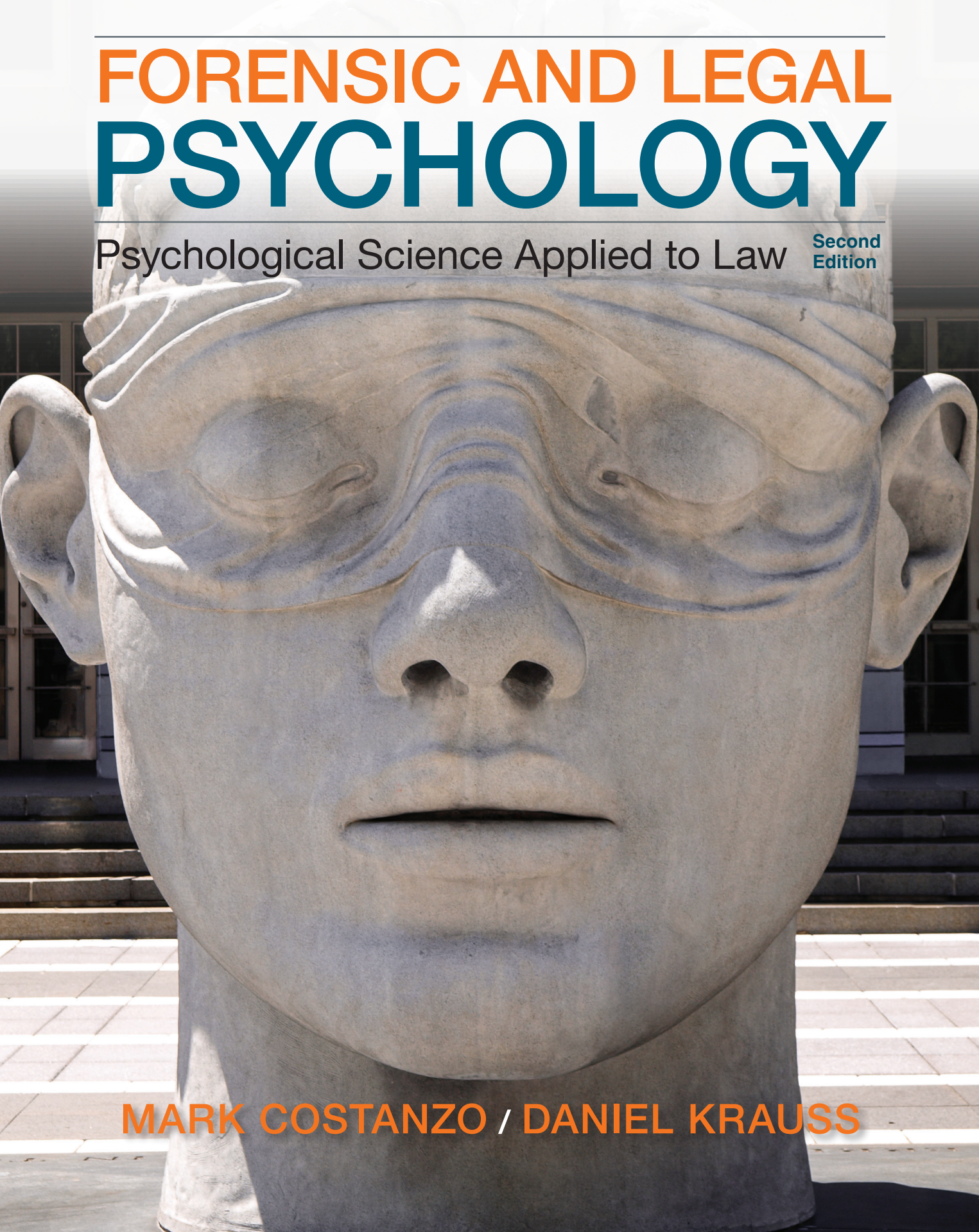
FORENSIC AND LEGAL PSYCHOLOGY

Psychological Science Applied to Law

Second Edition



MARK COSTANZO / DANIEL KRAUSS

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SECOND EDITION

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Claremont McKenna College

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For my three magnificent daughters:
Marina, Zoey, & Sophia –M.C.

