in Gujarat; Geeta Johri, also investigating the case, claimed that the CBI is pressuring her to falsely implicate former Gujarat minister Amit Shah.

#### *Sant Singh Chatwal case*

Sant Singh Chatwal was a suspect in CBI records for 14 years. The agency had filed two charge sheets, sent letters rogatory abroad and sent a team to the US to imprison Chatwal and his wife from 2–5 February 1997. On 30 May 2007 and 10 August 2008 former CBI directors Vijay Shankar and Ashwani Kumar, respectively, signed no-challenge orders on the imprisonment. Later, it was decided not to appeal their release.

This closed a case of bank fraud in which Chatwal had been embroiled for over a decade. Beside with four others, Chatwal was charged with being part of a "criminal conspiracy" to defraud the Bank of India's New York branch of ₹28.32 crore (US\$4.3 million). Four charges were filed through the CBI, with Chatwal named a defendant in two. The other two trials are still in progress. RTI applicant Krishnanand Tripathi was denied access to public information concerning the closed cases. The Central Information Commission later ordered the CBI to disclose the information; though, the CBI is exempt from the RTI Act. Chatwal is a recipient of the Padma Bhushan.

#### *Malankara Varghese murder case*

This case concerns the 5 December 2002 death of T. M. Varghese (also recognized as Malankara Varghese), a member of the Malankara Orthodox

Church managing committee and a timber merchant. Varghese Thekkekara, a priest and manager of the Angamali diocese of the rival Jacobite Syrian Christian Church (part of the Syriac Orthodox Church), was charged with murder and conspiracy on 9 May 2010. Thekkekara was not arrested after he was charged, for which the CBI was criticized through the Kerala High Court and the media.

### *Bhopal gas tragedy*

The CBI was publicly seen as ineffective in trying the 1984 Bhopal disaster case. Former CBI joint director B. R. Lall has said that he was asked to remain soft on extradition for Union Carbide CEO Warren Anderson and drop the charges (which incorporated culpable homicide). Those accused received two-year sentences.

### *2G spectrum scam*

The UPA government allocated 2G spectrum to corporations at very low prices through corrupt and illegal means. The Supreme Court cited the CBI several times for its tardiness in the investigations; only after the court began monitoring its investigations were high-profile arrests made.

### *Indian coal allocation scam*

This is a political scandal concerning the Indian government's allocation of the nation's coal deposits to private companies through Prime Minister Manmohan Singh, which cost the government ₹10673.03 billion (US\$160 billion). CBI director Ranjit Sinha submitted an affidavit in the Supreme Court that the coal-scam status report prepared through the agency was shared with Congress Party law minister Ashwani Kumar “as desired through him” and with secretary-level officers from the prime minister’s office (PMO) and the coal ministry before presenting it to the court.

## **CENTRAL DETECTIVE TRAINING SCHOOL**

The thought of setting up CDTs was initially conceived through the late illustrious police officer, Shri B.N. Mallick, the then Director, Intelligence Bureau. The late Home Minister Pt. Govind Ballav Pant encouraged the thought and the School was first incepted in 1956. The Institute was later brought under the aegis of BPR&D.

The CDTs, Kolkata is situated in the CFIs building at 30, Gorachand Road, Kolkata 700 014, beside with two other Units, viz. the Central Forensic Science Laboratory, and the Central Finger Print Bureau. It is a premier detective training school in India, which imparts training mainly on the scientific characteristics of crime case investigation and other police related subjects. This Institute is the oldest of the 5 (five) Central Detective Training Schools, situated at Kolkata, Chandigarh, Hyderabad, Ghaziabad & Jaipur.

Each CDTs is headed through a Principal, who is an IPS Officer. The Principal is assisted through one Vice Principal and other faculty members of the rank of Dy.SPs & Inspectors in imparting training to the participants.

This Institute imparts training to the police officers of the level of SI to Dy.SP of different States of the country and also from abroad. Officers from Delhi Police, CRPF, BSF, CBI, NCB, Air force, Army, Wildlife Crime Control Bureau (WLCCB), Royal Bhutan Police, Nepal Police, Maldives Police etc. have attended several courses organized through this Institute.

Besides the in-house faculty members, experienced senior police officers, belonging to the rank of D.G., I.G., D.I.G. and SP, eminent judges, doctors, academicians, forensic experts, professors etc. are invited through the CDTs to deliver lectures and their expert opinion on different topics of their respective fields.

The CDTs, Kolkata has an Air-conditioned Classroom, which is equipped with Projector, Visualizer, Public Address System, Computer, Laptop, Interactive Board, Interactive Panel, Lapel, Cordless mike, medico-legal charts, Public Address System and other modern day sophisticated training gadgets. Besides theoretical subjects, the most significant part constitutes of first-hand practical knowledge of the training. The trainees get an excellent facility to enrich their knowledge through doing practical of several forensic subjects and other related subjects linked with day-to-day police work. Forensic subjects contain practical training of footprint, fingerprint, handling, labeling and packing etc. The trainee officers get an opportunity to have practical and theoretical knowledge on ballistics, physical and chemical analysis of biological matters like blood, semen, hair, fiber, dust, other objects of forensic importance, different types of forged documents and counterfeiting notes, documents etc. from GEQD and CFSL. They can equip themselves with the latest know-how of the sophisticated methods of scientific analytical techniques like the D.N.A fingerprinting and other modern techniques of investigation.

Investigation Kit Boxes consisting of sophisticated items are used for recording and lifting of fingerprints, preserving, handling, labeling and packaging of physical evidences and for discovery of blood, semen, saliva, explosives, drugs etc. Mannequins are provided for carrying out simulation exercises of crime scene on Dacoity, Burglary, Rape Murder and Post-blast cases.

There is a well-intended Auditorium, with a seating capability of 50 persons, a Medico-legal Museum with different models of human body and an Interrogation Room. Separate medico-legal classroom is being set up which can accommodate 25/30 trainees.

In relation to the 20 (twenty) training courses are mannered on an average in a year. In the year 2011-12, twenty-six courses were successfully organized. In the year 2011 the Institute organized 10 additional courses including a course on 'Advanced Latent Finger Printing' mannered through the Federal Bureau of Investigation.

## **Training**

In the year 2011-12, a total of 702 trainees received training from this Institute. Approximately 250 trainees from several foreign countries, including officers from Royal Bhutan Police, Maldives, Nepal, Singapore, Sri Lanka, Palestine, Malaysia, Mauritius, Uganda, Iran, Iraq, Kenya, Nigeria, Philippines, Burma etc. had attended different training courses in this Institute till date.

## **Hostel**

The CDTS, Calcutta runs a 40-bedded Hostel, situated on the C.I.T. Road, approximately through the side of the Chittaranjan Hospital at Park Circus and at an aloofness of in relation to the 100 meters from the CDTS main campus.

## **NATIONAL CRIME RECORDS BUREAU**

The National Crime Records Bureau, abbreviated to NCRB, is an Indian government agency responsible for collecting and analysing crime data as defined through the Indian Penal Code (IPC). As an attached office of Ministry of Home Affairs (MHA), Government of India, NCRB is headquartered in New Delhi. NCRB is mandated to empower the Indian Police with Information Technology for modernization of Indian Police. It gives the investigating Officers with the tools, technologies and information to facilitate faster and more accurate investigation of crime and discovery of criminals.

## **Objectives**

As per the government Resolution dated 11.3.1986 the following objectives were set for the NCRB:

- To function as a clearing house of information on crime and criminals including those operating at National and International levels so as to assists the investigators, and others in linking crimes to their perpetrators.
- To store, coordinate and disseminate information on inter-state and international criminals from and to respective States, national investigating agencies, courts and prosecutors in India without having to refer to the Police Station records.
- To collect and process crime statistics at the National level.
- To receive from and supply data to penal and correctional agencies for their tasks of rehabilitation of criminals, their remand, parole, premature release etc.

- To coordinate, guide and assist the functioning of the State Crime Records Bureau
- To give training facilities to personnel of the Crime Records bureau, and
- To evaluate, develop and modernize crime Records Bureau
- Executive and develop computer based systems for the Central Police Organisations - and also cater to their data processing and training needs for computerization.
- To function as the National storehouse of fingerprint (FP) records of convicted persons including FP records of foreign criminals.
- To help trace inter state criminals through fingerprint search.
- To advise Central and State Governments on matters related to fingerprints and footprints, and to conduct training courses for fingerprint experts.

### **Fingerprint Center**

NCRB has its own fingerprint center since long time back. This is used for forensic science and criminal testing & record purpose. Lab was used manual technique to identify fingerprint.

### **Sketch Software**

NCRB has its own urbanized software to prepare suspected human sketch for identification. With the help of inputs from eyewitness operator prepare sketch.

### **Police officer Training Center**

NCRB has its own training center for providing training to Police officer. Periodically center gives several training to IPS and other officers from all over India and Law Enforcement Officers from foreign countries also.

### **Prison statistics**

The Ministry of Home Affairs assigned the work of collection, compiling and analyzing the statistics of prison institutions throughout India to the NCRB in March 1995, with the intention of creating a comprehensive source of information in relation to the prisons in India. The Bureau intended a questionnaire which incorporated all significant activities of prisons to rationalize and standardize the process of data collection in the country. All States and union territories were requested to furnish the information asked for in the standardized questionnaire. The Bureau published its first report in June 1998, which contained prisons statistics for 1995. Seventeen States and 6 UTs

responded to the questionnaire for the report. the remaining 8 and 1 UT did not give any information. The 1995 report on prison institutions in those regions was based on the "limited information" accessible to the NCRB.

## **MOBILE FORENSIC SCIENCE LABORATORIES**

Andhra Pradesh State Forensic Science Laboratory (APFSL) was established in November 1974 through merger of Scientific Section CID of Police Department and Chemical Examiner Unit of Medical & Health Department bringing APFSL under the Administrative control of the DG and IG of Police, Andhra Pradesh.

At present, APFSL has twelve sections; each headed through an Assistant Director and Supervised through four joint Directors. Realizing the need and importance to give analytical reports promptly and effectively Andhra Pradesh Forensic Science Laboratory expanded the activities to the Local level and Local Forensic Science Laboratories are functioning at Visakapatnam, Vijayawada, Kurnool, Guntur, Warangal, Tirupathi, Kamareddy And Karimnagar. APFSL has set up 24 mobile forensic science Laboratories described CLUES in all district headquarters to collect physical proof from crime scenes. The CLUES Team consists of a scientific officer / scientific assistant, photographer cum videographer and finger prints expert reach the crime scene in an exclusive vehicle beside with a full range of equipment for locating, recording and processing the physical proof at the crime scene. APFSL maintains highest quality in the analysis and prompt reporting and is accredited to ISO/IEC 17025: 2005 quality standards through the National Accreditation Board for laboratories, DST Govt. of India since 2004 onwards. Due to additional facilities introduced in APFSL and extensive training provided among all the ranks of police through a full-fledged Forensic Science Academic wing of AP Police Academy and similar courses mannered in AP Judicial Academy for Judicial officers at induction and in-service level, the utilization of forensic services has doubled throughout the last decade

## **IB**

The Intelligence Bureau (IB) is India's internal intelligence agency and reputedly the world's oldest intelligence agency. It was recast as the Central Intelligence Bureau in 1947 under the Ministry of Home Affairs. The cause for the perception may be because, in 1885, Major General Sir Charles MacGregor was appointed Quartermaster General and head of the Intelligence Department for the British Indian Army at Simla. The objective then was to monitor Russian troop deployments in Afghanistan, fearing a Russian invasion of British India through the North-West throughout the late 19th century.

In 1909, the Indian Political Intelligence Office was established in England in response to the development of Indian revolutionary activities, which came

to be described the Indian Political Intelligence (IPI) from 1921. This was a state-run surveillance and monitoring agency. The IPI was run jointly through the India Office and the Government of India and reported jointly to the Secretary of the Public and Judicial Department of the India Office, and the Director of Intelligence Bureau (DIB) in India, and maintained close get in touch with Scotland Yard and MI5.

Serving since December 2012, Syed Asif Ibrahim is the current director of the IB, the first Muslim to hold the position.

## **Responsibilities**

Shrouded in secrecy, the IB is used to garner intelligence from within India and also execute counter-intelligence and counter-terrorism tasks. The Bureau comprises employees from law enforcement agencies, mostly from the Indian Police Service (IPS) and the military. Though, the Director of Intelligence Bureau (DIB) has always been an IPS officer. In addition to domestic intelligence responsibilities, the IB is particularly tasked with intelligence collection in border areas, following the 1951 recommendations of the Himmatsinhji Committee (also recognized as the North and North-East Border Committee), a task entrusted to military intelligence organisations prior to independence in 1947. All spheres of human activity within India and in the neighborhood are allocated to the charter of duties of the Intelligence Bureau. The IB was also tasked with other external intelligence responsibilities as of 1951 until 1968, when the Research and Analysis Wing was formed. The current chief of the organisation is Syed Asif Ibrahim a 1977 batch IPS cadre.

## **Activities**

Understanding of the shadowy workings of the IB is largely speculative. Several a times even their own family members are unaware of their whereabouts. One recognized task of the IB is to clear licenses to amateur radio enthusiasts. The IB also passes on intelligence flanked by other Indian intelligence agencies and the police. The Bureau also grants the necessary security clearances to Indian diplomats and judges before they take the oath. On unusual occasions, IB officers interact with the media throughout a crisis situation. The IB is also rumored to intercept and open approximately 6,000 letters daily. It also has an email spying system similar to FBI's Carnivore system. The Bureau is also authorized to conduct wiretapping without a warrant.



## **Workings**

The Class 1 (Gazetted) officers carry out coordination and higher-level management of the IB. Subsidiary Intelligence Bureaus (SIBs) are headed through officers of the rank of Joint Director or above, but smaller SIBs are also sometimes headed through Deputy Directors. The SIBs have their units at district headquarters headed through Deputy Central Intelligence Officers (DCIOs). The IB maintains a large number of field units and headquarters (which are under the control of Joint or Deputy Directors). It is through these offices and the intricate process of deputation that a very organic linkage flanked by the state police agencies and the IB is maintained. In addition to these, at the national level the IB has many units (in some cases SIBs) to keep track of issues like terrorism, counter-intelligence, VIP security, threat assessment and sensitive areas (i.e. Jammu and Kashmir and such). IB officers (like their counterparts in R&AW) get monthly special pays and an extra one-month salary every year, as well as better promotions. Separately from the IPS and IAS, IB also recruits from the Indian Revenue Service (IRS).

## **Constitutionality**

IB was created on 23 December 1887, through the then British Secretary of State as a sub-sect of the Central Special Branch but there is no act of the Indian parliament or executive order relating to the functioning of the IB. In 2012, a PIL was filed challenging the legality of IB.

## **Operations**

The Intelligence Bureau reportedly has a lot of successes to its credit, but operations mannered through the IB are rarely declassified. Due to the extreme secrecy nearby the agency, there is little concrete information accessible in relation to it or its activities. The IB was trained through the Soviet KGB from the 1950's onwards until the collapse of the soviet union.

The IB was initially India's internal and external intelligence agency. Due to lapses on the part of the Intelligence Bureau to predict the Sino-Indian War of 1962, and later on, intelligence failure in the India-Pakistan War in 1965, it was bifurcated in 1968 and entrusted with the task of internal intelligence only. The external intelligence branch was handed to the newly created Research and Analysis Wing.

The IB has had mixed success in counter-terrorism. It was reported in 2008 that the IB had been successful in busting terror modules. It alerted the police before the Hyderabad blasts and gave repeated warnings of a possible attack on Mumbai through the sea before the November 2008 Mumbai attacks. On the whole, though, the IB came in for some sharp criticism through the

media after the relentless wave of terror attacks in 2008. The government came close to sacking top intelligence officials soon after 26/11 attacks because of serious lapses that led to the 2008 Mumbai attacks. Heavy politics, under-funding and a shortage of professional field agents are the chief problems facing the agency. The overall strength of the agency is whispered to be approximately 25,000, with 3500-odd field agents operating in the whole country. Of these, several are occupied in *political intelligence*.

## **CPO**

The International Foundation for Protection Officers (IFPO) Board of Directors established and maintains a voluntary certification process described the Certified Protection Officers (post nominals: CPO) course, which is based on current and valid standards that measure competency in the practice of private security for Security Officers. The IFPO requires that all programs that offer a certification necessity be maintained through the individual through a re-certification process. So the CPO certificate is valid for a period of two years, at which time re-certification necessity be achieved. Qualified Certified Protection Officers can also obtain the designation of CPO Instructor (post nominals: CPOI). This is a designation that requires qualification and the proper credentials. After 1998, when the Universal declaration for Human rights defenders passed, several International and Local NGOs created a post for protection officers. The post is for expertise in Security and risk assessment officers who are responsible for safety of Human rights defenders.

## **FBI**

The Federal Bureau of Investigation (FBI) is a governmental agency belonging to the United States Department of Justice that serves as both a federal criminal investigative body and an internal intelligence agency (counterintelligence). Also, it is the government agency responsible for investigating crimes on Native American reservations in the United States under the Major Crimes Act. The FBI has investigative jurisdiction over violations of more than 200 categories of federal crime.

The bureau was established in 1908 as the Bureau of Investigation (BOI). Its name was changed to the Federal Bureau of Investigation (FBI) in 1935. The FBI headquarters is the J. Edgar Hoover Building, situated in Washington, D.C. The bureau has fifty-six field offices situated in major cities throughout the United States, and more than 400 resident agencies in lesser cities and areas crossways the nation. More than 50 international offices described "legal attachés" exist in U.S. embassies and consulates general worldwide.

## **Budget, mission and priorities**

In the fiscal year 2011, the bureau's total budget was almost \$7.9 billion.

The FBI's main goal is to protect and defend the United States, to uphold and enforce the criminal laws of the United States, and to give leadership and criminal justice services to federal, state, municipal, and international agencies and partners.

Currently, the FBI's top investigative priorities are:

- Protect the United States from terrorist attacks;
- Protect the United States against foreign intelligence operations and espionage;
- Protect the United States against cyber-based attacks and high-technology crimes;
- Combat public corruption at all levels;
- Protect civil rights;
- Combat transnational/national criminal organizations and enterprises;
- Combat major white-collar crime;
- Combat important violent crime.

In August 2007, the top categories of lead criminal charges resulting from FBI investigations were:

- Bank robbery and incidental crimes (107 charges)
- Drugs (104 charges)
- Effort and conspiracy (81 charges)
- Material involving sexual use of minors (53 charges)
- Mail fraud – frauds and swindles (51 charges)
- Bank fraud (31 charges)
- Prohibition of illegal gambling businesses (22 charges)
- Fraud through wire, radio, or television (20 charges)
- Hobbs Act (Robbery and extortion affecting interstate commerce) (17 charges)
- Racketeer Influenced and Corrupt Organizations Act (RICO)– prohibited activities (17 charges)

## ***Indian reservations***

The federal government has the primary responsibility for investigating and prosecuting serious crime on Indian reservations.

- There are 565 federally recognized American Indian Tribes in the United States, and the FBI has federal law enforcement responsibility on almost 200 Indian reservations. This federal jurisdiction is shared concurrently with the Bureau of Indian Affairs, Office of Justice Services (BIA-OJS). Situated within the FBI's Criminal Investigative Division, the Indian Country Crimes Unit (ICCU) is responsible for

developing and implementing strategies, programs, and policies to address recognized crime problems in Indian Country (IC) for which the FBI has responsibility.—Overview, Indian Country Crime

The FBI does not specifically list crimes in Native American land as one of its priorities. Often serious crimes have been either poorly investigated or prosecution has been declined. Tribal courts can only impose sentences of up to three years, and then under certain restrictions.

Indian reservations often use the police of the Bureau of Indian Affairs, which is an agency of the U.S. Department of the Interior, for investigation within the reservation. Tribal police have limited jurisdiction over crimes.

### **Legal authority**

The FBI's mandate is established in Title 28 of the United States Code (U.S. Code), Section 533, which authorizes the Attorney General to "appoint officials to detect and prosecute crimes against the United States." Other federal statutes provide the FBI the authority and responsibility to investigate specific crimes.

The FBI's chief tool against organized crime is the Racketeer Influenced and Corrupt Organizations (RICO) Act. The FBI is also charged with the responsibility of enforcing compliance of the United States Civil Rights Act of 1964 and investigating violations of the act in addition to prosecuting such violations with the United States Department of Justice (DOJ). The FBI also shares concurrent jurisdiction with the Drug Enforcement Administration (DEA) in the enforcement of the Controlled Substances Act of 1970.

The USA PATRIOT Act increased the powers allotted to the FBI, especially in wiretapping and monitoring of Internet activity. One of the most controversial provisions of the act is the so-described *sneak and peek* provision, granting the FBI powers to search a house while the residents are absent, and not requiring them to notify the residents for many weeks afterwards. Under the PATRIOT Act's provisions, the FBI also resumed inquiring into the library records of those who are suspected of terrorism (something it had supposedly not done since the 1970s). The word "library" does not appear anywhere in the USA PATRIOT Act, and there is no specific proof that the FBI has, in fact, inquired into library records without a court order.

In the early 1980s, Senate hearings were held to examine FBI undercover operations in the wake of the Abscam controversy, which had allegations of entrapment of elected officials. As a result, in following years a number of guidelines were issued to constrain FBI activities.

A March 2007 report through the inspector general of the Justice Department described the FBI's "widespread and serious misuse" of national security letters, a form of administrative subpoena used to demand records and data pertaining to individuals. The report said that flanked by 2003 and 2005,

the FBI had issued more than 140,000 national security letters, several involving people with no obvious connections to terrorism.

Information obtained through an FBI investigation is presented to the appropriate U.S. Attorney or Department of Justice official, who decides if prosecution or other action is warranted.

The FBI often works in conjunction with other Federal agencies, including the U.S. Coast Guard (USCG) and U.S. Customs and Border Protection (CBP) in seaport and airport security, and the National Transportation Safety Board in investigating airplane crashes and other critical incidents. Immigration and Customs Enforcement Homeland Security Investigations (ICE-HSI) has almost the same amount of investigative man power as the FBI, and investigates the largest range of crimes. In the wake of the September 11 attacks, AG Ashcroft assigned the FBI as the designated lead organization in terrorism investigations after the creation of the U.S. Department of Homeland Security. ICE-HSI and the FBI are both integral members of the Joint Terrorism Task Force.

## **History**

### ***Background***

In 1896, the National Bureau of Criminal Identification was founded, which provided agencies crossways the country with information to identify recognized criminals. The 1901 assassination of President McKinley created an urgent perception that America was under threat from anarchists. The Department of Justice and the Department of Labor had been keeping records on anarchists for years, but President Theodore Roosevelt wanted more power to monitor them.

The Justice Department had been tasked with regulating interstate commerce since 1887, though it lacked the staff to do so. It had made little effort to relieve its staff shortage until the Oregon land fraud scandal erupted approximately the start of the 20th century. President Roosevelt instructed Attorney General Charles Bonaparte to make an autonomous investigative service that would report only to the Attorney General.

Bonaparte reached out to other agencies, including the Secret Service, for personnel, investigators in scrupulous. On May 27, 1908, Congress forbade this use of Treasury employees through the Justice Department, citing fears that the new agency would serve as a secret police. Again at Roosevelt's urging, Bonaparte moved to organize a formal bureau of investigation with its own staff of special agents.

### ***Creation***

The Bureau of Investigation (BOI) was created on July 26, 1908, after Congress had adjourned for the summer. Attorney General Bonaparte, using

Department of Justice expense funds, hired thirty-four people, including some veterans of the Secret Service, to work for a new investigative agency. Its first chief (the title is now recognized as director) was Stanley Finch. Bonaparte notified Congress of these actions in December, 1908.

The bureau's first official task was visiting and making surveys of the houses of prostitution in preparation for enforcing the "White Slave Traffic Act," or Mann Act, passed on June 25, 1910. In 1932, it was renamed the United States Bureau of Investigation. The following year it was connected to the Bureau of Prohibition and rechristened the Division of Investigation (DOI) before finally becoming an independent service within the Department of Justice in 1935. In the same year, its name was officially changed from the Division of Investigation to the present-day Federal Bureau of Investigation, or FBI.

### ***J. Edgar Hoover as director***

The Director of the BOI, J. Edgar Hoover, was an FBI Director who served from 1924–1972, a combined 48 years with the BOI, DOI, and FBI. He was chiefly responsible for creating the Scientific Crime Discovery Laboratory, or the FBI Laboratory, which officially opened in 1932, as part of his work to professionalize investigations through the government. Hoover was considerably involved in most major cases and projects that the FBI handled throughout his tenure. After Hoover's death, Congress passed legislation that limited the tenure of future FBI Directors to ten years.

Throughout the "War on Crime" of the 1930s, FBI agents apprehended or killed a number of notorious criminals who accepted out kidnappings, robberies, and murders throughout the nation, including John Dillinger, "Baby Face" Nelson, Kate "Ma" Barker, Alvin "Creepy" Karpis, and George "Machine Gun" Kelly.

Other activities of its early decades incorporated a decisive role in reducing the scope and influence of the Ku Klux Klan. Additionally, through the work of Edwin Atherton, the FBI claimed success in apprehending a whole army of Mexican neo-revolutionaries beside the California border in the 1920s.

Hoover began using wiretapping in the 1920s throughout Prohibition to arrest bootleggers. In the 1927 case *Olmstead v. United States*, in which a bootlegger was caught through telephone tapping, the United States Supreme Court ruled that FBI wiretaps did not violate the Fourth Amendment as unlawful search and seizure, as long as the FBI did not break into a person's home to complete the tapping. After Prohibition's repeal, Congress passed the Communications Act of 1934, which outlawed non-consensual phone tapping, but allowed bugging. In the 1939 case *Nardone v. United States*, the court ruled that due to the 1934 law, proof the FBI obtained through phone tapping was inadmissible in court. After the 1967 case *Katz v. United States* overturned the 1927 case that had allowed bugging, Congress passed the

Omnibus Crime Control Act, allowing public authorities to tap telephones throughout investigations as long as they obtain a warrant beforehand.

### ***National security***

Beginning in the 1940s and continuing into the 1970s, the bureau investigated cases of espionage against the United States and its allies. Eight Nazi agents who had planned sabotage operations against American targets were arrested, and six were executed (*Ex parte Quirin*) under their sentences. Also throughout this time, a joint US/UK code-breaking effort (the Venona project)—with which the FBI was heavily involved—broke Soviet diplomatic and intelligence communications codes, allowing the US and British governments to read Soviet communications. This effort confirmed the subsistence of Americans working in the United States for Soviet intelligence. Hoover was administering this project but failed to notify the Central Intelligence Agency (CIA) until 1952. Another notable case is the arrest of Soviet spies Rudolf Abel in 1957. The detection of Soviet spies operating in the US allowed Hoover to pursue his longstanding obsession with the threat he perceived from the American Left, ranging from Communist Party of the United States of America (CPUSA) union organizers to American liberals.

### ***Civil-rights movement***

Throughout the 1950s and 1960s, FBI officials became increasingly concerned in relation to the influence of civil rights leaders, whom they whispered had communist ties or were unduly influenced through them. In 1956, for instance, Hoover sent an open letter denouncing Dr. T.R.M. Howard, a civil rights leader, surgeon, and wealthy entrepreneur in Mississippi who had criticized FBI inaction in solving recent murders of George W. Lee, Emmett Till, and other blacks in the South. The FBI accepted out controversial domestic surveillance in an operation it described the COINTELPRO, which was short for "Counter-Intelligence Program." It was to investigate and disrupt the activities of dissident political organizations within the United States, including both militant and non-violent organizations. Among its targets was the Southern Christian Leadership Conference, a leading civil rights organization with clergy leadership.

The FBI regularly investigated Martin Luther King, Jr. In his 1991 memoir, *Washington Post* journalist Carl Rowan asserted that the FBI had sent at least one anonymous letter to King encouraging him to commit suicide.

In March 1971, the residential office of an FBI agent in Media, Pennsylvania was robbed; the thieves took secret files and distributed them to a range of newspapers, including *The Harvard Crimson*. The files detailed the FBI's extensive COINTELPRO program, which incorporated investigations into lives of ordinary citizens—including a black student group at a Pennsylvania military college and the daughter of Congressman Henry Reuss of Wisconsin. The country was "jolted" through the revelations, which

incorporated assassinations of political activists, and the actions were denounced through members of Congress, including House Majority Leader Hale Boggs. The phones of some members of Congress, including Boggs, had allegedly been tapped.

### ***Kennedy's assassination***

When President John F. Kennedy was shot and killed, the jurisdiction fell to the local police departments until President Lyndon B. Johnson directed the FBI to take over the investigation. To ensure clarity in relation to the responsibility for investigation of homicides of federal officials, Congress passed a law that put investigations of deaths of federal officials within FBI jurisdiction.

### ***Organized crime***

In response to organized crime, on August 25, 1953, the FBI created the Top Hoodlum Program. The national office directed field offices to gather information on mobsters in their territories and to report it regularly to Washington for a centralized collection of intelligence on racketeers. After the Racketeer Influenced and Corrupt Organizations Act, or RICO Act, took effect, the FBI began investigating the former Prohibition-organized groups, which had become fronts for crime in major cities and small towns. All of the FBI work was done undercover and from within these organizations, using the provisions provided in the RICO Act. Slowly the agency dismantled several of the groups. Although Hoover initially denied the subsistence of a National Crime Syndicate in the United States, the Bureau later mounted operations against recognized organized crime syndicates and families, including those headed through Sam Giancana and John Gotti. The RICO Act is still used today for all organized crime and any individuals who might fall under the Act.

In 2003 a congressional committee described the FBI's organized crime informant program "one of the greatest failures in the history of federal law enforcement." While protecting an informant in March 1965, the FBI allowed four innocent men to be convicted of murder. Three of the men were sentenced to death (which was later reduced to life in prison). The fourth defendant was sentenced to life in prison, where he spent three decades. In July 2007, U.S. District Judge Nancy Gertner in Boston found the bureau helped convict the four men of the March 1965 gangland murder of Edward "Teddy" Deegan. The U.S. Government was ordered to pay \$100 million in damages to the four defendants.



