

# PART I

## Fundamentals of Forensic Psychology

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# What is Forensic Psychology?

## An Introduction

### What is Forensic Psychology?

You have opened this book looking forward to learning something about **forensic psychology**, one of the fastest growing areas in all of psychology. But, do you really know what forensic psychology is? Is it like those *Crime Scene Investigation* (CSI) shows on television? Does forensic psychology involve apprehending serial killers? It has to be like the movies! *Silence of the Lambs*? *Kiss the Girls*? These are the types of things forensic psychologists do, right? No doubt these images portray limited aspects of forensic psychology that tantalize the public. Even though these examples might give inaccurate impressions of forensic psychology, they offer some insight into the field. Ultimately, these images get people interested in the topic and encourage us to think about the horrific things human beings are capable of at their worst.

I rarely tell people when I meet them that I am a forensic psychologist. I usually tell them I work at the local university. My proud father thinks my response makes it sound like I sweep the floors instead of work as a college professor. However, the images that come to mind for the average person when you state that you are a forensic psychologist are sometimes difficult to correct. In this chapter, I am initially going to spend some time clarifying the nature and limits of forensic psychology along with offering a specific definition of forensic psychology that we will use for the remainder of the book. And don't worry; some of those images that come to mind from the movies and television are accurate. Figure 1.1 shows Dr. Theodore Blau, former president of the APA.

### Is This Forensic Psychology?

Many people equate forensic psychology with forensic science or law enforcement. They believe that forensic psychologists arrive at a crime scene, survey the area, and eventually identify a number of psychological clues that will help



**Figure 1.1.** Dr. Theodore Blau, former President of the APA, began working in forensic psychology by testifying as a psychological expert and lectured regularly at the FBI Academy in Quantico, VA. From Psychology Archives – The University of Akron © Skip Gandy, Gandy Photography, Inc., Tampa, FL

catch the criminal. You see these situations continually portrayed by television shows, in the news media, and in movies. In fact, research suggests these media images may be leading to a number of incorrect perceptions about forensic science in general (Patry, Stinson, & Smith, 2008). However, psychologists are not routinely called upon to collect DNA specimens, analyze a sample of dirt left behind for the geographic location from which it originated, or even conduct so called psychological profiles. Forensic psychologists are not biologists or chemists and are rarely crime scene investigators or law enforcement officers. It may sound odd but they are just psychologists. They study human behavior and try to apply those principles to assist the legal system.

When an old friend of mine comes back to town, I often go over to her parents' house for a barbeque. One time her father asked me, knowing that I was a forensic psychologist, "how in the heck do you do therapy with dead people?" Now, while he was at least thinking about forensic psychologists in terms of tasks that psychologists typically perform (i.e., treatment of mental illness), he did not quite have it right when thinking about my work as a forensic psychologist. I don't often channel the dead but it really would be easy to predict the likelihood of future violence for someone who is dead. A number of students come to me interested in using their psychology or criminal justice major and the knowledge of human behavior they have acquired to "catch the bad guys." I usually explain to these students that rarely are forensic

psychologists called upon to apprehend suspects; in fact a recent study has found that only about 10% of forensic psychologists and psychiatrists have ever engaged in **criminal profiling** and only about 17% even believe it is a scientifically reliable practice (Torres, Boccaccini, & Miller, 2006). Most students who are interested in catching criminals should look into law enforcement rather than forensic psychology. However, if you are still interested in forensic psychology as a possible career you should know that you do get to spend a considerable amount of time playing detective but more on that later.

## The Origin of Forensic Psychology

Part of the public's misconception regarding forensic psychology stems from a lack of awareness about the very origin of the word forensic itself. Although some people think about forensic science and law enforcement when they think of forensic psychology, others might think about high school speech and debate. Focusing on solving arguments or being verbal adversaries in a speech and debate competition actually brings us a little closer to the true meaning of forensic psychology. The word forensic originated from the Latin word *forensis* which means *of the forum* and was used to describe a location in Ancient Rome. The Forum was the location where citizens resolved disputes, something akin to our modern day courtroom, and conducted the business of the day (Blackburn, 1996; Pollock & Webster, 1993). From this context evolved the meaning of forensic psychology. The role of the forensic psychologist is really pretty simple and straight forward, forensic psychologists assist the legal system.

## Our Definition of Forensic Psychology

Not only is there confusion in the general public about forensic psychology but there is even debate among psychologists about the nature of forensic psychology (Brigham, 1999). This debate has occurred not only in the United States, where reforms in mental health law and increasing pressure from the courts for clinical testimony have led to growth in the field but also in Canada, Europe, and other parts of the world (Blackburn, 1996; Ogloff, 2004). Broadly speaking, forensic psychology refers to any application of psychology to the legal system. However, many refer to this broader field as *psychology and the law* or *psycholegal studies* while specifying that forensic psychology focuses on the practice of **clinical psychology** to the legal system (e.g., Huss, 2001a). This narrower definition of forensic psychology that focuses only on clinical psychology excludes topics such as eyewitness identification (cognitive psychology), polygraphs (physiological psychology), jury behavior (social psychology), and the testimony of children in court (developmental psychology). These other non-clinical aspects have a powerful impact on the legal system and are extremely important in the psychological study of the law but they are beyond the scope of the current text. Students should check other sources if they have interest

in these aspects of psychology and the law (e.g., Brewer & Williams, 2005; Roesch, Hart, & Ogloff, 1999; Schuller & Ogloff, 2001; Weiner & Hess, 2006).

