

# ***INTRODUCTION TO PSYCHOLOGY AND LAW***

## ***Civil and Criminal Applications***

### CHAPTER OBJECTIVES

In this chapter, you will become familiar with:

- The definition of forensic psychology
- The history of forensic psychology
- The varied roles that forensic psychologists play
- The professional associations and publications relevant to forensic psychologists
- The structure of the legal system
- The similarities and differences in the fields of psychology and law
- The training opportunities for students who wish to pursue a career as a forensic psychologist

One of the questions that students in undergraduate psychology and law classes ask their professors is, “How can I become a profiler?” Clearly, television shows like *CSI* and *Criminal Minds*, as well as movies such as *Silence of the Lambs*, have piqued student interest to be involved in what is perceived as exciting and engaging work. The reality is that there is little market for profilers (see Box 1.1) and a career in forensic psychology is not the track to pursue if one has this interest. Indeed, one survey of forensic psychiatrists and psychologists found that only about 10% had ever engaged in criminal profiling and only a small percentage believe it is a scientifically reliable practice (Torres, Boccaccini, & Miller, 2006). Forensic psychology is a fascinating field that has far more to offer students who want to work at the intersection of psychology and law.

### Box 1.1 On Criminal Profiling

Due to depictions in popular media (e.g., *Silence of the Lambs*, *Profiler*, *CSI*), many students express an interest in and ask questions about criminal profiling, which may be described as a criminal investigative technique based, in part, on psychological expertise and knowledge. In reality, few law enforcement agencies employ such techniques and there is little call for such professionals. Those interested in such work should consider a career in law enforcement instead of clinical-forensic psychology.

The Behavioral Sciences Unit of the FBI does employ a few FBI agents who engage in this activity. The FBI makes a distinction between mental health and law enforcement: FBI agents are law enforcement professionals, not mental health professionals. In order to work as a profiler, or with the FBI in any other role, it is necessary to become an FBI agent. Experience in criminal investigation is needed before an agent can even be considered for a profiling position, but only a small number of agents ever become profilers. Since this would be a difficult goal to achieve, the FBI encourages prospective applicants who are interested in being special agents to do so because they are interested in the range of opportunities available with the FBI, not because they want to be a profiler.

*Source:* Excerpt from American Psychology-Law Society website: <http://www.ap-ls.org/students/careersIndex.html>.

## DEFINING FORENSIC PSYCHOLOGY

Forensic psychology can be conceptualized as encompassing both sides of the justice system (civil and criminal) as well as two broad aspects of psychology (clinical and experimental). It would seem that defining forensic psychology should be a straightforward task. Alas, this is not the case, and the difficulty stems from the fact that the professionals who work in forensic psychology come from a wide range of graduate and professional backgrounds. Some have degrees in clinical or counseling psychology; others have graduate training in other areas of psychology such as social, developmental, cognitive, or neuropsychology. Others have backgrounds in law, some with degrees in both psychology and law. The nature of their contributions to forensic psychology also varies. One central issue in defining forensic psychology is that forensic psychologists can work both within and outside the legal system. Some psychologists provide direct services to the court through assessments of issues such as competency to stand trial, criminal responsibility, or child custody. Others are researchers, typically based in universities, who conduct basic or applied research on such topics as eyewitness behavior or jury decision making. Still others combine both research

and clinical practice. This potential for working both within and outside the legal system has led Haney (1980) to comment, “Psychologists have been slow to decide whether they want to stand outside the system to study, critique, and change it, or to embrace and be employed by it. And the law has been tentative in deciding how it will use and grant access to psychologists” (p. 152).

For these reasons, it has been difficult to arrive at a definition that encompasses all of these professional backgrounds and varied roles. Table 1.1 shows a sample of definitions that various individuals and organizations have proposed. Some, like the one used by Goldstein, use broad definitions that attempt to encompass all of the backgrounds and roles described here, and distinguish the research and practice contributions. Others, such as those used by the American Psychological Association or the Specialty Guidelines for Forensic Psychologists (Committee on Ethical Guidelines for Forensic Psychologists, 1991), focus more on the applied roles of psychologists as providers of expertise to the legal system.

The conflicts involved in arriving at a definition of forensic psychology was the subject of Professor Jack Brigham’s 1999 presidential address to the American Psychology-Law Society. He posed the question, “What is forensic psychology, anyway?” His answer reflects the conflicts about clinical and nonclinical participants in forensic psychology:

To return to my original question about what is forensic psychology, I believe that there are two levels of classification that yield two sets of definitions. At the level of ethical guidelines and professional responsibility, the broad definition fits best. Any psychologist (clinical, social, cognitive, developmental, etc.) who works within the legal system is a forensic psychologist in this sense, and the same high ethical and professional standards should apply to all. When it comes to how the legal system and the public conceptualize forensic psychology, however, there is a definite clinical flavor. The clinical/nonclinical distinction is a meaningful one, I believe. For example, educational, training, and licensing issues that are pertinent to clinical forensic psychologists may be irrelevant or inapplicable to nonclinical forensic psychologists. Further, clinicians and nonclinicians differ in their orientation to the legal process and in the role that they are likely to play in the courtroom (e.g., individual assessments vs. research-based social fact evidence). So there you have it—two varieties of forensic psychologists, clinical and nonclinical. (Brigham, 1999, p. 295)

It is of note that some graduate programs use both narrow and broad definitions to define their program. John Jay College, which has MA and PhD programs in forensic psychology, states that “In developing

**Table 1.1 Definitions of Forensic Psychology**

American Board of Forensic Psychology (2007)	Forensic psychology is the application of the science and profession of psychology to questions and issues relating to law and the legal system. The word <i>forensic</i> comes from the Latin word <i>forensis</i> , meaning “of the forum,” where the law courts of ancient Rome were held. Today, <i>forensic</i> refers to the application of scientific principles and practices to the adversary process in which specially knowledgeable scientists play a role ( <a href="http://www.abfp.com">http://www.abfp.com</a> ).
American Psychological Association (2001)	Forensic psychology is the professional practice by psychologists who foreseeably and regularly provide professional psychological expertise to the judicial system. Such professional practice is generally within the areas of clinical psychology, counseling psychology, neuropsychology, and school psychology, or other applied areas within psychology involving the delivery of human services, by psychologists who have additional expertise in law and the application of applied psychology to legal proceedings ( <a href="http://www.apa.org/crsppp/archivforensic.html">http://www.apa.org/crsppp/archivforensic.html</a> ).
Goldstein (2003)	Goldstein “considers forensic psychology to be a field that involves the application of psychological research, theory, practice, and traditional specialized methodology (e.g., interviewing, psychological testing, forensic assessment, and forensically relevant instruments) to a legal question” (p. 4). Goldstein further distinguishes practice and research applications. The practice side of forensic psychology generates products for the legal system, such as reports or testimony. The research side has as its goal “to design, conduct, and interpret empirical studies, the purpose of which is to investigate groups of individuals or areas of concern or relevance to the legal system” (p. 4).
Ogloff and Finkelman (1999)	Define psychology and law quite broadly as the “scientific study of the effect the law has on people, and the effect people have on the law” (p. 3).
Committee on Ethical Guidelines for Forensic Psychologists (1991)	Defines forensic psychology to include “all forms of professional conduct when acting, with definable foreknowledge, as a psychological expert on explicitly psychological issues in direct assistance to the courts, parties to legal proceedings, correctional and forensic mental health facilities, and administrative, judicial, and legislative agencies acting in a judicial capacity” (p. 657).