## ***Notable post-Hoover reorganizations***

### ***Special FBI teams***

In 1984, the FBI formed an elite unit to help with problems that might arise at the 1984 Summer Olympics to be held in Los Angeles, particularly terrorism and major-crime. This was a result of the 1972 Summer Olympics at Munich, Germany, when terrorists murdered the Israeli athletes. Named Hostage Rescue Team (HRT), it acts as the FBI lead for a national SWAT team in related procedures and all counter-terrorism cases. Also formed in 1984 was the *Computer Analysis and Response Team* (CART).

From the end of the 1980s to the early 1990s, the FBI reassigned more than 300 agents from foreign counter-intelligence duties to violent crime, and made violent crime the sixth national priority. With reduced cuts to other well-established departments, and because terrorism was no longer measured a threat after the end of the Cold War, the FBI assisted local police forces in tracking fugitives who had crossed state lines, a felony. The FBI Laboratory helped develop DNA testing, continuing its pioneering role in identification that began with its fingerprinting system in 1924.

### ***Notable efforts in the 1990s***

Flanked by 1993 and 1996, the FBI increased its counter-terrorism role in the wake of the first 1993 World Trade Center bombing in New York, New York; the Oklahoma City bombing in 1995; and the arrest of the Unabomber in 1996. Technological innovation and the skills of FBI Laboratory analysts helped ensure that the three cases were successfully prosecuted. In the early and late 1990s, the FBI role in the Ruby Ridge and Waco incidents caused a public uproar in the government's role in the killings. Throughout the 1996 Summer Olympics in Atlanta, Georgia, the FBI was criticized for its investigation of the Centennial Olympic Park bombing. It has settled a dispute with Richard Jewell, who was a private security guard at the venue, beside with some media organizations, in regard to the leaking of his name throughout the investigation.

After Congress passed the *Communications Assistance for Law Enforcement Act* (CALEA, 1994), the *Health Insurance Portability and Accountability Act* (HIPAA, 1996), and the *Economic Espionage Act* (EEA, 1996), the FBI followed suit and underwent a technological upgrade in 1998, just as it did with its CART team in 1991. Computer Investigations and Infrastructure Threat Assessment Center (CITAC) and the National Infrastructure Protection Center (NIPC) were created to deal with the augment in Internet-related problems, such as computer viruses, worms, and other malicious programs that threatened US operations. With these developments, the FBI increased its electronic surveillance in public safety and national security investigations, adapting to the telecommunications advancements that

changed the nature of such problems.

### *September 11th attacks*

Within months of the September 11 attacks in 2001, FBI Director Robert Mueller, who had been sworn in a week before the attacks, described for a re-engineering of FBI structure and operations. He made countering every federal crime a top priority, including the prevention of terrorism, countering foreign intelligence operations, addressing cyber security threats, other high-tech crimes, protecting civil rights, combating public corruption, organized crime, white-collar crime, and major acts of violent crime.

In February 2001, Robert Hanssen was caught selling information to the Russian government. It was later learned that Hanssen, who had reached a high position within the FBI, had been selling intelligence since as early as 1979. He pleaded guilty to treason and received a life sentence in 2002, but the incident led several to question the security practices employed through the FBI. There was also a claim that Robert Hanssen might have contributed information that led to the September 11, 2001 attacks.

The 9/11 Commission's final report on July 22, 2004 stated that the FBI and Central Intelligence Agency (CIA) were both partially to blame for not pursuing intelligence reports that could have prevented the September 11, 2001 attacks. In its most damning assessment, the report concluded that the country had "not been well served" through either agency and listed numerous recommendations for changes within the FBI. While the FBI has acceded to most of the recommendations, including oversight through the new Director of National Intelligence, some former members of the 9/11 Commission publicly criticized the FBI in October 2005, claiming it was resisting any meaningful changes.

On July 8, 2007 *The Washington Post* published excerpts from UCLA Professor Amy Zegart's book *Spying Blind: The CIA, the FBI, and the Origins of 9/11*. The Post reported from Zegart's book that government documents show the CIA and FBI missed 23 potential chances to disrupt the terrorist attacks of September 11, 2001. The primary reasons for the failures incorporated: agency cultures resistant to change and new ideas; inappropriate incentives for promotion; and a lack of cooperation flanked by the FBI, CIA and the rest of the United States Intelligence Community. The book blamed the FBI's decentralized structure, which prevented effective communication and cooperation among different FBI offices. The book suggested that the FBI has not evolved into an effective counter-terrorism or counter-intelligence agency, due in large part to deeply ingrained agency cultural resistance to change. For instance, FBI personnel practices continue to treat all staff other than special agents as support staff, classifying intelligence analysts alongside the FBI's auto mechanics and janitors.

### ***Faulty bullet analysis***

For over 40 years, the FBI crime lab in Quantico whispered lead in bullets had unique chemical signatures. It analyzed the bullets with the goal of matching them chemically, not only to a single batch of ammunition coming out of a factory, but also to a single box of bullets. The National Academy of Sciences mannered an 18-month independent review of comparative bullet-lead analysis. In 2003, its National Research Council published a report whose conclusions described into question 30 years of FBI testimony. It found the analytic model used through the FBI for interpreting results was deeply flawed, and the conclusion, that bullet fragments could be matched to a box of ammunition, was so overstated that it was misleading under the rules of proof. One year later, the FBI decided to stop doing bullet lead analysis.

After a *60 Minutes/Washington Post* investigation in November 2007 (two years later), the bureau agreed to identify, review, and release all pertinent cases, and notify prosecutors in relation to the cases in which faulty testimony was given.

## **Organization**

### ***Organizational structure***

The FBI is organized into five functional branches and the Office of the Director, which contains most administrative offices. An executive assistant director manages each branch. Each branch is then divided into offices and divisions, each headed through an assistant director. The several divisions are further divided into sub-branches, led through deputy assistant directors. Within these sub-branches there are several sections headed through section chiefs. Section chiefs are ranked analogous to special agents in charge.

Three of the branches report to the deputy director while two report to the associate director. The five functions branches of the FBI are:

- FBI National Security Branch
- FBI Criminal, Cyber, Response, and Services Branch
- FBI Science and Technology Branch
- FBI Information and Technology Branch
- FBI Human Resources Branch

The Office of the Director serves as the central administrative organ of the FBI. The office give staff support functions (such as finance and facilities management) to the five function branches and the several field divisions. The office is supervised through the FBI associate director, who also oversees the operations of both the Information and Technology and Human Resources Branches.

- Office of the Director

- Immediate Office of the Director
- Office of the Deputy Director
- Office of the Associate Director
- Office of Congressional Affairs
- Office of Equal Employment Opportunity Affairs
- Office of the General Counsel
- Office of Integrity and Compliance
- Office of the Ombudsman
- Office of Professional Responsibility
- Office of Public Affairs
- Inspection Division
- Facilities and Logistics Services Division
- Finance Division
- Records Management Division
- Resource Planning Office
- Security Division

### ***Rank structure***

The following is a complete listing of the rank structure found within the FBI:

- Field Agents
  - New Agent Trainee (until graduation from Quantico)
  - Special Agent
  - Senior Resident Agent (non-supervisory, in a Resident Agency (satellite office))
  - Supervisory Senior Resident Agent (only applies in Resident Agency offices)
  - Supervisory Special Agent
  - Assistant Special Agent-in-Charge (ASAC)
  - Special Agent-in-Charge (SAC)
- FBI Management
  - Unit Chief
  - Section Chief
  - Deputy Assistant Director
  - Assistant Director
  - Associate Executive Assistant Director
  - Executive Assistant Director
  - Associate Deputy Director
  - Deputy Director
  - Director

## Specialties

FBI agents may also hold several specialty qualifications that require training, and formal certification. Current specialties contain the following:

- Bomb Technician
- Pilot
- Polygrapher
- Technically Trained Agent

## Infrastructure

The FBI is headquartered at the J. Edgar Hoover Building in Washington, D.C., with 56 field offices in major cities crossways the United States. The FBI also maintains over 400 resident agencies crossways the United States, as well as over 50 legal attachés at United States embassies and consulates. Several specialized FBI functions are situated at facilities in Quantico, Virginia, as well as a "data campus" in Clarksburg, West Virginia, where 96 million sets of fingerprints "from crossways the United States are stored, beside with others composed through American authorities from prisoners in Saudi Arabia and Yemen, Iraq and Afghanistan." The FBI is in process of moving its Records Management Division, which processes Freedom of Information Act (FOIA) requests, to Winchester, Virginia.

According to *The Washington Post*, the FBI "is building a vast repository controlled through people who work in a top-secret vault on the fourth floor of the J. Edgar Hoover Building in Washington. This one stores the profiles of tens of thousands of Americans and legal residents who are not accused of any crime. What they have done is appear to be acting suspiciously to a town sheriff, a traffic cop or even a neighbor."

The FBI Laboratory, established with the formation of the BOI, did not appear in the J. Edgar Hoover Building until its completion in 1974. The lab serves as the primary lab for most DNA, biological, and physical work. Public tours of FBI headquarters ran through the FBI laboratory workspace before the move to the J. Edgar Hoover Building. The services the lab conducts contain *Chemistry, Combined DNA Index System (CODIS), Computer Analysis and Response, DNA Analysis, Proof Response, Explosives, Firearms and Tool marks, Forensic Audio, Forensic Video, Image Analysis, Forensic Science Research, Forensic Science Training, Hazardous Materials Response, Investigative and Prospective Graphics, Latent Prints, Materials Analysis, Questioned Documents, Racketeering Records, Special Photographic Analysis, Structural Design, and Trace Proof* . The services of the FBI Laboratory are used through several state, local, and international agencies free of charge. The lab also maintains a second lab at the FBI Academy.

The FBI Academy, situated in Quantico, Virginia, is home to the

communications and computer laboratory the FBI utilizes. It is also where new agents are sent for training to become FBI Special Agents. Going through the 21-week course is required for every Special Agent. The Academy trains state and local law enforcement agencies, which are invited to the law enforcement training center. The FBI units that reside at Quantico are the *Field and Police Training Unit*, *Firearms Training Unit*, *Forensic Science Research and Training Center*, *Technology Services Unit* (TSU), *Investigative Training Unit*, *Law Enforcement Communication Unit*, *Leadership and Management Science Units* (LSMU), *Physical Training Unit*, *New Agents' Training Unit* (NATU), *Practical Applications Unit* (PAU), the *Investigative Computer Training Unit* and the "College of Analytical Studies."

In 2000, the FBI began the Trilogy project to upgrade its outdated information technology (IT) infrastructure. This project, originally scheduled to take three years and cost approximately \$380 million, ended up going distant over budget and behind schedule. Efforts to deploy modern computers and networking equipment were usually successful, but attempts to develop new investigation software, outsourced to Science Applications International Corporation (SAIC), were not. Virtual Case File, or VCF, as the software was recognized, was plagued through poorly defined goals, and repeated changes in management. In January 2005, more than two years after the software was originally planned for completion, the FBI officially abandoned the project. At least \$100 million (and much more through some estimates) was spent on the project, which never became operational. The FBI has been forced to continue using its decade-old Automated Case Support system, which IT experts consider woefully inadequate. In March 2005, the FBI announced it was beginning a new, more ambitious software project, code-named Sentinel, which they expected to complete through 2009. In 2012, the FBI stopped uploading documents into the ACS system, and transferred all active files into the Sentinel system, which is web-browser based (but has no connectivity outside the FBI secure infrastructure).

Carnivore was an electronic eavesdropping software system implemented through the FBI throughout the Clinton administration; it was intended to monitor email and electronic communications. After prolonged negative coverage in the press, the FBI changed the name of its system from "Carnivore" to "DCS1000." DCS is reported to stand for "Digital Collection System"; the system has the same functions as before. The Associated Press reported in mid-January 2005 that the FBI essentially abandoned the use of Carnivore in 2001, in favor of commercially accessible software, such as NarusInsight.

The Criminal Justice Information Services (CJIS) Division is situated in Clarksburg, West Virginia. Organized beginning in 1991, the office opened in 1995 as the youngest agency division. The intricate is the length of three football fields. It gives a main repository for information in several data systems. Under the roof of the CJIS are the programs for the *National Crime Information Center* (NCIC), *Uniform Crime Reporting* (UCR), *Fingerprint*

*Identification, Integrated Automated Fingerprint Identification System (IAFIS), NCIC 2000, and the National Incident-Based Reporting System (NIBRS).* Several state and local agencies use these data systems as a source for their own investigations and contribute to the database using secure communications. FBI gives these tools of sophisticated identification and information services to local, state, federal, and international law enforcement agencies.

FBI is in charge of National Virtual Translation Center, which gives "timely and accurate translations of foreign intelligence for all elements of the Intelligence Community."

## **Weapons**

An FBI special agent is issued a Glock Model 22 pistol or a Glock 23 in .40 S&W caliber. If they fail their first qualification, they are issued either a Glock 17 or Glock 19, and given two weeks of rigorous firearms training, to aid in their after that qualification. New agents are issued firearms, on which they necessity qualify, on successful completion of their training at the FBI Academy. The Glock 26 in 9 × 19 mm Parabellum and Glock Models 23 and 27 in .40 S&W caliber are authorized as secondary weapons. Special agents are also authorized to purchase and qualify with the Glock Model 21 in .45 ACP. Special agents of the FBI HRT (Hostage Rescue Team), and local SWAT teams are issued the Springfield Professional Model 1911A1 .45 ACP pistol.

## **CIA**

The Central Intelligence Agency (CIA) is one of the principal intelligence-gathering agencies of the United States federal government. The CIA's headquarters is in Langley, Virginia, a few miles west of Washington, D.C. Its employees operate from U.S. embassies and several other locations approximately the world. The only independent U.S. intelligence agency, it reports to the Director of National Intelligence.

The CIA has three traditional principal activities, which are gathering information in relation to the foreign governments, corporations, and individuals; analyzing that information, beside with intelligence gathered through other U.S. intelligence agencies, in order to give national security intelligence assessment to senior United States policymakers; and, upon the request of the President of the United States, carrying out or overseeing covert activities and some tactical operations through its own employees, through members of the U.S. military, or through other partners. It can, for instance, exert foreign political influence through its tactical divisions, such as the Special Activities Division.

In 2013, the Washington Post reported that CIA's share of the National Intelligence Program (NIP), a non-military component of the overall US

Intelligence Community Budget, has increased to 28% in 2013, exceeding the NIP funding received through military agencies National Reconnaissance Office (NRO) and National Security Agency (NSA). The CIA has increasingly taken on offensive roles, including covert paramilitary operations. One of its largest divisions, the Information Operations Center (IOC), have shifted focus from counter-terrorism to offensive cyber-operations.

## **Purpose**

The CIA succeeded the Office of Strategic Services (OSS), formed throughout World War II to coordinate secret espionage activities against the Axis Powers for the branches of the United States Armed Forces. The National Security Act of 1947 established the CIA, affording it "no police or law enforcement functions, either at home or abroad".

There has been considerable criticism of the CIA relating to security and counterintelligence failures, failures in intelligence analysis, human rights concerns, external investigations and document releases, influencing public opinion and law enforcement, drug trafficking, and lying to Congress. Others, such as Eastern bloc defector Ion Mihai Pacepa, have defended the CIA as "throughout the world's best intelligence organization," and argued that CIA activities are subjected to scrutiny unprecedented among the world's intelligence agencies.

According to its fiscal 2013 budget, the CIA has five priorities:

- Counterterrorism, the top priority given the ongoing Global War on Terror.
- Nonproliferation of nuclear and other weapons of mass destruction, with North Korea described as perhaps the hardest target.
- Warning American leaders of significant overseas events, with Pakistan described as an "intractable target".
- Counterintelligence, with China, Russia, Iran, Cuba, and Israel described as "priority" targets.
- Cyber intelligence.

## **Organizational structure**

The CIA has an executive office and many agency-wide functions, and four major directorates:

- The Directorate of Intelligence, responsible for all-source intelligence research and analysis
- The National Clandestine Service, formerly the Directorate of Operations, which does clandestine intelligence collection and covert action



- The Directorate of Support
- The Directorate of Science and Technology

### ***Executive Office***

The Director of the Central Intelligence Agency (D/CIA) reports directly to the Director of National Intelligence (DNI); in practice, he deals with the DNI, Congress (usually via the Office of Congressional Affairs), and the White House, while the Deputy Director is the internal executive. The CIA has varying amounts of Congressional oversight, although that is principally a guidance role.

The Executive Office also facilitates the CIA's support of the U.S. military through providing it with information it gathers, getting information from military intelligence organizations, and cooperating on field activities. Two senior executives have responsibility, one CIA-wide and one for the National Clandestine Service. The Associate Director for Military Support, a senior military officer, manages the relationship flanked by the CIA and the Unified Combatant Commands, who produce local/operational intelligence and consume national intelligence; he is assisted through the Office of Military Affairs in providing support to all branches of the military.

In the National Clandestine Services, an Associate Deputy Director for Operations for Military Affairs deals with specific clandestine human-source intelligence and covert action in support of military operations.

The CIA creates national-level intelligence accessible to tactical organizations, usually to their all-source intelligence group.

### ***Executive staff***

The staff also gathers information and then reports such information to the Executive Office.

### ***General publications***

The CIA's Center for the Study of Intelligence maintains the Agency's historical materials and promotes the study of intelligence as a legitimate discipline.

In 2002, the CIA's School for Intelligence Analysis began publishing the unclassified *Kent Center Occasional Papers*, aiming to offer "an opportunity for intelligence professionals and interested colleagues—in an unofficial and unfettered vehicle—to debate and advance the theory and practice of intelligence analysis."

### ***General Counsel and Inspector General***

Two offices advise the Director on legality and proper operations. The Office of General Counsel advises the Director of the CIA on all legal matters

relating to his role as CIA director and is the principal source of legal counsel for the CIA.

The Office of Inspector General promotes efficiency, effectiveness, and accountability in the administration of Agency activities, and seeks to prevent and detect fraud, waste, abuse, and mismanagement. The Inspector General, whose activities are independent of those of any other component in the Agency, reports directly to the Director of the CIA.

#### *Influencing public opinion*

The Office of Public Affairs advises the Director of the CIA on all media, public policy, and employee communications issues relating to this person's role. This office, among other functions, works with the entertainment industry.

#### *Directorate of Intelligence*

The Directorate of Intelligence produces all-source intelligence investigation on key foreign and intercontinental issues relating to powerful and sometimes anti-government sensitive topics. It has four local analytic groups, six groups for transnational issues, and two support units.

#### *Local groups*

There is an Office dedicated to Iraq, and local analytical Offices covering:

- The Office of Middle East and North Africa Analysis (MENA)
- The Office of South Asia Analysis (OSA)
- The Office of Russian and European Analysis (OREA)
- The Office of Asian Pacific, Latin American and African Analysis (APLAA)

#### *Transnational groups*

- The Office of Terrorism Analysis supports the National Counterterrorism Center in the Office of the Director of National Intelligence. See CIA transnational anti-terrorism activities.
- The Office of Transnational Issues assesses perceived existing and emerging threats to US national security and gives the most senior policymakers, military planners, and law enforcement with analysis, warning, and crisis support.
- The CIA Crime and Narcotics Center researches information on international crime for policymakers and the law enforcement community. As the CIA has no legal domestic police authority, it usually sends its analyses to the FBI and other law enforcement

organizations, such as the Drug Enforcement Administration and the Bureau of Alcohol, Tobacco, and Firearms.

- The Weapons Intelligence, Nonproliferation, and Arms Control Center gives intelligence support related to national and non-national threats, as well as supporting threat reduction and arms control. It receives the output of national technical means of verification.
- The Counterintelligence Center Analysis Group identifies, monitors, and analyzes the efforts of foreign intelligence entities, both national and non-national, against US government interests. It works with FBI personnel in the National Counterintelligence Executive of the Director of National Intelligence.
- The Information Operations Center Analysis Group. deals with threats to US computer systems. This unit supports DNI activities.

#### *Support and general units*

- The Office of Collection Strategies and Analysis gives comprehensive intelligence collection expertise to the Directorate of Intelligence, to senior Agency and Intelligence Community officials, and to key national policymakers.
- The Office of Policy Support customizes Directorate of Intelligence analysis and presents it to a wide diversity of policy, law enforcement, military, and foreign liaison recipients.

#### *National Clandestine Service*

The National Clandestine Service (NCS; formerly the Directorate of Operations) is responsible for collecting foreign intelligence, mainly from clandestine HUMINT sources, and covert action. The new name reflects its role as the coordinator of human intelligence activities among other elements of the wider U.S. intelligence community with their own HUMINT operations. The NCS was created in an effort to end years of rivalry over influence, philosophy and budget flanked by the United States Department of Protection and the CIA. In spite of this, the Department of Protection recently organized its own global clandestine intelligence service, the Protection Clandestine Service, under the Protection Intelligence Agency. The precise present organization of the NCS is classified.

#### *Directorate of Science and Technology*

The Directorate of Science & Technology was established to research, make, and manage technical collection disciplines and equipment. Several of its innovations were transferred to other intelligence organizations, or, as they became more overt, to the military services.

For instance, the development of the U-2 high-altitude reconnaissance aircraft was done in cooperation with the United States Air Force. The U-2's

original mission was clandestine imagery intelligence over denied areas such as the Soviet Union. It was subsequently provided with signals intelligence and measurement and signature intelligence capabilities, and is now operated through the Air Force.

Imagery intelligence composed through the U-2 and reconnaissance satellites was analyzed through a DS&T organization described the National Photo interpretation Center (NPIC), which had analysts from both the CIA and the military services. Subsequently, NPIC was transferred to the National Geospatial-Intelligence Agency (NGA).

The CIA has always shown a strong interest in how to use advances in technology to enhance its effectiveness. This interest has historically had two primary goals:

- Harnessing techniques for its own use
- Countering any new intelligence technologies the Soviets might develop.

In 1999, the CIA created the venture capital firm In-Q-Tel to help fund and develop technologies of interest to the agency. It has long been the IC practice to contract for major development, such as reconnaissance aircraft and satellites.

### ***Directorate of Support***

The Directorate of Support has organizational and administrative functions to important units including:

- The Office of Security
- The Office of Communications
- The Office of Information Technology

### **Training**

The CIA established its first training facility, the Office of Training and Education, in 1950. Following the end of the Cold War, the CIA's training budget was slashed, which had a negative effect on employee retention. In response, Director of Central Intelligence George Tenet established CIA University in 2002. CIA University holds flanked by 200 and 300 courses each year, training new hires and experienced intelligence officers, as well as CIA support staff. The facility works in partnership with the National Intelligence University, and comprises the Sherman Kent School for Intelligence Analysis, the Directorate of Intelligence's component of the university.

For later stage training of student operations officers, there is at least one classified training area at Camp Peary, close to Williamsburg, Virginia. Students are selected, and their progress evaluated, in methods derived from the OSS, published as the book *Assessment of Men, Selection of Personnel for*

*the Office of Strategic Services*. Additional mission training is mannered at Harvey Point, North Carolina.

The primary training facility for the Office of Communications is Warrenton Training Center, situated close to Warrenton, Virginia. The facility was established in 1951 and has been used through the CIA since at least 1955.

## **Budget**

Details of the overall United States intelligence budget are classified. Under the Central Intelligence Agency Act of 1949, the Director of Central Intelligence is the only federal government employee who can spend "un-vouchered" government money. The government has disclosed a total figure for all non-military intelligence spending since 2007; the fiscal 2013 figure is \$52.6 billion. According to the 2013 mass surveillance disclosures, the CIA's fiscal 2013 budget is \$14.7 billion, 28% of the total and approximately 50% more than the budget of the National Security Agency. CIA's HUMINT budget is \$2.3 billion, the SIGINT budget is \$1.7 billion, and spending for security and logistics of CIA missions is \$2.5 billion. "Covert action programs", including a diversity of activities such as the CIA's drone fleet and anti-Iranian nuclear program activities, accounts for \$2.6 billion.

There were numerous previous attempts to obtain general information in relation to the budget. As a result, it was revealed that CIA's annual budget in Fiscal Year 1963 was US \$550 million (inflation-adjusted US\$ 4.2 billion in 2013), and the overall intelligence budget in FY 1997 was US \$26.6 billion (inflation-adjusted US\$ 38.7 billion in 2013). There have been accidental disclosures; for instance, Mary Margaret Graham, a former CIA official and deputy director of national intelligence for collection in 2005, said that the annual intelligence budget was \$44 billion, and in 1994 Congress accidentally published a budget of \$43.4 billion (in 2012 dollars) in 1994 for the non-military National Intelligence Program, including \$4.8 billion for the CIA.

In *Legacy of Ashes-The History of the CIA*, Tim Weiner claims that early funding was solicited through James Forrestal and Allen Dulles from private Wall Street and Washington, D.C. sources. After that Forrestal influenced "an old chum," John W. Snyder, the U.S. Secretary of the Treasury and one of Truman's closest allies, to allow the use of the \$200 million Exchange Stabilization Fund through CIA fronts to influence European elections, beginning with Italy.

After the Marshall Plan was approved, appropriating \$13.7 billion over five years, 5% of those funds or \$685 million were made accessible to the CIA.

## **Relationship with other intelligence agencies**

The CIA acts as the primary US HUMINT, human intelligence, and general analytic agency, under the Director of National Intelligence, who directs or coordinates the 16 member organizations of the United States Intelligence Community. In addition, it obtains information from other U.S. government intelligence agencies, commercial information sources, and foreign intelligence services.

### ***U.S. agencies***

CIA employees form part of the National Reconnaissance Office (NRO) workforce, originally created as a joint office of the CIA and US Air Force to operate the spy satellites of the US military. The Special Collections Service is a joint CIA and National Security Agency (NSA) office that conducts clandestine electronic surveillance in embassies and hostile territory throughout the world.

### ***Foreign intelligence services***

The role and functions of the CIA are roughly equivalent to those of the United Kingdom's Secret Intelligence Service (the SIS or MI6), the Australian Secret Intelligence Service (ASIS), the Egyptian General Intelligence Service, the Russian Foreign Intelligence Service (Sluzhba Vneshney Razvedki) (SVR), the Indian Research and Analysis Wing (RAW), the Pakistani Inter-Services Intelligence (ISI), the French foreign intelligence service Direction Générale de la Sécurité Extérieure (DGSE) and Israel's Mossad. While the preceding agencies both collect and analyze information, some like the U.S. State Department's Bureau of Intelligence and Research are purely analytical agencies.

The closest links of the U.S. IC to other foreign intelligence agencies are to Anglophone countries: Australia, Canada, New Zealand, and the United Kingdom. There is a special communications marking that signals that intelligence-related messages can be shared with these four countries. An indication of the United States' close operational cooperation is the creation of a new message distribution label within the main U.S. military communications network. Previously, the marking of NOFORN (i.e., No Foreign Nationals) required the originator to specify which, if any, non-U.S. countries could receive the information. A new handling caveat, USA/AUS/CAN/GBR/NZL *Five Eyes*, used primarily on intelligence messages, provides an easier method to indicate that the material can be shared with Australia, Canada, United Kingdom, and New Zealand.

The task of the division described "Verbindungsstelle 61" of the German Bundesnachrichtendienst is keeping gets in touch with to the CIA office in Wiesbaden.

## **History**

The Central Intelligence Agency was created through Congress with the passage of the National Security Act of 1947, signed into law through President Harry S. Truman. Its creation was inspired through the successes of the Office of Strategic Services (OSS) of World War II, which was dissolved in October 1945 and its functions transferred to the State and War Departments. Eleven months earlier, in 1944, William J. Donovan, the OSS's creator, proposed to President Franklin D. Roosevelt to make a new organization directly supervised through the President: "which will procure intelligence both through overt and covert methods and will at the same time give intelligence guidance, determine national intelligence objectives, and correlate the intelligence material composed through all government agencies?" Under his plan, a powerful, centralized civilian agency would have coordinated all the intelligence services. He also proposed that this agency have authority to conduct "subversive operations abroad," but "no police or law enforcement functions, either at home or abroad."

### ***Immediate precursors, 1946–47***

The Office of Strategic Services, which was the first independent U.S. intelligence agency, created for World War II, was broken up shortly after the end of the war, through President Harry S. Truman, on September 20, 1945 when he signed an Executive Order which made the breakup 'official' as of October 1, 1945. The rapid reorganizations that followed reflected the routine sort of bureaucratic competition for resources, but also trying to deal with the proper relationships of clandestine intelligence collection and covert action (i.e., paramilitary and psychological operations).

### ***Early CIA, 1947–1952***

In September 1947, the National Security Act of 1947 established both the National Security Council and the Central Intelligence Agency. Rear Admiral Roscoe H. Hillenkoetter was appointed as the first Director of Central Intelligence, and one of the first secret operations under him was the successful support of the Christian Democrats in Italy.

The National Security Council Directive on Office of Special Projects, June 18, 1948 (NSC 10/2) further gave the CIA the authority to carry out covert operations "against hostile foreign states or groups or in support of friendly foreign states or groups but which are so planned and mannered that any U.S. government responsibility for them is not apparent to unauthorized persons."

In 1949, the Central Intelligence Agency Act (Public law 81-110) authorized the agency to use confidential fiscal and administrative procedures, and exempted it from most of the usual limitations on the use of Federal funds.

It also exempted the CIA from having to disclose its "organization, functions, officials, titles, salaries, or numbers of personnel employed." It also created the program "PL-110", to handle defectors and other "essential aliens" who fall outside normal immigration procedures, as well as giving those persons cover stories and economic support.

### ***The structure stabilizes, 1952***

Then-DCI Walter Bedell Smith, who enjoyed a special degree of Presidential trust, having been Dwight D. Eisenhower's primary Chief of Staff throughout World War II, insisted that the CIA – or at least only one department – had to direct the OPC and OSO. Those organizations, as well as some minor functions, formed the euphemistically named Directorate of Plans in 1952.

Also in 1952, United States Army Special Forces were created, with some missions overlapping those of the Department of Plans. In general, the pattern appeared that the CIA could borrow resources from Special Forces, although it had its own special operators.

### ***Early Cold War, 1953–1966***

Allen Dulles, who had been a key OSS operations officer in Switzerland throughout World War II, took over from Smith, at a time where U.S. policy was dominated through intense anticommunism. Several sources existed, the most visible being the investigations and abuses of Senator Joseph McCarthy, and the more quiet but systematic containment doctrine urbanized through George Kennan, the Berlin Blockade and the Korean War. Dulles enjoyed a high degree of flexibility, as his brother, John Foster Dulles, was simultaneously Secretary of State.