We will focus on a narrower definition of forensic psychology in this book that concentrates solely on the practice of clinical psychology. Our definition of forensic psychology will focus on the intersection of clinical psychology and the law. The clinical practice of psychology generally focuses on the assessment and treatment of individuals within a legal context and includes concepts such as psychopathy, insanity, risk assessment, personal injury, and civil commitment (Huss, 2001b). Furthermore, we will generally avoid topics that are more characteristic of police psychology (criminal profiling, fitness for duty evaluations, hostage negotiation) or correctional psychology that focus on issues pertinent to correctional facilities (prisons and jails) but do not lead to assisting the courts directly.

In using this definition of forensic psychology, we must also differentiate the practice of forensic psychology from forensic psychiatry. Clinical and counseling psychologists are often confused with psychiatrists. Although both psychologists and psychiatrists are trained to assist individuals with mental illness and emotional difficulties in general, there are significant differences (Grisso, 1993). Psychiatrists are medical doctors and obtain MDs or DOs. Psychologists typically obtain PhDs or PsyDs. As a result, psychiatrists are licensed to prescribe medication and emphasize this aspect of patient care. Traditionally, psychologists have not focused on the administration of medication, specifically psychotropic medication, and instead have focused on the psychological assessment and treatment of the mentally ill (see Chapter 2). Psychologists also usually have more extensive training in conducting research (Grisso, 1993) and therefore are better suited to examine many of the ideas we will discuss in this book. There will be issues we focus on that are relevant both to forensic psychology and forensic psychiatry. Nonetheless, we will discuss them from the perspective of the forensic psychologist.

### History of Forensic Psychology

Forensic psychology has a deep and extensive history that developed long before popular culture began to focus on it. See Table 1.1 for a brief list of important events in the development of forensic psychology. Hugo Munsterberg is often identified as one of the first psychologists to apply psychological principles to the law in his book, *On the Witness Stand* (1908). The German psychologist, William Stern, also focused on the application of psychological principles to the legal system by studying eyewitness identification in the early 1900s. However, the clinical practice of psychology, as it relates to the legal system, began at about the same time. The clinical practice of forensic psychology originated with Lightner Witmer and William Healy. Witmer began teaching courses on the psychology of crime in the early 1900s and Healy established the Chicago Juvenile Psychopathic Institute in 1909 to treat and assess juvenile

**Table 1.1.** Important Events in the Development of Forensic Psychology

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1908	Publication of <i>On the Witness Stand</i> by Hugo Munsterberg
1908	Lightner Witmer teaching courses on the psychology of crime
1909	Establishment of the Chicago Juvenile Psychopathic Institute
1921	Psychologist allowed to testify as an expert witness in <i>State v. Driver</i>
1962	Psychologists could testify in cases of insanity in <i>Jenkins v. United States</i>
1969	Creation of the American Psychology–Law Society
1970s	Founding of scholarly journals that publish articles exclusive to forensic psychology

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delinquents (Blackburn, 1996; Brigham, 1999), thereby serving as the first significant examples of forensic clinical psychologists.

As psychology, specifically the practice of clinical forensic psychology, began to develop in North America during the twentieth century, psychologists were called upon to apply their rudimentary knowledge to the legal system as expert witnesses (see Chapter 3). For example, a psychologist was allowed to testify as an expert witness in the United States in *State v. Driver* (1921) on juvenile delinquency (as cited in Johnstone, Schopp, & Shigaki, 2000). Though the court later rejected the testimony (Johnstone et al., 2000), this event still marked an important step in the development of forensic psychology. Court decisions such as *State v. Driver* tended to legitimize the profession, provided a market for forensic psychologists, and indicated that the legal system sought out psychology as another tool in arriving at fair and just legal outcomes.

However, it was an Appeals Court ruling in the District of Columbia, *Jenkins v. United States* (1962), which marked an even more significant turning point for the entire field of forensic psychology. In *Jenkins*, the court ruled that psychological testimony could be admitted to determine criminal responsibility (i.e., insanity). Forensic psychologists now routinely testify in insanity cases after evaluating defendants. These evaluations are necessary to determine whether defendants exhibit sufficient mental capacity at the time of their crimes to be held responsible for them. Prior to the *Jenkins* ruling, psychological testimony on insanity had largely been excluded in favor of testimony by physicians and psychiatrists (Van Dorsten, 2002). *Jenkins* is one of the first examples in which the law and the legal system influenced both research and the practice of forensic psychology. Specifically, it can be argued that the decision in *Jenkins* led to a boom in forensic psychology in the United States during the 1960s and 1970s because the courts admitted a variety of non-medical testimony (Loh, 1981). Although the Canadian legal system has arguably been less willing to allow psychologists to testify in court, there have been changes in recent years to increase their involvement (Schuller & Ogloff, 2001). Now that psychologists are increasingly being utilized by the legal system, a variety of additional signs point to growth in the field. The largest and possibly most prominent professional organization in forensic psychology, the American Psychology–Law

Society, was first established in 1969 and has grown to over 3,000 members (Grisso, 1991; Otto & Heilbrun, 2002). Furthermore, several forensic related journals in psychology such as *Law and Human Behavior* and *Behavioral Sciences and the Law* began publication in the 1970s (Melton, Huss, & Tomkins, 1999). All of these advances suggest a vibrant and growing profession.