Table 1.1 (Continued)

	<p><i>Note:</i> At the time of the writing of this book, the Guidelines were being updated. The latest draft defines forensic psychology as referring “to all professional practice by any psychologist working with any sub-discipline of psychology (e.g., clinical, developmental, social, cognitive) when the intended purpose of the service is to apply the scientific, technical, or specialized knowledge of psychology to the law and to use that knowledge to assist in solving legal, contractual, and administrative problems” (<a href="http://www.ap-ls.org/links/professionalsgfp.html">http://www.ap-ls.org/links/professionalsgfp.html</a>).</p>
Wrightsmann and Fulero (2005)	<p>Define forensic psychology as “any application of psychological research, methods, theory, and practice to a task faced by the legal system” (p. 2).</p>

this program, both the broader and narrower definitions of forensic psychology are recognized. The core curriculum in the doctoral program is clinically focused. The broader definition is encompassed in non-clinical elective courses in the program and in an Interdisciplinary Concentration in Psychology and Law available to CUNY Psychology doctoral students who are interested in forensic psychology but whose interests do not require clinical training” (retrieved from <http://johnjay.jjay.cuny.edu/forensicPsych/#Anchor-Q:-28528>, July 18, 2007). (As this book goes to press, a second track to John Jay’s doctoral program has been added. This track focuses on experimental psychology and law.)

We have adopted a broad definition for this book. **Forensic psychology** is the practice of psychology (defined to include research as well as direct and indirect service delivery and consultation) within or in conjunction with either or both sides of the legal system—criminal and civil.

## HISTORY OF FORENSIC PSYCHOLOGY

There is general agreement that although medical experts testified in some criminal cases in the 1800s (see Figure 1.1), the roots of modern-day psychology and law were not established until the early part of the twentieth century. If these roots can be traced to one individual, it would perhaps be Hugo Munsterberg, who was the director of Harvard’s Psychological Laboratory. Munsterberg was a strong advocate of the application of psychological research to legal issues. In his book *On the Witness Stand*, published in 1908, Munsterberg reviewed research on such topics as the reliability of eyewitness testimony, false confessions, and crime

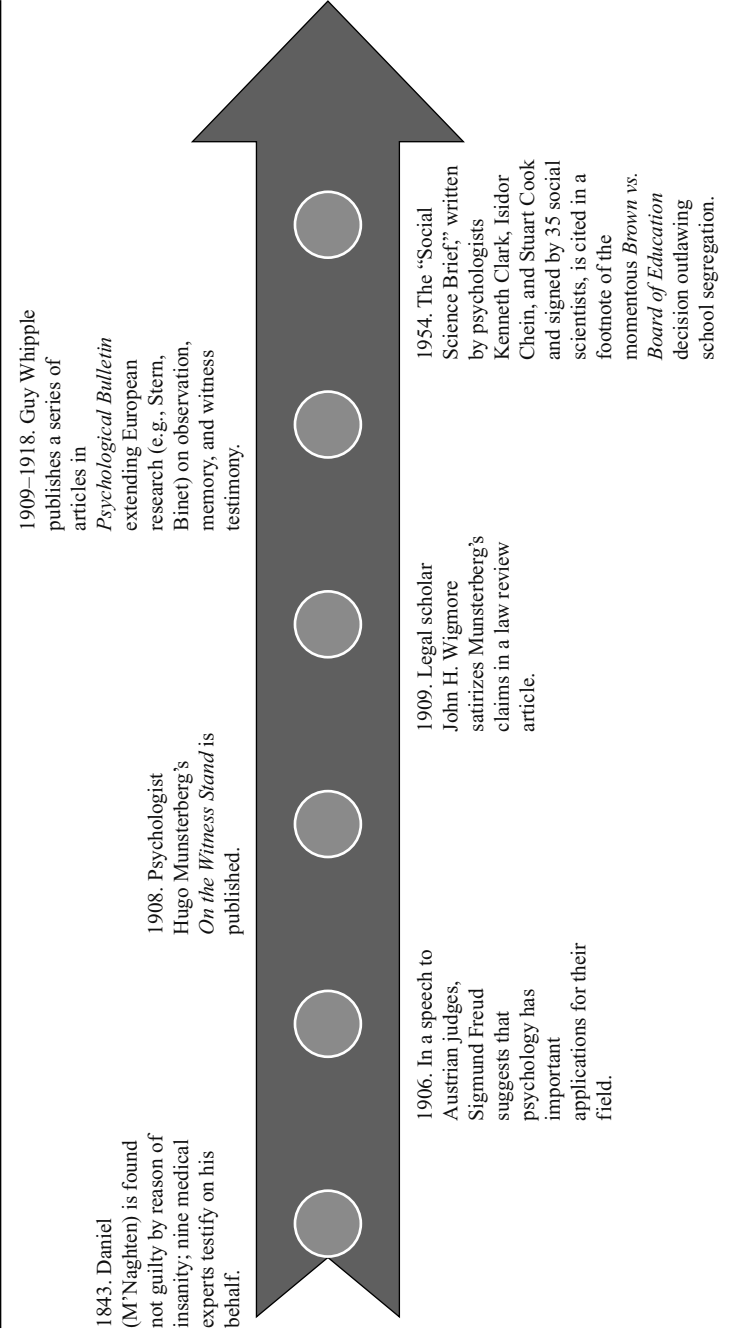
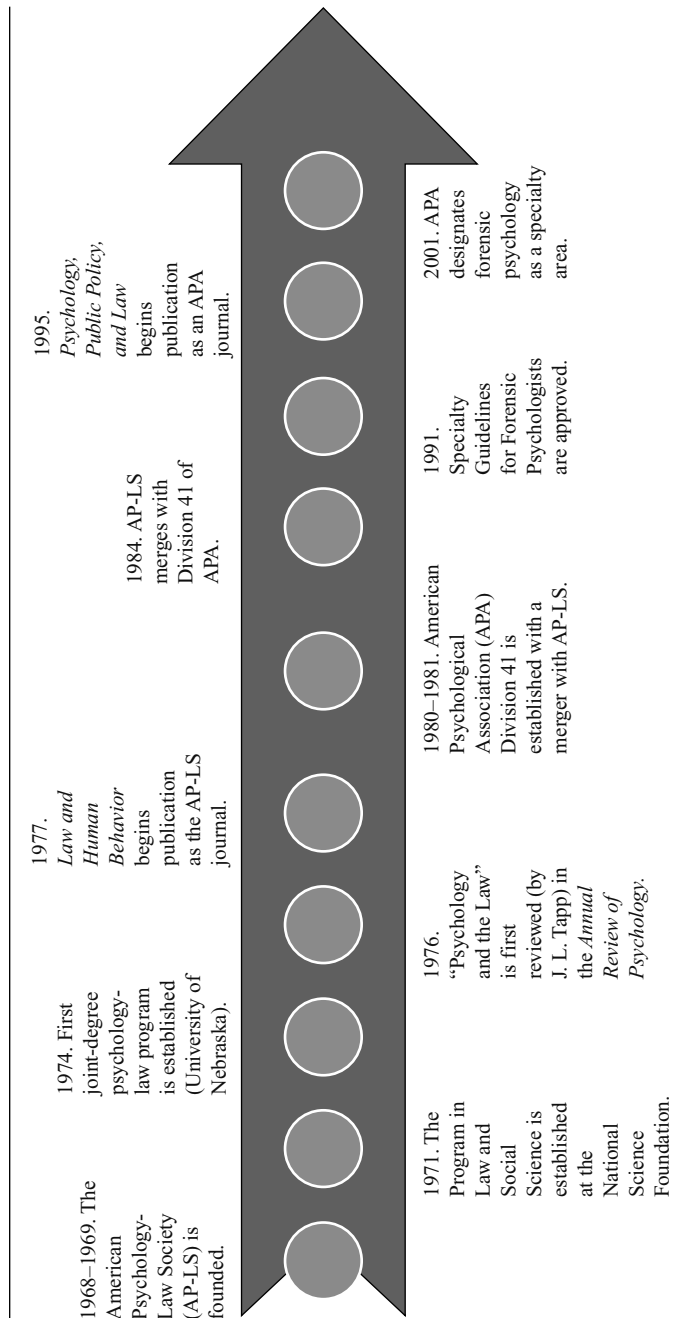