Among the first successes was the Lockheed U-2 aircraft, which could take pictures and collect electronic signals from an altitude thought to be above Soviet air defenses' reach. After Gary Powers were shot down through an SA-2 surface-to-air missile in 1960, causing an international incident, the SR-71 was urbanized to take over this role.

Throughout this period, there were numerous covert actions against left-wing movements perceived as communist. The CIA overthrew a foreign government for the first time throughout the 1953 Iranian coup d'état, at the request of Winston Churchill. Some of the largest operations were aimed at Cuba after the overthrow of the Batista dictatorship, including assassination attempts against Fidel Castro and the failed Bay of Pigs Invasion. There have been suggestions that the Soviet effort to put missiles into Cuba came, indirectly, when they realized how badly they had been compromised through a U.S.-UK defector in place, Oleg Penkovsky.

The CIA, working with the military, formed the joint National Reconnaissance Office (NRO) to operate reconnaissance aircraft such as the SR-71 and later satellites. "The fact of" the United States operating



reconnaissance satellites, like "the fact of" the subsistence of NRO, was highly classified for several years.

One of the biggest operations ever undertaken through the CIA was directed at Zaïre in support of Mobutu Sese Seko.

### ***Indochina and the Vietnam War (1954–1975)***

The OSS Patti mission arrived in Vietnam close to the end of World War II, and had important interaction with the leaders of several Vietnamese factions, including Ho Chi Minh. While the Patti mission forwarded Ho's proposals for phased independence, with the French or even the United States as the transition partner, the US policy of containment opposed forming any government that was communist in nature.

The first CIA mission to Indochina, under the code name Saigon Military Mission arrived in 1954, under Edward Lansdale. U.S.-based analysts were simultaneously trying to project the evolution of political power, both if the scheduled referendum chose merger of the North and South, or if the South, the U.S. client, stayed independent. Initially, the US focus in Southeast Asia was on Laos, not Vietnam.

Throughout the period of U.S. combat involvement in the Vietnam War, there was considerable argument in relation to the progress among the Department of Protection under Robert McNamara, the CIA, and, to some extent, the intelligence staff of Military Assistance Command Vietnam. In general, the military was uniformly more optimistic than the CIA. Sam Adams, a junior CIA analyst with responsibilities for estimating the actual damage to the enemy, eventually resigned from the CIA, after expressing concern to Director of Central Intelligence Richard Helms with estimates that were changed for interagency and White House political reasons. Adams afterward wrote the book *War of Numbers*.

### ***Abuses of CIA authority, 1970s–1990s***

Things came to a head in the mid-1970s, approximately the time of Watergate. A dominant characteristic of political life throughout that period were the attempts of Congress to assert oversight of the U.S. Presidency and the executive branch of the U.S. government. Revelations in relation to the past CIA activities, such as assassinations and attempted assassinations of foreign leaders (most notably Fidel Castro and Rafael Trujillo) and illegal domestic spying on U.S. citizens provided the opportunities to augment Congressional oversight of U.S. intelligence operations.

Hastening the CIA's fall from grace were the burglary of the Watergate headquarters of the Democratic Party through ex-CIA agents, and President Richard Nixon's subsequent effort to use the CIA to impede the FBI's investigation of the burglary. In the well-known "smoking gun" recording that led to President Nixon's resignation, Nixon ordered his chief of staff, H. R. Haldeman, to tell the CIA that further investigation of Watergate would "open

*the whole can of worms*" in relation to the Bay of Pigs Invasion of Cuba. In this method Nixon and Haldemann ensured that the CIA's No. 1 and No. 2 ranking officials, Richard Helms and Vernon Walters, communicated to FBI Director L. Patrick Gray that the FBI should not follow the money trail from the burglars to the Committee to Re-elect the President, as it would uncover CIA informants in Mexico. The FBI initially agreed to this due to a long-standing agreement flanked by the FBI and CIA not to uncover each other's sources of information, though within a couple of weeks the FBI demanded this request in writing, and when no such formal request came, the FBI resumed its investigation into the money trail. Nonetheless, when the smoking gun tapes were made public, damage to the public's perception of CIA's top officials, and therefore to the CIA as a whole, could not be avoided.

In 1973, then-Director of Central Intelligence (DCI) James R. Schlesinger commissioned reports – recognized as the "Family Jewels" – on illegal activities through the Agency. In December 1974, investigative journalist Seymour Hersh broke the news of the "Family Jewels" (after it was leaked to him through DCI William Colby) in a front-page article in *The New York Times*, claiming that the CIA had assassinated foreign leaders, and had illegally mannered surveillance on some 7,000 U.S. citizens involved in the antiwar movement (Operation CHAOS). The CIA had also experimented on people, who unknowingly took LSD (among other things).

Congress responded to the disturbing charges in 1975, investigating the CIA in the Senate via the Church Committee, chaired through Senator Frank Church (D-Idaho), and in the House of Representatives via the Pike Committee, chaired through Congressman Otis Pike (D-NY). In addition, President Gerald Ford created the Rockefeller Commission, and issued an executive order prohibiting the assassination of foreign leaders.

Throughout the investigation, Schlesinger's successor as DCI, William Colby, testified before Congress on 32 occasions in 1975, including in relation to the "Family Jewels". Colby later stated that he whispered that providing Congress with this information was the correct thing to do, and ultimately in the CIA's own interests. As the CIA fell out of favor with the public, Ford assured Americans that his administration was not involved: "There are no people presently employed in the White House who have a relationship with the CIA of which I am personally unaware."

Repercussions from the Iran-Contra affair arms smuggling scandal incorporated the creation of the Intelligence Authorization Act in 1991. It defined covert operations as secret missions in geopolitical areas where the U.S. is neither openly nor apparently occupied. This also required an authorizing chain of command, including an official, presidential finding report and the informing of the House and Senate Intelligence Committees, which, in emergencies, requires only "timely notification."

### ***2004, DNI takes over CIA top-level functions***

The Intelligence Reform and Terrorism Prevention Act of 2004 created the office of the Director of National Intelligence (DNI), who took over some of the government and intelligence community (IC)-wide functions that had previously been the CIA's. The DNI manages the United States Intelligence Community and in so doing it manages the intelligence cycle. Among the functions that moved to the DNI were the preparation of estimates reflecting the consolidated opinion of the 16 IC agencies, and preparation of briefings for the president. On July 30, 2008, President Bush issued Executive Order 13470 amending Executive Order 12333 to strengthen the role of the DNI.

Previously, the Director of Central Intelligence (DCI) oversaw the Intelligence Community, serving as the president's principal intelligence advisor, additionally serving as head of the CIA. The DCI's title now is "Director of the Central Intelligence Agency" (D/CIA), serving as head of the CIA.

Currently, the CIA reports to the Director of National Intelligence. Prior to the establishment of the DNI, the CIA reported to the President, with informational briefings to congressional committees. The National Security Advisor is a permanent member of the National Security Council, responsible for briefing the President with pertinent information composed through all U.S. intelligence agencies, including the National Security Agency, the Drug Enforcement Administration, etc. All 16 Intelligence Community agencies are under the authority of the Director of National Intelligence.

### ***Al-Qaeda and the "Global War on Terrorism"***

The CIA had long been dealing with terrorism originating from abroad, and in 1986 had set up a Counterterrorist Center to deal specifically with the problem. At first confronted with secular terrorism, the Agency found Islamist terrorism looming increasingly large on its scope.

In January 1996, the CIA created an experimental "virtual station," the Bin Laden Issue Station, under the Counterterrorist Center, to track Bin Laden's developing activities. Al-Fadl, who defected to the CIA in spring 1996, began to give the Station with a new image of the Al Qaeda leader: he was not only a terrorist financier, but a terrorist organizer, too. FBI Special Agent Dan Coleman (who together with his partner Jack Cloonan had been "seconded" to the Bin Laden Station) described him Qaeda's "Rosetta Stone".

In 1999, CIA chief George Tenet launched a grand "Plan" to deal with al-Qaeda. The Counterterrorist Center, its new chief Cofer Black and the center's Bin Laden unit were the Plan's developers and executors. Once it was prepared Tenet assigned CIA intelligence chief Charles E. Allen to set up a "Qaeda cell" to oversee its tactical execution. In 2000, the CIA and USAF jointly ran a series of flights over Afghanistan with a small remote-controlled reconnaissance drone, the Predator; they obtained probable photos of Bin Laden. Cofer Black and others became advocates of arming the Predator with

missiles to try to assassinate Bin Laden and other al-Qaeda leaders. After the Cabinet-level Principals Committee meeting on terrorism of September 4, 2001, the CIA resumed reconnaissance flights, the drones now being weapons-capable.

The CIA set up a Strategic Assessments Branch in 2001 to remedy the deficit of "big-picture" analysis of al-Qaeda, and apparently to develop targeting strategies. The branch was formally set up in July 2001, but it struggled to find personnel. The branch's head took up his job on September 10, 2001.

After 9/11, the CIA came under criticism for not having done enough to prevent the attacks. Tenet rejected the criticism, citing the Agency's planning efforts especially over the preceding two years. He also measured that the CIA's efforts had put the Agency in a position to respond rapidly and effectively to the attacks, both in the "Afghan sanctuary" and in "ninety-two countries approximately the world". The new strategy was described the "Worldwide Attack Matrix".

Anwar al-Awlaki, a Yemeni-American U.S. citizen and al-Qaeda member, was killed on September 30, 2011, through an air attack accepted out through the Joint Special Operations Command. After many days of surveillance of Awlaki through the Central Intelligence Agency, armed drones took off from a new, secret American base in the Arabian Peninsula, crossed into northern Yemen, and unleashed a barrage of Hellfire missiles at al-Awlaki's vehicle. Samir Khan, a Pakistani-American al-Qaeda member and editor of the jihadist *Inspire* magazine, also reportedly died in the attack. The combined CIA/JSOC drone strike was the first in Yemen since 2002 – there have been others through the military's Special Operations forces – and was part of an effort through the spy agency to duplicate in Yemen the covert war which has been running in Afghanistan and Pakistan.

### ***2003 War in Iraq***

Whether or not the intelligence accessible, or presented through the Bush Administration, justified the 2003 invasion of Iraq or allowed proper planning, especially for the occupation, is quite controversial. Though, there was more than one CIA employee that asserted the sense that Bush administration officials placed undue pressure on CIA analysts to reach certain conclusions that would support their stated policy positions with regard to Iraq.

CIA Special Activities Division paramilitary teams were the first teams in Iraq arriving in July 2002. Once on the ground they prepared the battle space for the subsequent arrival of U.S. military forces. SAD teams then combined with U.S. Army Special Forces (on a team described the Northern Iraq Liaison Element or NILE). This team organized the Kurdish Peshmerga for the subsequent U.S.-led invasion. They combined to defeat Ansar al-Islam, an ally of Al-Qaeda. If this battle had not been as successful as it was, there would have been a considerable hostile force behind the U.S./Kurdish force in the

subsequent assault on Saddam's Army. The U.S. side was accepted out through Paramilitary Operations Officers from SAD/SOG and the Army's 10th Special Forces Group.

SAD teams also mannered high-risk special reconnaissance missions behind Iraqi lines to identify senior leadership targets. These missions led to the initial strikes against Saddam Hussein and his key generals. Although the initial strike against Hussein was unsuccessful in killing the dictator, it was successful in effectively ending his skill to command and control his forces. Other strikes against key generals were successful and significantly degraded the command's skill to react to and maneuver against the U.S.-led invasion force.

NATO member Turkey refused to allow its territory to be used through the U.S. Army's 4th Infantry Division for the invasion. As a result, the SAD, U.S. Army Special Forces joint teams and the Kurdish Peshmerga were the whole northern force against Saddam's Army throughout the invasion. Their efforts kept the 1st and 5th Corps of the Iraqi Army in place to defend against the Kurds rather than their moving to contest the coalition force coming from the south. This combined U.S. Special Operations and Kurdish force soundly defeated Saddam's Army, a major military success, similar to the victory over the Taliban in Afghanistan. Four members of the SAD/SOG team received CIA's unusual Intelligence Star for their "heroic actions."

### ***Operation Neptune Spear***

On May 1, 2011, President Barack Obama announced that Osama bin Laden was killed earlier that day through "a small team of Americans" operating in Abbottabad, Pakistan, throughout a CIA operation. The raid was executed from a CIA forward base in Afghanistan through elements of the U.S. Navy's Naval Special Warfare Development Group and CIA paramilitary operatives.

It resulted in the acquisition of extensive intelligence on the future attack plans of al-Qaeda. The operation was a result of years of intelligence work that incorporated the CIA's capture and interrogation of Khalid Sheik Mohammad (KSM), which led to the identity of a courier of Bin Laden's, the tracking of the courier to the compound through Special Activities Division paramilitary operatives and the establishing of a CIA safe house to give critical tactical intelligence for the operation.

### **Open Source Intelligence**

Until the 2004 reorganization of the intelligence community, one of the "services of common concern" that the CIA provided was Open Source Intelligence from the Foreign Broadcast Information Service (FBIS). FBIS, which had absorbed the Joint Publication Research Service, a military organization that translated documents, moved into the National Open Source

Enterprise under the Director of National Intelligence.

The CIA still gives a diversity of unclassified maps and reference documents both to the intelligence community and the public.

Throughout the Reagan administration, Michael Sekora (assigned to the DIA), worked with agencies crossways the intelligence community, including the CIA, to develop and deploy a technology-based competitive strategy system described Project Socrates. Project Socrates was intended to utilize open source intelligence gathering approximately exclusively. The technology-focused Socrates system supported such programs as the Strategic Protection Initiative in addition to private sector projects.

As part of its mandate to gather intelligence, the CIA is looking increasingly online for information, and has become a major consumer of social media. "We're looking at You Tube, which carries some unique and honest-to-goodness intelligence," said Doug Naquin, director of the DNI Open Source Center (OSC) at CIA headquarters. "We're looking at chat rooms and things that didn't exist five years ago, and trying to stay ahead."

### **Outsourcing and privatization**

Several of the duties and functions of Intelligence Community activities, not the CIA alone, are being outsourced and privatized. Mike McConnell, former Director of National Intelligence, was in relation to publicize an investigation report of outsourcing through U.S. intelligence agencies, as required through Congress. Though, this report was then classified. Hillhouse speculates that this report comprises requirements for the CIA to report:

- Different standards for government employees and contractors;
- Contractors providing similar services to government workers;
- Analysis of costs of contractors vs. Employees;
- An assessment of the appropriateness of outsourced activities;
- An estimate of the number of contracts and contractors;
- Comparison of compensation for contractors and government employees;
- Attrition analysis of government employees;
- Descriptions of positions to be converted back to the employee model;
- An evaluation of accountability mechanisms;
- An evaluation of procedures for "conducting oversight of contractors to ensure identification and prosecution of criminal violations, financial waste, fraud, or other abuses committed through contractors or contract personnel"; and
- An "identification of best practices of accountability mechanisms within service contracts."

According to investigative journalist Tim Shorrock:

- ...what we have today with the intelligence business is something distant more systemic: senior officials leaving their national security and counterterrorism jobs for positions where they are basically doing the same jobs they once held at the CIA, the NSA and other agencies — but for double or triple the salary, and for profit. It's a privatization of the highest order, in which our communal memory and experience in intelligence — our crown jewels of spying, so to speak — are owned through corporate America. Yet, there is essentially no government oversight of this private sector at the heart of our intelligence empire. And the lines flanked by public and private have become so blurred as to be nonexistent.

Congress has required an outsourcing report through March 30, 2008.

- The Director of National Intelligence has been granted the authority to augment the number of positions (FTEs) on elements in the Intelligence Community through up to 10% should there be a determination that activities performed through a contractor should be done through a US government employee."

Part of the contracting problem comes from Congressional restrictions on the number of employees in the IC. According to Hillhouse, this resulted in 70% of the de facto workforce of the CIA's National Clandestine Service being made up of contractors. "After years of contributing to the increasing reliance upon contractors, Congress is now providing a framework for the conversion of contractors into federal government employees—more or less."

As with most government agencies, building equipment often is contracted. The National Reconnaissance Office (NRO), responsible for the development and operation of airborne and space borne sensors, long was a joint operation of the CIA and the United States Department of Protection. NRO had been significantly involved in the design of such sensors, but the NRO, then under DCI authority, contracted more of the design that had been their custom, and to a contractor without extensive reconnaissance experience, Boeing. The after that-generation satellite Future Imagery Architecture project "how does heaven look", which missed objectives after \$4 billion in cost overruns, was the result of this contract.

Some of the cost problems associated with intelligence come from one agency, or even a group within an agency, not accepting the compartmented security practices for individual projects, requiring expensive duplication.

## **Controversies**

Major sources for this section contain the Council on Foreign Relations of the United States series, the National Security Archive and George Washington University, the Freedom of Information Act Reading Room at the

CIA, U.S. Congressional hearings, and books through William Blum and Tim Weiner. Note that the CIA has responded to the claims made in Weiner's book, and that Jeffrey Richelson of the National Security Archive has also been critical of it.

Areas of controversy in relation to the inappropriate, often illegal actions contain experiments, without consent, on human beings to explore chemical means of eliciting information or disabling people. Another area involved torture and clandestine imprisonment. There have been attempted assassinations under CIA orders and support for assassinations of foreign leaders through citizens of the leader's country, and, in a somewhat different legal category that may fall under the customary laws of war, assassinations of militant leaders.

### ***Extraordinary rendition***

Extraordinary rendition is the apprehension and extrajudicial transfer of a person from one country to another.

The term "torture through proxy" is used through some critics to describe situations in which the CIA and other US agencies have transferred suspected terrorists to countries recognized to employ torture, whether they meant to enable torture or not. It has been claimed, though, that torture has been employed with the knowledge or acquiescence of US agencies (a transfer of anyone to anywhere for the purpose of torture is a violation of US law), although Condoleezza Rice (then the United States Secretary of State) stated that:

- "the United States has not transported anyone, and will not transport anyone, to a country when we consider he will be tortured. Where appropriate, the United States seeks assurances that transferred persons will not be tortured."

Whilst the Obama administration has tried to aloofness itself from some of the harshest counterterrorism techniques, it has also said that at least some forms of renditions will continue. Currently the administration continues to allow rendition only "to a country with jurisdiction over that individual (for prosecution of that individual)" when there is a diplomatic assurance "that they will not be treated inhumanely."

The US programme has also prompted many official investigations in Europe into alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states. A June 2006 report from the Council of Europe estimated 100 people had been kidnapped through the CIA on EU territory (with the cooperation of Council of Europe members), and rendered to other countries, often after having transited through secret detention centers ("black sites") used through the CIA, some situated in Europe. According to the separate European Parliament report of February 2007, the CIA has mannered 1,245 flights, several of them to destinations



where suspects could face torture, in violation of article 3 of the United Nations Convention Against Torture.

Following the 11 September 2001 attacks the United States, in scrupulous the CIA, has been accused of rendering hundreds of people suspected through the government of being terrorists—or of aiding and abetting terrorist organisations—to third-party states such as Egypt, Jordan, Morocco, and Uzbekistan. Such "ghost detainees" are kept outside judicial oversight, often without ever entering US territory, and may or may not ultimately be devolved to the custody of the United States.

On October 4, 2001, a secret arrangement is made in Brussels, through all members of NATO. Lord George Robertson, British defense secretary and later NATO's secretary-general, will later explain NATO members agree to give "blanket over flight clearances for the United States and other allies' aircraft for military flights related to operations against terrorism."

### *Security and counterintelligence failures*

While the names change periodically, there are two basic security functions to protect the CIA and its operations. There is an Office of Security in the Directorate for Support, which is responsible for physical security of the CIA buildings, secure storage of information, and personnel security clearances. These are directed inwardly to the agency itself.

In what is now the National Clandestine Service, there is a counterintelligence function, described the Counterintelligence Staff under its most controversial chief, James Jesus Angleton. This function has roles including looking for staff members that are providing information to foreign intelligence services (FIS) as moles. Another role is to check proposals for recruiting foreign HUMINT assets, to see if these people have any recognized ties to FIS and therefore may be attempts to penetrate CIA to learn its personnel and practices, or as a provocateur, or other form of double agent.

This agency component may also launch offensive counterespionage, where it attempts to interfere with FIS operations. CIA officers in the field often have assignments in offensive counterespionage as well as clandestine intelligence collection.

### *Security failures*

The "Family Jewels" and other documents reveal that the Office of Security violated the prohibition of CIA involvement in domestic law enforcement, sometimes with the intention of assisting police organizations local to CIA buildings.

On December 30, 2009, a suicide attack occurred in the Forward Operating Base Chapman attack, a major CIA base in the province of Khost, Afghanistan. Seven CIA officers, including the chief of the base, were killed and six others seriously wounded in the attack. The CIA is consequently conducting an investigation into how the suicide bomber supervised to avoid

the base's security measures.

### *Counterintelligence failures*

Perhaps the most disruptive period involving counterintelligence was James Jesus Angleton's search for a mole, based on the statements of a Soviet defector, Anatoliy Golitsyn. A second defector, Yuri Nosenko, challenged Golitsyn's claims, with the two calling one another Soviet double agents. Several CIA officers fell under career-ending suspicion; the details of the relative truths and untruths from Nosenko and Golitsyn may never be released, or, in fact, may not be fully understood. The accusations also crossed the Atlantic to the British intelligence services, which also were damaged through molehunts.

On February 24, 1994, the agency was rocked through the arrest of 31-year veteran case officer Aldrich Ames on charges of spying for the Soviet Union since 1985.

Other defectors have incorporated Edward Lee Howard, David Henry Barnett, both field operations officers, and William Kampiles, a low-level worker in the CIA 24-hour Operations Center. Kampiles sold the Soviets the detailed operational manual for the KH-11 reconnaissance satellite.

### *Failures in intelligence analysis*

The agency has also been criticized through some for ineffectiveness as an intelligence gathering agency. Former DCI Richard Helms commented, after the end of the Cold War, "The only remaining superpower doesn't have enough interest in what's going on in the world to organize and run an espionage service." The CIA has come under scrupulous criticism for failing to predict the collapse of the Soviet Union.

See the information technology section of the intelligence analysis management for discussion of possible failures to give adequate automation support to analysts, and A-Space for an IC-wide program to collect some of them. Cognitive traps for intelligence analysis also goes into areas where CIA has examined why analysis can fail.

Agency veterans, such as John McLaughlin, who was deputy director and acting director of central intelligence from October 2000 to September 2004, have lamented CIA's inability to produce the kind of long-range strategic intelligence that it once did in order to guide policymakers. McLaughlin notes that CIA is drowned through demands from the White House and Pentagon for instant information, and said, "intelligence analysts end up being the Wikipedia of Washington." In the intelligence analysis article, orienting oneself to the consumers deals with some methods in which intelligence can become more responsive to the needs of policymakers.

For the media, the failures are most newsworthy. A number of declassified National Intelligence Estimates do predict the behavior of several countries, but not in a manner attractive to news, or, most significantly, not public at the

time of the event. In its operational role, some successes for the CIA contain the U-2 and SR-71 programs, and anti-Soviet operations in Afghanistan in the mid-1980s.

Among the first analytic failures, before the CIA had its own collection capabilities, it assured President Harry S. Truman on October 13, 1950 that the Chinese would not send troops to Korea. Six days later, over one million Chinese troops arrived. -->

The history of U.S. intelligence, with respect to French Indochina and then the two Vietnams, is long and intricate. The Pentagon Papers often contain pessimistic CIA analyses that conflicted with White House positions. It does appear that some estimates were changed to reflect Pentagon and White House views.

Another criticism is the failure to predict India's nuclear tests in 1974. A review of the several analyses of India's nuclear program did predict some characteristics of the test, such as a 1965 report saying, correctly, that if India did develop a bomb, it would be explained as "for peaceful purposes".

A major criticism is failure to forestall the September 11 attacks. The 9/11 Commission Report identifies failures in the IC as a whole. One problem, for instance, was the FBI failing to "connect the dots" through sharing information among its decentralized field offices. The report, though, criticizes both CIA analysis, and impeding their investigation.

The executive summary of a report which was released through the office of CIA Inspector General John Helgeson on August 21, 2007 concluded that former DCI George Tenet failed to adequately prepare the agency to deal with the danger posed through Al-Qaeda prior to the attacks of September 11, 2001. The report had been completed in June 2005 and was partially released to the public in an agreement with Congress, over the objections of current DCI General Michael Hayden. Hayden said its publication would "consume time and attention revisiting ground that is already well plowed." Tenet disagreed with the report's conclusions, citing his planning efforts vis-à-vis al-Qaeda, particularly from 1999.

### ***Human rights concerns***

The CIA has been described into question on many occasions for some of the tactics it employs to carry out its missions. At times these tactics have incorporated torture, funding and training of groups and organizations that would later participate in killing of civilians and other non-combatants and would try or succeed in overthrowing democratically elected governments, human experimentation, and targeted killings and assassinations.

The CIA has been criticized for ineffectiveness in its basic mission of intelligence gathering. A variant of this criticism is that allegations of misconduct are symptomatic of lack of attention to basic mission in the sense that controversial actions, such as assassination attempts and human rights violations, tend to be accepted out in operations that have little to do with

intelligence gathering. The CIA has been charged with having more than 90% of its employees living and working within the United States, rather than in foreign countries, which is in violation of its charter. The CIA has also been accused of a lack of financial and whistleblower controls which has led to waste and fraud.

### ***External investigations and document releases***

At several times since the creation of the CIA, the U.S. government has produced comprehensive reports on CIA actions that marked historical watersheds in how CIA went in relation to the trying to fulfill its vague charter purposes from 1947. These reports were the result of internal/presidential studies, external investigations through Congressional committees or other arms of the US Government, or even the simple releases and declassification of large quantities of documents through the CIA.

Many investigations (e.g., the Church Committee, Rockefeller Commission, Pike Committee, etc.), as well as released declassified documents, reveal that the CIA, at times, operated outside its charter. In some cases, such as throughout Watergate, this may have been due to inappropriate requests through White House staff. In other cases, there was a violation of Congressional intent, such as the Iran-Contra affair. In several cases, these reports give the only official discussion of these actions accessible to the public.

### ***Influencing public opinion and law enforcement***

The CIA has much popular agreement in a set few instances wherein it has acted inappropriately, such as in providing technical support to White House operatives conducting both political and security investigations, with no reputed legal authority to do so. In several cases, ambiguity existing flanked by law enforcement and intelligence agencies may expose a clandestine operation. This is a problem not unique to intelligence but also seen among different law enforcement organizations, where one wants to prosecute and another to continue investigations, perhaps reaching higher levels in a conspiracy.

### ***Drug trafficking***

Two offices of CIA Directorate of Intelligence have analytical responsibilities in this area. The Office of Transnational Issues applies unique functional expertise to assess existing and emerging threats to U.S. national security and gives the most senior U.S. policymakers, military planners, and law enforcement with analysis, warning, and crisis support.

Since CIA has no domestic police authority, it sends its analytic information to the Federal Bureau of Investigation (FBI), Immigration and Customs Enforcement (ICE) and other law enforcement organizations, such as

the Drug Enforcement Administration (DEA) and the Office of Foreign Assets Control of the United States Department of the Treasury (OFAC).

Another part of CIA, the National Clandestine Service, collects human intelligence (HUMINT) in these areas.

Research through Dr. Alfred W. McCoy, Gary Webb, and others has pointed to CIA involvement in narcotics trafficking crossways the globe, although the CIA officially denies such allegations. Throughout the Cold War, when numerous soldiers participated in transport of Southeast Asian heroin to the United States through the airline Air America, the CIA's role in such traffic was reportedly rationalized as "recapture" of related profits to prevent possible enemy control of such assets.

### ***Lying to Congress***

Former Speaker of the United States House of Representatives Nancy Pelosi has stated that the CIA repeatedly misled the Congress since 2001 in relation to the water boarding and other torture, though Pelosi admitted to being told in relation to the programs. Six members of Congress have claimed that Director of CIA Leon Panetta admitted that over a period of many years since 2001 the CIA deceived Congress, including affirmatively lying to Congress. Some congressmen consider that these "lies" to Congress are similar to CIA lies to Congress from earlier periods.

### ***Covert programs hidden from Congress***

On July 10, 2009, House Intelligence subcommittee Chairwoman Representative Jan Schakowsky (D, IL) announced the termination of an unnamed CIA covert program described as "very serious" in nature which had been kept secret from Congress for eight years. CIA Director Panetta had ordered an internal investigation to determine why Congress had not been informed in relation to the covert program. Chairman of the House Intelligence Committee Representative Silvestre Reyes announced that he is considering an investigation into alleged CIA violations of the National Security Act, which requires with limited exception that Congress be informed of covert activities. Investigations and Oversight Subcommittee Chairwoman Schakowsky indicated that she would forward a request for congressional investigation to HPSCI Chairman Silvestre Reyes.

As mandated through Title 50 of the United States Code Chapter 15, Subchapter III, when it becomes necessary to limit access to covert operations findings that could affect vital interests of the U.S., as soon as possible the President necessity report at a minimum to the Gang of Eight (the leaders of each of the two parties from both the Senate and House of Representatives, and the chairs and ranking members of both the Senate Committee and House Committee for intelligence). The House is expected to support the 2010 Intelligence Authorization Bill including a provision that would require the President to inform more than 40 members of Congress in relation to the

covert operations. The Obama administration threatened to veto the final version of a bill that incorporated such a provision. On July 16, 2008 the fiscal 2009 Intelligence Authorization Bill was approved through House majority containing stipulations that 75% of money sought for covert actions would be held until all members of the House Intelligence panel were briefed on sensitive covert actions. Under the George W. Bush administration, senior advisers to the President issued a statement indicating that if a bill containing this provision reached the President, they would recommend that he veto the bill.

The program was rumored vis-à-vis leaks made through anonymous government officials on July 23, to be an assassinations program, but this remains unconfirmed. "The whole committee was stunned....I think this is as serious as it gets," stated Anna Eshoo, Chairman, Subcommittee on Intelligence Community Management, U.S. House Permanent Select Committee on Intelligence (HPSCI).

