Forensic Psychology
Promises and Problems

WHAT IS FORENSIC PSYCHOLOGY?

The term forensic psychology has taken a quantum leap in national awareness over the past few decades. However, in the minds of most members of the public (particularly after television shows such as Criminal Minds) the term evokes a particular image: that of a clinical psychologist seeking to understand the nature of a particular crime or criminal in order to solve a crime, or to testify as an expert about that crime after it is solved. But what is forensic psychology? As a beginning definition, this book proposes that forensic psychology is broadly defined as “any application of psychological research, methods, theory, and practice to a
task faced by the legal system” (see also Bartol & Bartol, 2004 for a similarly broad definition). Recently, Hess (2006) proposed a three-part functional definition of forensic psychology by describing the three ways that psychology and the law interact: psychology in the law, psychology by the law (i.e., rules and laws governing practice), and psychology of the law. This text focuses primarily on psychology in the law and the psychology of the law.

Thus, appropriate subjects for forensic psychology expertise can include such widely varying activities as clinical psychological evaluations in child custody or criminal cases, and social psychological consultation on jury selection or pretrial publicity effects (see Box 2.3 in Chapter 2). Forensic psychologists can be found doing research, working with law enforcement officials, serving as expert witnesses, advising legislators on public policy, and in general doing things that people might not expect. Consider the following real-life examples:

- **Gary Wells** is a Distinguished Professor of Psychology at Iowa State University. His training is in social psychology, and his specialty is the psychology of eyewitness identification (see Chapter 10). Dr. Wells teaches classes and mentors graduate students. He has also published numerous articles in scholarly journals on the question of eyewitness identification and the factors that affect eyewitness accuracy. Apart from his basic teaching and research, Dr. Wells is frequently asked to be an expert witness in criminal cases. In addition, he is active in educating lawyers and judges about eyewitness issues and in attempting to change public policy on eyewitness identification (for example, by testifying in front of congressional committees with regard to legislative changes, or by working with law enforcement officials to change eyewitness evidence collection techniques; see Wells et al., 2000; Farmer, 2001; Doyle, 2004).

- **Antoinette Kavanaugh** is the Clinical Director of the Cook County Juvenile Court Clinic (CCJCC), in Chicago, Illinois. Cook County Juvenile Court is the oldest Juvenile Court in the country and is a very large court system. The CCJCC does many things, among which is conducting court-ordered forensic evaluations of youths and their families who are involved in the Juvenile Justice and Child Protection Divisions of the Court. As Clinical Director, Dr. Kavanaugh conducts juvenile justice forensic evaluations (e.g., sentencing, competencies, and Not Guilty by Reason of Insanity—see Chapter 5). She also supervises other doctoral-level clinicians who conduct evaluations as well as master’s-level professionals who are liaisons to the courtroom, and trains judges and lawyers about issues related to forensic psychology.

- **Heather Kelly** works at the Science Public Policy Office of the American Psychological Association in Washington, D.C. Her doctorate is in clinical psychology from the University of Virginia. Part of her job is to bring science, and the science of psychology in particular, to bear on the federal legislative process. This can take the form of lobbying members of Congress directly on substantive issues about which a body of psychological research has something to say, and it can also entail more indirect ways of highlighting the relevance of scientific psychology on Capitol Hill, such as holding briefings and bringing in psychologists to testify before congressional committees.

- **Joy Stapp** was trained as a social psychologist; she currently is a partner and co-owner of Stapp Singleton, a firm that specializes in trial consulting. The firm is hired primarily by attorneys representing defendants in lawsuits—that is, in civil cases, not criminal trials. Her firm concentrates on cases dealing with trademark disputes, intellectual property conflicts, and other commercial litigation. Other trial consultants may assist in personal injury cases; for example, an electrician may have been injured on the job and is claiming that the manufacturer of a transformer was negligent in constructing the piece of equipment.
Trial consultants assess the attitudes of people role-playing as jurors in a trial in order to identify issues perceived by the actual trial jurors; they assemble attitude questions based on psychological concepts that may influence the mock jurors who have observed a rehearsal of the trial. Are the verdicts of the mock jurors related to attitudes they expressed prior to the trial? Could the selection of actual jurors for the trial be influenced by such attitudes? Trial consultants may also be asked to conduct surveys to determine the extent and nature of pretrial publicity in a case (see Chapter 12).

Marissa Reddy Randazzo (now in private practice) served until recently as the chief research psychologist and research coordinator for the U.S. Secret Service, working in their National Threat Assessment Center. In this capacity, she directed all Secret Service research on threat assessment and various types of violence, including assassination, stalking, school shootings, workplace shootings, and terrorism. The day-to-day aspects of her job included developing research ideas, forming partnerships with other government agencies, collaborating with consultants, implementing study plans, overseeing the work of the project managers who run the studies, and translating research findings into training modules relevant to law enforcement operations. As part of her job, she regularly conducted training for local, state, and federal law enforcement personnel, for agencies in the U.S. intelligence community, and for school and corporate security personnel. On occasion, she had to brief members of Congress, Cabinet secretaries, and White House staff. Dr. Randazzo received a Ph.D. in clinical psychology from Princeton University.

National leaders are the recipients of an untold number of threats, but how can those that might lead to assassination attempts be distinguished from those that simply “let off steam” or are otherwise less serious? Can FBI agents and other law enforcement officials identify those individuals whose threats are a function of mental illness? (See Chapter 4.)

The foregoing examples reflect the variety of activities that may fall under the label “forensic psychology.” Note that the training and past experiences of these forensic psychologists differ, depending on their role. A forensic psychologist who does court-ordered child custody or criminally related evaluations, or who works in a prison or with law enforcement, will come from a background in clinical psychology and is likely to have had a more diversified clinical practice before he or she came to focus on forensic psychology. Other forensic psychologists, for example, those who specialize in eyewitness reliability and the factors that affect it, or trial consultants who work with attorneys on issues related to jury selection or pretrial publicity effects, may have been trained as experimental psychologists, social psychologists, cognitive psychologists, or developmental psychologists. In this book, Chapters 3 through 9 will focus on clinically related applications of forensic psychology, while Chapters 10 through 16 will focus on social, cognitive, and experimental applications of forensic psychology.

To simply assert without discussion that forensic psychology is “any application” of psychology to the legal system, as we do here, fails to acknowledge an ongoing controversy within the field as to just who is a forensic psychologist and how one should be trained to become one. The development of doctoral training programs with “forensic psychology” in their title has accelerated in the last five years and is still evolving (Melton, Huss, & Tomkins, 1999; Krauss & Sales, 2006). Not all observers would agree that each of the preceding examples reflects their definition of forensic psychology.

Even a former president of the American Psychology-Law Society, in his presidential address, asked, “What is forensic psychology, anyway?” (Brigham, 1999). Brigham’s (1999) thoughtful review examined the definitions of forensic psychology in the professional literature and separated them into broad and narrow types. The definition that began this chapter is, of course, a broad one; a
more narrow definition would limit the focus of forensic psychology to clinical and professional practice issues, such as assessing insanity or mental competency, testifying about rape trauma or battered woman syndrome, conducting child custody evaluations, and other activities that rely upon professional training as a clinical or counseling psychologist.

This type of definition would exclude the evaluation-research function as well as many specific activities, including those by the research psychologist who testifies as an expert witness or the trial consultant who conducts surveys about the effects of pretrial publicity. Those psychologists trained in experimental, social, or developmental psychology, but who lack clinical training, would not be eligible. Thus, it must be recognized that for many psychologists, “forensic psychology” is seen as a subspecialization of clinical psychology. As an illustration, the workshops offered by the American Academy of Forensic Psychology have been primarily on clinical psychology topics (Brigham, 1999); recent sessions covered child sex abuse allegations, the MMPI-2 and the Rorschach in court, assessing psychopathy, and the battered woman defense. Recently, this has changed somewhat, with the inclusion of workshops on topics such as eyewitness identification and jury selection (for current information on workshops, see www.abfp.com).

Thus, honest disagreement exists over how encompassing the definition should be. With a narrow definition, many psychologists would be left, to use Brigham’s term, in a “definitional limbo.” Consider Brigham’s own situation: A social psychologist and a professor, he has not had training in clinical psychology. He carries out research on eyewitnesses’ memory and sometimes provides expert testimony in criminal trials. When asked in court, “Are you a forensic psychologist?” he has said:

My most accurate current response would seem to be, “Well, it depends. . . .” And, in my experience, judges hate responses of that sort, which they see as unnecessarily vague or evasive. (Brigham, 1999, p. 280, italics in original)

As more and more graduate students seek training in forensic psychology, the lack of an agreed-upon definition increases the magnitude of the problem. One manifestation of the issue is the question of whether the American Psychological Association (APA) should certify a “specialty” or “proficiency” in forensic psychology. (Recently, only three specializations in psychology had such a designation—clinical, counseling, and school psychology.) Although it is true that the purpose of a “specialty” designation is to evaluate specific graduate-school training programs and not to credential individuals, a concern exists that such labels in the future may be applied to individual psychologists. So should a training program that seeks a specialty designation as forensic psychological include only clinical-type training, or should it be broader? Or, should such a specialty designation even be sought? Arguments have been offered for each perspective (Brigham, 1999; Heilbrun, 1998). After completing a survey of its membership and extensive discussion, the Executive Committee of the American Psychology-Law Society voted in August 1998 to support a narrow clinical definition of the specialty area of forensic psychology, with a request that the APA designate this specialty as “clinical forensic.” In 2000, the American Psychology-Law Society submitted an application for the forensic psychology specialty designation. The APA approved it in 2001, but without the word clinical in the name.

Throughout the preceding discussion, the theme of “either-or” has arisen—that is, only training limited to clinical psychology, or more than clinical training. Some forensic psychologists have suggested a richer, less adversarial conception of what training in forensic psychology should be. Kirk Heilbrun (described in Brigham, 1999) has offered a model that reflects three training areas and two approaches; this conceptualization is reprinted in Table 1.1. This approach is a comprehensive one, and the coverage of what is forensic psychology in this book is in keeping with Heilbrun’s conceptualization.

Note that among the training topics in his model are consultation in jury selection and in
HISTORY OF THE RELATIONSHIP BETWEEN PSYCHOLOGY AND THE LAW

TABLE 1.1 Heilbrun’s Conceptualization of Training in Forensic Psychology

<table>
<thead>
<tr>
<th>Law and Psychology Interest Areas (with associated training)</th>
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<tbody>
<tr>
<td><strong>Experimental (clinical, counseling, school psychology)</strong></td>
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<tr>
<td>1. Assessment tools</td>
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<tr>
<td>2. Intervention effectiveness</td>
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<tr>
<td>3. Epidemiology of relevant behavior (e.g., violence, sexual offending) and disorders</td>
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<tr>
<td><strong>Clinical (social, developmental, cognitive, human experimental psychology)</strong></td>
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<tr>
<td>1. Memory</td>
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<td>2. Perception</td>
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<td>3. Child development</td>
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<tr>
<td>4. Group decision making</td>
</tr>
<tr>
<td><strong>Legal (law, some training in behavioral science)</strong></td>
</tr>
<tr>
<td>1. Mental health law</td>
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<tr>
<td>2. Other law relevant to health and science</td>
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<tr>
<td>3. Legal movements</td>
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<tr>
<th>Research/Scholarship</th>
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<tbody>
<tr>
<td>1. Forensic assessment</td>
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<tr>
<td>2. Treatment in legal context</td>
</tr>
<tr>
<td>3. Integration of science into practice</td>
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<tr>
<td><strong>Applied</strong></td>
</tr>
<tr>
<td>1. Consultation re jury selection</td>
</tr>
<tr>
<td>2. Consultation re litigation strategy</td>
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<tr>
<td>3. Consultation re “state of science”</td>
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<tr>
<td>4. Expert testimony re “state of science”</td>
</tr>
<tr>
<td>1. Policy and legislative consultation</td>
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<td>2. Model law development</td>
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litigation strategy (the topics of Chapter 12), policy and legislative consultation (described in Chapter 16), and expert testimony on the state of the science on such topics as eyewitness reliability (Chapter 10) or confessions (Chapter 11), as well as such traditional topics as forensic assessments of various sorts (Chapters 5–9).

HISTORY OF THE RELATIONSHIP BETWEEN PSYCHOLOGY AND THE LAW

We have seen the diversity of activities by contemporary forensic psychologists. But how did we get where we are today? What was the relationship of the two fields when they began to interrelate? How have matters changed?

The division between those contemporary psychologists who conduct research in search of scientific laws (“basic” psychology) and those psychologists who work toward the alleviation of detrimental behaviors in individuals (“applied” psychology) can be traced back to the beginnings of the twentieth century (see the following sections). The distinction is certainly relevant to the origin of forensic psychology.

The Applied Side

As long as criminal law has attempted to regulate human conduct, the courts have faced the applied challenge of dealing with those people, who, because of mental disturbance or perhaps a criminal tendency, cannot or will not conform their behavior to legal requirements.

Cesare Lombroso, an Italian who lived from 1836 to 1909, is considered the father of modern criminology, because he sought to understand the causes of crime (see Lombroso, 1876), albeit from a biological perspective. In the United States, the development of separate juvenile courts, first done in Illinois in 1899, led William Healy, a physician, to initiate a program to study the causes of juvenile delinquency. His founding of the Juvenile Psychopathic Institute in 1909, with a staff that included psychologist Grace M. Fernald, led to increased emphasis on the foundations of criminal behavior. Dr. Fernald was one of the first
psychologists to specialize in the diagnosis and treatment of juvenile delinquency. Also, during the late 1800s and early 1900s, Sigmund Freud was developing his theory of personality, and his writings about psychopathology influenced thinking about the causes of criminal behavior. In a speech in 1906 to a group of judges, Freud proposed that psychology could be of practical use to their field (Horowitz & Willging, 1984).

The Academic Side: The Role of Hugo Münsterberg

But a second thrust came from academic psychology. Consider the following quotation from a prominent psychology-and-law researcher regarding his building facilities: “[V]isiting friends [would find], with surprise, twenty-seven rooms overspun with electric wires and filled with [equipment], and a mechanic busy at work” (Münsterberg, 1908, p. 3). Five pages later, this psychologist wrote: “Experimental psychology has reached a stage at which it seems natural and sound to give attention to its possible service for the practical needs of life” (p. 8).

A contemporary statement? No, it is from On the Witness Stand (1908), written by psychologist Hugo Münsterberg a century ago. It is an appropriate indication of the importance, longevity, and centrality of forensic psychology to note that one of the original founding members of the APA in 1892, James McKeen Cattell, was an active researcher in eyewitness reliability (Fulero, 1999; see Chapter 10 of this book; see also Bartol & Bartol, 2006). A few months later, five other psychologists were added to the membership list. One of these was Hugo Münsterberg, who, in September 1892, had come from Germany to the United States, to establish—at William James’s invitation—the psychological laboratory at Harvard University. At the APA’s first annual meeting in December 1892 in Philadelphia, a dozen papers were presented. Münsterberg’s was the final one; in it, he criticized his colleagues’ work as “rich in decimals but poor in ideas” (see Cattell, 1894, 1895).

Although psycholigical issues captured only a small portion of Münsterberg’s professional time, his impact on the field was so prodigious that it is appropriate to call him the founder of forensic psychology. His choices of what to do are still implicitly reflected in research activities of psychologists interested in the legal system. For example, the chapter topics of Münsterberg’s 1908 book—memory distortions, eyewitness accuracy, confessions, suggestibility, hypnosis, crime detection, and the prevention of crime—in varying degrees define what some psychologists think of as topics for contemporary forensic psychology.

Münsterberg was by no means the sole instigator of a movement. In some ways, he was a less-than-ideal symbol; he was arrogant and pugnacious, and he often engaged in self-important posturing. Even William James later described him as “vain and loquacious” (Lukas, 1997, p. 586). More important, there were other pioneers, too (Ogloff, 2000). Even before Münsterberg published his book, Hermann Ebbinghaus (1885), using himself as a subject, demonstrated the rapid rate of early memory loss. In France, Alfred Binet, as early as 1900, was seeking to understand children’s competence as eyewitnesses (Yarmey, 1984). In Germany, Louis William Stern began publishing eyewitness research as early as 1902; during the next year, he was admitted to German courts of law to testify as an expert witness on eyewitness identification. Stern (1903) established a periodical dealing with the psychology of testimony. While it is true that much of the early work published there was classificatory (for example, six types of questions that might be asked of an eyewitness), other contributions were empirical; for example, Stern compared the memory abilities of children and adults. Wells and Loftus observed: “Not surprisingly, the early empirical work was not of the quality and precision that exists in psychology today” (1984, p. 5). Yet the foundation was set.

Guy Montrose Whipple (1909, 1910, 1911, 1912), in a series of Psychological Bulletin articles, brought the Aussage (or eyewitness testimony) tradition into English terminology, introducing American audiences to classic experiments relating testimony and evidence to perception and memory. Even before World War I, “law was acknowledged
as a fit concern for psychology and vice versa” (Tapp, 1976, pp. 360–361).

But Münsterberg was the psychologist “who pushed his reluctant American colleagues into the practical legal arena” (Bartol & Bartol, 1999, p. 7), and thus he had the greatest impact—for good or bad. Some of the topics first illuminated by Münsterberg and his contemporaries remain in the limelight, including the work on lie detection (see discussion of William Marston in Box 1.1 below). Especially with regard to the accuracy of eyewitness identification, the immense interest in recent times can be directly traced to Münsterberg’s work (Moskowitz, 1977; Bartol & Bartol, 2006).

Münsterberg’s Goals for Psychology and the Law. Münsterberg’s mission has been described as raising the psychological profession to a position of importance in public life (Kargon, 1986), and the legal system was one vehicle for doing so. Loftus (1979) commented: “At the beginning of the century, Münsterberg was arguing for more interaction between the two fields, perhaps at times in a way that was insulting to the legal profession” (p. 194). “Insulting” is a strong description, but it is true that Münsterberg wrote things like this: “[I]t seems astonishing that the work of justice is carried out in the courts without ever consulting the psychologist and asking him for all the aid which the modern study of suggestion can offer” (1908, p. 194). At the beginning of the twentieth century, chemists and physicists were routinely called as expert witnesses (Kargon, 1986). Why not psychologists? Münsterberg saw no difference between the physical sciences and his own.

Münsterberg’s Values. Münsterberg’s specific views toward the court system help us understand the actions he took.

More importantly, they cause us to ask: How different are our values and beliefs from his?

The jury system rests on a positive assumption about human nature—that a collection of reasonable people are able to judge the world about them reasonably accurately. As Kalven and Zeisel put it, the justice system recruits a group of twelve lay people, chosen at random from the widest population; it convenes them for the purpose of a particular trial; it entrusts them with great official powers of decision; it permits them to carry out deliberations in secret and report out their final judgment without giving reasons for it; and, after their momentary service to the state has been completed, it orders them to disband and return to private life. (1966, p. 3)

Furthermore, our society values the rights of the accused; it protects suspects against self-incrimination and places the burden of proof on the state to show guilt beyond a reasonable doubt. As his biographer, Matthew Hale, Jr., saw it, Münsterberg took a very different view of society and the role of the psychologist as expert. “The central premise of his legal psychology . . . was that the individual could not accurately judge the real world that existed outside him, or for that matter the nature and processes of his own mind” (Hale, 1980, p. 121). Thus, police investigations and courtroom procedures required the assistance of a psychologist.

Three Crucial Activities. Münsterberg reflected his desire to bring psychology into the courtroom by:

1. Demonstrating the fallibility of memory, including time overestimation, omission of significant information, and other errors.

2. Publishing On the Witness Stand, which was actually a compilation of highly successful magazine articles. As a result of these articles, he became, after William James, America’s best-known psychologist (Lukas, 1997). His goal in these McClure’s Magazine pieces was to show an audience of laypeople that “experimental psychology has reached a stage at which it seems natural and sound to give attention also to its possible service for the practical needs of life” (1908, p. 8).

3. Offering testimony as an expert witness in highly publicized trials. Perhaps most
controversial was his intrusion in the 1907 Idaho trial of labor leader “Big Bill” Haywood (Hale, 1980; Holbrook, 1987). The International Workers of the World (IWW) leader was charged with conspiracy to murder Frank Steunenberg, a former governor of Idaho and a well-known opponent to organized labor. On December 30, 1905, in Caldwell, Idaho, Steunenberg had opened the gate to his modest home and was blown apart by a waiting bomb. The murder trial transformed Haywood into an international symbol of labor protest; Clarence Darrow offered his services as defense attorney, and people like Eugene V. Debs and Maxim Gorky rallied support (Hale, 1980).

The case against Haywood rested on the testimony of the mysterious Harry Orchard, a onetime IWW organizer who—after a four-day interrogation—confessed to committing the bombing (as well as many other crimes) at the behest of an “inner circle” of radicals, including Haywood. Münsterberg firmly believed that one of psychology’s strongest contributions was in distinguishing false memory from true; thus, he examined Orchard in his cell, during the trial, and conducted numerous tests on him over a period of seven hours, including some precursors of the polygraph. In Münsterberg’s mind, the most important of these was the word association test. Upon returning to Cambridge, Münsterberg permitted an interview with the Boston Herald (July 3, 1907), which quoted him as saying, “Orchard’s confession is, every word of it, true” (Lukas, 1997, p. 599). This disclosure, coming before a verdict had been delivered, threatened the impartiality of the trial, and Münsterberg was rebuked by newspapers from Boston to Boise. Still, the jury found Haywood not guilty, as the state did not produce any significant evidence corroborating Orchard’s confession, as Idaho required. Two weeks later, Münsterberg amended his position by introducing the concept of “subjective truthfulness.” His free association tests, he now concluded, revealed that Orchard genuinely believed he was telling the truth, but they couldn’t discern the actual facts of the matter.

Despite the adverse publicity, Münsterberg maintained his inflated claims for his science. In a letter to the editor, he wrote: “To deny that the experimental psychologist has indeed possibilities of determining the ‘truth-telling’ process is just as absurd as to deny that the chemical expert can find out whether there is arsenic in a stomach or whether blood spots are human or animal origin” (quoted by Hale, 1980, p. 118). His claims took on exaggerated metaphors; he could “pierce the mind” and bring to light its deepest secrets.

In fairness, it should be noted that Münsterberg did not limit his advocacy to one side in criminal trials. In one case, he felt that the defendant’s confession was the result of a hypnotic induction and hence false, so Münsterberg offered to testify for the defense. In the Idaho case, his conclusions (which, if not derived from his political ideologies, were certainly in keeping with his antipathy to anarchy and union protest) supported the prosecution.

Münsterberg, like most true believers committed to their innovative theories, may have exaggerated his claims in order to get attention and convince himself of the merits of his claims. His biographer, Matthew Hale (1980), has made a strong case that Münsterberg “deceived himself with alarming frequency, and his distortions in certain cases bordered on outright falsification” (1980, p. 119).

**Reaction from the Legal Community**

Not surprisingly, Münsterberg’s advocacy generated withering abuse from the legal community.

One attack, titled “Yellow Psychology” and written by Charles Moore, concluded that the laboratory had little to lend to the courtroom and expressed skepticism that Münsterberg had discovered a “Northwest Passage to the truth” (quoted in Hale, 1980, p. 115).

John Henry Wigmore, a law professor and a leading expert on evidence, cast an article (1909) in the form of a trial against Münsterberg during which lawyers cross-examined him for damaging assertions. This article, was, in the words of Wallace Loh, “mercilessly satiric” (1981, p. 316);
it suggested that experimental psychology, at the

time, lacked enough knowledge to be practical
(Davis, 1989). Furthermore, Wigmore argued that
the jury system distrusted those outside interfer-
ences, such as Münsterberg’s, that intruded upon
their commonsense judgments. But Wigmore
made a telling point in his article. As Loftus
(1979) has reminded us, in Wigmore’s courtroom
drama: “Before the jurors left the courtroom to go
home, the judge took a few moments to express
his personal view. He said essentially this: In no
other country in the civilized world had the legal
profession taken so little interest in finding out what
psychology and other sciences had to offer that
might contribute to the nation’s judicial system”
(p. 203).

A Period of Inactivity

Perhaps for these reasons—exaggeration by
Münsterberg and avoidance by legal authorities—
research by scientific psychology applicable to the
courts languished from the First World War until
the latter half of the 1970s (Ogloff, 2000). There
were contributions in the 1920s (Marston, 1924;
see Box 1.1), 1930s (Stern, 1939), 1940s (Weld &
Danzig, 1940), and into the 1960s (Toch, 1961),
but they were infrequent. Historical treatments of
the development of the field (for example, Bartol &
Bartol, 1999; Davis, 1989; Foley, 1993; Kolasa,
1972) noted that a few works examined the legal
system from the psychological perspective; those
included such books as Burtt’s Legal Psychology in
1931 and Robinson’s Law and the Lawyers in 1935,
and some speculative reviews in law journals
(Hutchins & Slesinger, 1928a, b, c; Louisell, 1955,
1957). There were even books like McCarty’s
Psychology for the Lawyer in 1929 (McCarty, 1929).
But until the 1960s, a good deal of the work on the
social science of law was done by anthropologists,
sociologists, and psychiatrists (Tapp, 1977; see, e.g.,

The relationship between eyewitness confi-
dence and accuracy is an example of the gap in
research activity. Münsterberg performed perhaps
the first empirical test of this relationship (Wells &
Murray, 1984). In his test, children examined
pictures for 15 seconds and then wrote a report of
everything they could remember. Subsequently, he
asked them to underline those parts of their report
of which they were absolutely certain. Münsterberg
reported that there were almost as many mistakes in
the underlined sentences as in the rest. Other stud-
ies in the first years of the twentieth century, by
Stern and by Borst, were reported by Whipple
(1909). Paradoxically, no further empirical interest
surfaced until almost 65 years later (Wells &
Murray, 1984).

Explanations for the “lull” in empirical psycho-
logical research on legal issues came from Sporer
overgeneralizations drawn from experimental stud-
ies that did not meet adequately the demands of
complex courtroom reality” (quoted by Wells &
Loftus, 1984, p. 6). Another reason is offered by
Wells and Loftus: that “psychological research dur-
ing that time was oriented primarily toward theo-
retical issues with little focus on practical problems”
(1984, p. 6).

Resurgence in the 1970s

Interest in legal issues from experimental psycholo-
gists and social psychologists did not resume until
the 1970s (Ogloff, 2000); with regard to one exam-
ple, eyewitness identification, Wells and Loftus
(1984) estimated that over 85% of the entire pub-
lished literature surfaced between 1978 and the

Why the rise in the 1970s? One reason, ac-
cording to Wells and Loftus (1984), was a renewed
emphasis on the need to make observations in nat-
ural contexts in order to understand social behavior
and memory. More generally, social psychology in
the 1970s responded to a crisis about its relevance
by extending its concepts to real-world topics, in-
cluding health and the law (Davis, 1989). Nagel
went so far as to claim: “The contemporary law
and psychology movement has been the direct out-
growth of social psychologists’ self reflection on
the failure of their discipline to advance social policy: it
was an explicit rejection of the academically effete
nature of much social psychological curiosity and an attempt to become more ‘action-oriented’” (1983, p. 17).