## Major Areas of Forensic Psychology

However, the nature of forensic psychology is probably still not totally clear to you. One way to get a better idea about forensic psychology is to examine the major areas of forensic psychology and the law itself. Typically, forensic psychology can be divided into both the criminal aspects and the civil aspects (see Table 1.2 for examples of forensic psychology in both). This division of the roles and tasks of forensic psychology is based on the legal separation between the civil and criminal law. **Criminal law** focuses on acts against society and it is the government that takes the responsibility for pursuing criminal matters through law enforcement officers and prosecutors. The focus of criminal law is to punish offenders in order to maintain a societal sense of justice and deter crime. The murder that may have occurred last night or the mugging down the street are considered violations of criminal law because we, as a society, do not consider these behaviors appropriate and consider violations of criminal law as an offense against any one of us. The state, or the government, acts on behalf of society as the prosecution and files criminal charges against a defendant when it believes an individual has violated the criminal law.

There are a number of legal issues specific to criminal law that often play a role in the practice of forensic psychology. For example, **mens rea** is a principle of criminal responsibility that relates to an individual's mental state. Mens rea, or guilty mind, means that an individual has committed an unlawful act willfully or purposefully. It goes to suggest the culpability or blameworthiness of a defendant. Although psychologists are not called upon to render an opinion in every criminal case as to whether a defendant suffered from a guilty mind, they are called upon in select instances. These instances usually focus on the issue of insanity. In insanity cases, it is the responsibility of the forensic psychologist to assist the court in identifying whether a defendant suffered from a mental

**Table 1.2.** Example Areas of Forensic Practice in Criminal and Civil Law

<b>Criminal law</b>	<b>Civil law</b>
Risk assessment at the time of sentencing	Child custody
Insanity and criminal responsibility	Civil commitment
Competency to stand trial	Personal injury
Treatment of sexual offenders	Worker's compensation
Juvenile transfer to adult court	Competency to make medical decisions



illness and if it prohibited him from forming mens rea and therefore intentionally committing the crime. Other relevant instances in criminal law may include when a juvenile or mentally retarded person is facing the death penalty. Recent Supreme Court cases have ruled that offenders under the age of 18 (*Roper v. Simmons*, 2005; Box 1.1) and defendants suffering from mental retardation (*Atkins v. Virginia*, 2002) do not have sufficient mental capabilities to form mens rea and be legally responsible for a capital offense. Therefore, they cannot be executed.

In contrast, any violation of **civil law** is considered a wrong against an individual. Civil law is concerned with private rights and remedies, not necessarily the public good. If I get into a car accident because I am driving too fast and hit another person, I can be held civilly responsible because I have damaged that person in some way. **Torts** fall within civil law and consist of a wrongful act that causes harm to an individual. Furthermore, it is up to the harmed individual, not society to take action. Torts consist of four different legal elements or legal requirements for a violation of civil law to have occurred. In order for a tort to have taken place: (1) one individual must owe a duty; (2) that duty must have been violated; (3) the violation of that duty must be the

### **Box 1.1. A Supreme Court Decision in *Roper v. Simmons* (2005)**

The issue of mens rea was part of the landmark decision in *Roper v. Simmons* (2005). In 1993, Christopher Simmons planned and carried out the murder of Shirley Crook only 7 months before his eighteenth birthday. Furthermore, the crime was not sudden and impulsive. Simmons explained his plan in great detail to two of his friends who he attempted to involve in the plan. He told them that they would break into a house, rob it, tie up a victim and toss the victim off a bridge. He even bragged to them that they would get away with it because they were minors. On September 9, 1993, Simmons and his friends met up to carry out the plan. However, one of his friends decided not to participate. As a result Simmons and his only accomplice, Charles Benjamin, went to the home of Shirley Crook. They broke into the house, bound Mrs. Crook with duct tape, loaded her inside her own mini van, and drove to a nearby state park where

they threw her off a bridge and she drowned. Christopher Simmons was soon apprehended after he bragged to peers about killing Mrs. Crook and was convicted of murder and sentenced to death.

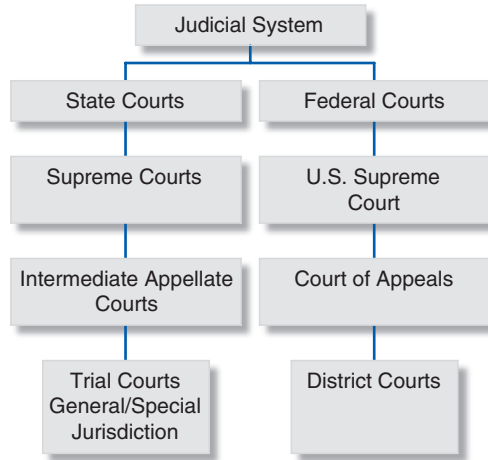
On appeal, his attorneys argued that imposition of the death penalty on a juvenile was cruel and unusual punishment because he lacked the mental capacity or mens rea to understand the crime and the sentence. The American Psychological Association filed an **amicus curiae** brief with the court that the body of scientific evidence clearly indicated that juveniles (individuals under 18) did not have the ability to take full moral responsibility for their choices. The United States Supreme Court agreed and ruled that the death penalty represented cruel and unusual punishment for juveniles because of their insufficient mental capacity to truly understand their actions.

proximate cause of a suffered harm; and (4) harm must occur and it has to involve a legally protected right (Douglas, Huss, Murdoch, Washington, & Koch, 1999).

