Working with Investigators and Forensic Specialists
Law Enforcement Investigations: Essential Considerations

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Nobody is going to take your views seriously if you cannot support them.

Robert K. Miller (1992, p. 3)

KEY TERMS

Administrative Investigations: Fact-finding inquiries conducted by an agency or government regarding its own management and performance.

Assessment (of Intelligence): Determining the significance of information.

Criminal Intelligence: Information compiled, analyzed, and/or disseminated in an effort to anticipate, prevent, or monitor criminal activity.

Criminal Investigations: Inquiries conducted when there is a suspected violation of criminal codes or statutes to determine whether a crime has been committed, to gather evidence related to the identity of suspects, to locate and facilitate arrest, to recover property, and to prepare a case for criminal prosecution.

Deduction (of Intelligence): Determining the useful conclusions which may be drawn from the assessment and integration of intelligence.

Employment Tribunals: Independent judicial bodies who determine disputes between employers and employees over employment rights, usually involving cases of discrimination and wrongful terminations (Dodd, 2009).

Garrity Rule: A legal protection which provides that during an administrative investigation, a police officer or other public employee may be compelled to provide statements under threat of discipline or discharge, but those statements cannot be used to prosecute the officer criminally.

High Intensity Drug Trafficking Area (HIDTA): A program that designates areas within the United States that face drug trafficking threats affecting other areas and develops and implements a strategy.

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Dr. P. J. Ortmeier (2006, p. 320) explains that an investigation is “any systematic inquiry to determine the facts surrounding an event or situation.” Careful readers will note that this definition does not assume criminality, it does not assume victimity, and it does not assume a particular outcome. It suggests, rather, that the facts are not known. It is used to describe a situation in which the facts must be gathered, verified, and organized so that meaningful inferences may be drawn from them. On that same line of reasoning, the need for an investigation suggests that conclusions about persons or events are unwarranted until the necessary inquiry has been conducted.
Law enforcement investigators of every kind are charged, within the scope of their inquiries, to answer the time-honored questions of who, what, where, when, how, and why. The results of an investigation, once assembled, may be used as proofs—that someone did or did not do something, that something did or did not happen, that patterns or motives are present or absent. The contexts for developing investigative proofs vary widely but tend to involve administrative or legal proceedings.

Law enforcement agency policies and the criminal codes that law enforcement agents are meant to enforce vary from agency to agency, from city to city, from state to state, and from country to country. However, investigative goals and best investigative practice standards are universal. It is fair to say that, in general terms, all investigators are after the same thing: the facts about what happened. In narrower terms, however, every investigator has different rules to follow while getting there. Whether one is a homicide detective in Australia, a sex crimes detective in New York City, an Inspector working for Scotland Yard, a vice detective in Los Angeles, or a detective/constable in Barbados—no one law enforcement agency is the same as any other, even within the same country. For the uninitiated, this can be disorienting and frustrating.

The purpose of this chapter is to help orient forensic criminologists with a general but applied understanding of what law enforcement investigations involve, who performs them, and to what end. It will discuss the two major types of investigations, the roles of agencies charged with performing them, the problem of jurisdiction, and educational requirements and recommendations. It will conclude with a discussion regarding the use of outside experts, such as forensic criminologists, and some friendly advice.

LOCAL, STATE, AND FEDERAL LAW ENFORCEMENT IN THE UNITED STATES

The term law enforcement refers to sworn officers or agents of government agencies chartered to enforce criminal laws within their jurisdiction and to investigate related infractions.

In the United States, local law enforcement refers to campus and city police departments, as well as county sheriffs’ offices. Most law enforcement occurs at the local level (Ortmeier, 2006, p. 17) because just about every U.S. city has its own police department of varying size and capability. Ortmeier further reveals, “the majority of police agencies employ less than ten full-time sworn police officers and approximately one-third employ less than five full-time officers” (p. 17). Most counties have an elected sheriff who leads his or her respective office, and a few have a police department as well. In the counties where there is both a sheriff’s office and police department, the duties of the sheriff
are somewhat limited, depending on which tasks of law enforcement are delegated to the police department by the elected officials. The bottom line is that it is done a little differently everywhere, and broad generalizations about roles and responsibilities will not always apply.

State agencies that conduct criminal investigations are varied and encompass numerous enforcement tasks. Generally, state law enforcement agencies have an investigative arm or subdivision (i.e., a State Bureau of Investigation). However, many other state agencies have investigators and agents who perform criminal investigations. They include, but are certainly not limited to, the State Medical Board, the Department of Health, the Attorney General’s Office, Child and Family Welfare (a.k.a. Child Protective Services), Department of Human Services, gaming commissions, the Department of Indian Affairs—the list goes on and on. With all these agencies, one can easily become confused.

As a general example, it is a criminal violation to commit welfare fraud; yet, the investigation will often be conducted by investigators in the Department of Human Resources, not the “State Bureau of Investigations,” state law enforcement, or state police.

In Georgia, as a more specific example, the Georgia Bureau of Investigations (GBI) has statewide jurisdiction and is independent of other criminal justice agencies. The GBI provides assistance to local and state agencies through the Investigations Division, the State Crime Laboratory, and the Georgia Crime Information Center. The largest division is the Investigations Division, and GBI Agents assist local agencies with violent crime investigations.

Federal agencies (often called the “letter agencies” by street cops), on the other hand, are organized and tasked with specific and limited enforcement challenges by law, executive order, or design. As noted by Ortmeier (2006, p. 15) “Federal law enforcement agencies do not have general police powers because the U.S. Constitution limits the authority of the national government.” Ortmeier (2006) further notes the existence of law enforcement and investigative duty within the following U.S. departments: Labor, Agriculture, Defense, Interior, Postal Service, Treasury, and Transportation. The smallest federal law enforcement agency is the U.S. Fish and Wildlife Agency with approximately 261 special agents and 122 wildlife inspectors. Additionally, each branch of the military has its own investigative division.