To Trina, the boys, and Buff.—D.K.

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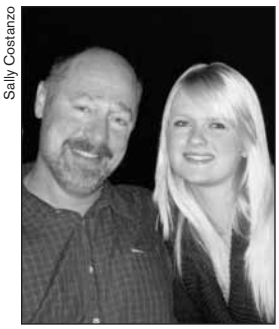
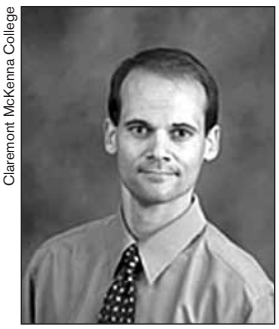
About the Authors


Sally Costanzo

MARK COSTANZO received his Ph.D. in social psychology from the University of California at Santa Cruz. He is a professor of psychology at Claremont McKenna College and a member of the plenary faculty at Claremont Graduate University. He has published research on a variety of law-related topics including police interrogations, false confessions, jury decision-making, sexual harassment, attorney argumentation, alternative dispute resolution, and the death penalty. Professor Costanzo is author of the books *Just Revenge: Costs and Consequences of the Death Penalty* and *Psychology Applied to Law.* He has co-edited four books, including *Expert Psychological Testimony for the Courts* and *Violence and the Law.*

Professor Costanzo has served as a consultant for more than 100 criminal cases and has provided expert testimony in state, federal, military, and juvenile courts. He has received Outstanding Teaching and Mentoring Awards from the American Psychology-Law Society (APLS), the Society for the Psychological Study of Social Issues (SPSSI), the Western Psychological Association (WPA), and the Society for the Teaching of Psychology (STP).


Claremont McKenna College

DANIEL KRAUSS completed a joint-degree program in psychology and law at the University of Arizona, receiving his J.D. and then his Ph.D. in clinical psychology and psychology, policy, and law. He is a professor at Claremont McKenna College and is a member of the plenary faculty at Claremont Graduate University. Professor Krauss has published a large number of research articles and book chapters relating to clinical psychological evaluations for the courts, legal and psychological expertise, and jury decision-making. He is the co-editor of *The Law and Public Policy: Psychology and the Social Sciences* book series published by the American Psychological Association (APA) Press.

Professor Krauss is licensed to practice law in Arizona, is a member of the United States Supreme Court bar, and has served as the United States Supreme Court Fellow to the U.S. Sentencing Commission. He is a licensed clinical psychologist in the state of California, and a diplomate in forensic psychology, board certified by the American Board of Professional Psychology. Professor Krauss was a recipient of the Early Career Research Award by the Western Psychological Association.

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Brief Contents

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Contents

Why We Wrote This Book

Every year, each of us teaches a course in either Forensic Psychology or Psychology and Law. Our combined teaching experience—spanning more than three decades—prompted us to write this book and guided our writing process. Our goal was to produce a student-friendly textbook, a book that is both accessible and rigorous. Drawing on research in social, cognitive, clinical, and developmental psychology, we demonstrate how psychological science can be used to enhance the gathering of evidence, improve legal decision-making, reduce crime, and promote justice.

One aspect of this book that makes it a distinctive alternative to existing textbooks is writing style. Of necessity, all textbooks designed for a particular course must be similar in content. Often, it is how content is presented that makes a book appealing to students and instructors. We've taken great care to write *Forensic and Legal Psychology* in a lively, engaging style. When presenting research findings, we portray the research process as a kind of detective story—an effort to unravel a mystery through systematic data collection. We also make extensive use of real cases and trials to draw students into the material and to illustrate the relevance of research findings. To make sure our writing was clear and engaging, every chapter was reviewed and edited by both students and scholars. Finally, to enhance the visual appeal of the book and to clarify research findings, we use numerous tables, graphs, photos, and figures throughout the text.