Allegations through Director Panetta indicate that details of a secret counterterrorism program were withheld from Congress under orders from former U.S. Vice President Dick Cheney. This prompted Senator Feinstein and Senator Patrick Leahy, chairman of the Senate Judiciary Committee to insist that no one should go outside the law. "The agency hasn't discussed publicly the nature of the effort, which remains classified," said agency spokesman Paul Gimigliano.

*The Wall Street Journal* reported, citing former intelligence officials familiar with the matter, that the program was an effort to carry out a 2001 presidential authorization to capture or kill al-Qaeda operatives.

#### *Intelligence Committee investigation*

On July 17, 2009, the House Intelligence Committee said it was launching a formal investigation into the secret program. Representative Silvestre Reyes announced the probe will look into "whether there was any past decision or direction to withhold information from the committee".

Congresswoman Jan Schakowsky (D, IL), Chairman of the Subcommittee on Oversight and Investigations, who described for the investigation, stated that the investigation was planned to address CIA failures to inform Congress fully or accurately in relation to the four issues: C.I.A. involvement in the downing of a missionary plane mistaken for a narcotics flight in Peru in 2001, and two "*matters that remain classified*", as well as the rumored-assassinations question. In addition, the inquiry is likely to look at the Bush administration's program of eavesdropping without warrants and its detention and interrogation program. U.S. Intelligence Chief Dennis Blair testified before the House Intelligence Committee on February 3, 2010 that the U.S. intelligence community is prepared to kill U.S. citizens if they threaten other Americans or the United States. The American Civil Liberties Union has said this policy is "particularly troubling" because U.S. citizens "retain their constitutional right

to due process even when abroad." The ACLU also "expressed serious concern in relation to the lack of public information in relation to the policy and the potential for abuse of unchecked executive power."

## CSI

*CSI: Crime Scene Investigation* (referred to as *CSI*, also recognized as *CSI: Las Vegas*) is an American crime drama television series that premiered on CBS on October 6, 2000. The show was created through Anthony E. Zuiker and produced through Jerry Bruckheimer. It is filmed primarily at Universal Studios in Universal City, California.

The series follows Las Vegas criminalizes (recognized as "Crime Scene Investigators") working for the Las Vegas Police Department (LVPD) (instead of the actual title of "Crime Scene *Analysts*" and "Las Vegas *Metropolitan* Police Department" (LVMPD)) as they use physical proof to solve grisly murders in this unusually graphic drama, which has inspired a host of other cop-show "procedurals". The series mixes deduction, gritty subject matter and character-driven drama. The network later added spin-offs *CSI: Miami* and *CSI: NY*, which have both been cancelled after ten and nine seasons respectively.

*CSI* has been recognized as the most popular dramatic series internationally through the Festival de Television de Monte-Carlo, which has awarded it the "International Television Audience Award (Best Television Drama Series)" three times. *CSI*'s worldwide audience was estimated to be over 73.8 million viewers in 2009. In 2012, *CSI* was named the most watched show in the world for the fifth time.

*CSI* has been nominated multiple times for industry awards and has won nine awards throughout its history. The program has spawned many media projects including an exhibit at Chicago's Museum of Science and Industry, a series of books, many video games, and two additional TV shows. It has reached milestone episodes, such as the 100th, "Ch-Ch-Changes", the 150th, "Living Legend", which starred Roger Daltrey from The Who, performers of the show's theme song, the 200th, "Mascara" (aired on April 2, 2009), and the 250th, "Cello and Goodbye" (on May 5, 2011). On March 20, 2013 CBS renewed *CSI* for a 14th season which began on September 25, 2013.

## DEA

The Drug Enforcement Administration (DEA) is a United States federal law enforcement agency under the U.S. Department of Justice, tasked with combating drug smuggling and use within the United States. Not only is the DEA the lead agency for domestic enforcement of the Controlled Substances Act, sharing concurrent jurisdiction with the Federal Bureau of Investigation (FBI) and Immigration and Customs Enforcement (ICE), it also has sole

responsibility for coordinating and pursuing U.S. drug investigations abroad.

## **History and mandate**

The Drug Enforcement Administration was established on July 1, 1973, through Reorganization Plan No. 2 of 1973, signed through President Richard Nixon on July 28. It proposed the creation of a single federal agency to enforce the federal drug laws as well as consolidate and coordinate the government's drug control activities. Congress accepted the proposal, as they were concerned with the rising availability of drugs. As a result, the Bureau of Narcotics and Dangerous Drugs (BNDD), the Office of Drug Abuse Law Enforcement (ODALE), and other federal offices merged to make the DEA.

From the early 1970s, DEA headquarters was situated at 1405 I ("Eye") Street NW in downtown Washington, D.C. With the overall growth of the agency in the 1980s (owing to the increased emphasis on federal drug law enforcement efforts) and a concurrent growth in the headquarters staff, DEA began to search for a new headquarters location; locations in Arkansas, Mississippi, and several abandoned military bases approximately the U.S. were measured. Though, then-Attorney General Edwin Meese determined that the headquarters had to be situated in close proximity to the Attorney General's office. Therefore, in 1989, the headquarters relocated to 600–700 Army-Navy Drive in the Pentagon City area of Arlington, Virginia, close to the Metro station with the same name.

On April 19, 1995, Timothy McVeigh attacked the Alfred P. Murrah Federal Building in Oklahoma City because it housed local offices for the FBI, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and DEA, all of which had accepted out raids that he viewed as unjustified intrusions on the rights of the people; this attack caused the deaths of two DEA employees, one task force member, and two contractors in the Oklahoma City bombing. Subsequently, the DEA headquarters intricate was classified as a Level IV installation under United States federal building security standards, meaning it was to be measured a high-risk law enforcement target for terrorists. Security measures contain hydraulic steel roadplates to enforce standoff aloofness from the building, metal detectors, and guard stations.

In February 2003, the DEA established a Digital Proof Laboratory within its Office of Forensic Sciences.

## **Organization**

The DEA is headed through an *Administrator of Drug Enforcement* appointed through the President of the United States and confirmed through the U.S. Senate. The Administrator reports to the Attorney General through the Deputy Attorney General. The Administrator is assisted through a Deputy Administrator, the Chief of Operations, the Chief Inspector, and three



Assistant Administrators (for the Operations Support, Intelligence, and Human Resources Divisions). Other senior staff contains the chief financial officer and the Chief Counsel. The Administrator and Deputy Administrator are the only presidentially-appointed personnel in the DEA; all other DEA officials are career government employees. DEA's headquarters is situated in Arlington, Virginia crossways from the Pentagon. It maintains its own DEA Academy situated on the United States Marine Corps base at Quantico, Virginia beside with the FBI Academy. It maintains 21 domestic field divisions with 227 field offices and 86 foreign offices in 62 countries. With a budget exceeding 2.415 billion dollars, DEA employs over 10,800 people, including over 5,500 Special Agents. Becoming a Special Agent with the DEA is a competitive process.

### ***Structure***

- Administrator
  - Deputy Administrator
    - Human Resource Division
      - Career Board
      - Board of Professional Conduct
      - Office of Training
    - Operations Division
      - Aviation Division
      - Office of Operations Management
      - Special Operations Division
      - Office of Diversion Control
      - Office of Global Enforcement
      - Office of Financial Operations
    - Intelligence Division
      - Office of National Security Intelligence
      - Office of Special Intelligence
      - El Paso Intelligence Center
      - OCDETF Fusion Center
    - Financial Management Division
      - Office of Acquisition and Relocation Management
      - Office of Finance
      - Office of Resource Management
    - Operational Support Division
      - Office of Administration
      - Office of Information System
      - Office of Forensic Science
      - Office of Investigative Technology
    - Inspection Division

- Office of Inspections
- Office of Professional Responsibility
- Office of Security Programs
- Field Divisions and Offices

### ***Agents***

After getting a conditional offer of employment, recruits necessity then create it through a 19-week rigorous training which consist of firearms proficiency including basic marksmanship, weapons safety, tactical shooting, and deadly force decision training. In order to graduate, students necessity maintain an academic average of 80 percent on academic examinations, pass the firearms qualification test, successfully demonstrate leadership and sound decision-making in practical scenarios, and pass rigorous physical task tests. Upon graduation, recruits earn themselves the title of DEA Special Agent.

Job applicants who have a history of any drug use are excluded from consideration. Investigation usually comprises a polygraph test for special agent, diversion investigator, and intelligence research specialist positions.

- Applicants who are found, through investigation or personal admission, to have experimented with or used narcotics or dangerous drugs, except those medically prescribed, will not be measured for employment with the Drug Enforcement Administration (DEA). Exceptions to this policy may be made for applicants who admit to limited youthful and experimental use of marijuana. Such applicants may be measured for employment if there is no proof of regular, confirmed usage and the full-field background investigation and results of the other steps in the process are otherwise favorable.

The DEA's relatively firm stance on this issue is in contrast to that of the Federal Bureau of Investigation, which, in 2005, measured relaxing its hiring policy relevant to individual drug use history.

### ***Aviation Division***

The DEA Aviation Division or Office of Aviation Operations (OA) (formerly Aviation Section) is an airborne division based in Fort Worth Alliance Airport, Texas. The current OA fleet consists of 106 aircraft and 124 DEA pilots.

The DEA shares a communications system with the Department of Protection for communication with state and local enforcement independent of the Department of Justice and police information systems and is coordinated through an information command center described the El Paso Intelligence Center (EPIC) close to El Paso, Texas.

### ***Foreign-deployed Advisory and Support Teams***

Foreign-deployed Advisory and Support Teams is the enforcement arm of the DEA's Drug Flow Attack Strategy. Their stated mission is to "plan and conduct special enforcement operations; train, mentor, and advise foreign narcotics law enforcement units; collect and assess proof and intelligence in support of U.S. and bilateral investigations."

As of January 2010, FAST fields five teams. One team is always stationed in Afghanistan conducting Counter Narcotics (CN), Counter Terrorism (CT), Direct Action (DA) missions. The remaining four teams are stationed at Marine Corps Base Quantico, Virginia. FAST originally was created to solely conduct missions in Afghanistan to disrupt the Afghan opium trade (which helps fund the Taliban) but has evolved into a global action arm for the U.S. Department of Justice and DEA.

Selection for FAST is very hard; attrition rates are usually above 50%. Selection is rumored to last 8 weeks where events such as timed runs, timed ruck sack marches, land navigation and several other events are mannered daily. Once selection is complete, advanced training begins with emphasis in small unit tactics, and close quarters battle.

### ***Special Operations Division***

The DEA Special Operations Division (SOD) is a secretive division within the DEA, which forwards information from wiretaps, intercepts and databases from several sources to federal agents and local law enforcement officials. The SOD came under scrutiny following the 2013 mass surveillance disclosures.

### ***Budget***

The 1998 DEA budget was directed toward three of five major goals of U.S. drug eradication:

- Demand reduction (\$3.3 million) via anti-legalization education, training for law enforcement personnel, youth programs, support for community-based coalitions, and sports drug awareness programs.
- Reduction of drug-related crime and violence (\$181.8 million) funding state and local teams and mobile enforcement teams.
- Breaking foreign and domestic sources of supply (\$1.0149 billion) via domestic cannabis eradication/suppression; domestic enforcement; research, engineering, and technical operations; the Foreign Cooperative Investigations Program; intelligence operations (financial intelligence, operational intelligence, strategic intelligence, and the El Paso Intelligence Center); and drug and chemical diversion control.

## **Firearms**

DEA agents' primary service weapons are the Glock 22 and Glock 23 in .40 S&W caliber ammunition, and agents can also qualify to use the Glock 27 and SIG Pro in .40 S&W, and they also have the option of using the newly appointed Smith & Wesson M&P series pistol.

Special Agents may qualify with their own personally-owned handguns and certain handguns are allowed to be used with permission from the DEA Firearms office in Quantico, VA, but they are required to qualify on all assigned weapons quarterly.

Trained to use shoulder-launched weapons, the H&K UMP40 is the standard SMG of DEA, although the Colt 9mm SMG may also be issued. They are issued a LWRCI M6A2 carbine as their new personal duty service rifle and also the Rock River Arms CAR-15 and shotguns such as the Remington 870 are one of the weapons trained.

## **Impact on the drug trade**

In 2005, the DEA seized a reported \$1.4 billion in drug trade related assets and \$477 million worth of drugs. According to the White House's Office of Drug Control Policy, the total value of all of the drugs sold in the U.S. is as much as \$64 billion a year, giving the DEA an efficiency rate of less than 1% at intercepting the flow of drugs into and within the U.S. Critics of this theory (including recipient of the Nobel Memorial Prize in Economic Sciences, Milton Friedman, prior to his death a member of Law Enforcement Against Prohibition) point out that demand for illegal drugs is inelastic; the people who are buying drugs will continue to buy them with little regard to price, often turning to crime to support expensive drug habits when the drug prices rise. One recent study showed that the price of cocaine and methamphetamine is the highest it has ever been while the quality of both is at its lowest point ever. This is contrary to a collection of data done through the Office of National Drug Control Policy, which states that purity of street drugs has increased, while price has decreased. In contrast to the statistics presented through the DEA, the United States Department of Justice released data in 2003 showing that purity of methamphetamine was on the rise.

## ***Registration and licensing***

] The DEA has a registration system in place which authorizes medical professionals, researchers and manufacturers access to "Schedule I" drugs, as well as Schedules 2, 3, 4 and 5. Authorized registrants apply for and, if granted, receive a "DEA number". An entity that has been issued a DEA number is authorized to manufacture (drug companies), distribute, research, prescribe (doctors, nurse practitioners and physician assistants, etc.) or

dispense (pharmacy) a controlled substance.

### ***Diversion control system***

Several problems associated with drug abuse are the result of legitimately-manufactured controlled substances being diverted from their lawful purpose into the illicit drug traffic. Several of the analgesics, depressants and stimulants manufactured for legitimate medical use can often carry potential for dependence or abuse. So those scheduled substances have been brought under legal control for prevention and population safety. The goal of controls is to ensure that these "controlled substances" are readily accessible for medical use, while preventing their distribution for illicit distribution and non-medical use. This can be a hard task, sometimes providing difficulty for legitimate patients and healthcare providers while circumventing illegal trade and consumption of scheduled drugs.

Under federal law, all businesses which manufacture or distribute controlled drugs, all health professionals entitled to dispense, administer or prescribe them, and all pharmacies entitled to fill prescriptions necessity register with the DEA. Registrant's necessity complies with a series of regulatory requirements relating to drug security, records accountability, and adherence to standards.

All of these investigations are mannered through Diversion Investigators (DIs). DIs conduct investigations to uncover and investigate suspected sources of diversion and take appropriate civil and administrative actions. Prescription Database Management Programs (PDMP) aid and facilitate investigation and surveillance.

### ***MDMA DEA scheduling overturn***

In 1985 MDMA and its analogues were under review through the American government as a drug for potential of abuse. Throughout this time, many public hearings on the new drug were held through the DEA. Based on all of the proof and facts presented at the time, the DEA's administrative law judge did not see MDMA and its analogues as being of large concern and recommended that they be placed in Schedule III. The DEA administrator, expressing concern for abuse potential, overruled the recommendation and ruled that MDMA be put in Schedule I, the Controlled Substances Act's most restrictive category.

### **Criticism**

The DEA has been criticized for placing highly restrictive schedules on a few drugs which researchers in the fields of pharmacology and medicine regard as having medical uses. Critics assert that some such decisions are motivated primarily through political factors stemming from the U.S.

government's War on Drugs, and that several benefits of such substances remain unrecognized due to the difficulty of conducting scientific research. A counterpoint to that criticism is that under the Controlled Substances Act it is the Department of Health and Human Services (through the Food and Drug Administration and the National Institute on Drug Abuse), not the DEA, which has the legal responsibility to create scientific and medical determinations with respect to drug scheduling; no drug can be scheduled if the Secretary of Health and Human Services recommends against it on a scientific or medical basis, and no drug can be placed in the most restrictive schedule (Schedule I) if DHHS finds that the drug has an accepted medical use. Jon Gettman's essay *Science and the End of Marijuana Prohibition* describes the DEA as "a fall guy to deflect responsibility from the key decision-makers" and opines, "HHS calls the shots when it comes to marijuana prohibition, and the cops at DEA and the general over at ONDCP take the heat."

The DEA is also criticized for focusing on the operations from which it can seize the most money, namely the organized cross-border trafficking of marijuana. Some individuals contemplating the nature of the DEA's charter advise that, based on danger, the DEA should be most focused on cocaine. Others suggest that, based on opiate popularity, the DEA should focus much more on prescription opiates used recreationally, which critics contend comes first before users switch to heroin.

Practitioners who legally prescribe medicine though necessity possess a valid DEA license. According to federal law the budget of the whole DEA is to be paid through these license fees. In 1984 a three-year license cost \$25. In 2009 the fee for a three-year license was \$551. Some have likened this approach to license fees unreasonable, "like making pilot licenses support the whole Federal Aviation Authority (FAA) budget."

### ***Costs***

The total cost of the DEA from 1972 to 2009 according to the agency website was \$536,367,800,000.00 with 10,784 employees in 2009. For the data accessible for the years 1986 to 2009, the average cost per arrest made was \$9,893.09.

### ***Libertarians***

Others, such as the Cato Institute and the Drug Policy Alliance criticize the very subsistence of the DEA and the War on Drugs as both hostile, and contrary, to the concept of civil liberties through arguing that anybody should be free to put any substance they choose into their own bodies for any cause, particularly when legal drugs such as alcohol, tobacco and prescription drugs are also open to abuse, and that any harm caused through a drug user or addict to the general public is a case of conflicting civil rights. Recurrently, billions of dollars are spent yearly, focusing largely on criminal law and demand

reduction campaigns, which has resulted in the imprisonments of thousands of U.S. citizens. Demand for recreational drugs is somewhat static as the market for most illegal drugs has been saturated, forcing the cartels to expand their market to Europe and other areas than the United States. United States federal law registers cannabis as a Schedule I drug, yet it is common for illicit drugs such as cannabis to be widely accessible in most urban, suburban, and even rural areas in the United States, which leads drug legalization proponents to claim that drug laws have little effect on those who choose not to obey them, and that the resources spent enforcing drug laws are wasted. As it relates to the DEA specifically, the vast majority of individual arrests stemming from illegal drug possession and distribution are narrow and more local in scope and are made through local law enforcement officers, while the DEA tends to focus on superior, interstate and international distribution networks and the higher-ranking members of such organizations in addition to operating in conjunction with other local, state, and federal law enforcement agencies beside U.S. borders.

Some groups advocate legalization of certain controlled substances under the premise that doing so may reduce the volume of illicit trafficking and associated crime as well as yield a valuable tax source, although some of the results of drug legalization have raised doubt in relation to some of these beliefs. For instance, marijuana is now accessible as a palliative agent, in Canada, with a medical prescription. Yet 86% of Canadians with HIV/AIDS, eligible for a prescription, continue to obtain marijuana illegally (AIDS Care. 2007 Apr; 19(4):500-6.) Though, this could be due to the availability or quality of illegal cannabis compared to provisions through government sources. Bureaucratic impediments may also discourage patients from actually attempting to receive it from the government.

### ***Incarceration of Daniel Chong***

An April 2012 DEA raid on a California home led to the incarceration of Daniel Chong for many days under circumstances of neglect. The 23-year-old student attending the University of California, San Diego was taken into custody beside with eight other people when the DEA executed a raid on a suspected MDMA distribution operation at a residence that he was visiting to celebrate the April 20 cannabis "holiday" recognized as "420". According to Chong, the DEA agents questioned him and told him that he could go home, one even offering him a ride home, but instead he was transferred to a holding cell and confined for five days without any food or water, although Chong said he ingested a powdery substance that was left for him, which was later found to be methamphetamine. After five days and two failed suicide attempts, DEA agents found Chong. He was taken to the hospital, where he spent three days in rigorous care, because his kidneys were close to failing. No criminal charges were filed against Chong. A DEA spokesperson stated that the extended detention was accidental and the acting special agent in charge of the

San Diego DEA office issued an apology to Chong. Chong disputes the claim of accidental neglect, saying that DEA personnel ignored his calls for help. His attorney stated intent to file a claim against the federal government and some members of California's delegation to the Congress described for further investigation of the incident.

### ***Department of Justice Smart on Crime Program***

On 12 August 2013, at the American Bar Association's House of Delegates meeting, Attorney General Eric Holder announced the "Smart on Crime" program, which is "a sweeping initiative through the Justice Department that in effect renounces many decades of tough-on-crime anti-drug legislation and policies." Holder said the program "will encourage U.S. attorneys to charge defendants only with crimes "for which the accompanying sentences are better suited to their individual conduct, rather than excessive prison conditions more appropriate for violent criminals or drug kingpins..." Running through Holder's statements, the increasing economic burden of over-incarceration was stressed. As of August 2013, the Smart on Crime program is not a legislative initiative but an effort "limited to the DOJ's policy parameters."

### ***International***

The DEA was accused in 2005 through the Venezuelan government of collaborating with drug traffickers, after which President Hugo Chávez decided to end any collaboration with the agency. In 2007, after the U.S. State Department criticized Venezuela in its annual report on drug trafficking, the Venezuelan Minister of Justice reiterated the accusations: "A large quantity of drug shipments left the country through that organization, []... We were in the attendance of a new drug cartel."

The government of Bolivia has also taken similar steps to ban the DEA from operating in the country. In September 2008, Bolivia and the US drastically reduced diplomatic ties with one another, each withdrawing ambassadors from the other country. This occurred soon after Bolivian president Evo Morales expelled all DEA agents from the country due to a revolt in the traditional coca-rising Chapare Province. The Bolivian government claimed that it could not protect the agents, and Morales further accused the agency of helping incite the violence, which claimed 30 lives. National agencies were to take over control of drug management. Three years later, Bolivia and the US began to restore full diplomatic ties. Though, Morales maintained that the DEA would remain unwelcome in the country, characterizing it as an affront to Bolivia's "dignity and sovereignty".

In the Netherlands, both the Dutch government and the DEA have been criticized for violations of Dutch sovereignty in drug investigations. According to Peter R. de Vries, a Dutch journalist present at the 2005 trial of Henk Orlando Rommy, the DEA has admitted to activities on Dutch soil. Earlier, then Minister of Justice Piet Hein Donner, had denied to the Dutch



parliament that he had given permission to the DEA for any such activities, which would have been a requirement through Dutch law in order to allow foreign agents to act within the territory.

### **Raids on medical marijuana dispensaries**

The DEA has taken a particularly strong stance on enforcement of the Controlled Substances Act on persons and organizations acting within state laws that allow medical cannabis cultivation and distribution.

"The people of California and the County of Santa Cruz have overwhelmingly supported the provision of medical marijuana for people who have serious illnesses," county Supervisor Mardi Wormhoudt told the *San Francisco Gate*. "These people (blocking the road) are people with AIDS and cancer and other grave illnesses. To attack these people, who work collectively and have never taken money for their work, is outrageous."

As a result, the Wo/Men's Alliance for Medical Marijuana, with the City and County of Santa Cruz, has sued the DEA, Attorney General Michael Mukasey, and the ONDCP. The most recent court decision rejected the government's motion to dismiss, which allows detection to move forward. The American Civil Liberties Union hailed the decision as "a first-of-its-kind ruling. "

More recently, the DEA has escalated its enforcement efforts on the recently-proliferated Los Angeles area medical cannabis collectives. On July 25, 2007, the DEA raided the California Patients Group, Hollywood Compassionate Communal, and Natural Hybrid (NHI Caregivers) in Hollywood, California. Earlier that day, the operators of those collectives participated in a press conference with LA City Council members announcing the City's intention to regulate the collectives and asking the DEA to halt raids on collectives while the City drafted regulations. The dispensary operator of Natural Hybrid (NHI Caregivers) was forced to close down the communal due to the tremendous loss caused through the DEA mannered joint task force raid against them.

### **BUREAU OF ALCOHOL, TOBACCO, FIREARMS**

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is a federal law enforcement organization within the United States Department of Justice. Its responsibilities contain the investigation and prevention of federal offenses involving the unlawful use, manufacture and possession of firearms and explosives; acts of arson and bombings; and illegal trafficking of alcohol and tobacco products. The ATF also regulates via licensing the sale, possession, and transportation of firearms, ammunition, and explosives in interstate commerce. Several of ATF's activities are accepted out in conjunction with task forces made up of state and local law enforcement

officers, such as Project Safe Neighborhoods. ATF operates a unique fire research laboratory in Beltsville, Maryland, where full-scale mock-ups of criminal arson can be reconstructed.

The agency is led through B. Todd Jones, Director, and Thomas E. Brandon, Deputy Director. ATF has 4,770 employees, and an annual budget of \$1.2 billion (2012).

## **Organizational history**

The ATF was formerly part of the United States Department of the Treasury, having been formed in 1886 as the "Revenue Laboratory" within the Treasury Department's Bureau of Internal Revenue. The history of ATF can be subsequently traced to the time of the revenueurs or "revenoors" and the Bureau of Prohibition, which was formed as a unit of the Bureau of Internal Revenue in 1920, was made an independent agency within the Treasury Department in 1927, was transferred to the Justice Department in 1930, and became, briefly, a division of the FBI in 1933.

When the Volstead Act, which established prohibition in the United States, was repealed in December 1933, the Unit was transferred from the Department of Justice back to the Department of the Treasury where it became the Alcohol Tax Unit (ATU) of the Bureau of Internal Revenue. Special Agent Eliot Ness and many members of The "Untouchables", who had worked for the Prohibition Bureau while the Volstead Act was still in force, were transferred to the ATU. In 1942, responsibility for enforcing federal firearms laws was given to the ATU.

In the early 1950s, the Bureau of Internal Revenue was renamed "Internal Revenue Service" (IRS), and the ATU was given the additional responsibility of enforcing federal tobacco tax laws. At this time, the name of the ATU was changed to the Alcohol and Tobacco Tax Division (ATTD).

In 1968, with the passage of the Gun Control Act, the agency changed its name again, this time to the Alcohol, Tobacco, and Firearms Division of the IRS and first began to be referred to through the initials "ATF". In Title XI of the Organized Crime Control Act of 1970, Congress enacted the Explosives Control Act, 18 U.S.C.A. Chapter 40, which provided for close regulation of the explosives industry and designated certain arsons and bombings as federal crimes. The Secretary of the Treasury was made responsible for administering the regulatory characteristics of the new law, and was given jurisdiction over criminal violations relating to the regulatory controls. These responsibilities were delegated to the ATF division of the IRS. The Secretary and the Attorney General were given concurrent jurisdiction over arson and bombing offenses. Pub.L. 91-452, 84 Stat. 922, October 15, 1970.

In 1972 ATF was established as a separate Bureau within the Treasury Department when Treasury Department Order 221, effective July 1, 1972, transferred the responsibilities of the ATF division of the IRS to the new

Bureau of Alcohol, Tobacco, and Firearms. Rex D. Davis oversaw the transition, becoming the bureau's first director, having headed the division since 1970. Throughout his tenure, Davis shepherded the organization into a new era where federal firearms and explosives laws addressing violent crime became the primary mission of the agency. Though, taxation and other alcohol issues remained priorities as ATF composed billions of dollars in alcohol and tobacco taxes, and undertook major revisions of the Federal wine labeling regulations relating to use of appellations of origin and varietal designations on wine labels.

In the wake of the terrorist attack on the World Trade Center on September 11, 2001, President George W. Bush signed into law the Homeland Security Act of 2002. In addition to the creation of the Department of Homeland Security, the law shifted ATF from the Department of the Treasury to the Department of Justice. The agency's name was changed to Bureau of Alcohol, Tobacco, Firearms, and Explosives. Though, the agency still was referred to as the "ATF" for all purposes. Additionally, the task of collection of federal tax revenue derived from the production of tobacco and alcohol products and the regulatory function related to protecting the public in issues related to the production of alcohol, previously handled through the Bureau of Internal Revenue as well as through ATF, was transferred to the newly established Alcohol and Tobacco Tax and Trade Bureau (TTB), which remained within the Treasury Department. These changes took effect January 24, 2003.

### **ATF and violent crime**

Since 2001, ATF Agents have recommended over 10,000 felons every year for federal prosecution for firearms possession just through the Project Safe Neighborhoods framework. In PSN's first year, 2001–2002, over 7700 of these cases resulted in convictions with an average sentence of over five years per defendant. This number had risen to over 12,000 prosecutions in FY 2007. The annual FBI Uniform Crime Report (UCR) demonstrated that throughout the decade of 2001–2010, the reduction of violent crime offenses in United States Districts with dedicated Project Safe Neighborhood Agents and United States Attorneys distant outperformed the national average.

Usually, in relation to the 90% of the cases referred through ATF for prosecution each year are for firearms, violent crime, and narcotics offenses. Through the first half of 2011, ATF (with fewer than 2,000 active Special Agents) had recommended 5,203 cases for prosecution. This yields an average of 5.0 cases per agent per year. For comparison, the FBI (with slightly more than 13,000 active Special Agents) had recommended 8,819 cases for prosecution, for an average of 1.2 cases per agent in per year.

## **Personnel**

ATF, as a bureau, consists of many different groups that each have their own respective role, commanded through a director. Special Agents are empowered to conduct criminal investigations, defend the United States against international and domestic terrorism, and work with state and local police officers to reduce violent crime on a national level. ATF Special Agents have some of the broadest authority of any federal agency; 18 U.S.C. § 3051 empowers them to enforce any statute in the United States Code. Specifically, ATF Special Agents have lead investigative authority on any federal crime committed with a firearm or explosive, as well as investigative authority over regulatory referrals and cigarette smuggling. ATF Special Agents also often enforce violations of the Uniform Controlled Substances Act, and have the statutory authority to conduct narcotics cases independently of the Drug Enforcement Administration, Immigration and Customs Enforcement, or any other agency. All ATF Special Agents require a Top Secret (TS) security clearance, and in several instances, need a higher level, TS/SCI (Top Secret/Sensitive Compartmented Information) clearance. In order to get a security clearance, all potential ATF Special Agents necessarily pass a detailed series of Single Scope Background Investigations (SSBI). ATF Special Agents uniformly rank at the top or close to the top of all federal agencies in cases referred for prosecution, arrests made, and average time per defendant on an annual basis. Special Agents currently comprise approximately 2,400 of the Agency's almost 5,000 personnel.