The U.S. Department of Homeland Security (DHS) encompasses 22 federal agencies with varied law enforcement and intelligence-gathering tasks. By examining the Border and Transportation Security Directorate, one can find the following agencies and tasks: Transportation Security Administration (TSA)—tasked to protect the transportation systems and security at airports; Customs and Border Protection (CBP)—tasked to manage, control, and protect
the nation’s borders; Immigration and Customs Enforcement (ICE)—tasked to identify and counter vulnerabilities in the nation’s border, economic, transportation, and infrastructure security; U.S. Secret Service (USSS)—tasked to protect the president and national leaders and financial and critical infrastructure. Other agencies in DHS include United States Park Police, the law enforcement branch of the National Park Service—tasked to protect national parks and monuments and Food and Drug Administration (FDA)—tasked to protect food, the blood supply, and drug tampering.

Among the most well known federal agencies, the Federal Bureau of Investigation has charter over 200 categories of federal law, including counterterrorism, counterintelligence, cybercrime, public corruption, civil rights, organized crime, white collar crime, and major thefts/violent crime (see http://www.fbi.gov for a complete list). It also has its own crime lab. However, it does not have charter over sex crimes or homicides unless they occur on federal property. This is infrequent, to say the least, and quite a contrast to their portrayal in film and television.

**TYPES OF INVESTIGATIONS**

Generally speaking, two types of investigations are performed by government (a.k.a. public) and law enforcement agencies: *administrative* and *criminal*.

**Administrative Investigations**

*Administrative investigations* are fact-finding inquiries conducted by an agency or government regarding its own management and performance. Such investigations are authorized as a routine matter, by suspected infractions of policies, or by the concerns of a person in authority. They involve an investigation into an event or circumstance involving one or more of the following (examples only):

- Employee background;
- Employee character and fitness;
- Promotions and pay raises;
- Employee or departmental performance reviews;
- Employee or departmental audits;
- Employee safety;
- Officer-involved shootings;
- Violations of agency policies, rules, or protocols;
- Professional misconduct;
- Harassment or discrimination;
- Property misuse/damage/theft;
- Threatening, intimidating, or violent behavior;
- Potential criminal activity involving agency personnel or resources.
These circumstances and related violations are generally noncriminal and may result in disciplinary action such as suspension, demotion, financial sanctions, and even dismissal. However, the circumstances can also be procedural—in relation to promotions, pay raises, transfers, or in response to a particular yet general concern. In such cases, administrative investigations can result in favorable outcomes, like changes to existing agency policies, rules, and protocols.

**Force of Effect**

Administrative investigations have the weight of the investigating agency behind them—but not necessarily the weight of the law. If those in the agency are forward thinking and reform oriented, then the findings of these inquiries are given a priority and action is taken. If not, then there may be little or no agency response at all, resulting in diminished internal accountability. Under these circumstances, it is possible that even when a clear violation has occurred, the penalties may be misunderstood, misapplied, or ignored altogether. Agency response is entirely up to those in charge of the agency.

In Atlanta, Georgia, for example, police hiring policies related to pre-employment background investigations are well-guarded secrets, but the results are not. As explained in Eberly (2008):

- Keovongsa Siharath was arrested in Henry County on charges he punched his stepfather.
- Jeffrey Churchill was charged with assault in an altercation with a woman in a mall parking lot.
- Calvin Thomas was taken into custody in DeKalb County on a concealed weapons charge.

All three are now officers with the Atlanta Police Department.

More than one-third of recent Atlanta Police Academy graduates have been arrested or cited for a crime, according to a review of their job applications. The arrests ranged from minor offenses such as shoplifting to violent charges including assault. More than one-third of the officers had been rejected by other law enforcement agencies, and more than half of the recruits admitted using marijuana.

“On its face, it's troubling and disturbing,” said Vincent Fort, a state senator from Atlanta. “It would be very troubling that people might be hitting the streets to serve and protect and they have histories that have made them unqualified to serve on other departments.”

But Atlanta police say it's not so simple. Officials have been trying without success for more than a decade to grow the department
to 2,000 officers, an effort hurt by this year’s budget crisis. With competition for recruits intense among law enforcement agencies, Atlanta has had to make concessions.

“We would like, in an ideal world, to see every applicant with a clean record, but obviously that’s not reality,” said Atlanta police Lt. Elder Dancy, who runs the department’s recruitment unit. “I don’t think you’ll find any departments who hire only applicants with squeaky-clean records.”

Three decades ago, a police officer with a criminal record was much less common than it is now, said Robert Friedmann, a criminal justice professor at Georgia State University. But times have changed and many agencies have had to relax their hiring policies, Friedmann said.

Other local police agencies have hiring guidelines similar to Atlanta’s. Police departments for Cobb, DeKalb and Gwinnett counties don’t hire recruits with felony convictions but do hire those with misdemeanor arrests, on a case-by-case basis.

Dancy would not divulge all of Atlanta’s restrictions but said the department won’t hire anyone with felony convictions, or those with convictions for obstruction of justice, sex or domestic crimes.

Even so, police documents show that many of their recruits have blemishes on their records.

The Atlanta Journal-Constitution, through an Open Records Act request, asked in mid-August for the job applications of the Atlanta Police Department’s two most recent graduating classes. The department provided 36 applications for police recruits who graduated June 10 and Aug. 4. All the graduates are currently Atlanta police officers.

Some departments have a zero tolerance policy for pre-employment criminal conduct; whereas, others do not. However, having a policy and following it are two different things.

In the United Kingdom, guidelines provided by the Home Office and the Association of Chief Police Officers offer the following with regards to driving under the influence (Cobain, 2008):

An officer convicted by a court of a drink driving offence can expect to face a formal misconduct hearing.

The usual sanction to be applied or, in the case of a senior officer, recommended by the tribunal and applied by the police authority, is
either dismissal or a requirement to resign to reflect the serious view which is taken both inside the service and by society generally.

However, despite having faced internal administrative misconduct hearings, many officers have been allowed to stay on the job. Cobain (2008) describes the following reality, not entirely dissimilar to the results in Atlanta, where those charged and convicted of a crime are allowed to continue serving in law enforcement:

Scores of police officers across the UK are avoiding dismissal after being convicted of drink-driving, despite Home Office guidelines that say they should usually be sacked or forced to resign because of the seriousness of the offence. The Guardian has learned that at least 170 officers have been allowed to remain serving—or to retire at taxpayers’ expense—after being convicted of drunk-driving since the guidelines were issued six years ago.