Forensic and Legal Psychology is intended to provide a comprehensive introduction to the varied, expanding field of psychology and law. The chapters that follow explore virtually every aspect of legal system psychologists have studied. We emphasize how research and theory can deepen our understanding of key participants (e.g., criminals, police, victims, lawyers, witnesses, judges, and jurors) and basic psychological processes (e.g., decision-making, persuasion, perception, memory, and behavior change) in the legal system. In addition to core chapters on topics such as eyewitness identification, jury decision-making, child custody, and the insanity defense, we include full chapters on a few topics not well covered in most textbooks. For example, our chapter on the psychology of forensic identification (DNA, fingerprints, and physical trace evidence) explores an increasingly important area of psychology and law. Contrary to media depictions, the process of matching trace evidence to a criminal suspect relies heavily on human judgment and is prone to error based on perceptual and cognitive biases. We have also devoted an entire chapter to the rapidly evolving area of workplace law (a topic that includes issues such as sexual harassment, prejudice and discrimination, and work-family conflicts). Full chapters are also devoted to risk assessment (a key consideration in arrest, sentencing, and parole decisions); prisons (an expanding area of research and employment for psychologists); lie detection; and the death penalty.

This is an introductory textbook. We assumed that students taking the course will not yet have a strong foundation in psychology or research methods. Although many students who take forensic or legal psychology are psychology majors, many are not. Because the course has become an attractive breadth requirement for students majoring in criminal justice, pre-law, legal studies, anthropology, sociology, and political science, we wrote this textbook to be accessible to students from a variety of academic disciplines. We hope this book provides a lucid overview of the field and conveys our enthusiasm for the many applications of psychological science to the legal system.

NEW TO THE SECOND EDITION

In this thoroughly revised second edition, we have responded to comments from students and instructors and have added new research and new pedagogical features to enhance the reading experience of students. A few such changes include:

- More than 400 new research citations.
- More than 50 new legal case citations.
- Expanded coverage of the impact of technology in the courtroom.
- New material on the use of neuroscience and brain scan evidence in criminal cases.
- Expanded coverage of research on the death penalty.
- Updates throughout the book to reflect the new DSM-5.
- Added coverage of alternatives to prison.
- New material on the use of large data sets to predict and prevent crime.

New and enhanced pedagogical features include:

Focus on Careers

These new boxes contain brief descriptions of possible careers in psychology and law. The psychologists featured describe the characteristics of their jobs, the training that prepared them for their careers, and what they like (and dislike) about their jobs. Highlighted careers include Police Psychologist (Chapter 3); Trial Consultant (Chapter 6); Social Science Research Analyst (Chapter 11); Violence Risk Expert (Chapter 14); and Correctional Psychologist (Chapter 16).

Scientific American Spotlights

A unique feature of this text is the use of brief articles and excerpts from the pages of *Scientific American Mind.* The boxed articles and excerpts have been judiciously selected to highlight important new research relevant to the study of psychology and law. The *Scientific American* Spotlight boxes explore the following topics: the use and misuse of brain scans in the courtroom (Chapter 1); the questionable effectiveness of the D.A.R.E. program (Chapter 1); the use of group interrogation to reveal lying (Chapter 2); increasing cognitive load to detect lying (Chapter 3); using DNA to create sketches of suspects (Chapter 4); predictive policing (Chapter 5); the long-term effects of recovered memory therapy on mental health (Chapter 11); the use of projective tests in child custody cases (Chapter 12); the relationship between mental illness and violence (Chapter 14); the use of the Implicit Association Test (IAT) to detect

subtle racial and age-related biases (Chapter 15); and the use of technology and social media to identify the best employees (Chapter 15).

To reinforce student learning and encourage students to think more deeply about concepts, each chapter ends with a list of Discussion and Critical Thinking Questions. Too often, students become fixated on memorizing without understanding. Questions provided at the end of each chapter help combat that tendency by encouraging students to think about what they have learned and go beyond mere memorization by considering the implications of the ideas the chapter presents. These critical thinking questions help students make connections between research findings and the functioning of the legal system. Finally, a list of Key Terms at the end of each chapter allows students to immediately test their comprehension and retention of information. For quick reference, key terms from every chapter are compiled and clearly defined in an extensive Glossary at the end of the book.

