

Crime

Computer Viruses to Twin Towers

H. Thomas Milhorn, M.D., Ph.D.

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Crime: Computer Viruses to Twin Towers

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Preface

Crime: Computer Viruses to Twin Towers is an overview of the United States legal system, with a brief introduction to Islamic and International law. The book is divided into six parts. Part I (The Legal System and Crime) introduces the U.S. legal system and the classification of crime. Part II (White Collar Crime) covers cybercrime, crime the old fashioned way, and healthcare fraud. Part III (Homicide) deals with simple murder, serial murder, mass and spree murder, and assassination. Part IV (Special Groups) covers the mafia; the family; the medical, legal, and teaching professions; the religion profession; celebrities; and stupid criminals. Part V (On the Edge) deals with topics I consider to be a bit strange; that is, quackery, innovative defenses, and dangerous cults. And finally, Part VI (Residue) discusses what is left ... capital punishment and crimes against humanity, including terrorism.

The subtitle, *Computer Viruses to Twin Towers*, reflects the scope of the book; that is, from computer viruses, which cause only aggravation or loss of money, to the deadly terrorist attacks on the Twin Towers of the World Trade Center and the Pentagon on September 11, 2001 that snuffed out almost 3000 lives.

Throughout the book, to illustrate points, I have used over 300 cases of actual crimes. The names of the people and the facts of the cases used in the discussions of these crimes are taken directly from referenced news reports. I have no direct knowledge of these individuals or their purported crimes, indictments, or charges. Also throughout the book, I have used the generic "he," with both masculine and feminine meanings.

I would like to thank my wife, Kay, for putting up with my obsessive-compulsive behavior when I'm working on a project and my son, Toby, for constructively reading each chapter as they were written and using his skills as a graphic designer to design the book cover.

H. Thomas Milhorn, M.D., Ph.D.

CONTENTS

Part I. The Legal System and Crime

Chapter 1. The Legal System 2

Law in the United States 2

Crime 3

Law Enforcement 6

Courts 7

Punishment 12

Juvenile Justice System 17

Islamic Legal System 18

International Legal System 19

Chapter 2. Classification of Crime 21

Crimes against Government 21

Crimes against Habitation 23

Crimes against Person 24

Crimes against Property 29

Crimes against Sexual Morality 31

Inchoate Crimes 36

White Collar Crime 37

Drug Crimes 38

Hate Crimes 39

Crimes against Humanity 42

Part II. White Collar Crime

Chapter 3. Cybercrime 46

Auction Fraud 46

Charity Scams 46

Child Pornography 47

Computer Viruses 48

Copyright Violation 48

Cramming Scams 49

Cyber Hijacking 50

Cyber Snake Oil 51

Cyberstalking 53

Cyberterrorism 54

Education Scams 54

Employment Scams 56

Extortion 58

Hacking 59

Identity Theft 60

Illegal Alien Fraud 61

Investment Fraud 62

Let Me Help You Scams 64

Nigerian Scam 65

Prostitution 65

Quick Divorce Fraud 66

Spam 66

Telemarketing and Fraud 67

Travel Scams 67

Chapter 4. Crime the Old Fashioned Way 71

Advanced Fee Schemes 71

Airport Scams 72

Auto Repair Scam 72

Bank Fraud 73

Bankruptcy Scam 74

Blackmail/Extortion 74

Bribery 75

Copyright Infringement 75

Corporate Fraud 76

Counterfeiting 77

Coupon Redemption 78

Embezzlement 78

Employment Scams 79

Environmental Fraud 82

Fortune Tellers and Gypsies 82

Government Fraud 83

Home Improvement Scams 87

Identity Theft 87

Insurance Fraud 89

Investment Schemes 90

Jamaican Switch 92

Kickback 92

Land Fraud 93

Lottery/Sweepstakes Scams 94

Money Laundering 94

Odometer Fraud 95

Payroll Fraud 95

Pigeon Drop 96

Ponzi/Pyramid Schemes 97

Quick Change Scam 98

Seminar Scam 98

Telephone Fraud 99

Travel Scams 101

Chapter 5. Healthcare Fraud 104

Who Commits Healthcare Fraud? 104

Types of Healthcare Fraud 105

Automobile Accident Fraud 105

Contractor Fraud 106

Embezzlement 106

Fictitious Companies 107

Fraudulent Research 107

Healthcare Facilities 107

Individual Healthcare Providers 112

Medical Equipment Suppliers 117

Pharmaceutical Services 119

Consumer Fraud 121

Part III. Homicide

Chapter 6. Murder 124

Children and Teenagers who Kill 124

Women who Kill 133

Men who Kill 134

Pairs/Groups that Kill 136

Unsolved Murders 138

Chapter 7. Serial Murder 144

Classification of Serial Killers 144

Bizarre Serial Killers 145

Male Serial Killers 152

Female Serial Killers 161

Nonselective Serial Killers 163

Pair Serial Killers 165

Unsolved Serial Murders 168

Chapter 8. Mass and Spree Murder 176

Mass Murder 176

Spree Murder 183

Chapter 9. Assassination 189

Assassination Attempts 189

Assassinations 199

Part IV. Special Groups

Chapter 10. The Mafia 211

Italian Mafia 211

Early New York Criminal Gangs 212

Organized Crime 213

Mafia Structure 214

Mafia Families 216

Mafia Wives 228

Foreign Crime Groups 229

Chapter 11. Crime in the Family 237

Bigamy/Polygamy 237

Child Abuse 239

Domestic Violence 241

Incest 242

Murder 243

Chapter 12. Crime in the Professions 258

Legal Profession 258

Medical Profession 268

Teaching Profession 276

Chapter 13. In the Name of God 283

Historical Crimes 283

Modern Crimes 288

Chapter 14. Celebrity Crime 299

Non-lethal Crimes 299

Lethal Crimes 312

Chapter 15. Stupid Criminals 320

Bank Robbery 320

Burglary 322

Murder 324

Robbery 325

Substance Abuse 326

Theft 328

Other 330

Part V. On the Edge

Chapter 16. Quackery 337

History of Quackery 338

Modern Day Quackery 346

Alternative Medicine 358

Chapter 17. Innovative Defenses 362

- I Was Asleep 362
- I Didn't Feel Well 364
- I Was Out of my Mind 367
- I Did It to Save Society 372
- My Diet Did It 373
- It Was the Medication's Fault 374
- It Was Someone Else's Fault 377
- Other 379

Chapter 18. Dangerous Cults 384

- Definition of a Cult 384
- Types of Cults 384
- Characteristics of a Dangerous Cult 385
- Some Dangerous Cults 386

Part VI. Residue

Chapter 19. Capital Punishment 401

- History of Capital Punishment 401
- Historical Capital Punishment Methods 402
- Modern Capital Punishment Methods 415

Chapter 20. Crimes against Humanity 426

- Crime against Peace 426
- Ethnic Cleansing 426
- Sexual Violence 428
- War Crime 429
- State Terrorism 430
- Non-state Terrorism 430

Index 448

Part I

The Legal System and Crime

Chapter 1

The Legal System

The United States is run under a federal system in which the federal government in Washington, D.C. shares authority with state governments, which in turn share authority with local governments. Both the federal government and each of the state governments are divided into executive, legislative, and judicial branches. Written constitutions, both federal and state, form a system of separated powers, checks, and balances among the branches. The legal system involves laws, enforcement organizations, court systems, and corrections facilities.