A series of requests for information made under the Freedom of Information Act have revealed wide differences in the manner in which forces deal with officers convicted of drink-driving, or related offences such as failing to provide a breath or blood specimen.

Some, such as Nottinghamshire, Thames Valley and Essex, demand the resignation of every officer convicted of the offence if they do not volunteer their resignations, while others, such as West Midlands, demand the resignation of the overwhelming majority of those caught drink-driving.

Within other forces, such as the Police Service of Northern Ireland and Northumbria police, the majority of officers convicted of the offence have been allowed to continue serving or to retire.

This passage brings us back to the reality that many government and law enforcement agencies perform administrative investigations but are essentially free to decide what the results mean even when the law has been violated. Under these conditions, there are agencies that act with impunity until compelled by government intervention, public outcry, or civil litigation to enact reform.

Who Performs Administrative Investigations?
Administrative investigations may be conducted by a supervisor, by a particular department or unit within the affected agency, or by an independent agency, investigator, or tribunal. Most procedural investigations or minor infractions relating to individual officers are conducted in house and kept relatively quiet. There may even be a unit dedicated to handling these kinds of inquiries, such
as an Internal Affairs Division or an Audit Department. The more severe, system, or public the administrative concern, the more there is a need for the appearance of action and objectivity, and the more likely an independent inquiry will be involved.

Historically, independent investigations and audits of law enforcement agencies have been reactive—a response to highly publicized incidents of failure or malfeasance. Quasi-independent investigations involve outside agencies, like bringing in the state or federal authorities to investigate a local department. Fully independent investigations have involved various specialists and specialist panels drawn from forensic criminology disciplines. Two major examples include New York City’s Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedure of the Police Department headed by retired judge Milton Mollen (1994) and the independent investigation of the Houston Police Department Crime Lab from 2004–2007 headed by attorney Michael Bromwich, formerly of the United States Department of Justice, Office of the Inspector General.¹

It is common for law enforcement agencies to prefer independent investigators with some kind of prior law enforcement experience or connection. This preference is inherently problematic: while such investigators may have the required knowledge and expertise to perform an investigation, past alignment with law enforcement may facilitate bias or its appearance. Consequently, bringing in an ex-commissioner of police or an ex-police detective to perform an investigation or audit of any kind is ill advised unless his or her reputation outside law enforcement is impeccable and his or her findings are made available for public scrutiny.

Administrative investigations related to employment issues have their own rules. As mentioned in the previous section, the United Kingdom has Employment Tribunals, which “are independent judicial bodies who determine disputes between employers and employees over employment rights.”² They hear cases involving discrimination and wrongful termination for all public employees, including police officers (Dodd, 2009). In Australia, there is a similar government agency called the Australian Industrial Relations Commission (AIRC).³

In the United States, the only comparable national agency is the Equal Employment Opportunity Commission (EEOC),⁴ which operates at the federal level. However, each individual state has its own peculiar employment laws and investigating agencies. When law enforcement officers are involved in administrative investigations, especially those that might result in their termination, the Garrity Rule applies.
The Garrity Rule

As demonstrated in the previous sections, it is entirely foreseeable that non-criminal inquiries may uncover criminal activity. If an administrative investigation confirms the likelihood or the existence of criminal activity, then a separate criminal investigation must be requested by the appropriate law enforcement agency. However, if this occurs within a law enforcement agency in the United States, a controversial protection is engaged, referred to as the Garrity Rule.

The Garrity Rule refers to the U.S. Supreme Court’s decision in *Garrity v. New Jersey* (1967). It provides that during an administrative investigation, a police officer or other public employee may be compelled to provide statements under threat of discipline or discharge, but those statements may not be used to prosecute him or her criminally. As explained in Clymer (2001, pp. 1314–1321):

> Police departments routinely conduct noncriminal, administrative investigations into allegations of police misconduct to determine whether discipline is warranted. As part of those investigations, investigators often interview the suspect officer or officers along with witness officers. In cases in which alleged misconduct may result in criminal charges, suspect officers have a valid basis for asserting their Fifth Amendment privilege and refusing to answer questions on the ground that their statements may incriminate them. To promote thorough investigations, and perhaps to avoid the unseemly spectacle of officers refusing to cooperate with their own departments, regulations, state statutes, and departmental policies often require that police officers, whether suspects or witnesses, answer questions that investigators pose. Refusal to do so can result in discipline, including job loss.

In a series of cases decided from 1967 to 1977, the Supreme Court confronted states’ use of economic sanctions—job termination, loss of pension benefits or political office, disbarment from legal practice, and ineligibility for state contracts—to compel cooperation in criminal and noncriminal investigations. In all but one of these “so-called ‘penalty’ cases,” public employees and officials, contractors, and others refused to waive immunity or answer questions and later contested the resulting economic sanctions. *Garrity v. New Jersey* arrived in the Supreme Court in a different posture. In Garrity, the employees, most of whom were police officers, answered the questions, thus avoiding the threatened economic sanctions, and challenged the state’s subsequent use of their answers in criminal prosecutions. Garrity, unlike the other penalty cases, presented the question whether compelled statements were admissible in criminal prosecutions.
Edward Garrity, the Chief of Police for the New Jersey Borough of Bellmawr, other police officers, and a court clerk were suspected of fixing traffic tickets. The Supreme Court of New Jersey ordered the state Attorney General to conduct an investigation into the alleged misconduct and report his findings. A deputy attorney general questioned the suspects. A state statute required that they answer questions or lose their jobs and pensions. Before conducting the interrogation, the deputy attorney general told each interviewee that his answers could be used in state criminal proceedings and that “if he refused to answer he would be subject to removal from office.” The interviewees answered the questions posed to them. Later, local prosecutors brought criminal charges and introduced into evidence at trial the statements that the defendants had made to the deputy attorney general. After their convictions, the defendants appealed, claiming that the use of their compelled statements violated their constitutional rights. New Jersey courts rejected those claims. But, in a five-to-four decision, the United States Supreme Court reversed, holding the admission of the compelled statements unconstitutional.