James H. Davis (1989) took a different approach:

It is tempting to draw a general parallel between the temporal sequence of the past: Münsterberg’s proposals; reaction and critique of other scholars, disenchantment among social psychologists; and finally, abandonment of efforts at application of psychology to law. But something different happened “the next time around.” The general disenchantment that was characteristic of the latter “crisis” period was not followed by an “abandonment phase.” Rather, we have seen a continuous evolution and strengthening of some new developments during the succeeding years—a period in which applied research in social psychology came to be recognized in its own right. (p. 201, italics in original)

**The Present**

Where do we stand now? Psychologists do research on a number of topics relevant to the real world of the legal system; beyond the extensive work on jury decision making, psychologists have studied such diverse phenomena as sentencing decisions, the impact of the specific insanity definition, children’s abilities as eyewitnesses, and the impact of the battered woman defense.

Much of this work has been done in laboratories, with limitations to its applications to real-world decisions.

At the same time, judges, trial attorneys, police, and other representatives of the legal system are making real-world decisions—about the competency of a defendant, about which jurors to dismiss, about how to interrogate a suspect. Applied psychologists sometimes have an influence in such decisions as well as the thousands of others made daily in the legal system.

It is our position that it is time for psychologists to move beyond basic research and to focus on how their perspective can improve the decisions made in law offices and courtrooms. In doing so, we will need to face the obstacles alluded to earlier in this chapter. Each profession and each discipline has its own way of doing things, its own way of seeing the world and defining the experiences in it. Police operate out of shared assumptions about the nature of the world; the experience of going through law school socializes attorneys to emphasize certain qualities; judges learn certain values and emphasize them in their decisions. Forensic psychologists must recognize these values (as well as their own) as they attempt to have an impact.

**CONFLICTS BETWEEN PSYCHOLOGY AND THE LAW**

Disagreement within the field about the extent and limits of forensic psychology is not the only
problem we face. When psychology seeks to apply its findings to the legal system, it faces the task of working with another discipline, that of the law. Lawyers—including judges, trial lawyers, and law school professors—are trained to look at human behavior in a way different from the perspective of psychologists (Horowitz & Willging, 1984). Thus, we next examine the nature of these conflicts between the law and psychology (and other social sciences). Only after that exploration may we move to a more extensive description of the various roles of forensic psychologists, in Chapter 2.

If forensic psychology can succeed in any systematic way, it must first confront the conflicts between the goals and values of the legal profession and those of psychology. The following paragraphs examine some of these conflicts in depth (see also Box 1.2).

## Laws and Values

Laws are human creations that evolve out of the need to resolve disagreements. In that sense, laws reflect values, and values are basic psychological concepts (Darley, Fulero, Haney, & Tyler, 2002; Finkel, Fulero, Haugaard, Levine, & Small, 2001). **Values** may be defined as standards for decision making, and thus laws are created, amended, or discarded because society has established standards for what is acceptable and unacceptable behavior. Society’s values can change, leading to new laws and new interpretations of existing laws. For example, for many years society looked the other way when a married man forced his wife to have sexual relations against her will, but society has become increasingly aware of and concerned about what is called *spousal rape*, and now every state in the United States has laws that prohibit such actions.

Each discipline approaches the generation of knowledge and the standards for decision making in a different way. An attorney and a social scientist will often see the same event through different perspectives, because of their specialized training. Judges may use procedures and concepts different from those of psychology in forming their opinions. It is not that one approach is correct and that the other is wrong; rather, they are simply different.

Some lawyers rely on psychologists to help plan effective trial tactics, and many courts now accept psychologists as expert witnesses on a variety of

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**Box 1.2 Tensions Between Law and Psychology**

The tensions between law and psychology may be expressed as dichotomies (Haney, 1980). Nagel (1983, p. 3) and Haney (1980) list the following as the most frequently cited:

1. Psychology’s emphasis on innovation and counterintuitive thinking versus law’s *stare decisis* model and conservative stance, which resist innovation.
2. Psychology’s empirical versus law’s authoritarian epistemology, based on a hierarchy.
3. Psychology’s experimental methodology versus law’s adversarial process.
4. Psychology’s descriptive versus law’s prescriptive discourse.
5. Psychology’s nomothetic versus law’s ideographic focus.
6. Psychology’s probabilistic and tentative conclusions versus law’s emphasis on certainty, or at least the assumption that legal conclusions are irrevocable.
7. Psychology’s academic and abstract orientation versus law’s pragmatic and applied orientation.
8. Psychology’s proactive orientation versus law’s reactive orientation.

It should be noted that, though fundamental differences are agreed upon, some psychologists (cf. Laufer & Walt, 1992) argue that some of these differences may be more apparent than real. In particular, they believe that the influence of *precedent* on explanation in psychology has been underemphasized. For example, “normal science” imposes existing paradigms on interpretations and explanations of facts; these paradigms direct new research endeavors.
topics. But obstacles stand in the way of full application, and many of these obstacles are at the most basic level—the level of values and goals. Conflicts between the values of psychology and the values of the legal system are a focus for this chapter, because they play a role in evaluating the topics covered in subsequent chapters, especially in the degree to which psychology is successful in influencing the decisions of the legal system.

Many ways exist to distinguish these contrasting goals and values; John Carroll (1980) put it as follows:

The goals of the law and the goals of social science are different and partially in conflict. The law deals in morality, social values, social control, and justifying the application of abstract principles to specific cases. In day-to-day operation, the system values efficiency and expediency... In contrast, social science deals in knowledge, truth, and derives abstract principles from specific instances. These are thought to be value-free. In operation, the scientific method values reproducible phenomena and underlying concepts and causes rather than the specifics or form in which these appear. (1980, p. 363)

The response of the APA after the verdict in John Hinckley’s trial is an example of the expression of psychology’s values. After Hinckley was found not guilty by reason of insanity, the insanity defense came under increased attack from both the public sector and various professional organizations; both the American Psychiatric Association and the American Bar Association called for more stringent standards. Some states adopted a “guilty but mentally ill” plea, while several states actually abolished the insanity defense (see Chapter 5). The APA (March 1984), in contrast, argued for an empirical approach “in which both existing standards and proposals for change would be carefully examined for their scientific merit” (Rogers, 1987, p. 841). A recent review done by psychologists of the changes proposed by those who call for changes in the insanity defense, or its actual abolition, has found them generally lacking in research support (Borum & Fulero, 1999; see also Fulero & Finkel, 1991, and Finkel & Fulero, 1992).

What Determines “Truth”?

The most fundamental conflict arises from the nature of truth, albeit also the most elusive and challenging quest. Suppose we ask a psychologist, a police officer, a trial attorney, and a judge the same question: How do you know that something is true? Each might say, “Look at the evidence,” but for each the evidence is defined differently.

Psychologists are trained to answer a question about human behavior by collecting data. A conclusion about behavior is not accepted by psychologists until the observations are objectively measurable, they show reliability (they are consistent over time), and they possess replicability (different investigators can produce similar results). In contrast, lawyers are more willing to rely on their own experience, their own views of life, and their intuition or “gut feelings.” J. Alexander Tanford (1990), a professor of law, proposed that the Supreme Court tends “to approve legal rules based on intuitive assumptions about human behavior that research by psychologists has shown to be erroneous” (p. 138). For example, in the decision in Schall v. Martin (1984), the majority of the Supreme Court agreed that “judges can predict dangerous behavior, no matter what the relevant research says” (Melton, 1987, p. 489, italics in original).

Tanford’s indictment of the Supreme Court is devastating:

From 1970 to 1988, the United States Supreme Court decided 92 cases concerning the propriety of various rules of evidence and trial procedure. In most cases, relevant psychological literature on juror behavior was readily available in interdisciplinary journals, widely circulated books, law reviews, journals for practicing lawyers, law student textbooks, and even the popular press. In a number of instances,
the Justices were provided with nonpartisan amicus briefs explaining in detail relevant jury behavior research. Yet, not a single Supreme Court majority opinion has relied even partly on the psychology of jury behavior to justify a decision about the proper way to conduct a trial.

Here is a pungent example: In Holbrook v. Flynn (1986), the Court unanimously ruled that the jury had not been biased by seeing the defendant surrounded by armed security guards; the judicial opinion admitted it was based on “[the Court’s] own experience and common sense” and rejected an empirical study with contradictory findings.

For the police officer, personal observation is a strong determinant of the truth. Police take pride in their ability to detect deception and their interrogative skills as ways of separating truth-telling from falsification. Gisli Gudjonsson (1992, 2003), a psychologist and a former police officer, noted that many police interrogators have blind faith in the use of nonverbal signs of deception. Certainly they also rely on physical measures: Speeding is determined by the reading on the radar gun; alcohol level by the blood-alcohol test. However, crime investigation may reflect either inductive or deductive methods of reasoning; see examples of this distinction, developed by Bruce Frey (1994), in Box 1.3.

As the preceding implies, a belief in the validity of intuition is a part of a police officer’s evidence evaluation. Hays (1992), a 20-year veteran of the Los Angeles Police Department, wrote: “Most cops develop an instinct for distinguishing the legitimate child abuse complaints from the phony ones” (p. 30). Police are willing to use a broader number of methods to determine truth than are psychologists. For example, a substantial number of police departments are willing to use psychics to help them solve crimes (see also the recent TV show “Psychic Detectives”), while most psychologists are appalled by the notion that psychics have any valid avenues toward knowledge. Box 1.4 provides an example.

**Box 1.3 Inductive versus Deductive Methods of Reasoning**

Induction and deduction are two contrasting methods used to solve a problem. **Deduction** requires the application of rules or a theory, while **induction** requires the generation of rules or a theory. Usually, deduction goes from the general to the specific, while induction uses several specifics to generate a general rule.

In a creative analysis, Bruce Frey contrasted the ways that two popular fictional detectives solved crimes.

Sherlock Holmes’s investigative procedure was to examine a set of clues, develop a number of possible solutions, and eliminate them one by one. “When you have eliminated all the possibilities but one, that remaining one, no matter how improbable, must be the correct solution”—so goes his credo. (Further examples of Holmes’s approach can be found in Chapter 4). Frey (1994) labeled this the inductive process because it examined many possibilities and used observations to create a theory, to infer a conclusion.

In contrast, Miss Jane Marple, the heroine of many of Agatha Christie’s mysteries, used quite different, deductive skills. A polite, elderly woman who lived in the village of St. Mary Mead, she possessed an intimate knowledge of human interactions and behaviors among the inhabitants of her hometown. Her procedure when entering a problem-solving situation was to use the model of St. Mary Mead as a template and to apply that model to the facts. We know that both detectives were quite successful (their authors made sure of that).

Neither procedure has clear superiority over the other. Do these approaches distinguish between the problem-solving styles of the psychologist and the lawyer? Psychology as a science relies on the deductive method: A general theory leads to specific hypotheses; the testing of these hypotheses leads to results that confirm, disconfirm, or revise the theory. The law, with its emphasis on precedent and previous rulings, would seem, in a broad sense, to be inductive. But each discipline is multifaceted, and specific psychologists, legal scholars, and attorneys might follow either procedure.
What about attorneys and judges—what determines truth for them? Within the courtroom, for some attorneys, truth may be irrelevant. Probably for more judges and trial attorneys, the assumption is that the adversary system will produce truths or at least fairness. Courts have repeatedly stated that “a fair trial is one in which evidence [is] subject to adversarial testing” (Strickland v. Washington, 1984, p. 685, quoted by Tanford and Tanford, 1988, p. 765). The nature of the adversary system leads some trial attorneys to value conflict resolution over the elusive quest for the truth. Another conception sometimes offered (Pulaski, 1980) is that trials are conducted not to find out what happened—the police, the prosecutor, and the defense attorney all probably know what happened—but as a game to persuade the community that proof is strong enough to justify punishment.

Martha Deed (1991), a psychotherapist, quoted the view of Paul Ivan Birzon, the president of New York State’s Academy of Matrimonial Lawyers:

The law assumes that truth emerges from the clash of adversaries in the courtroom. The law assumes that: Uneven skills of counsel do not exist; bias doesn’t influence the decision-maker; evidence can be clearly presented. . . . Right and morality are irrelevant. Personal convictions are irrelevant. Only “truth” produced through trial is relevant. “Truth” for the law is a legal construct which relates to facts as they emerge at trial. “Truth” does not necessarily coincide with reality. (quoted by Deed, 1991, p. 77)

But if trial attorneys and, especially, judges focus on the assessment of truth in a court-related context, evidence and the law are determinants. Legal authorities rely heavily on precedents in reaching decisions. The principle of stare decisis (“let the decision stand”) has the weight, for judges, equivalent to the importance of the principle of experimentation for scientific psychologists.

As we have seen, appellate judges are not as bound as psychologists by empirical findings when they draw conclusions about the real world. In the case of California v. Greenwood (1988), which involved the police confiscating the garbage bags left by Bobby Greenwood at the street side for collection, the majority opinion of the U.S. Supreme Court stated that people have no “subjective expectation of privacy” when they put out their garbage for collection. No psychologist would make such a statement without obtaining confirmatory data first.

This is not to say that the courts always ignore social science research when that research can help
clarify or resolve empirical issues that arise in litigation; in fact, Monahan and Walker (1991) concluded that “increasingly in recent decades the courts have sought out research data on their own when the parties have failed to provide them” (p. 571). Use of psychological research in the courtroom traces back to 1908 in the landmark case of Muller v. Oregon. Was social welfare legislation constitutional when it limited to 10 hours the workday of any female working in a factory or laundry? Louis Brandeis assembled medical and social science research that showed the debilitating effect of working long hours and then presented this material to the Supreme Court in a brief that defended Oregon’s limits on work hours. (This brief became the model for what are now called Brandeis briefs, those that focus on empirical evidence and similar types of evidence rather than reviewing past cases and statutes.) Never before had a litigant explicitly relied on social science findings in a Supreme Court brief (Tomkins & Cecil, 1987). The majority opinion in Muller v. Oregon upheld the legislation, ruling that it was not a violation of the Fourteenth Amendment for a state to limit women’s workdays, and referred to the social science evidence in a long footnote, stating that although they (social scientists) “may not be, technically speaking, authorities” (p. 420), they would receive “judicial cognizance” (p. 421).

Tomkins and Oursland (1991), among others, have observed that the historic tension between social science and the law “does not imply that social science has been excluded from the courts” (p. 103). Even Justice Frankfurter, who often noted the immaturity of social sciences, included in one of his opinions a “Brandeis brief” of several hundred pages that cited only eight legal cases among the extensive coverage of empirical data (Perkins, 1988). The Brown v. Board of Education (1954) decision regarding school desegregation, the most visible example of inclusion, is examined in detail in Chapter 2.

The Nature of Reality

In the novel Body of Evidence (1991) by Patricia D. Cornwell (an expert on medical forensics), a character expresses the opinion that “everything depends on everything else” (p. 13); that is, you can’t identify cause and effect, as variables interact with each other in undecipherable ways. To what extent do people give credence to such a view? Psychologists are trained to disabuse this notion; the experimental method emphasizes an analytic nature of the world. There are independent variables out there—each has a separate influence. Even if one variable’s impact is influenced by the amount of another variable, we talk about an interaction; psychology assumes a view that influences can be separated and distinguished from each other. None of the other professions or disciplines holds adamantly to such a conception of the world.

While the psychological field assumes that the world is composed of separable variables that act independently of, or interactive with, other variables, it also is more tolerant of ambiguity than is the legal field. In fact, the focus of psychology can be labeled as probabilistic, for several reasons. We express our “truths” as “statistically significant” at, for example, the 0.05 level, meaning that we are saying it is likely—but not certain—that a real effect or difference exists.

Even more basic is psychology’s assumption that people think in terms of probabilities and likelihoods. If you examine the instruments used by research psychologists, you find that they often will ask subjects, “What is the likelihood that . . .?” or similar questions. In contrast, the courts, lawyers, and people in general may well think in yes-or-no, right-or-wrong categories.

Dawes (1988), Kahneman, Slovic, and Tversky (1982; Tversky & Kahneman, 1974, 1983), Koehler (1992, 2001; Kaye & Koehler, 1991), and Thompson (1989a) have provided numerous examples of the lay public’s tendency to misunderstand probabilities and their difficulties in applying probabilistic reasoning; for example, the adherence to the “gambler’s fallacy,” ignorance of regression-to-the-mean effects, and failure to pay attention to base rates.

In our legal system, proof is based “on showing direct cause and effect: action A caused (or at least in measurable ways contributed to) result B; Jones
pulled the trigger and Smith died; Roe violated the contract and as a consequence Doe lost money” (Rappeport, 1993, p. 15). In contrast, psychologists are more concerned with the probability that A is related to B.

The Legal System’s Criticisms of Psychology

If psychology wants to make a contribution to the functioning of the legal system, then it is incumbent on psychology to understand the criticisms of it and indicate what it can provide. Some of these criticisms are evaluated in the following paragraphs.

The Lack of Ecological Validity of Psychological Research. The oldest criticism, going back to Wigmore’s response to Münsterberg’s work, notes the dissimilarity between the procedures and subjects of psychological research studies and the procedures and participants in the actual legal system. Jury research has been a significant source of such criticism, both by lawyers and by some psychologists (Bornstein, 1999; Dillehay & Nietzel, 1980; Konecni & Ebbesen, 1981; Ogloff, 2000). It is erroneous to assume that simply because a manipulation has an effect in the laboratory, it will automatically have the same effect on jurors in the courtroom (Tanford & Tanford, 1988).

Perhaps the most detailed criticism of the validity of social science research is found in then-Chief Justice Rehnquist’s majority opinion in Lockhart v. McCree (1986), involving the use of death-qualified jurors. (Chapter 2 examines this case in detail.) Most research psychologists (but not all; see Elliott, 1991a, 1991b) support the conclusion that death-qualified jurors are conviction-prone, and the APA submitted an amicus brief reviewing the research leading to such a conclusion. (Chapter 2 examines this case in detail.)

He presented six criticisms (summarized by Tanford, 1990):
1. “Only” six studies specifically demonstrated conviction-proneness, too small a number from which to draw reliable conclusions. Another eight studies that corroborated this conclusion were considered irrelevant because they assessed jurors’ attitudes rather than verdicts. (This illustrates a problem in some psychology and law research, especially in the 1970s and 1980s: experimental rigor without enough external validity.)
2. Three of the six “relevant” studies had been presented to the Supreme Court in an earlier case (Witherspoon v. Illinois, 1968), at which time the justices considered them too tentative, and 18 years later Justice Rehnquist saw their value as weaker because of the passage of time. (But while three studies alone may be tentative, when three more find the same or similar results, the value of the first three should increase rather than decrease.)
3. Three of the six studies used randomly selected individuals, instead of real jurors sworn to apply the law. (This objection suggests that the oath that jurors take affects their verdicts, but the experimental evidence for this is equivocal at best, for both children and adults; see Lyon, 2000.)
4. Two experiments that did use actual jurors did not include jury deliberations and, therefore, were, for Justice Rehnquist, of no value (Lockhart v. McCree, 1986, p. 171). (But while that may affect the value attached to the study, it does not in itself render it completely invalid.)
5. The studies did not say whether the outcome, considering all the evidence, would have been different if the jury were not death-qualified. (But a study that varies death-qualification and looks at its effect on verdict does exactly that.)
6. Only one study investigated the possibility of the independent “nullifier” phenomenon—that is, whether someone opposed to the death penalty would vote not guilty just to prevent a death sentence (Tanford, 1990, p. 146). (True, but it is not clear that this invalidates the conclusion.)
Justice Rehnquist also contended that other serious methodological problems existed, but that he didn’t have time to mention them (Lockhart v. McCree, 1986, p. 173). Given such a rejection, how should psychology proceed? Diamond (1989) noted that there are topics for which the courts believe that psychology has some answers—child custody or deceptive advertising—but sometimes the quality of the research offered the courts is not good. She quoted the reaction of an exasperated court in a trial in which the judge rejected surveys produced by both sides:

It is difficult to believe that it was a mere coincidence that when each party retained a supposedly independent and objective survey organization, it ended up with survey questions which were virtually certain to produce the particular results it sought. This strongly suggests that those who drafted the survey questions were more likely knaves than fools. If they were indeed the former, they must have assumed that judges are the latter. (American Home Products Corp. v. Johnson & Johnson, 1987, quoted by Diamond, 1989, p. 250)

Going Beyond the Data to Make Moral Judgments. Former Judge David Bazelon (1982), who was one of the strongest supporters of psychology on the federal bench, has chastised psychologists for going beyond their data and venturing beyond their expertise to make moral judgments. Melton, Petrila, Poythress, and Slobogin (1997), in an introductory chapter for a handbook on psychological court evaluations, used this admonition as a springboard to examine what they call the “current ambivalence” about the relationship of mental health and the law.

For example, psychologists may be encouraged to testify in court over theories and findings that lack validity. These and other temptations are examined in detail in Chapter 2. The quality of the scientific evidence supporting conclusions of forensic psychologists is, in truth, a prevailing theme throughout this book.

Intruding upon the Legitimate Activities of the Legal System. Some attorneys, law professors, and social critics fear that the infusion of psychological knowledge into the legal system will somehow change it for the worse and will subvert its legitimacy. An example is the use of psychologists as trial consultants; Gold (1987) argued that their use has created a set of superlawyers who are able to control the decision making of juries. According to this view, the psychologists’ knowledge of persuasion techniques and jury decision making will somehow increase the likelihood of extraneous influences affecting verdicts (but see also Kressel and Kressel, 2002; Posey & Wrightsman, 2005; Lieberman & Sales, 2006). For example, Gold feared that, armed with such knowledge, “lawyers can induce jurors to make judgments about the credibility of a speaker through manipulation of the ‘powerfulness’ of the speaker’s language” (Gold, 1987, p. 484).

Gold’s detailed critique reflects the fact that many lawyers “fundamentally misunderstand the psychology of jury behavior and the trial process” (Tanford & Tanford, 1988, p. 748). This is regrettable, but it is once more an indication that forensic psychology must reach out and seek to correct such false assumptions. The actual contributions and effectiveness of psychologists as trial consultants are examined in Chapter 12.

Two Illustrative Court Decisions

Two Supreme Court decisions in the 1980s neatly illustrate the conflict in values between the legal profession and scientific psychology. In one of these, the majority decision by the U.S. Supreme Court went against a massive pattern of statistical evidence; in the other, the Court’s opinion was consistent with the position of the psychologist who testified as an expert witness, but the impact of the psychologist’s testimony is not clear. These two cases are chosen as illustrative for several reasons: The research methods differ from one case to the other, the cases deal with differing but equally noteworthy contemporary examples of discrimination, and they reflect the difference of opinion both between disciplines and within each
discipline. (The latter point is important because—just as few Supreme Court majority opinions reflect acceptance by all nine justices—psychologists are not always in agreement about the proper applications of research findings.)

**A Criminal Case: McCleskey v. Kemp (1987).** Warren McCleskey was an African American man who participated in the armed robbery of an Atlanta furniture store in the late 1970s; he was convicted of killing a White police officer who responded to the alarm that a robbery was in progress. McCleskey was sentenced to death, but he challenged the constitutionality of this sentence on the grounds that the state of Georgia administered its death-sentencing laws in a racially discriminatory manner. But in 1987, the United States Supreme Court rejected his claim in a 5 to 4 vote, and McCleskey was later executed.

What was the basis for McCleskey’s claim? And what was the rationale for the Supreme Court’s decision? What can we learn from this case about the conflict in values between psychology and the legal system?

McCleskey’s claim of racial bias used a statistical analysis, clearly a fundamental method employed by the field of psychology. The use of statistical analysis is central to the empirical approach; in this study, the procedures were clearly described and the data were quantifiable, so that other investigators could repeat the procedures and find the same results. A law professor at the University of Iowa, David Baldus, and his associates (Baldus, Woodworth, & Pulaski, 1990) carried out two studies of Georgia’s use of the death penalty. The raw data for the larger of these consisted of the 2,484 homicide cases in Georgia between 1973 and 1979 that led to a conviction for murder or voluntary manslaughter. Of these, 1,620, or 65%, included facts that made the defendant eligible to be sentenced to death, under Georgia law. Of these, 128 defendants, or 8.7%, were actually sentenced to death.

Analysis of the results found that defendants whose victims were White encountered a substantially higher likelihood of receiving a death sentence than those with African American victims; when the victim was White, 11% of homicide defendants were sentenced to death, but with African American victims, between 1% and 2% of defendants were sentenced to death.

When all four possible combinations of race of defendant and race of victim were compared, the combination that led to a death sentence most often (in 21% of the cases) was a White victim and an African American defendant (the other combinations had the following percentages: White defendant and White victim, 8%; White defendant and African American victim, 3%; and African American defendant and African American victim, 1%).

But is it fair to conclude, based only on these percentages, that the race of the participants (especially the victim) is the determining factor leading to the choice of a death sentence? When a jury or judge considers whether to impose the sentence of death, many states provide a consideration of the presence of any **aggravating or mitigating factors**. For example, did the defendant have a history of having been abused? A woman who killed her husband might claim, as a mitigating factor, that he had battered, threatened, and tortured her for years. Baldus and his associates recognized that characteristics of some killings reflected aggravating factors, making them more susceptible to severe sentences—for example, if the victim was also raped or if torture was used, or if the defendant killed several people. It is possible that the victims in these most heinous of homicides were more often White than another race, thus contributing to the results in the first analysis. By evaluating the impact of these factors, Baldus and his colleagues were able to clarify and pinpoint the racial discrimination. For example, when the crime involved extremely aggravating factors, such as multiple stab wounds, an armed robbery, a child victim, or the defendant having a prior record, the race of the victim had little effect on the sentence given; severe sentences were given regardless of the race. But, with respect to those homicides that included a moderate level of aggravating factors, the race of the victim was quite influential, leading to a ratio of 3 to 1 (38% death-sentencing rate for murderers with White victims,
versus 13% death-sentencing rate for murderers with African American victims).

Interestingly, in the analysis by Baldus and his colleagues, “the case of Warren McCleskey falls at 42 on the aggravation scale, squarely in the midrange of cases, where the race-of-the-victim effects are the strongest” (Baldus, Woodworth, & Pulaski, 1992, p. 262). (In contrast, there is a “total absence” of a race-of-victim effect among the most-aggravated cases, those between 60 and 100 on the level-of-aggravation scale.) What is perplexing about this detailed analysis is Baldus’s placement of McCleskey’s crime in the midrange on the level-of-aggravation scale; McCleskey participated in an armed robbery (#29 in severity on a list of 41 case characteristics), and the victim was a police officer on duty (an oddly placed #18 on the 41-item severity list).

Let us consider McCleskey’s appeal before the Supreme Court. His attorneys made two claims: the first was that “the persistent race-of-victim disparities, which [Baldus’s] studies identified after adjusting for all plausible legitimate aggravating and mitigating circumstances, provided a sufficient basis for invalidating McCleskey’s death sentence under the equal protection clause of the 14th Amendment” (Baldus, Woodworth, & Pulaski, 1992, p. 262). The second claim derived from the Eighth Amendment’s clause that protects defendants from cruel and unusual punishments.