The federal government has specific powers defined by the Constitution, and the 50 states have powers that are not delegated to the federal government by the Constitution nor prohibited by it. The powers of the federal government include authority to (1) regulate interstate commerce, (2) regulate the environment, and (3) control aspects of healthcare through programs such as Medicare. The states, under their general police powers to protect the public health, safety, and welfare, also retain substantial independent authority.

The two-tier legal system extends to judiciary and corrections facilities as well. Federal courts and state courts, though distinct entities, function in similar manners. Each has general jurisdiction trial courts, appellate courts, and supreme courts. Individuals tried and convicted in federal court and sentenced to imprisonment serve their terms in prisons run by the federal government. Similarly, individuals tried and convicted in state courts and sentenced to imprisonment serve their sentences in state prisons.^{1,2,3}

LAW IN THE UNITED STATES

Federal law has its source in the U.S. Constitution, as well as federal statutes and regulations passed by Congress that are deemed to be compatible with the Constitution. State law is derived from state constitutions and statutes derived from state legislatures. Law can be divided into criminal law and civil law.

Criminal Law

Criminal law governs actions and relationships that are deemed to harm society as a whole. It defines crimes, establishes punishments, and regulates the investigation and prosecution of people accused of committing crimes. A person who acts in a way that is considered harmful to society may be prosecuted by the government in a criminal case. If the individual is convicted, he will be punished under criminal law by a fine, imprisonment, or death. Criminal law includes both *substantive law* and *criminal procedure law*.^{1,4}

Substantive Law. This type of law defines crime and punishment, such as the act that defines murder and what punishment a murderer should receive.

Procedure Law. This type of law is concerned with the legal rules to be followed and the steps to be taken to investigate, apprehend, charge, prosecute, convict, and sentence to punishment individuals who violate substantive criminal law.^{1,4}

Civil Law

The term *civil law* applies to all legal proceedings that are not criminal in nature. Under this definition, laws regulating marriage, contracts, and payment for personal injury are examples of civil law. Civil law tradition makes a sharp distinction between private and public law. *Private law* includes the rules governing relationships such as marriage, divorce, and contractual agreements. *Public law* consists of matters that concern the government ... constitutional law, criminal law, and administrative law.

An important concept in civil law is the *tort*, which is a wrongful act against an individual that has injured another. The law permits a civil (non-criminal) action to be brought. Relief may be obtained in the form of damages or an injunction, but not incarceration.

Civil law judges administer the codes that are written by legal scholars and enacted by legislators. The civil law system assumes that there is only one correct solution to a specific legal problem. Therefore, judges are not expected to use judicial discretion or to apply their own interpretation to a case.^{5,6}

In some cases, a person's alleged wrongful and harmful act can invoke both criminal and civil law responses, as in the case of O. J. Simpson in regard to the deaths of his ex-wife, Nicole Simpson, and Ron Goldman. Simpson was found not guilty in a criminal trial, but liable in a civil trial and ordered to pay \$33.5 million to the families of Nicole and Goldman. This case is discussed in Chapter 14 (Celebrity Crime).

CRIME

Crime is the commission of an act, or the omission of an act, that violates the law, and as a result is punishable by local, state, or federal government. Crime can be classified a number of ways.

Common Law Crime versus Statutory Crime

Common Law Crime. When William the Conqueror invaded England in 1066, he combined the best of Anglo-Saxon law with Norman law, which resulted in the English common law. Much of common law is by custom and precedent rather than by written code. In this system, judges rather than legislatures created laws and determined punishment for crimes. By the 14th century,

legal decisions and commentaries on the common law began providing precedents for the courts and lawyers to follow. In the United States, common law became the basic law of most states due to the book, *Commentaries on the Laws of England*, completed by Sir William Blackstone in 1769, and which became every American lawyer's bible. Today, almost all common law has been enacted into statutes with modern variations by all the states (except Louisiana, which is still influenced by the Napoleonic Code).^{1,4}

Statutory Crime. Although common law provides the basis for defining crimes, federal and state legislatures have enacted statutes that define the elements of crimes. For example, common law judges defined rape as sexual intercourse by a man with a woman who was not his wife, against her will and through the use or threat of force. Modern statutes have modified the elements of the common law crime of rape so that, under some statutes, the victim can be either man or woman, and a husband can be found guilty of raping his wife. Another important division of crime is that of *felonies* and *misdemeanors*. The distinction is based on the severity of the crime and is rooted in common law. Since each jurisdiction determines the punishment for offenses, a misdemeanor in one jurisdiction may constitute a felony in another.^{1,4}

Felony Crime versus Misdemeanor Crime

Felony Crime. A *felony* is considered a very serious crime, whereas a misdemeanor is considered to be less serious. Crimes commonly considered felonies include aggravated assault, arson, burglary, murder, and rape. Originally, felonies were crimes for which the punishment was either death or forfeiture of property. Nowadays, felons can receive punishments ranging in severity from probation, to imprisonment, to execution. Felons often receive additional punishments, such as the loss of voting rights, exclusion from certain lines of work, and loss of firearm rights. Many U.S. jurisdictions divide felonies into classes, such as class A felony, class B felony, and so forth.^{1,4}

Misdemeanor Crime. In most jurisdictions, misdemeanor crimes are those punishable by a fine or any imprisonment in a local jail for a year or less. In addition, some jurisdictions have a classification for petty offenses called *infractions*, which are usually punishable by a small fine, such as parking with an expired parking meter.