The Court offered two explanations: The statements were inadmissible under the Due Process Clause as coerced confessions, and the state’s threat to fire the police officers unless they gave statements was an unconstitutional condition.

In a later case, the Court offered a different rationale for the result in Garrity: The police officers’ compelled statements were analogous to immunized testimony and thus inadmissible under the Fifth Amendment privilege. Many lower courts have followed suit, describing Garrity as a case involving the privilege and compelled statements as “immunized.”

The compelled statements in Garrity resembled formally immunized testimony. When a witness before a court or a grand jury asserts the privilege against self-incrimination, the prosecution can compel her testimony by securing an immunity grant. In Kastigar v. United States, the Court held that “use and derivative use” immunity (often simply called “use immunity”) is sufficient to require a witness to testify despite an assertion of the privilege. If an immunized witness persists in her refusal to testify, she can be held in contempt. The immunized testimony is thus compelled by the contempt threat.

Use immunity does not foreclose later criminal charges against the witness for matters described in the immunized testimony. Rather, it prevents the prosecution from making use of the testimony and any evidence derived there from against the witness in a criminal trial. The
Kastigar Court reasoned that a grant of such immunity is coextensive with the Fifth Amendment because it leaves the witness-turned-defendant “in substantially the same position as if the witness had claimed the Fifth Amendment privilege” and remained silent.

The Garrity protection operates in a similar manner—it enables states to compel statements from public employees by threatening job termination but bars use of the statements in later criminal prosecutions. Accordingly, when the deputy attorney general threatened Garrity and the others with loss of their jobs, he granted them de facto use immunity in exchange for their answers. Although Garrity and the others did not first assert the privilege, an action typically required to trigger its protection, the Court since has concluded that when assertion itself would be penalized, as was the case in Garrity, the protection is self-executing.

Opponents of the Garrity Rule argue that it essentially immunizes corrupt law enforcement officers by operating “as a trap for investigators and prosecutors who fail either to take steps to minimize exposure to compelled statements or to prepare to disprove taint.” Further, the rule “can serve as a tool for unscrupulous internal affairs investigators who seek to undermine criminal prosecutions by disseminating compelled statements and treacherous police witnesses who allege that they are tainted in order to avoid giving prosecution testimony” (Clymer, 2001, p. 1382).

Consider the recent case of Police Officer Sam Streater, 45, from New Haven, Connecticut. He was arrested in 2008 for soliciting a known prostitute, Vanessa DiVerniero, by paying her $20 to have sex with him in his car. As explained in Kaempffer (2009):

> A Superior Court judge last month approved an application from Officer Sam Streater, a 17-year veteran, for accelerated rehabilitation, a program reserved for first-time, nonviolent offenders. The probation will last a year and, if he stays out of trouble, the charges would be dismissed.

Supervisory State’s Attorney David Strollo said Monday Streater was treated like any other defendant. It’s common for defendants in similar circumstances to receive AR, he said, so his office did not oppose Streater’s application.

> “Given that he was not on duty as a police officer (when the misconduct occurred), we thought it would be fair to treat him like any other citizen on this case,” Strollo said, describing the resolution as “consistent” with similar cases.
Streater was caught with a suspected prostitute last September in Fair Haven, not long after members of the department’s gun unit finished up a prostitution sting in the neighborhood. After the sting was over, officers went looking for a woman they had seen earlier in the night, for whom they believed they had an active warrant. They saw her in Streater’s car and pulled it over.

During an internal affairs investigation, Streater admitted under Garrity protection that he had solicited the woman for sex. Under the Garrity rule, a department can order a police officer to give a statement about alleged misconduct but can’t use that information in a criminal prosecution. The criminal charges against Streater—soliciting a prostitute and soliciting a prostitute from a motor vehicle—relied on statements made by the woman.

Streater was suspended without pay for two weeks in late November. The suspension was still in effect when IA served the arrest warrant, which police at the time indicated was pursued at the urging of the State’s Attorney’s office.

... 

The department has indicated it plans no other discipline as a result of the arrest.

Further details are reported in Kaempffer (2008):

During the internal affairs probe, Streater allegedly admitted he had solicited the prostitute. But because he was ordered to give the statement and did not do so voluntarily, a legal ruling called the Garrity protection was triggered. The protection, which is similar in concept to invoking the Fifth Amendment right against self-incrimination, means nothing he said could be used against him criminally.

The state’s charges, however, appear to be based on statements made by the woman, who acknowledged to police that she engaged in a sexual act with Streater in his car for $20, according to an arrest warrant affidavit.

The warrant states that the police department’s drug unit was conducting a prostitution sting the night of Sept. 23 in Fair Haven, and officers observed a woman, Vanessa DiVerniero, walking in the area. Police described her as a known prostitute who had an arrest warrant pending, but the squad supervisor told them not to serve the warrant until after the sting was completed.
Once the operation was done, the officers went looking for DiVerniero, and observed her in a white Dodge Intrepid.

DiVerniero later told the internal affairs unit that when officers stopped the car and approached, the driver, who was Streater, told them, “Yeah, it’s me…. I got a C-I.” C-I is police jargon for confidential informant.

DiVerniero said she initially denied to police that anything happened, but told IA in a subsequent interview that Streater had picked her up and paid her for sex.

In this case, the Garrity Rule offered little protection to the officer against the statements of the prostitute. However, it does appear to have shielded the officer from being held accountable for false statements he made at the scene—namely that the prostitute was his confidential informant (a.k.a., C.I.). In any case, as of this writing, the officer’s department will continue to employ him despite his conviction for a crime. As has been made clear in previous sections, this scenario is not unique to law enforcement in New Haven or even the United States.

**Criminal Investigations**

*Criminal investigations* are conducted when there is a suspected violation of criminal codes or statutes (Lyman, 2008). Gilbert (2004, p. 37) notes, “Criminal investigation is a logical, objective, legal inquiry involving a possible criminal activity.” In the United States, suspected criminal violations are investigated by local, state, and federal law enforcement agencies based on jurisdictional authority as provided by law.