Figure 1.1 Landmark Dates in Forensic Psychology



**Figure 1.1 (Continued)**  
Source: Adapted and expanded from Brigham (1999), Table 1.

detection and prevention, and argued that the legal system should make greater use of this research. He wrote that “The courts will have to learn, sooner or later, that the individual differences of men can be tested today by the methods of experimental psychology far beyond anything which common sense and social experience suggest” (p. 63). Munsterberg was a controversial figure whose claims for the contributions of psychology to law were not supported by empirical research.

Criticisms of Munsterberg were rampant. As Doyle (2005) commented, “What Munsterberg had failed to grasp was that his knowledge about the reliability of *witnesses* was not sufficient to answer the legal system’s concern for the reliability of the *verdicts*” (p. 30). Notable among the critiques by both the legal and psychological communities was one by the legal scholar, John Wigmore. In a satirical article published in a law review in 1909, Wigmore staged a mock lawsuit in which he accused Munsterberg of libeling the legal profession and exaggerating his claim of what psychology had to offer the law. He subjected Munsterberg’s claims to a rigorous cross-examination in which he argued that psychological testimony about such issues such as eyewitness credibility should not be admissible in the courts. Of course, Munsterberg was found guilty. It is of interest to note that, despite his scathing critique of Munsterberg, Wigmore (1940) was positive about the potential of psychology to offer assistance to the courts on a range of legal issues, noting that the courts will be ready for psychologists when psychologists are ready for the courts. It was not until the past few decades that psychology has begun to answer Wigmore’s call.

At the same time that Munsterberg published his book, Louis Brandeis, a lawyer who would later become a U.S. Supreme Court Justice, submitted, in the case of *Muller v. Oregon* (1908), a brief that summarized the social science research showing the impact that longer working hours had on the health and well-being of women. The Oregon court’s decision was consistent with the conclusions Brandeis reached in the brief. This marked the first time that social science research was presented in court in the form of a brief, and subsequent briefs of this nature became known as *Brandeis briefs*. As we will see in Chapter 11, however, these briefs were not commonly presented in the courts until decades later.

Another early historical event was the publication, in the prestigious journal *Psychological Bulletin*, of a series of articles by Guy Whipple that in part related memory and the accounts of witnesses. In an article published in 1909, Whipple set the stage for later laboratory research on witness behavior. He wrote,

If, then, the work of reporting is difficult even for the trained expert working under laboratory conditions and using a carefully refined terminology, how much more difficult must it be for the untrained individual to report with



accuracy and completeness the experiences of his daily life, when to the inadequacy of his language there must be added the falsifying influences of misdirected attention, mal-observation, and errors of memory, not to mention the falsifying influences that may spring from lack of caution, of zeal for accurate statement, or even from deliberate intent to mislead. (p. 153)

Perhaps the most cited social science brief was the one submitted in the famous desegregation case, *Brown v. Board of Education* (1954). Led by psychologists Kenneth Clark, Isidor Chein, and Stuart Cook, a brief was prepared that summarized research demonstrating that segregation has negative effects on the self-esteem and other personality characteristics of African American children. The brief was cited as a footnote in the Supreme Court's decision that segregation violated the Equal Protection and Due Process clauses of the Fourteenth Amendment. While it has since been debated whether or how much this research influenced the Court's decision (see Cook, 1985), there is no question that it marked the potential of using psychological research to inform courts about the negative consequences of social policies and practices.

The modern era of forensic psychology can perhaps be traced to the late 1960s when two psychologists, Jay Ziskin and Eric Dreikurs, began discussions that led to the creation of forensic psychology's first professional association (Grisso, 1991). These early meetings, which initially took place at the American Psychological Association Conference in San Francisco in 1968, led to the development of the American Psychology-Law Society (AP-LS). Ziskin in particular was the driving influence, and he had lofty aspirations for the impact of psychology and law. He wrote in AP-LS's first newsletter:

While only the future can reveal the significance of a present event, I feel that [the meeting] in San Francisco will prove to be an event of historic significance . . . It may not prove grandiose to compare the potential impact of the creation of this society in its area with that of the Royal Academy of Science in Britain and the Academie des Sciences in France . . . We can perceive that we have taken on a precious responsibility, for there are few interdisciplinary areas with so much potential [as psychology and law] for improving the human condition and for acquiring and utilizing greater understanding of man. (p. 1)

Whether AP-LS will realize Ziskin's vision, it is noteworthy that AP-LS has thrived since its inception. AP-LS has now grown to over 2,000 members, has sponsored a major journal, *Law and Human Behavior*, a scholarly book series, and has developed guidelines for the professional practice of forensic psychology, among other accomplishments.

## THE ROLES OF FORENSIC PSYCHOLOGISTS

There are many roles for forensic psychologists. At a broad level, one can divide these roles into research and practice, although this is an arbitrary and sometimes incorrect classification. Some forensic psychologists do focus entirely on research while others entirely focus on some form of practice. However, many of those who would identify themselves as researchers also engage in clinical forensic practice, while some clinicians are also active researchers. For example, the authors of this text are trained in clinical psychology, work in university settings but also conduct psychological evaluations for the courts. While some forensic psychologists work in universities as we do, or in other research settings, the majority of forensic psychologists are primarily practitioners who work in a wide range of settings.