SUPPLEMENTS AND MEDIA

We are pleased to offer an enhanced supplements and media package to accompany this textbook. The package has been crafted by experienced teachers to help instructors teach their course and to give students the tools to develop their skills.

For Instructors

The Instructor's Resource Manual includes extensive chapter summaries, learning objectives, suggestions for in-class presentations, projects, and assignments, as well as tips for integrating multimedia into your course. It also includes a list of suggested readings for each chapter. These readings include books and journal articles and reports of original research as well as scientific reviews.

The Test Bank features approximately 35 multiple-choice and 5 essay questions per chapter. Also included in the Test Bank are chapter-specific Web quizzes (15 questions each) that can be made available to students via your Course Management System.

Diploma Computerized Test Bank (available for Windows and Macintosh on one CD-ROM) allows instructors to add an unlimited number of questions; edit questions; format a test; scramble questions; and include pictures, equations, and multimedia links. With the accompanying gradebook, instructors can record students' grades throughout a course, sort student records, and view detailed analyses of test items, curve tests, generate reports, add weights to grades, and more. Blackboard- and WebCT-formatted versions of the Test Bank are also available on the CD-ROM.

ACKNOWLEDGMENTS

This book has only two authors, but many people reviewed the chapters and offered their insights and criticisms. Reviewers included both scholars and students. Many instructors and researchers generously agreed to read and comment on all or part of the book. The names of these reviewers are listed

below. This book is much stronger because of their efforts. We are grateful for their insights and assistance.

We are grateful to the following colleagues who served as expert reviewers for the second edition:

Lynn Barrieau, Mount Wachusett Community College; Marcus T. Boccaccini, Sam Houston State University; Brian Bornstein, University of Nebraska-Lincoln; Elliott Currie, University of California; David DeMatteo, Drexel University; Kathleen Dudemaine, University of the Virgin Islands; Robert W. Dumond, Southern New Hampshire University; Donald Dutton, University of British Columbia; Phoebe C. Ellsworth, University of Michigan; Robert E. Emery, University of Virginia; Russell K. Espinoza, California State University, Fullerton; Jonathan J. Koehler, Northwestern University School of Law; Lindsay Malloy, Florida International University; Diane Mello-Goldner, Pine Manor College; Daniel C. Murrie, University of Virginia School of Medicine; William O'Donohue, University of Nevada; Amy J. Posey, Benedictine College; Nicholas Scurich, University of California at Irvine; Brent Snook, Memorial University; Emily Stark, Minnesota State University, Mankato; Nancy Kay Steblay, Augsburg College.

Because we wrote this book for college students, we sought out advice and feedback from our own students. Over the course of two years, students in *Forensic Psychology* and *Psychology and Law* classes at Claremont McKenna College read drafts of each chapter. Their comments were essential in helping us to improve the clarity and readability of the text. The students listed below read and commented on one or more chapters in this book.

Cristina Acosta
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Jamie Terbeest
Christopher Vandover
Katherine Wernet
Ryan Wessels

Other than the two authors, the person most responsible for getting the second edition into print was our editor at Worth Publishers, Christine Cardone. Chris's enthusiasm helped fuel the project from start to finish. She made herself available to us throughout the writing process and her advice was essential in helping us make the right decisions. Chris not only provided insight and guidance, she also provided much-needed support and occasional prodding along the way. Chris's assistant editor, Catherine Michaelsen, was essential in getting the chapters, graphics, and art into production. Cheri Dellelo was indispensable in bringing this book to print. She read every chapter and provided detailed feedback. Her meticulous editing throughout the writing process helped us write a better book. Julio Espin, our project editor, oversaw the mysterious process of transforming our manuscript into a real book. Finally, our photo researcher, Brenda Harris, tracked down the right photos and helped us make key decisions about the illustrations in this text. We are grateful to all the people at Worth for their energy and advice.

—Mark Costanzo and Daniel Krauss

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1 Psychology and Law: A Cautious Alliance

- A Brief History of Psychology and Law
- A Clash of Cultures
- Roles Played by Psychologists Interested in Law
- Five Pathways for Influencing the Legal System
- Has Psychology Influenced the Courts?