It is generally the purpose of a criminal investigation to determine whether a crime has been committed, to gather evidence and information related to the identity of suspects, to locate and facilitate the arrest of suspects, to recover lost or stolen property, and to prepare a case fit for criminal prosecution. These fundamentals have not changed in centuries, but the means to achieve them, including the technology used, has certainly evolved (see generally Gross, 1906; O’Connell and Soderman, 1936; O’Hara, 1970; and Savino and Turvey, 2004; Turvey, 2008). Fundamentals change as does the concept of crime and criminality, given that criminal statutes and their enforcement evolve from year to year, and are only as firm as those who write and rewrite them.

O’Hara (1970, p. 1) provides an important touchstone regarding investigative basics:

> The tools of the investigator are, for the sake of simplicity, referred to as the three “I’s”, namely Information, Interrogation, and Instrumentation. By the application of the three “I’s” in varying proportions the
investigator gathers the facts which are necessary to establish the guilt of the accused in a criminal trial.

O’Hara goes on to explain that *Information* is “knowledge which the investigator gathers from other persons” (p. 7)—including records and statements provided by witnesses, informants, and other individuals. O’Hara further explains that *Interrogation* refers to “the skillful questioning of witnesses as well as suspects” (p. 9)—including interviews with the impartial who have no reason to withhold facts, and the confrontational questioning of suspects or others who might have a reason to be deceptive in their answers. Finally, O’Hara offers that *Instrumentation* refers to “the application of instruments and the methods of physical sciences to the detection of crime” (p. 11). The term is used to suggest analyses performed both in the crime lab by scientists and in the police station by investigators (p. 11):

Instrumentation, however, is taken here to mean rather more than criminalistics. It includes also all the technical methods by which the fugitive is traced and examined and, in general, the investigation is advanced. Thus, fingerprint systems, modus operandi files, the lie detector, communication systems, surveillance equipment such as telephoto lens and detective dyes, searching apparatus such as the x-ray unit and the metal detector, and other investigative tools are contained within the scope of the term.

Using Information, Interrogation, and Instrumentation, the fact that a crime was committed is proved or refuted. Once the elements of the crime, or the corpus delicti, have been established, the person responsible must be identified. Offenders are identified by means of a confession, an eyewitness, or circumstantial evidence such as motive, means, opportunity, and associative evidence.

O’Hara (1970, p. 19) makes it clear that, while the investigator is “basically a collector of facts,” he or she must use logic and reasoning to develop case theories and draw conclusions about the crime. Though crimes can be complex, the investigator is admonished to take no shortcuts in the search for information. He or she must be scrupulous in his or her methods and objective in rationale. This suggests a duty to be intellectually and temperamentally prepared to do so.

Criminal investigators have an onus beyond that of mere “fact collector” because of the consequences that will arise from their work. Unlike many administrative investigations, the results of criminal investigations carry with them the weight of the courts and the law. As result, investigations can lead to criminal charges, criminal convictions, fines, jail time, and even the death penalty under certain circumstances. On the facts and conclusions drawn from a
solid investigation, a criminal is arrested and the innocent remain free. And the opposite is also true.

In smaller agencies with fewer resources, there may be only a couple of detectives catching cases full time who are required to work everything that comes through the door. In the smallest agencies, with fewer than 10 sworn officers, there may be no dedicated investigators at all. The smaller the agency, the more reliant it is on assistance from neighboring agencies or those higher up the food chain with larger budgets, more manpower, and better investigative “toys” (county, state, and federal agencies).

Most local law enforcement agencies have dedicated investigators assigned to the investigation of violent crime, such as robbery, sexual crimes, and homicide. In larger agencies there will be investigative subunits, broken down by crime type per the needs within a given jurisdiction (e.g., homicide unit, robbery unit, sex crimes unit, vice unit, organized crime unit, etc.). In larger law enforcement agencies, or those with sufficient budgets, there may even be intelligence units.

**Investigation vs. Intelligence Gathering**

There is an important distinction between an active investigation and the gathering of what is referred to as *intelligence*. Investigations are reactive—based on a complaint or an event. Intelligence gathering and analysis is proactive—it occurs separate from complaints and events in anticipation of them. Dr. David Carter (2004, p. 7) explains that with respect to law enforcement:

> Intelligence is the product of an analytic process that evaluates information collected from diverse sources, integrates the relevant information into a cohesive package, and produces a conclusion or estimate about a criminal phenomenon by using the scientific approach to problem solving (i.e., analysis). Intelligence, therefore, is a synergistic product intended to provide meaningful and trustworthy direction to law enforcement decision makers about complex criminality, criminal enterprises, criminal extremists, and terrorist.

*Criminal intelligence* is a related term used in American law enforcement and is defined as “information compiled, analyzed, and/or disseminated in an effort to anticipate, prevent, or monitor criminal activity” (Peterson, 2005, p. 39).

Many law enforcement agencies have a Criminal Intelligence Unit, or a division with a similar designation, which is essentially a team of investigators charged with collecting and analyzing information for decision-making and crime prevention strategies. Through the process of informed analysis, information collected from a variety of streams becomes intelligence (FM 34–3, p. 1–1). By
“connecting the dots,” analyzing patterns and establishing connections, the bits and pieces of information gathered from multiple sources can provide a bridge to a path for the investigator. A path that leads to the recognition that something has happened, may happen, or may happen again.

**What Is Intelligence?**

What are intelligence analysts examining? The answer depends. Carter (2004) provides that the information examined can be any unanalyzed data, evidence, events, or processes that reveal a crime or witness. “Analysis is the determination of the significance of the information relative to information and intelligence already known and drawing deductions about the probable meaning of the evaluated information” (FM 34–3, p. 2–1).