Matters that judges 200 years ago never thought about, such as carjacking, bribing college athletes, and making false statements about the sell of stocks, have become laws by statute. Although the trend is to add new crimes by statute, to a lesser extent there is a tendency for some crimes to disappear from one era to the next. For example, laws that once punished witchcraft by death have been deleted by legislatures, and laws against sodomy and adultery have virtually disappeared.^{1,4}

Defenses to Crime

Defenses for the commission of a crime include innovative defenses and common defenses. Innovative defenses are discussed in Chapter 17. Common defenses include age, duress, entrapment, insanity, intoxication, mistake, and self-defense:

Age. *Juvenile crime* refers to offenses committed by individuals under the age of 18, and *juvenile law* refers to that body of law applicable to these individuals. Children's offenses typically include *delinquent acts* (which would be considered crimes if committed by adults) and *status of*

fenses, which are less serious misbehavior, such as truancy and parental disobedience. Both are within the jurisdiction of the juvenile court. More serious offenses committed by minors may be tried in criminal court and be subject to prison sentences. In recent years there has been a trend to try teenagers charged with murder as adults.^{7,8}

Duress. A person who commits a crime because another person is exerting extreme pressure on him may use the defense of *duress*. Most jurisdictions allow the defense of duress only when: (1) the pressure exerted is immediate and substantial, such as the threat of death or serious bodily harm; (2) the coercion is such that a reasonable person in the offender's position would have committed the crime; and (3) the offender did not willingly participate in creating a situation where duress was likely. For example, if a woman kills a man because another person who is armed threatens to kill her if she does not, she would have the defense of duress to any charge of murder.^{1,7}

Insanity. The defense of *insanity* is based on the premise that those who are unable to control their actions, or appreciate the criminality of their actions, due to mental illness should not be punished under criminal law. The insanity defense does not strictly conform to the medical definition of mental illness.

Beginning in the mid-19th century, the test of insanity applied in England and much of the United States was known as the *M'Naghten rule*. This test was derived from the English case of Daniel M'Naghten, who was tried for murder in 1843. M'Naghten was judged not guilty because he suffered from a mental illness that prevented him from understanding whether his actions were right or wrong.

Some jurisdictions have supplemented the M'Naghten rule with the *irresistible impulse* test. Under this standard, an accused person can be found not guilty by reason of insanity when faced with a situation in which he was incapable of refraining from a criminal act, such as a man catching his wife having intercourse with another man.

Some jurisdictions recognize a defense of *diminished responsibility* because of *diminished capacity*, such as mental retardation. Under this defense, a person accused of a crime may assert that he did not have the requisite mental capacity to understand the seriousness of the crime.^{1,7}

Entrapment. A person who is induced by a law enforcement officer to commit a crime that he would not have otherwise undertaken can claim the defense of *entrapment*. To prove the defense, the person must show that the idea for committing the crime originated with a law enforcement agent, that the agent persuaded him to commit the crime, and that he was not predisposed to commit such a crime.^{1,7}

Intoxication. Whether caused by alcohol, illegal drugs, or prescribed medications, *intoxication* produces a state of mind resembling insanity. For intoxication to be used as a defense against a crime, it must be involuntary. For example, if one is forced to consume an intoxicant, or if one consumes an intoxicant without knowledge of its mentally disabling nature, the defense of *intoxication* may be used.^{1,7}

Mistake. If a person takes another person's property, mistakenly believing that it is his own, this *mistake* negates the intent to steal that is required for the crime of larceny.^{1,7}

Self-defense. As a general rule, the law provides a defense for actions that are reasonable to protect oneself from the imminent use of unlawful force. For example, a person is justified in the use of deadly force in *self-defense* if he reasonably believes it is necessary to prevent an act that would cause immediate death or serious bodily injury. If acting in self-defense, one may respond only with force proportional to the force defended against or necessary to resist the unlawful attack. Thus, one may not use deadly force except in response to deadly force. One who has initiated or provoked an attack generally may not claim self-defense.^{1,7}

LAW ENFORCEMENT

The United States has a fragmented system of police administration comprising some 19,000 separate municipal and county law enforcement agencies and an estimated 21,000 additional federal, state, and local agencies with specialized jurisdictions of responsibility. Approximately half the local law enforcement agencies consist of fewer than 10 police officers.⁹

Federal Law Enforcement

The jurisdiction of federal law enforcement agencies is limited to the government's power to regulate interstate commerce, impose taxes, and enforce constitutional and federal law. The principal law enforcement agencies of the federal government are the Department of Justice, the Department of Homeland Security, and the United States Postal Service.⁹

Department of Justice. Law enforcement agencies in the Department of Justice include: (1) the Federal Bureau of Investigation (FBI), which deals with bank robberies, kidnappings, terrorism, and violation of other federal laws, and provides training, identification, and laboratory services to local police, (2) the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), which investigates alcohol and tobacco smuggling, bombings, and violations of federal firearms and arson laws, (3) the Drug Enforcement Administration (DEA), which investigates cases involving illicit narcotics and other drugs, and (4) the U.S. Marshals Service, which has responsibility for safeguarding and transporting federal prisoners and acting as marshals for U.S. courts.⁹

Homeland Security. Law enforcement agencies in the Department of Homeland Security include: (1) the United States Coast Guard, which protects the country's ports and waterways, (2) the Bureau of Border Security, which enforces immigration laws and includes the Border Patrol, (3) the Secret Service, whose primary responsibilities include protection of the President and Vice President and their families and investigation of counterfeiting, and (4) the United States Customs Service, which investigates smuggling and inspects passengers, vehicles, and cargo entering or leaving the country.^{9,10}

U.S. Postal Service. Postal Inspectors enforce over 200 federal laws in investigations of crimes that may adversely affect or fraudulently use the U.S. Mail, the postal system, or postal employees.¹⁰

State Law Enforcement

Basically, two kinds of state police agencies exist in the United States ... those with general functions similar to local police and those with limited responsibilities, mainly involving highway patrol on state roads.⁹

Local Law Enforcement

City Law Enforcement

A city police department's goals are to: (1) prevent crime, (2) investigate crime and apprehend offenders, (3) control traffic, (4) maintain order, (5) deal with emergencies and disasters, (6) lo-

cate missing persons and lost children, and (7) deal with marital disputes, crowd control, and ambulance calls.