A defendant stands accused of a terrible crime. Lawyers make opening statements, witnesses are called, motives are questioned, secrets are revealed. In their closing arguments, lawyers make impassioned pleas to the men and women of the jury. Jurors struggle to find the truth. In a hushed courtroom, thick with tension, the jury foreperson announces the verdict: "We find the defendant . . . ."

The courtroom trial is a staple of great and trashy literature, of distinguished films and lousy TV shows. This is so because the trial is a compelling psychological drama. There is the question of motivation—was it love, hate, fear, greed, or jealousy that caused the behavior of a criminal? There is persuasion—lawyers and witnesses attempt to influence a judge or jury, and, during deliberations, jurors attempt to influence each other. Perceptual and cognitive processes come into play—eyewitnesses must remember and report what they saw, jurors must sift through evidence to reach conclusions. Finally, there is decision-making: The goal is to reach a decision, a verdict. And, if the verdict is guilty, there is a choice about what punishment the defendant deserves.

The trial is the most visible piece of our justice system. But it is only a small piece. When we look beyond the trial, we find that the legal system is saturated with psychological concerns. Every area of psychology (e.g., developmental, social, clinical, cognitive) is relevant to some aspect of law. Here are a few examples:

Developmental psychology—Following a divorce, which kind of custody arrangement will promote healthy development of the child? Can a child who commits a murder fully appreciate the nature and consequences of his or her crime?

Social psychology—How do police interrogators make use of principles of coercion and persuasion to induce a suspect to confess to a crime? Do the group dynamics of juries influence their verdict decisions?

Clinical psychology—How can we decide whether or not a mentally ill person is competent to stand trial? Is it possible to predict whether a mentally ill person will become violent in the future?

Cognitive psychology—How accurate is the testimony of eyewitnesses? Under what conditions are eyewitnesses able to remember what they saw? Do jurors understand jury instructions in the way that lawyers and judges intend the instructions to be understood?

In the abstract, psychology and law seem like perfect partners. Both focus on human behavior, both strive to reveal the truth, and both attempt to solve human problems and improve the human condition. However, in practice, the relationship between psychology and law has not always been smooth or satisfying. ◀

A BRIEF HISTORY OF PSYCHOLOGY AND LAW

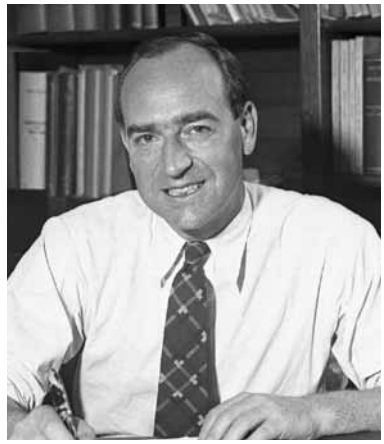
Scholarly disciplines seldom have clear starting points. Only in retrospect can we look back and identify the small streams that eventually converge to form a strong intellectual current. What is clear is that a full appreciation of the possible applications of psychology to the legal system began to emerge in the early years of the twentieth century. In 1906, Sigmund Freud gave a speech in which he cautioned Austrian judges that their decisions were influenced by unconscious processes (Freud, 1906/1959). He also noted that insights from his theory could be used to understand criminal behavior and to improve the legal system. However, it was two events in 1908 that triggered a broad recognition among psychologists that their ideas might be used to transform the legal system. The first event was the publication of a book entitled *On the Witness Stand.* The author was an experimental psychologist named Hugo Munsterberg. He had been a student of Wilhelm Wundt (the person generally regarded as the founder of modern psychology), and he left Germany to direct the Psychological Laboratory at Harvard.

Munsterberg wrote *On the Witness Stand* with the purpose of "turning the attention of serious men to an absurdly neglected field which demands the full attention of the social community" (Munsterberg, 1908, p. 12). His book succeeded in getting the attention of the legal community, although it was not the kind of attention he had hoped for. In 1909, a leading legal scholar published a savagely satirical critique of what he considered to be Munsterberg's exaggerated claims for psychology. In the article, Munsterberg was put on trial for libel, cross-examined, and found guilty (Wigmore, 1909). Not only did *On the Witness Stand* receive an icy reception from legal scholars, it also failed to mobilize research psychologists. Despite his achievements, Munsterberg is only begrudgingly acknowledged as the founding father of psychology and law.