**RISS**

One example of successful intelligence gathering and dissemination within the law enforcement community would be the Regional Information Sharing Systems (RISS) program, which has been in existence since the 1980s with an emphasis on organized crime control (Lyman, 2008, p. 180). RISS is a nationwide law enforcement information-sharing program, offering secure communication, access to intelligence databases, and investigative resources and services. As explained at [http://www.riss.net](http://www.riss.net):

The mission of RISS is to support law enforcement efforts nationwide to combat illegal drug trafficking, identity theft, human trafficking, violent crime, terrorist activity, and to promote officer safety. Traditional support services provided to law enforcement member agencies are:

- Information sharing resources
- Analytical services
- Loan of specialized investigative equipment
- Confidential funds
- Training conferences
- Technical assistance

RISS operates a secure intranet, known as RISSNET™, to facilitate law enforcement communications and information sharing nationwide. RISS local, state, federal, and tribal law enforcement member agency personnel have online access to share intelligence and coordinate efforts against criminal networks that operate in many locations across jurisdictional lines. The RISS Program is a federally funded program administered by the U.S. Department of Justice (DOJ), Bureau of Justice Assistance (BJA).

RISS provides a means by which regional law enforcement agencies can share intelligence though a centralized database, analysis of intelligence and
investigative data, specialized and technical equipment, training, and funds (Lyman, 2008, pp. 180–181). Working with these systems during the 2005 G-8 Summit at Sea Island, Georgia, those of us in the U.S. military police community were impressed by the sharing of information as law enforcement prepared for the security mission for President Bush and numerous world leaders.

**HIDTA**

Another example of successful intelligence gathering would be the efforts of High Intensity Drug Trafficking Area (HIDTA) analysts. As explained at http://www.hidta.org:

The High Intensity Drug Trafficking Area (HIDTA) Program was created by the Anti-Drug Abuse Act of 1988. This act authorized the Director of the Office of National Drug Control Policy (ONDCP) to designate regions within the United States that face drug trafficking threats affecting other areas of the nation as HIDTAs.

The HIDTA Program provides resources to assist each HIDTA in developing and implementing a strategy to address its regional drug threat. Each HIDTA strives to create partnerships between federal, state and local law enforcement agencies and promote a coordinated, intelligence driven response to its drug trafficking problems.

For example, HIDTA analysts can, upon receiving a written request from any law enforcement agency inquiring about a person or a location, set to work. Accessing multiple civilian and law enforcement databases by hand (because these databases are not cross-searchable), they accumulate every related public document and record. The caveat being that the search must be germane to a homicide or drug-related crime to get analyst priority. This program is a valuable tool for helping to locate suspects, develop lists of known associates, and determine connections across residences, vehicles, and other assets.

The author was part of a team that developed a deconfliction initiative in the Atlanta (Georgia) HIDTA office in 2000. The program replicated, in part, successful programs in Baltimore and Miami HIDTA offices. The deconfliction mission was developed to ensure that when multiple jurisdictions are involved in drug investigations in many areas of the city or state, law enforcement agencies share intelligence to prevent law enforcement officers from interfering with or even facing each other in drug arrests. The Law Enforcement Assistance and Deconfliction (LEAD) program remains active and ensures jurisdictional challenges are examined in high-risk investigations.

There are many other kinds of intelligence and intelligence-gathering tools; however, these have been among the most useful to the author in terms of providing an informed nexus within and across the law enforcement community.
They are provided as examples of more successful efforts. As already suggested, each agency will have its own peculiar streams of intelligence as dictated by where it is, what it does, and what crime occurs in its jurisdiction.

**Analyzing Intelligence**


*Assessment* is the determination of the significance of information. To evaluate information it must be scrutinized to determine the pertinence of the information, the reliability of the source, and the creditability of the information (FM 34–3, p. 2–10). Is the information pertinent to the investigation, and what value does it have to whom? Is the information coming from known sources that provided accurate or corroborated data in past cases? Can a comparison with other data sources be conducted? These questions provide direction for an intelligence analysis.

*Integration* is the combination of the elements from an analysis to produce a picture of activities (FM 34–3, p. 2–13). Integration may be accomplished by *link analysis charting*, which refers to “a technique designed to show relationships between individuals and organization using a graphical visual design. It is used to show graphically transactions or relationships that are too large and confusing for one to assimilate through the reading of reports.” This flowcharting may track events, commodities, people, places, and times (Lyman, 2008, p. 177–179).

*Deduction* of valid intelligence should be the result of integration efforts. Is there a useful conclusion derived from the assessment and integration? What is the probable meaning of the work completed? Using critical thinking skills, can we draw a conclusion or make a prediction about future events? These are the questions asked by investigators.

**JURISDICTION AND POLITICS**

Criminal investigations are conducted by law enforcement agencies within their respective geographical and statutory jurisdictions. As already described, within the United States there are local, state, and federal agencies investigating all manner of criminal violations. Local law enforcement has jurisdiction over most major crimes such as robbery, sex crimes, and homicides. State and federal authorities may provide support with these types of cases upon request, but unlike film and television, it is not generally their show if they do. Additionally, there is tribal law enforcement on Native American reservations and military law enforcement on military bases and installations.
Complicating matters is the harsh reality that there is often little communication between any of the aforementioned entities. In some cases there is open rivalry within jurisdictions and across multiple agencies and multiple levels of local, state, and federal law enforcement characterized by repeated turf wars. Every agency, it seems, wants its share of the spoils of good investigative efforts—from good press, to seized vehicles for departmental use or sale, to better clearance statistics.

With multiple levels and types of law enforcement, who is responsible and who is in charge at any given moment on any given case? Authorization to conduct criminal investigations, as well as territorial geographical boundaries, reflects the jurisdiction of U.S. law enforcement. Agency jurisdiction is addressed by statute for federal agencies. State and local agencies that are accredited by the Commission on Accreditation for Law Enforcement Agencies, Incorporated (CALEA) are required to develop written directives addressing the geographical boundaries, responsibilities on concurrent jurisdiction, and procedures for requesting federal law enforcement assistance (CALEA standards 2.1–2.1.4). However, multiple agencies at multiple levels may have jurisdiction over particular crimes. In illegal drug investigations, a local agency, a state agency, and federal agencies might all be involved.