For a tort to have occurred in the car accident I caused above, I must have owed a duty. Generally, it is legally recognized that operators of motor vehicles have a duty or a responsibility not to collide with other drivers or more appropriately to obey traffic regulations. For example, I have a responsibility or a duty to turn left only when there is a green light and no oncoming traffic. If I collided with another driver because I turned left while a traffic light was red, I have violated or breached that duty. A breach of duty can be intentional or a result of negligence. Negligence occurs when an individual falls below an ordinary or reasonable level of care. So even if I did not intend to turn when the light was red, it may have been negligent of me to do so because a reasonable person would not have turned at that time. The third element of a tort involves proximate cause. For the third element to be met, my violation of the duty must be the proximate cause to any harm that defendant suffers. Proximate cause is normally considered to be something that naturally follows or occurs in an unbroken continuous sequence of events. If a giant meteor falls from the sky at the exact moment I am turning left on the red light, smashes into the plaintiff's car and then I collide with him, my violation of the traffic regulations is not the proximate cause of his damaged car. The giant meteor falling out of the sky is the proximate cause of his damage, even though I may have met the first two elements of the tort. In order for a harm to occur, the opposing driver must suffer damage to his car, be physically or psychologically injured or suffer some other kind of harm. In this example, if I've fulfilled the first three elements of a tort but instead only bumped the opposing driver on his bumper so that he did not suffer any damage to his car or his person, a tort would not have occurred because he did not suffer any harm. Civil law generally recognizes that there must be damage because one of the purposes of civil law is to compensate the victim for damage suffered and even to restore him to his prior state, whether that is physically, psychologically, or financially (Douglas et al., 1999).

In civil law, one party, the plaintiff, must bring action against someone who has violated his rights, the defendant. In the above example, assume that my insurance company and I refuse to compensate the person for any damage he suffered. The plaintiff, the person I hit with my car, must file a lawsuit against me and argue that I caused the car accident that resulted in his injuries. In this instance, a forensic psychologist might evaluate the plaintiff to see if he has suffered any psychological damage. For example, the plaintiff may suffer from **posttraumatic stress disorder (PTSD)** and be afraid to drive or experience significant anxiety when he drives. The plaintiff could ask to be compensated for his emotional trauma and for the cost of any psychological assistance he sought out.

Much of this book will focus on criminal aspects of psychology and students express greater interest in the criminal aspects of forensic psychology. However,



**Figure 1.2.** The United States Judicial System

the civil aspects of forensic psychology are largely understudied, especially given that the civil law may constitute a greater portion of forensic practice. As a result, some chapters of this text will focus almost exclusively on civil issues (Chapters 12 and 13) as well as discussion of civil aspects of different topics such as competency (Chapter 8).

### Structure of the Legal System

Some knowledge of the structure of the legal system might be helpful at this point. In the United States, there are two types of trial systems, the state courts and the federal courts (see Figure 1.2). In some ways, these two different systems are set up in a parallel fashion. The state courts typically have some sort of entry level or trial court, **circuit courts**, that allow for an appeals process, and have a court that functions as the highest court in that state, normally the Supreme Court. The United States federal system is set up in a similar manner. There are entry level trial courts, **district courts**. There are also a variety of different types of **appeals courts**. In addition, the United States Supreme Court is the highest court of appeals in the United States.

Often there is some confusion about these two different legal systems and their ultimate **jurisdictions**. Generally, any violation of state or local criminal and civil codes will be brought to a state court. Any violation of federal law will be brought to a federal court. It is not always apparent which jurisdiction should hear a particular case though. The legal battle between the former *Playboy* centerfold and actress, Anna Nicole Smith, and her late husband's children over her husband's will is an example where one of the issues is under which jurisdiction the case should be held (see Box 1.2). In this case, one of the arguments was whether the case should be tried in California or Texas. This question is important because each state has different laws governing wills

### Box 1.2. The Anna Nicole Smith Case

Anna Nicole Smith is relevant to our discussion of forensic psychology because of her court case that involved two different state courts and the federal court system. Prior to her death in 2007, Anna Nicole Smith was a model, actress, and pop celebrity who rose to fame first as a Playboy Playmate but later appeared in national commercials, her own television show and various movies. Billionaire J. Howard Marshall reportedly promised to marry Ms. Smith on multiple occasions after he met her at a strip club prior to her rise to fame. After her own divorce, she married Mr. Marshall, age 89, when she was 26 years-old. Many suspected that it was a marriage of convenience because of the age disparity and Mr. Marshall's wealth.