The Supreme Court rejected both these claims. In the majority opinion, Justice Lewis Powell chose to focus on any intent to discriminate; he wrote that no equal-protection violation occurred because McCleskey’s attorneys did not prove “that the decision-makers in his case acted with discriminatory purpose,” that no evidence was presented “specific to his own case that would support an inference that racial considerations played a part in his sentence” (McCleskey v. Kemp, 1987, pp. 292–293, italics in original). Justice Powell went on to write that statistical evidence of classwide, purposeful discrimination was not even relevant to equal-protection claims of racial discrimination in death-sentencing cases (McCleskey v. Kemp, 1987, pp. 296–297, quoted by Baldus, Woodworth, & Pulaski, 1992, p. 263).

Furthermore, the Court held that any suggestion of discrimination in the sentence given McCleskey was overcome by the presence of two factors that, by Georgia state statute, were cited as aggravating ones—the previously mentioned armed robbery and the victim’s being a police officer. For the Court, each of these provided a sufficient basis for imposing a death penalty.

As an aside, it should be noted that the courts, including the U.S. Supreme Court, have regularly inferred intent to discriminate on the basis of statistical evidence; furthermore, they have endorsed jury decisions and employment discrimination rulings brought under Title VII of the Civil Rights Act of 1964 that rely on such data. (Some of the latter will be reviewed in Chapter 13 on discrimination and the legal system.) Here, for McCleskey, paradoxically, the Court imposed a more severe burden of proof. (As Justice Blackmun noted in his dissenting opinion, one would have expected the Court to impose a less stringent burden of proof because in death-sentence cases, society’s ultimate sanction is involved; McCleskey v. Kemp, 1987, pp. 347–348.)

Clearly, we have a conflict here. What are we to make of this conflict? First, we need to note that the goals of the researchers and the judges are different. Psychologists derive the truth from empirical proof. The fact that in a large number of cases a significant racial disparity was demonstrated justified McCleskey’s claim of lack of due process; that is, the standard procedure in psychology is to focus on trends emerging from a number of observations. The scientific method seeks general laws that can be applied to specific cases.

But for the courts, other considerations were more salient. Court decisions are case specific, and here the statistically demonstrated pattern of racial bias in sentencing in previous cases was ignored. Also, the courts have issues to consider beyond the determination of truth. Justice Powell’s opinion acknowledged that if McCleskey had been granted relief, it would have threatened all the previously sentenced capital cases in Georgia and disrupted the American death-sentencing system (Baldus, Woodworth, & Pulaski, 1992). At the time of the
McCleskey decision, more than 3,000 death sentences had been imposed since its reinstatement in 1976, but only 100 of these prisoners had actually been executed.

Both positions could be defended. As psychologists, we have been socialized to believe that empirical results define the truth, that data have power. In contrast, Justice Powell concentrated on the specific case and noted that Warren McCleskey had been convicted of murder, he had killed a police officer, and he had been participating in an armed robbery. In effect, the Court asked: In a state that permits the death penalty, is this not a heinous crime? If any crime justifies such a sentence, does not this one?

Justice Powell’s majority opinion in the McCleskey case also noted that any inequity in sentencing on the basis of race was, in his view, properly rectified by legislative action rather than by judicial fiat. He threw down the gauntlet to the U.S. Congress and state legislatures to pass laws if they felt a correction was needed. In 1994, the U.S. House of Representatives did just that. It passed, by a narrow margin, a bill that would permit people sentenced to death to challenge their sentence by using statistics of past racial discrimination in executions to show that their sentence reflected racial bias (Seelye, 1994). They might show, for example, that in the case of certain types of crimes, such as killing a police officer, only African Americans had been executed, or that the death penalty was given only to defendants whose victims were White. But the U.S. Senate opposed this bill, so it was not adopted.

A Civil Case: Price Waterhouse v. Hopkins (1989). The previous example reflected a decision in a criminal case by the U.S. Supreme Court that refused to acknowledge racial discrimination. In Price Waterhouse v. Hopkins (1989), the Court acknowledged the presence of sex discrimination in a civil suit, after reviewing the testimony of a psychologist about the nature of stereotyping. But how much difference did the testimony of the psychologist make?

Ann Hopkins, in 1982, was in her fourth year as a very successful salesperson at Price Waterhouse, one of the nation’s leading accounting firms. She had brought in business worth $25 million; her clients raved about her, and she had more billable hours than any other person proposed for partner for that year (Fiske, Bersoff, Borgida, Deaux, & Heilman, 1991). No one at the firm disputed her professional competence. But she was not made a partner—not that year and not the next year. Price Waterhouse apparently rejected her because of her heavy-handed managerial style and her “interpersonal skills problems”; she was described as “macho,” lacking “social grace,” and needing “a course at charm school.” A colleague didn’t like her use of profanity; another reportedly advised her that she would improve her chances if she would “walk more femininely, talk more femininely, dress more femininely, wear makeup, have her hair styled, and wear jewelry” (Hopkins v. Price Waterhouse, 1985, p. 1117). She was caught in a double-bind: Women were censured for being aggressive even though aggressiveness was, in reality, one of the job qualifications (Chamallas, 1990).

So Ann Hopkins took the firm to court, claiming sex discrimination and a violation of Title VII of the Civil Rights Act of 1964. The preceding information, though disturbing, was not enough; she had to demonstrate that the stereotypic remarks accounted for discrimination in the decision rejecting her as a partner. Thus, social psychologist Susan Fiske, of the University of Massachusetts at Amherst, was asked to testify as an expert witness. She agreed, because she felt the case fit the scientific literature on sex stereotyping in organizations to a striking degree.

An account by Fiske and her colleagues describes the nature of her testimony in the trial; it “drew on both laboratory and field research to describe antecedent conditions that encourage stereotyping, indicators that reveal stereotyping, consequences of stereotyping for out-groups, and feasible remedies to prevent the intrusion of stereotyping into decision making. Specifically, she testified first that stereotyping is most likely to intrude when the target is an isolated, one- or few-of-a-kind individual in an otherwise homogeneous environment. The person’s solo or near-solo status makes
the unusual category more likely to be a salient factor in decision making” (Fiske et al., 1991, p. 1050). Of 88 candidates proposed for partner in 1982, Ann Hopkins was a token woman; of 662 partners at Price Waterhouse, only 7 were women.

Among many relevant matters, Professor Fiske also testified that subjective judgments of interpersonal skills and collegiality—apparently essential in the partnership decision—are quite vulnerable to stereotypic biases, and decision makers should be alert to the possibility of stereotyping when they employ subjective criteria. She concluded that sexual stereotyping played a major role in the firm’s decision to deny Hopkins a partnership.

In Price Waterhouse’s decisions on partners, the opinions of people with limited hearsay information were given the same weight as the opinions of those who had more extensive and relevant contact with Ann Hopkins (Fiske, Bersoff, Borgida, Deaux, & Heilman, 1991, 1993), and Price Waterhouse had no policy prohibiting sex discrimination. As Fiske and her colleagues observed, “Consistent with this failure to establish organizational norms emphasizing fairness, overt expressions of prejudice were not discouraged” (Fiske et al., 1991, p. 1051). Professor Fiske, in her testimony, noted that many of Price Waterhouse’s practices could be remedied if the firm applied psychological concepts and findings.

At the original trial, the presiding judge, Gerhard Gesell, expressed some frustration over the psychologist’s testimony. He seemed to have great difficulty understanding what the psychologist was saying, and “at times he undermined her position by changing the meaning of her statements and then challenging her to explain herself more clearly” (Chamallas, 1990, p. 110). Some of his trial statements and his written opinion cause one to wonder if he appreciated the substance of Dr. Fiske’s testimony; for example, he misunderstood the concept of a stereotype and seemed to view it as some disease or malady; he wondered if the partner who advised Hopkins to act more femininely had been bitten by what he called the “stereotype bug” (quoted by Chamallas, 1990, p. 113).

But after considering all the evidence, Judge Gesell ruled in favor of Ann Hopkins’s claim, writing that an “employer that treats [a] woman with [an] assertive personality in a different manner than if she had been a man is guilty of sex discrimination” (Hopkins v. Price Waterhouse, 1985, p. 1119). Price Waterhouse—not surprisingly—appealed Judge Gesell’s decision and, in doing so, argued that the social psychologist’s testimony was “sheer speculation” of “no evidentiary value” (Price Waterhouse v. Hopkins, 1987, p. 467). After Judge Gesell’s decision was upheld by a three-judge panel of the U.S. Circuit Court of Appeals for the District of Columbia, Price Waterhouse asked the U.S. Supreme Court to review the case, and because various appellate court decisions in Hopkins and other similar cases had been in conflict, the Court accepted the case for review. Indeed, the APA was one of the groups that filed an amicus (“friend of the court”) brief for the consideration of the Court.

On May 1, 1989, the Supreme Court handed down its decision, voting 6 to 3 to uphold a significant portion of Judge Gesell’s decision. Specifically, the majority ruled that in such cases as these, “it is not permissible for employers to use discriminatory criteria, and they (not the plaintiff) must bear the burden of persuading the trier of fact that their decision would have been the same if no impermissible discrimination had taken place” (quoted by Fiske et al., 1991, p. 1054). However, the Court also ruled that Judge Gesell had held Price Waterhouse to too high a standard of proof (i.e., clear and convincing evidence) and that he should review the facts in light of a less stringent (preponderance of the evidence) standard, to determine if Price Waterhouse was still liable.

Thus it would appear that the testimony of a research psychologist had a significant impact on the judge’s decision in a landmark case—a case for which a major aspect of the ruling was upheld by the Supreme Court. But some of the justices were hostile to Professor Fiske’s message; in his dissenting opinion, Justice Anthony Kennedy questioned her ability to be fair, implying that Fiske would have reached the same conclusion whenever a woman was denied a promotion. Even the majority opinion by
Justice William Brennan downplayed the impact of the expert witness's testimony. The majority opinion stated:

Indeed, we are tempted to say that Dr. Fiske's expert testimony was merely icing on Hopkins' cake. It takes no special training to discern sex stereotyping in a description of an aggressive female employee as requiring "a course at charm school." Nor . . . does it require expertise in psychology to know that, if an employee's flawed "interpersonal skills" can be corrected by a soft-hued suit or a new shade of lipstick, perhaps it is the employee's sex and not her interpersonal skills that has drawn criticism. (Price Waterhouse v. Hopkins, 1989, p. 1793).

Fiske and her colleagues had the following reaction to this comment:

One can interpret this comment in various ways; as dismissive, saying that the social science testimony was all common sense; as merely taking the social psychological expertise for granted; or as suggesting that one does not necessarily require expert witnesses to identify stereotyping when the evidence is egregious. (Fiske et al., 1991, p. 1054)

Although any of these is a possibility, none is congruent with a claim that the social science evidence really made a difference in the Court's opinion. It does, however, miss an essential point about psychological research in psychology and law: while "everyone may know" the conclusion of a set of studies (in this case research on sex discrimination in the workplace, though the same argument applies in all areas of forensic psychology expert testimony), the fact that experimental studies support the arguments made by the attorney bolster their credibility and amount to relevant evidence about the assertion being made. Since arguments are not evidence, experts provide the scientific basis for the claim.

It is worth mentioning that not all psychologists have endorsed the application of Fiske's conclusions (Barrett & Morris, 1993). Not only do judges disagree with each other (recall that the votes in the two cases described here were 5 to 4 and 6 to 3—hardly ringing endorsements) but psychologists do, too. In fact, the lack of uniform agreement within the field creates problems for the establishment of agreed-upon procedures for forensic psychologists. For example, is there sufficient scientific evidence to justify a psychologist's testifying that a murder defendant's behavior reflected the battered woman syndrome (see Chapter 7)? Are the data extensive enough and reliable enough for the APA to submit an amicus brief arguing that adolescent females are mature enough to decide whether to have an abortion (which, in fact, the APA did)? These are just two examples of the acceptability of applying psychological knowledge to the legal system. On the other hand, unanimity is not required in any area of science (or law)—only "general acceptance." The other side is free to present an expert with a different conclusion, thus exposing the triers of fact to both sides, along with cross-examination of the assertions made.

THE FUTURE OF THE RELATIONSHIP BETWEEN PSYCHOLOGY AND THE LAW

Courts have sometimes been sympathetic to psychological research; sometimes they have not.

Can we detect why? And can we predict the future of this relationship? Tanford (1990) reviewed two types of theories of the interaction between social science and the law. One type predicts that the obstacles to use of social science research in the courts can be overcome, and that science will eventually assume a prominent role in legal

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1. The majority opinion was written by Justice Brennan; others in the majority were Justices Blackmun, Marshall, Stevens, White, and O'Connor. The minority included Justices Kennedy, Rehnquist, and Scalia.
policy-making. This view notes that modern Western culture has elevated science to a prominent position. In contrast, the other approach predicts that social science will not have much impact on the law in the near future. This position is based on the current reluctance of the courts to rely on empirical research. Tanford (1990) offered six reasons for this reluctance:

1. Judges are conservative and perceive social scientists to be liberal.
2. Judges are self-confident and do not believe that they need any assistance from nonlawyers.
   a. For example, Justice Frankfurter once said, “I do not care what any . . . professor in sociology tells me” (quoted by Tanford, 1990, p. 1953).
   b. Judges are human, and it is human nature to be unscientific.
3. Judges are ignorant of, inexperienced with, or do not understand empirical social science.
4. Samuel R. Gross (1980), a law professor who argued the *Hovey* death-qualified jury case before the California Supreme Court (*Hovey v. Superior Court*, 1980), has proposed that “much of the abuse that social science has suffered in the courts is a product of nothing more sinister than ignorance” (p. 10).
5. Judges perceive science as a threat to their power and prestige.
6. Law and social science are rival systems with competing logics (Tanford, 1990, p. 152).

Any of these reasons for reluctance to accept forensic psychology can surface in a specific case. Chapter 2 examines some of the roles for psychologists in the legal system and some of the ways that psychologists may abuse their opportunities, thus contributing to the conflict between the two disciplines.

**SUMMARY**

Forensic psychology may be (and in this text, is) broadly defined as any application of psychological knowledge or methods to a task faced by the legal system. This definition implies that forensic psychologists can come from many backgrounds in psychology—clinical, experimental, social, developmental—and play many roles: researcher and educator, consultant to law enforcement, trial consultant, evaluator and expert witness, and consultant to judges through the presentation of legal briefs. But other definitions of forensic psychology have tried to limit it to clinical applications of psychology to the legal system. Current training programs reflect these diverse definitions.

In their attempts to apply their knowledge to the legal system, forensic psychologists need to be aware of the history of the relationship and the conflicting values between the scientific and legal approaches. In the 100-year-old history of the relationship, influences can be traced from criminology and from experimental psychology. Hugo Münsterberg, a professor and director of the Psychological Laboratory at Harvard University in the first two decades of the twentieth century, may be considered the founder of forensic psychology because of his research (on such contemporary topics as eyewitness accuracy and memory), his influential articles for the lay public, and his involvement in several prominent trials. But he was only one of a number of experimental psychologists who were active in applying their knowledge to the courts during the period from 1900 to 1920. For various reasons, the relationship between the two fields languished for 50 years, until the mid-1970s. Since that time, there has been an explosion of research and a similar expansion in the application of psychological concepts and findings to such diverse legal issues as the battered woman syndrome, the use of police interrogations to elicit confessions, and the selection of juries.

But psychology has not always had the effect it has sought. Two court decisions, in the cases of *McCleskey v. Kemp* and *Price Waterhouse v.*
Hopkins, illustrate the conflict between psychology and the law with regard to their bases for decision making. Some conflicts are fundamental, dealing with the nature of truth and reality. Furthermore, the legal system is sometimes uninformed about, and hence unsympathetic to, the methods used in psychology. It is the job of forensic psychology to see that this changes.

**KEY TERMS**

aggravating or mitigating factors  
amicus brief  
Brandeis briefs  
deduction  
empirical approach  
forensic psychology  
induction  
precedent  
reliability  
replicability  
sex stereotyping  
“specialty” designation  
spousal rape  
stare decisis  
“subjective expectation of privacy”  
trial consultants  
values

**SUGGESTED READINGS**


A readable history of the field that reviews developments in five major topics: courtroom testimony, cognitive and personality assessment, correctional psychology, police psychology, and criminal psychology.


An updated collection of comprehensive and detailed reviews of many of the topics explored in this book, including lie detection, hypnosis, testifying in court, assessing competency, and police consultation.


An analysis of the use by police of psychics to help solve crimes. While the book exposes the tricks of charlatans, it is sympathetic to the use of paranormal techniques in crime investigation.


A chapter of special value to those considering further training in forensic psychology. The following models for professional training are described and critiqued: joint Ph.D.–J.D. programs, Ph.D. specialty programs, a Ph.D. minor, and postdoctoral programs. Internship opportunities are also described.


Worth extracting from stuffy library stacks, to determine just how prescient it is for the forensic psychology of the twenty-first century.


Written by two forensic psychologists with extensive “hands-on” experience, this book not only illustrates a number of activities but also considers professional and ethical dilemmas.
Forensic Psychologists
Roles and Responsibilities

The Multitude of Forensic Psychology Roles and Activities
Specific Roles: Researcher
Specific Roles: Consultant to Law Enforcement
Specific Roles: The Trial Consultant
Specific Roles: Forensic Evaluator and Expert Witness
  Evaluation and Assessment
  Expert Witnessing
Specific Roles: Presentation of Psychology to Appellate Courts and Legislatures

The Temptations of Forensic Psychology
  Promising Too Much
  Substituting Advocacy for Scientific Objectivity
  Letting Values Overcome Empirical Findings
  Doing a Cursory Job

Summary
Key Terms
Suggested Readings

THE MULTITUDE OF FORENSIC PSYCHOLOGY ROLES AND ACTIVITIES

Chapter 1 introduced several people whose activities qualify them to be called forensic psychologists, even though their day-to-day work dramatically differs. The activities of these people by no means encompass the entire scope of forensic psychology. Consider the following two examples, both of which demonstrate that evaluation is a primary responsibility of many forensic psychologists with clinical psychology backgrounds, who act as evaluators and potential expert witnesses (discussed later in this chapter).
Neuropsychologists engage in forensic activities when they examine a criminal defendant to determine if he or she has damage to the right hemisphere of the brain, affecting judgment and impulse control (Dywan, Kaplan, & Pirozzolo, 1991; Pirozzolo, Funk, & Dywan, 1991). In their forensic capacity, neuropsychologists may carry out specific or comprehensive evaluation of brain functioning, and may testify as expert witnesses with regard to what they find. A number of tests have been developed to assess normal versus impaired brain functioning, and several handbooks and textbooks review these procedures, including those by Kolb and Whishaw (1990), Lezak (1995), Adams, Parsons, and Culbertson (1996), Goldstein and Incagnoli (1997), Heilbronner (2005), and Larrabee (2005).

The assessment of other, non-neuropsychological characteristics of defendants is also a task for forensic psychology. As an example, it might be important to know the extent to which a criminal defendant could or should be classified as “psychopathic.” This could have an impact on sentencing, as it might relate to the likelihood of the commission of future offenses. Although perhaps 1% of the general population may be classified as psychopaths, they comprise 15% to 25% of the prison population “and are responsible for a markedly disproportionate amount of the serious crime, violence, and social distress in every society” (Hare, 1996, p. 26; see also Herve & Yuille, 2006). Psychopathy reflects the following characteristics: impulsivity, a lack of guilt or remorse, pathological lying and manipulativeness, and a continual willingness to violate social norms. Forensic psychologists have sought to develop instruments to assess psychopathy; among the most prominent is the Hare Psychopathy Checklist—Revised (or PCL-R), developed by Robert Hare; it employs a 20-item rating scale, completed on the basis of a semistructured interview and on other information about the subject (Hare, 1991; Fulero, 1995; see Chapter 6). Characteristics to be rated by the psychologist include lack of realistic long-term goals and callous lack of empathy; each item is rated on a 3-point scale, according to specific criteria.

In conjunction with all their roles, temptations exist for forensic psychologists to go beyond the limits of their expertise. We will discuss the ethical responsibilities of psychologists as they respond to the demands of the legal system. In doing so, we will also take a look at the five basic roles for forensic psychologists: researcher, law enforcement consultant, trial consultant, evaluator/expert witness, and consultant on amicus briefs presented to appellate courts.

**SPECIFIC ROLES:**

**RESEARCHER**

Researchers in all fields of psychology share a common scientific method. Hypotheses are generated, tested empirically, interpreted statistically, and then shared with others in the scientific community through the process of peer review and publication (for an excellent review of the scientific method in the context of eyewitness identification, see chapter 4 in Cutler & Penrod, 1995).

In forensic psychology research, ethical questions arise as they do in other areas of psychology. For example, most would agree that it would not be appropriate to commit actual crimes in front of test subjects. But what sort of scenarios can eyewitness researchers ethically create? Similarly, jury researchers interested in pretrial publicity effects may do survey research on actual members of a jury pool in a particular case. What should the researchers do to ensure that the identities of the participants in their research remain anonymous? Fortunately, there is guidance in answering these questions. Researchers in forensic psychology, just as in other areas of psychological research (assuming they are APA members), are subject to the American Psychological Association Code of Ethics (most recently revised in 2002 and published in the American Psychologist, July 2002). In addition, forensic psychology researchers will look to the Specialty Guidelines for Forensic Psychologists (Committee on Ethical Guidelines for Forensic Psychologists,
1991; currently in the process of revision—see www.ap-ls.org).

**SPECIFIC ROLES:**

**CONSULTANT TO LAW ENFORCEMENT**

Another important role for forensic psychologists is assisting law enforcement (see Chapter 3). Clearly, ethical issues may arise during such work. Foremost among these is the question of who is the client (see Brodsky, 1973, for a prescient and cogent discussion of ethical issues). For example, when a police officer is referred for psychological treatment or counseling, is the client the officer or the department (for purposes of confidentiality)? Ethical issues may also arise in the roles that forensic psychologists have with regard to personnel selection, promotion, and training.

**SPECIFIC ROLES: THE TRIAL CONSULTANT**

Increasingly, trial attorneys are relying on psychologists and other social scientists to aid them in preparing for and carrying out a trial. This role has variously been called a trial consultant, a litigation consultant, or a jury consultant (see Fulero & Penrod, 1990; Kressel & Kressel, 2002; Lieberman & Sales, 2006). Some trial consultants have doctoral degrees, some have master’s degrees, and some have bachelor’s degrees. But it is important to note that at present, not a single state licenses or certifies trial consultants, so it is actually possible for anyone with any level of training to hang up a shingle and proclaim himself or herself a “trial consultant.” As Jeffrey Frederick, a long-time jury consultant, has noted, “All you need is a client” (quoted by Mandelbaum, 1989, p. 18).

What do trial consultants do? A firm of trial consultants (which might be a single consultant with a small support staff) is hired by a law firm to assist in identifying the major issues in a case, determine if there has been excessive pretrial publicity in the case (see Posey & Dahl, 2002), prepare witnesses for trial, and advise in jury selection. “We try to give the trial team the perspective of the jurors, and the things we find are often counterintuitive,” stated Greg Mazares, president of Litigation Sciences, Inc. (quoted in Lawson, 1994, p. B14). For example, Litigation Sciences worked on the case of a child who fell from an electrical tower and was injured. His mother sued the power company for damages. In assisting the power company’s defense team, the trial consultants found that, contrary to expectations, possible jurors who were parents “sympathized with the defendant company because they understood parental responsibility and what it takes to control a child” (Lawson, 1994, p. B14). Trial consultants also may participate in continuing education seminars offered frequently to improve lawyers’ negotiation, jury selection, and trial presentation skills (Beisecker, 1992). At such sessions, they may try to disabuse trial attorneys of the belief that successful jury selection requires nothing but the application of intuition (Fulero & Penrod, 1990).

Chapter 12 describes the duties of trial consultants in detail. At this point, note that trial consultants are most often hired by law firms representing clients involved in large civil trials, so the types of cases they handle do not cover the spectrum. It used to be rare that a trial consultant would work in a criminal trial, simply because one side didn’t have the resources and the other side didn’t have the inclination to hire one. But the pattern is shifting; the trial of William Kennedy Smith for rape, the trial of the four Los Angeles police officers charged with beating Rodney King, and the trial of Damian Williams and Henry Watson for the attack on truck driver Reginald Denny all used consultants. In the latter trial, Los Angeles County approved the hiring of (and paying for) a $175-per-hour trial consultant to assist the defendants, because they were indigent (Cox, 1993).

One type of ethical problem emerges because trial consultants are not only social scientists; they
may have to be entrepreneurs, too (Posey & Wrightsman, 2005). Some (though not all) advertise and market what they have to offer. Larger firms distribute glossy brochures extolling their various services. These firms also have a number of fixed costs, including support staff salaries, office rental, and computer costs, that persist regardless of the number of clients they have (see Strier, 1999, for a thoughtful discussion of trial consulting in terms of both efficacy and ethical issues).

Conflicts may arise between trial consultants and their employer-attorneys. These can be divided into procedural and substantive conflicts. With regard to procedures, consultants must always remember that they are employed by the attorneys, and thus it is the attorneys who are ultimately responsible for making decisions involving the case. For example, a trial consultant may believe that questions about prospective jurors’ reading habits or television-viewing preferences are diagnostic of the jurors’ biases regardless of the issue at trial. The attorney, however, may feel such questions are inappropriate invasions of privacy (or, conversely, it may be the attorney who wants such questions while the trial consultant believes them to be inappropriate; see Posey & Dahl, 2002). Substantive conflicts can be generated over any topic: the appropriate “theory” of the case, how witnesses should present themselves, which prospective jurors should be excused, which witnesses should be presented first (see Chapter 12).

The dual occupational nature of the consultant—applied scientist plus businessperson—makes for challenging ethical responsibilities. As an applied researcher, the consultant must follow the standard guidelines for ethical research; these take the form of a list of moral imperatives:

1. Thou shalt not fake data.
2. Thou shalt not plagiarize.
3. Thou shalt not draw false conclusions from thy data.

Furthermore, the consultant has the moral responsibility not to break the law, even if the consultant’s client wishes it. Trial consultant Hale Starr and attorney Kathleen Kauffman posed this question: What do you do if you know a witness is lying about important case facts, but the attorney wants you to help the witness appear as credible as possible? Starr’s response included the following: “If we believe that the witness is lying, then we should inform the lawyer. . . . If they’re saying, ‘Is it okay to teach someone how to lie, credibly,’ the answer to that is: that’s not our job and that’s not what we do” (Starr & Kauffman, 1993, p. 5).