A police force is usually organized as one of several departments within the local government. The police are part of the local criminal justice system, which also includes the prosecuting attorney's office, the courts, probation offices, and corrections agencies. The executive head of a police department ... the commissioner, superintendent, or chief of police ... is usually appointed by a mayor, city administrator, or city legislative body. In larger police departments, executive officers may be selected through a civil service or merit system, after moving through the ranks from patrol officer to sergeant, lieutenant, captain, and deputy or assistant chief.^{9,10}

County Law Enforcement

At the county level, the head of the law enforcement agency usually holds the title, *sheriff*. The sheriff is almost always elected and has the power to appoint deputies. Sheriffs' departments often provide law enforcement services for unincorporated areas of counties, and are usually responsible for functions not normally carried out by municipal police, such as operating the county jail; providing courtroom security; and serving legal documents, including subpoenas and court orders.^{9,10}

Private Security Forces

There are thousands of private security forces in the United States. These organizations employ a substantial percentage of all persons engaged in police work, and the use of private security by both businesses and individuals is increasing rapidly. Large corporations often maintain security forces to curb internal thefts, shoplifting, robberies, and trespassing.

In some cities volunteer *citizen patrols*, such as the *Guardian Angels* in New York City, have been formed to prevent crime. In a few cases, these patrols operate without an official relationship to the police department. Far more common, however, is the use of police-organized, uniformed citizen groups, generally known as *reserve* or *auxiliary police*.⁹

COURTS

Courts in the United States are government institutions that resolve legal disputes ... criminal and civil ... and that hear appeals from such cases. The United States has a dual system of federal and state courts that are independent of one another. There are essentially 52 of these court systems in the United States ... the federal system, 50 state systems, and the court system in the District of Columbia. The authority of a court to decide a case is called its *jurisdiction*. Courts have jurisdiction only within geographical boundaries. A city court cannot usually try cases that arise outside the city limits, and courts in one state rarely have jurisdiction over events happening or people living in other states. Jurisdiction is often limited by types of cases. However, a court with general jurisdiction may hear many different sorts of cases.^{1,11,13}

The Federal Court System

The federal court system resembles a three-tier pyramid. At the base lie the *U.S. district courts*, which are trial courts for both criminal and civil matters. At the top sits the *U.S. Supreme Court*. In between are the *U.S. courts of appeals*, which hear appeals from district courts.

Unlike state courts, federal courts have no authority to create a general common law, for either a state or the country as a whole. Federal courts may only interpret the law contained in statutes or regulations. They have jurisdiction to hear only those cases allowed under the Constitution and by federal law. These include treaties, cases affecting ambassadors and similar foreign officials, disputes between states, cases which concern commerce and navigation on the seas, controversies to which the United States is a party, and disputes between citizens of different states. Under federal law, some cases may be heard only by federal courts, such as patent and copyright disputes. Federal judges serve lifetime appointments, except for those on some specialized courts. All federal judges must be appointed by the President and confirmed by a majority vote of the Senate.^{11,12,14}

District Courts

Congress has divided the United States into 94 federal districts and authorized about 650 judges to serve in the courts of those districts. Each district is contained within a state and no district overlaps state boundaries. Every state (and Puerto Rico, a U.S. commonwealth) has at least one federal district. District court trials are presided over by individual judges who are responsible for controlling every aspect of the cases assigned to them.^{11,12,13}

Courts of Appeals

The *federal courts of appeals* hear appeals from judgments and orders of the U.S. district courts and from many federal administrative agencies, such as the *Environmental Protection Agency*. Of the 13 courts of appeals, 12 are located in federal geographic units known as circuits. The states are grouped into 11 circuits, with no state divided between circuits. The formal names for these courts are the *U.S. Court of Appeals for the First Circuit*, the *U.S. Court of Appeals for the Second Circuit*, and so on through the 11th circuit. The 12th and smallest circuit ... the District of Columbia Circuit ... is in Washington, D.C. The 13th circuit court, the *U.S. Court of Appeals for the Federal Circuit*, is not defined geographically, but is instead specialized by subject. It hears appeals in cases involving international trade, patents, trademarks, money claims against the United States, and veterans affairs.

Congress has authorized approximately 150 federal appeals court judgeships. Their numbers range from six in the First Circuit (Maine, New Hampshire, and Massachusetts) to 28 in the Ninth Circuit (seven Western states, including California). The judges within a circuit are divided into rotating three-judge panels when deciding cases. Occasionally all the judges of the circuit may sit together to decide a case.

The term, circuit, derives from the original structure of these courts. Under the *Judiciary Act of 1789*, trials of certain cases were required to be held before three-judge circuit courts consisting of two Supreme Court justices and the federal judge in the district court. Therefore, in addition to their regular duties, Supreme Court justices were required to ride circuit, traveling from district to district within their assigned circuit, often covering great distances. In 1891 Congress established the modern courts of appeals and abolished Supreme Court circuit riding.^{11,12,14}

The Supreme Court

The U.S. Supreme Court, which consists of nine justices, is the highest court in the land. It therefore has the final word on the most important constitutional and legal issues, and establishes precedents that guide lower courts. It can hear appeals of cases from the U.S. courts of appeals and state supreme courts, so it has power to shape constitutional and federal law for the nation and to ensure that the states abide by constitutional and federal law. The Supreme Court typically decides to review cases that allows it to resolve conflicts over legal interpretations that have developed within the federal circuits.^{3,11,14}

Courts of Special Jurisdiction

In addition to the district and appeals courts, Congress has established several specialized courts to hear particular types of cases. These include the *U.S. Tax Court* and the *U.S. Court of Federal Claims*. The U.S. Tax Court provides a judicial forum in which affected persons can dispute tax deficiencies determined by the Commissioner of Internal Revenue prior to payment of the disputed amounts. The U.S. Court of Federal Claim hears claims against the United States (except personal injury and other tort cases, which can be filed in the district courts). The U.S. Court of Federal Claims also has jurisdiction to hear claims involving land and related disputes among *Native American* tribes. Other courts include the *Court of International Trade*; the *U.S. Court of Veteran Appeals*; and the *U.S. Court of Military Appeals*, which hears appeals from general courts-martial. Judges on many of these courts are appointed by the president and confirmed by the Senate, but they serve for limited terms.^{3,11,14}

Territorial Courts

Congress has established district courts in the various territories of the United States, including *Guam* and the *Virgin Islands*. These courts have the same federal jurisdiction as other U.S. district courts, but in addition hear cases involving local matters that in the United States are heard by state courts.¹⁴

The State Court System

The vast majority of legal cases in the United States are decided in state courts. In every state, the purpose of the courts is the same ... to prosecute crimes and settle disputes. Every state arranges its courts in a hierarchy similar to the federal system. Trial courts try cases, intermediate appellate courts consider appeals from trials, and supreme courts hear further appeals.