The legal issues started 13 months after the marriage when Mr. Marshall died. Ms. Smith claimed half of her late husband's estate because of his promise, even though she had been left out of his will. This action led to a dispute with one of her husband's sons, E. Pierce Marshall, that continued for over a decade across several state courts and

the federal courts. In 2000, she was awarded almost half a billion dollars by a California court but was denied all proceeds from J. Howard Marshall's estate by a Texas court and ordered to pay one million in legal fees to E. Pierce Marshall.

Because there was now a conflict between two different state courts the battle was moved to the federal court system. Originally in 2002, a federal court reduced her award to 88 million only for it later to be completely reversed by the 9th Circuit Court of Appeals when it ruled that Ms. Smith was not a rightful heir and should not receive any of the estate. However, in these disputes between states the United States Supreme Court is the final word. In 2006, the Supreme Court unanimously decided in favor of Ms. Smith by concluding that she had the right to pursue a share of her husband's estate but the ruling did not award her a portion of the estate. Even though both parties to the case have now died, E. Pierce Marshall in 2006 and Anna Nicole Smith in 2007, their heirs continue the legal battle and the case remains unresolved.

that may be more or less favorable to one party involved in the lawsuit. There are also a number of specific instances in which the federal courts have jurisdiction such as when a constitutional issue is central to a case or there is a dispute between two states. Nonetheless, decisions of the United States Supreme Court are not always binding to all state courts. For example, in a case we will discuss in Chapter 3 that focused on the admissibility of expert testimony, *Daubert v. Merrell Dow* (1993), the states did not have to follow the ruling of the Supreme Court because it involved an interpretation of federal law, not a constitutional issue. Nonetheless, state courts often listen to the United States Supreme Court when it does render a decision, even if it is not binding on them. The court system that may hear a given case can even be dictated by the law enforcement officers or prosecutors. In some instances, law enforcement officers and prosecutors have discretion whether a particular defendant will be charged with a state or a federal crime, though they have committed only a single act. The prosecutor's eventual choice dictates the court system that hears the case.

One final point should also be noted. Most people believe that U.S. legislatures make laws by proposing bills and then passing them with some sort of majority vote. However, laws can originate both from legislatures and the courts. When a state or the federal government enacts a law legislatively, it is referred to as **statutory law**. **Case law** is law derived by court's interpretation of existing statutory law or instances in which no statute exists. Both statutory law and case law carry equal weight. Sometimes case law is referred to as **common law** but common law is not only based on prior judicial rulings but also on custom and tradition. The common law tradition of judge-made law differs from the process in many other countries. The term common law suggests an origin in England and countries that previously were colonies in the British Empire. Ireland, Australia, Canada (except Quebec), and the United States are referred to as common law countries because much of their legal systems reflect the notion that judges have the authority to make law.

## Careers in Forensic Psychology

As the legal system began to recognize the benefit of psychology, career opportunities also expanded (Roberson, 2005). As we will discuss in Chapter 2, forensic psychologists typically engage in three primary activities, assessment, treatment, and consultation. For example, a forensic psychologist may evaluate a defendant for insanity (Chapter 7) or attempt to determine the best interest of a child in a custody situation (Chapter 12). A forensic psychologist may attempt to restore the competency of a defendant so he can stand trial (Chapter 8). A forensic psychologist may assess psychopathy in an individual (Chapter 4) who could be released from prison as part of a risk assessment to determine his potential for future violence (Chapter 5). The forensic psychologist may then have to testify at a hearing or a trial about his or her findings. However, most legal issues are resolved without the forensic psychologist testifying as an expert (Chapter 3). With the emergence of forensic psychology has come an ever widening array of career options. Forensic psychologists work in a variety of settings such as jails and prisons, state hospitals, law enforcement agencies, state and federal government agencies, community clinics, juvenile detention facilities, private practice, and even at colleges and universities. In any of these settings, a forensic psychologist may work as an administrator, therapist, researcher, or **policy evaluator**. A good source of information on careers in forensic psychology, and the broader field of psychology and law, is available from APLS (Bottoms et al., 2004).

## The Relationship of the Law and Psychology

Remember, I said that forensic psychology was the intersection of clinical psychology and the law. There have been several attempts at trying to explain

the relationship between psychology and law. These attempts have ranged from Haney's (1980) tripartite description of psychology in the law, psychology and law, and psychology of law to Monahan and Walker's (1988) theory of social science as falling into social authority, social fact, and social framework. I will not take the time to go into these theories more but it is important to know that in both instances, these scholars argued for the application of social science research to assist the legal system. A more recent theoretical conceptualization of the relationship between psychology and law that we will utilize in this book is something called **therapeutic jurisprudence**. Therapeutic jurisprudence (TJ) has been defined as "the use of social science to study the extent to which a legal rule or practice promotes the psychological and physical well-being of the people it affects" (Slobogin, 1996, p. 767). Therapeutic jurisprudence includes not only the impact of statutory or case law but also the less formal legal process that may focus on the actions of judges and attorneys. As TJ has spread, it also has been applied more generally to suggest any manner in which the law can be therapeutic (helpful in some way) or anti-therapeutic (detrimental in some way). Moreover, the application of TJ does not infer that a particular action must have something to do with psychotherapy or even clinical psychology in general. It means that the law can have an impact outside the routine guilt or innocence of a defendant or the negligence of a defendant in a civil suit. TJ suggests that the law matters beyond the laws of a courtroom and can have a profound impact on the practice of forensic psychology and our lives beyond that which we routinely assume.