The guidelines for professional standards of the American Society of Trial Consultants (American Society of Trial Consultants, 1998) urge consultants not to compile win-loss records. Consultants should not suggest that their services will inevitably help win a case for their client, because many events can intervene between preparation for the trial and the jury verdict (Mandelbaum, 1989). Despite such admonitions, the conflicting roles—scientist versus entrepreneur—may tempt the trial consultant to sound as if he or she is bragging; here is one example: “Because of our experience and our proprietary research procedures, Litigation Sciences has been associated with the winning side of the most prominent and highly publicized cases that have gone to trial. These have included assisting our clients to obtain defense verdicts in difficult product liability, antitrust, toxic tort, contract, securities, and wrongful termination cases. We have also been associated with the largest plaintiff verdicts ever returned in intellectual property, securities, and contract/tortious interference cases” (Litigation Sciences, 1988, p. 3).

A fundamental principle within the scientific community is the sharing of data and ideas. Researchers do not ordinarily maintain a proprietary interest in their findings or terminology; in contrast, Litigation Sciences, early in its brochure, notes: “The terms ‘Psychological Anchor, Polarization Profile, and Shadow Jury’ are trademarks of Litigation Sciences” (1988, p. 2). According to Hale Starr, founder of another trial consulting organization (quoted by Mandelbaum, 1989, p. 18), Litigation Sciences sent out letters to various consultants and researchers telling them to cease using the term shadow jury because Litigation Sciences had trademarked it. Fulero and Penrod (1990) have
noted that, by and large, trial consultants have viewed their work as “proprietary” and thus have not made their data and methods available for scientific peer review, which is critical for scientific reliability and acceptance. Fulero and Penrod (1990) also called on trial consultants to make their data available for scientific scrutiny. Confidentiality is a particular concern for trial consultants, who need to avoid unreasonable intrusion into the privacy of others, including members of focus groups or mock juries. It is essential that trial consultants recognize that all information about a particular case remains private and confidential. For example, in carrying out surveys, trial consultants must assure respondents of confidentiality, or many of them will not participate. Without such participation, trial consultants cannot obtain a representative sample. Promises of confidentiality also immunize the results against inaccuracies or bias in the information given. Yet there may be problems in keeping such information confidential, as lawyers for the other side seek to undermine the results of the survey (see Posey & Dahl, 2002, for a discussion of such issues).

Codes of several professional organizations that survey respondents carry caveats, such as the following: “Unless the respondent waives confidentiality for specified uses, we shall hold as privileged and confidential all information that might identify a respondent with his or her responses” (quoted by Hubbert, 1992, p. 3). For example, the National Jury Project, a trial-consulting organization, routinely removes and destroys all respondent-identifiable information from the questionnaires, telephone-listing sheets, and any other survey documents, after the survey is completed (Hubbert, 1992). A conflict arises when the results of the survey are presented at court and a judge wants the names of the interviewees and proof that subjects were in fact interviewed and that the results are accurate representations of responses. On such occasions, a reinterview may take place to determine whether the subjects had been interviewed before and whether they felt coerced in any way (Hubbert, 1992). A court-appointed witness or notary public may observe the reinterview. But it has been the experience of the National Jury Project that when its policy is fully explained in court, the results are never rejected.

**SPECIFIC ROLES: FORENSIC EVALUATOR AND EXPERT WITNESS**

Forensic psychologists may be called on to evaluate parties in criminal or civil cases and to provide expertise in court. Other than a doctoral degree and a license to practice, is there any way to tell who has a special interest in forensic psychology? The American Board of Professional Psychology (ABPP; see www.abpp.com, the board’s website, for more information) offers a Diplomate in Forensic Psychology, indicating the recipient as being at the highest level of excellence in his or her field of forensic competence.

The American Board of Forensic Psychology was established in 1978 to protect the consumer of forensic psychology; since 1985, it has operated as a specialty of the ABPP. Other, so-called vanity licenses and diplomates should be considered very carefully, as they do not require the same levels of training and experience that the ABPP demands (Golding, 1999). Regardless, different types of ethical issues may surface in the roles of evaluator and of expert witness.

**Evaluation and Assessment**

Forensic psychologists asked by attorneys or courts to do assessments specifically for purposes of criminal or civil cases must understand, and make sure that the parties understand, that such evaluations are not “therapy” and, as a result, anything said during such an assessment does not have the same confidentiality as nonforensic counseling or assessment. Indeed, when a person is evaluated for purposes of a legal case, anything that is said or done will be open to scrutiny in a forensic report or in expert testimony. Psychologists who work in forensic contexts are required to inform the parties of this fact (see...
In most states, the psychotherapist-client privilege of confidentiality ends if the therapist believes the client is “dangerous to himself or to the person or property of another and that disclosure of the communication is necessary to prevent the threatened danger” (Fulero, 1988; Reinhold, 1990, p. 89).

But what of evidence of past crimes? Is confidentiality provided? Should it be? In the famous case of Lyle and Erik Menendez, police were informed by Ms. Judalon Smyth, a former “friend” (and patient) of the brothers’ psychotherapist, Beverly Hills psychologist L. Jerome Oziel, that tapes existed on which the brothers had confessed to their parents’ murders, and that at Dr. Oziel’s request, she had made transcriptions of those tapes. So a further question arose: Can psychologist-client privilege be broken by the presence of a third party?

In 1992, two years after the brothers’ arrest, the California Supreme Court suppressed the tape from evidence as an invasion of psychologist-client privilege. But when the first trial began in late 1993, the brothers presented their mental state as an issue. The trial judge ruled that the privilege was waived and that the tape could be introduced as evidence. The judge acknowledged that his ruling had little precedent and that the issue was “a unique situation not addressed by any other case in any other court” (quoted by Associated Press, 1993, p. A7). Because of the disclosures made by the woman, Dr. Oziel was stripped of his license to practice psychology in California (CNN, January 3, 1997, http://www.cnn.com/US/9701/03/menendez.psychologist/).

(The 1993 trial ended in a hung jury; the Menendez brothers were later retried and convicted of first-degree murder in 1996, and sentenced to life without parole.)
testify about what they have observed or what they know as fact, expert witnesses may express opinions, for they are presumed to possess special knowledge about a topic, knowledge that the average juror does not have. The judge must be convinced that the testimony any expert will present reflects the requisite knowledge, skill, or experience and that the testimony will aid in resolving the dispute and leading jurors toward the truth.

It has been estimated that more than 20% of the cases before the federal courts have a strong scientific or technological component (Slind-Flor, 1994). The topics for which a psychologist may be called as an expert witness are extensive; Box 2.3, reprinted from Nietzel and Dillehay (1986), describes several. Some topics reflect forms of clinical expertise, and some reflect forms of social, experimental, cognitive, or developmental psychology expertise.

In the past, an expert witness primarily served the court rather than the litigants (Landsman, 1995). Today, most expert witnesses are recruited by trial attorneys and only rarely by the judge, even though Federal Rule of Evidence 706 explicitly allows the court to use its own expert (“The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection”). Regardless of who proffers the expert, it is the judge who must determine the expert witness’s acceptability. The criteria used by the attorneys and by the judge are not in direct opposition, but are different from each other. And, sometimes psychologists may be tempted to “sell themselves” to each, if they want to serve as experts.
### Box 2.3 Examples of Topics for Psychologists as Expert Witnesses

<table>
<thead>
<tr>
<th>Topic</th>
<th>Question</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insanity defense</td>
<td>What is the relationship between the defendant’s mental condition at the time of the alleged offense and the defendant’s responsibility for the crime with which the defendant is charged?</td>
</tr>
<tr>
<td>Competence to stand trial</td>
<td>Does the defendant have an adequate understanding of the legal proceedings? Is he or she able to work with his or her attorney?</td>
</tr>
<tr>
<td>Sentencing</td>
<td>What is the appropriate disposition? What is the risk of reoffense?</td>
</tr>
<tr>
<td>Eyewitness identification</td>
<td>What are the factors that affect the accuracy of eyewitnesses?</td>
</tr>
<tr>
<td>Trial procedure</td>
<td>What effects do pretrial and/or trial procedures have?</td>
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<tr>
<td>Civil commitment</td>
<td>Does a mentally ill person present an immediate danger or threat to self or others that requires treatment in a hospital setting?</td>
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<tr>
<td>Psychological damages in civil cases</td>
<td>What psychological consequences has an individual suffered as a result of tortious conduct? How treatable are these consequences? To what extent are the psychological problems attributable to a preexisting condition?</td>
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<tr>
<td>Psychological autopsies</td>
<td>In equivocal cases, do the personality and circumstances under which a person died indicate a likely mode of death?</td>
</tr>
<tr>
<td>Negligence and product liability</td>
<td>How do environmental factors and human perceptual abilities affect an individual’s use of a product or his or her ability to take certain precautions in its use?</td>
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<tr>
<td>Trademark litigation</td>
<td>Is a certain product name or trademark confusingly similar to a competitor’s? Are advertising claims likely to mislead consumers?</td>
</tr>
<tr>
<td>Class action suits</td>
<td>What psychological evidence is there that effective treatment is being denied or that certain testing procedures are discriminatory against minorities in the schools or in the workplace?</td>
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<tr>
<td>Guardianship and conservatorship</td>
<td>Does an individual possess the necessary mental ability to make decisions about living conditions, financial matters, health, etc.?</td>
</tr>
<tr>
<td>Child custody</td>
<td>What psychological factors will affect the best interests of the child whose custody is in dispute? What consequences are these factors likely to have on the family?</td>
</tr>
<tr>
<td>Adoption and termination of parental rights</td>
<td>What psychological factors will affect the best interests of the child whose custody or visitation schedule is in dispute?</td>
</tr>
<tr>
<td>Professional malpractice</td>
<td>Did the defendant’s professional conduct fail to meet the standard of care owed to the plaintiffs?</td>
</tr>
<tr>
<td>Social issues in litigation</td>
<td>What are the effects of pornography, violence, spouse abuse, etc., on the behavior of a defendant who claims that his or her misconduct was caused by one of these influences?</td>
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</tbody>
</table>

As far as the presiding judge is concerned, the expert witness at trial “is cast in the role of a witness, not as one of the advocates and not as a decision maker” (Saks, 1992, p. 191). As with other witnesses, experts must promise to “tell the truth, the whole truth, and nothing but the truth.” At the same time, however, judges are dubious about what experts have to say (Saks & Van Duizend, 1983, cited in Saks, 1992). One decision by a court of appeals is typical: “Hired experts, who generally are highly compensated—and by the party on whose behalf they are testifying—are not notably disinterested” (Tagatz v. Marquette University, 1988, p. 1042, quoted by Saks, 1992, p. 194).

And, at least sometimes, judges’ concerns are warranted. Every issue of legal periodicals, such as the National Law Journal, carries classified advertisements offering services by expert witnesses, and some seem to reflect sympathy with one side. For example, an advertisement by a neurologist reflected his ability to “quantify subtle brain damage not seen in MRI and CT” (“Closed head injuries,” 1994).

As noted in Box 2.4, not only judges are critical of expert witnesses. Several advocates of tort reform, including former Vice President Dan Quayle (1992) and especially Peter Huber in his book Galileo’s Revenge (1991), have claimed that “junk science” in the form of scientific “experts” hired by “unscrupulous plaintiffs’ attorneys [are] responsible for the awarding of millions of dollars each year against blameless corporations” (Landsman, 1995, p. 131). It should be noted that Huber has not been without his critics (see Chesebro, 1993, and Faigman, Porter, & Saks, 1994). Chapter 12 reviews some of Huber’s claims about the biases of jurors in civil trials.

Conflict is inevitable when expert witnesses are invited into the courtroom. As Saks (1992) observed, in the courtroom, experts “control the knowledge of their fields; they determine how to conceptualize and organize the material and what to emphasize. But judges and lawyers control the case, including just what part of the expert’s store of information they consider to be relevant. Thus, “the paradigms of the legal process and virtually any field of knowledge are almost assured to be in conflict with each other” (Saks, 1992, p. 185). If a trial attorney concludes that his or her preliminary choice for an expert witness is unsatisfactory, that expert can be dismissed prior to trial and another one selected. Furthermore, expert witnesses often learn the “facts” of the case from the attorneys who hired them, teachers who have a very particular agenda (Saks, 1992).

A second conflict concerns the role of the expert witness. We saw in Chapter 1 that Hugo Münsterberg did not hesitate to take sides; he played the role of advocate. In contrast, contemporary psychologists have been trained to be impartial scientists. Which role is appropriate? Elizabeth Loftus (Loftus & Ketcham, 1991) posed it this way:

Should a psychologist in a court of law act as an advocate for the defense or an impartial educator? My answer to that question, if I am completely honest, is both. If I believe in his innocence with all my heart and soul, then I probably can’t help but become an advocate of sorts. (p. 238, italics in original)

John Brigham responded, “Loftus’s implication that one will become an advocate could prove destructive in the creative hands of an aggressive attorney who is seeking to destroy an impartial expert witness’s credibility” (1992, p. 529). Furthermore, in surveys by Kassin, Ellsworth, and Smith (1989) and Kassin, Tubb, Hosch, and Memon (2001), eyewitness experts said that they were as willing to testify for the prosecution as for the defense, if asked (see Chapter 10 for more on this subject).

In 1986, a psychic testified in court that a CAT scan had caused her to lose her psychic powers, and a physician—testifying as an expert witness—backed her claim. The jury awarded her $1 million in damages. (The award was later overturned.) The expert witness in a trial has a great opportunity to influence that is only accentuated by the fact that “it is virtually impossible to prosecute an expert witness for perjury” (Sears v. Rutishauser, 1984, p. 212). Michael Saks concluded that an expert witness who manages to overlook contrary findings or
Box 2.4 Are Psychologists “Whores of the Court”?  

With its bright yellow jacket and its provocative title—*Whores of the Court*—splashed across the entire cover, Margaret Hagen’s book was bound to attract attention.

But it is the book’s contents that generated the strongest reaction. For Dr. Hagen, an experimental psychologist on the faculty of Boston University, the whores are those forensic psychologists, psychiatrists, and social workers who mislead judges and juries about child sexual abuse, insanity, psychological disability, and a variety of other topics, leading to the book’s subtitle, *The Fraud of Psychiatric Testimony and the Rape of American Justice*.

Those concerned with the powerful temptations of forensic psychology found much to applaud in the book. Hagen reflected the caution that should be the basis of forensic applications when she questioned whether mental health professionals can distinguish between real victims of post-traumatic stress disorder and those who fake symptoms. She described on page 262 how a professional staff member at a trauma clinic testified that no one could fake traumatic memories or fool psychiatric tests. She has been justifiably critical of psychologists who serve as hired guns in child custody disputes.

But many believe that Hagen weakened her case by overreaction, exaggeration, and stereotyping. Saul Kassin (1998a), in a thoughtful review, summarized:

Underlying much of Hagen’s attack are three underlying themes, or stereotypic portraits, of forensic clinical psychologists. One is that they are simply not competent on the basis of science (not to mention their lack of education in such areas as neuroscience, learning, memory, development, and behavior in social groups) to testify as they do. Second is that many clinical psychologists are driven by missionary liberal motives . . . The third theme is that forensic clinical psychologists are economically motivated by the almighty dollar . . . This last motive is what gives rise to the image of psychologists as “whores” of the court. (p. 322)

Some of Hagen’s statements are wildly divergent from our experiences as expert witnesses; for example, she wrote:

For the whole clinical psychological profession in whatever guise, the increase in power and prestige in the civil litigation arena has been dizzying. Just think of it. Judges genuflecting before your sagacious testimony, and changing the law to fit your word. . . . It is a compelling picture of a powerful profession flexing its muscles as never before. (1997, p. 255)

We cannot recall a judge “genuflecting”—to the contrary, our experience is that other, less complimentary types of judicial nonverbal behavior have been sharply pointed in our direction. Finally, another review of Hagen’s book (Fulero, 1997) noted that she committed precisely the same mistakes that she attributed to forensic psychologists:

I agree here that while Hagen’s essential point is well-taken—that is, a number of psychological experts are offered in courts to testify about shaky theories, questionable ideas, and conclusions without solid empirical evidence—the manner in which this point is presented “throws out the baby with the bathwater,” obscuring valid comments about the proper types and uses of psychological expert testimony with anecdotes, errors, flaming over-generalizations, and inflammatory charges. Further, the presentation of the essential point in such a manner will actually make it more difficult to rein in the very excesses Hagen deplores. (p. 10)

who commits errors “still is likely to remain safe from any formal penalty” (1992, p. 193). This includes protection from civil liability. Testimony given in court is privileged; “a witness may say whatever he or she likes under oath, and no private remedies are available to persons who may be harmed as a result” (Saks, 1992, p. 193). Saks has described an incredible case (reflected in three court decisions: In re *Imbler*, 1963; *Imbler v. Craven*, 1969; and *Imbler v. Pachtman*, 1976): An object was offered as evidence linking the defendant to a crime. This object had three different fingerprints on it, but the fingerprint expert testifying for the prosecution reported only on the two that were the defendant’s. (The defendant was convicted and sentenced to death; the third print was only revealed later.) Was the expert deliberately deceitful or only incompetent? Unless evidence for dishonesty exists,
the court must conclude that the defendant was “only” incompetent.

It is worth mentioning that while experts may be immune from criminal or civil liability for what they say in court, they apparently are not immune from potential loss of their license to practice. Courts in both Washington and Pennsylvania declined to extend immunity in ethical complaints lodged with state licensing boards for the actions of health care professionals while serving as expert witnesses. The Washington Supreme Court refused to extend the immunity for expert witnesses from civil liability to disciplinary proceedings (Deathagen v. Examining Board of Psychology, 1997). The court reasoned that the threat of professional discipline is an important check on the conduct of professionals who are otherwise immune from civil liability. In Huhta v. State Board of Medicine (1998) a Pennsylvania appellate court also held that immunity from civil liability for expert witnesses is not a defense in a disciplinary proceedings before the State Board of Medicine, because it would hamper the licensing board’s fulfillment of its responsibility to ensure the competence and fitness of physicians to practice medicine.

Suppose that an expert witness, at the end of extended testimony, looks at the jury intently and says:

I guess you noticed that I withheld some information from the court, stretched other information, and offered an opinion that sounded more certain than our field’s knowledge really permits. I did that because I am committed to making the world a better place, and I think it will be better if the court reaches the outcome I want to see in the case. (Saks, 1992, pp. 187–188)

Such actions do happen, even if they are not acknowledged by the experts, who may disregard contradictory evidence or exaggerate their own credentials. Every expert witness must consider this question: Do I tell the court things that will undercut my own seemingly authoritative knowledge (Saks, 1992)? And, as is considered in detail later in this chapter, every expert must make a personal decision about what the standard should be for reporting on a particular finding or the validity of a specific diagnostic tool.

Every expert witness must decide how to resolve the central dilemma of “relating his or her field’s knowledge to the cause at stake in the litigation” (Saks, 1992, p. 190). Is one loyal to one’s field of expertise or to the outcome of the case? Saks (1992) identified three ways to resolve this conflict:

1. The conduit-educator: As a conduit-educator, the expert regards his or her own field as the first priority; the thinking might go like this:

   My first duty is to share the most faithful picture of my field’s knowledge with those who have been assigned the responsibility to make the decisions. To do this may be to be a mere technocrat, rather than a complete human being concerned with the moral implications of what I say and with the greatest good of society. The central difficulty of this role is whether it is all right for me to contribute hard-won knowledge to causes I would just as soon see lose. (Saks, 1992, p. 189)

2. The philosopher-ruler/advocate: If the expert witness views himself or herself as a kind of philosopher-ruler/advocate, the oath of telling “the whole truth” is of less concern. Hans described it as follows:

   Some experts chose a legal-adversary stance, in which they volunteered only research evidence that supported their side, de-emphasized or omitted the flaws in the data, or refrained from discussing opposing evidence. In the words of one expert: “I understand the partisan nature of the courtroom and I realized that I would be on the stand arguing for a position without also presenting evidence that might be contrary to my . . . side. But, you see, that didn’t bother me, because I knew that the other side was also doing that.” (Hans, 1989, p. 312)
3. The “hired gun”: Although somewhat similar to the second role, hired guns work in the service of their employer’s values rather than trying to advance their own (Saks, 1992). The motivation is to help the person who hired the expert. The APA’s ethical guidelines (APA, 2002) are clear on this point: “Psychologists seek to promote accuracy, honesty, and truthfulness in the science, teaching, and practice of psychology. In these activities psychologists do not steal, cheat, or engage in fraud, subterfuge, or intentional misrepresentation of fact” (2002, Ethical Principle C).

The guidelines of the American Academy of Forensic Sciences are equally explicit:

The forensic scientist should render technically correct statements in all written or oral reports, testimony, public addresses, or publications, and should avoid any misleading or inaccurate claims. The forensic scientist should act in an impartial manner and do nothing which would imply partisanship or any interest in a case except the proof of facts and their correct interpretation (quoted by Saks, 1992, p. 191).

Saks, perhaps only half tongue-in-cheek, has suggested one “test” of how well the expert has assumed the honest educator’s role. He suggests that the opposing attorney ask the witness to “please tell the court everything you know about this case that the party who called you to the witness stand hopes does not come out during your cross-examination” (1992, p. 191).

The courts have, of course, established some standards for admissibility of proposed experts. For 70 years, the Frye test (Frye v. United States, 1923; see Box 1.1 in Chapter 1) served as one criterion for some courts in the United States; it stated that the well-recognized standards regarding principles or evidence for a particular field should determine the admissibility of expert testimony. But that rule, which is still the operative criterion in some states, such as New York, has been strongly criticized (Imwinkelreid, 1992). Additional guidelines were established in 1975 with the adoption of the Federal Rules of Evidence, which specified in Rule 702 that qualified experts can testify “if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue” (quoted by Bottoms & Davis, 1993, p. 14).

Thus, the Federal Rules of Evidence acknowledged the importance of general acceptance but did not limit admissibility on that basis, emphasizing whatever is relevant and “helpful.” The United States Supreme Court, in the case of Daubert v. Merrell Dow Pharmaceuticals, Inc. (1993), sought to clarify the distinction between the Federal Rules of Evidence and the more restrictive Frye test, because the Federal Rules of Evidence applied only in federal courts, and most state courts in the United States were still using the Frye rule.

Hence, we have a central issue in the conflict between science and the law: “To what extent should judges be gatekeepers, screening out what has come to be known as junk science from naive jurors who might otherwise be misled, overly awed, or moved by compassion for plaintiffs? Conversely, to what extent should juries be permitted to serve their traditional role as fact finders?” (Greenhouse, 1992, p. A9).

In this so-called “junk science” case (Huber, 1991), Joyce Daubert had borne a child with a deformed limb after taking Merrell Dow’s morning-sickness drug Bendectin (at that time, the only drug developed in the United States for the nausea resulting from pregnancy). Jason Daubert, of San Diego, born in 1974 and thus 19 years old when the case went to the Supreme Court, was missing three fingers and a major bone in his right arm.

Despite its approval by the Food and Drug Administration (FDA), Bendectin was removed from the market in 1983; Merrell Dow cited the costs of litigation and insurance as the reason. (More than 2,000 lawsuits against Bendectin were filed in the 1980s, according to Rebello, 1993.) When the cases went to trial, juries ruled for the plaintiff at least half the time, but invariably these verdicts were tossed out on appeal. One example is a Texas case in October 1991. A Nueces County jury ordered Merrell Dow to pay more than $33 million to Kelly Havner, after concluding that her
birth defects were caused by her mother’s use of Bendectin during pregnancy. The award included $30 million in punitive damages, but the judge reduced the award, cutting the punitive damages in half while retaining the $3.75 million award for actual damages. Merrell Dow appealed the award, and in March 1994, the Court of Appeals for the state of Texas found no scientific evidence to support the jury’s decision (Merrell Dow Pharmaceuticals, Inc. v. Havner, 1994). The Chief Justice wrote, “All the primary researchers who have studied Bendectin have reached but one conclusion, and it does not support the theory postulated by the Havners’ experts” (quoted by Fisk, 1994, p. A16). The court found the testimony of the five expert witnesses for the plaintiff to be deficient because they were unable to cite a single epidemiological study that reflected a statistically significant relationship between Bendectin and birth defects. Several of these experts “sought to rely on scientific data concerning test tube analysis and chemical composition analogies” (Birnbaum & Jackson, 1994, p. B7).

The decision by Merrell Dow to remove Bendectin from the market reflects one of the underlying issues in these cases. Product manufacturers claim that the litigation over product liability has run amok; they claim that in such junk science cases, an expert may be hired to testify that virtually anything caused a particular aberration (Birnbaum & Crawford, 1993). The manufacturers want to maintain the procedure of summary judgment, by which a judge’s ruling avoids an expensive trial. They contend that “if all cases involving disputes between scientific experts must go to trial, manufacturers may be forced to remove other products from the market and will be disinclined to create and market new products” (Birnbaum & Crawford, 1993, p. 18).

Attorneys for persons claiming defects, such as Ms. Daubert, argued that allowing judges to rule on the substance of innovative scientific testimony would generate a “scientific orthodoxy” discouraging the development of science; this was the basis for questioning “whether the Federal Rules of Evidence require courts to measure the foundation of expert scientific testimony before submitting that testimony to the jury and, if so, by what standard” (Birnbaum & Crawford, 1993, p. 18). Thus, the Dauberts argued for a lenient standard or judicial restraint, leaving to the jury those decisions about the acceptability of scientific methodology. They further accused the appeals court of a “blatant abuse of judicial power” in “trampling over” the goal of making the courts more open to scientific evidence (quoted in Greenhouse, 1992, p. A9). (This refers to Congress’s action in 1975; when it enacted the Federal Rules of Evidence, it told judges to admit all evidence they considered relevant.)

In contrast, Merrell Dow strongly argued that it was up to the judge to determine if a foundation existed for an expert’s testimony that was grounded in agreed-upon standards set by the scientific community. In the Daubert suit, Merrell Dow had “moved for a summary judgment, arguing that in light of the consensus in the scientific community, the Dauberts could not establish that Bendectin caused their infant’s birth defects” (Birnbaum & Crawford, 1993, p. 18). The company argued that a high standard for admissibility of scientific evidence was necessary to protect jurors “from scientific shamans who, in the guise of their purported expertise, are willing to testify to virtually any conclusion to suit the needs of the litigant with resources sufficient to pay their retainers” (quoted in Greenhouse, 1992, p. A9).

Bendectin litigation began in the 1970s, when individual cases surfaced noting that pregnant women had taken the drug and then produced children with birth defects (Green, 1992; Sanders, 1992, 1993). More than 30 epidemiological studies were done; Merrell Dow claimed that none of these showed any association between Bendectin and birth defects (Birnbaum & Crawford, 1993). In 1980, the FDA reached the same conclusion.

In their suit against the pharmaceutical company, Ms. Daubert’s lawyers used eight expert witnesses who relied upon chemical, in-vitro, and in-vivo animal studies; most importantly, they also cited an unpublished statistical “reanalysis” of data from the 30 previously published studies that had, in contrast, found no detrimental effects from taking Bendectin. This reanalysis was carried out by
statistician Shanna Helen Swan, of the California Department of Health Sciences (Begley, 1993). One of the experts gave the opinion that Bendectin was the cause of the child’s deformities. But the expert’s “reanalysis” did not use the conventional 0.05 level of significance to test the association. Nevertheless, the plaintiff’s experts concluded that Bendectin is a teratogen—that is, it causes limb reduction (Frazier, 1993).