The roles of forensic psychologists will be discussed in more detail in chapters throughout this book. The American Board of Forensic Psychology (ABFP) provides the following list of the types of activities of psychologists engaged in the practice of forensic psychology:

- Psychological evaluation and expert testimony regarding criminal forensic issues such as trial competency, waiver of Miranda rights, criminal responsibility, death penalty mitigation, battered woman syndrome, domestic violence, drug dependence, and sexual disorders
- Testimony and evaluation regarding civil issues such as personal injury, child custody, employment discrimination, mental disability, product liability, professional malpractice, civil commitment, and guardianship
- Assessment, treatment, and consultation regarding individuals with a high risk for aggressive behavior in the community, in the workplace, in treatment settings, and in correctional facilities
- Research, testimony, and consultation on psychological issues impacting on the legal process such as eyewitness testimony, jury selection, children's testimony, repressed memories, and pretrial publicity
- Specialized treatment service to individuals involved with the legal system
- Consultation to lawmakers about public policy issues with psychological implications
- Consultation and training to law enforcement, criminal justice, and correctional systems
- Consultation and training to mental health systems and practitioners on forensic issues
- Analysis of issues related to human performance, product liability, and safety

- Court-appointed monitoring of compliance with settlements in class-action suits affecting mental health or criminal justice settings
  - Mediation and conflict resolution
  - Policy and program development in the psychology-law arena
  - Teaching, training, and supervision of graduate students, psychology, and psychiatry interns/residents, and law students
- (retrieved from <http://www.abfp.com/brochure.asp>, July 18, 2007)

## Professional Associations and Publications

There are a number of professional groups that represent psychology and law. In North America, the primary group is the American Psychology-Law Society (AP-LS), which is an interdisciplinary organization devoted to scholarship, practice, and public service in psychology and law (see Grisso, 1991 for a history of AP-LS). AP-LS is both a free-standing organization as well as part of the American Psychological Association (Division 41). AP-LS has an active undergraduate and graduate student membership (see the AP-LS website for student information: <http://www.ap-ls.org>). The American Board of Forensic Psychology (ABFP) awards a Diploma in Forensic Psychology to those psychologists who satisfactorily complete the requirements for achieving Specialty Board Certification in forensic psychology. In Europe, the European Association of Psychology and Law (EAPL) is the representative association, and in Australia and New Zealand, it is the Australian & New Zealand Association for Psychiatry, Psychology & the Law (ANZAPPL). The three associations each have annual conferences and have held several joint conferences in order to promote international collaborations and presentation of the latest research findings.

**AP-LS member statistics.** An analysis of membership data from the 2006 AP-LS member database provides an instructive profile of forensic psychologists. Nearly two-thirds of the over 2,100 members and fellows of AP-LS are male, but there are indications that this imbalance will shift in the next decade as 78% of the over 600 student members of AP-LS are female. The vast majority of members work in applied settings, with less than 20% indicating they work in academic institutions. Minorities are underrepresented. Haney's comment in 1993 that "put bluntly, psychology and law is an almost universally white and still largely male discipline" (pp. 388–389) remains true today. AP-LS member statistics show that less than 5% of members are from minority groups. This is in stark contrast to the representation of minorities in the criminal justice system, in which minorities account for the majority of defendants and prison inmates in many states.

**Journals.** There are also many journals that are entirely devoted to forensic psychology topics. *Law and Human Behavior* was the first journal, and it is the official publication of AP-LS. It began publication in 1977 as a quarterly journal, and expanded to six issues per year in 1990. In addition to *Law and Human Behavior*, the field has added many new journals, reflecting the substantial increases in research and practice that psychology and law has enjoyed over the past 40 years. The list is extensive but includes *Criminal Behavior and Mental Health*; *Behavioral Sciences & the Law*; *Psychology, Public Policy, and the Law*; and *Legal and Criminological Psychology*.

## OVERVIEW OF LAW

This section provides an overview of the legal system, the origins of law, values, and law. This includes the organization of the courts (trial, appellate, federal, Supreme Court).

### Sources of Law

Law can be thought of as the total of all the rules governing behavior that is enforceable in courts. There are four sources of law in the United States including the U.S. Constitution, state and federal statutes, administrative law, and court made law or *common law*.

#### *U.S. Constitution*

In order to understand the complexity of the American legal system, it is helpful to recall that the United States was founded as the union of 13 colonies, each one claiming independence from the British Crown. In 1787, the U.S. Constitution was put in place to govern the relationship among the 13 colonies and the national Congress. It defined the powers and authority of the federal and state governments and delineated the kinds of laws that the federal Congress and the state legislatures could pass.

The U.S. Constitution is often referred to as the “Law of the Land” because it supersedes all other laws or rules. The power of Congress and of the state legislatures to pass laws is always subject to the U.S. Constitution. Laws or rules that are inconsistent with the Constitution, either because they violate rights guaranteed by the Constitution or because the Constitution does not authorize that legislature to pass that kind of law, are *unconstitutional*. A court that finds a law to be unconstitutional will strike it down giving it no force or effect.

## *Statutes*

As we have just seen, the Constitution gives Congress and state legislatures the power to pass legislation or laws in certain domains. Federal and state laws are known as **statutes**. The powers of Congress, or the federal legislature, to pass laws are set out in Article I of the Constitution. Examples of domains for which Congress has jurisdiction and can pass statutes include laws related to providing and maintaining a Navy, establishing post offices, and regulating commerce with foreign nations.

All powers not expressly granted to the federal legislature by the Constitution are reserved for the states. State legislatures have the power to pass laws concerning many domains of interest to forensic psychologists. For example, state legislatures have the power to enact legislation regarding criminal law, civil commitment, and family law. With respect to domains within their jurisdiction, each state will have its own statute or statutes. For example, California has enacted *The Penal Code of California* while Michigan has enacted *The Michigan Penal Code*—both statutes dealing with criminal law within their jurisdiction.

## *Administrative Rules and Regulations*

In some cases, the federal or state government may delegate some of its powers to specialized administrative agencies through authorizing statutes. As a part of this delegation, many of these agencies will have the authority to make rules and regulations relevant to their responsibilities and within their area of expertise. These laws are referred to as *rules* or *regulations* rather than statutes, but they generally have the same force as statutes. The power of the administrative agency to enact rules and regulations is set out in the authorizing statute. One area of administrative law relevant to forensic psychologists is the laws surrounding the determination of disability and disability benefits.

## *Common Law*

The U.S. legal system has its roots in the English common law system. Historically, English grand juries, kings, and magistrates catalogued their decisions according to the type and subject matter of the case. When subsequent cases came before them, they reviewed earlier decisions to determine whether a previous case was sufficiently similar to the current one. If so, they applied the principles set out in the earlier decision to the new decision. This body of principles came to be known as the *common law*. The common law is therefore often referred to as court- or judge-made law. Many of the principles established in English common law continue to be applied by U.S. courts today. In addition, the doctrine of *stare decisis*, Latin for “let the decision stand,” remains.