ATF Investigators (formerly Regulatory Inspectors and not to be confused with Special Agents) are charged with regulating the gun and explosive industry. These men and women are not armed law enforcement officers but have administrative authority to search and conduct inspections, as well as to recommend revocation and/or non-renewal of Federal Firearms Licenses to licensees who are in violation of Federal firearms laws and regulations.

The remainder of the Bureau is personnel in several staff roles from office administrative assistants to intelligence analysts and electronic specialists. Additionally, ATF relies heavily on state and local task force officers to supplement the Special Agents and who are not officially part of the ATF roster.

## **Hiring and training**

ATF Special Agent hiring is fiercely competitive, comparable to the selection process of other Special Agent positions in sister agencies. Typically distant less than 5% of qualified applicants – those possessing at minimum a four year bachelor degree and competitive work experience (which is usually four or more years at a local or state police department) are eventually hired. ATF's hiring process has a nondisclosure agreement so the specific details of

the process are not totally revealed, though applicant's necessity pass a rigorous background check in order to achieve, at minimum, a top secret clearance. In addition to the background check agents necessity pass written tests, multiple physical fitness tests, interviews and medical exams even to be measured to be selected for training.

ATF Special Agents necessity complete a 27 week training program at the Federal Law Enforcement Training Center in Glynco, Georgia. It is one of the longest training programs in the United States, distant longer than any other training program of Justice Department Special Agents (FBI, DEA, USMS). This training program currently consists of a one week pre-Basic, the twelve week basic Criminal Investigator Training Program, and a fourteen week Special Agent Basic Training Course. Only then are Special Agents released to a field office to begin a three year probationary tour.

## **Firearms**

Members of ATF are issued the Glock 22 or the Glock 27 as their sidearm while the agents are trained in the use of, and issued, long arms if it meets certain requirements. To encounter dangerous criminals, the ATF would send their professional SWAT team named Special Response Team (SRT), which they are armed with Heckler & Koch MP5 sub-machine guns or other weapons needed to the mission.

## **Field divisions**

The ATF has many field offices crossways the nation in major cities. Those cities are: Atlanta, GA; Baltimore, MD; Boston, MA; Charlotte, NC; Chicago, IL; Columbus, OH; Dallas, TX; Denver, CO; Detroit, MI; Houston, TX; Kansas City, MO; Los Angeles, CA; Louisville, KY; Miami, FL; Nashville, TN; Newark, NJ; New Orleans, LA; New York, NY; Philadelphia, PA; Phoenix, AZ; San Francisco, CA; Seattle, WA; St. Paul, MN; Tampa, FL; Washington, D.C.. Also there are field offices in different countries such as Canada, Mexico, El Salvador, Colombia, Iraq, and in the Caribbean (all supervised through Miami).

## **Regulation of firearms**

ATF is responsible for regulating firearm commerce in the United States. The Bureau issues Federal Firearms Licenses (FFL) to sellers, and conducts firearms licensee inspections. The Bureau is also involved in programs aimed at reducing gun violence in the United States, through targeting and arresting violent offenders who unlawfully possess firearms. ATF was also involved with the Youth Crime Gun Interdiction Initiative, which expanded tracing of

firearms recovered through law enforcement, and the ongoing Comprehensive Crime Gun Tracing Initiative. ATF also gives support to state and local investigators, through the National Integrated Ballistic Identification Network (NIBIN) program.

### ***Firearms tracing***

ATF's Comprehensive Crime Gun Tracing Initiative is the largest operation of its kind in the world. In FY07, ATF's National Tracing Center processed over 285,000 trace requests on guns for over 6,000 law enforcement agencies in 50 countries. ATF uses a Web-based system, recognized as eTrace that gives law enforcement agencies with the capability to securely and electronically send trace requests, receive trace results, and conduct basic trace analysis in real time. Over 2,000 agencies and more than 17,000 individuals currently use eTrace, including over 33 foreign law enforcement agencies. Gun tracing gives information to Federal, State, local and foreign law enforcement agencies on the history of a firearm from the manufacturer (or importer), through the distribution chain, to the first retail purchaser. This information is used to link suspects to firearms in criminal investigations, identify potential traffickers, and detect in-state, interstate, and international patterns in the sources and types of crime guns.

### ***Firearms ballistic tracing***

ATF gives investigative support to its partners through the National Integrated Ballistic Information Network (NIBIN), which allows Federal, State, and local law enforcement agencies to image and compare crime gun proof. NIBIN currently has 203 sites. In FY07, NIBIN's 174 partner agencies imaged more than 183,000 bullets and casings into the database, resulting in over 5,200 matches that provided investigative leads.

### **Regulation of explosives**

With the passage of the Organized Crime Control Act (OCCA) in 1970, ATF took over the regulation of explosives in the United States, as well as prosecution of persons occupied in criminal acts involving explosives. One of the most notable investigations successfully mannered through ATF agents was the tracing of the car used in the World Trade Center 1993 bombings, which led to the arrest of persons involved in the conspiracy.

ATF also enforces provisions of the Safe Explosives Act, passed after 9/11 to restrict the use/possession of explosives without a Federal license to use them. ATF is measured to be the leading federal agency in most bombings that occur within the U.S., with exception to bombings related to international terrorism (investigated through the FBI).

ATF currently trains the U.S. military in proof recovery procedures after a

bombing. All ATF Agents are trained in post-blast investigation, though ATF maintains a cadre of almost 150 highly trained explosive experts recognized as Certified Explosives Specialists (CES). ATF/CES Agents are trained as experts concerning Improvised Explosive Devices (IED's), as well as commercial explosives. ATF Agents work closely with State and Local Bomb Disposal Units within the United States.

## **History of controversy**

### ***ATF throughout the 1980s***

Complaints concerning the techniques used through ATF in their effort to generate firearm cases led to hearings before Congressional committees in the late 1970s and 1980s. At these hearings proof was received from citizens who had been charged through ATF, from experts who had studied ATF, and from officials of the Bureau itself. A Senate Subcommittee report stated that "Based upon these hearings it is apparent that ATF enforcement tactics made possible through current federal firearms laws are constitutionally, legally, and practically reprehensible."

The Subcommittee received proof that ATF primarily devoted its firearms enforcement efforts to the apprehension, upon technical *malum prohibitum* charges, of individuals who lack all criminal intent and knowledge. Proof received demonstrated that ATF agents tended to concentrate upon collector's items rather than "criminal street guns".

Beginning in 1975, Bureau officials apparently reached a judgment that a dealer who sells to a legitimate purchaser may nonetheless be subject to prosecution or license revocation if he knows that that individual intends to transfer the firearm to a nonresident or other unqualified purchaser (Straw purchase). This position was never published in the Federal Register and is indeed contrary to indications which Bureau officials had given Congress that such sales were not in violation of existing law. Rather than informing dealers of this distinction, ATF agents set out to produce mass arrests based on "Straw purchase" sale charges, sending out undercover agents to entice dealers into transfers of this type.

In hearings before ATF's Appropriations Subcommittee, though, expert proof was submitted establishing that almost 75 percent of ATF gun prosecutions were aimed at ordinary citizens who had neither criminal intent nor knowledge, but were enticed through agents into unknowing technical violations.

The Firearm Owners Protection Act of 1986 addressed some of the abuses noted in the 1982 Senate Judiciary Subcommittee report.

### ***ATF throughout the 1990s***

Two incidents in the early 1990s—Ruby Ridge and the Waco Siege—

involved the ATF and later the Federal Bureau of Investigation's Hostage Rescue Team (HRT). Both brought criticism to the ATF and FBI.

The Ruby Ridge Siege began in June 1990. Randy Weaver was pressured through Kenneth Fadeley, an ATF informant, to shorten the barrels on two shotguns and sell these to Fadeley. Weaver maintained the barrels were a legal length, but after Fadeley took possession, the shotguns were later found to be shorter than allowed through federal law, requiring registration as a short-barreled shotgun and payment of a \$200 tax. ATF filed firearms charges against Weaver, but offered to drop the charges if he would become an informant. After Weaver refused to cooperate, ATF passed on false information in relation to the Weaver to other agencies that became part of a misleading file that profiled Weaver as having explosive booby traps, tunnels and bunkers at his home; rising marijuana; having felony convictions; and being a bank robber. (At his later trial, the gun charges were determined to be entrapment and Weaver was acquitted.) Though, Weaver missed a February 20, 1991, court date because U.S. Probation Officer Richins mistakenly told Weaver that the trial date was March 20, and the US Marshals Service (USMS) was charged with bringing Weaver in. Weaver remained with his family in their mountain top cabin. On August 21, 1992, a USMS surveillance team was involved in a shootout that left US Marshal Bill Degan, Samuel Weaver (14), and his pet dog dead. FBI HRT laid siege to the cabin; the after that day, Lon Horiuchi, an FBI HRT sniper, opened fire on the Weavers, killing Weaver's wife, Vicki, and wounding Weaver and a family friend. A subsequent Department of Justice review and a Congressional hearing raised many questions in relation to the actions of ATF, USMS, USAO and FBI HRT and the mishandling of intelligence at the USMS and FBI headquarters. The Ruby Ridge incident has become a lightning rod for legal activists within the gun rights community.

The second incident was the Waco Siege of the Branch Davidian religious sect close to Waco, Texas, on February 28, 1993. ATF agents, accompanied through the press, mannered a raid to execute a federal search warrant on the sect's compound, recognized as Mt. Carmel. The Branch Davidians were alerted to the upcoming warrant execution but ATF raid leaders pressed on, despite knowing the advantage of surprise was lost. (ATF Director Steve Higgins had promised Treasury Under-Secretary Ron Noble that the Waco raid would be canceled if the ATF undercover agent Robert Rodriguez reported that the element of surprise had been lost.) The resulting exchange of gunfire left six Davidians and four ATF agents dead. FBI HRT later took over the scene and a 51-day stand-off ensued, ending on April 19, 1993, after the intricate caught fire, perhaps as a result of the HRT's introduction of flammable tear gas into the compound. The follow-up investigation revealed the bodies of seventy-six people including twenty children inside the compound. Although a grand jury found that the deaths were suicides or otherwise caused through people inside the building, accusations of excessive force through law enforcement persist. Shortly after the raid, the bureau's



director, Stephen E. Higgins, retired early from his position.

Timothy McVeigh cited these incidents as his motivation for the Oklahoma City Bombing, which took place on April 19, 1995, exactly two years after the end of the Waco Siege.

In 1994, two ATF supervisory agents, Phillip J. Chojnacki and Charles D. Sarabyn, who were suspended for their roles in leading the Waco raid were reinstated in December 1994, with full back pay and benefits (with a demotion) despite a Treasury Department report of gross negligence. The incident was removed from their personnel files.

### ***ATF throughout the 2000s***

A September 2008 report through the Department of Justice, Office of the Inspector General, determined that 76 firearms and 418 laptop computers were lost, stolen or missing from ATF, after a 59 month audit period flanked by 2002 and 2007.

Flanked by May 2004 and August 2005, ATF Agents, in conjunction with Virginia State and local police, mannered an operation at some eight gun shows in Virginia. With special attention to female purchasers, several gun show attendees were stopped through agents as they returned home, then detained while being interrogated, and several had their purchases confiscated through ATF agents. The purchasers were compelled through an ATF letter to appear at ATF offices to explain and justify their purchases. ATF stated this was a "Pilot Program" that ATF was planning to apply throughout the country. In addition, in Pittsburgh, Pa., ATF agents showed up at gun show customers' homes a week after a show, demanding to see the buyers' guns or sale paperwork and arresting those who could not—or would not—comply. This ATF operation was the subject of a Congressional hearing where witnesses testified of harassment, intimidation and verbal abuse through ATF Agents, and ATF Agents actively dissuaded customers from purchasing firearms.

### ***ATF throughout the 2010s***

In May 2008, William Newell, Special Agent in charge of the Phoenix ATF Office, said: "When 90 percent-plus of the firearms recovered from these violent drug cartels are from a U.S. source, we have a responsibility to do everything we can to stem the illegal flow of these firearms to these thugs." According to the Department of Justice Office of the Inspector General, "ATF told the OIG that the 90-percent figure ... could be misleading because it applied only to the small portion of Mexican crime guns that are traced." Under Operations "Fast and Furious", "Too Hot to Handle", and "Wide Receiver", indictments show that the Phoenix ATF Office, over protests from the gun dealers and some ATF agents involved and without notifying Mexican authorities, facilitated the sale of over 2,500 firearms (AK-47 rifles, FN 5.7mm pistols, AK-47 pistols, and .50 caliber rifles) to traffickers destined for Mexico. Several of these same guns are being recovered from crime scenes in

Arizona and throughout Mexico, which is artificially inflating ATF's eTrace statistics of U.S. origin guns seized in Mexico. One gun is alleged to be the weapon used through a Mexican national to murder Customs and Border Protection Agent Brian Terry on December 14, 2010. ATF and DOJ denied all allegations. After appearing at a Congressional Hearing, three supervisors of Fast and Furious (William G. McMahon, Newell, and David Voth) were reported as being transferred and promoted through ATF. ATF denied the transfers were promotions.

In June 2011, Vince Cefalu, an ATF special agent for 24 years who in December 2010 exposed ATF's "Project Gunrunner" scandal, was notified of his termination. Cefalu's dismissal followed allegations that ATF retaliates against whistleblowers. ATF spokesman Drew Wade denied that the bureau is retaliating but declined to comment in relation to the Cefalu's case.

## **REVIEW QUESTIONS**

- Explain the setup of Central Bureau of Investigation.
- Explain the setup of IB
- Explain the setup of FBI
- Explain the setup of CIA
- Discuss the concept of bureau of alcohol, tobacco, firearms

## **PSYCHOLOGY AND LAW**

### **STRUCTURE**

- Learning objectives
- Understand the role and duties of criminal investigations
- Qualification of a forensic scientist
- Ethical issues in forensic science
- Expert witness
- Civil commitment
- Review questions

### **LEARNING OBJECTIVES**

After reading this chapter, you should be able to:

- Understand the role and duties of criminal investigations
- Understand the ethical issues in forensic science
- Understand the expert witness and Civil commitment

## **UNDERSTAND THE ROLE AND DUTIES OF CRIMINAL INVESTIGATIONS**

### **Criminal investigation**

Criminal Investigation is an applied science that involves the study of facts, used to identify, locate, and prove the guilt of a criminal. A complete criminal investigation can contain searching, interviews, interrogations, proof collection and preservation and several methods of investigation. Modern day criminal investigations commonly employ several modern scientific techniques recognized collectively as forensic science. Criminal investigation is an ancient science that may have roots as distant back as circa 1700 BCE in the writings of the Code of Hammurabi. In the code it is suggested that both the accuser and accused had the right to present proof they composed. In the modern era criminal investigations are most often done through government police forces. Private investigators are also commonly hired to complete or assist in criminal investigations. An early recorded professional criminal investigator was the English constable. Approximately 1250 CE it was recorded that the constable was to "...record...matters of fact, not matters of judgment and law."

### **Roles of a Criminal Investigator**

Criminal investigators are specially trained law enforcement officials who specialize in crime scene investigation or some other aspect of investigative law enforcement. The Bureau of Labor Statistics (BLS) projects that the number of new jobs for detectives will augment through 10 percent from 2008 to 2018. Knowing the different roles of a criminal investigator can help you determine if this career could be the right choice for you.

### ***Investigative Roles***

The primary role of the criminal investigator is to plan and carry out criminal investigations. Criminal investigators work at both the scene of the crime and in the field as needed in order to carry out other characteristics of an investigation. The criminal investigator performs a number of different duties when conducting investigations. They interview witnesses, suspects and even the victims whenever it is possible to do so. Criminal investigators can work on a diversity of different types of cases that contain not only murder cases, but also cases involving robbery, kidnapping and even white-collar crime.

### ***Surveillance***

In conjunction with ongoing investigative techniques, criminal investigators also perform several surveillance techniques to bring the investigation to its conclusion. The type of surveillance mannered often depends upon the criminal investigators employer. For instance, those working for the Federal Bureau of Investigation (FBI) may be involved in more elaborate forms of surveillance such as wire taps. Other types of surveillance duties can contain taking photographs of suspects and criminals occupied in illegal activity, going undercover to find incriminating information, and tracking stolen property.

### ***Analysis Roles***

Criminal investigators examine the information they have composed and effort to draw the most logical conclusions. Criminal investigators may work in crime laboratories analyzing proof as well. A good portion of their time may be spent trying to piece together small strands of proof of information linking the proof to the criminal or crime. Criminal investigators who specialize in cyber crime may spend a good portion of their time analyzing data found in computer databases and electronic documents.

### ***Reporting Roles***

Criminal investigators also play roles related to documentation and reporting of the results of their investigations. Criminal investigators document their findings through written reports that can later be used in the prosecution of criminals. They also report to other departments or agencies what the results of their findings happen to be. This is done in order to give a collaborative effort flanked by different law enforcement agencies that can bring an investigation to a swift conclusion. Criminal investigators may also be described upon to report their findings to grand juries through serving as key witnesses on certain cases where the investigator's work has acquiesced incriminating proof.

### **Duties of a Criminal Investigator**

Criminal investigators probe into suspected violations of law. Their primary duty is to examine proof and help a prosecutor decide whether to bring a criminal case before a grand jury. Criminal investigators exist at federal, state, and local levels. They can specialize in range of areas, including homicide, kidnapping, burglary, theft, financial crimes, and cyber crimes.

### ***Gather Proof***

A large part of a criminal investigator's duties is to search for proof that reveals or establishes the identity of a crime's perpetrator. The type of search mannered depends upon the crime committed. In a homicide investigation, the criminal investigator would be expected to gather forensic proof such as fingerprints, DNA proof, or any other physical proof that gives clue to the person responsible for the crime. In contrast, for a cyber crime, the criminal investigator would search through records and computer files for proof of culpability.

### ***Conduct Interviews***

Criminal investigators routinely interrogate or interview witnesses, victims, and suspects. The purpose of these interviews is to assess the veracity of the suspect and victim's stories, and to unearth testimony that would help a prosecutor decide whether to bring a case.

### ***Perform Surveillance***

Some criminal investigators are required to conduct covert surveillance of suspects or witnesses. Surveillance may occur through visual monitoring of the target, or through court-authorized wiretaps.

### ***Give Court Testimony***

Criminal investigators are often required to appear in court proceedings as expert witnesses. They are entitled to provide their professional opinion as to the likelihood of whether a crime occurred, whether it occurred in a certain manner, or whether the suspect is likely to have been involved.

### ***Prepare Reports***

After conducting research on a case and gathering proof, a criminal investigator necessarily write a detailed report summarizing the research performed and conclusions drawn. The report may contain photographs, drawings, graphs and other analyses that help support the investigator's conclusions. Prosecutors regularly use these reports to decide whether to bring a case.

### ***Direct the Investigation***

Criminal investigators are responsible for determining the duration, scope, and direction of an investigation.

## **QUALIFICATION OF A FORENSIC SCIENTIST**

To become a forensic scientist, one usually needs to earn bachelor's degrees in chemistry, biology, or forensic science. Some crime scene investigators and forensic science technicians are trained as police officers who have graduated from police academies.

## **ETHICAL ISSUES IN FORENSIC SCIENCE**

### **Describe Ethics**

Ethics, also recognized as moral philosophy, is a branch of philosophy that involves systematizing, defending, and recommending concepts of right and wrong conduct. The term comes from the Greek word *ethos*, which means "character". Ethics is a complement to Aesthetics in the philosophy field of Axiology. In philosophy, ethics studies the moral behavior in humans and how one should act. Ethics may be divided into four major areas of study:

- Meta-ethics, in relation to the theoretical meaning and reference of moral propositions and how their truth values (if any) may be determined;
- Normative ethics, in relation to the practical means of determining a moral course of action;
- Applied ethics, in relation to the how moral outcomes can be achieved in specific situations;
- Descriptive ethics, also recognized as comparative ethics, is the study of people's beliefs in relation to the morality;

Ethics seeks to resolve questions dealing with human morality—concepts such as good and evil, right and wrong, virtue and vice, justice and crime.

### ***Defining ethics***

According to Dr. Richard Paul and Dr. Linda Elder of the Foundation for Critical Thinking, "most people confuse ethics with behaving in accordance with social conventions, religious beliefs and the law", and don't treat ethics as a stand-alone concept. Paul and Elder describe ethics as "a set of concepts and principles that guide us in determining what behavior helps or harms sentient creatures". The *Cambridge Dictionary of Philosophy* states that the word ethics is "commonly used interchangeably with 'morality' ... and sometimes it is used more narrowly to mean the moral principles of a scrupulous custom, group, or individual."

The general meaning of ethics: rational, optimal (*regarded as the best solution of the given options*) and appropriate decision brought on the basis of common sense. This does not exclude the possibility of destruction if it is necessary and if it does not take place as the result of intentional malice. If, for

instance, there is the threat of physical conflict and one has no other solution, it is acceptable to cause the necessary extent of injury, out of self-defense. Therefore ethics does not give rules like morals but it can be used as a means to determine moral values (*attitudes or behaviours giving priority to social values, e.g. ethics or morals*).

### ***Meta-ethics***

Meta-ethics is a field within philosophy that seeks to understand the nature of normative ethics. The focus of meta-ethics is on how we understand, know about, and what we mean when we talk in relation to the right and what is wrong.

Meta-ethics has always accompanied philosophical ethics, but in this explicit sense it came to the fore with G.E. Moore's *Principia Ethica* from 1903. In it he first wrote in relation to the he described *the naturalistic fallacy*. Moore was seen to reject naturalism in ethics, in his Open Question Argument. This made thinkers look again at second order questions in relation to the ethics. Earlier, the Scottish philosopher David Hume had put forward a similar view on the difference flanked by facts and values.

Studies of how we know in ethics divide into cognitive and non-cognitivism; this is similar to the contrast flanked by descriptivists and non-descriptivists. Non-cognitivism is the claim that when we judge something as right or wrong, this is neither true nor false. We may for instance be only expressing our emotional feelings in relation to the things. Cognitivism can then be seen as the claim that when we talk in relation to the right and wrong, we are talking in relation to the matters of fact.

The ontology of ethics is in relation to the value-bearing things or properties, i.e. the kind of things or stuff referred to through ethical propositions. Non-descriptivists and non-cognitivists consider that ethics does not need a specific ontology, since ethical propositions do not refer. This is recognized as an anti-realist position. Realists on the other hand necessity explain what kind of entities, properties or states are relevant for ethics, how they have value, and why they guide and motivate our actions.

### ***Normative ethics***

Normative ethics is the study of ethical action. It is the branch of philosophical ethics that investigates the set of questions that arise when considering how one ought to act, morally speaking. Normative ethics is separate from meta-ethics because it examines standards for the rightness and wrongness of actions, while meta-ethics studies the meaning of moral language and the metaphysics of moral facts. Normative ethics is also separate from descriptive ethics, as the latter is an empirical investigation of people's moral beliefs. To put it another method, descriptive ethics would be concerned with determining what proportion of people consider that killing is always wrong, while normative ethics is concerned with whether it is correct to hold

such a belief. Hence, normative ethics is sometimes described prescriptive, rather than descriptive. Though, on certain versions of the meta-ethical view described moral realism, moral facts are both descriptive and prescriptive at the same time.

### *Historical ethical theories*

#### *Virtue ethics*

Virtue ethics describes the character of a moral agent as a driving force for ethical behavior, and is used to describe the ethics of Socrates, Aristotle, and other early Greek philosophers. Socrates (469 BC – 399 BC) was one of the first Greek philosophers to encourage both scholars and the common citizen to turn their attention from the outside world to the condition of humankind. In this view, knowledge having a bearing on human life was placed highest, all other knowledge being secondary. Self-knowledge was measured necessary for success and inherently an essential good. A self-aware person will act totally within his capabilities to his pinnacle, while an ignorant person will flounder and encounter difficulty. He posited that people will naturally do what is good, if they know what is right. Evil or bad actions are the result of ignorance. If a criminal was truly aware of the intellectual and spiritual consequences of his actions, he would neither commit nor even consider committing those actions. Any person who knows what is truly right will automatically do it, according to Socrates. While he correlated knowledge with virtue, he similarly equated virtue with joy. The truly wise man will know what is right, do what is good, and so be happy.

Aristotle (384 BC – 323 BC) posited an ethical system that may be termed "self-realizationism." In Aristotle's view, when a person acts in accordance with his nature and realizes his full potential, he will do well and be content. At birth, a baby is not a person, but a potential person. To become a "real" person, the child's inherent potential necessity be realized. Unhappiness and frustration are caused through the unrealized potential of a person, leading to failed goals and a poor life. Aristotle said, "Nature does nothing in vain." So, it is imperative for people to act in accordance with their nature and develop their latent talents in order to be content and complete. Happiness was held to be the ultimate goal. All other things, such as civic life or wealth, are merely means to the end. Self-realization, the awareness of one's nature and the development of one's talents, is the surest path to happiness.

Aristotle asserted that man had three natures: vegetable (physical/metabolism), animal (emotional/appetite) and rational (mental/conceptual). Physical nature can be assuaged through exercise and care, emotional nature through indulgence of instinct and urges, and mental through human cause and urbanized potential. Rational development was measured the most significant, as essential to philosophical self-awareness and as uniquely human. Moderation was encouraged, with the extremes seen as degraded and immoral. For instance, courage is the moderate virtue flanked by



the extremes of cowardice and recklessness. Man should not simply live, but live well with conduct governed through moderate virtue. This is regarded as hard, as virtue denotes doing the right thing, to the right person, at the right time, to the proper extent, in the correct fashion, for the right cause.

#### *Stoicism*

The Stoic philosopher Epictetus posited that the greatest good was contentment and serenity. Peace of mind, or *Apatheia*, was of the highest value; self-mastery over one's desires and emotions leads to spiritual peace. The "unconquerable will" is central to this philosophy. The individual's should be independent and inviolate. Allowing a person to disturb the mental equilibrium is in essence offering you in slavery. If a person is free to anger you at will, you have no control over your internal world, and so no freedom. Freedom from material attachments is also necessary. If a thing breaks, the person should not be upset, but realize it was a thing that could break. Similarly, if someone should die, those close to them should hold to their serenity because the loved one was made of flesh and blood destined to death. Stoic philosophy says to accept things that cannot be changed, resigning oneself to subsistence and enduring in a rational fashion. Death is not feared. People do not "lose" their life, but instead "return", for they are returning to God (who initially gave what the person is as a person). Epictetus said hard problems in life should not be avoided, but rather embraced. They are spiritual exercises needed for the health of the spirit, just as physical exercise is required for the health of the body. He also stated that sex and sexual desire are to be avoided as the greatest threat to the integrity and equilibrium of a man's mind. Abstinence is highly desirable. Epictetus said remaining abstinent in the face of temptation was a victory for which a man could be proud.

#### *Hedonism*

Hedonism posits that the principal ethic is maximizing pleasure and minimizing pain. There are many schools of Hedonist thought ranging from those advocating the indulgence of even momentary desires to those teaching a pursuit of spiritual bliss. In their consideration of consequences, they range from those advocating self-gratification regardless of the pain and expense to others, to those stating that the most ethical pursuit maximizes pleasure and happiness for the most people.

#### *Cyrenaic hedonism*

Founded through Aristippus of Cyrene, Cyrenaics supported immediate gratification or pleasure. "Eat, drink and be merry, for tomorrow we die." Even fleeting desires should be indulged, for fear the opportunity should be forever lost. There was little to no concern with the future, the present dominating in the pursuit for immediate pleasure. Cyrenaic hedonism encouraged the pursuit of enjoyment and indulgence without hesitation, believing pleasure to be the only good.

### *Epicureanism*

Epicurean ethics is a hedonist form of virtue ethics. Epicurus "presented a sustained argument that pleasure, correctly understood, will coincide with virtue". He rejected the extremism of the Cyrenaics, believing some pleasures and indulgences to be detrimental to human beings. Epicureans observed that indiscriminate indulgence sometimes resulted in negative consequences. Some experiences were so rejected out of hand, and some unpleasant experiences endured in the present to ensure a better life in the future. To Epicurus the *summum bonum*, or greatest good, was prudence, exercised through moderation and caution. Excessive indulgence can be destructive to pleasure and can even lead to pain. For instance, eating one food too often will cause a person to lose taste for it. Eating too much food at once will lead to discomfort and ill-health. Pain and fear were to be avoided. Living was essentially good, barring pain and illness. Death was not to be feared. Fear was measured the source of most unhappiness. Conquering the fear of death would naturally lead to a happier life. Epicurus reasoned if there was an afterlife and immortality, the fear of death was irrational. If there was no life after death, then the person would not be alive to suffer, fear or worry; he would be non-existent in death. It is irrational to fret over circumstances that do not exist, such as one's state in death in the absence of an afterlife.

### *State consequentialism*

State consequentialism, also recognized as Mohist consequentialism, is an ethical theory that evaluates the moral worth of an action based on how much it contributes to the basic goods of a state. The *Stanford Encyclopedia of Philosophy* describes Mohist consequentialism, dating back to the 5th century BC, as "an extraordinarily sophisticated version based on a plurality of intrinsic goods taken as constitutive of human welfare." Unlike utilitarianism, which views pleasure as a moral good, "the basic goods in Mohist consequentiality thinking are ... order, material wealth, and augment in population". Throughout Mozi's era, war and famines were common, and population growth was seen as a moral necessity for a harmonious society. The "material wealth" of Mohist consequentialism refers to basic needs like shelter and clothing, and the "order" of Mohist consequentialism refers to Mozi's stance against warfare and violence, which he viewed as pointless and a threat to social stability. Stanford sinologist David Shepherd Nivison, in *The Cambridge History of Ancient China*, writes that the moral goods of Mohism "are interrelated: more basic wealth, then more reproduction; more people, then more production and wealth ... if people have plenty, they would be good, filial, kind, and so on unproblematically." The Mohists whispered that morality is based on "promoting the benefit of all under heaven and eliminating harm to all under heaven." In contrast to Bentham's views, state consequentialism is not utilitarian because it is not hedonistic or individualistic. The importances of outcomes that are good for the community

outweigh the importance of individual pleasure and pain.

#### *Modern normative ethics*

Traditionally, normative ethics (also recognized as moral theory) was the study of what creates actions right and wrong. These theories offered an overarching moral principle one could appeal to in resolving hard moral decisions.