In the original suit, the trial court granted Merrell Dow’s motion for summary judgment, holding that the animal and pharmacological studies, plus the epidemiological reanalysis, were insufficient to show causation; hence, no justification existed for a jury trial. The trial court relied on the Federal Rules of Evidence (specifically Rules 702 and 403); the Ninth U.S. Circuit Court of Appeals, in upholding the summary judgment, relied on standards from the Frye decision.

Both the state court and the appeals court (the latter in 1991) ruled the experts’ testimony inadmissible because the “reanalysis” was unpublished and had not been evaluated by other scientists (or subjected to peer review); that is, in the court’s view, the evidence was not generally accepted by the appropriate scientific community. Thus, in appealing to the U.S. Supreme Court, attorneys for Ms. Daubert challenged the lower court’s interpretation of what “general expectation” meant, and specifically the use of the Frye test rather than the Federal Rules of Evidence.

In a Supreme Court decision announced in June 1993, the majority opinion (reflecting a 7 to 2 vote) held that the Frye criterion was unnecessarily restrictive and was superseded (at least in federal courts) by the Federal Rules of Evidence. The latter’s Rule 702 was interpreted in Justice Harry Blackmun’s majority opinion to be adequate in limiting admissibility to that testimony grounded in relevant and reliable evidence, with those considerations to be decided by the presiding judge (Bottoms & Davis, 1993). Justice Blackmun was explicit: federal judges were obligated to “ensure that any or all scientific testimony or evidence admitted is not only relevant, but reliable” (quoted by Sherman, 1993, p. 28). (Note that what judges call “reliable,” psychologists call “valid”; when psychologists say something is “reliable,” they mean it is consistent, but not necessarily accurate.) Several criteria were considered appropriate for judges to use in determining the scientific validity of research; these included (1) whether the research had been peer-reviewed (favorably, we assume, as the Court didn’t say); (2) how testable it was (or how it stacked up on “ falsifiability ” or “refutability”); (3) if it had a recognized rate of error; and (4) if it adhered to professional standards in using the technique in question (Bersoff, 1993). Thus, the Supreme Court remedied the case to the San Diego court, saying the contested evidence had to be reevaluated on the basis of the Federal Rules of Evidence. The judge would have to decide if the proposed evidence by the plaintiff was both relevant and reliable; thus, in the words of one observer, “By adopting an evidentiary standard of scientific validity, the High Court replaced a test that was deferential to outsiders with one that requires judges themselves to make the necessary determination” (Faigman, 1995, pp. 960–961).

The minority opinion, written by then-Chief Justice Rehnquist, shed no tears over the abandonment of the Frye standard; one of its major differences with the majority opinion was its belief that U.S. federal judges now had the “obligation or the authority to become amateur scientists in order to perform that role.” Justice Rehnquist expressed the view that such matters were “far afield from the expertise of judges” (quoted by Bottoms & Davis, 1993, p. 14). During the oral arguments for the case, Justice Rehnquist had expressed a great deal of skepticism that judges, who lacked doctorates in science, could determine whether scientific testimony was valid (Bersoff, 1993).

Now, several years later, attorneys, judges, and psychologists are all trying to understand the effect of the Daubert decision (Dyk & Castanias, 1993; Ebert, 1993; Erard & Seltzer, 1994; Sanders, 1994; Symposium, 1994; Tomkins, 1995; Mcgough, 1998). Even an occasional judge has expressed his concerns in public (Gless, 1995). Does it open the doors for the admissibility of junk science or do just the opposite?
E. Wayne Taff, one of the attorneys who prepared an *amicus* brief in the *Daubert* appeal, has said: “The court could have said the evidence here was valid or not, but they didn’t. What are we going to do when the 9th Circuit says we don’t believe animal studies are valid and another circuit says the contrary. We’re going to have divergent opinions all over until the Supreme Court takes another case. I see another decade of disputes” (quoted by Coyle, 1993, p. 12).

Some observers at first thought that the ruling would be applied only to novel or unconventionally tested scientific evidence, but federal court decisions that were rendered within three months of the Supreme Court’s decision showed that nearly all expert testimony might be evaluated according to the *Daubert* criteria (Sherman, 1993). Within a few months, experts so scrutinized included an accountant, a product liability expert, a clinical physician, several economists, and an accidentologist. One example was a case from the Virgin Islands (described by Birnbaum & Jackson, 1994) in which the plaintiff claimed that her use of nonprescription asthma medications during her pregnancy caused her daughter’s birth defects. The trial judge conducted a hearing that lasted seven days and evaluated the testimony of five expert witnesses for the plaintiff and four for the defense. The judge then decided that the plaintiff’s expert testimony was inadmissible and granted a summary judgment for the defendant.

As Melton (1993) has asked, will the decision apply to the testimony of clinical psychologists expressing opinions on specific issues? Other prominent forensic psychologists have also expressed caution about this decision; Bersoff (1993) questioned, “What will the effect of this decision be on such controversial forensic testimony as the prediction of violence, the use of battered spouse, rape, trauma, and child sexual abuse accommodation syndromes, the limitations of eyewitness identification, or the presence of sex stereotyping and harassment in employment settings?” (pp. 6–7).

Quotations from two sets of psychologists reflect the concerns comprehensively; first, Bottoms and Davis (1993), writing about the case, said:

Few would argue the wisdom of allowing judges the option of ignoring a consensus of “experts” in favor of the individual integrity of evidence, or the prudence of asking questions about the sample, procedures or statistics behind a relevant finding. However, that legal experts, not scientists, will answer such questions should be of concern. Although this ruling opens the door for “well-grounded and innovative” but unpublished evidence, it also potentially opens it for testimony based on questionable techniques that are unrecognized by the scientific community for good reason—reason not necessarily discernible by fact-finders untrained in scientific methodology. (p. 14).

More recently, Kovera and Borgida (1998) wrote:

We argue that the *Daubert* decision is not well informed by psychological science. Empirical research has demonstrated that other legal safeguards presumed to be effective may not be (e.g., Stinson, Devenport, Cutler, & Kravitz, 1996). Moreover, psychological evidence already on the shelf suggests that *Daubert*’s safeguards do not provide effective means for discrediting any unreliable expert evidence that may be admitted at trial. (p. 203).

As one attorney noted, “In a sense, the real losers in this case are trial judges” (quoted by Angier, 1993, p. A8). They will have to consider the acceptability not only of the conclusions but of the methods used by those submitted to be scientific experts. And, according to a follow-up report (Slind-Flor, 1994), federal judges have a sense that they “don’t measure up well” when dealing with science and technology. Within months of the *Daubert* decision, a training program for judges was established under the direction of the Carnegie Commission on Science, Technology and Government and the Federal Judicial Center to educate judges as active evaluators of expert
testimony (Sherman, 1993). A reference manual for judges was distributed by the Federal Judicial Center in 1994. Psychologists should be involved in such efforts to aid legal professionals in the challenge to discriminate good science from bad; if they do, they will benefit science and the law, by exhorting their colleagues “to do competent science before becoming compensated experts” (Faigman, 1995, p. 979).

Since the Daubert decision, the Supreme Court has acted on two more cases dealing with the limits of the admissibility of expert testimony. These decisions, too, have implications for the testimony of psychologists. In the case of General Electric Co. v. Joiner (1997), the Court ruled that if an “analytical gap” existed between a scientific expert’s knowledge and the conclusions expressed in the expert’s testimony, that testimony could be excluded from evidence. Thus, once again, the judge was expected to be a vigilant “gatekeeper” who assessed the linkages in experts’ testimony. The second decision, Kumho Tire Co. Ltd. v. Carmichael (1999), extended the Daubert ruling to nonscientific expert witnesses who claimed specialized knowledge. In the original trial, a Japanese tire company had been sued. The plaintiff claimed that a flaw in the tire’s design was the cause of a fatal car accident involving an Alabama family. The evidence the Carmichael family wanted to introduce included the testimony of an engineer, a “tire-failure expert,” but his methodology was questioned by the judge, who doubted whether the engineer’s procedures could accurately determine the cause of the tire’s failure. In a unanimous decision, the Supreme Court concluded that in federal courts, judges should apply the same standards (such as the presence of peer review or an analysis of error rates), so that, for example, handwriting or fingerprint experts whose testimony is based on dubious methodology and which does not meet the standards of legal reliability might well be rejected (see Risinger & Saks, 1996; Saks, 1998).

A research project at the University of Nevada, Reno (Gatowski et al., 2001; Dahir et al., 2005) took a look at how the Daubert trilogy has affected actual judges. These researchers conducted an extensive telephone survey of some 400 state court judges, asking their opinions about the case, its utility as a decision-making guideline, their level of understanding of the case, and how the case is applied to various types of expert testimony. By and large, judges endorsed the Daubert reasoning, but were divided on whether the intent was to raise the standard of admissibility or to lower it—which suggests that we should see quite a bit of variability in judges’ decisions on specific sorts of expert testimony for some time to come (see Groscur, Penrod, Studebaker, Huss, & O’Neil, 2002; Penrod, Fulero, & Cutler, 1995). However, many judges readily noted their concern that they lacked the scientific expertise and education to make the sorts of decisions that they are required to make in cases involving experts, echoing the worries discussed earlier and making educational programs for judges even more critical.

SPECIFIC ROLES: PRESENTATION OF PSYCHOLOGY TO APPELLATE COURTS AND LEGISLATURES

The efforts of Münsterberg and his contemporaries to bring scientific psychology into the courts sought to produce results that would be influential at the trial level. Münsterberg apparently never tried to influence the decision of an appellate court or to testify before legislatures for or against proposed laws. This role, specifically the preparation of amicus curiae briefs to accompany appeals and the presentation of psychological issues to legislative committees or others with power to institute legal change, has become an important example of the role of forensic psychologists, especially in the last two decades (Acker, 1990; Wrightsman, 1999). Two of the most recent efforts are an amicus brief by a group of social scientists and law professors with regard to the Kumho Tire case just described (Vidmar et al., 1998, 2000), and the eventual adoption by the attorney general of the state of New
Jersey of guidelines for lineups and photo spreads in eyewitness identification cases (Farmer, 2001).

An ad hoc group of psychologists, sociologists, and law professors headed by Vidmar (1998, 2000) prepared the amicus brief in *Kumho Tire*. It was a science-translation brief, and its impetus was a set of other amicus briefs that made allegations that, in the opinion of the psychologists, drew conclusions about jury behavior that were unsupported by empirical research. Its goal was to present objectively the substantial body of research findings on issues related to the competence and diligence of juries. For example, research has determined that juries (contrary to the allegations of the other briefs) typically are not easily confused by expert evidence and do not quickly defer to experts. Furthermore, juries do not routinely sympathize with plaintiffs in personal injury cases when experts testify for the plaintiff; in fact, they may be skeptical of plaintiffs’ claims (Vidmar et al., 1998, 2000). This was not the first time that social science research was used in briefs in order to present scientific findings from our field to appellate-level courts.

In its historic decision that racially segregated schools were “inherently unequal” (*Brown v. Board of Education*, 1954), the Supreme Court cited, in the famous Footnote 11, research by psychologists Kenneth Clark and Mamie Clark and a statement by a group of prominent social scientists titled, “The effect of segregation and the consequences of desegregation: A social science statement.” It is uncertain just how much the justices, in overturning school segregation, were influenced by the social scientists’ statement (Cook, 1984). However, consider such statements as “the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group,” or “a sense of inferiority affects the motivation of a child to learn.” These statements from the Court’s opinion are consistent with the conclusions drawn from the well-publicized doll study by Kenneth Clark and Mamie Clark (1952). Consistent with conclusions, yes, but how consistent with results?

The Clarks showed a set of dolls to 134 Black children (ages 6 to 9) in the segregated schools of Pine Bluff, Arkansas, and 119 Black children in unsegregated schools in Springfield, Massachusetts. The children were requested to do certain things, such as:

- Give me the doll you like the best.
- Give me the doll that looks like you.
- Give me the doll that looks bad.

The segregated Southern children, the Clarks wrote, were “less pronounced in their preference for the white doll”; when asked to hand their questioner “the doll that looks like you,” 39% of the unsegregated Springfield children picked the White doll compared to only 29% in the segregated Arkansas schools. When asked for the nice doll, 68% of the Springfield children chose the White doll, while only 52% of the Pine Bluff children did. Which doll “looked bad”? More than 70% of the desegregated children chose the Black doll, whereas only 49% of the segregated children did. What are we to make of these findings? Do they, as the Clarks concluded, show invidious effects of segregation? The conclusion for critics of the Clarks’ conclusions (cf. van den Haag, 1960) was that if the tests demonstrate damage to Black children, then they demonstrate that the damage is less with segregation and greater with desegregation.

Kenneth and Mamie Clark’s interpretation of the results was, as you might expect, opposite. Essentially, they concluded that “black children of the South were more adjusted to the feeling that they were not as good as whites, and because they felt defeated at an early age, did not bother using the device of denial” (quoted by Kluger, 1976, p. 356). The Clarks’ interpretation is not the most parsimonious one. Did they predict this finding before the data were collected? The research report does not say so. The Clarks stated that some children, when asked which doll they resembled, broke down and cried. This type of behavior, they reported, “was more prevalent in the North than in the South” (p. 560). Research results that are subject to conflicting interpretations—especially when the result is not consistent with a desired explanation—demand that the researchers begin with a theory that produces testable hypotheses. Fortunately, the Supreme Court in 1954 concluded
that school segregation is inherently unequal, and it did not have to rely on research data to so conclude.

If the data were so subject to a multitude of interpretations, why did the Supreme Court not simply note that school segregation, on the face of it, induced an assumption of inferiority leading to a response of humiliation? It may have been “precisely because the Court knew it was backing a firm precedent and entering a heated debate, that it wished to garner all the supporting evidence that was available. Without data, there was a danger that the arguments on both sides might merely have become so much moral posturing and empty assertions” (Perkins, 1988, p. 471). As Thurgood Marshall noted in 1952, the earlier separate-but-equal “doctrine had become so ingrained that overwhelming proof was sorely needed to demonstrate that equal educational opportunities for Negroes could not be provided in a segregated system” (quoted in Rosen, 1972, p. 130).

Turning from Clark and Clark’s data to the statement by the social scientists that was part of the Brown amicus brief, we should note that some psychologists also disagree about its desirability. Stuart Cook (1979), 25 years later, concluded that the information in the statement was sound, but Harold Gerard (1983) felt that the statement was based “not on hard data but mostly on well-meaning rhetoric.”

In the Brown case, the values of the psychologists were consistent with the values of the justices—especially of Chief Justice Warren—but not necessarily with a straightforward interpretation of the research results. In the brief submitted by the APA in the case of Lockhart v. McCree (1986) regarding death-qualified jurors (see Bersoff, 1987), we find a different combination, specifically a conflict in values between the majority of psychologists and the majority opinion of the Supreme Court.

In Lockhart v. McCree, the Court rejected three decades worth of social science research that had shown that the exclusion of prospective jurors opposed to the death penalty, done before the trial starts, produces a jury that is conviction-prone (Cowan, Thompson, & Ellsworth, 1984; Fitzgerald & Ellsworth, 1984; Thompson, 1989b). The brief also observed that such death-qualified juries are unrepresentative, because they exclude a higher percentage of certain types of people. The Court rejected both claims, and the conflict between social science and the law was never more sharply represented than in Chief Justice Rehnquist’s majority opinion:

We will assume for purposes of this opinion that the studies are both methodologically valid and adequate to establish that “death-qualification” in fact produces juries somewhat more “conviction-prone” than “nondeath-qualified juries. “We hold, nonetheless, that the Constitution does not prohibit the states from “death-qualifying” juries in capital cases. (Lockhart v. McCree, 1986, p. 1764)

Several value conflicts are present here. One is the priority given to empirical research findings. As Thompson (1989b) observed, the Court’s decision may have rested primarily on pragmatic considerations. But a political ideology conflict exists, too. Those social scientists who are political liberals are concerned about decisions like McCree because they create a trial jury that is slanted toward conviction, by excluding those opposed to the death penalty. But those Supreme Court justices who are politically conservative (the majority when McCree’s case was decided) are concerned that if those prospective jurors who are adamantly opposed to the death penalty were left on the jury, they would slant the trial toward acquittal.

Once more, on the acceptability of submitting the specific brief on death-qualified jurors, we find inconsistency not only between disciplines but within the field of psychology (Finch & Ferraro, 1986). Research psychologist Rogers Elliott (1991a, 1991b) has raised two questions: (1) Are the data consistent enough to transmit to the Court (and, if consistent, are they developed enough to be useful in setting policy)? and (2) Can briefs communicate the research results adequately? Elliott criticized the methodological adequacy of the studies cited by the APA brief in the Lockhart
v. McCree appeal and argued that “the data in the brief are insufficient to its claims and cannot do more than justify a verdict of not proven” (1991b, p. 62, italics in original).

Should a psychologist become an expert witness or aid in the preparation of an amicus curiae brief? What accounts for the sometimes volatile differences in reactions of psychologists on specific issues and specific cases? Kassin and Wrightsman (1983) proposed that jurors, contemplating evidence in a criminal trial, possessed varying degrees of either pro-prosecution or pro-defense biases; they found that a measure constructed to assess juror bias could predict the direction of the juror’s verdict in most types of criminal trials. This analysis may be extended to differences in psychologists’ reactions to involvement in the court system. How consistent should a phenomenon be to declare it reliable? And, how is consistency measured: A box score of different studies’ results? The percentage of variance accounted for? A meta-analysis? Elliott, as implied earlier, sought a high standard of reliability; in his view, psychologists should reflect “organized skepticism” (1991b, p. 75). Self-descriptions of those who insist on an exceedingly high standard for reliability include “cautious” and “prudent.” It would seem that, for such psychologists, the state of knowledge must approach certainty. Does this mean that there is no situation in which they would endorse involvement with the courts? Elliott’s response: “The claim made here is not that scientific organizations should not or may not (or should or may) take moral positions. Rather, it is that, if they do so, they should not affect to base them on scientific foundations when such foundations are insufficient to bear the argument constructed on them” (1991b, p. 74).

In contrast, those psychologists who have testified and submitted amicus briefs, while demanding a clear pattern of research findings, have different standards regarding reliability. Many of them endorse the “best available evidence” argument, which proposes that it is appropriate for psychologists to testify even if their conclusions must be tentative (see Loftus, 1983). Yarmey (1986) argued that an expert’s statements should conform to the criterion of scientific respectability, but that absolute certainty is not required. He suggested this criterion: Is the evidence clear, convincing, reliable, and valid, or is it sufficiently ambiguous that experts could find support for whatever position they wished to defend? Ellsworth (1991), in response to Elliott’s criticisms, wrote, “To keep silent until our understanding is perfect is to keep silent forever” (p. 77), and “I think we should file briefs when we believe that we have something to say that would improve the quality of the courts’ decision making” (p. 89). (Ellsworth, in contrast to Elliott, concluded that the set of studies on the conviction-proneness of death-qualified jurors is consistent in the direction of its findings, and that the effect is of sufficient magnitude to be of practical importance.) Fulero (1987), in discussing the question of pretrial publicity effects and expert testimony, proposed a similar standard: “If, in the view of the expert, the research literature demonstrates ‘to a reasonable degree of scientific probability’ that an effect exists, then the literature ought to be presented to the trier of fact in a legal context” (pp. 262–263).

Another example: Bersoff (1987), in describing the McCree brief, turned the question around to the critics: What state of the data would ever be strong enough to persuade critics and skeptics to testify? This leads to consideration of another dimension. Psychologists differ in their perception and weighing of conflicting facts, just as jurors do. Bermant (1986) proposed that these assessments of the strength of the available evidence are major causes of the disagreement about the propriety of expert testimony. Part of the difference in evidence interpretations results from the degree to which psychologists are concerned about avoiding erroneous convictions. Perhaps, then, Fulero’s (1987) criterion allows these differences to be aired in the context of expert testimony.

Does all this have to do with the political orientations of psychologists? As Ring (1971) observed almost four decades ago, most social psychologists are politically liberal, but not all are (and indeed, things may have changed in psychology as they have in American society in general). A major
concern of politically liberal psychologists is that some defendants will be wrongfully convicted, imprisoned, and executed. Some psychologists do not see this as a major problem. McCloskey and Egeth (1983) argued that wrongful convictions from mistaken eyewitness testimony reflected only a “small fraction of the 1% of cases in which defendants were convicted at least in part on the basis of eyewitness testimony” (p. 552). Konecni and Ebbesen (1986) approvingly quoted this argument and concluded from it “that in the state of California one person is wrongfully convicted approximately every three years because of mistaken eyewitness testimony” (1986, p. 119). Of course, we might ask how many errors of omission are we willing to make to avoid making one error of commission? Konecni and Ebbesen (1986) went on to conclude: “One wrongful conviction every three years because of mistaken identification in a state the size of California (if the estimates given above are correct) may be one wrongful conviction too many, but most reasonable people would probably regard it as well within the domain of acceptable risk—acceptable because no workable system of justice is perfect” (1986, p. 119).

Other psychologists would disagree. The magnitude of error, they would say, is much greater. Fulero (1997) and Cutler and Penrod (1995) have noted that if there are 1 million felony convictions in the United States each year, and the system is 99.5% accurate and has only a 0.5% error rate, then there are 1,500 wrongful convictions per year—and the number of wrongful convictions goes up another 1,500 for each 0.5% of error you give to the system. And, they might also note that we now understand that “wrongful conviction” is a concern not just of the politically liberal but of everyone, even political “conservatives”—because for every wrongful conviction, a guilty criminal remains at large, free to commit other crimes. Those in law enforcement at the highest levels, not generally considered “political liberals,” have begun to see this as well (Technical Working Group on Eyewitness Evidence, 1999).

The amicus brief directed to the U.S. Supreme Court has been a frequent mechanism by which the APA seeks its goals to promote and advance human welfare (Grisso & Saks, 1991; Wrightsman, 1999). In several instances, this device has been effective (Tremper, 1987). But in several notable cases, the majority of the Court has decided in a direction contrary to the conclusions supported by psychological theory and findings.

One of these, the McCleskey v. Kemp (1987) decision involving the racial bias in the death penalty, was described in Chapter 1. In another decision on a different issue, in Schall v. Martin (1984), the U.S. Supreme Court considered the constitutionality of a New York law that provided pretrial detention of allegedly delinquent juveniles if they were felt to be likely to commit further illegal acts before a court decision. Can legal professionals or mental health professionals predict who will engage in violent or criminal acts? The Supreme Court heard a presentation reflecting the then-predominant psychological perspective, that such predictions are difficult (Ewing, 1985). Yet, the Supreme Court did not find that such preventive detention violated constitutional protections.

In another case (Bowers v. Hardwick, 1986), the APA offered an amicus brief challenging the basis of laws that made sodomy between consenting homosexual persons illegal. A few states prohibited genital–anal intercourse between heterosexual persons; the state of Georgia, the appellant in this case, prohibited such acts only between two homosexual persons. Specifically, the brief brought psychological research findings to bear on several myths offered as justifications for such “sodomy laws”: that the behaviors reflect mental illness, that they are a threat to public health, and that they are unusual (Bersoff & Ogden, 1991). Yet, the Court maintained laws (recently in effect in about one-half the states, though very seldom enforced) that prohibit homosexual behavior.

At first, it appeared that psychology’s intervention was unsuccessful in all three cases. But in all three cases, the Court’s references to scientific data did not challenge the facts that APA had demonstrated; the Court simply said that “the psychological data were not sufficient grounds upon which to decide the legal questions” (Grisso & Saks, 1991,
p. 207). The Court appeared to listen to evidence and took it seriously enough to discuss it. Indeed, in a more recent case, *Atkins v. Virginia* (2002), the United States Supreme Court ruled 6 to 3 that executions of mentally retarded criminals are “cruel and unusual punishment,” violating the Eighth Amendment to the Constitution. The APA submitted an *amicus* brief that clearly influenced the majority opinion and indeed it quoted research from that brief in a footnote (as noted in Chapter 1, there is never unanimity within psychology; Bersoff (2002) has written critically about the APA’s position in the *Atkins* case). In 2005, the APA submitted in *Roper v. Simmons*, in which the issue was whether the imposition of the death penalty on an individual who was 17 years old when he committed a murder constitutes “cruel and unusual” punishment, violates the Eighth Amendment to the Constitution, thus extending the *Atkins* reasoning. Again, the Court, clearly influenced by the APA brief, ruled that it did. Finally, however, in the case of *Lawrence v. Texas* (2003), the Supreme Court reversed its position in *Bowers* and ruled that laws banning homosexual sodomy were unconstitutional.

So, in Grisso and Saks’s (1991) reasoned opinion, APA *amicus* briefs may be making two important contributions to forensic psychology. First, “they may reduce the likelihood that judicial use of spurious, unsubstantiated opinions about human behavior will establish precedent for future cases” (p. 207). Second, the *amicus* briefs may, to put it crudely, “keep the Court honest,” or, to quote Grisso and Saks, “psychology’s input may compel judges to act like judges, stating clearly the fundamental values and normative premises on which their decisions are grounded, rather than hiding behind empirical errors or uncertainties” (p. 208). In this light, psychology’s efforts in these controversial cases appear to be more effective (see also Wrightsman, 1999).

When psychology seeks to influence the courts, it needs to go more than halfway. In a study of the Supreme Court’s use of social science research in cases involving children, Hafemeister and Melton (1987) concluded that when secondary social science sources were cited, they typically were ones published in law reviews or government reports, not in psychology journals. The moral is clear: If we want to influence judges, we must publish our conclusions in the periodicals that they read (see also Fulero & Mossman, 1998).

What is the appropriate stance for psychologists who seek to influence court decisions? We have alluded to some of the dangers. Roesch, Golding, Hans, and Reppucci (1991) posed interesting choices:

Should social scientists limit themselves to conducting and publishing their research and leave it to others to apply their research findings? Or do they have an ethical obligation to assist the courts and other social groups in matters relating to their expertise? If an activist role for social scientists is appropriate, what are the comparative advantages of brief writing, expert testimony, and other mechanisms of approaching the courts? (p. 2)

When psychology as an organized profession seeks to influence the law through an *amicus* brief to an appellate court, it can do so for a variety of reasons. For example, the APA may perceive a shared interest in the outcome with one of the parties in the litigation; usually the interest relates to economic benefits, powers, or prerequisites for APA’s members (Saks, 1993). For example, in 1993, the APA filed an *amicus* brief in conjunction with a court case involving the confidentiality of unfunded grant applications (Adler, 1993). This “guild” interest may not be consistent with the neutral stance of some conceptions of the *amicus* brief, and may in fact harm the perception of impartiality in other presentations of scientific evidence. Indeed, Roesch, Golding, Hans, & Reppucci (1991) noted that this type of advocacy brief contrasts with the science-translation brief, or an objective summary of a body of research.

The science-translation brief reflects the second role, as an honest broker; it occurs when APA pos-
sesses knowledge that the Court otherwise might not have and that might assist the Court in deciding the case before it. Saks argued that taking this role “minimizes the temptation to fudge, maximizes the value of the knowledge to the public interest, and helps protect the integrity of the APA and of psychology” (1993, p. 243).