A second important event occurred in 1908: In the case of *Muller v. Oregon,* the Supreme Court ruled that the workday of any woman employed in a laundry or factory could be limited to 10 hours. Lawyer Louis Brandeis (who later became a Supreme Court justice) filed his famous **Brandeis Brief** in that case. His basic argument was as follows:

When the health of women has been injured by long hours, not only is the working efficiency of the community impaired, but the deterioration is handed down to succeeding generations. Infant mortality rises, while the children of married working-women, who survive, are injured by inevitable neglect. The overwork of future mothers thus directly attacks the welfare of the nation (Muller v. Oregon, 1908).

Hugo Munsterberg & Karl Llewellyn. *(A: Science Source, B: Bettmann/Corbis)*



The *Muller* decision was a major victory for the progressive movement, which sought to reduce work hours, improve wages, and restrict child labor. Most important for psychology, Brandeis's brief opened the door for U.S. courts to use social scientific evidence. Ironically, the "social science"

cited by Brandeis would not be considered valid science by modern standards; it was little more than unsystematic observations and the casual use of medical and labor statistics. But the important point is that, later, far more rigorous research would enter the courthouse through the door pushed open by Brandeis.

During the two decades following the Brandeis Brief, the legal system showed little interest in social science. Then, in the late 1920s and into the 1930s, the **legal realism** movement reenergized the dormant field of social science and law. Legal realists reacted against the established order represented by "natural law." According to proponents of natural law, judicial decisions were thought to reflect principles found in nature. The task of judges was to deduce, through careful logic, the single correct decision in a particular case. In contrast, the realists believed that judges actively constructed the law through their interpretations of evidence and precedent. Further, these constructions of the law served particular social policy goals. In one of the first critiques of classical jurisprudence, Oliver Wendell Holmes wrote that the law,

> **. . . cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics . . . . The very considerations which judges most rarely mention, and always with an apology, are the secret root from which the law draws all the juices of life. I mean, of course, considerations of what is expedient for the community concerned. Every important principle which is developed by litigation is in fact and at bottom the result of more or less definitely understood views of public policy (Holmes, O.W., 1881, p. 2–3).**

These were revolutionary ideas at the time. Holmes and other legal scholars argued that law was not merely rules and precedents—it was the means through which policy ends were achieved. The legal realists argued that the social context and social effects of laws were as important as the mechanical application of logic. Realist scholars sought to look beneath "legal fictions" and formalisms to examine the actual behavior of lawyers and judges.

In 1927, the dean of Yale Law School appointed a psychologist to the faculty in an effort to, ". . . make clear the part of the law in the prediction and control of behavior" (Schlegel, 1979, p. 493). Optimism about the potential for a fruitful partnership between psychology and law was widespread in the writings of the time. In 1930, the American Bar Association (ABA) journal proclaimed that, "The time has arrived when the grim hard facts of modern psychological inquiry must be recognized by our lawmakers despite the havoc they may create in the established institutions" (Cantor, 1930, p. 386).

The realist movement was an early example of the influence of psychology on the law. The two towering psychologist–philosophers of the time—William James and John Dewey—had already championed the ideas of pragmatism, induction, and scientific approaches to the study of social issues (Dewey, 1929; James, 1907). Legal realists embraced the idea that the law needed to pragmatically promote the common good and make use of social scientific research. By 1931, Karl Llewellyn, a leader of the realist movement, enumerated several core principles: (1) because society is always in flux faster than the law, laws must be continually reexamined to make sure they serve society well; (2) law is "a means to social ends and not an end in itself," and (3) law must be evaluated in terms of its effects (Llewellyn, 1931, p. 72). Realism's reconceptualization of the law was an enormous success.

African American student escorted to high school by National Guard troops enforcing school integration *(Everett Collection Historical/Alamy)*

Llewellyn's fundamental principles now enjoy almost universal acceptance among the legal community.