At the turn of the 20th century, moral theories became more intricate and are no longer concerned solely with rightness and wrongness, but are interested in several different kinds of moral status. Throughout the middle of the century, the study of normative ethics declined as meta-ethics grew in prominence. This focus on meta-ethics was in part caused through an intense linguistic focus in analytic philosophy and through the popularity of logical positivism.

In 1971 John Rawls published *A Theory of Justice*, noteworthy in its pursuit of moral arguments and eschewing of meta-ethics. This publication set the trend for renewed interest in normative ethics.

#### *Consequentialism*

Consequentialism refers to moral theories that hold that the consequences of a scrupulous action form the basis for any valid moral judgment in relation to the action (or makes a structure for judgment, see rule consequentialism). Therefore, from a consequentiality standpoint, a morally right action is one that produces a good outcome, or consequence. This view is often expressed as the aphorism "*The ends justify the means*".

The term "consequentialism" was coined through G.E.M. Anscombe in her essay "Modern Moral Philosophy" in 1958, to describe what she saw as the central error of certain moral theories, such as those propounded through Mill and Sidgwick. Since then, the term has become common in English-language ethical theory.

The defining characteristic of consequentialist moral theories is the weight given to the consequences in evaluating the rightness and wrongness of actions. In consequentialist theories, the consequences of an action or rule usually outweigh other thoughts. Separately from this basic outline, there is little else that can be unequivocally said in relation to the consequentialism as such. Though, there are some questions that several consequentialist theories address:

- What sort of consequences count as good consequences?
- Who is the primary beneficiary of moral action?
- How are the consequences judged and who judges them?

One method to divide several consequentialisms is through the types of consequences that are taken to matter most, that is, which consequences count as good states of affairs. According to hedonistic utilitarianism, a good action

is one that results in an augment in pleasure, and the best action is one that results in the most pleasure for the greatest number. Closely related is eudaimonic consequentialism, according to which a full, flourishing life, which may or may not be the same as enjoying a great deal of pleasure, is the ultimate aim. Similarly, one might adopt an aesthetic consequentialism, in which the ultimate aim is to produce beauty. Though, one might fix on non-psychological goods as the relevant effect. Therefore, one might pursue an augment in material equality or political liberty instead of something like the more ephemeral "pleasure". Other theories adopt a package of many goods, all to be promoted equally. Whether a scrupulous consequentialist theory focuses on a single good or several, conflicts and tensions flanked by different good states of affairs are to be expected and necessity be adjudicated.

### *Utilitarianism*

Utilitarianism is a hedonistic ethical theory that argues the proper course of action is one that maximizes overall "happiness". Jeremy Bentham and John Stuart Mill are influential proponents of this school of thought. In *A Fragment on Government* Bentham says 'it is the greatest happiness of the greatest number that is the measure of right and wrong' and describes this as a fundamental axiom. In *An Introduction to the Principles of Morals and Legislation* he talks of 'the principle of utility' but later prefers "the greatest happiness principle".

Hedonistic utilitarianism is the paradigmatic instance of a consequentialist moral theory. This form of utilitarianism holds that what matters are the aggregate happiness; the happiness of everyone and not the happiness of any scrupulous person. John Stuart Mill, in his exposition of hedonistic utilitarianism, proposed a hierarchy of pleasures, meaning that the pursuit of certain kinds of pleasure is more highly valued than the pursuit of other pleasures.

### *Deontology*

Deontological ethics or deontology is an approach to ethics that determines goodness or rightness from examining acts, or the rules and duties that the person doing the act strove to fulfill. This is in contrast to consequentialism, in which rightness is based on the consequences of an act, and not the act through itself. In deontology, an act may be measured right even if the act produces a bad consequence, if it follows the *rule* that "one should do unto others as they would have done unto them", and even if the person who does the act lacks virtue and had a bad intention in doing the act. According to deontology, we have a *duty* to act in a method that does those things that are inherently good as acts ("truth-telling" for instance), or follow an objectively obligatory rule (as in rule utilitarianism). For deontologists, the ends or consequences of our actions are not significant in and of themselves, and our intentions are not significant in and of themselves.

Immanuel Kant's theory of ethics is measured deontological for many

different reasons. First, Kant argues that to act in the morally right method, people necessarily act from duty (*deon*). Second, Kant argued that it was not the consequences of actions that create them right or wrong but the motives (maxime) of the person who carries out the action.

Kant's argument that to act in the morally right method, one necessarily act from duty, begins with an argument that the highest good necessarily be both good in itself, and good without qualification. Something is 'good in itself' when it is intrinsically good and 'good without qualification' when the addition of that thing never creates a situation ethically worse. Kant then argues that those things that are usually thought to be good, such as intelligence, perseverance and pleasure, fail to be either intrinsically good or good without qualification. Pleasure, for instance, appears to not be good without qualification, because when people take pleasure in watching someone suffering; this seems to create the situation ethically worse. He concludes that there is only one thing that is truly good:

- Nothing in the world—indeed nothing even beyond the world—can perhaps be conceived which could be described well without qualification except a *good will*.

#### *Contemporary virtue ethics*

Modern virtue ethics was popularized throughout the late 20th Century in large part as a response to G.E.M. Anscombe's *Modern Moral Philosophy*. Anscombe argues that Consequentialist and Deontological ethics are only feasible as universal theories if the two schools ground themselves in divine law. As a deeply devoted Christian herself, Anscombe proposed that either those who do not provide ethical credence to notions of divine law take up virtue ethics, which does not necessitate universal laws as agents themselves are investigated for virtue or vice and held up to "universal standards," or that those who wish to be utilitarian or consequentialist ground their theories in religious conviction. Alasdair MacIntyre, who wrote the book *After Virtue*, was a key contributor and proponent of modern virtue ethics, although MacIntyre supports a relativistic account of virtue based on cultural norms, not objective standards. Martha Nussbaum, a contemporary virtue ethicist, objects to MacIntyre's relativism, among that of others, and responds to relativist objections to form an objective account in her work "Non-Relative Virtues: An Aristotelian Approach." *Complete Conduct Principles for the 21st Century* blended the Eastern virtue ethics and the Western virtue ethics, with some modifications to suit the 21st Century, and formed a part of contemporary virtue ethics.

#### *Pragmatic ethics*

Associated with the pragmatists, Charles Sanders Peirce, William James, and especially John Dewey, pragmatic ethics holds that moral correctness evolves similarly to scientific knowledge: socially over the course of several lifetimes. Therefore, we should prioritize social reform over attempts to

account for consequences, individual virtue or duty (although these may be worthwhile attempts, provided social reform is provided for).

#### *Role ethics*

Role ethics is an ethical theory based on family roles. Unlike virtue ethics, role ethics is not individualistic. Morality is derived from a person's relationship with their community. Confucian ethics is an instance of role ethics. Confucian roles center approximately the concept of filial piety or *xiao*, a respect for family members. According to Roger Ames and Henry Rosemont, "Confucian normativity is defined through living one's family roles to maximum effect." Morality is determined through a person's fulfillment of a role, such as that of a parent or a child. Confucian roles are not rational, and originate through the *xin*, or human emotions.

#### *Postmodern ethics*

The 20th century saw an extra ordinary expansion and evolution of critical theory, following on earlier Marxist Theory efforts to locate individuals within superior structural frameworks of ideology and action.

Antihumanists such as Louis Althusser and Michel Foucault and structuralists such as Roland Barthes challenged the possibilities of individual agency and the coherence of the notion of the 'individual' itself. As critical theory urbanized in the later 20th century, post-structuralism sought to problematize human relationships to knowledge and 'objective' reality. Jacques Derrida argued that access to meaning and the 'real' was always deferred, and sought to demonstrate via recourse to the linguistic realm that "there is nothing outside context" (unfortunately, "il n'y a pas de hors-texte" is often mistranslated as "there is nothing outside the text"); at the same time, Jean Baudrillard theorised that signs and symbols or simulacra mask reality (and eventually the absence of reality itself), particularly in the consumer world.

Post-structuralism and postmodernism argue that ethics necessity study the intricate and relational circumstances of actions. A simple alignment of ideas of right and scrupulous acts is not possible. There will always be an ethical remainder that cannot be taken into account or often even recognized. Such theorists find narrative (or, following Nietzsche and Foucault, genealogy) to be a helpful tool for understanding ethics because narrative is always in relation to the particular lived experiences in all their complexity rather than the assignment of an thought or norm to separate and individuated actions.

Zygmunt Bauman says Postmodernity is best described as Modernity without illusion. The illusion being the belief that humanity can be repaired through some ethic principle. Postmodernity can be seen in this light as accepting the messy nature of humanity as unchangeable.

David Couzens Hoy states that Emmanuel Levinas's writings on the face of the Other and Derrida's meditations on the relevance of death to ethics are signs of the "ethical turn" in Continental philosophy that occurred in the 1980s and 1990s. Hoy describes post-critique ethics as the "obligations that present

themselves as necessarily to be fulfilled but are neither forced on one or are enforceable".

Hoy's post-critique model uses the term *ethical resistance*. Examples of this would be an individual's resistance to consumerism in a retreat to a simpler but perhaps harder lifestyle, or an individual's resistance to a terminal illness. Hoy describes Levinas's account as "not the effort to use power against itself, or to mobilize sectors of the population to exert their political power; the ethical resistance is instead the resistance of the powerless".

Hoy concludes that

- The ethical resistance of the powerless others to our capability to exert power over them is so what imposes unenforceable obligations on us. The obligations are unenforceable precisely because of the other's lack of power. Those actions are at once obligatory and at the same time unenforceable is what put them in the category of the ethical. Obligations that were enforced would, through the virtue of the force behind them, not be freely undertaken and would not be in the realm of the ethical.

In present day conditions the powerless may contain the unborn, the terminally sick, the aged, and the insane and non-human animals. It is in these areas that ethical action in Hoy's sense will apply. Until legislation or the state tools enforces a moral order that addresses the causes of resistance these issues will remain in the ethical realm. For instance, should animal experimentation become illegal in a society, it will no longer be an ethical issue on Hoy's definition. Likewise one hundred and fifty years ago, not having a black slave in America would have been an ethical choice. This later issue has been absorbed into the fabric of an enforceable social order and is so no longer an ethical issue in Hoy's sense.

## **Professional Standards for the Practice of Criminalistics**

*Professional Standards for the Practice of Criminalistics* is divided into two sections. In Section One, the author examines existing ethics codes. For each code cited, he emphasizes its strengths, weaknesses, and differences. The author also discusses the need for and importance of professional ethics codes. He cites examples of situations in which rules, organizational mandates, and competency guidelines are at present inadequate. He discusses the differences flanked by legal and scientific principles and how these differences can "muddy" obligations the forensic scientist might have. This section then delves into the application of several codes of ethics and how they impact the forensic scientist on a daily basis. It covers such topics as the interaction among the forensic scientist, investigators, and attorneys, both prosecuting and protection. It also covers the interaction flanked by the forensic scientist and laboratory colleagues.

In Section Two, the author puts the codes and thoughts discussed in

Section One into practice through citing hypothetical, yet specific, case scenarios that forensic scientists could face in their daily practice. He outlines examples of case situations involving professional practices and technical competence, suggests possible actions, and then discusses relevant ethics (or the lack thereof) to which the case applies. Section Two of *Ethics in Forensic Science: Professional Standards for the Practice of Criminalistics* would be excellent in a training setting as a source for discussion topics, particularly for those scientists new to the field.

One of the strengths of the book is its commentary concerning ethical issues in different forensic disciplines. The issues and cases allow forensic scientists to become more aware of the work done outside of their area of expertise, knowledge that could go distant in avoiding some of the ethical problems mentioned throughout the book. Though, whereas the topics discussed are relevant to the practicing forensic scientist, the book might leave a layman with the impression that because there are so few established formal ethics codes, ethics are not usually measured significant through criminalists or forensic scientists. The author fails to emphasize the growth of scientific and technical working groups in the forensic science disciplines and their work in establishing training, validation, and interpretation standards. The author also fails to discuss the legal standards that now apply to forensic DNA testing laboratories. These working groups and legal standards indicate that the forensic science profession is interested in good scientific practices. This would then minimize the author's issue with competence. At the same time, it would assure the author and the general public that professionals were becoming cognizant of the several ethical dilemmas that are part of the legal-scientific world and are being trained to cope with them.

## **Code of conduct for expert witness**

### ***Expert Witnesses - Code of Conduct***

#### *Expert witnesses to comply with code of conduct*

- A party to proceedings who engages an expert witness necessity either provide the expert witness a copy of this code of conduct, or be satisfied that the expert witness has seen the code of conduct and is familiar it.
- An expert witness necessity comply with the code of conduct in preparing any affidavit for filing with the Court, or in the preparation of a proposed brief of proof , or in giving any oral proof in any proceeding in the Court.
- The proof of any expert witness who has not read, or does not agree to comply with, the code of conduct may only be adduced with leave of the Court.



### ***Duty to the Court***

- An expert witness has an overriding duty to assist the Court impartially on relevant matters within the expert's area of expertise.
- An expert witness is not, and necessarily not behaves as, an advocate for the party who engages the witness. Expert witness's necessity declares any relationship with the parties calling them or any interest they may have in the outcome of the proceeding.

### ***Proof of an expert witness***

- In any proof given through an expert witness, that person necessarily, in the body of the witness's statement or affidavit (if the proof is in writing) or orally (if the proof is being given orally) -
  - acknowledge that the expert witness has read this code of conduct and agrees to comply with it;
  - state the witness's qualifications as an expert;
  - describe the ambit of the proof given and state either that the proof is within the expert's area of expertise, or that the witness is relying on some other (recognized) proof;
  - identify the data, information, facts, and assumptions measured in forming the witness's opinions;
  - state the reasons for the opinions expressed;
  - state that the expert witness has not omitted to consider material facts recognized to the witness that might alter or detract from the opinions expressed;
  - specify any literature or other material used or relied upon in support of the opinions expressed;
  - describe any examinations, tests, or other investigations on which the expert witness has relied, and identify, and provide details of, the qualifications of any person who accepted them out; and
  - if quoting from statutory instruments (including policy statements and plans), do so sparingly. A schedule of relevant quotations may be attached to the statement of proof, or a folder produced containing relevant excerpts may be produced.
- If an expert witness believes that his or her proof, or any part of it, may be partial or inaccurate without some qualification, that qualification necessarily be stated in the proof.
- If an expert witness believes that his or her opinions are not firm or concluded because of insufficient research or data, or for any other cause, that necessity be stated in the proof.
- If after the exchange of a brief of proof has occurred, an expert witness changes any of his or her opinions, that necessity be communicated without delay to the party or parties wishing to call the witness.

## **Sanction against expert for unethical conduct**

**Professions India's member organisations' Codes of Ethics necessity is supported through disciplinary processes and appropriate sanctions. These sanctions contain reprimands, fines, suspension or expulsion depending on the misconduct. There is provision for the Court to notify the relevant professional body of any misconduct through a member of one of our member associations. Though Professions India would support the Court having discretionary powers to apply appropriate sanctions where there is clear proof of misconduct. We do not have adequate information in relation to the seriousness of the problem of inappropriate or unethical conduct through experts so are unable to offer advice on what sanctions might be appropriate.**

## **EXPERT WITNESS**

An expert witness, professional witness or judicial expert is a witness, who through virtue of education, training, ability, or experience, is whispered to have expertise and specialized knowledge in a scrupulous subject beyond that of the average person, enough that others may officially and legally rely upon the witness's specialized (scientific, technical or other) opinion in relation to an proof or fact issue within the scope of his expertise, referred to as the expert opinion, as an assistance to the fact-finder. Expert witnesses may also deliver expert proof in relation to the facts from the domain of their expertise. At times, their testimony may be rebutted with a learned treatise, sometimes to the detriment of their reputations.

In Scots Law, *Davie v Magistrates of Edinburgh* (1953) gives authority that where a witness has scrupulous knowledge or skills in an area being examined through the court, and has been described to court in order to elaborate on that area for the benefit of the court, that witness may provide proof of his opinion on that area.

## **Experts in the real world**

Typically, experts are relied on for opinions on severity of injury, degree of sanity, cause of failure in a machine or other device, loss of earnings, care costs, and the like. In an intellectual property case, an expert may be shown two music scores, book texts, or circuit boards and asked to ascertain their degree of similarity. In the majority of cases the expert's personal relation to the defendant is measured irrelevant.

The tribunal itself, or the judge, can in some systems call upon experts to technically evaluate a certain fact or action, in order to give the court with a

complete knowledge on the fact/action it is judging. The expertise has the legal value of an acquisition of data. The results of these experts are then compared to those through the experts of the parties.

The expert has a heavy responsibility, especially in penal trials, and perjury through an expert is a severely punished crime in most countries. The use of expert witnesses is sometimes criticized in the United States because in civil trials, they are often used through both sides to advocate differing positions, and it is left up to a jury to decide which expert witness to consider. Although experts are legally prohibited from expressing their opinion of submitted proof until after they are hired, sometimes a party can surmise beforehand, because of reputation or prior cases, that the testimony will be favorable regardless of any basis in the submitted data; such experts are commonly disparaged as "hired guns."

### ***Duties of experts***

In England and Wales, under the Civil Procedure Rules 1998 (CPR), an expert witness is required to be independent and address his or her expert report to the court. A witness may be jointly instructed through both sides if the parties agree to this, especially in cases where the liability is relatively small.

Under the CPR, expert witnesses are usually instructed to produce a joint statement detailing points of agreement and disagreement to assist the court or tribunal. The meeting is held quite independently of instructing lawyers, and often assists in resolution of a case, especially if the experts review and modify their opinions. When this happens, substantial trial costs can be saved when the parties to a dispute agree to a settlement. In most systems, the trial (or the procedure) can be suspended in order to allow the experts to study the case and produce their results. More regularly, meetings of experts occur before trial.

Experts charge a professional fee which is paid through the party commissioning the report (both parties for joint instructions) although the report is addressed to the court. The fee necessity not is contingent on the outcome of the case. Expert witnesses may be subpoenaed (issued with a witness summons), although this is normally a formality to avoid court date clashes.

In the United States, under the Federal Rule of Proof 702 (FRE), an expert witness necessity is qualified on the topic of testimony. In determining the qualifications of the expert, the FRE requires the expert have specialized education, training, or practical experience in the subject matter relating to the case. The expert's testimony necessity be based on facts in proof, and should offer opinion in relation to the causation or correlation to the proof in drawing a conclusion.

## **History**

The earliest recognized use of an expert witness in English law came in 1782, when a court that was hearing litigation relating to the silting-up of Wells harbor in Norfolk accepted proof from a leading civil engineer, John Smeaton. This decision through the court to accept Smeaton's proof is widely cited as the root of modern rules on expert proof. Though, it was still such an unusual characteristic in court that in 1957 in the Old Bailey, Lord Justice Patrick Devlin could describe the case of suspected serial killer Dr John Bodkin Adams therefore: "It is a most curious situation, perhaps unique in these courts that the act of murder has to be proved through expert proof."

On the other hand, expert proof is often the most significant component of several civil and criminal cases today. Fingerprint examination, blood analysis, and DNA fingerprinting are common kinds of expert proof heard in serious criminal cases. In civil cases, the work of accident analysis, forensic engineers, and forensic accountants is usually significant, the latter to assess damages and costs in long and intricate cases. Intellectual property and medical negligence cases are typical examples.

Electronic proof has also entered the courtroom as critical forensic proof. Audio and video proof necessity be authenticated through both parties in any litigation through a forensic expert who is also an expert witness who assists the court in understanding details in relation to the that electronic proof .

Voice-mail recordings and closed-circuit television systems produce electronic proof often used in litigation, more so today than in the past. Video recordings of bank robberies and audio recordings of life threats are presented in court rooms through electronic expert witnesses.

## **Non-testifying experts**

In the U.S., a party can hire experts to help him/her evaluate the case. For instance, a car maker may hire an experienced mechanic to decide if its cars were built to specification. This kind of expert opinion will be protected from detection. If the expert finds something that is against its client, the opposite party will not know it. This privilege is similar to the work product protected through the attorney/client privilege. The non-testifying expert can be present at trial or hearing to aid the attorney in asking questions of other expert witnesses.

## **Testifying experts**

If the witness needs to testify in court, the privilege is no longer protected. The expert witness's identity and almost all documents used to prepare the testimony will become discoverable. Usually an experienced lawyer will

advise the expert not to take notes on documents because all of the notes will be accessible to the other party.

An expert testifying in a United States federal court necessarily satisfies the requirements of Fed. R. Evid. 702. Usually, under Rule 702, an expert is a person with "scientific, technical, or other specialized knowledge" who can "assist the trier of fact," which is typically a jury. A qualified expert may testify "in the form of an opinion or otherwise" so long as: "(1) the testimony is based upon enough facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case."

Although experts can testify in any case in which their expertise is relevant, criminal cases are more likely to use forensic scientists or forensic psychologists, whereas civil cases, such as personal injury, may use forensic engineers, forensic accountants, employment consultants or care experts. Senior physicians – UK, Ireland, and Commonwealth consultants, U.S. attending physicians – are regularly used in both the civil and criminal courts.

The Federal Court of Australia has issued guidelines for experts appearing in Australian courts. This covers the format of the expert's written testimony as well as their behaviour in court. Similar procedures apply in non-court forums, such as the Australian Human Rights and Equal Opportunity Commission.

## **CIVIL COMMITMENT**

Civil commitment or involuntary commitment is a legal process through which an individual with symptoms of severe mental illness is court-ordered into treatment in a hospital (inpatient) or in the community (outpatient).

Criteria for civil commitment are established through laws, which vary flanked by nations. Commitment proceedings often follow a period of emergency hospitalization throughout which an individual with acute psychiatric symptoms is confined for a relatively short duration (e.g. 72 hours) in a treatment facility for evaluation and stabilization through mental health professionals — who may then determine whether further civil commitment is appropriate or necessary. If civil commitment proceedings follow, the evaluation is presented in a formal court hearing where testimony and other proof may also be submitted. The subject of the hearing is typically entitled to legal counsel and may challenge a commitment order through habeas corpus rules.

Historically, until the first third of the twentieth century or later in most jurisdictions, all committals to public psychiatric facilities and most committals to private ones were involuntary. Since then, there have been alternating trends towards the abolition or substantial reduction of involuntary commitment, a trend recognized as "deinstitutionalization."

## **Purpose**

In most jurisdictions, involuntary commitment is specifically applied to individuals found to be suffering from a mental illness that impairs their reasoning skill to such an extent that the laws, state, or courts find that decisions necessity or should be made for them under a legal framework. (In some jurisdictions, this is a separate proceeding from being "found incompetent.")

Involuntary commitment is used to some degree for each of the following headings although different jurisdictions have different criteria. Some jurisdictions limit court-ordered treatment to individuals who meet statutory criteria for presenting a danger "to self or others." Other jurisdictions have broader criteria.

### ***First aid***

Training is slowly becoming accessible in mental health first aid to equip community members such as teachers, school administrators, police officers, and medical workers in recognizing and managing situations where evaluations of behavior might be appropriate. The extension of first aid training to cover mental health problems and crises is a quite recent development. A mental health first aid training course was urbanized in Australia in 2001 and has been found to improve assistance provided to persons with a mental illness or in a mental health crisis. This form of training has now spread to a number of other countries (Canada, Finland, Hong Kong, Ireland, Singapore, Scotland, England, Wales, and the United States). Mental health triage may be used in an emergency room to evaluate the degree of risk and prioritize treatment.

### ***Observation***

Observation is sometimes used to determine if a person warrants involuntary commitment. It is not always clear on a relatively brief examination whether a person is psychotic or otherwise warrants commitment.

### ***Containment of danger***

A common cause given for involuntary commitment is to prevent danger to the individual or society. People with suicidal thoughts may act on these impulses and harm or kill themselves. People with psychoses are occasionally driven through their delusions or hallucinations to harm themselves or others. People with certain types of personality disorders can occasionally present a danger to themselves or others.

This concern has found expression in the standards for involuntary commitment in every U.S. state and in other countries as the "danger to self or others" standard, sometimes complemented through the requirement that the

danger be "imminent." In some jurisdictions, the "danger to self or others" standard has been broadened in recent years to contain need-for-treatment criteria such as "gravely disabled."

## **Deinstitutionalization**

Starting in the 1960s, there has been a worldwide trend toward moving psychiatric patients from hospital settings to less restricting settings in the community, a shift recognized as "deinstitutionalization." Because the shift was typically not accompanied through a commensurate development of community-based services, critics say that deinstitutionalization has led to large numbers of people who would once have been inpatients being incarcerated in jails and prisons or becoming homeless. These scenarios would occur when outpatient services are not accessible or patients choose not to adhere to treatment outside the hospital. In some jurisdictions, laws authorizing court-ordered outpatient treatment have been passed in an effort to compel individuals with chronic, untreated severe mental illness to accept treatment while living outside the hospital.

Before the 1960s deinstitutionalization there were earlier efforts to free psychiatric patients. Doctor Philippe Pinel (1745 - 1826) ordered the removal of chains from patients.

## **Approximately the world**

### ***United Nations***

United Nations General Assembly (resolution 46/119 of 1991), "Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care" is a non-binding resolution advocating certain broadly-drawn procedures for the carrying out of involuntary commitment. These principles have been used in several countries where local laws have been revised or new ones implemented. The UN runs programs in some countries to assist in this process.

### ***Australia***

In Australia, court hearings are not required for involuntary commitment. Mental health law is constitutionally under the state powers. Each state therefore has different laws, several of which have been updated in recent years.

### ***Referral for service***

The usual requirement is that a police officer or a physician determines that a person requires a psychiatric examination, usually through a psychiatric

hospital. If the person is detained in the hospital, they usually necessity be seen through an authorized psychiatrist within a set period of time. In some states, after a further set period or at the request of the person or their representative, a tribunal hearing is held to determine whether the person should continue to be detained. In states where tribunals are not instituted, there is another form of appeal.

Some Australian states require that the person is a danger to the society or themselves; other states only require that the person be suffering from a mental illness that requires treatment. The Victorian Mental Health Act (1986) identifies in part that:

- A person may be admitted to and detained in an approved mental health service as an involuntary patient in accordance with the procedures specified in this Act only if—
  - the person appears to be mentally ill; and
  - the person's mental illness requires immediate treatment and that treatment can be obtained through admission to and detention in an approved mental health service; and
  - because of the person's mental illness, the person should be admitted and detained for treatment as an involuntary patient for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and
  - the person has refused or is unable to consent to the necessary treatment for the mental illness; and
  - the person cannot receive adequate treatment for the mental illness in a manner less restrictive of that person's freedom of decision and action.

There are additional qualifications and restrictions but the effect of these provisions is that people who are assessed through doctors as being in need of treatment may be admitted involuntarily without the need of demonstrating a risk of danger. This then overcomes the pressure described above to exaggerate issues of violence to obtain an admission.

### *Treatment*

In general, once the person is under involuntary commitment, treatment may be instituted without further requirements. Some treatments, such as electroconvulsive therapy (ECT), often require further procedures to comply with the law before they may be administered involuntarily.

Community treatment orders can be used in the first instance or after a period of admission to hospital as a voluntary/involuntary patient. With the trend towards deinstitutionalization, this situation is becoming increasingly frequent, and hospital admission is restricted to people with severe mental illnesses.



## ***New Zealand***

The Mental Health (Compulsory Assessment and Treatment) Act 1992, replaced the previous Act, enacted in 1969. Although there were many reasons to replace the previous act, one key aspect was the lack of review, as once the Reception Order had been made through a District Court judge and two doctors, that the proposed patient be taken to hospital: "Subject to the provisions of this Act, every reception order, whether made before or after the commencement of this Act, shall continue in force until the patient is discharged." Despite the deinstitutionalization that began in New Zealand throughout the 1960s, as in several other Western countries, several patients stayed at the psychiatric hospital for years, as the original reception order remained in force. Another cause to review the former act was that patients appeared at the District Court (formerly the Magistrates Court until 1980) - which hears all but the most serious *criminal* cases. The present Act emphasizes that Mental Health Hearings be heard at the Family Court instead, to remove any implication that the patient is being detained in hospital due to a criminal act. It does, though, give that Mental Health Hearings may take place at the District Court, if there is no other appropriate alternative. Often the Family Court will sit at the Mental Health Inpatient Unit.

There are multiple checks and balances built into the present committal procedures. As in the United Kingdom, the process is usually recognized as "sectioning".

Section 8A gives that any person, aged 18 or over, who has seen the proposed patient within the last 72 hours, may apply to the Director of Area Mental Health Services (DAMHS), to have that person seen through a psychiatrist, against their wishes. The person necessity be a danger to themselves or others, or be unable to care for themselves. Section 8B requires that the person be seen through a doctor, preferably their own General Practitioner, to provide their opinion as to whether the applicant is correct in their statements in relation to the proposed patient's behaviour. If the doctor is satisfied, this paperwork is signed, and the process continues to Section 9 where Duly Authorized Officers (DAOs) - operating as agents of the DAMHS, have the power to detain the person for six hours, and throughout that time, they have the power to transport the proposed patient to the psychiatrist. This is usually at a hospital, but the patient may be seen at a police station, depending on the circumstances. If the proposed patient refuses to accompany them, the Police will assist under the Memorandum of Understanding flanked by the Ministry of Health and the New Zealand Police. Under s10 they are formally interviewed through the psychiatrist, and if they are to be admitted, an s11 is issued that detains the patient for assessment and treatment at an inpatient mental health unit, for up to five days. Following this, an s12 review is held, and if necessary the patient can be held under s13 for fourteen days. At the end of this time, the psychiatrist necessity applies for a Court Hearing as to whether the patient can be treated compulsorily for any longer. Section 14(4)

provides up to fourteen days for the hearing to occur. The detention sections (11, 13, & 14(4)) can be done in the outpatient setting, but in practice, most compulsory patients are detained at a hospital.

Two compulsory treatment orders are accessible. Section 29 is a Community Treatment Order, and the Act clearly states that this should be applied for. The patient can only be recalled to hospital twice for two fourteen-day periods in the six months that it lasts for. If a community order is not appropriate (for instance, due to the risk posed through the patient to themselves or others), a s30 Inpatient Treatment Order can be applied for, where the patient is either in hospital, or on leave from hospital. In either case, two health professionals necessity apply to the Family Court - the psychiatrist, backed through a second health professional, usually a registered nurse, sometimes a social worker.