Yet other investigative tasks, such as property crime or homicide, have failed to raise the level of communication across jurisdictional boundaries, except when task forces are formed. Multijurisdictional drug task forces paved the way for the development of other types of task forces to address specific issues, such as serial crime, fugitives, and arson. Task forces or major case squads are formed when political pressure, media scrutiny, or management dictates the resolution of crime though a combined team effort. Agency leadership must provide labor (investigators) and resources to participate in task force operations. However, forming a task force is not a simple answer to complex problems. With multiple levels of political influence and pressure, the personality differences of agency leadership and vastly different policies and procedures, the task force is hard pressed to run effectively and efficiently from the first day. However, the formation of a task force can work. Good leadership is the key to success in any task force.

At the local and state level, a memorandum of agreement between agencies appears to guide investigative efforts. Simply putting the jurisdictional issue in writing with written directives or agreements, often developed by middle managers and signed by agency executives, has been successful. Deputy Chief of Police, David Beam, Marietta (Georgia) Police Department noted to the author that (2009), “We have clear cut jurisdictional lines so this is rarely an issue; if however, a problem develops, the Chief of Police usually irons it out with the head of the other agency.”
How are day-to-day issues of jurisdiction handled? It is the experience of the author that the lowest ranking persons involved can work through these issues when given a chance. If management gives investigators the authority to work with their peers in jurisdictional issues, the investigators can work it out. There will always be territorial turf protecting by those higher in the chain of command; however, the investigators on the ground seem to have the tenacity to work through issues with other agency investigators. Supervisors should be encouraged to let them.

While the creation of a task force is not a silver bullet for interagency communication, especially when run by a poor leader, the good ones are a start in the right direction. In any given case there are going to be jurisdictional conflicts, potential and actual alike. On a good day, this conflict can provide checks and balances and give agencies the ability to cooperate and share resources. On a bad day, it can make an investigator’s worst fears come to life.

**INVESTIGATOR QUALIFICATIONS**

This chapter has provided only a glimpse of the greater picture that is the world of investigations, and only from a law enforcement perspective. That is to say, these are only some of the jobs that exist, and certainly this chapter does not include all the investigative work conducted in the private or defense sector. Nonetheless, it is fairly representative of what law enforcement investigative efforts are meant to involve and accomplish, if only in the most general sense.

It is important to understand that investigations are not a surreal or even unusual task undertaken only by those with special knowledge or abilities. They are everyday occurrences involving methods and skills that can be taught and learned by individuals of varying educational backgrounds. Soderman and O’Connell explain (1935, p. 1):

> Natural Science began to develop by leaps and bounds in the middle of the nineteenth century. This introduced exactness and a widespread knowledge of things. The obscure mysticism which had prevailed concerning everything disappeared as the clear, cold light of science clarified matters, and the change quickly became apparent in criminal investigation. Justice, which had been for centuries to solve problems and search for the truth, turned to science.

We must, therefore, acknowledge that many outside the investigative community possess more than adequate investigative skills. Conversely, we must accept that many within the investigative community do not. The reason is that, for some, being an investigator is merely a job title; for others, it is a political
appointment; for even fewer, it is a profession; and for the smallest number, it is a true calling. As warned in Dienstein (1995, p. 160):

The adequacy of an investigation and the skill of the investigator can result in a successful prosecution and conviction of the offender or the exoneration of a person unjustly accused. An inadequate investigation can result in a failure of the prosecution or the conviction of the wrong person.

Given the consequences for substandard investigations that are beneath best practices, investigations must be conducted thoroughly and only by those who have taken the time to get the proper education and training. Experience is less of an issue as it is a problem that time will solve.

**Investigator Education Requirements**

Not all law enforcement agencies have equal access to manpower and resources. Larger departments have larger budgets. The more crime within their jurisdiction, the more of their budget is spent responding to crime with less available funding for training and qualified personnel. Conversely, smaller departments with less crime in well-off areas may have more funding available for training and luring in good applicants. This eventuality can create a gap between the best-trained and most-experienced investigators. It also shapes the quality of applicants, the results of which can vary widely, as we have seen.

Detectives and inspectors are almost exclusively drawn from the ranks of patrol officers. That is to say, they are grown from successful applicant/graduates of a local police academy who get hired by a local department, get assigned a car and a patrol, and stay with a particular agency for a predetermined period of time. Some departments allow officers to take a shortcut to their detective's shield by working in the *vice squad* as an undercover. Eventually, these officers apply to work in investigations from that experience base. If accepted, perhaps based on passing some kind of detective's exam or perhaps based on more subjective criteria, generally they learn their trade on the job from senior investigators.

It should also be noted that truly experienced law enforcement investigators are not as common as depicted in film or on television. In fact, for most police officers, a homicide is a rare event that they may see once in a career if at all. And serial murder cases are almost unheard of (serial rape, robbery, and burglary cases are all too common, however). This is especially true for investigators working outside the United States, where rapes and homicides are much less frequent.

With respect to pre-employment education, most federal law enforcement agencies in the United States require a four-year college degree and/or varying
amounts of experience depending on the agency. State and local agencies may require a four-year degree, though many do not. Assignment to specialized squads may also require specific internal or external certifications.

For example, assignment as an arson investigator in a local jurisdiction required the following (Cloer, 2009):

1. High school diploma or General Educational Development (GED) supplemented by five or more years knowledge and skills developed by work experience within the agency, with a minimum of one year experience as a Fire Investigator Technician
2. State of Georgia Firefighter Certification
3. State of Georgia Fire Investigator Certification
4. State of Georgia Peace Officer Certification

Marietta (Georgia) Police Department (MPD) leadership recommends officers attend various Peace Officer Standards and Training Counsel courses, such as interviews and interrogations, basic criminal investigations courses, and search warrants and affidavits, in preparation for a detective assignment. Upon selection as a detective, an officer attends specialized courses in homicide investigations, blood splatter interpretation, and others. Although a degree is not required at MPD for selection as a detective, if two applicants have the same qualifications, the degreed applicants will usually be selected (Beam, 2009).