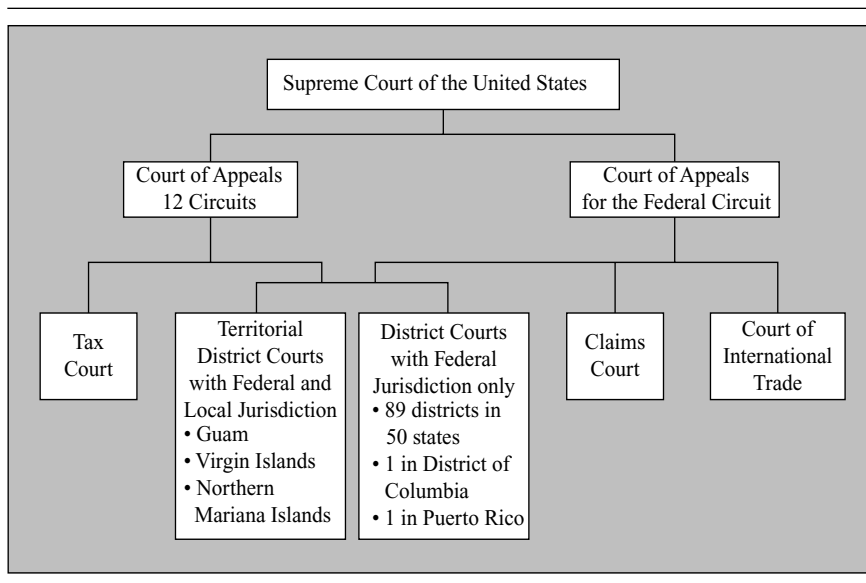
That is, when a judge interprets a law, subsequent judges will often be bound by that interpretation through the process of precedence. Whether a judge is bound by a previous decision will largely depend on the jurisdiction of the court.

## COURT SYSTEMS

The U.S. court system is one of the most complex in the world. It is composed of both federal and state court systems, each applying the laws of their jurisdiction. Taken together, there are thousands and thousands of individual courts in the United States! Courts are the final interpreters of law (they apply statutes, regulation and, common law) and are therefore central to the legal system.

### Federal System

The Federal Court system is created like a three-level pyramid (see Figure 1.2). U.S. District Courts, the majority of courts in the federal system, make up the bottom of the pyramid. These trial courts are the entry point for most cases in the federal system. There are 94 U.S. federal judicial districts each with at least one court. Each state is composed of at least one district but many of the more populated states are made up of multiple districts. New York, for example, is composed of four federal judicial districts (i.e., Eastern, Northern, Southern,



**Figure 1.2 Supreme Court of the United States**

Source: Encarta, [http://encarta.msn.com/media\\_461518049\\_1741500781\\_-1\\_1/united\\_states\\_court\\_system.html](http://encarta.msn.com/media_461518049_1741500781_-1_1/united_states_court_system.html).

and Western). U.S. District Courts are courts of general jurisdiction. That is, they have the authority to hear a very wide range of cases including both criminal and civil cases. If a losing party feels that a District Court made an error in reaching a decision, in many circumstances, they can appeal the decision to courts at the midlevel of the pyramid, the U.S. Courts of Appeals. The U.S. Courts of Appeals, often referred to as the U.S. Circuit Courts, are spread over 12 circuits or geographical regions. The U.S. Courts of Appeals hear appeals from District Courts within their regions. Cases at this level are decided by the majority of a three-judge panel. Decisions made by a U.S. Circuit Court will be binding on all District Courts within their jurisdiction through the doctrine of **stare decisis** (a legal term referring to the principle that prior court decisions establish precedence for current cases). A party who is dissatisfied with a decision made by a U.S. Court of Appeals may seek review by the U.S. Supreme Court by filing a motion for a **writ of certiorari** (this is a request for a higher court to direct a lower court, tribunal, or public authority to send the record in a given case for review). If the motion is successful, a higher court will then order the lower court to turn over transcripts and documents related to a specific case for review.

The U.S. Supreme Court is the single court at the top of the pyramid. It comprises nine judges, called justices, who decide cases based on a majority. The court's jurisdiction is largely discretionary. That is, when a *writ of certiorari* is filed with the U.S. Supreme Court, requesting that a U.S. Court of Appeals decision be reviewed, the nine justices will decide whether they wish to hear the case. If at least four justices agree to hear the case, *certiorari* is granted and the case is heard. Otherwise, the case is not heard and the decision of the U.S. Court of Appeals stands. The U.S. Supreme Court grants *certiorari* in only a minority of cases. The decision not to hear a case does not reflect the U.S. Supreme Court's agreement with the lower-level courts. Rather, the Court hears cases that are the most constitutionally or legally important. For example, if many Circuit Courts have interpreted identical statutes differently, the U.S. Supreme Court may agree to hear the case in order to clarify that area of law. Decisions made by the U.S. Supreme Court are binding on all other courts in the federal system. The U.S. Supreme Court is the highest arbiter of federal law and, as a result, it is sometimes called the *court of last resort*. If a losing party is unhappy with a decision made by the U.S. Supreme Court, there is no other option or remedy.

## State System

The structure of state court systems vary greatly from state to state. While some states follow a pyramid structure that shares features with the federal system, many states operate complex systems involving courts with

overlapping jurisdiction. Some state systems rely on four levels of courts with (1) courts of limited jurisdiction, (2) courts of general jurisdiction, (3) intermediate appellate courts, and (4) courts of last resort. In these systems, a trial will begin either at a court of limited jurisdiction or at a court of general jurisdiction depending on the subject matter and the seriousness of the case. Cases heard in a court of limited jurisdiction can often be appealed to a court of general jurisdiction. Cases first heard in a court of general jurisdiction can usually be appealed either to the intermediate appellate court or to the court of last resort depending on the nature and seriousness of the case. While this system may seem overly complex, many state systems are much more elaborate and convoluted. Students who are interested in learning about the state court system in their jurisdiction should consult their state government website for additional information.

## THE COURT PROCESS

There are two distinct types of actions or lawsuits available in the United States: civil actions and criminal actions. The rules for each, the responsibilities of the court, and the rights of defendants differ considerably in both types. In addition, the outcomes can differ greatly. Some readers will remember or have heard of the O. J. Simpson trials, in which a famous ex-NFL football star was accused of killing his ex-wife and her companion. In his first trial, a criminal trial, O. J. Simpson was acquitted of the double murder. However, in his second trial, the civil trial, he was found liable for wrongful death and ordered to pay \$33.5 million in damages.

### Criminal Process

In a criminal action, the federal or state government prosecutes, in the name of the people, a **defendant** charged with violating a criminal law. In most criminal cases in the United States, there exists a presumption of innocence. That is, the defendant is presumed innocent unless proven guilty. The burden of proof lies with the prosecution and the level of proof, or the standard of proof, required is “beyond a reasonable doubt.” That is, the **prosecutor** must convince the court that the criminal charge in the given case is true “beyond a reasonable doubt.”

The standard of proof is high in part because of the gravity of the potential outcomes in a criminal action. The penalties available are usually set out in the relevant criminal statute and they typically include a range of fines or prison time a court can impose for a given offense. In general, more severe penalties are imposed for more serious offenses and in some jurisdictions on repeat offenders.



Defendants in criminal actions are afforded a number of rights some of which are set out and protected by the U.S. Constitution. Among these rights are: the right to be free from unreasonable searches and seizures (Fourth Amendment), the right against self-incrimination (Fifth Amendment), and the right to a speedy trial (Sixth Amendment). In addition to these rights, a criminal defendant is also afforded the right to counsel. If a criminal defendant in federal and state court cannot afford an attorney, the court will appoint one, most often the **public defender**. Finally, if a criminal defendant is acquitted, the prosecution's right to appeal is virtually nonexistent.

## Civil Process

Civil actions involve two or more private parties where at least one party alleges a violation of a statute or some provision of the common law. Cases involving breaches of contracts or injuries that are the result of negligence (i.e., **tort law**, which allows an injured individual to recover damages from someone who is responsible or liable for those injuries) are both examples of civil cases. The party initiating the lawsuit is the **plaintiff** while the party answering to the lawsuit is the *defendant*.