There are a variety of ways in which the legal system can have a beneficial or detrimental impact on the people it affects. For example, if a judge never mandates treatment for domestic violence perpetrators that come before her, that may have a negative impact on the likelihood of that offender perpetrating the crime in the future. If an appeals court rules that there is a clear patient-client privilege for psychologists, clients may be more willing to share information with their therapist. The civil commitment laws in a particular state may be written so the homeless are more likely to be civilly committed because they are a danger to themselves under a gravely disability provision. All of these are examples in which we can examine the law from a TJ perspective and hopefully improve the administration and application of the law. In this book TJ will be important because it will highlight how the law can have real consequences on some aspect of forensic psychology, intentionally or unintentionally. The law can be a living and breathing entity and this realization is important for our study of forensic psychology. Forensic psychologists must be aware of the consequences of the law and the legal system as they assist the courts. TJ will be used as a way to highlight the impact of the law in the practice of forensic psychology. TJ is certainly not the only way to make this clear and to be honest there is nothing all that profound about TJ. The idea of therapeutic jurisprudence simply highlights some important ways in which the law can have positive and negative ramifications in the practice of forensic psychology and ways in which forensic psychology can assist the legal system.



## The Conflict between Law and Psychology

Some would argue that the intersection between psychology and the law is more of a collision. Psychology and the law are two very different disciplines that approach solving problems in very different ways. Haney (1980) and Ogloff and Finkelman (1999) identified several conflicts between psychology and the law. In general, the law tends to be authoritative and psychology tends to be empirically based. This dichotomy suggests that the law is based in precedent. The principle of **stare decisis**, let the decision stand, is at the heart of the law. The law puts great stock in prior legal rulings and is resistant to changing those prior rulings. The legal system is organized in a very hierarchical fashion with specific rules and procedures. Psychology on the other hand focuses on an aggregation of a number of pieces of information with conclusions that may shift across time as the research examines a given question from different perspectives. Psychology accepts that change is likely in our pursuit of the truth.

These two systems also differ in the manner in which they arrive at the truth as they see it. The law uses the adversarial system, at least in Commonwealth countries such as the United States, Canada, United Kingdom, and Australia, in which two opposing sides are assumed to use maximum effort to achieve victory. It is assumed that the truth will be revealed as a result of these two sides doing their best. This approach is often in conflict with psychology that instead uses experimentation through objective research. Though there are times in which bias is introduced into the empirical process, the intent is to reveal an objective truth. The law and psychology are also different in that psychology is descriptive and the law is prescriptive. Psychology describes human behavior and the law dictates or prescribes how humans should behave. Another fundamental difference between the two is that psychology is **nomothetic** and the law is **idiographic**. Psychology focuses on the aggregate or on broad theories that can be generalized to a number of instances. The law focuses on an individual case or a specific pattern of facts. Finally, psychology is probabilistic and the law is definitive. Psychology talks about the likelihood of a given event occurring or that it is beyond random error that a given event happens. In contrast, the law attempts to be certain. A defendant is either guilty or not guilty. Either evidence is admissible or it is not admissible.

Of course, all of these differences are artificial in some way because they are conceptualized along a dichotomy and not a dimension. None of these differences are true for either discipline in every single instance but they are generally more true of one discipline than the other. More importantly, these differences go to the core of the conflict between these two disciplines and often cause conflict for psychologists choosing to work within the legal system. For example, a local defense attorney once asked me to testify in a case in which a woman assaulted her husband. In doing so she wanted me to testify about the relevance of battered woman's syndrome (see Chapter 3) to this case. However, there is little valid, scientific research to support the unique constellation of traits that has been described as battered women syndrome (BWS) and the characteristics

that separate it from PTSD. However, she was convinced that BWS was the best trial strategy in this case and did not care if there was little scientific support for it. Her job was to defend her client. My job was to present the scientific research objectively. Ultimately, I did not testify in the case largely because the attorney did not want me to testify according to my interpretation of the scientific literature. Forensic psychology is littered with these types of conflicts between psychology and law and we will examine them throughout the entire book.

## Education and Training in Forensic Psychology

### How Do I Become A Forensic Psychologist?

The question of how to become a forensic psychologist is a complex one. In addition, asking this question might be putting the proverbial cart before the horse. For example, how many people grow up hearing the question, “What do you want to be when you grow up?” All of us have heard it at one time or another. How many of us reply to it by stating, “I want to be a graduate student!” It is unlikely that any of us offered that reply even if we knew what graduate school was as a child. However, someone interested in being a forensic psychologist must realize that there is a means (graduate school) to reach the goal (becoming a forensic psychologist) and that graduate school may not be for everyone.