Judges on many state courts ... including state supreme courts ... are elected and serve terms of various lengths. In an attempt to reduce the influence of politics on the courts, some states now require the governor to appoint judges.

By longstanding tradition, all judges appointed to the federal courts are lawyers; however, some judges on smaller, limited-jurisdiction state courts are not. In many states, for example, lay judges can serve on rural traffic courts and as justices of the peace.^{11,13}

Trial courts fall into a number of types ... courts of limited jurisdiction, courts of general jurisdiction, intermediate appellate courts, and supreme appellate courts.

Courts of Limited Jurisdiction

In every state, most cases come to trial in *courts of limited jurisdiction*, such as small-claims, juvenile, and traffic courts. In some states these courts handle more than 80 percent of all trials. About 100 million cases come through these courts annually, but the overwhelming majority of these are simple traffic cases in which motorists plead guilty and pay a fine by mail.^{11,13}

Courts of General Jurisdiction

Felony prosecutions and major civil trials take place in *courts of general jurisdiction*, which are empowered to hear many kinds of cases. These courts are often called *superior courts*, although the name varies by state. Every year, more than 10 million cases or prosecutions are filed in these courts. Fewer than 2 percent of these ever come to trial. Most civil cases are settled by the parties, and most criminal defendants enter plea bargains; that is, they plead guilty to the crime charged or to a lesser offense.^{11,13}

Intermediate Appellate Courts

These courts were established by states to relieve the pressure on their supreme courts, which were being inundated by appeals. As in the federal system, state intermediate appellate courts hear appeals from both criminal and civil trial courts within their geographic regions. The larger states generally have more than one intermediate appellate court.^{11,13}

Supreme Appellate Courts

Every state has a final appellate court. In most states these are called *supreme courts*. The state supreme courts hear appeals mostly from intermediate appeals courts. Like the U.S. Supreme Court, most state supreme courts may choose which cases to review, and all have the final word on matters of state law; that is, common law, statutory law, and the state constitution. Not even the U.S. Supreme Court can overturn their decisions about what the state constitution or state law means, although it may rule against the state if it concludes that a state law or constitutional provision conflicts with the U.S. Constitution. State supreme courts typically consist of between five and nine members who rule as a panel.^{11,13}

Arraignment

The first appearance in court on a criminal charge is usually the *arraignment*. After the arrest, the person must be brought before a judge within 24 to 48 hours so that the charges can be read and the judge can determine whether or not there was probable cause for the arrest. If probable cause is found, the person may plead guilty, not guilty, or in some instances *nolo contendere*. If the person pleads guilty, then a trial is not required. *Nolo contendere* is a plea in which the defendant neither admits nor denies that he committed the crime, but agrees to a punishment ... usually a fine or jail time. Usually, this type of plea is entered because it can't be used as an admission of guilt if a civil case is held after the criminal case. If the accused does not have the money to hire a lawyer, one is appointed at this time.¹⁴

Decision to Go to Trial

If the person pleads not guilty in the arraignment, the decision must be made on whether or not to proceed to trial. This can be done by either of two ways ... preliminary hearing or grand jury. The decision is up to the prosecutor. In either case, if the person is found likely to have committed the crime, he must then stand trial for the alleged crime, unless a plea bargain is reached.

Preliminary Hearing. A *preliminary hearing* is the hearing given a person charged with a crime to determine whether or not enough evidence exists to hold the person for trial. The hearing is open to the public, unless the defendant requests that it be closed. The accused person must be present at this hearing. If a person is jailed, he is entitled to a preliminary hearing within 10 days of arrest. If a person is released from jail on bond, he is entitled to a preliminary hearing within 30 days of arrest.

If the judge finds probable cause after hearing the evidence, the person charged is bound over for trial. If the judge does not find that an offense has been committed or that the accused is likely the person who committed an offense, the charges are dismissed.¹⁵

Grand Jury. A *grand jury* is a criminal justice procedure whereby, in each court district, a group of 16 to 23 citizens hold an inquiry on criminal complaints brought by the prosecutor to decide whether or not a trial is warranted. If the decision is yes, an *indictment* is issued which spells out the charges. The person must then stand trial. If the grand jury decides not to indict the accused, the charges are dismissed.

Unlike the preliminary hearing, the grand jury is a secret affair, and penalties are established for anyone leaking information. Only the prosecutor presents evidence. The defendant is required to be there, but is not entitled to have a lawyer physically present. The accuser is not required to be present.^{15,16}

Trial by Jury

A trial may be defined broadly and comprehensively as a judicial examination of the issues between two parties. Trials are usually held before a judge sitting alone or a judge and jury. In most states, the details of trials in the various courts are regulated by the state codes of civil and criminal procedure and the state constitutions.

Civil cases are divided into two classes: *equity cases*, which are usually tried by a judge sitting without a jury; and *actions at law*, which are usually tried before a jury. In civil cases, the right to a trial by jury can, in most jurisdictions, be waived. In some states, the defendant may waive the right to be tried by a jury even in criminal cases, although in many jurisdictions the rule decrees that in all cases involving the commission of felony the defendant must be tried by a jury.¹¹

Jury Selection

The *jury selection* procedure usually followed in the trial of either a civil or criminal action is as follows: A panel of prospective jurors is convened in the court in which the case is to be tried. The attorneys for the respective parties are then permitted to examine the prospective jurors for the purpose of determining their qualifications to sit as jurors. Each side has the right, depending on the type of case and the jurisdictions involved, to challenge a certain number of jurors peremptorily; that is, without cause. Those individuals are then dismissed. Prospective jurors who exhibit bias or prejudice can be challenged for cause and dismissed. The first 12 persons who are accepted as satisfactory by both sides constitute the jury. A small number of alternates are also chosen.^{17,18}

Trial Procedures

Trials begin with opening remarks by the plaintiff lawyer in a civil trial or prosecuting officer in a criminal trial and the defense lawyer. This is followed by presentation of evidence and cross-examination, summations by both sides, charge by the court, and finally a verdict by the jury. In capital cases, the jury may later hear arguments for and against the death penalty.^{17,18}

Opening Remarks. It is customary for the attorney for the plaintiff in a civil case and the prosecuting officer in a criminal case to make the first opening address to the jury, which consists of a statement of what the prosecution intends to prove. The defendant's attorney then makes an opening address to the jury, which consists of a similar statement as to what proof will be addressed on behalf of the defendant.^{17,18}