Even a science-translation brief will reflect the perspective and values of its writers (Roesch, Golding, Hans, & Reppucci, 1991). How much interpretation should an amicus brief contain? Melton and Saks (1990) suggested that both the advocacy brief and the science-translation brief can end up misleading a reader, especially a lay reader, which is what judges are when they read these kinds of briefs. “The solution, we think, is in approaching the writing with an honest desire to share with the courts a faithful picture of the available psychological knowledge, and to interpret the research only to the extent that doing so will clarify its meaning.” (p. 5)

Because controversy is inevitable in science, any science-translation brief will generate some disagreement by social scientists. But “in preparing briefs, social scientists should strive to ensure, at a minimum, that briefs represent a consensual view of social scientists (i.e., what most experts in the field would conclude)” (Roesch, Golding, Hans, & Reppucci, 1991, p. 6). Alternative explanations should be included, when appropriate. Sometimes the psychologist-authors of the brief go too far, in Saks’s opinion. They may begin “to lose sight of who the client is (is the client APA or one of the parties?) or what the brief’s goals are (is the goal to share relevant knowledge or to urge a particular legal conclusion?), or which kind of amicus role they are in (is this a guild brief or a science-translation brief?)” (Saks, 1993, p. 243).

APA’s brief in the case involving Ann Hopkins and Price Waterhouse (described in Chapter 1) provides a provocative example. It stated:

Amicus concludes that sex stereotyping existed in petitioner’s employment setting, was transformed into discriminatory behavior, and played a significant role in the decision of the petitioner not to select respondent as a partner of the firm. (American Psychological Association, 1991, p. 1062)

Note that this quotation asserts an opinion on the ultimate issue—on the facts of the case—equivalent to a psychologist testifying that a particular eyewitness was in error when identifying the defendant. Saks’s reaction to this brief: “To my eyes, this is remarkable language in a science translation brief by a non–party . . . . If the goal of the brief was to share with the Court relevant findings from the research literature on gender stereotyping or to show that Professor Fiske’s testimony about that research literature was generally accepted within her field, then the quoted language goes much too far” (1993, p. 244).

As interest in forensic psychology continues to grow, systematic concern about codifying the ethical guidelines has increased. Division 41 (the American Psychology–Law Society) of the APA has developed a set of guidelines for forensic psychologists, under the direction of Stephen L. Golding, Thomas Grisso, and David Shapiro. These Specialty Guidelines for Forensic Psychologists, approved by the membership of APA Division 41, have been published (Committee on Ethical Guidelines for Forensic Psychologists, 1991; see the American Psychology–Law Society website at www.ap-ls.org). In late 2002, a Revision Committee was formed to consider changes to the Specialty Guidelines, and that committee is still working on the revision (see www.ap-ls.org for more information and the latest draft as of 2006). The guidelines build upon the APA’s Ethical Principles of Psychologists in several aspects of forensic work, including confidentiality, the relationship between psychologists and litigating
parties, and procedures in preparing evaluations. Nevertheless, forensic psychologists, for various reasons, may exceed what is acceptable in their profession and even what the law theoretically permits them to do. The following are some temptations that recur throughout the roles described in the rest of this book.

**Promising Too Much**

Sometimes forensic psychologists who are hired by attorneys or the courts promise a level of success they cannot guarantee (see Strier, 1999). Litigation Sciences, one of the earliest and largest of the trial consulting firms, in its brochure, has claimed an impressive record of successes. “We have been involved in more than 900 cases, and our research findings have been consistent with the actual outcome in more than 95% of the matters that have gone to trial” (Litigation Sciences, 1988, p. 3). This surely must generate great optimism for any law firm that hires Litigation Sciences. Is a 95% success rate consistent with the degree to which social scientists can predict outcomes in such nonexperimental situations? Can any trial consultant—with or without utilizing a control group consisting of the same trial without the consultant—actually show that “success,” defined by a favorable verdict, was due to or caused by the consultant’s input, was irrelevant to the consultant’s input (that is, would have occurred anyway), or occurred in spite of the consultant’s input (that is, that the trial consultant’s input was detrimental, but the jury voted for that side anyway)?

Similarly, psychologists who have developed tests and other instruments that are used in child custody evaluations or assessments of psychopathology may be tempted to claim a greater level of validity than is warranted in real-life situations. Some forensic psychologists may become committed to the use of certain tests, such as the MMPI or the Rorschach, even in situations in which their applicability is questionable (see Wood, Nezworski, Lilienfeld, & Garb, 2003; Ziskin, 1995; Faust, in press; Lilienfeld, Lynn, & Lohr, 2003).

**Substituting Advocacy for Scientific Objectivity**

When psychologists become expert witnesses, they are usually hired by one side in an adversarial proceeding. Most psychologists, in such a situation, are conscientious and try to be ethical “even to the point of providing ammunition to the other side when the situation warrants it” (Ceci & Hembrooke, 1998a, p. 1). But it is tempting to play the advocate role, to take sides, to become sympathetic to the arguments of the side that is paying the psychologist, and to “slant” the testimony in that direction. The shift toward partisanship may be subtle, even unconscious. Attorneys contribute to the problem by “shopping around” until they find an expert who will say what they want (Spencer, 1998; see also Box 2.2). Many people, including some judges, see the expert witness as a hired gun, willing to say whatever his or her client needs said. An apparent example of a hired gun on the stand occurred in the trial of John Demjanjuk, the alleged “Ivan the Terrible,” a Nazi concentration-camp guard, at his eventual trial in Israel (see Chapter 10 for details of this case). A handwriting expert who was testifying in Demjanjuk’s defense concluded that a signature on a document was probably not Demjanjuk’s, but the prosecution confronted the expert with an earlier public statement in which he expressed the opposite conclusion. The expert refused to explain the inconsistency on the grounds that he had a “contractual relationship” with the Demjanjuk Defense Fund, which would sue him if he explained further (Spencer, 1998). A recent, widely discussed book by experimental psychologist Margaret Hagen (1997) is a broadside attack on psychologists as hired guns (see Box 2.4).

The proper role for a psychologist as an expert witness is that of an objective scientist who reports all the data, even if they make a less supportive case for the side that hired the psychologist. But it is hard to avoid the seduction of taking sides. Sometimes, when the advocate role becomes paramount, the psychologist may be tempted to “create” a diagnosis to fit the behavior—examples are “Black rage” and “urban survival syndrome”—when no proof exists for the
Letting Values Overcome Empirical Findings

Probably none of us can escape our values as influences on the ways that we perceive the world. The temptation is to let our values determine our scientific conclusions in a court of law.

For example, a forensic psychologist is asked to do an evaluation of a pair of parents who are divorcing, in order to assist the judge in making a custody decision that is in the best interests of the child. What if the psychologist discovers that one of the parents—on rare occasions when the child has uttered an expletive—washes out the child’s mouth with soap? There is nothing illegal about this, and probably nothing physically harmful, but perhaps the psychologist is repulsed by the behavior. No empirical data exist that such an action is related to the general question of appropriateness for custody, but the psychologist’s recommendation could be affected by it.

In another example of this type of temptation, a psychologist serving as an expert witness may go beyond any legitimate scientific basis in offering conclusions about whether a group of children was sexually abused. In the late 1980s, Kelly Michaels was charged with the sexual abuse of many children under her supervision at the Wee Care Day Nursery in Maplewood, New Jersey; a psychologist testified for the prosecution that for 19 of 20 children, their testimony and conduct were "consistent with" the presence of a child sexual abuse accommodation syndrome. This expert defined "consistent with" as having a "high degree of correlation," 'over point six [.6] in numerical terms of probability" (quoted by Miller & Allen, 1998, p. 148).

Despite the ambiguous nature of this conclusion, the jury convicted Kelly Michaels of 115 counts of sexual abuse of children, and she was given a prison sentence of 47 years. But five years later, her conviction was overturned; there was no scientific basis for the expert witness’s assertion that the testimony and conduct of the children bore any relationship to the presence of a sexual abuse accommodation syndrome (Miller & Allen, 1998). As Newman put it:

A claim that [a child’s] behavior is “consistent with” the sex abuse syndrome does not reveal causes for the behavior other than sex abuse that may exist. The symptom of headache is consistent with being hit over the head with a blunt instrument, but [blows by] blunt instruments do not cause most people’s headaches. (1994, p. 196)

In another case (Barefoot v. Estelle, 1983), the Supreme Court opinion shows that two psychiatrists went beyond the available research on predicting dangerousness by testifying that they knew (to 100% certainty) that the defendant would commit crimes in the future (Lavin & Sales, 1998). One, Dr. James Grigson, was expelled from the American Psychiatric Association for his testimony in this and many other Texas death penalty cases (Lavin & Sales, 1998).

Doing a Cursory Job

A prisoner on death row in Florida, Alvin Bernard Ford, began gradually to show changes in his behavior—at first just an occasional peculiar notion, but, over time, more frequent and more extreme. He became obsessed with the idea that he was the target of a criminal conspiracy and began to have delusions that he was “Pope John Paul III” who had appointed the nine justices of the Florida Supreme Court. Because a person cannot be executed unless he or she is capable of understanding the implications of the act, the governor of Florida appointed a panel of three psychiatrists to conduct a competency hearing to evaluate whether Ford had the mental capacity to understand the nature of the death penalty and the reasons why it had been imposed on him (Miller & Radelet, 1993).

One would imagine that such an evaluation should be done thoughtfully and carefully, given the implications of its possible outcome. Yet the three psychiatrists, together, interviewed Ford for a total of only about 30 minutes. Furthermore, this questioning was done in the presence of eight
other people, including attorneys and prison officials. Each of the psychiatrists filed two- or three-page reports with the governor; each agreed that Ford met the criterion of sanity as defined by the state law, even though each gave a different specific diagnosis of the inmate. Thus, the governor signed Ford’s death warrant, although the U.S. Supreme Court (in Ford v. Wainwright, 1986), on appeal, required Florida to redo the competency hearing. (Ford died in prison of natural causes before he could be executed.)

The unreliability of psychiatric diagnoses will recur as an issue (see Chapter 6). However, the temptation of concern here is to be less than thorough and professional in one’s work for the courts or other authorities.

**SUMMARY**

The roles of forensic psychologists in the legal system are diverse, but they share certain temptations, including promising too much, substituting advocacy for scientific objectivity, letting values overcome empirically based conclusions, doing a cursory job, and maintaining dual relationships and competing roles.

Psychologists differ about the degree to which we should attempt to apply our findings to legal questions. Some believe that we do not possess findings that are sufficiently reliable to be applied to real-life decisions, or believe that their colleagues, because of their politically liberal orientations, tend to sympathize with the defendant. Those psychologists active in presenting scientific psychological findings to the courts respond by arguing that the information from our field, while not unanimous, does improve the quality of decision making in the legal system.

The courts have entered this controversy by considering just what the standard should be in admitting scientific evidence at trial. In a trilogy of decisions—Daubert, Kumho, and Joiner—the Supreme Court applied standards of scientific acceptance, such as publication in a peer-reviewed journal, general acceptance, and reliability and validity, in order to determine the admissibility of psychologists as expert witnesses.

**KEY TERMS**

- advocate role
- amicus curiae briefs
- competency hearing
- conduit-educator
- confidentiality
- death-qualified juries
- dual relationships
- evaluation
- expert witness
- fact witnesses
- Frye test
- hired gun
- junk science
- peer review
- philosopher-ruler/advocate
- Psychopathy
- science-translation brief
- standard of reliability
- summary judgment
- trial consultant

**SUGGESTED READINGS**

These relentlessly readable books by one of America’s most respected forensic psychologists include a wealth of practical suggestions, succinctly put. An example: “With indifferent attorneys be assertive. With incompetent attorneys, decline the case or educate them” (Brodsky, 1991, p. 197).


All forensic psychologists anticipating their first testimony are indebted to Maggie Bruck for painfully portraying the pitfalls of such an activity. She had not been warned about what to expect, but now we can know.


The general viewpoint of this book is similar to that of Margaret Hagen’s Whores of the Court; both books are by psychologists who are critical of their psychotherapist colleagues who use invalid psychological tests and substitute intuition for empirical findings.


A few forensic psychologists love it, more hate it, and some of us say to it, “Yes, but . . .” (see Box 2.4). Certainly one of the most talked-about books in recent years.


Few of us have had such an impact that our names have become verbs within the lingo of a certain profession, but that is true of the late Jay Ziskin. When trial attorneys “Ziskinize” psychologists or psychiatrists who are testifying, they challenge them by cross-examining them intensively with regard to the accuracy of their statements and the validity of the procedures they have used. This three-volume set assesses the validity of a number of forensic topics; any forensic psychologist who anticipates being an expert witness needs to consult these volumes. The most current, the sixth edition, is in preparation as of 2007 (D. Faust (Ed.), Coping with psychiatric and psychological testimony (6th ed.). New York: Oxford University Press).
More than forty years ago, an influential United States government report on police organizations (President’s Commission on Law Enforcement and Administration of Justice, 1967) portrayed a place for psychology in only one aspect of law enforcement: the selection of police recruits.
In contrast, this chapter attempts to show that psychology can play a significant role in almost every aspect of police work, from selection of recruits, through the training of police and other law enforcement officers, to the evaluation of their work performance. Forensic psychologists can assist in responding to the major types of complaints about the police—corruption, racism, and brutality. Furthermore, psychology and the other social sciences have evaluated recent changes in police procedures, such as team policing, or the assignment of police officers to particular neighborhoods, so that they become familiar with local concerns. The purpose of this chapter is to examine what psychology has to offer in reaching our shared goal of improving law enforcement procedures.

WHO ARE THE CLIENTELES?

Police corruption and brutality in New York City and Los Angeles; the beating of Rodney King in Los Angeles; the arrest of three police officers in Detroit for planning the theft of $1 million in cash—these and other events have sensitized the public to the potential problems of the police (Cannon, 1998; Fields, 1993). Less acknowledged is the other side of the coin: the acts of heroism by law enforcement officers and the risk of officers’ death or injury (between 140 and 200 U.S. officers are killed in the line of duty each year). Stresses on the police can take a terrible toll: Twelve New York City police officers committed suicide in a single year (Associated Press, 1994; James, 1994).

In identifying the possible contributions of psychology to policing, we begin by asking: Who are the clientes? To whom are forensic psychologists responsible, when they seek to apply psychological knowledge to the criminal justice system? A forensic psychologist is most likely to be hired by the police or sheriff’s department, most often as a consultant though sometimes as a staff member, but the forensic psychologist also has an ethical responsibility to respond to the public’s concerns about the police. As we will see, achieving both these responsibilities at the same time is often challenging.

The Public

What does the public want from law enforcement officers? Individual respondents would differ, but two general wishes are a sense of respect and a lack of prejudice. The Christopher Commission that studied the Los Angeles Police Department after the officers’ beating of Rodney King concluded that “too many . . . patrol officers view citizens with resentment and hostility; too many treat the public with rudeness and disrespect” (quoted by Schmalleger, 1995, p. 202). A desire for fairness is typical (Tyler & Folger, 1980; Vermunt, Blaauw, & Lind, 1998); clearly, a frequent complaint about the police is their discrimination against African Americans and other minorities. For decades, members of racial minority groups have perceived themselves to be unjustly victimized by the police and other law enforcement officers, including highway patrol officers and sheriff’s deputies (Decker & Wagner, 1982). African Americans believe they are abused by the police far more than are Whites in several ways: being roughed up unnecessarily, being stopped and frisked without justification, and being the object of abusive language. The concerns of minority-group members are reflected in complaint rates; for example, in Philadelphia 70% of complaints against the police were from African Americans, even though the population of the city at the time was 75% White (Hudson, 1970).

These concerns are so great that victims have sarcastically developed a crime-classification acronym, DWB (“driving while Black”), to reflect the tendency of some patrol officers to concentrate on minorities as possible offenders. In 1998, 11 African American motorists, with support from the ACLU and the NAACP, filed a class action lawsuit against the state of Maryland, claiming race-based profiling by its state troopers in their efforts to seize illegal drugs and weapons. Typically, these plaintiffs reported being detained for almost an hour while being questioned. Troopers exposed luggage to a
drug-sniffing dog and, on occasion, left clothes strewn on the side of the highway. (An Oklahoma trooper reportedly told an African American man, “We ain’t good at repacking.” Johnson, 1999, p.4A.) The Maryland state troopers’ own records over a three-year period ending in December 1997 indicated that although 75% of the drivers on Interstate 95 in Maryland were White and 17% were Black, 70% of those pulled over and searched were Black while only 23% were White (Barovik, 1998; Janofsky, 1998). Similar complaints have been filed against law enforcement agencies in other states, including Colorado, Illinois, Indiana, New Jersey, Oklahoma, and Pennsylvania (Johnson, 1999).

In U.S. v. Montero-Camargo, 208 F.3d 1122 (9th Cir. 2000), the court addressed the seizure of drugs from a vehicle near the U.S.-Mexico border in El Centro, California. Among the factors used by the Border Patrol to justify the stop of the vehicle was that the occupants of the vehicle were Hispanic. The Court upheld the seizure based on other factors (such as the fact that defendants made a U-turn in an area with no side roads and in plain view of the Border Patrol station), but declared that race could not be used even as one factor among many in a decision to stop a vehicle. The problem remains pervasive enough that in June 2001, the Bureau of Justice Assistance, a component of the Office of Justice Programs, United States Department of Justice, awarded the Northeastern University Institute on Race and Justice a grant to create a website called the Racial Profiling Data Collection Resource Center to monitor this problem (see www.racialprofilinganalysis.neu.edu).

What can be done to reduce this concern? Does psychology have anything to offer? Although the topic deserves more attention, one intervention is the use of a psychologist to assist in community involvement in police selection. Often, the goals in selection by police departments reflect traditional criteria; they fail to recognize the goal of diversity in the makeup of law enforcement agencies, specifically the hiring of minorities and women.

Members of special interest groups want to express their own agendas in police departments’ activities. Many of these departments, however, have “resisted what they consider unwarranted interference from people whom they believe have little understanding of the nature of the job, and are, in fact, hostile to the police and their definition of the nature of their work” (Ellison, 1985, p. 77).

Katherine W. Ellison (1985) is a community psychologist who was invited to develop a new procedure for selecting police officers for the Montclair, New Jersey, police department. In doing so, she capitalized on the concept of stakeholders, people who have a special knowledge and interest, or a “stake,” in running the department. Stakeholders included, as you would expect, officers from the department, especially patrol officers. Members of the Township Council and other township officials, as well as members of the local media, the clergy, and other opinion leaders, were included. But Ellison also solicited interviews from a stratified quota sample of 100 citizens from the community and included community representatives in the panel that interviewed candidates for police training. A side benefit, in addition to selecting officers who reflected community demographics, was an increase in the communication between the police and those members of the community who characteristically complain about the unresponsiveness of the police.

A second community concern is police corruption. Deviant behavior by police can vary along a continuum of seriousness; an example of such a categorization is offered in Box 3.1. In a four-year period in the mid-1990s, more than 500 police officers in 47 cities were convicted of federal crimes (Johnson, 1998). Arrests and convictions for violations of state laws were even higher. The recent violations are different from those of earlier times, when some officers accepted bribes to ignore rampant examples of gambling, prostitution, or liquor violations. Now, the corruption manifests in officers who are active participants in the crime; some of these, in the words of the former police commissioner of New York City, William Bratton, have “truly become predatory figures” (quoted by Johnson, 1998, p. 8A).

In some cases, officers who engage in corrupt behavior do so partly because of conflicts in achieving
professional success. Big-city police who are given the task of capturing drug dealers must often rely on informants, but when the police slip informants money to tattle (usually $10 to $20), their supervisors ridicule their requests for reimbursement, telling them that ‘’s just part of doing business (Kramer, 1997). But temptations to become lawbreakers are also a part of chasing drug dealers. One police officer, convicted of corruption, told a reporter:

So when we hit a place, we’d take some money to reimburse our informant payments. After a while, with so much dough sitting around, you just take more, and then you begin to get used to it. Unless you’re completely nuts, you’re careful. If you find 10 grand, say, you take only three or four. You can’t raid a drug house and come back and not turn in some money. That’d be a sure tipoff. (quoted by Kramer, 1997, p. 83)

Michael Dowd was a New York City police officer who exemplified how corruption began with small illegal acts, such as taking money from the bodies of victims, moving to major busts, to eventually recruiting other officers to participate in an elaborate system of bribery and extortion that netted Dowd more than $15,000 per week (McAlary, 1994). Eventually Dowd and other police began to deal cocaine to suburban Long Island youngsters. Only because of those acts was he caught, arrested, and convicted; he is now serving a 14-year prison sentence.

Why do brutality and corruption occur, given the extensive screening that is demanded of candidates for training as law enforcement officers? Are these behaviors the result of personality characteristics, or do they develop from the presence of a subculture (a local precinct, a squad of officers) prone to corruption? These important questions have not received sufficient study. Jerome Skolnick (1966) concluded that a process of informal socialization—specifically, interactions with experienced officers—was perhaps more important than police-academy training in determining how rookies viewed their work and the public. In his classic analysis of police life, Arthur Niederhoffer (1967) claimed that the police subculture transformed a police officer into an authoritarian

<table>
<thead>
<tr>
<th>Box 3.1 Types of Police Deviance by Category and Example</th>
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<tr>
<td><strong>High-Level Corruption</strong></td>
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<tr>
<td>Violent Crimes: The physical abuse of suspects, including torture and nonjustifiable homicide.</td>
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<tr>
<td>Denying Civil Rights: Routinized schemes to circumvent constitutional guarantees.</td>
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<tr>
<td>Criminal Enterprise: The resale of confiscated drugs, stolen property, etc.</td>
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<tr>
<td>Property Crimes: Burglary, theft, etc., committed by police.</td>
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<tr>
<td>Major Bribes: Accepting $1,000 to “overlook” contraband shipments and other law violations.</td>
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<tr>
<td><strong>Low-Level Corruption</strong></td>
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<tr>
<td>Role Malfeasance: Destroying evidence, offering biased testimony, and protecting “crooked” cops.</td>
</tr>
<tr>
<td>Being “Above” Inconvenient Laws: Speeding, smoking marijuana.</td>
</tr>
<tr>
<td>Minor Bribes: Twenty dollars to “look the other way” on a ticket.</td>
</tr>
<tr>
<td>Playing Favorites: Not ticketing friends, etc.</td>
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<tr>
<td>Gratuities: Accepting free coffee, meals, etc.</td>
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personality, and several studies of changes that take place from the recruit to the experienced police officer support such a tendency (Carlson & Sutton, 1975; Genz & Lester, 1976; Hageman, 1979; McNamara, 1967). Role demands may lead to increased authoritarianism and a greater willingness to use force; working in high-crime areas seemed to foster authoritarianism in the police (Brown & Willis, 1985). One empirical effort to determine if authoritarianism scores of police officers were related to the number of times they had been disciplined produced no significant relationships (Henkel, Sheehan, & Reichel, 1997), but the approach needs to be extended. Expressions of brutality and corruption may well reflect an interaction between a predisposition to lawbreaking within the individual officer, combined with being in a subculture that makes such actions easy to do and easy to get away with doing—a subculture that may even have norms that encourage such behavior.

The Police Department

A second clientele for the forensic psychologist is, of course, the police department itself. A psychologist can assist police departments and other law-enforcement agencies in answering a number of important questions; for example:

- What should be included in the training program for recruits? Does success in a training program predict effectiveness as a police officer?
- Are there ways to prevent or reduce police burnout? What are effective ways to deal with the stresses of police work?
- How effective are different strategies for combating crime? Are foot patrols more effective than police cars? Does saturated patrolling work?

Subsequent sections of this chapter identify what psychology has to offer as answers to these questions, as well as conflicts between the approaches to answers by psychologists and by the police. More detailed information relevant to these questions can be found in books on the topic of police psychology, including those by Blau (1994) and by Kurke and Scrivner (1995).

THE SELECTION OF POLICE

While Lewis Terman and L. L. Thurstone pioneered the use of psychological tests to classify police applicants in the early 1900s (see Super, 1999; Scrivner, 2006), it was not until the Law Enforcement Assistance Administration provided funding to local law enforcement agencies beginning in 1967 that psychologists began to become seriously involved in the selection of police officers.

What should be the goals of a program to select candidates for law enforcement training? Foremost for police chiefs has been the attempt to screen out disturbed applicants rather than to select those with a desirable profile (Reiser, 1982c). For a long time, psychologists (e.g., Smith & Stotland, 1973) have proposed that we should move beyond this focus on gross pathology. For example, what are the characteristics of an ideal law enforcement officer and how are they best measured (see Scrivner, 2006)? Psychology has made strides toward answering these questions over the last 90 years but definitive answers remain elusive, partly because of the lack of agreement about the ideal and also because some desired traits cannot be reliably measured (Ainsworth, 1995).

Attainment of the goal of selecting desirable police officers for training is especially tantalizing because, in many jurisdictions, the initial pool is a large one. Rachlin (1991) pointed out that in New York City between 30,000 and 50,000 people take the police civil service test every time it is administered. From this large pool, those who score high enough must still go through a series of rigorous evaluations before they are selected for training at the police academy. These include (Rachlin, 1991):

1. A review of academic transcripts, tax returns, and military and employment records.

2. Background checks with the Department of Motor Vehicles, and a fingerprint check with the FBI and the New York State central fingerprint registries.
3. Interviews with neighbors, family, friends, and employers.

4. A screening medical exam, in which prospective trainees may be eliminated because of heart murmurs, high blood pressure, back problems, or impaired hearing or vision. Prospective candidates must be physically fit, and standards are high. For example, to pass the 1991 physical for the Chicago Police Department, a man had to be able to bench-press 98% of his weight, run 1.5 miles in 13.46 minutes, and do 37 situps in one minute; a woman had to press 57% of her weight and run 1.5 miles in 16:21 minutes (Kaplan, 1991). Since that time, and currently, there is a state-wide Illinois physical fitness test known as POWER (the Peace Officer Wellness Evaluation Report; see www.chicagopolice.org/recruitment/power.pdf).

5. Psychological testing (4 hours in length).

6. Interview with a clinical psychologist.

7. A full medical examination.

Only after passing all these hurdles is the applicant chosen for training. Somewhere between 500 and 1,500 applicants are chosen for the 5½-month training at the New York City Police Academy. Even after this rigorous selection, about 10% drop out during the training period (Rachlin, 1991). The process remains substantially the same today.

A History of Psychology and Police Selection

Psychologists’ involvement in the evaluation of police characteristics extends back, surprisingly, to Lewis Terman, the author of the widely used Stanford-Binet intelligence test (Scrivner, 2006). Terman (1917), publishing in the very first issue of the Journal of Applied Psychology, tested the intelligence of 30 police and firefighter applicants in San Jose, California. Finding that their average IQ was 84, he recommended that no one whose IQ fell below 80 be accepted for those positions (Spielberger, 1979).