If you are interested in becoming a forensic psychologist, you will need to seek admission into a graduate program in psychology. However, the nature of that program will be as varied as the different roles and responsibilities of forensic psychologists. The first question you should ask yourself: Is a doctorate or a master’s degree the best option for me? There are several different publications that speak to the advantages and disadvantages of doctorate and masters programs in general (e.g., Actkinson, 2000). In addition to these general considerations, there are also some issues specific to forensic psychology that should be considered. Most students interested in forensic psychology focus on obtaining a doctorate degree (PhD or PsyD). Although doctorate programs provide the most professional flexibility and have advantages over masters program, you can also hash out a viable career in forensic psychology after obtaining a masters degree. Moreover, masters programs have less competitive admission standards, take less time to complete, allow you to earn a professional salary earlier, may be more plentiful in a given geographic location, and are more likely to allow for part-time study. In addition, research has suggested that there are not obvious differences in the quality of service provided by master level and doctorate level clinicians in general (Clavelle & Turner, 1980) though this answer is unclear in relation to forensic work specifically. Nonetheless, those who earn doctorate degrees generally have several distinct advantages over the masters-level clinician. These advantages include a greater



breadth and depth of practice and the ability to practice more independently, depending on where you live and the licensure laws governing the practice of psychology. These advantages may be accentuated in forensic psychology, specifically because of the necessity of assessment and evaluations skills in forensic practice.

### *Models of training in forensic psychology*

*Joint-degree programs* The next question to ask after selecting the type of degree you would like to pursue is the model or type of training you would like to pursue. Many students think that in order to become a forensic psychologist you need to obtain degrees in both psychology and the law (Melton et al., 1999). They then become dejected when they are unable to gain admission to one of the few joint-degree programs. However, the joint-degree is only one way to become a forensic psychologist and may not be the best route. Furthermore, admission into a joint-degree program is very competitive because of the high admission requirements for most programs and their scarcity. A **joint-degree program** is a program in which you obtain both a law degree and a psychology degree. This process means obtaining the typical law degree, a JD or Juris Doctorate, and PhD in psychology. Some schools, such as the University of Nebraska, offer a variety of different degree combinations (PhD/MLS and MA/JD). There are not currently any formal joint-degree programs in Canada but students in forensic psychology programs in Canada have obtained LLBs (Bachelor of Laws), the equivalent to JDs outside of the United States, informally during their training. A joint-degree program may be advantageous because it allows training in the two disciplines simultaneously, which increases the chances of a true understanding of the integration of psychology and the law. Obtaining degrees in two disciplines also may increase career options. Although it might seem appealing to get both a law degree and psychology degree, there are drawbacks (see Melton et al., 1999).

The disadvantages of pursuing the joint-degree route focus on the time, expense, and effort involved in obtaining two advanced degrees. There is a reason that joint-degree programs are rare and have competitive admission standards. They simply are not for everyone. It is difficult to transition between two different disciplines, much less two different faculties, ways of thinking, or even campus locations. You also are in school longer and as I suggested before children do not grow up yearning for the glory of a life as a graduate student. While you are in school, you are not earning a professional income, you are living at below poverty, and you may be incurring additional expenses such as paying tuition or school loans. Furthermore, obtaining a joint-degree does not necessarily mean you will have more career options. As Melton et al. (1999) mention, psychology-related jobs may wonder if you are going to be an attorney some day and the legally related jobs wonder why you have this PhD and how it is going to be useful in practicing the law. Although knowledge of the law is necessary, one certainly does not need to obtain a law degree to acquire this knowledge and function as a forensic psychologist. As a result,

students should think seriously if the joint-degree is the best option for them to become a forensic psychologist.

*Specialty programs* Another model of training for forensic psychology is to attend a graduate program that specializes in forensic training. In these specialty programs, students will focus on obtaining a degree in clinical psychology but also receive some specialized training in forensic psychology. The specialized training may consist of seminars in forensic related issues, practicum or clinical placements in forensic facilities or even taking a few law school courses. Students who attend these specialty programs often engage in many of the same activities as the joint-degree students. However, they will not fulfill the requirements to obtain a law degree and may have greater difficulty with the integration of psychology and the law. A program such as the one offered by Simon Fraser University in British Columbia, Canada is an example of a program with a special emphasis in forensic psychology. The programs that offer an emphasis in forensic psychology are also more plentiful than the joint-degree programs and may offer a broader training in clinical psychology in general (see Table 1.3 or <http://ap-ls.org/students/graduateIndex.html> for comprehensive lists of both types of forensic psychology programs).

*General programs* Most forensic psychologists actually have not obtained their degrees from a joint-degree or specialty program. Instead, they have attended a general program in clinical or counseling psychology. They may have participated in a practicum at a local prison, obtained a predoctoral internship at institutions that focused on forensics after they completed their coursework, or

**Table 1.3.** List of Forensic Psychology Doctoral Programs per Model of Training

<b>Joint-degree programs</b>	<b>Specialized programs</b>
Arizona State University (JD/PhD)	Carlos Albizu University in Miami (PsyD)
Drexel University/Villanova Law School University (JD/PhD)	Drexel University (PhD)
Golden Gate University School of Law/Pacific Graduate School of Psychology (JD/PhD)	Fordham University (PhD)
University of Arizona (JD/PhD)	Illinois School of Professional Psychology (PhD)
University of Nebraska (JD/PhD, MLS/PhD, JD/MA)	John Jay College of Criminal Justice (PhD)
Widener University (JD/PsyD)	Nova Southeastern University (PhD/PsyD)
	Pacific Graduate School of Psychology (PhD)
	Sam Houston State University (PhD)
	Simon Fraser University (PhD)
	University of Arizona (PhD)
	University of Nebraska (PhD)

pursued a postdoctoral training opportunity after they graduated with their PhD. Although none of these options affords the same depth of forensic training you receive in the joint-degree and specialty programs, they are more plentiful and allow for a greater breadth of training. For example, you may enter graduate school thinking you want to be a forensic psychologist and then realize after obtaining some experience that it is not the best option for you. These general programs are more likely to allow you to obtain experience in a number of areas of clinical psychology and not force you to focus on forensic psychology so early in your professional development. It is not clear that any of these options are superior to the others in all aspects. It really depends on the individual student and his or her personal and professional objectives.