Presentation of Evidence. After the opening addresses, the plaintiff lawyer or prosecuting officer attempts to substantiate the allegations set forth in the plaintiff's complaint (civil case) or the indictment (criminal case) by the introduction of such evidence as may be available. The examination of the witnesses called by either of the parties is called *direct examination*; examination by opposing counsel, which follows, is called *cross-examination*.^{17,18}

Summations. At the conclusion of the case it is customary for both sides to make their summations, which consist of comment by counsel with regard to the testimony of the various witnesses who have testified at the trial, and the inferences to be drawn there from. In both civil and criminal cases, counsel for the defendant usually sums up first, and the attorney for the plaintiff or the prosecuting officer concludes.^{17,18}

Charge of the Court. After the summations, the court (judge) charges the jury. The *charge* of the court consists of a statement and an explanation of the rules of law applicable to the issues in the case for the guidance of the jury. After the charge is made, counsel for either party can take exception to those portions of the charge which they consider objectionable and make requests that additional charges be given by the court.^{17,18}

The Verdict. At the conclusion of the charge, the jury retires from the courtroom to decide on its *verdict*. The verdict of a jury terminates the trial. In a case tried before a judge sitting alone, the decision of the judge constitutes a termination of the trial.^{17,18}

PUNISHMENT

People who commit crimes may be punished in a variety of ways. Offenders may be subject to (1) fines or other monetary assessments, (2) confinement in jail or prison for a period of time (incarceration), or (3) executed. In general, societies punish individuals to achieve revenge against wrongdoers and to prevent further crime, both by the person punished and by others contemplating criminal behavior. Some modern forms of criminal punishment focus on correction, rather than, or in addition to, penalty. Correctional programs attempt to teach offenders how to substitute lawful types of behavior for unlawful actions.

Punishments range in severity depending on the crime, with the most severe forms applied to individuals who commit the most serious crimes.³

Compensation

Certain punishments require offenders to provide compensation for the damage caused by their crimes. There are three chief types of compensation ... fines, restitution, and community service.

Fine. A *fine* is a monetary penalty imposed on an offender and paid to the court. Most criminal statutes in the United States contain provisions for the imposition of fines. However, fines have not been widely used as criminal punishment because most criminals do not have the money to pay them.

Restitution. The term *restitution* refers to the practice of requiring offenders to compensate financially crime victims for the damage the offenders caused. In most cases, crime victims must initiate the process of obtaining restitution from the offender. Thus, when the criminal is prosecuted, the victim must inform the court of financial losses or medical expenses. Judges may impose restitution in conjunction with other forms of punishment, such as probation or incarceration.

Community Service. Offenders sentenced to *community service* perform services for the state or community rather than directly compensating the crime victim or victims. Some of the money saved by the government as a result of community service work may be diverted to a fund to compensate crime victims. Courts may also sentence offenders to community service to defray a portion of the administrative expenses of prosecution. Judges and parole authorities have discretion to determine the nature of the community service to be performed by the offender.^{3,19}

Incarceration

The most serious or repeat offenders are usually incarcerated. Criminals may be incarcerated in jails or in prisons.

Jails

Locally operated facilities, jails typically house persons convicted of misdemeanors, as well as individuals awaiting trial, witnesses in protective custody, offenders charged with crimes in other jurisdictions, probation and parole violators, and juveniles awaiting transfer to juvenile facilities. As a rule, jails house criminals sentenced to less than one year of incarceration. The majority of jails in the United States are small, consisting of a single building with several tiers of cells and cellblocks.

Some offenders receive a *split sentence*, serving some time in jail before being released on probation. In another variation, called *intermittent sentencing*, offenders spend weekends in jail, but return to the community during the week. This practice enables offenders to maintain jobs and remain in contact with their families while also being punished.^{3,19}

Prisons

Prisons are state or federally operated facilities that house individuals convicted of felonies. Typically, offenders sentenced to a year or more of incarceration are housed in prisons rather than jails.

Because prisons house long-term offenders, they frequently offer vocational and educational programs for inmate rehabilitation and self-improvement. Most jails do not have such programs. Jails also lack other inmate amenities that exist in prisons, such as exercise facilities, small stores,

and physicians, counselors, and other professionals on staff who treat or assist inmates in diverse ways.

Prison facilities usually spread out over several acres, with high walls topped with razor wire surrounding the perimeter. Prisons are also divided into a complex arrangement of custody levels so that more-dangerous inmates are separated from less dangerous ones. In most prisons, sophisticated equipment is used to track inmate movements and promote compliance with prison rules. Armed guards occupy strategic positions in towers in an overlapping security arrangement to deter prisoners from escape attempts.

In the United States, all federal prisoners must work if they are able, and they are paid a small wage for their labor. Each state has its own policy concerning prison labor. Some inmates who are capable of working are employed within the institution, performing such tasks as food preparation and building maintenance. A small proportion of prisoners participate in prison industries, which are for-profit enterprises that produce a wide range of goods and services. These industries manufactured a variety of goods, including agricultural products, garments and textiles, wood products, and furniture.

Most prisons offer counseling and educational programs designed to help inmates with drug or alcohol dependencies or mental health problems. Many inmates lack basic employment skills when they enter prison. The majority of prisons offer inmates a variety of educational and vocational-technical services. Under most conditions, inmates may voluntarily participate in these programs for purposes of self-improvement. Prison work teaches assorted skills, such as carpentry, computer programming, drafting, and electronics. These skills help inmates find jobs in the private sector. Availability of rehabilitative programs varies considerably among state prisons. Prison officials may assist inmates in job placements following release.^{3,19}

Types of Prisons

State and federal prisons are divided into tiers or units that house different types of offenders, which are differentiated according to the degree of risk they pose to other inmates and to prison personnel. Conventional custody levels include *minimum-security*, *medium-security*, and *maximum-security*, with each higher custody level involving closer supervision, more elaborate security, and more intensive inmate control. Some correctional institutions in the United States are multilevel; that is, they include all levels of custody within the same facility. Some multilevel facilities also include *super-maximum security* areas for the absolute worst and most dangerous criminals.

Some prisons are designed exclusively for women. Special facilities also exist to house juvenile offenders. Other institutions are specifically equipped to provide medical services or psychological counseling and therapy to offenders with physical or mental ailments.^{18, 19}

Prison Personnel

Like other institutions, prisons contain a leadership and authority structure responsible for governing and operating the organization. At the top of this hierarchy is the *Warden*, also known as the *Superintendent* or *Chief Administrator*. *Deputy Wardens* typically assist in administrative duties. *Correctional Officers* manage and control the inmates.