Several decades later, the emphasis shifted to personality characteristics; in the 1940s, an attempt was made to use the Humm-Wadsworth Temperament Scale as a basis for selecting police applicants in Los Angeles (Humm & Humm, 1950), despite the lack of evidence for its validity (Ostrov, 1986). Since then, psychologists have employed a variety of procedures. Although they continue to use personality inventories, they also employ interviews and situational tests as tools. We evaluate each of these approaches in the next sections.

Tools for Psychological Selection

The Interview. As in the selection of people for most professional positions, the personal interview has been a central part of the selection process for law enforcement officers. Typically, a clinical psychologist or psychiatrist conducts a brief interview. The tradition approach has been to search for pathology (Silverstein, 1985). Are there personality characteristics or traits that imply abnormal behavior? Recently, however, emphasis has shifted to using the interview to assess such desirable qualities as social maturity, stability, and skill in interpersonal relations (Janik, 1993). Chandler (1990) viewed the interview as providing answers to questions about “military bearing,” sense of humor, and absence of anger. The interview can provide information on characteristics not visible through other procedures, including body language, appropriateness of emotions expressed by the interviewee, insight into one’s own behavior, and an ability to convey a sense of self (Silverstein, 1985).

But the interview, as a selection device, is fraught with problems. The purpose of the clinical interview has traditionally been not so much for prediction; instead, the goal was to gain an in-depth understanding of the individual. Validity was often assessed by comparing one clinician’s judgment to that of other clinicians. The literature from industrial/organizational psychology on the use of the clinical interview gives no indication that it is valid as a predictor of job performance (Ulrich & Trumbo, 1965).

Another problem is that there is no agreed-upon format for the interview. Some urge that
the interview be standardized so that it always covers issues relevant to the job criteria (Hibler & Kurke, 1995); a structured approach also permits comparisons between applicants. But other psychologists and psychiatrists prefer the opportunity to probe topics of concern, as these emerge from the responses of the individual candidate. Regardless of the procedures used, it is essential that the interview be conducted in a fair and equitable way (Jones, 1995). Applicants who are members of minority racial and ethnic groups are sensitive to possibilities of racial bias by interviewers, and some commentators (Jones, 1995; Milano, 1989) have suggested that a form be prepared, specifying the topics covered in the interview.

An article by Hargrave and Hiatt (1987, p. 111) cited studies related to psychiatric interviews for selection of police officers. One of the problems the researchers noted is the strong tendency for people to portray themselves more positively in face-to-face interviews than on personality tests, resulting in an increase in the number of false positives (poor risks who are hired) and no impact on the goal of reducing false negatives (those not hired who would have displayed acceptable performance).

Two particular problems obstruct the attainment of validity for interviews in police selection, although each of these problems is characteristic of some other occupations, too (Spielberger, 1979). The first is the lack of criteria against which to judge predictors (Hargrave & Hiatt, 1987). Police and other law enforcement officers have a great deal of autonomy in their activities; also, the number of activities they carry out daily may be diverse. Second, screening of applicants via a clinical interview leads to elimination of those considered unqualified; the resulting studies thus have a restricted range of candidates, from whom individual differences in effectiveness are compared with their interview results.

Hargrave and Hiatt (1987) set out to deal with the second problem by capitalizing on an unusual situation. Two classes of police academy trainees \( (N = 105) \) were individually tested and interviewed by two clinical psychologists, who each rated the trainees on suitability for the job. But these ratings were not used to exclude any candidate from training. Candidates were rated on personality characteristics (anxiety, mood, anger, antisocial characteristics, and ability to accept criticism), interpersonal effectiveness (ability to communicate, assertiveness, self-confidence, and ability to get along with others), and intellectual characteristics (judgment and verbal skills). The interview used a five-point rating scale, ranging from 1 (unsuitable) to 5 (excellent), in order to assess overall psychological suitability for the job.

The trainees then completed a five-month law enforcement academy. At the end of training, three performance criteria were examined: (1) attrition during training, (2) ratings of psychological suitability given by the training officers, and (3) peer evaluations. Correlations were determined between each of these and the ratings by each clinician; these are as follows:

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<th>Clinician A</th>
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<tr>
<td>Academy attrition</td>
<td>.24**</td>
<td>.14</td>
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<tr>
<td>Instructors’ ratings</td>
<td>.19</td>
<td>.27*</td>
</tr>
<tr>
<td>Peer evaluations</td>
<td>.09</td>
<td>.13</td>
</tr>
<tr>
<td>Composite criterion</td>
<td>.26**</td>
<td>.24**</td>
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* \( p < .05; ** p < .01 \)

Although some of these correlation coefficients are statistically significant, the relationships are relatively weak and certainly too low to make confident predictions about the success of individuals.

An analysis of clinicians’ dichotomized ratings of “suitable” versus “unsuitable” with the goal criterion of “successful” versus “unsuccessful” found that Clinician A correctly classified 67% of the subjects, and Clinician B, 69%. An analysis of those trainees who were rated by the clinicians as “suitable” but were “unsuccessful” on the composite criterion indicated that all but one were unsatisfactory due to attrition.

**Psychological Tests.** Administration of psychological tests to police trainees is a frequent selection device; the tests can be group-administered, computer-scored, and easily interpreted. Certainly
the public seems to expect that its police officers will be screened by psychological testing (see Box 3.2 and Box 3.3). But do they have any validity in this context?

**The MMPI and the CPI.** General personality measures, such as the Minnesota Multiphasic Personality Inventory (Hathaway & McKinley, 1983) and the California Psychological Inventory (Gough, 1975), are staples of such testing. The Minnesota Multiphasic Personality Inventory (MMPI) was originally designed, in the early 1940s, to identify individuals with psychotic or neurotic problems. As Blau (1994) observed, it has been the workhorse of paper-and-pencil personality assessment for more than half a century. It consists of 550 true-or-false items and usually takes an hour to complete. In the late 1980s, the MMPI-2 was developed out of a need to update and restandardize the original instrument (Butcher, 1992).

**Box 3.2 A New Psychological Screening Disqualifies 22% of Prospective Officers**

After 22% of prospective officers flunked new psychological screening, the Milwaukee Police Department swore in a smaller-than-expected class of recruits on Monday.

The pool of recruits started at 77, but 17 failed the psychological examination, two others washed out at other parts of the screening and one declined the job, bringing Monday’s new class in at 57. The department’s academy can take up to 66 recruits per class for the 23-week training program.

With more than 200 officer vacancies and homicides surging this year, Chief Nannette Hegerty has pressed for a third class of recruits to join the two already planned in 2006. Some aldermen have championed the issue and plan to push it at the Common Council’s budget debate Friday, but there doesn’t appear to be enough support.

The Fire and Police Commission, which hires officers, overhauled its psychological screening of prospective officers after the Journal Sentinel reported that Milwaukee was out of step with other cities.

Beginning in 2000, Milwaukee gave all candidates a written psychological test, but only those whose answers raised concerns were sent to a psychologist. Most police departments require all candidates be interviewed by a psychologist, experts said.

The issue of psychological screening arose after off-duty police officers were accused of savagely beating Frank Jude Jr. in October 2004. None of the four officers who were initially suspended, three of whom have been charged with felonies, received any psychological screening when they were hired.

Mayor Tom Barrett proposed all officers see a psychologist, beginning with this class, at a cost of $19,000. Hegerty said she would like to have more recruits but welcomed the new scrutiny.

“Every spot is important and I would love to be able to fill every spot, but I am not going to take people who don’t have the personality to be a police officer just to fill seats,” she said.

In the past three classes, the commission has sent between 60 and 62 recruits to the academy. In 2001 and 2002, the classes were larger, one reaching 67, said David Heard, the commission’s executive director.

Heard said the commission has sent over smaller classes recently because that is what the department wants. Department officials were not available for comment late Monday.

Patrick Curley, Barrett’s chief of staff, said the next classes will have to be larger to accomplish the mayor’s goal of putting 180 new officers on the street from the current and next two classes.

“We will have to talk to the chief and commission members as well as the budget office. It is doable,” he said.

Heard said he had no firm notion of how many candidates would fail the new psychological screening but that 22% was higher than he had planned for. He didn’t have anyone else to send because the commission was at the end of its 2002 hiring list with this class.

“Initially you think when you have 77 ready to go, you will have capacity. We will know next time,” Heard said. “This time we sent everyone we had.”

Stephen Curran, a Baltimore-based police psychologist who does testing for local, state and federal law enforcement agencies, said there is no standard failure rate for psychological screening.

Some departments with vigorous background investigations have only 2% of applicants fail, he said. Others that don’t scrutinize backgrounds as closely sometimes have higher failure rates at the psychological screening stage, he said.
Whether the MMPI-2 was an improvement over the original MMPI has generated much discussion (see Blau, 1994, p. 83). One study that administered both scales to 166 police officers found that 70% of them produced normal profiles on both tests (Hargrave, Hiatt, Ogard, & Karr, 1993). But individual respondents did not always score the highest on the same subscale from one form of the test to the other.

The California Psychological Inventory (CPI) is similar in format to the MMPI, but its subscales reflect such personal traits as dominance, sociability, and flexibility, in contrast to the diagnostic categories (for example, Psychopathic Deviate, Hypomania) of the MMPI. A survey of 72 major law-enforcement agencies (Strawbridge & Strawbridge, 1990) found that the MMPI was by far the most frequently used instrument—in 33, or 46%, of the departments. Next most frequent was the CPI (in 11 of 72 departments) and the Inwald Personality Inventory (used in 5 departments). Two departments used the Rorschach Inkblot Technique, and two used a human figure drawings test; 37 (or 51%) of the departments used no test at all. This survey was done in 1989, and the percentage of departments using tests has certainly increased as more departments have sought accreditation by the Commission on Accreditation for Law Enforcement Agencies (Blau, 1994).

Reviewing the use of psychological tests in police selection, Hargrave and Hiatt (1987) reported studies finding significant relationships between MMPI scales and police officers’ job tenure, automobile accidents, supervisor’s ratings, and job problems. Although the CPI has been used less often, scale scores were related to trainees’ academy performance and to supervisors’ ratings. (Specific studies cited are listed in Hargrave and Hiatt, 1987, p. 110, and Bartol, 1991, p. 127). In another review, Bartol (1991) was less sanguine, describing the track record of the MMPI in screening and selection of law enforcement personnel as “mixed.” However, Bartol (1991) concluded that the MMPI, despite its limitations, continues to be the most commonly used personality measure for the selection of police.

In the study of trainees described earlier that evaluated the predictive validity of the clinical interview, Hargrave and Hiatt also administered the MMPI and CPI to 105 police trainees on their first day of training. The clinicians then interpreted each
The city of Tacoma has released a long-lost psychological evaluation that helps explain why David Brame was hired as a police officer in 1981.

Brame rose through the ranks to become Tacoma’s police chief. On April 26, 2003, he fatally shot his estranged wife, Crystal, and then committed suicide.

Since then, several investigations have probed Brame’s career. One mystery has been why he was hired in 1981, even though public records show he flunked one psychological exam and was judged a “marginal candidate” by a second psychologist.

The answer to the question of Brame’s hiring apparently lay in a forgotten file cabinet. A city worker found two envelopes while cleaning old file cabinets last week, according to Acting City Attorney Elizabeth Pauli.

The envelopes contained four psychological exams. They included a previously unreleased evaluation in 1981 that recommended Brame for the police department, and a 1989 exam that judged him “fit for duty” after he had been accused of rape.

Tacoma Mayor Bill Baarsma said the newly discovered 1981 evaluation proves Brame’s hiring followed normal procedures.

“That explains why he was hired. That was the great unanswered question,” Baarsma said yesterday.

Crystal Brame’s family has filed a wrongful death lawsuit against the city, Pierce County and several city officials including Baarsma. The lawsuit alleges officials condoned Brame’s violent behavior and ignored signs he was going to kill his wife.

Tacoma City Councilman Kevin Phelps said the uncovered records should help the city defend against the lawsuit.

“The city did all the right steps and did their homework,” Phelps said. “I don’t think there’s any psychological test in the country that would have suggested David Brame would have done what he did.”

Paul Luvera, attorney for Crystal Brame’s family, said the new documents don’t let Tacoma off the hook.

“Having read the three tests, it only confirms the fact this man should never have been hired as a police officer and certainly should not have been promoted to chief of police,” Luvera said. “These are not the kind of results you would want.”

Brame was first evaluated in September 1981, after he applied to the Tacoma Police Department. Psychologist Steven Sutherland recommended against hiring Brame, concluding the 23-year-old was depressed, immature and insecure.

“I feel that these personality variables will have a detrimental effect on his work as a police officer and will contribute to potential danger for him, his fellow officers and the community at large,” the psychologist wrote.

Six days after Sutherland delivered his negative report to the police department, Brame got a second psychological exam. The results were totally different.

Psychologist John Larsgaard found Brame “mature and stable and realistic about life,” and said the personality test made him seem “almost ideal.”

Larsgaard did note Brame seemed to be tailoring his answers and may have tried to “psych out” the personality test. Still, he highly recommended Brame.

“I am confident that he would make a very fine young policeman, who, with years of training and experience, could be a valuable asset to the Tacoma Police Department,” Larsgaard wrote. This positive evaluation has not been made public before now.

Brame then got a third, tiebreaker evaluation. The third psychologist, James Shaw, saw Brame in November 1981. Shaw said Brame seemed to be a “marginal” candidate. However, he recommended Brame with the caveat that he be closely supervised.

Brame did well at police academy and during his probation at the Tacoma Police Department. He was promoted through the ranks, even after being accused of rape in 1988.

The Tacoma Police Department investigated the allegation internally instead of referring it to an outside law enforcement agency. The police chief at the time, Ray Fjetland, closed the investigation with the conclusion “not sustained.” Brame was never charged.

The documents released Thursday show that Brame was evaluated by psychologist James Shaw again after the rape allegation.

Shaw said Brame was “fully cooperative” with the evaluation and was “fully fit for duty” as a police officer.

Shaw’s letter doesn’t refer to the rape allegation, merely “an investigation which was quite stressful to Officer Brame.” There’s no indication that Shaw knew the nature of the stressful investigation.
Trainee’s scores to classify his or her suitability. These ratings were compared with the same criteria as the interview data. The results were:

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<td>Composite criterion</td>
<td>.34**</td>
<td>.24**</td>
</tr>
</tbody>
</table>

* p < .05; ** p < .01.

Clinician A correctly classified 66% of the trainees; Clinician B, 67%. These latter predictions were not different from those by the interview data, although the correlations between test results and individual criteria are somewhat higher than with the interview. Again, the results are not strong enough to make decisions about individual applicants.

Although some of these correlations are significant, the relationships are not impressive. In a follow-up study, Hargrave and Hiatt (1989) tested 579 trainees with the CPI and found that CPI profiles distinguished between those suitable and unsuitable for training. These authors concluded that CPI profiles have a more consistent relationship with job performance by police than with police academy variables. In general, the higher-rated police officers scored higher on the measures from the so-called Class II and Class III on the CPI (Class II consists of measures of socialization, responsibility, intrapersonal values, and character; Class III consists of measures of achievement potential). The other two classes of variables on the CPI showed no complicated relationship with police performance; these are Class I (measures of poise, ascendancy, self-assurance, and interpersonal adequacy) and Class IV (measures of intellectual and interest modes).

A second approach by Hargrave and Hiatt (1989) capitalized on the evaluations given to police on the job. Forty-five officers from three municipal law-enforcement agencies, all of whom had experienced serious job problems, were compared with 45 matched controls who had not received disciplinary notices for serious job problems. (The groups were matched on gender, race, education, and length of employment; their average age was 27 years, and most had some college and had been on the job 3 years.) The job-related difficulties experienced by the problem group included providing drugs to inmates, being convicted for using illegal drugs, using unnecessary force, physically confronting other officers, and violating departmental procedures, resulting in the escape of inmates. All these police had taken the CPI as part of the job-selection process. Only on the CPI Class II scales were there significant differences between the two groups (recall that Class II measures maturity, personal values, self-control, and sense of responsibility). Individuals who score higher (T scores above 50) on the scales in Class II are seen as being careful, cautious, and controlled and as having a sense of duty and a reluctance to take risks. Those scoring low (less than 40) are more carefree, but also are opportunistic risk-takers.

The non-problem group scored higher on the CPI scales So (Socialization), Sc (Self-Control), and Wh (Sense of Well-Being). Compared to non-problem officers, four times as many problem officers had scale scores at or below a T score of...
40. Thus, it appears that qualities of impulsivity, risk taking, easy boredom, lack of objectivity, and willingness to break rules contribute to problems among officers (Hargrave & Hiatt, 1989).

Hiatt and Hargrave (1988a, 1988b) used a similar procedure to assess the predictive validity of the MMPI. They followed 55 urban police officers who had received at least one performance evaluation. Those rated as unsatisfactory scored significantly higher on two MMPI scales: Pa (Paranoia) and Ma (Hypomania). Building on this procedure, Bartol (1991) followed 600 police officers from 34 small-town police departments over 13 years to determine which officers were terminated. He concluded that an immaturity index consisting of a combination of the MMPI scales Pd (Psychopathic Deviate) and Ma (Hypomania) plus the L scale was a strong predictor of termination.

Bartol suggested an immaturity index cutoff score of 49 (a combination of the K-corrected Pd and Ma scores plus the L score) as “suggestive of possible problems” (1991, p. 131, italics in original), especially if the Ma scale is highly elevated. Seventy percent of the terminated officers received immaturity scores of 49 or above, compared with 23% of the retained group. (If an immaturity score of 54 was used as the cutoff, 53% of the terminated group would be correctly identified, contrasted with 95% of the retained group.)

Note that the typical interpretation given a high Ma score is consistent with a low score on the CPI Cluster II—impulsive, moody, and having a low frustration tolerance. Bartol wrote, “Police administrators and peers of high Ma officers often describe them as hyperactive individuals who seek constant activity” (1991, p. 131). One terminated police officer reportedly had developed the off-duty habit of locating speed traps and then driving by at a high speed to test other officers’ alertness and effectiveness in high-speed chases (Bartol, 1991). Bartol concluded that the Pd scale from the MMPI, by itself, had limited predictive power; it was more useful when combined with a high Ma score. In general, this combination—in MMPI lingo, a 4–9 code—in individuals reflects “a marked disregard for social standards and values. They frequently get into trouble with the authorities because of antisocial behavior” (Graham, 1987, p. 109).

The 4–9 code had appreciable predictive power for Bartol’s sample only when merged with the L scale. When the MMPI was originally developed, the purpose of the L scale was to detect a deliberate and unsophisticated attempt on the part of respondents to present themselves in a favorable light (Graham, 1987). (Those MMPI items scored on the Lie scale portray the test taker as someone who does things, such as “read every editorial in the newspaper every day,” which most people would like to say they do but, in all honesty, cannot say they actually do.) Bartol (1991) noted that “police administrators continually report that high-L-scoring police officers demonstrate poor judgment in the field, particularly under high levels of stress. They seem to be unable to exercise quick, independent, and appropriate decision making under emergency or crisis conditions. They become confused and disorganized” (1991, p. 131). Based on 15 years of working with police supervisors, Bartol considered an L score above 8 (out of 15 items) to be one of the best predictors of poor performance as a police officer. However, he offered a titillating addition: “More recently, we have also discovered that extremely low L scale scores (0 or 1) also forecast poor performance, suggesting that the L scale may be curvilinear in its predictive power” (1991, p. 131).

The Inwald Personality Inventory. The MMPI and the CPI are, of course, general instruments. In contrast, the Inwald Personality Inventory (IPI) was developed for a more specific and limited purpose: to measure the suitability of personality attributes and behavior patterns of law enforcement candidates (Inwald, Knatz, & Shusman, 1983; Inwald, 1992; Detrick & Chibnall, 2002). This instrument is a 310-item, true-false questionnaire consisting of 26 scales (25 original scales and 1 validity scale) designed to measure, among other matters, stress reactions and deviant behavior patterns, including absence and lateness problems, interpersonal difficulties, antisocial behavior, and
alcohol and drug use. IPI subscales also measure suspicious, anxious, and rigid characteristics. This test usually takes about 45 minutes to complete.

Another significant difference between the IPI and the previously described tests is that the IPI was developed “with the express purpose of directly questioning public safety/law enforcement candidates and documenting their admitted behaviors, rather than inferring those behaviors from statistically-derived personality indicators” (Inwald, 1992, p. 4). As Blau (1994) has noted, it is essentially a “screening out” test that seeks to assess antisocial behavior and emotional maladjustments that might adversely affect police performance.

The IPI items measure both personality characteristics and behavior patterns. The scales contain statements that assess both the unusual types of behavior patterns that reflect severe problems and those that reflect less extreme adjustment difficulties. They are designed to identify, for example, “a highly guarded but naive individual as having hyperactive or antisocial tendencies based strictly on behavioral admissions” (Inwald, 1992, p. 3). The scales also have a goal of differentiating between individuals who express socially deviant attitudes and those who act on them (Inwald, 1992).

The IPI contains a validity scale (Guardedness) similar to the validity scales on other inventories. But in contrast to the MMPI L scale, the 19 statements on the Guardedness scale contain minor shortcomings common to almost all people. Inwald noted, “When a candidate denies such items, a strong need to appear unusually virtuous is indicated” (1992, p. 4).

Inwald developed the IPI items after reviewing more than 2,500 preemployment interviews with candidates for law enforcement positions. Not only did the emerging characteristics include those qualities related to effective police functioning, but they also include self-revealing statements made by applicants during actual interviews.

A factor analysis (Inwald, 1992) of the IPI scales, using 2,397 male and 147 female police officer candidates, done to determine commonalities among the responses to different items, found the following:

- Factor 1, for both sexes, measured rigid, suspicious, and antisocial behaviors. It included Rigid Type, Undue Suspiciousness, and Antisocial Attitudes.
- For the males, Factor 2 was composed of two scales, Substance Abuse and Hyperactivity, reflecting risk-taking and impulsive behavior. For the female sample, Alcohol and Depression scales also contributed to this factor.
- For the third factor, even greater sex differences emerged. For the men, Phobic Personality, Lack of Assertiveness, Depression, and Loner Type scales loaded on the factor, but for women, these were replaced with Job Difficulties and Absence Abuse.

An early effort to validate the IPI compared it to the MMPI in a study of 716 male correction officer recruits; criterion measures included job retention or termination, absence, lateness, and disciplinary measures in the first 10 months of service (Shusman, Inwald, & Landa, 1984). This study concluded that for most criteria, the IPI scales predicted the status of officers more often than did the MMPI scales, and that the combination of IPI and MMPI scales increased accuracy of classification. The improved performance when the two scales are used together is a consistent conclusion of those validation studies reported in the test manual (Inwald, 1992), along with the relative strength of the IPI over the MMPI (Scogin, Schumacher, Howland, & McGee, 1989).

Further validation studies (Inwald & Shusman, 1984; Shusman & Inwald, 1991a) used 329 police recruits and 246 correctional officers; again, researchers concluded that more IPI than MMPI scales discriminated successfully. For example, the IPI yielded 82% correct classifications for absences, while the MMPI produced 69% correct classifications. The two scales, when combined, increased the accuracy rate to 85%. Especially useful as predictors of problematic behavior were IPI scales measuring trouble with the law, previous job difficulties, and involvement with drugs.

Another kind of study (Shusman, Inwald, & Knatz, 1987), a cross-validation, involved 698
male police officers who completed six months of training in the police academy. In the validation sample \((N = 421)\), the IPI scales assigned from 61% to 77% of the officers into correct group membership, based on eight performance criteria, while MMPI scales identified only between 50% and 70%. In the cross-validation sample, researchers observed slightly more shrinkage for the IPI than for the MMPI concerning most of the criteria. But even with this somewhat greater degree of shrinkage, the cross-validation classification rates for the IPI were equal to or greater than the original validation percentages from the MMPI alone for all but one of the eight criteria.

Several of the IPI items ask for admissions of behaviors that are, at the least, socially unacceptable, and often are violations of laws. Would applicants for positions in law enforcement readily admit to such behaviors? A clever study by Ostrov (1985) provided a provocative answer.

The Chicago Police Department screened two groups of approximately 200 applicants each, using the IPI. Each candidate also provided a urine sample for analysis. In the first sample, 43 candidates had positive urinalysis results; in the second sample, 34 did. These subgroups were found to differ from random samples of the other candidates (i.e., those with a negative urinalysis) on several of the Drug scale items (significant differences on 3 items for sample 1 and 5 items for sample 2). The particular items referred to both marijuana and hard drug use.

Despite some impressive validation findings, the reliability of the IPI scales is not always strong. Inwald (1992) has reported Cronbach alpha coefficients (measures of internal consistency) of 0.41 to 0.82 for male police officer candidates and 0.32 to 0.80 for female candidates. An effort to combine the original 26 scales into 12 lengthier scales to increase reliability was not successful in any meaningful degree (Shusman & Inwald, 1991b).

**Situational Tests.** A third approach uses situational tests, or small samples of behaviors like those police would show on the job. One example is the work of Dunnette and Motowidlo (1976), who sought to define the critical dimensions of job performance for each of four police jobs: (1) general patrol officer, (2) patrol sergeant, (3) detective (investigator), and (4) intermediate-level commander. Finding little in the way of assessing these specific dimensions when they began their work in the early 1970s, the researchers designed a series of simulations and standardized situational tasks, such as role-playing exercises on behaviors believed to be representative of critical police tasks; that is, they tried to assess how the recruits would respond on activities that form the criteria for effective police work. For instance, they asked recruits to intervene in a dispute between a husband and his wife, to carry out a burglary investigation, and to aid a man injured at a hotel. Selection of candidates for police training was based on performance on these and other kinds of tasks.

On other occasions, situational tests have been used in police selection. One example is the work of Mills, McDevitt, and Tonkin (1966), who administered three tests intended to simulate police abilities to a group of Cincinnati police candidates. The Foot Patrol Observation Test required candidates to walk a six-block downtown route and then answer questions about what they remembered having just observed. In the Clues Test, candidates had 10 minutes to investigate a set of planted clues about the disappearance of a hypothetical city worker from his office. They were observed as they performed this task and were graded on the information they assembled. The Bull Session was a two-hour group discussion of several topics of importance in police work.

Performance on the Clues Test correlated significantly with class ranking in the police academy, but the scores from the Foot Patrol Observation Test did not. Although researchers did not derive independent grades for the Bull Session component, it was viewed as an important measure of emotional and motivational qualities. Additionally, Mills, McDevitt, and Tonkin (1966) discovered that the Clues Test was not correlated with intelligence—indicating the advantage of including a measure of nonintellectual abilities in a selection battery.
Although situational tests have an intuitive appeal as selection devices, they have not proven to be superior predictors of performance compared to the personality test results described in the earlier section. Because they are time-consuming and expensive, they are used mainly to supplement psychological tests.

THE TRAINING OF POLICE

All law enforcement agencies have some form of training programs for their recruits. What roles do psychologists play in such training programs, and what do our clienteles want from psychologists here?