The standard of proof in civil trials is generally on the “balance of probabilities,” also known as the “preponderance of evidence.” This standard of proof is much lower than “beyond a reasonable doubt” and will usually be met if there is more than a 50% chance that the allegations are true or more simply, if it is more probable than not.

The many rights afforded to criminal defendants are not necessarily provided to the defendant in a civil trial. For example, in civil cases, the defendant does not have a right to counsel and is not protected against self-incrimination. For example, while O. J. Simpson was not required to testify in his criminal trial, he was required to testify at his civil trial. Many believe that his testimony coupled with the lower standard of proof accounts for the finding of liability in the wrongful death suit as opposed to the acquittal in his criminal trial.

## Judges and Juries

In many civil and criminal cases, defendants are afforded the option of having their case heard before a judge alone or a judge and jury. If the defendant elects to have the case heard before a judge alone, the judge will be the arbiter of both the law and of the facts. That is, the judge decides both matters of law (e.g., which evidence to allow, how motions should be decided) and the facts of the case (e.g., decides which parties to believe, what actually transpired). The judge, therefore, decides whether the prosecution

or the plaintiff has met the burden of proof and ultimately whether the defendant should be found guilty or liable. In judge and jury trials, the judge decides matters of law while the jury hears the evidence and reaches a decision about guilt or liability. Juries are made up of lay people, often referred to as *a jury of one's peers*. The jury is selected at random through a predefined procedure. In order to be eligible for jury duty, you must be at least 18 years of age, be a U.S. citizen, and have no felony convictions. Based on the facts presented at trial including the testimony of witnesses and the presentation of documents and on expert witnesses and legal arguments, the jury decides on the liability or guilt of a defendant. In coming to their decision, the jury must apply legal principles as explained by the judge. For example, a jury in a criminal trial must in making their decision apply the “beyond a reasonable doubt” standard of proof. Jury decision making is described in more detail in Chapter 7.

## DIFFERENCES BETWEEN PSYCHOLOGY AND LAW

One of the difficulties faced by those in forensic psychology centers on how the two disciplines fundamentally approach their respective fields. Psychology is grounded in theory and empirical research which is used to test those theories. New research can provide evidence to support or invalidate prior research. A substantial amount of psychological research focuses on the differences between groups of individuals. The legal system, on the other hand, is ultimately concerned with the individual case. Court decisions are based on precedence, that is, what prior courts have decided in similar fact cases. There are two basic models of justice in Western societies. One is an **inquisitorial model**, which is used in a number of European countries (e.g., France, Switzerland). In this model, a judge or magistrate takes an active role in determining the facts of a case. U.S. law is based on an **adversarial model** of justice. In this model, a judge is considered to be an impartial referee between parties. There are two opposing sides, the defense and the prosecution. Each side is given the opportunity to present its version of the case. Once both sides present the evidence, the judge or jury acts as an impartial and passive fact finder, reaching a decision based in theory on an objective and unbiased review of the evidence presented in court. As discussed in Chapter 7, the ideal of a dispassionate trier of fact may not always be realized, as values and other factors may influence the decisions of judges or juries.

The adversarial system presents unique difficulties for psychologists. Psychologists are often hired by one side or the other in a criminal case or

civil dispute to conduct a psychological evaluation of an individual. These evaluations may focus on such issues as competency to stand trial, the psychological impact of an assault, or risk for future violence. The individual being evaluated may perceive a psychologist as an opponent rather than an objective evaluator, and this may influence how he or she responds to the evaluator (Bush, Connell, & Denney, 2006). The adversarial nature of the legal system may also place pressure on psychologists because attorneys are primarily focused on being an advocate for their client and may attempt to influence the evaluation report. As discussed in Chapter 12, the psychologist's ethical guidelines mandate that psychologists do not take sides, but rather perform an independent evaluation.

Haney (1980) has discussed many of the conflicts that arise between law and forensic psychology:

1. Academic psychology emphasizes creative, novel, and innovative approaches to research questions. As Haney notes, researchers are encouraged to go beyond standard or accepted categories, and to extend them into new areas. The profession highly values the “‘creative aspect’ of its science . . . in hypothesis generating, methodological design, and the interpretation of data” (p. 159). The legal system, on the other hand, is more conservative in nature, and resists innovation. It operates on the principle of *stare decisis* in which prior court decisions establish precedence for current cases. Prior decisions should not be overturned unless there are strong legal reasons to do so. Haney comments that “a truly unique idea or argument is likely to lose in court” (p. 159) and adds that “the law is explicitly backward looking in its style and method” (p. 160).
2. Psychology is primarily an empirical enterprise “whose principles and propositions depend for their confirmation upon the collection of consistent and supporting data” (p. 160). The legal system in contrast is based on a hierarchical and authoritative system in which the lower courts are bound by decisions of higher courts.
3. Psychology attempts to arrive at “truth” through the application of an experimental model, in which empirical research is designed to test hypotheses. Research methodologies are designed to minimize error or bias. New research can provide evidence to support or disconfirm prior research. The law uses an adversarial system to arrive at “truth.” Each side presents its version of the case and the ultimate goal is to win a case. As Haney comments, “bias and self-interest are not only permitted, they are assumed at the outset and thought to be the very strength and motive force of the procedure” (p. 162).
4. Psychology is descriptive in nature, with a goal of describing behavior as it naturally occurs. The law is prescriptive, in that laws are designed

to tell people how they should behave, and what punishment will be given if they do not.

5. Psychology is nomothetic (in which data are obtained through the investigation of groups) in nature, “concentrating upon general principles, relationships, and patterns that transcend the single instance. For the most part, it eschews case studies and principles generated from single cases” (Haney, 1980, p. 164). The law is ideographic (in which data are obtained through the investigation of one individual, usually the individual under consideration), in that it focuses on decisions in an individual case, with the facts of each case forming the basis for the decision. This difference often creates a conflict for experts who testify because the empirical basis for the testimony may lie in group data. For example, laboratory research on the reliability of eyewitnesses report high error rates in certain conditions, but there is considerable individual variation. Some individuals are accurate even if the majority may not be. This presents a problem for court testimony because the court wants to know whether a single individual is accurate. Psychology’s group data cannot be used to reach an opinion that a specific individual is not reliable.
6. Psychology research is based on methods relying on probabilistic models. Psychologists characterize the relationship between cause and effect using statistics and the tools of probability theory. Hypotheses are tested with the express acknowledgment that there is always a chance of reaching the wrong conclusions. For example, choosing a probability level of 95% for a particular analysis means that there is a 5% chance that the null hypothesis will be rejected when it was actually correct. Thus, psychological research is based on the principle of probability rather than certainty. The law, in contrast, operates on a principle of certainty, in large part because the legal system demands a final definitive outcome. Criminal defendants are either guilty or not guilty. Plaintiffs in civil cases are either negligent or not. Of course, these “certain” decisions can be wrong, as shown in the many cases of convicted defendants who were later exonerated by DNA evidence.
7. Psychology is a proactive discipline. Researchers decide what hypotheses to address, and then design studies to test those hypotheses. The law is reactive, in that it waits until issues (or people) are brought to it.
8. Psychology is an academic enterprise, at least in terms of its research. As Haney comments, “Its ‘issues’ are commonly determined by the intellectual curiosities of psychologists and the practical reality of having to publish in order to prosper. For this reason, its concerns can and often do get far out of contact with the ‘real world’” (p. 167). The law is operational and applied in nature, “its concerns are those of the real world and its problem solving is geared to application” (p. 168).