Administrators. The responsibilities of prison wardens include hiring and firing personnel, implementing new correctional policies, insuring the safety of prisoners and staff, and establishing

regulations to deal effectively with rule infractions by staff or inmates. However, no uniformity exists among the states about how each prison should be managed and what rules should govern the behavior of correctional officers. In general, fixed and limited correctional budgets impose serious constraints that prevent administrators from being fully effective in the performance of their tasks.¹⁹

Correctional Officers. Most correctional officer applicants receive several weeks of training. Prisons administer pre-employment screenings to detect illegal drug use or prior criminal records of applicants. A significant proportion of prison systems subject applicants to psychological testing.¹⁹

Privatization of Prisons

Typically, prisons in the United States are operated and funded through taxes, by either the states or the federal government. However, chronic prison and jail overcrowding has prompted the growth of prisons-for-profit ... privately owned and run prison and jail operations. Private prisons are financed and operated just as other for-profit businesses. Governments seeking to house inmates in a private prison typically pay a set amount per day per prisoner to the company. However, private prisons derive their authority over prisoners from the government, and are subject to greater governmental control than many other private corporations. Private-enterprise operations in corrections have taken place particularly in the juvenile justice system, where minimum-security detention facilities are often privately organized and managed.¹⁹

Execution

The most extreme form of punishment is death. *Execution* of an offender is known as *capital punishment*. Federal law authorizes capital punishment for more than 40 offenses, including premeditated murder, treason, and murder related to aircraft hijacking, drug trafficking, and civil rights violations. The majority of states also authorize the death penalty for violations of state criminal law, including such crimes as treason, murder, and rape. The majority of states that have the death penalty now execute offenders by means of lethal injection ... the administration of fatal amounts of fast-acting drugs and chemicals. Three states allow execution of criminals by hanging and three states provide for execution by firing squad.^{3,19} Capital punishment is further discussed in Chapter 19.

Other Approaches

In the United States, persons convicted of crimes are most often placed on probation. Those who have served prescribed terms of imprisonment may be placed on parole. Other options include furlough and half-way houses.¹⁹

Probation and Parole

A person who receives *probation* remains in the community, but is subject to supervision and must comply with various conditions. The conditions may include mandatory group or individual psychological counseling sessions, classes, or vocational training. Because growing numbers of offenders have drug or alcohol dependencies, drug rehabilitation programs are often included as a condition of probation. Probationers who have committed more serious crimes require tighter su-

pervision, including house arrest and electronic monitoring. *Parole* is a conditional, early release of a prisoner serving an indeterminate or unexpired sentence. The decision of whether or not to release a prisoner on parole is made by a special committee known as the *parole board*.^{2,19}

House Arrest. People under *house arrest* must remain in their house and may leave only for periods of work during the day. They must observe rigid curfews and allow probation officers to enter their homes at any time to inspect the premises for illegal drugs or other contraband.^{2,19}

Electronic Monitoring. This is often used in conjunction with house arrest. With *electronic monitoring*, the offender wears electronic bracelets or anklets that emit electronic signals that permit probation officers to detect whether the probationer is where he is supposed to be. Another type of electronic monitoring involves a telephonic device that reads the electronic signal of the probationer's bracelet. When probation officers call at random times, offenders must insert their bracelets into the device so that the officers can verify the offender's location.^{2,19}

Furlough

Some inmates may be granted furloughs (temporary leaves) so that they can spend weekends or holidays visiting with their families at home.^{2,19}

Halfway Houses

Parole boards place some paroled inmates in halfway houses. These community residences, staffed by counselors and aides, assist offenders in making the transition back into community life. Halfway houses provide released prisoners with a place to sleep and eat. In addition, halfway-house personnel help parolees find jobs and get access to needed services. Today, there are hundreds of halfway houses in the United States.^{2,19}

Goals of Criminal Punishment

Goals of criminal punishment include retribution, deterrence, incapacitation, and rehabilitation.

Retribution. The major driving force underlying all punishment is revenge, also referred to as *retribution*. In retaliation for wrongdoing, societies seek to punish individuals who violate the rules. There is little evidence to indicate that criminals change their behavior as a result of government-imposed retribution. Many former prisoners repeatedly commit crimes.^{2,19}

Deterrence. Criminal punishment is also intended as a *deterrent* to future criminality. Offenders who are punished may be deterred from future wrongdoing because they fear additional punishment. Others who contemplate crime may also be deterred from criminal behavior by examples set by the prosecution and punishment of prisoners.^{2,19}

Incapacitation. Isolating criminals from society through confinement or incarceration is the most direct method of crime prevention. *Incapacitation* of offenders in prisons and jails prevents them from harming others or damaging property. Inmates who are warehoused in large prisons where they associate closely with other criminals may develop additional antisocial behaviors. Consequently, incapacitation may perpetuate criminal behaviors rather than eliminate them.^{3,19}

Rehabilitation. Another goal of criminal punishment is *rehabilitation* of the offender. Supporters of rehabilitation seek to prevent crime by providing offenders with the education and skills to become productive members of society.^{2,19}

JUVENILE JUSTICE SYSTEM

In the second half of the 19th century, increased attention was given to the need for special legal procedures that would protect and guide the juvenile offender rather than subject the child to the full force of criminal law. As the U.S. juvenile justice system began to develop, jurisdiction over criminal acts by children was transferred from adult courts to the newly created juvenile courts. The first such court was established in Chicago in 1899.

The juvenile justice system tries to treat and rehabilitate youngsters who become involved in delinquency. The methods used can be categorized as community treatment, residential treatment, and institutionalization.^{1,3,8}

Community Treatment

In most instances, *community treatment* involves placing the child on probation. When the child is not believed to be harmful to others, he is placed under the supervision of an officer of the juvenile court and must abide by the specific rules that are worked out between the officer and the child. In some instances community treatment also takes the form of restitution, in which the child reimburses the victim, either through direct payment or through some form of work or public service. Furthermore, youngsters placed in community-based treatment programs do not reside at a facility. Instead they live at home and receive treatment from mental health clinics or similar services during the day.^{1,8}

Residential Treatment

Residential treatment generally takes place in a group home where the juvenile is provided with psychological and vocational counseling. Other forms of residential treatment include rural programs, such as forestry camps and work farms.