### *Levels of forensic training*

No matter the general model that a program falls within, Bersoff et al. (1997) propose three different levels of training that any clinical program could offer in training forensic psychologists. The lowest level is called *the legally informed clinician* and is based on the idea that every psychologist must be prepared to be a potential expert witness and that forensic issues are part of any general clinical practice. A legally informed clinician is one who does not call him or herself a forensic psychologist but is educated in some fundamentally forensic ideas, as the law applies to even basic practice in clinical psychology. A legally informed clinician is educated in issues such as confidentiality, privilege, and responding to legal subpoenas for their clinical records (Packer & Borum, 2003). These topics would be included in routine courses offered in clinical programs such as required ethics, clinical assessment, and psychotherapy (Bersoff et al., 1997). The *proficient clinician* receives specialized training in forensic psychology such as: course work and clinical training in forensic hospitals, prisons, and juvenile detention facilities; preparing forensic assessments; and testifying as an expert witness (Bersoff et al., 1997). This level of expertise allows clinical psychologists who have not specialized in forensic psychology to engage in some limited forensic work. For example, someone who is a child psychologist may want to conduct a limited number of custody evaluations. *Specialist clinicians* are the highest level of this theoretical training and consist of an integrated training experience designed specifically to train forensic psychologists. Specialist clinicians would receive extensive training in case law and forensic practice skills across a variety of different patient populations. There appears to be an increasing emphasis on specialization in forensic psychology (Packer & Borum, 2003). This emphasis may not only encourage graduate programs providing forensic training but also require forensic postdoctoral training and certification at an advanced level of ability by organizations such as the American Board of Professional Psychology (ABPP). In addition, it should be made clear that any amount of training does not allow someone to practice as a forensic psychologist. In order to practice forensic psychology, you must be licensed as a clinical or practicing psychologist in a given state. Students should make sure that any program, no matter the model or the level of training they subscribe to,

produces graduates who meet general licensing requirements and can actually practice clinical psychology.

## Summary

There is a great deal of confusion about the nature and practice of forensic psychology. The public confusion is often the result of the abundance of media and popular culture references to sensationalistic aspects of forensic psychology. The debate within psychology as to the precise boundaries of forensic psychology also continues and contributes to the confusion. Our focus will be on forensic clinical psychology and forensic psychology will be defined as the clinical practice of psychology that focuses on assessment and treatment of individuals within a legal context. Forensic psychology has a long history but has expanded exponentially in the past 40 years.

An important part of forensic psychology is knowledge of the legal system. The legal system can be divided into criminal and civil law. Each of these two broad areas of the law serve different purposes and forensic psychologists working in either area of the law will face different issues and responsibilities. Within both criminal and civil law, the legal system has a hierarchical structure with a variety of different types of courts that serve different purposes. Although legislative bodies are routinely given the power to pass laws, case law is also derived from court decisions.

Forensic psychologists are continually confronted with the natural conflict between the law and psychology. Each discipline tends to answer questions in different ways. The legal system tends to base decisions in human reason while psychology seeks to provide answers through experimentation. As a result, conflicts between the two disciplines often arise and must be acknowledged by forensic psychologists. One legal theory that has attempted to bridge the gap between psychology and the law is therapeutic jurisprudence (TJ). TJ recognizes the impact of the legal system on the practice of clinical psychology and seeks to apply psychological research to the legal system in order to promote the psychological and physical well-being of those individuals who come into contact with the legal system. TJ will be used throughout the book to bring attention to the impact of the legal system both on the practice of forensic psychology and on those people who are patients and clients within the mental health system.

Though media images are often sensationalistic, there currently is a great deal of interest in forensic psychology and students are continually seeking answers on how to become a forensic psychologist. There are a variety of ways for someone to become trained as forensic psychologist. Students can seek admission to joint-degree programs, specialty programs in forensic psychology, or general training programs in clinical or counseling psychology. Upon graduation, these students have a host of employment opportunities available to them.

## Key Terms

amicus curiae	criminal profiling	nomothetic
appeals court	district court	policy evaluator
case law	forensic psychology	posttraumatic stress disorder
circuit court	idiographic	stare decisis
civil law	joint-degree program	statutory law
clinical psychology	jurisdiction	therapeutic jurisprudence
common law	mens rea	torts
criminal law		

## Further Readings

- Bersoff, D. N., Goodman-Delahunty, J., Grisso, J. T., Hans, V. P., Poythress, N. G., & Roesch, R. (1997). Training in law and psychology: Models from the Villanova Conference. *American Psychologist*, *52*, 1301–1310.
- Packer, I. K., & Borum, R. (2003). Forensic training in practice. In A. M. Goldstein (Ed.), *Handbook of psychology: Vol. 11. Forensic psychology* (pp. 21–32). Hoboken, NJ: Wiley.