College degree programs that most benefit investigators range from traditional criminology and criminal justice programs to specifically designed concentrations within these programs. At Kennesaw State University in Georgia, for example, the criminal justice major includes three concentrations; the Forensic Behavioral Sciences concentration offers students courses in Criminal Investigations, Profile of the Serial Offender, and Criminal Profiling and Analysis. It is the concentrations available within a criminology or criminal justice program that make a degree opportunity more focused and useful.

The author would argue, based on his years of performing investigations and educating future generations, that the ability to complete any four-year degree program should be a basic requirement for applicants pursuing investigatively oriented careers. The more focused on the specialty area of investigations, the better. Being able to complete such a program says that these applicants can commit to a course of study and achieve its completion, that they know how to work with equals (other students) and superiors (professors and administrators) in a constructive fashion, and that they have been given the basics of a liberal arts education—meaning that they know the world is bigger than themselves and their own experience. Likely, it also means they have tasted success and failure. All these are valuable experiences and invaluable raw material for future investigators. Unfortunately, this is not yet a requirement, and while
many fine investigators lack a formal college education, it is still a very useful tool for discriminating qualified applicants at any point prior to and during a law enforcement career.

THE “OUTSIDE” EXPERT

As we have seen in this chapter, forensic criminologists of just about every kind may be asked to provide advice or opinions during administrative and criminal investigations by law enforcement. Often it is late in the investigation when leads and clues seem to be exhausted or after there has been a massive public failure or conflict of some kind and outside eyes are “requested.” Investigators in law enforcement agencies may welcome another “set of eyes” examining their case, that is, if the outside expert is truly an expert. As explained by Chief David Beam of the MPD (2009): “They must be credentialed and have the background to testify as an expert witness in court in regard to whatever we are using them for.” However, this cuts both ways, as those at the Ph.D. level have a tradition of simply rubbing law enforcement the wrong way—for being too theoretical or too uninformed.

The author offers the following advice to consulting forensic criminologists who may be unfamiliar with law enforcement practice and culture:

1. Ensure that agency personnel have a clear picture of what you can and will do. Do not lead them to think you will solve the case; rather, lead them to the thought that you may offer some ideas and direction.

2. Ensure that agency personnel know your qualifications, education, and experience. Although a curriculum vitae may provide insight, that alone will not impress the street-level investigator.

3. Remember that law enforcement is a rather closed society, and you may be viewed as an interloper. Do not expect to be welcomed with open arms by everyone in the agency.

4. Do not be hyper critical! Many agency leaders have a phobia about “airing their dirty laundry” or the perception that “they could not solve the case.” If you find policies and procedures that need improvements, that issue should be addressed but is usually not the focus of the invitation to examine an investigation. If you find something wrong, help the agency find the fix to the imbroglio.

5. When investigators have performed well and done the right thing, kudos are in order.

6. Be truthful, do not embellish, do not exceed your area of expertise, and provide a bridge to a path for improving the resolution of the case.
7. Be prepared for the heinous cases to stay locked away in the recesses of your mind. They will not go away. Remember that at the end of the day, it is all about justice, not about you.

RATIOCINATION AND LUCUBRATION

The purpose of this chapter is to assist forensic criminologists’ understanding of what law enforcement investigations involve, the various types of investigations, the roles of agencies, the problem of jurisdiction, educational requirements for investigators, and some advice if asked to opine on an investigation. We hope that this information will help with your ratiocination and lucubration.

_Ratiocination_ is clear thinking; it is putting forth a logical argument. _Lucubration_ is long, hard study, often at night, sometimes resulting in a written scholarly work. Both of these are considered required traits and tasks for forensic criminologists. In all things we do to ensure the scales of justice are balanced, we must be the epitome of critical thinking experts. “Critical thinkers prize truth and so are constantly on the lookout for inconsistencies, both in their own thinking and in the arguments and assertions of others” (Bassham, Irwin, Nardone, and Wallace, 2008, p. 5).

SUMMARY

To be effective forensic criminologists, we need to understand the logistics of how law enforcement operates. Although various jurisdictional issues are present everywhere, the fundamental goals and practices behind investigative efforts remain consistent across time and space. All investigators, whether they are carrying out an administrative or criminal investigation and regardless of whether they are local, state, or federal, have similar aims. That is, they seek to determine whether a crime or violation has been committed, to gather evidence and information related to the identity of the person suspected of carrying out this behavior, to locate and facilitate the arrest or discipline of the person, to recover property, and to prepare a case fit for criminal prosecution or disciplinary action. One of the over-arching differences between administrative and criminal investigations, then, is that many agencies are free to decide what to do with the results of administrative investigations. Administrative investigations are used to determine such things as demotions, suspensions, dismissals, promotions, changes to policy or protocol, and the like; whereas, criminal investigations often involve much more dire consequences in light of more serious violations. Unlike administrative investigations, then, criminal investigations carry with them the weight of the court and the law.
Apart from having serious consequences, criminal investigations also involve intelligence gathering, assessment, integration, and deduction. That is, information which has been gathered before a crime has occurred—in fact, in anticipation of it—can be very useful to law enforcement on many different levels and across jurisdictions.

It should also be noted that in law enforcement communities there are often jurisdictional and political considerations that need to be made known to forensic criminologists. Despite some good intelligence programs designed for information sharing, there is often little communication between agencies or even an open rivalry. This conflict may provide checks and balances to the agencies involved or have much more negative effects. In light of this, it is crucially important that forensic criminologists involved with these agencies, and the agencies themselves for that matter, maintain open lines of communication, an ability to think critically about themselves and others, and the initiative and motivation to get past any bumps in the road.

**Review Questions**

1. T/F Investigative goals and best practices change depending on the jurisdiction.
2. Explain the difference between administrative and criminal investigations in terms of who performs them, their goals, and the consequences of related violations.
3. T/F Police agencies have a zero-tolerance policy for pre-employment criminal conduct.
4. Why is it problematic to have an independent investigator with a prior law enforcement connection to carry out an administrative investigation?
5. What is the Garrity Rule? Why is it important for law enforcement?
6. Name and explain the three I’s proposed by O’Hara (1970).
7. T/F The investigator is simply a fact collector. Why or why not?
8. When are forensic criminologists generally called in to assist with ongoing investigations?

**REFERENCES**