People who have committed a crime whilst mentally unwell are subject to the Criminal Procedure (Mentally Impaired Persons) Act 2003, although the Mental Health Act also refers to their care. If taken into custody, it is a matter for the Court as to whether they will go to prison and have their mental health issues treated whilst imprisoned, or whether they are "insane" in the legal sense, in which case they are detained at a Forensic Mental Health Unit. These are situated at Auckland, Hamilton, Wellington, Christchurch, and Dunedin. The Acts described give also for the transfer of patients flanked by prisons and Forensic Mental Health Units, and the reasons for doing this.

As in several other countries, New Zealand has found that closing its large country psychiatric hospitals and replacing them with small inpatient units, and a community care model, does not always mean better care. Whilst several people were released who were able to adapt to, and become part of, their communities, some patients were unable to adapt, and the current system is not set up for people who require long term closely supervised mental health care.

### ***Finland***

Involuntary commitment requires three criteria: 1) severe mental illness with impaired insight; 2) that a lack of treatment would worsen the condition or endanger the safety or security of the patient or others; 3) and other treatments or services are insufficient or inapplicable.

Instead, they necessity be referred to THL (National Institute for Health and Welfare) for involuntary treatment. Niuvanniemi hospital specializes in involuntary commitment of criminal patients.

### ***Germany***

In Germany, there is a rising tendency to use the law on legal guardianship instead of mental health law for justification of involuntary commitment or treatment. The ward's legal guardian decides that he/she necessity go into mental hospital for treatment, and the police then acts on this decision. This is

simpler for the government and family members than the formal process for commitment under mental health laws. In German criminal law, a person who was convicted of certain crimes can also be sentenced to be kept in preventive detention; see article on preventive detention.

### *Netherlands*

In Dutch criminal law a convict can be sentenced to involuntary psychiatric treatment in a special institute described a TBS-clinic? TBS is an abbreviation for "Ter Beschikkingstelling," literally meaning "being placed at disposal." Legally, such a sentence is not regarded as punishment like a prison sentence, but as a special measure. Often, when a convict is sentenced to TBS, he first serves a prison sentence. The convict will then be placed in a TBS-clinic after serving time in prison (usually two-thirds of the original prison sentence, although this practice is under discussion).

According to Dutch law, meeting three circumstances is required for a convict to be sentenced to TBS. These circumstances are:

- the crime committed necessity have been directly related to a psychiatric disorder,
- recidivism necessity be likely, and
- the convict can not, or only partially, be held accountable for the crime.

To determine if these circumstances are met, the suspect is observed in a forensic psychiatric detention center, the Pieter Baan Centre. Neither the prosecution nor the protection can effectively challenge the Pieter Baan Centre's report, since it is the only institution that can conduct such investigations. Fatal mistakes have occurred, for instance, when a child molester regarded through the Pieter Baan Center as "not dangerous" killed a child upon release. The conclusions in the centre's report are not binding, the judge can decide to ignore, or only partially accept them.

Every convict detained in a TBS-clinic may get temporary leave after serving a certain time or after some progress in treatment. This is regarded as an essential part of treatment, as the convict will be slowly re-entering society this method. At first the convict will be escorted through a therapist, and will be allowed outside the clinic for only a few hours. After evaluation, time and freedom of movement will be expanded until the convict can move freely outside the clinic without escort (usually for one day at a time). At that time, the convict will find work or follow an education. Usually, the convict is released after being in this situation for one or two years without incident.

The time to be served in TBS can be indefinite, and it may be used as a form of preventive detention. Evaluation through the court will occur every one or two years. Throughout these evaluations the court determines if any progress is made in treatment of the convict, and if it will be safe to release the

convict into society. In general, the court will follow conclusions made through the TBS-clinic.

Average time served in a TBS-clinic through a convict is slightly over eight years.

#### *Dutch TBS-clinics*

In the Netherlands there are currently 12 institutions regarded as TBS-clinics:

- Inforsa/Arkin, Amsterdam
- Dr. Henri van der Hoevenstichting, Utrecht
- Dr. S. van Mesdagkliniek, Groningen
- Hoeve Boschoord, Boschoord
- FPC Veldzicht, Balkbrug
- Pompestichting, Nijmegen
- Oostvaarderskliniek, Almere
- De Kijvelanden/FPC Tweelanden, Poortugaal
- FPC Oldenkotte, Rekken
- FPC De Rooyse Wissel, Venray
- GGz Drenthe, Assen
- GGz Eindhoven/De Woenselse Poort, Eindhoven

These institutions combined currently are holding in relation to the 1840 convicts.

Through the end of the 20th century, it was concluded that some convicts could not be treated and so could not be safely released into society. For these convicts, TBS-clinics formed special wards, described "long-stay wards". Transfer to such a ward means that the convict will no longer be actively treated, but merely detained. This is regarded as more cost-effective. In general, the convicts in these wards will be incarcerated for the rest of their lives, although their detention is eligible for regular review through the court.

#### *Controversy*

Since the latter half of the 1990s, considerable controversy has grown in Dutch society, in relation to the TBS-system. This controversy has two main areas. The first level of controversy resulted from the media increasingly reporting cases of convicts committing crimes while still in, or after, treatment in a TBS-clinic.

Some examples of these cases are:

- Throughout 1992, a truck driver was convicted of raping and murdering three young children. Eight years earlier he was released from a TBS-clinic after being treated for child molestation.

- A convict, in relation to be released from a TBS-clinic, murdered the owner of a garage in 1996 while under the influence of drugs.
- An ex-convict treated in a TBS-clinic, murdered two women in 1994 and 1997.
- A convict, still being treated through a TBS-clinic, randomly killed a man in the city of Groningen in 1999.
- Flanked by 2000 and 2004, an ex-convict tortured many animals and killed a homeless man. He had been treated in a TBS-clinic.
- In 2002 an ex-convict was sentenced for triple murder. He also was released earlier.
- In 2005 a convict escaped his escort throughout leave. He was arrested many days later after killing a man.

Political and social attention increased, and debate started in relation to the effectiveness of the TBS-system and whether convicts should be granted leave from TBS-clinics. Especially right-wing politicians suggested the TBS-system be discarded altogether. Numerous articles in newspapers, magazines, television and radio programs and a revealing book written through an ex-convict (which for the first time openly questioned the effectiveness of the TBS-system) boosted discussion. Prior to that, any problems had been mostly denied through TBS-clinics themselves.

The center of attention became a highly renowned TBS-clinic, Dr. S. Van Mesdagkliniek in the city of Groningen. Events that took place there, through the end of the 1990s and the first years of the 21st century, provoked the second cause for controversy. Concern rose in relation to the claims of unprofessional behavior through staff working in TBS-clinics, and the Dr. S. Van Mesdagkliniek urbanized a poor reputation over these problems. This TBS-clinic has been plagued with unprofessional and even criminal acts through its staff since 1999.

Throughout that year, the clinic came under investigation through Dutch police after rumors in relation to the female staff members committing sexual offenses against convicts appeared. Five such cases were exposed throughout the investigation, and also numerous cases of drug-abuse, smuggling, and trading of contraband such as alcohol, mobile phones, pornographic material, and hard drugs. It became apparent that staff members did not have the required education, had not been informed in relation to the rules and regulations, disregarded legal procedures, gave false testimonies, tampered with proof, uttered false accusations against convicts, and intimidated colleagues. At least one psychiatrist, employed as such through the clinic, proved to be not qualified, and treatment of convicts was in several cases simply non-existent.

These problems had been recognized for long through the management but were kept hidden. After public outcry in relation to the situation, management was replaced and all of the nine (at the time) TBS-clinics in the Netherlands were subjected to investigation. Six of them proved to be below the required

legal standards. Though, problems did not end there. In spite of several measures taken through the government, convicts still were released without proper treatment. As a consequence, numerous crimes were committed through convicts that were regarded as treated through TBS-clinics. Also, sexual offenses against convicts through staff members and smuggling of contraband did not cease in many TBS-clinics. In 2006, the Dutch government formed a committee to investigate the TBS-system. Some, though not the worst, problems were recognized and countermeasures were implemented. One of the recognized actual results is that fewer convicts escape throughout temporary release.

Controversy concerning the, often praised, Dutch TBS-system sustained. In 2005, a staff member working in the Dr. S. Van Mesdagkliniek was caught smuggling liquor to convicts suffering from alcohol-related problems. In 2007, a female staff member committed sexual offenses against a convict, and had smuggled contraband. She was sentenced to three months in prison in 2009. That same year, investigation proved convicts still had ample access to illicit drugs and four inmates from the Dr. S. Van Mesdagkliniek were arrested for possession of child pornography. Several crimes committed through released convicts treated in TBS-clinics, escape statistics because they occurred in other countries, or because they differ from the crime the convict was originally convicted for (several convicts released from TBS-clinics find their method in illegal drug trade and related crimes). Because there seems to be no acceptable alternative accessible, political support for the much troubled TBS-system remains, in spite of the controversy.

### ***United Kingdom***

In the United Kingdom, the process recognized in the United States as involuntary commitment is informally recognized as "detaining" or "sectioning," using several sections of the Mental Health Act 1983 (covering England and Wales), the Mental Health (Northern Ireland) Order 1986 and the Mental Health (Care and Treatment) (Scotland) Act 2003 that give its legal basis.

In England and Wales, approved mental health professionals have a lead role in coordinating Mental Health Act assessments, which they conduct in cooperation with usually two medical practitioners. Under the Mental Health Act, detention is determined through utility and purpose. Mentally ill individuals may be detained under Section 2 for a period of assessment lasting up to 28 days or Section 3 for a period of treatment lasting up to 6 months. Patients already on a ward may be detained under section 5(2) for up to 72 hours for the purposes of allowing an assessment to take place for Section 2 or 3. Separate sections deal with mentally ill criminal offenders. In all cases detention needs to be justified on the basis that the person has a mental disorder and poses a risk of harm to his/her own health, safety, or the safety of others.

Under the amended Mental Health Act 2007, which came into force in November 2008 to be detained under Section 3 for treatment, appropriate treatment necessity be accessible in the place of detention? Supervised Community Treatment orders signifies that people can be discharged to the community on a conditional basis, remaining liable to recall to hospital if they break the circumstances of the community treatment order.

### ***United States***

Involuntary commitment is governed through state law and procedures vary from state to state. In some jurisdictions, laws concerning the commitment of juveniles may vary, with what is the *de facto* involuntary commitment of a juvenile perhaps *de jure* defined as "voluntary" if his parents agree, though he may still have a right to protest and effort to get released. Though, there is a body of case law governing the civil commitment of individuals under the Fourteenth Amendment through U.S. Supreme Court rulings beginning in 1975 with the ruling that involuntary hospitalization and/or treatment violates an individual's civil rights in *O'Connor v. Donaldson*. This ruling forced individual states to change their statutes. For instance, the individual necessity be exhibiting behavior that is a danger to himself or others in order to be held, the hold necessity be for evaluation only and a court order necessity be received for more than very short term treatment or hospitalization (typically no longer than 72 hours). This ruling has severely limited involuntary treatment and hospitalization in the U.S. In the U.S. the specifics of the relevant statutes vary from state to state.

In 1978, the *Addington v. Texas* set the bar for involuntary commitment for treatment through raising the burden of proof required to commit persons from the usual civil burden of proof of "preponderance of the proof" to the higher standard of "clear and convincing" proof.

An instance of involuntary commitment procedures is the Baker Act used in Florida. Under this law, a person may be committed only if they present a danger to themselves or others. A police officer, doctor, nurse, or licensed mental health professional may initiate an involuntary examination that lasts for up to 72 hours. Within this time, two psychiatrists may ask a judge to extend the commitment and order involuntary treatment. The Baker Act also requires that all commitment orders be reviewed every six months in addition to ensuring certain rights to the committed including the right to get in touch with outsiders. Also, a person under an involuntary commitment order has a right to counsel and a right to have the state gives a public defender if they cannot afford a lawyer. While the Florida law allows police to initiate the examination, it is the recommendations of two psychiatrists that guide the decisions of the court.

In the 1990s, involuntary commitment laws were extended under several state laws commonly recognized under the umbrella term, SVP laws, to hold some convicted sex offenders in psychiatric facilities after their prison

conditions were completed. (This is usually referred to as "civil commitment," not "involuntary commitment," since involuntary commitment can be criminal or civil). This matter has been the subject of a number of cases before the Supreme Court, most notably *Kansas v. Hendricks* and *United States v. Comstock* in regard to the Adam Walsh Child Protection and Safety Act, which does not require a conviction on sex offences, but only that the person be in federal custody and be deemed a "sexually dangerous person".

In Arizona, the government can mandate inpatient treatment for anyone determined to be "persistently or acutely disabled." Virtually anyone who suspects that someone has mental problems and needs help could file an application to a state-licensed healthcare agency for a court-ordered evaluation.

In Connecticut, someone can be committed only if he or she has "psychiatric disabilities and is dangerous to himself or herself or others or gravely disabled". "Gravely disabled" has usually been interpreted to mean that the person is unable on his own to obtain adequate food, shelter and clothing.

In Iowa, any "interested person" may begin commitment proceedings through submitting a written statement to the court. If the court finds that the respondent is "seriously mentally impaired," he or she will be placed in a psychiatric hospital for further evaluation and perhaps treatment. Further hearings are required at specific intervals for as long as the person is being involuntarily held.

The Michigan Mental Health Code gives that a person "whose judgment is so impaired that he or she is unable to understand his or her need for treatment and whose sustained behavior as the result of this mental illness can reasonably be expected, on the basis of competent clinical opinion, to result in important physical harm to himself or herself or others" may be subjected to involuntary commitment, a provision paralleled in the laws of several other jurisdictions. These types of provisions have been criticized as a sort of "heads I win, tails you lose". Understanding one's "need for treatment" would cause one to agree to voluntary commitment, but the Bazelon Center has said that this "lack of insight" is "often no more than disagreement with the treating professional" and this disagreement might form part of the proof to support one's involuntary commitment.

In Nevada, prior to confining someone, the state necessity demonstrates that the person "is mentally ill and, because of that illness, is likely to harm him or others if allowed his liberty."

In Oregon, the standard that the allegedly mentally ill person "Peter as been committed and hospitalized twice in the last three years, is showing symptoms or behavior similar to those that preceded and led to a prior hospitalization and, unless treated, will continue, to a reasonable medical probability, to deteriorate to become a danger to self or others or unable to give for basic needs" may be substituted for the danger to self or others standard.



In Utah, the standard is that "the proposed patient has a mental illness which poses a substantial danger". "Substantial danger" means the person, through his or her behavior, due to mental illness: (a) is at serious risk to: (i) commit suicide, (ii) inflict serious bodily injury on himself or herself; or (iii) because of his or her actions or inaction, suffer serious bodily injury because he or she is incapable of providing the basic necessities of life, such as food, clothing, and shelter; (b) is at serious risk to cause or effort to cause serious bodily injury; or (c) has inflicted or attempted to inflict serious bodily injury on another.

### *Controversy in relation to liberty*

The impact of involuntary commitment on the right of self-determination has been a cause of concern. Critics of involuntary commitment have advocated that "the due process protections... provided to criminal defendants" be extended to them. The Libertarian Party opposes the practice in its platform. Thomas Szasz and the anti-psychiatry movement have also been prominent in challenging involuntary commitment.

A small number of individuals in the U.S. have opposed involuntary commitment in those cases in which the diagnosis forming the justification for the involuntary commitment rests, or the individuals say it rests, on the speech or writings of the person committed, saying that to deprive him of liberty based in whole or part on such speech and writings violates the First Amendment. Other individuals have opposed involuntary commitment on the bases that they claim (despite the amendment usually being held to apply only to criminal cases) it violates the Fifth Amendment in a number of methods, particularly its privilege against self-incrimination, as the psychiatrically examined individual may not be free to remain silent, and such silence may actually be used as "proof" of his "mental illness".

Although patients involuntarily committed theoretically have a legal right to refuse treatment, refusal to take medications or participate in other treatments is noted through hospital staff. Court reviews usually are heavily weighted toward the hospital staff, with the patient input throughout such hearings minimal. In *Kansas v. Hendricks*, the US Supreme Court found that civil commitment is constitutional regardless of whether any treatment is provided.

### *Alternatives*

Accompanying deinstitutionalization was the development of laws expanding the power of courts to order people to take psychiatric medication on an outpatient basis. Though the practice had occasionally occurred earlier, outpatient commitment was used for several people who would otherwise have been involuntarily committed. The court orders often specified that a person who violated the court order and refused to take the medication would be subject to involuntary commitment.

Involuntary commitment is distinguished from conservatorship and guardianship. The intent of conservatorship or guardianship is to protect those not mentally able to handle their affairs from the effects of their bad decisions, particularly with respect to financial dealings. For instance, a conservatorship might be used to take control of the finances of a person with dementia, so that the person's assets and income are used to meet his basic needs, e.g., through paying rent and utility bills.

Advance psychiatric directives may have a bearing on involuntary commitment.

### **Politically motivated abuses**

At certain places and times, the practice of involuntary commitment has been used for the suppression of dissent, or in a punitive method.

In the former Soviet Union, psychiatric hospitals were used as prisons in order to isolate political prisoners from the rest of society. The official explanation was that no sane person would declaim the Soviet government and Communism. British playwright Tom Stoppard wrote *Every Good Boy Deserves Favour* in relation to the relationship flanked by a patient and his doctor in one of these hospitals. Stoppard was inspired through a meeting with a Russian exile.

In 1927, after the execution of Sacco and Vanzetti in the United States, a demonstrator named Aurora D'Angelo was sent to a mental health facility for psychiatric evaluation after she participated in a rally in support of the anarchists.

## **REVIEW QUESTIONS**

- Explain the role criminal investigations.
- Explain the duties of criminal investigations.
- Discuss the ethical issues in forensic science
- What is expert witness?
- What is Civil commitment? Explain.

## **FORENSIC MEDICINE**

### **STRUCTURE**

- Learning objectives

- Global Medical jurisprudence
- Legal Procedure in India
- Documentary proof
- Understanding Laws and ethics of medical practice
- Review questions

## **LEARNING OBJECTIVES**

After reading this chapter, you should be able to:

- Understand the global medical jurisprudence
- Understand the legal procedure in India
- Understand the documentary proof
- Understand the laws and ethics of medical practice

## **GLOBAL MEDICAL JURISPRUDENCE**

Medical jurisprudence or legal medicine is the branch of science and medicine involving the study and application of scientific and medical knowledge to legal problems, such as inquests, and in the field of law. As modern medicine is a legal creation, regulated through the state, and medicolegal cases involving death, rape, paternity, etc. require a medical practitioner to produce proof and appear as an expert witness, these two fields have traditionally been interdependent. Forensic medicine, which comprises forensic pathology, is a narrower field that involves collection and analysis of medical proof (samples) to produce objective information for use in the legal system. Medical jurisprudence had a chair founded at the University of Edinburgh in 1807, first occupied through Andrew Duncan, the younger. It was imposed on the university through the administration of Charles James Fox, and in scrupulous Henry Erskine working with Andrew Duncan, the elder.

### **Scope**

Medical jurisprudence is concerned with a broad range of medical, legal, and ethical issues, as well as human rights and rights of individuals.

Physicians have a duty to act in their patient's best interest and can be charged in a court of law if they fail to do so. On the other hand, a physician may be required to act in the interest of third parties if his patient is a danger to others. Failure to do so may lead to legal action against the physician.

States have been recognized to ask physicians engage in torture of individuals or examine and identify individuals who can endure torture. In such circumstances, physician's necessity chooses whether to disobey the authorities even at the risk of harm to them.

Physicians assess injured individuals and the degree of impairment they

cause. This allows courts to determine and award damages. They may also be required to assess the mental status of accused persons and whether they are fit to stand trial. They may also determine whether an individual is of sound mind and capable of getting into a binding contract with another party. They are also required to perform an autopsy to determine the cause or time of death where this is not clear.

Medical jurisprudence comprises:

- questions of the legal and ethical duties of physicians;
- questions affecting the civil rights of individuals with respect to medicine; and,
- medicolegal assessment of injuries to the person.

Under the second heading, there are several characteristics, including (but not limited to):

- questions of competence or sanity in civil or criminal proceedings;
- questions of competence of minors in matters affecting their own health; and,
- questions of lawful fitness or safety to drive a motor vehicle, pilot an aeroplane, use scuba gear, play certain sports, or to join certain occupations.

Under the third heading, there are also several characteristics, including (but not limited to):

- assessment of illness or injuries that may be work-related or otherwise compensable;
- assessment of injuries of minors that may relate to neglect or abuse; and,
- certification of death or else the assessment of possible causes of death. This, though, is the more commonly understood, albeit narrow, meaning of forensic medicine.

## **LEGAL PROCEDURE IN INDIA**

### **Police Inquest**

The police inquest is held under section 174 of the Criminal Procedure Code (Commonly referred to as Cr.P.c.). In India, normally the inquest is mannered through a police officer, not below the rank of a head constable. A police officer conducting an inquest is recognized as an investigating officer. Whenever a suspicious death occurs anywhere, the information reaches the local police officer first of all. He immediately informs the Executive

Magistrate of the area and then proceeds to the place where the body is lying. The thought of informing the Executive Magistrate is that in certain cases, the Magistrate may himself want to conduct the inquest (his inquest being fairer and superior to that of the police inquest). There are certain specific cases in which only the Magistrate shall hold an inquest (as mentioned under the relevant heading), but the Magistrate reserves the right to conduct inquest in any other case which he deems fit. If there is no order from the Magistrate to the contrary, the Police officer conducts an inquiry into the cause of death in the attendance of two or more respectable witnesses of the locality. These witnesses are recognized as panchas, panch witnesses, or panchayatdars. He also looks at the body for proof of any injury, poisoning, etc. Based on his findings after viewing the body, as well as information received from the witnesses, he prepares a report on the probable cause of death, as judged through him. This report is described the panchnama or the inquest report. The inquest report, on an average consists of in relation to the 10 papers, but it may be as long as 50 papers or as short as just 3 papers. It all varies from case to case. The usual papers that the report contains are:-(i) Brief facts of the case (ii) statements and opinions of two or more relatives or neighbors or friends of the deceased (iii) a sketch of the scene where the body is lying (iv) a form filled up through the police officer himself, giving details of injuries as visualized through him (v) any treatment records, if the person had been getting some treatment for some disease or injury prior to his death (vi) a copy of the MLC, if this was made at the time the patient was brought to the hospital (vii) statement of the deceased prior to his death concerning his cause of death (viii) suicide note of the deceased if this was found (ix) a copy of the First Information Report (FIR), if this had been lodged with the police (x) any other relevant paper (for instance, the railway ticket found in the deceased's wallet, if the body was found on a platform. It may indicate where he was traveling from and where to). After preparing the inquest report, the police officer may come to one of the two conclusions; either there has been a foul play or there has been none. In either case, his subsequent action would be different.

*An instance would create the procedure somewhat clear. Let us imagine that a police officer receives a report that a woman has been found burnt, somewhere in Kailash Colony. He would first inform the area magistrate in relation to the said death, and then proceed to the place where the body of the woman is lying. The body of the woman may be at her own home, if the death occurred immediately after burning, (such deaths are described "on the spot" deaths); it may be at the hospital, if she had been transferred to the hospital and the death occurred there, or it may be in the mortuary, if the death occurred in the hospital, and the body has been shifted to the hospital mortuary. In the above case, if the body of the woman is lying at the mortuary, the police officer would come to the mortuary first, but after talking to the relatives, and neighbors (waiting there to receive the body), and seeing the body himself, he may like to see the place of occurrence also. He may see*

*some marks of blunt injury on the dead body, and if some neighbor told him in addition, that on the day of occurrence of crime he had seen the woman being beaten and dragged about, it becomes very necessary for him to see the place of occurrence of crime too. He may find proof of drag marks there, or may be some broken bangles, which would be very helpful in prosecuting the culprits later on. In India, the law does not require the doctor (forensic pathologist) to visit the scene of crime, but some sincere police officers prefer to take the doctors to the scene of crime on their own initiative. Interpretations of a trained forensic expert at the scene of crime may be very valuable.*

*If the police officer finds that there is no foul play, he may hand over the body to the relatives for cremation or disposal in any other method in accordance with the person's religion. Let us imagine that in the above case, he finds the following facts (i) the woman was married for more than seven years, and was having very good relations with her husband and in-laws; there had never been a demand for dowry (ii) The parents of the girl assert that they do not suspect her in-laws and that their behavior towards their daughter had been very good and exceptional (iii) The deceased had given statement throughout her illness that she was burnt accidentally throughout cooking (iv) All the neighbors of the woman say that the relations of the woman were very good with her husband and her in-laws, and they never saw them fighting, and (v) on viewing the body, no signs of injury other than burns are found. This much proof is enough for the investigating officer to conclude that no foul play is involved, and he would provide the body to the relatives for disposal.*

*On the other hand, if the findings of the investigating officer are different from those given above, he may reach the conclusion that there had been some foul play. Any one or more of the following findings in the above case may lead him to think that there was some foul play (i) the woman was newly married and there used to be a fight approximately daily in the household (some neighbor may provide this information), and/or (ii) the parents of the girl assert that their daughter had been burnt to death through her in-laws, and/or (iii) the deceased gave a statement throughout her illness that she had been burnt to death through her husband and in-laws, and/or (iv) Some neighbor provides the information that on the day of burning he saw through the window that the husband was putting fire to his wife, and/or (v) in addition to the usual burn injuries, the investigating officer notices some nail marks on the neck (indicating among other things an effort to throttle).*

Once a police officer decides that some foul play is involved in the death of the person, it becomes imperative for him to get a post-mortem done. Only a post-mortem examination through an expert doctor can settle matters conclusively. It can either confirm everyone's doubts or put them to rest. The relatives can not get absent through saying that "we don't want a post-mortem". If the investigating officer decides to have a post-mortem done, he sends the body to the adjacent medical officer authorized for this purpose. He submits the whole inquest report to the medical officer for his perusal. In

addition he appends on top of the inquest report, a formal written request for conducting the post mortem examination. The medical officer conducts the autopsy and then prepares the post-mortem report in duplicate. If he thinks, that some additional examinations such as chemical examination of the viscera is significant to find the cause of death (as when he finds some strange smelling chemical in the stomach and suspects that the deceased might have been poisoned), he would preserve the viscera and hand them over to the investigating officer in a sealed container, for having them analyzed from the chemical examiner. It is the duty of the investigating officer to send over the viscera to the chemical examiner.

*After preparing the post-mortem report, the original is given to the investigating officer and the duplicate is kept in the office records for subsequent reference. It is studied through the doctor at the time the he is summoned in that case through the court of law. The time gap flanked by the conduction of post-mortem and his summoning to the court is in relation to the 2 years on an average, but there have been cases where the doctor has been described as late as 15 years after conducting the post-mortem! Through that time, the doctor might have forgotten everything in relation to the case. The duplicate copy comes handy at such times. The duplicate copy may also be used for research purposes, or for deriving statistical information such as how several dowry deaths occurred throughout a scrupulous year, and so on. In urbanized countries, the post-mortem reports are stored electronically in a computer, which creates retrieval, and statistical processing very easy.*

### **Magistrate's inquest**

The magistrate's inquest is held under section 176 of the Cr.P.C. (compare with the police inquest, which is held under section 174 of Cr.P.C.). This means an inquiry mannered through a magistrate to ascertain certain matters of fact. The law (i.e. section 176 of Cr.P.C.), specifically directs the Magistrate to hold an inquest in following types of cases:-

- Death occurring in police custody
- Suicide of a woman within seven years of marriage
- Death of a woman within seven years of marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman. *In addition to the above 3 cases in which a magistrate is legally bound to hold an inquest, the magistrate reserves the right to hold an inquest in any other case of death which he deems fit. On receipt of information of death through the police officer, he may choose to hold an inquest himself. Experience has shown that a magistrate usually holds an inquest in the following types of cases too:-*
  - any death in which the police are involved in any method, such as death of a convict in jail, death in police firing, or death

occurring throughout police investigation. The essence behind this provision is that the suspect culprit (police) himself can not be the judging authority as to who has committed the offence.

- Cases of exhumation.

## **Coroner's inquest**

This means an inquiry mannered through a coroner into the cause and manner of death. In India, the Coroner's inquest is no more done now. It was actually a legacy of the English *Raj* that we had for over 200 years. The following discussion is of historical importance only.

### ***History of the coroner's inquest***

The office of the coroner originated in England in the time of King Richard I (1157-1199). This system was effective and was adopted through other countries in due course of time. Several countries, later replaced it with the Chief Medical Examiner system. The story of how the coroner system came into being is motivating. King Richard I used to be absent most of the time from his country, to fight wars. Throughout his absence, there had to be an officer to look after the law and order situation. He was the so described "keeper of the pleas of the Crown", one who kept the country going, through looking and investigating into several crimes, and punishing the culprits. He was described *custodes placitorum coronae* (which is Latin for "the keeper of the pleas of the Crown"). In those times, he looked into several types of cases, including unnatural deaths, fires, treasure troves (a valuable find), wrecks, and even illegal catching of the royal fish such as the sturgeon. In fact section 30 of the Coroner's Act, 1871, specifically stipulates that the Coroner would not inquire into treasure troves or wrecks, and would not seize any fugitive goods. He would be concerned mainly with the investigation into obscure, suspicious, and unnatural deaths.

The Coroner's title also underwent a sea change with the passage of time. The title "custodes placitorum coronae" was shortened to carbonator, and ultimately to coroner. In India the system was introduced through the British in pursuance of the provisions of the Coroner's Act 1871 in the "Presidency Towns" of Calcutta and Bombay. Later on the coroner system was removed from Calcutta, and still later from Bombay too. The coroner's court was established in India in 1902.

### ***The Coroner***

As already stated, in India, the coroner's inquest is no more held. The following discussion is meant for people interested in Coroner's inquest for historical research. Coroner used to be a special officer appointed through the



government to inquire into causes of unnatural deaths. The Coroner was required to have a legal qualification and is usually an advocate, attorney, pleader, or first class magistrate, or a transferred metropolitan magistrate (all of whom necessarily have a minimum of five years experience in the legal field). He held the rank of a First Class Judicial Magistrate. He presided over the Coroner's court and is governed through the provisions of the Coroner's Act 1871. He usually used to sit alone but necessarily sits with a jury in certain cases.