A forensic psychologist with training in organizational psychology can evaluate a police training program to see if it is consistent with the responsibilities and responses of police as they carry out their tasks. The typical training program has been criticized for emphasizing “narrowly defined aspects of the job dealing with criminal activity, understanding relevant laws, effective firearms training, self-defense, and other survival techniques” (Stratton, 1980, p. 38). Although these are important, psychologists are urging departments to include in training the strategies necessary for coping with job-related stress and other interpersonal and communication skills (see Scrivner, 2006; Toch, 2002; Sheehan & Van Hasselt, 2003). Increasingly, police need to have human-relations skills, including awareness of diversity and ability to communicate effectively.

Activities of a Psychologist in a Police Department

It has been estimated that as of 1995, more than 150 psychologists served full-time or part-time as police psychologists (Reese, 1995). Such psychologists formed the Law Enforcement Behavioral Sciences Association (LEBSA), and a section of Division 18 of the American Psychological Association (Division of Psychologists in Public Service) is titled the Police Psychology Section. These organizations sponsor presentations and workshops at national conventions and share procedures, experiences, and data.

Martin Reiser began serving as department psychologist with the Los Angeles Police Department in 1968. He observed that police departments usually ask psychologists to participate in police training programs in two ways, as teachers and as consultants (Reiser, 1972). As a teacher, the psychologist may be asked to instruct recruits on handling mentally ill people, on human relations, on criminal psychology, or on relationships with authority figures. As a consultant, “the psychologist is expected to have some practical know-how and expertise about educational processes, teaching techniques, learning systems, and technology” (Reiser, 1972, p. 33).

Psychologists serving as consultants to police departments are generally available and on call to anyone in the department. Requests might include the following (Reiser, 1982b):

- The police chief wants a survey of pursuits and shootings.
- A sergeant asks for help in developing a psychologically based program of driver training to reduce police-involved accidents.
- Homicide detectives may want consultation on a bizarre murder.
- A particular officer may need psychological counseling.

Psychologists acting as consultants to police departments need to be flexible and adaptable; they must modify their frame of reference to accommodate the variety of service requests (Reiser, 1982a, 1982b). One of the central problems for the psychologist/consultant is that of identification: Is the psychologist a mental health specialist, a social change agent, an organizational staff specialist, or an employee in a hierarchy? Reiser (1982b) has proposed that the level of the organization at which the consultant “gets plugged in” will determine how he or she is seen by other members of the organization, particularly those in power.
Traditionally, police officers have been wary, if not downright antagonistic, toward psychologists. Police likely have encountered a psychologist or another mental health professional in one of four ways, all of them inhibiting the development of officers’ respect for the psychological profession. White and Honig (1995, pp. 258–259) described these interactions as follows:

Watching “do-gooder” psychologists testify on behalf of criminals.

Observing psychologists apparently protecting police officers who are claiming a disability but are perceived by their fellow officers as weak or abusing the system.

Viewing the psychologist as the “enemy” who has the power to keep an officer or a potential officer off the force through the psychologist’s role in police selection or fitness-for-duty evaluations.

On rare occasions, dealing with mentally disturbed psychologists who have been released after police officers brought them in for involuntary hospitalization.

Thus, an initial task for a police psychologist is to listen and learn. He or she should seek to understand the culture of the police department by participating in ride-alongs (see Gelber, 2003), asking questions, and in all ways understanding the world of law enforcement rather than “gathering ammunition to change it” (White & Honig, 1995, p. 259). A police administrator may fear that the psychologist has magical powers and that the consultant may somehow usurp the administrator’s control or brainwash the police administrator in some way. Reiser (1982b) has emphasized that the personal attributes of the consultant—being pragmatic, showing adaptability—are crucial for success; what a psychologist is able to achieve is “a function of role expectations of the organization, plus what the individual consultant brings to the situation in the form of his [or her] personal attributes” (p. 28).

Each of these responsibilities may have many manifestations. Like many organizations, police departments are susceptible to adopting innovative and unique programs, partly because they are new and different. Often such programs do not receive an adequate internal evaluation, if any evaluation at all. Psychologists can play a useful role in evaluating the effectiveness of such innovations, whether they be team policing, sensitivity training, or community orientation sessions.

The Curriculum of Training Programs

A new police chief may ask a psychologist to design a training program for recruits. Essential questions the psychologist should ask are these: What do police do? What do they need to know and be able to do? Studies of policing have consistently found that the police role is one of providing services and keeping the peace rather than handling crime (Meadows, 1987). Yet, the training the police get may be inconsistent with their subsequent duties. Germann (1969) has noted that most entry-level police training is devoted to “crook-catching”—as much as 90% of the training time—whereas officers spend only 10–15% of their job duties on this activity. The National Advisory Commission on Criminal Justice Standards and Goals (1973, p. 392) suggested a training program of 400 hours, organized around the following six subject areas:

1. Introduction to the Criminal Justice System: An examination of the foundation and functions of the criminal justice system with specific attention to the role of the police in the system and government.
2. Law: An introduction to the development, philosophy, and types of law; criminal law; criminal procedure and rules of evidence; discretionary justice; application of the U.S. Constitution; court systems and procedures; and related civil law.
3. Human Values and Problems: Public service and noncriminal policing; cultural awareness; changing roles of the police; human behavior and conflict management; psychology as it relates to the police function; causes of crime and delinquency; and police–public relations.
4. **Patrol and Investigation Procedures**: The fundamentals of the patrol function including traffic, juvenile, and preliminary investigation; reporting and communication; arrest and detention procedures; interviewing; criminal investigation and case preparation; equipment and facility use; and other day-to-day responsibilities and duties.

5. **Police Proficiency**: The philosophy of when to use force and the appropriate determination of the degree necessary; armed and unarmed defense; crowd, riot, and prisoner control;

6. **Administration**: Evaluation, examination, and counseling processes; department policies, rules, regulations, organization, and personnel problems.

The commission recommended a distribution of training time as indicated in Box 3.4. Meadows (1987) surveyed 234 police chiefs and 355 criminal-justice educators about the importance of training in each of these categories. Both groups felt a need for increased training in the law and in written and oral communication, implying that police officers may not be doing a good job of communicating with the public.

### On-the-Job Training

Once the police officer is credentialed and is on the job, the need for training does not end. A chapter by White and Honig (1995) on the role of the police psychologist in training activities divided on-the-job training into three categories: wellness training, training that provides information or skills, and training that relates the individual to the organization. Each is described in Box 3.5.

### Specialized Training

In addition to formal and on-the-job training, police officers may need training in specialized activities; two types are described in the following sections.

#### Responses to Spouse Assault

Comprehensive studies indicate that in the United States, about 10% of women are assaulted by their husband and...
almost 7% are assaulted repeatedly (Straus, Gelles, & Steinmetz, 1980). Only about one of every seven assaults is reported to the police (Schulman, 1979; Straus, & Gelles, 1986); one reason is that victims do not expect police to be sympathetic or helpful. These expectations are at least sometimes realistic. In 1979, the Oakland, California, Police Department’s training bulletin instructed police that a man should not be arrested for wife assault because he would “lose face” (Paterson, 1979, cited by Jaffe, Hastings, Reitzel, & Austin, 1993). Levens and Dutton (1980) found that the police had negative attitudes toward intervening in domestic disputes. Training of police by psychologists conceivably can improve how police respond and eventually whether victims choose to call for help.

Within five years of an episode in which a fellow officer, witness, or suspect is seriously injured (Reese, Horn, & Dunning, 1991; Simpson, Jensen, & Owen, 1988).

Informational and Skill Training
This type of continuing education assists police officers in performing their job duties. All the special topics listed here reflect human-behavior issues that can benefit from the participation of psychologists:

a. Managing people with mental illness.

b. Increasing cross-cultural awareness.

c. Improving communication skills.

d. Working with victims of rape and sexual assault.

Two kinds of specialized topics—responses to spouse assault and negotiating with hostage takers—are considered in this chapter.

Organizational Training
The goal of organizational training is to improve the functioning of the organization as a whole, and such training is especially useful for officers in supervisory and management roles (White & Honig, 1995). For example, as in any organization, police departments may face questions of sexual harassment, grief management, racial discrimination, and substance use awareness.

The work by Donald Dutton and his colleagues (Dutton, 1981, 1988; Dutton & Levens, 1977) found that training significantly increased the use by police of mediation and referral techniques.

One review (Jaffe, Hastings, Reitzel, & Austin, 1993) suggested that training programs for police should include information on the “social costs of wife assault, statistics on prevalence, information on why victims stay or return, and descriptions of local services” (p. 89). It also suggested that the police have available a manual of resources as well as business cards with 24-hour phone numbers.

Of course, many jurisdictions now have laws mandating the arrest of offenders, thus taking away police discretion in that regard. In 1984, a report published by the United States Attorney...
General’s Task Force on Family Violence recommended that arrest be the preferred policy in dealing with domestic violence incidents. The results of a study published that same year, since referred to as “The Minneapolis Experiment,” concluded that arrest proved far more effective in curtailing repeat offenses of spouse abuse than did either advice or separation (Sherman & Berk, 1984). While the authors of this landmark experiment recommended that presumptive arrest and not mandatory arrest policies be instituted based on their findings, the experiment has since been cited by many proponents of mandatory arrest policies. According to the results of subsequent studies, the Minneapolis Experiment has influenced police department arrest policies throughout the country (Binder & Meeker, 1988; Cohn & Sherman, 1986).

Negotiating with Terrorists and Hostage Takers. Terrorism is now almost a routine part of modern industrialized society; every time we go through a metal detector at an airport, we may be reminded of the possibility. Psychologists and other social scientists are beginning to study the phenomenon systematically (Crenshaw, 1986; Friedland & Merari, 1985; Smith & Damphousse, 2002). As the first line of response, police, the FBI, and other public-safety agencies play a central role (Greenstone, 1995b).

Another recurring problem is the person who takes hostages. Law enforcement officers must choose whether to negotiate with the hostage taker or use direct and physical means of intervention. An example of this dilemma occurred in Kansas City, Kansas, in 1994. A man was holding his stepson at gunpoint inside the family house. During an extended standoff with the police, the estranged wife of the hostage taker escaped from the house safely along with two other people. Police entered the house and negotiated with the hostage taker, who barricaded himself and his hostage in an upstairs bedroom. After about three hours, the police decided they had an opportunity to jump the hostage taker and disarm him. But as they began to do so, the hostage (a teenager) bolted from the room; a police officer—confronted by a man bursting from a room straight toward him—feared for his safety and fired. The 18-year-old was shot in the abdomen and critically wounded (Alm, 1994). Box 3.6 gives another example.

Negotiation with terrorists and hostage takers has become a well-established concept in almost all police departments in the United States, and it receives great emphasis by the FBI and many state police departments. A survey of 34 police departments found that 31 (91%) had a designated negotiation team (Fuselier, 1988). Training courses on hostage negotiation often recommend consultation with a clinical psychologist (Fuselier, 1988). What can the field of psychology offer?

Who Takes Hostages? The law enforcement and clinical literature differentiates four basic types of hostage taker: the political activist or terrorist, the criminal, the mentally disturbed person, and the prisoner. Hassel (1975, cited by Fuselier, 1988) concluded that the most frequent type is the criminal trapped while committing a crime, while Stratton (1978) identified political terrorists as the most difficult to negotiate with because of their “total commitment, exhaustive planning, and ability to exert power effectively” (p. 71). But Maher (1977) considered the mentally disturbed hostage taker as the greatest threat. These contradicting conclusions reflect, for Fuselier (1988), the need for a “systematic nationwide collection or compilation...of information on hostage incidents” (pp. 175–176) by law enforcement agencies.

Why Do People Take Hostages? Fuselier (1988) suggested four reasons political terrorists take hostages: (1) to demonstrate to the public the inability of a government to protect its own citizens, (2) to ensure increased publicity for their political agenda, (3) to create civil discontent indirectly by causing the government to overreact and restrict its citizens, and (4) to demand release of members of their groups who are in custody.

These reasons reflect planned activities; in contrast, a criminal may spontaneously take a hostage...
when his or her own freedom is jeopardized, reflecting a need for safe passage or a means to escape. Prisoners typically use hostages as a means of protesting conditions within the prison. Mentally disturbed people take hostages for a variety of reasons, though each stems from the hostage taker’s own view of the world. The most poignant example of this was the 2007 mass shootings at Virginia Tech (see Box 3.7).

The Role of the Clinical Psychologist. Does the psychologist have something valuable to offer when hostages are taken? The answer seems to be a qualified yes. Those police who are best trained in the procedures of hostage negotiations are more likely to bring about a successful resolution of the incident (Borum, 1988). Success in such situations is usually defined as “a resolution in which there is no loss of life to any of those involved in the incident including police, hostage taker, and hostages” (Greenstone, 1995b, p. 358). Psychological considerations are central in evaluating progress in the negotiations; for example, Greenstone (1995a) suggested that if the hostage taker is talking more, is more willing to talk about his or her personal life, and reflects less violence in his or her conversation, progress is being achieved. Furthermore, McMains (1988) identified three roles: the professional, who is a source of applicable behavioral science information; the consultant, who develops training programs, materials, and exercises; and the participant/observer, who makes suggestions but recognizes the authority of the law enforcement personnel.

But experts are not in agreement. Several perspectives can be identified:

1. Powitsky (1979) argued that psychologists might perform some relevant duties, such as gathering information to be used in the negotiating strategy, but that “the majority of practicing psychologists, especially those who work outside of the criminal justice system,
would not be very helpful (and some would be harmful) in a hostage-taking situation” (p. 30).

2. Poythress (1980), who described himself as a "guarded optimist," offered that “mental health professionals may have something to offer in the hostage situation, but probably less than the field commanders might hope for” (p. 34). He listed three reasons why the responsible police officer should not enlist a psychologist’s opinion on the decision to negotiate rather than attack: psychologists have little formal training on this topic, little research has been done, and few psychologists have had much field experience in it. In the two decades since Poythress wrote this, a modest beginning has occurred in providing assistance to negotiations (see, for example, Fowler, De Vivo, & Fowler, 1985; Soskis, 1983; and Yonah & Gleason, 1981).

a. The FBI’s training academy at Quantico, Virginia, has developed a 30-hour Basic Hostage Negotiations training module (Greenstone, 1995a).

b. Predictors of the probable dangerousness of a given person in a given situation are notoriously bad (Poythress, 1980).

c. Meehl (1954) showed many years ago that statistical (i.e., actuarial) methods are more accurate than clinical judgment in general predictions of outcome.

3. More positive in his view was Reiser (1982a, 1982b), who saw the psychologist contributing as a backup and adviser to the negotiation team.
as well as providing training on the topics of assessment of the hostage taker’s motives and personality, the development of communication skills, and the challenge of dealing with stress and fatigue.

4. Fusilier (1988), author of a useful review, accepted the value of psychologists as consultants, but only after they have received training in hostage negotiation concepts. After attending a hostage negotiation seminar, the psychologist “can assist in both determining whether a mental disorder exists and deciding on a particular negotiation approach” (p. 177). But Fusilier noted that a psychologist should not be used as the primary negotiator; instead, being a consultant allows the psychologist “to maintain a more objective role in assessing the mental status and performance of the negotiator” (1988, p. 177).

Psychologists, if not primary negotiators, can play a role by offering a post-incident critique of the team as well as counseling for the police and victims. The effects on police of participation in a hostage negotiation may be similar to those in other stressful situations: anxiety, somatic responses, and a subjective sense of work overload (Beutler, Nussbaum, & Meredith, 1988; Dietrich & Smith, 1986; Zizzo, 1985).

The Role of the Psychologist as Evaluation Researcher. Another role with respect to hostage negotiations is the psychologist as evaluation researcher. What works and what doesn’t work? Allen, Cutler, and Berman (1993) collected the types of responses used by the police tactical teams in all 130 situations reflecting hostage taking or suicide attempts in Miami, Florida, for five years; they focused on the 48 cases in which some form of negotiation was used. Face-to-face negotiation (compared to use of a bullhorn, a public address system, or a telephone) was the least effective method of apprehending the hostage taker. Police often see face-to-face negotiation as a “last resort.” The analysis also indicated that hostage takers under the influence of drugs were much less likely to come out without violence.

Many evaluations of police activities and innovations in police policies are carried out by people not trained in the methodology of psychology and the social sciences. Psychologists, however, can play a major role in the evaluation of police activities. We provide two examples here: one at the level of the individual police officer (the fitness-for-duty evaluation), and the other at the level of general policy innovation (community policing).

Fitness-for-Duty Evaluations

After participating in critical incidents involving the death of a partner or an injury during a chase or shoot-out, the law enforcement officer may exhibit emotional or behavioral reactions that prompt his or her supervisor to request a fitness-for-duty evaluation (Inwald, 1990; Scrivner, 2006). Complaints against the officer, such as charges of brutality, may also lead to an investigation of the officer’s emotional stability. It is understood that police officers face special problems, and that the suicide rate among police is higher than that of the general population (see Box 3.8). A psychologist may be called on to conduct the evaluation (Delprino & Bahn, 1988). Robin Inwald (1990) offered a set of guidelines for such evaluations, which include the following:

1. They shall be done only by qualified psychologists or psychiatrists who are licensed in that state.
2. The evaluator should be familiar with research on testing and evaluation in the field of police psychology.
3. As far as possible, the evaluation should not be done by a psychologist or psychiatrist who provides counseling within the same department.
4. Issues of confidentiality should be made explicit in writing prior to conducting the
fitness-for-duty evaluation, and a consent form should be obtained from the officer.

5. The fitness-for-duty assessment should include at least one interview with the officer; a battery of psychological tests; interviews with supervisors, family members, and coworkers; and a review of any past psychological and medical evaluations.

6. The fitness-for-duty evaluator should provide a written report documenting the findings of the evaluation along with specific recommendations regarding continued employment and rehabilitation. (Two examples of such reports may be found in Blau, 1994, pp. 134–138 and pp. 140–142.)

COMMUNITY POLICING

The 1970s and 1980s saw increases in drug usage and resultant crime, along with the continued decay of many inner cities in the United States. Like other concerned institutions, law enforcement agencies sought new ways to deal with these problems. The concept of community policing was developed as a response; as the name implies, its goal was to reunite the police with the community (Peak & Glensor, 1996). One author defines community policing as “an extension of the police–community relations concept which envisions an effective working partnership between the police and members of the community in order to solve problems which concern both” (Schmalleger, 1995, p. 200). For example, residents of some neighborhoods are outraged by the proliferation of “crack houses” on their streets and drug traffickers in the public parks; in community policing, focus is on improving the quality of life and being responsive (even proactively) to citizens’ concerns.

Community policing has been implemented in different ways in different cities (Skolnik & Bayley, 1986). For example, in San Francisco, police began riding on city buses; in other cities, police began

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**Box 3.8 The Problem of Police Suicide**

More Agencies Are Practicing Prevention to Lift Stigma on Seeking Help

The warning signs that police officer Steve Martin was a suicide risk were clear enough in hindsight: erratic behavior, disgust with his job, heavy drinking, a strained marriage. But the lack of foresight is what leaves his wife, Debbie, angry more than a year later.

“When officers came and told me what had happened—and I have a roomful of witnesses to this—they said, ‘We knew he was in serious trouble,’” she says. “I remember thinking, OK, so why didn’t you do anything about it? How can you sit there and tell me after he put a gun to his head that you knew he was bad off?”

What happened in Wichita is tragically familiar across the country, say psychologists and former officers who have studied law enforcement suicide. The crime-fighting culture is about strength and control, and most officers think asking for help is a badge of weakness. Police are supposed to solve problems, not be the problem.

“These folks are taught to suppress their emotions and soldier forward,” says Elizabeth Dansie, a psychologist who works with California police agencies in the aftermath of suicides. “It’s very difficult for them to admit they need help.”

More law enforcement agencies are trying to prevent suicide in their ranks.

The California Highway Patrol is developing training for suicide awareness and prevention after eight troopers killed themselves in eight months last year, for a total of 13 since September 2003. The CHP toll is “the largest cluster I’ve seen for a department that size,” says Robert Douglas, executive director of the National Police Suicide Foundation.

The International Association of Chiefs of Police is circulating a proposal, obtained by USA TODAY, to make suicide-prevention tools available to all of the nation’s nearly 18,000 state and local police agencies. “Current police culture . . . tends to be entirely avo- dant of the issue,” leaving suicidal officers with “no place to turn,” a draft of the proposal says.
The suicide foundation says it has verified an average of 450 law enforcement suicides in each of the past three years, compared with about 150 officers who died annually in the line of duty. Douglas says no more than 2% of the nation’s law enforcement agencies have prevention programs.

Suicide rates for police—at least 18 per 100,000—are higher than for the general population, according to Audrey Honig, chief psychologist for the Los Angeles County Sheriff’s Department.

Large departments (New York City, Milwaukee) and small ones (Holland, Ohio; Lavallette, N.J.) had suicides last year.

Police departments in New York, Los Angeles and Chicago, the Los Angeles County Sheriff’s Department and the Washington State Patrol are among the few agencies with comprehensive programs, including videos, peer-support training, coaching on warning signs and psychological outreach.

The Los Angeles sheriff’s program started in 2001. Since 2002 the force has had just two suicides among its 9,000 officers. “Our personnel are receptive to getting assistance when they need it,” Honig says.

In the past, law enforcement suicides often were ruled accidental deaths, and they are still underreported, Dansie says. “Most of us agree that the statistics are probably much higher than we actually know, because of the shame factor.”

CHP’s reaction was typical, says John Violanti, a former New York state trooper and now a professor at the State University of New York at Buffalo. Fallout from suicide, he says, “lasts a long time, and morale goes down the tube. I’ve seen entire departments go into states of depression.”

CHP will hire a clinical psychologist to oversee a broad prevention program called “Question, Persuade and Refer,” Deputy Chief Ramona Prieto says. “It won’t just be putting up a few posters and hoping people understand,” Prieto says. “It will be training at every level for every employee.”

Police bear the same stress from work, family and illness that civilians do. What’s different is the stress of the street and the access to a gun. “Research has always shown that availability of firearms, comfort with firearms, increases suicide rates,” Honig says.

Police acquire “image armor,” says James Reese, a former FBI agent who started the bureau’s stress-management training in the 1980s. “It’s their need to always be in control, always be fine, always be right. We never hear cops say, ‘I’m afraid. I made a mistake.’”

The FBI has no mandatory suicide-prevention training outside its stress program, spokeswoman Cathy Milhoan says. Since 1993, 20 agents have killed themselves, she says.

Steve Martin, a 6-foot-6, well-liked veteran of the Wichita force, was 44 when he shot himself on Halloween 2005. Debbie Martin says she tried repeatedly to get her husband into counseling.

“He kept canceling the appointments,” she says. “He said he was afraid the department would find out he was going, that he had a serious drinking problem, and he’d be fired.”

Martin couldn’t leave the job at the station, and what he saw over 15 years, several on a gang unit, began to wear him down, his wife says. He couldn’t let go of one incident—finding a 2-year-old girl in a car, shot in the head after a gang shootout.

The couple separated but spent a lot of time together. Martin was drinking daily, cursing his job, she says. He threatened her and once pulled his gun on her.

Martin’s suicide threw the force of 690 officers into turmoil. “A lot of people were in denial,” says Lt. Sam Hanley, his former sergeant. “A lot of them were angry at Steve himself, because they worked with him and he hadn’t said anything.”

Hanley was ordered to develop suicide-prevention training, and Wichita officers attended mandatory four-hour sessions. “Suicide has always been kind of hush-hush in the police community,” he says. “When it happens to one of your people, all of a sudden everybody wants information.”


athletic programs for young people in high-crime areas, established bicycle patrols or reestablished foot patrols, or started neighborhood police stations.

Anecdotal evidence for the effectiveness of these programs was encouraging, but a more reliable evaluation was more difficult to do. Often communities would initiate several changes at once and, hence, not be able to evaluate the separate impact of each. The goal of the change—was it a quicker response by the police to crimes, reduction of crime rates, higher clearance rates for crimes that
were committed, or greater community satisfaction with the police and lessened fears of crime? Some citizens remain suspicious of the police and are not willing to accept a more visible presence of the police in their neighborhood (Schmalleger, 1995). Also, some police are more comfortable with traditional law-enforcement duties than with community relations (Sparrow, Moore, & Kennedy, 1990). The forensic psychologist as an evaluation researcher can aid the police department in designing interventions that permit clearer tests of their effectiveness; the evaluation researcher also clarifies the important outcome measures—how the community weighs the importance of crime control, citizen satisfaction, or job satisfaction of police.

**SUMMARY**

Forensic psychologists can contribute to many aspects of police work: the procedure of selecting officers for training, the preservice and on-the-job training of officers, and the evaluation of the performance of individual officers and of innovative programs by law enforcement agencies. In doing so, forensic psychologists have the difficult task of not only being responsive to the police department but also recognizing concerns of the public about problems in some departments, including corruption, racism, and brutality.

The selection of candidates for law enforcement training is usually an involved and extensive process. The psychologist plays a role in interviewing candidates and in advising the department about instruments to administer to candidates. Among these, the Minnesota Multiphasic Personality Inventory is the most widely used, but the Inwald Personality Inventory is worthy of consideration, as it was designed specifically for selection of law enforcement officers.

Psychologists can contribute to the in-service training of police officers in general as well as specific areas. Wellness training is of special importance, given the high rates of stress and resulting alcoholism, burnout, and marital discord in police as an occupational group. Forensic psychologists also have contributed to specialized training in responding to hostage taking and to domestic assaults. The role of the evaluation researcher enters when the psychologist is asked to assess the worthiness of a recently adopted policy, such as community policing.

**KEY TERMS**

burnout  
California Psychological Inventory (CPI)  
clienteles  
community policing  
DWB  
false negatives  
false positives  
fitness-for-duty evaluation  
hostage taker  
immaturity index  
Inwald Personality Inventory (IPI)  
L scale  
Minnesota Multiphasic Personality Inventory (MMPI)  
police corruption  
police psychologist  
police selection  
primary negotiator  
race-based profiling  
ride-alongs  
situational tests  
stakeholders  
team policing  
wellness training
SUGGESTED READINGS


A number of books available in paperback chronicle the lives of police in the line of duty. This book contains interviews with 100 police officers; as you would suspect, the dramatic receives more coverage than the routine, but the book is a useful portrayal of how police describe their jobs.


A comprehensive review by a prominent police psychologist; it contains extensive practical information.


An exposé by a former investigative reporter of organized criminal activity by certain officers in the New York City Police Department.


A book-length analysis of the development and implementation of community policing.


A readable report of the transition of four recruits from the New York City Police Academy to life on the streets. Contains a detailed description of what is involved in police training.

A number of reviews of the Inwald Personality Inventory are available and are worth reading to understand what is involved in developing an effective selection device. They are:


Swartz, J. D. (1985). Review of Inwald Personality Inventory. In J. V. Mitchell (Ed.), *The ninth mental measurements yearbook* (pp. 713–714). Lincoln, NE: Buros Institute of Mental Measurements, University of Nebraska.

Waller, N. G. (1992). Review of Inwald Personality Inventory. In J. J. Kramer & J. C. Conoley (Eds.), *Eleventh mental measurements Yearbook* (pp. 418–419). Lincoln, NE: Buros Institute of Mental Measurements, University of Nebraska.