Institutionalization

Institutionalization is the most severe form of treatment for juvenile offenders. The child is incarcerated in a secure facility and denied freedom to come and go in the community. The institution is responsible for the child's counseling, education, recreation, room and board, and other daily activities.

In the United States, the federal government has no correctional institutions or judicial means for prosecuting and confining juveniles. However, juvenile correctional institutions exist in every U.S. state, and various local family and juvenile courts adjudicate juvenile offenses. Some states operate industrial schools or reform-oriented institutions that are designed to accommodate minors. Some institutions also house *status offenders*; that is, minors who have committed acts that would not be crimes if adults committed them, but which are prohibited to minors. Examples of such acts include running away from home, violating a curfew, and truancy from school.

Typically, judges avoid the option of incarceration as much as possible in cases involving juveniles, using it only after repeated offenses or in the case of serious and violent delinquents.

Judges determine length of incarceration based on various factors, including the nature of the offense and the offender's prior record. However, compared with adult offenders, juveniles spend shorter periods of time incarcerated. In most jurisdictions, juveniles must be released from confinement after they reach adulthood unless their delinquent offenses are accompanied by special circumstances, such as death of, or serious injury to, victims.

Correctional institutions for juveniles may be secure or non-secure. Secure institutions for juveniles are similar to prisons for adults. However, most juvenile institutions have dormitory-like atmospheres and individual rooms similar to those on college campuses. Officials lock juveniles up at night and require them to participate in various programs during daytime hours. These programs may include basic education, vocational and technical training, and counseling on an individual or group basis. Non-secure settings may be camps or ranches where youths participate in supervised outdoor activities and learn various skills.

Younger offenders may be sentenced to highly regimented, military-style correctional programs known as boot camps. Generally, offenders volunteer to participate in boot camp programs to avoid other types of incarceration. At boot camps, officials subject offenders to strict discipline and physical training. They also provide educational or vocational programs. Boot camps serve as an alternative to traditional, long-term incarceration and attempt to train offenders to be law-abiding. Typically, boot camp sentences range from two to six months.^{1,8}

ISLAMIC LEGAL SYSTEM

Islam is one of the three major world religions ... along with Judaism and Christianity ... that professes to believe in a single God ... the God of Abraham. In the Arabic language, the word *Islam* means *surrender* or *submission* to the will of *Allah*, which is the Islamic word for God. A follower of *Islam* is called a *Muslim*, which in Arabic means *one who surrenders to God*. *Islam's* central teaching is that there is only one all-powerful, all-knowing God, and this God created the universe. They reject the Christian notion of the Trinity, viewing it as the worship of three gods. They believe that Jesus existed, but was a prophet rather than the Son of God.

Sharia (Arabic for "the way") is a term that refers to the body of laws and rules that regulate Muslim life. These laws are an expression of God's will, according to Muslim belief. The application of the laws depends on interpretation by jurists; that is, leaders versed in Islamic law. Thus, while only one *Sharia* exists, it is expressed in legal interpretation so that there are many schools of *Sharia*. Although some commandments are clearly enunciated in the *Koran*, jurists must derive most of them along the principles of a methodology known as the *science of the law*. The *Koran* is the sacred text of *Islam*, considered by Muslims to contain the revelations of God to Muhammad.

According to the science of law, four principal sources provide the basis for the *Sharia*: (1) the *Koran*; (2) the *Sunnah*, which is the collection of actions and sayings of the prophet Muhammad, the founder of *Islam*; (3) *ijma*, meaning *consensus*, which for most jurists refers to the consensus over the centuries of the schools of law, but which may also refer to the consensus of the Muslim community; and (4) *qiyas*, reasoning by analogy, in which jurists formulate new laws based on the *Koran* or the *Sunnah*.

The science of the law, in addition to providing principles of interpretation, categorizes the human actions that are covered by law. These actions are divided into (1) obligatory, (2) recommended, (3) permissible, (4) reprehensible, and (5) prohibited actions. Only violations of laws that belong to the first and last categories (obligatory and prohibited) carry punishment under formal law; violations of laws in the other categories (recommended, permissible, and reprehensible) are punishable only by God.

Over time, the laws that Muslims follow have been elaborated on by the Islamic schools of law. When the schools of law agree on a judgment, it becomes binding on Muslims. Today there are five schools of law, and their work is largely limited to applying laws and judgments passed in earlier times. The most important debate among modern Muslims concerns whether the Sharia should be applied in all aspects of life, and whether, and how, to renovate it so that it addresses the most pressing issues facing the Muslim world today.

Punishment under Sharia law includes amputation of one or both hands for theft, stoning to death for adultery, and beheading with a sword for drug crimes and murder.^{20,21}

INTERNATIONAL LEGAL SYSTEM

Although there are no international police forces, *Interpol* serves some police functions, and the *International Court of Appeal* is involved with resolving controversies among countries and trying individuals accused of war crimes.

Interpol

Interpol is the world's largest international police organization with 181 member countries. It was established in 1923 to enhance and promote cross-border police co-operation. Its mission is to help police and law enforcement officers from around the world ... with different languages, cultures, and national laws ... to co-operate with one another to combat crime. Because of the unbiased role *Interpol* must play at the international level, its constitution does not allow it to engage in any activity of a political, military, religious, or racial character.

Interpol receives, stores, analyses, and circulates criminal data in co-operation with its member countries around the clock in its four official languages (English, French, Spanish, and Arabic). *Interpol* deals only with international crimes; that is, crimes that involve two or more member countries. *Interpol*'s core functions are to provide member states with a secure global communications system; to provide timely and effective exchange, storage, and processing of important police information to all member countries; and provide other related services, including the issuing of international wanted persons notices and similar alerts.

Every member country has an *Interpol* contact point called a *National Central Bureau* (NCB) which is staffed by its own police. This bureau is the single point of contact for foreign governments requiring assistance with overseas investigations and appropriate contact information when confronted with different police structures in other countries.

Contrary to popular belief, *Interpol* officers do not travel around the world investigating cases in different countries. Each member country employs its own officers to operate in its own territory and in accordance with its own national laws. Each member country can also send officers to serve a tour of duty at the organization's *General Secretariat* in Lyon France.²²

International Court of Justice

The *International Court of Justice* was formed when the United Nations was organized after World War II. Its seat is at the *Peace Palace* in *The Hague* (Netherlands). In 1946 it replaced the *Permanent Court of International Justice*, which had functioned in the *Peace Palace* since 1922.²¹

Functions of the Court