### ***The Coroner's court***

The Coroner's Court was almost certainly the only court in the country, which had a jury system. Under section 12 of the Coroner's Act, 1871, he could summon flanked by five and fifteen respectable persons (but there should be an odd number of people always), to act as jury. The word "Coroner's court" may make confusion in the minds of some people who may think that it is like any other court which can grant punishment. It is significant to realize that the Coroner's court was not a court of trial, and as such it had no power to grant punishment to the culprit, even if his offense seems to have been proved. It was only a court of enquiry. After conducting an enquiry into the cause of death, if the Coroner found ample proof against some suspect, he would forward a copy of his inquisition report to the Commissioner of Police, and he would take further action in this regard (like sending the culprit to the metropolitan magistrate empowered to commit him for trial, and grant punishment if found guilty). If the person, who has caused the death, is at large, the Coroner had the power to arrest him and send him to the Magistrate for trial. The several powers of the former Coroner may be summed up as follows. Sections within brackets refer to the Coroner's Act 1871, which empower the Coroner for the said function:-

- Power to inquire into suspicious and unnatural deaths:- The Coroner was empowered to inquire into the causes of all deaths through accident, homicide, suicide, sudden deaths, or death of a prisoner (sec 8)
- Power of getting information from the Superintendent of a prison concerning death of a prisoner:-If the death of a prisoner occurs, the Superintendent of the prison necessarily inform the Coroner. If the Superintendent fails to inform the Coroner, he may be subjected to a fine of up to five hundred rupees (Five hundred rupees may seem a very small amount today, but it was rather a large amount in 1871, when the Act was framed!) (sec 9)
- Power to exhume:-The Coroner could order a body to be exhumed, if he believes that some foul play was involved in his death, and the matters were hushed up through hurried and clandestinely burying the body (sec 11)

- Power to view the body and dispense with the post-mortem examination:-He may view the body and may decide whether or not a post-mortem is required (sec 15)
- Power to summon witnesses:-He can summon any witness, which he deems fit to his court, to provide information concerning the cause of death. If the described witness fails to appear in his court, he would be liable to punishment as prescribed under sections 174, 175 and 176 of the Indian Penal Code. (sec 17)
- Power to order a post-mortem examination, and to provide remuneration to the doctor:-He is authorized to order any registered medical practitioner (usually the Police Surgeon) to hold a postmortem examination, and after the post-mortem examination is over, he may provide him a reasonable amount of remuneration (sec 18). Later, the medical practitioner could also be described as a witness to tell the court his findings. If he fails to appear he would be subject to the same penal provisions as outlined above.
- Power to refer the matter to the Commissioner of Police:-If the person who has caused the death of the deceased, has already surrendered, the Coroner would send the report of his inquisition to the Commissioner of Police who would take further action in that regard (sec 25).
- Power to arrest the guilty and commit him for trial:-If the guilty person is at large, the Coroner could issue a warrant of his arrest (sec 26). In this case, he would send him for trial to such Magistrate who in empowered to commit him to trial.
- Power to appoint Deputy:-He could appoint a Deputy Coroner throughout his sickness or absence due to unavoidable circumstances (sec 38).

Sometimes the Coroner might discover that some foul play has been involved in the death of the person, yet he may be unable to identify the culprit(s). In this case he would return an open verdict. This means, that it has been recognized that a crime has indeed been committed, but for the time being the culprits are not identifiable (It is significant to appreciate, that if the culprits have been recognized, but are not traceable, then the Coroner would not return an open verdict. In that case he would issue warrants for the arrest of such person(s), as outlined above). When an open verdict is returned, the matter is kept in abeyance till more facts come to light which would help identify the culprit(s).

### **Oath and affirmation**

In law, an affirmation is a solemn declaration allowed to those who conscientiously object to taking an oath. An affirmation has exactly the same legal effect as an oath, but is usually taken to avoid the religious implications of an oath; it is therefore legally binding but not measured a religious oath.

Some religious minorities hold beliefs that allow them to create legally binding promises, but forbid them to swear an oath before God. Additionally, several declines to create a religious oath because they feel that to do so would be valueless or even inappropriate, especially in secular courts. In some jurisdictions, an affirmation may only be given if such a cause is provided.

## **DOCUMENTARY PROOF**

Documentary proof is any proof introduced at a trial in the form of documents. Although this term is most widely understood to mean writings on paper (such as an invoice, a contract or a will), the term actually contain any media through which information can be preserved. Photographs, tape recordings, films, and printed emails are all forms of documentary proof.

- Documentary versus physical proof: A piece of proof is *not* documentary proof if it is presented for some purpose other than the examination of the contents of the document. For instance, if a blood-spattered letter is introduced solely to show that the defendant stabbed the author of the letter from behind as it was being written, then the proof is physical proof, not documentary proof. Though, a film of the murder taking place *would* be documentary proof (just as a written description of the event from an eyewitness). If the content of that same letter is then introduced to show the motive for the murder, then the proof would be both physical and documentary.
- Authentication: Documentary proof is subject to specific forms of authentication, usually through the testimony of an eyewitness to the execution of the document, or to the testimony of a witness able to identify the handwriting of the purported author. Documentary proof is also subject to the best proof rule, which requires that the original document be produced unless there is a good cause not to do so.

## **Medical certificate**

A medical certificate (sometimes referred to as a doctor's certificate) is a statement from a physician or other health care provider that attests to the result of a medical examination of a patient. It can serve as a "sick note" (documentation that an employee is unfit for work) or proof of a health condition. An aegrotat or sick note is a type of medical certificate excusing a student's absence from school for reasons of illness.

### ***Purpose and applications***

Medical certificates are sometimes required to obtain certain health benefits from an employer, create an insurance claim, for tax purposes, or for certain legal procedures. Medical certificates are used to indicate eligibility of

activity, such as the use of disabled parking. Medical certificates can also be used to describe a medical condition a person has, such as blindness. Medical certificates are often used to certify that someone is free of contagious diseases, drug addiction, mental illness, or other health issues.

Health criteria are often required when making an application for something, such as an eye examination to get a driver's license. Other times medical criteria are presented voluntarily through an applicant in a self-assessment, without either a doctor or access to the person's medical record. Specific health criteria or medical history are required for certain jobs.

In the United States, the majority of pilots are required to possess a valid medical certificate that certifies sound health as part of the requirements for piloting an airplane. In the U.S., sport pilots may use a valid state driver's license in place of a medical certificate, and glider and hot air balloon pilots are not required to obtain them.

### ***Aegrotat***

The term *aegrotat* (abbreviated as *aegrot*) is used primarily in the United Kingdom and Commonwealth of Nations. In the context of British undergraduate degrees a student who is too ill to finish may be awarded an aegrotat degree if the student otherwise would have passed exams or other requirements.

### ***Impact on occupation***

Except in certain unique circumstances, a holder of a medical certificate in the National Aeronautics and Space Administration may not "act as pilot in command or in any other capability as a required flight crewmember of an aircraft".

A patient with circumstances such as: measles, chicken-pox, hepatitis A, leprosy, typhoid fever, and whooping cough, can return to work immediately after their healing phase or medical tests. Approximately always the patient may only be allowed to return to work upon submission of a medical certificate.

### ***Eligibility***

Sometimes, there are standards and procedures in place, for workers in a certain field to be eligible to receive a medical certificate. Any airman at the National Aeronautics and Space Administration necessarily provide their employee's access to the National Driver Register. On top of this, other tests which are required for first-, second- and third-class airmen are: eye, ear/nose/throat/equilibrium, mental, neurologic, and cardiovascular.

*The India List and India Office List 1905* explains that officers on "Long Leave in Europe" necessarily, among other things, give a medical certificate, which is obtained at the Medical Board of India Office.

*Practical Guide to Employees' State Insurance Act, Rules and Regulations* explains that under the ESI Act, the employee necessity obtain a medical certificate via the ESI Dispensary/Hospital, which then gets deposited at the adjacent office of the ESI Corporation.

### ***Falsification***

As several illnesses can come in relation to suddenly, sometimes the worker will not have enough time to receive a medical certificate, or may be too sick to obtain one. In other cases, the worker may not be bothered to go to the trouble of getting one, or may be lying in relation to the their illness and want to falsify a certificate to back up their story to their boss.

There have been discussions concerning whether it is okay to fire someone for submitting a fabricated medical certificates. In several cases, it is deemed wrong, such as in Australia where a bank officer was dismissed after handing in a forged certificate, which prompted a Fair Work Australia Commissioner to say they had a "sustained lack of regard for the truth". Another instance is a WA police officer who was stood down after committing the same offense. Sometimes it is not so black and white. In one case, a woman claimed she was "coerced into falsifying [a] medical certificate [which ultimately led to her being fired] because she was 'being bullied and treated unfairly' through two managers".

There are some companies that sell fake medical certificates. Although the site *Doctors Note Store* sells "fake sick notes and medical certificates for workers in Australia, New Zealand and the United Kingdom", they add that the "fakes are for 'novelty use only'".

At Flinders University, "providing a forged medical certificate" is viewed as academic misconduct.

In New South Wales, medical professionals who "deliberately issue a false, misleading, or inaccurate certificate" can be charged under the Medical Practice Act. This is in response to The New South Wales Medical Board "getting numerous complaints from employers, insurers, the courts, etc concerning the quality, accuracy, and truthfulness of sickness certificates".

### ***Validation***

In order to prove that one's medical certificate is authentic, the following should be done and taken into consideration:

- Having it written in legible text, in the doctor's handwriting, and without "abbreviations or medical jargon".
- Should only contain facts or observations made through the doctor, and each should be justified.
- Should contain the date of appointment, how sick the patient is, the date they can go back to work, be addressed to the recipient of the certificate (boss etc.),

- Should only be for something "observed through the doctor" or "reported through the patient and deemed to be true through the doctor".
- Can be issued after the patient has taken sick leave, but it necessity contain the date of appointment, and the length of time the employee should be out of work for.
- Should consider if the patient can return to work before they have fully healed, but with "altered duties".
- Respect "rights to confidentiality" and consent of patient (sometimes, the cause for sick leave may be personal and the patient may request it taken off the certificate, in which case "it should be made clear to the patient that the information provided on the certificate may not be enough to attract sick leave and that an employer has the ultimate right to accept or to reject a certificate".
- Falsifying a medical certificate is a form of fraud.

### **Dying declaration**

In the law of proof, the dying declaration is testimony that would normally be barred as hearsay but may nonetheless be admitted as proof in certain kinds of cases because it constituted the last words of a dying person. In medieval English courts, the principle originated of *Nemo moriturus praesumitur mentiri* — a dying person is not presumed to lie. An incident in which a dying declaration was admitted as proof has been found in a 1202 case.

### ***In the United States***

Under the Federal Rules of Proof, a dying declaration is admissible if the proponent of the statement can establish:

1. Unavailability of the declarant -- this can be established using FRE 804(a)(1)-(5);
2. The declarant's statement is being offered in a criminal prosecution for homicide, or in a civil action;
3. The declarant's statement was made while under the belief that his death was imminent; and
4. The declarant's statement necessity relate to the cause or circumstances of what he whispered to be his impending death.

The declarant does not actually have to die for the statement to be admissible, but there necessity is a genuine belief that death was imminent and the declarant necessity is unavailable to testify in court. If the stipulations cannot be met, it would then constitute hearsay and not fall into the exception. As with all testimony, the dying declaration will be inadmissible unless it is based on the declarant's actual knowledge.

Furthermore, the statement necessarily relate to the circumstances or the cause of the declarant's own death. A counterexample is the dying declaration of Clifton Chambers in 1988, in which Chambers confessed those ten years earlier, he had helped his son bury a man named Russell Bean, whom the son had killed through accident. The statement was enough cause to justify a warrant for a search on the son's property; Bean's body was indeed found, but there was no physical proof of a crime after ten years, and since Chambers was not the victim, his dying declaration was not admissible as proof, and the son was never brought to trial.

In U.S. federal courts, the dying declaration exception is limited to civil cases and criminal homicide prosecutions. Although several U.S. states copy the Federal Rules of Proof in their statutes, some permit the admission of dying declarations in *all* cases.

The first use of the dying declaration exception in American law was in the 1770 murder trial of the British soldiers responsible for the Boston Massacre. One of the victims, Patrick Carr, told his doctor before he died that the soldiers had been provoked. The doctor's testimony helped protection attorney John Adams to secure acquittals for some of the defendants and reduced charges for the rest.

If the defendant is convicted of homicide but the reliability of the dying declaration is in question, there are grounds for an appeal.

The future of the dying declaration doctrine in light of Supreme Court opinions such as *Crawford v. Washington* (2004) is unclear (*Crawford* was decided under the constitution's Confrontation Clause, not the common law). Opinions such as *Giles v. California* (2008) discuss the matter (although the statements in *Giles* were not a dying declaration), but Justice Ginsberg notes in her dissent to *Michigan v. Bryant* (2011) that the court has not addressed whether the dying declaration exception is valid after the confrontation clause cases.

### ***In India***

Dying declarations are allowed as proof in Indian courts if the dying person is conscious of his or her danger, he or she has given up hopes of recovery, the death of the dying person is the subject of the charge and of the dying declaration, and if the dying person was capable of a religious sense of accountability to his or her Maker.

## **UNDERSTANDING LAWS AND ETHICS OF MEDICAL PRACTICE**

## Understanding relationships: clinical ethics, law & risk management

### *Definitions and sources of authority*

In the course of practicing medicine, a range of issues may arise that lead to consultation with a medical ethicist, a lawyer, and/or a risk manager. The following discussion will outline key distinctions flanked by these roles.

- *Clinical ethics* may be defined as: a discipline or methodology for considering the ethical implications of medical technologies, policies, and treatments, with special attention to determining what ought to be done (or not done) in the delivery of health care.
- *Law* may be defined as: established and enforceable social rules for conduct or non-conduct; a violation of a legal standard may make criminal or civil liability.
- *Risk Management* may be defined as: a method of reducing risk of liability through institutional policies/practices.

Several health care facilities have in-house or on-call trained ethicists to assist health care practitioners, caregivers and patients with hard issues arising in medical care, and some facilities have formally constituted institutional ethics committees. In the hospital setting, this ethics consultation or review process dates back to at least 1992 with the formulation of accreditation requirements that mandated that hospitals establish a “mechanism” to consider clinical ethics issues.

Ethics has been described as beginning where the law ends. The moral conscience is a precursor to the development of legal rules for social order. Ethics and law therefore share the goal of creating and maintaining social good and have a symbiotic relationship as expressed in this quote:

- [C]onscience is the guardian in the individual of the rules which the community has evolved for its own preservation. *William Somerset Maugham*

The role of lawyers and risk managers are closely connected in several health care facilities. Indeed, in some hospitals, the administrator with the title of Risk Manager is an attorney with a clinical background. There are, though, significant distinctions flanked by law and risk management. Risk management is guided through legal parameters but has a broader institution-specific mission to reduce liability risks. It is not uncommon for a hospital policy to go beyond the minimum requirements set through a legal standard. When legal and risk management issues arise in the delivery of health care, ethics issues may also exist. Similarly, an issue originally recognized as falling within the clinical ethics domain may also raise legal and risk management concerns.

To better understand the important overlap among these disciplines in the health care setting, consider the sources of authority and expression for each.



Ethical norms may be derived from:

- Law
- Institutional policies/practices
- Policies of professional organizations
- Professional standards of care, fiduciary obligations

Law may be derived from:

- Federal and state constitutions (fundamental laws of a nation or state establishing the role of government in relation to the governed)
- Federal and state statutes (laws written or enacted through elected officials in legislative bodies, and in some states, such as Washington and California, laws created through a majority of voters through an initiative process)
- Federal and state regulations (written through government agencies as permitted through statutory delegation, having the force and effect of law constant with the enabling legislation)
- Federal and state case law (written published opinions of appellate-level courts concerning decisions in individual lawsuits)
- City or town ordinances, when relevant

Risk Management may be derived from law, professional standards and individual institution's mission and public relations strategies and is expressed through institutional policies and practices.

## **Orientation to law for non-lawyers**

### ***Potential legal actions against health care providers***

There are two primary types of potential civil actions against health care providers for injuries resulting from health care: (1) *lack of informed consent*, and (2) *violation of the standard of care*. Medical treatment and malpractice laws are specific to each state.

### ***Informed Consent***

Before a health care provider delivers care, ethical and legal standards require that the patient give informed consent. If the patient cannot give informed consent, then, for most treatments, a legally authorized surrogate decision-maker may do so. In an emergency situation when the patient is not legally competent to provide informed consent and no surrogate decision-maker is readily accessible, the law implies consent on behalf of the patient, assuming that the patient would consent to treatment if he or she were capable of doing so.

Information that necessity be conveyed to and consented to through the patient comprises: the treatment's nature and character and anticipated results, alternative treatments (including non-treatment), and the potential risks and benefits of treatment and alternatives. The information necessity be presented in a form that the patient can comprehend (i.e., in a language and at a level which the patient can understand) and that the consent necessity be voluntary given. An injured patient may bring an informed consent action against a provider who fails to obtain the patient's informed consent in accordance with state law.

From a clinical ethics perspective, informed consent is a communication *process*, and should not simply be treated as a required *form* for the patient's signature. Similarly, the legal concept of informed consent refers to a state of mind, i.e., understanding the information provided to create an informed choice. Health care facilities and providers use consent forms to document the communication process. From a provider's perspective, a signed consent form can be valuable proof the communication occurred and legal protection in defending against a patient's claim of a lack of informed consent. Initiatives at the federal level (i.e., the Affordable Care Act) and state level (e.g., Revised Code of Washington § 7.70.060) reflect approaches that support shared decision-making and the use of patient decision aids in order to ensure the provision of complete information for medical decision-making.

#### *Failure to follow standard of care*

A patient who is injured throughout medical treatment may also be able to bring a successful claim against a health care provider if the patient can prove that the injury resulted from the provider's failure to follow the accepted standard of care. The duty of care usually requires that the provider use reasonably expected knowledge and judgment in the treatment of the patient, and typically would also require the adept use of the facilities at hand and options for treatment. The standard of care emerges from a diversity of sources, including professional publications, interactions of professional leaders, presentations, and exchanges at professional meetings, and among networks of colleagues. Experts are hired through the litigating parties to assist the court in determining the applicable standard of care.

Several states measure the provider's actions against a national standard of care (rather than a local one) but with accommodation for practice limitations, such as the reasonable availability of medical facilities, services, equipment, and the like. States may also apply different standards to specialists and to general practitioners. As an instance of a statutory description of the standard of care, Washington State currently identifies that a health care provider necessity "exercise that degree of care, ability, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he belongs, in the State of Washington, acting in the same or similar circumstances.

### ***The litigation process: a brief summary***

There are essentially three separate phases to the litigation process: (1) initiation, (2) pre-trial, and (3) trial and post-trial. The possibility that the parties will reach an agreement in relation to the legal claims before or throughout trial, recognized as a *settlement*, means that the vast majority of initiated claims do not go through all three phases. An understanding of the litigation process and its accompanying vocabulary can be helpful in providing a fuller understanding of the intersection of law, clinical ethics, and risk management.

#### ***Initiation phase***

A lawsuit will begin when the *plaintiff* (an allegedly injured patient) files a *complaint* (claim) with the court. The plaintiff is obligated to legally notify (*serve*) the *defendant(s)* (e.g., the health care provider) with a *summons* and the complaint on the defendant. Medical malpractice lawsuits regularly contain more than one defendant and may be made against more than one provider, institution, and manufacturer of medical equipment and/or pharmaceutical companies. In the complaint, the plaintiff presents the facts that are the basis for the lawsuit. The defendant is required to file an *answer* (written response) with the court, and to also give the plaintiff with a copy within a specified period of time.

#### ***Pre-trial phase***

After filing a lawsuit and before trial, both sides (plaintiff and defendant) gather information using several methods recognized as *detection*. Detection methods used may contain *interrogatories*, which are written questions that the opposing side necessarily answers under oath. *Requests for production* require the opposing side to give documents to the other side. *Requests for admissions* require the opposing side to state that some facts are true before trial. Witnesses can be required to answer questions in person under oath, recognized as an *authentication*, and may also be required to bring documents to the authentication. Although the information composed throughout detection prepares the parties for trial, it also can be used as a basis for settlement. Indeed, most civil lawsuits, including actions against health care providers, are settled and never go to trial before a judge or jury. Some cases are resolved through *summary judgment*, in which the court decides in favor of one party based on information derived throughout the detection process. To encourage the parties to find a resolution to a health care dispute before trial, a few states require the parties to submit to *mediation*.

#### ***Trial and post-trial phase***

Cases involving injuries in health care are typically decided through a jury.

Though, cases involving federal health care facilities (and their employees), such as the Veterans Health Administration, are decided through a judge. A trial in front of a jury will involve the following, in this order: jury selection; opening statements through both parties; plaintiff's trial testimony; defendant's trial testimony; closing arguments; *jury instructions* (argued through legal counsel to the judge, determined through the judge, and intended to guide the jury in decision-making); jury deliberation; and, verdict. Even after a jury verdict, there may be post-trial motions to the judge which could alter the outcome of the case.

### ***How and where to find the law on a scrupulous topic***

Law is dynamic—it is constantly evolving and changing, and this is particularly true in health law. Courts and legislatures respond to new issues and technologies through creating new laws or applying and interpreting existing laws. The changing nature of the law prompts a caveat to legal researchers: material obtained through general legal searches may not be current and the state of the law should be confirmed with a practicing lawyer before relying upon it.

Reference librarians at law schools, particularly at public institutions, may be helpful in locating specific documents or orienting an interested person to the law. Specific statutes, regulations, or case law may also be accessible on official government websites. In addition, medical journals (accessible on the internet or in medical school libraries) regularly have articles on clinical ethics or policy issues in health care which often address relevant legal authority.

### **Common clinical ethics issues: medical decision-making and provider-patient communication**

There are a number of common ethical issues that also implicate legal and risk management issues. Briefly discussed below are common issues that concern medical decision-making and provider-patient communication.

If a patient is capable of providing informed consent, then the patient's choices in relation to the treatment, including non-treatment, should be followed. This is an established and enforceable legal standard and also constant with the ethical principle of respecting the autonomy of the patient. The after that two sections (Surrogate decision-making; Advance directives) discuss how this principle is respected from a legal perspective if a patient lacks capability, temporarily or permanently, to create medical decisions. The third section briefly introduces the issue of provider-patient communication, and highlights a contemporary dilemma raised in decisions concerning the disclosure of medical error to patients.

### ***Surrogate decision-making***

The determination as to whether a patient has the *capability* to give informed consent is usually a professional judgment made and documented through the treating health care provider. The provider can create a determination of temporary or permanent incapacity, and that determination should be connected to a specific decision. The legal term *competency* (or *incompetency*) may be used to describe a judicial determination of decision-making capability. The designation of a specific *surrogate decision-maker* may either be authorized through court order or is specified in state statutes.

If a court has determined that a patient is incompetent, a health care provider necessarily obtains informed consent from the court-appointed decision-maker. For instance, where a guardian has been appointed through the court in a guardianship action, a health care provider would seek the informed consent of the guardian, provided that the relevant court order covers personal or health care decision-making.

If, though, a physician determines that a patient lacks the capability to give informed consent, for instance, due to dementia or lack of consciousness, or because the patient is a minor and the minor is legally proscribed from consenting, then a legally authorized surrogate decision-maker may be able to give consent on the patient's behalf. Most states have specific laws that delineate, in order of priority, who can be a legally authorized surrogate decision-maker for another person. While these laws may vary, they usually assume that legal relatives are the most appropriate surrogate decision-makers. If, though, a patient has previously, while capable of consenting, selected a person to act as her decision-maker and executed a legal document recognized as a *durable power of attorney for health care* or *health care proxy*, then that designated individual should give informed consent.

In Washington State, a statute identifies the order of priority of authorized decision-makers as follows: guardian, holder of durable power of attorney; spouse or state registered partner; adult children; parents; and adult brothers and sisters. If the patient is a minor, other consent provisions may apply, such as: court authorization for a person with whom the child is in out-of-home placement; the person(s) that the child's parent(s) have given a signed authorization to give consent; or, a competent adult who represents that s/he is a relative responsible for the child's care and signs a sworn declaration stating so. Health care providers are required to create reasonable efforts to locate a person in the highest possible category to give informed consent. If there are two or more persons in the same category, e.g., adult children, then the medical treatment decision necessarily are unanimous among those persons. A surrogate decision-maker is required to create the choice she believes the patient would have wanted, which may not be the choice the decision-maker would have chosen for herself in the same circumstance. This decision-making standard is recognized as *substituted judgment*. If the surrogate is unable to ascertain what the patient would have wanted, then the surrogate may consent

to medical treatment or non-treatment based on what is in the patient's *best interest*.

Laws on surrogate decision-making are slowly catching up with social changes. Non-married couples (whether heterosexual or same sex) have not traditionally been recognized in state law as legally authorized surrogate decision-makers. This lack of recognition has left providers in a hard legal position, encouraging them to defer to the decision-making of a distant relative over a spouse-equivalent unless the relative concurs. Washington law, for instance, now recognizes spouses and domestic partners registered with the state as having the same priority status.

### *Parental decision-making and minor children*

. A parent may not be permitted in certain situations to consent to non-treatment of his or her minor child, particularly where the decision would significantly impact and perhaps result in death if the minor child did not receive treatment. Examples contain parents who refuse medical treatment on behalf of their minor children because of the parents' social or religious views, such as Jehovah's Witnesses and Christian Scientists. The decision-making standard that usually applies to minor patients in such cases is recognized as the *best interest* standard. The substituted judgment standard may not apply because the minor patient never had decision-making capability and so substituted judgment based on the minor's informed choices is not able to be determined. It is significant to note that minors may have greater authority to direct their own care depending on their age, maturity, nature of medical treatment or non-treatment, and may have authority to consent to specific types of treatment. For instance, in Washington State, a minor may give his or her own informed consent for treatment of mental health circumstances, sexually transmitted diseases, and birth control, among others. Depending on the specific facts, a health care provider working with the provider's institutional representatives could potentially legally give treatment of a minor under implied consent for emergency with documentation of that determination, assume temporary protective custody of the child under child neglect laws, or if the situation is non-urgent, the provider could seek a court order to authorize treatment.

### *Advance directives*

The term *advance directive* refers to many different types of legal documents that may be used through a patient while competent to record future wishes in the event the patient lacks decision-making capability. The choice and meaning of specific advance directive terminology is dependent on state law. Usually, a *living will* expresses a person's desires concerning medical treatment in the event of incapacity due to terminal illness or permanent unconsciousness. A *durable power of attorney for health care* or *health care proxy* appoints a legal decision-maker for health care decisions in

the event of incapacity. An *advance health care directive* or *health care directive* may combine the functions of a living will and durable power of attorney for health care into one document in one state, but may be equivalent to a *living will* in another state. The *Physician Orders for Life Sustaining Treatment (POLST) form* is a document that is signed through a physician and patient which summarizes the patient's wishes concerning medical treatment at the end of life, such as resuscitation, antibiotics, other medical interventions and artificial feeding, and translates them into medical orders that follow patients regardless of care setting. It is especially helpful in effectuating a patient's wishes outside the hospital setting, for instance, in a nursing care facility or emergency medical response context. This relatively new approach is accessible in relation to dozen states, although the programs may operate under different names: POST (Physician Orders for Scope of Treatment), MOST (Medical Orders for Scope of Treatment), MOLST (Medical Orders for Life-Sustaining Treatment), and COLST (Clinician Orders for Life-Sustaining Treatment). The simple one page treatment orders follow patients regardless of care setting. Therefore it differs from an advance directive because it is written up through the clinician in consultation with the patient and is a portable, actionable medical order. The POLST form is planned to complement other forms of advance directives. For instance, Washington State recognizes the following types of advance directives: the health care directive (living will), the durable power of attorney for health care, and the POLST form. Washington also recognizes another legal document recognized as a *mental health advance directive*, which can be prepared through individuals with mental illness who fluctuate flanked by capability and incapacity for use throughout times when they are incapacitated.

State laws may also differ on the circumstances that can be sheltered through an individual in an advance directive, the procedural requirements to ensure that the document is effective (such as the number of required witnesses), and the circumstances under which it can be implemented (such as invalidity throughout pregnancy).

Advance directives can be very helpful in choosing appropriate treatment based upon the patient's expressed wishes. There are situations, though, in which the advance directive's veracity is questioned or in which a legally authorized surrogate believes the advance directive does not apply to the scrupulous care decision at issue. Such conflicts implicate clinical ethics, law, and risk management.

### ***Provider-patient communications: disclosing medical error***

Honest communication to patients through health care providers is an ethical imperative. Excellent communication eliminates or reduces the likelihood of misunderstandings and conflict in the health care setting, and also may affect the likelihood that a patient will sue.

One of the more contentious issues that has arisen in the context of

communication is whether providers should disclose medical errors to patients, and if so, how and when to do so. Disclosure of medical error makes a potential conflict among clinical ethics, law and risk management. Despite a professional ethical commitment to honest communication, providers cite a fear of litigation as a cause for non-disclosure. Specifically, the fear is that those statements will stimulate malpractice lawsuits or otherwise be used in support of a claim against the provider. An augment in malpractice claims could then negatively affect the provider's claims history and malpractice insurance coverage.

There is some proof in closed systems (one institution, one state with one malpractice insurer) that an apology coupled with disclosure and prompt payment may decrease either the likelihood or amount of legal claim. In addition, a number of state legislatures have recently acted to protect provider apologies, or provider apologies coupled with disclosures, from being used through a patient as proof of a provider's liability in any ensuing malpractice litigation. It is currently too early to know whether these legal protections will have any impact on the size or frequency of medical malpractice claims. For this cause and others, it is advisable to involve risk management and legal counsel in decision-making concerning error disclosure.

## **REVIEW QUESTIONS**

- What is medical jurisprudence?
- Explain the legal procedure in India
- What is documentary proof
- What is dying declaration?
- Explain the concepts of : police inquest; magistrate's inquest and coroner's inquest



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