## Haney's Taxonomy

Haney (1980) conceptualized the complexity and diversity of roles for psychologists in the legal system. He has suggested a threefold taxonomy to understand the multiple relationships of psychology and law: psychology *in* the law, psychology *and* law, and psychology *of* law.

*Psychology in the law* refers to the “explicit and conventional use of psychology by lawyers in the legal process” (p. 153). This relationship accounts for the most common role of psychologists involved in legal issues, since it encompasses the activities of psychologists who conduct court-ordered evaluations or who consult with lawyers on legal issues. Examples include psychological testimony on legal issues such as the insanity defense or competency to stand trial. It might also address questions such as whether a particular offender is at risk for reoffending. For this type of involvement, psychologists must adapt their knowledge and expertise to the legal questions that the courts or law define. To be admissible in court, psychologists must demonstrate that their evidence is relevant to the legal question. *Psychology in the law* also refers to the roles that psychologists can provide as expert consultants in various aspects of legal proceedings. Lawyers employ psychologists to consult about the selection of jurors or how jurors might react to certain defense strategies. Psychologists have also been employed to conduct studies of the effect that pretrial publicity may have on a particular case. Such research can be used by lawyers in motions arguing for a change of venue to another community. Haney notes that *psychology in the law* accounts for the most frequent roles of psychologists in the legal system, and cautions psychologists to “realize that when they are used *by* the legal system in this way they have little control over the ends to which their expertise is ultimately applied” (p. 154).

*Psychology and law* involves the use of “psychological principles to analyze and examine the legal system” (p. 154). Unlike *psychology in the law*, the relationship of the two disciplines of law and psychology is one that involves “coequal and conjoint use of psychological principles to analyze and examine the legal system” (p. 154). Research that follows from this relationship examines the assumptions that the law makes about behavior. Examples include research on eyewitness accuracy, coerced and/or false confessions, and judicial decision making. This type of involvement can result in changes in the way in which the legal system operates. The extensive research on police lineups in the past two decades, which demonstrated biases in how suspects were identified by witnesses, formed the basis for recommendations by an AP-LS subcommittee for changes in lineup and photospread procedures, many of which have been adopted by police throughout the United States (Wells et al., 1998). Other examples of *psychology in the law* include the study of whether adolescents have the capacity to

waive their arrest rights, whether personality characteristics affect the decisions of judges or jurors, and whether the death penalty acts as a deterrent.

*Psychology of law*, in which psychologists study issues such as why people need the law and why people obey the law, is the third relationship Haney suggested. Two major categories fall under this approach to examining psychology's role. One, psychologists can study the origins and existence of law, in terms of the psychological functions that law serves. Two, psychologists can study how laws operate as a determinant of behavior. Haney recognizes that this approach to law is difficult for psychologists to apply to research, in part because "the unit of analysis—law qua law—is too global and pervasive, and therefore not easily manipulated or systematically varied in ways familiar to psychologists" (p. 156).

Haney notes that the roles and expectations of psychologists are different for each of these three relationships. In the first relationship, psychologists have a more passive role, since the law defines the legal concepts that psychologists are asked to address. The second and third relationships provide more autonomous roles for psychologists in that they can define the legal issues they address. Haney comments that while the majority of psychologists are involved *in* the law, it is the other two relationships in which psychologists might have the most impact on legal change through research that examines how the law actually works or studies leading to changes that might improve legal procedures.

## **Training in Forensic Psychology**

When the field of psychology and law began to expand in the 1970s, the majority of psychologists who conducted research or engaged in practice were not specifically trained in psychology and law. This began to change with the creation of the first psychology and law graduate program in the United States at the University of Nebraska in 1973 (Krauss & Sales, 2006). Since then, programs have been established in many other universities in the United States, Canada, Europe, Australia, and elsewhere in the world.

In most states, a PhD or PsyD is required for forensic psychology practice. A doctoral degree in clinical psychology is typically based on a combination of training in research and practice, whereas in other areas of psychology (e.g., social, cognitive) it is primarily a research-based degree. A PsyD (or Doctor of Psychology) program places greater emphasis on the practice of psychology and less emphasis on independent research.

While there are now many graduate programs in which specialized training in forensic psychology is available, a doctoral degree in forensic psychology is not necessary to engage in work in the field. Many, even a majority, of psychologists have training in the traditional areas of

psychology and no formal graduate training in forensic psychology. These psychologists have typically participated in workshops and other continuing education programs to keep up-to-date with the latest advances in psychology and law. The number of forensic psychologists with formal graduate training in forensic psychology has gradually increased in the past 20 years as more programs have been initiated.

**Graduate programs.** Graduate programs offer a number of options for training in forensic psychology (see Table 1.2 for a list of programs). Some programs adopt the scientist-practitioner model of clinical training, offering basic research and practical training in clinical psychology but with an emphasis on forensic applications. Other programs are nonclinical in nature, focusing training on more traditional fields of psychology such as social, developmental, or other experimental areas of psychology. A few programs offer joint-degree programs, with students obtaining a PhD and a law degree (see Bersoff et al., 1997, for a discussion of models of graduate training in forensic psychology).

Heilbrun (2001) has presented a table summarizing the approaches to training in forensic psychology (see Table 1.3). He conceptualizes the training in a  $2 \times 3$  model, in which research scholarship and applied activities can be taught within three major interest areas: clinical, experimental, and legal. The model shows that each interest area includes training and experiences in research and scholarship but also in the application of psychology to the legal system. Thus, students in clinical programs learn the basic research on assessment and intervention but also how to conduct forensic assessments and provide treatment in the legal context. Experimental students study basic research in memory, perception, and other areas of experimental psychology, but also how to apply that research to consultation activities in the legal system such as jury selection and expert testimony. Students in law schools who also receive some training in behavioral science learn about mental health law and legal movements, but also how to apply that to developing new law or to consult about policy and legislative change.

An illustrative graduate program is one developed at Simon Fraser University, which uses an approach that provides graduate training in all three of these options. The Law and Forensic Psychology program offers two distinct tracks. Graduate students in the Clinical Forensic track meet all the requirements of the clinical psychology doctoral program and take additional courses to specialize in forensic psychology. Graduate students in the Experimental Psychology and Law stream or track meet all the requirements for the experimental doctoral program, and take additional courses to develop research and applied policy skills in law and forensic psychology. Due to the overlap of the two areas, students in both streams will take many of the same courses and will develop similar research

**Table 1.2 Graduate Training in Forensic Psychology**

Clinical PhD/PsyD Programs	<p>University of Alabama (Clinical PhD with a psychology-law concentration)</p> <p>University of Arizona (PhD and/or JD)</p> <p>Alliant International University (PhD in Forensic Psychology or PsyD in Forensic Psychology)</p> <p>Arizona State University (Law and Psychology JD/PhD Program)</p> <p>Carlos Albizu University in Miami (PsyD in Clinical Psychology with a concentration in forensic psychology)</p> <p>Drexel University (JD/PhD)</p> <p>Drexel University (PhD with a concentration in forensic psychology)</p> <p>University of Florida (Counseling PhD with psychology-law concentration or JD)</p> <p>Fordham University (Clinical PhD with concentration in forensic psychology)</p> <p>Illinois School of Professional Psychology (Clinical PsyD with concentration in forensic psychology)</p> <p>John Jay College of Criminal Justice–CUNY (MA or PhD)</p> <p>University of Nebraska (joint JD and PhD or joint JD and MA in Psychology)</p> <p>Nova Southeastern University (PsyD with a concentration in clinical forensic psychology)</p> <p>Pacific Graduate School of Psychology (joint PhD/JD)</p> <p>Sam Houston State University (PhD in Clinical Psychology with an emphasis in forensic psychology)</p> <p>Simon Fraser University (PhD in Clinical-Forensic Psychology)</p> <p>West Virginia University (PhD in clinical with emphasis in forensics)</p> <p>Widener University (JD/PsyD joint degree)</p>
Nonclinical PhD/PsyD Programs	<p>University of Arizona (PhD and/or JD)</p> <p>Alliant International University (PhD in Forensic Psychology or PsyD in Forensic Psychology)</p> <p>Arizona State University (Law and Psychology JD/PhD Program)</p> <p>Florida International University (PhD in Psychology with an emphasis in legal psychology)</p> <p>Georgetown University (PhD in Psychology with concentration in human development and public policy and a PhD in a joint program with an MA in public policy)</p> <p>John Jay College of Criminal Justice–CUNY (MA or PhD)</p> <p>University of Nevada–Reno (PhD in social psychology with a concentration in psychology and law)</p> <p>Simon Fraser University (PhD in psychology in the law and forensic psychology program)</p> <p>University of California–Irvine (PhD in Criminology, Law &amp; Society)</p> <p>University of Florida (Developmental PhD with psychology-law concentration or JD)</p> <p>University of Illinois at Chicago (PhD with concentration in psychology and law)</p> <p>University of Minnesota (PhD in social psychology with a research concentration in social psychology and law)</p> <p>University of Nebraska (joint JD and PhD or joint JD and MA in Psychology)</p> <p>University of Texas at El Paso (PhD in Applied Psychology with the Legal Psychology Group)</p> <p>University of Wyoming (PhD with concentration in psychology and law)</p>

Source: <http://www.ap-ls.org/students/graduateIndex.html>.



**Table 1.3 Heilbrun's Conceptualization of Training in Forensic Psychology**

	Law and Psychology Interest Areas (with associated training)		
	Clinical	Experimental	Legal
	(clinical, counseling, school psychology)	(social, developmental, cognitive, human experimental psychology)	(law, some training in behavioral science)
Research/Scholarship	1. Assessment tools 2. Intervention effectiveness 3. Epidemiology of relevant behaviors (e.g., violence, sexual offending) and disorders	1. Memory 2. Perception 3. Child development 4. Group decision making	1. Mental health law 2. Other law relevant to health and science 3. Legal movements (law and social science, therapeutic jurisprudence, psychological jurisprudence)
Applied	1. Forensic assessment 2. Treatment in legal context 3. Integration of science (idiographic, nomothetic, reasoning) into practice	1. Consultation on jury selection 2. Consultation on litigation strategy 3. Consultation on "state of science" 4. Expert testimony on "state of science"	1. Policy and legislative consultation 2. Model law development

*Source:* Heilbrun (2001).

skills; however, students in the Clinical-Forensic Stream further develop their clinical training to include forensic training and practice experience. In cooperation with the University of British Columbia, the SFU Program in Law and Forensic Psychology also offers students in law and forensic psychology an opportunity to complete both a PhD and a law degree.

Undergraduate students who wish to pursue a career in forensic psychology should be aware that admission to graduate programs in forensic psychology (or psychology more generally) is highly competitive, with most programs admitting fewer than 10% of applicants. Students will usually need to major in psychology, have outstanding grades and scores on the Graduate Record Exam (GRE), and have excellent references. Students are advised to obtain as much research experience as possible, working in labs of professors as well as conducting their own research. Volunteer work or jobs in forensic psychology settings, such as juvenile detention centers or forensic hospitals, can also be helpful.

Many students inquire about whether a PhD in psychology and a law degree are necessary for engaging in either research or practice in forensic psychology. The short answer is no, but Professor Don Bersoff, one of the founders of joint degree programs, has written eloquently about the potential value of both degrees (see Box 1.2).

### Box 1.2 On the Value of Joint Degree Programs

The following excerpt, on the potential contribution that JD/PhD graduates can make to forensic psychology, was written by Professor Don Bersoff, a past president of the American Psychology-Law Society who founded one joint degree program and later directed another one.

One of the great values of joint training is that it produces people who are comfortable and conversant in two divergent languages—that of science and that of law. Thus, graduates have the potential of serving as translators for the respective members of these two jargon-filled and technical fields. Graduates of JD/doctoral programs can translate legal principles for psychologists, helping them to understand the meaning and implications of such relevant concepts as due process, equal protection, informed consent, and insanity and the impact of the legal system on the practice of psychology. Conversely, these graduates can help inform law students, law professors, lawyers, and judges about the meaning of such legally relevant terms as falsifiability, Type I and Type II errors, multivariate analysis, test validity, psychosis, or the applicability of research on memory, perception, and group dynamics to such legal problems as eyewitness identification, the constitutionality of nonunanimous juries, or the validity of certain exculpatory “syndromes.” (Bersoff, 1999, p. 392)

## SUMMARY

The involvement of psychologists in the legal system dates back to the early part of the last century, but it has only been in the last 40 or 50 years that psychologists have made substantive and consistent contributions. Forensic psychology has grown dramatically during this period, as witnessed by the creation of professional associations and the publication of journals in psychology and law. We defined *forensic psychology* as encompassing both sides of the justice system (civil and criminal) as well as two broad aspects of psychology (clinical and experimental). Psychologists have made a range of contributions in both research and practice. This chapter provided numerous examples of the type of activities in which forensic psychologists contribute to the legal system. It was noted that the interaction of psychology and law is not without its difficulties. We provided an overview of Haney’s model for understanding the differences between psychology and law as a way of explaining the reasons for the conflicts that often arise between the two disciplines. Training models for students wishing to pursue a career in forensic psychology were reviewed. It is essential that forensic psychologists understand the legal system, and this chapter presented an overview of how the legal system operates in the United States.

## SUGGESTED READINGS AND WEBSITES

- American Board of Forensic Psychology website: <http://www.abfp.com>.
- American Psychological Association website: <http://www.apa.org/crsppp/archivforensic.html>.
- American Psychology-Law Society website: <http://www.ap-ls.org/>.
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## KEY TERMS

- *Adversarial model*
- *Defendant*
- *Forensic psychology*
- *Inquisitorial model*
- *Plaintiff*
- *Prosecutor*
- *Public defender*
- *Stare decisis*
- *Statutes*
- *Tort law*
- *Writ of certiorari*

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