Although the realists set in motion a revolution in how people thought about the functions of law, the movement was much less successful in promoting the use of research findings. Curiously, few of the legal realists had collaborated with psychologists or other social scientists. The enthusiasm of the legal realists was based on rather naive assumptions about the nature of psychological science. Following the 1930s, disillusionment about the utility of social science set in. Finding the answers to psychological questions proved to be more complicated and arduous than the realists had supposed. Even worse, the answers provided by social scientists tended to be complex, and predictions about behavior tended to be probabilistic (that is, expressed in terms of the increased likelihood of an event occurring rather than as a certainty). Disenchantment and disengagement seemed to settle in for more than a decade.

In May 1954, in the case of *Brown v. Board of Education,* the U.S. Supreme Court voted unanimously that keeping black and white children segregated in separate schools was a violation of the Fourteenth Amendment's guarantee of "equal protection under the law." That historic decision—widely regarded as one of the most important Supreme Court rulings of the twentieth century—was a milestone in the slowly maturing relationship between social science and the law. The ruling was not only monumental in its impact on American society; it was the first to make explicit use of research provided by social scientists. The legal briefs submitted to the Court included a document entitled, *The Effect of Segregation and the Consequences of Desegregation: A Social Science Statement.* It was signed by 32 prominent social scientists. Many of the sources provided in that statement were cited in footnote 11 of the Court's decision, and a few key passages from *Brown* echo the arguments made in the statement. Chief Justice Earl Warren wrote:

> **. . .the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system (Brown v. Board of Education, 1954).**

The Court further concluded that separating black children merely because of their race, ". . . generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone" (*Brown v. Board of Education,* 1954, p. 488). Although the true impact of social science in the *Brown* decision has been questioned, there is little doubt that it raised the hopes of social scientists (Hafemeister & Melton, 1987). *Brown* held out the promise that the highest court in the land would be receptive to social scientific research.

The social and intellectual climate of the late 1960s nurtured the fledgling field of psychology and law. In 1966, Harry Kalven (a lawyer) and Hans Zeisel (a sociologist) published an influential book entitled *The American Jury.* This seminal work

(discussed more fully in Chapter 13) summarized a multiyear study of how juries and judges reach their decisions. Karl Menninger's book *The Crime of Punishment,* also published in 1966, advocated much greater use of therapeutic methods to rehabilitate criminals. These books gave psychology and law a much-needed boost. There was great enthusiasm about psychology's potential for improving the legal system.

Within the broader psychological community, there was a growing eagerness to find ways of applying theory and research to areas such as law. In his 1969 presidential address to the American Psychological Association (APA), George Miller (a distinguished cognitive psychologist who had spent virtually all of his career conducting basic research in the laboratory) called for "giving psychology away"—that is, for using psychological knowledge to solve pressing social problems (Miller, 1969). In the same year, Donald Campbell called for much more extensive use of the research methods he and other scientists had pioneered. The opening sentence of his 1969 article neatly sums up his approach and conveys the optimism of the time:

> **The United States and other modern nations should be ready for an experimental approach to social reform, an approach in which we try out new programs designed to cure specific social problems, in which we learn whether or not these programs are effective, and in which we retain, imitate, modify, or discard them on the basis of apparent effectiveness on the multiple imperfect criteria available (Campbell, 1969, p. 409).**

Psychologists interested in the legal system were also feeling optimistic about psychology's possibilities. In 1969, they established the *American Psychology-Law Society* (*APLS*), proclaiming that, ". . . there are few interdisciplinary areas with so much potential for improving the human condition" (Grisso, 1991).

The intermittent flirtations between psychology and law did not mature into a steady relationship until the late 1970s (Packer & Borum, 2013). The first issue of the APLS's major journal, *Law and Human Behavior,* appeared in 1977. Since then, several other journals that feature psycholegal research and theory have appeared (e.g., *Behavioral Sciences and the Law; Criminal Justice and Behavior; Journal of Empirical Legal Studies; Law and Society Review;* and *Psychology, Public Policy, and Law*). Scientific organizations other than APLS (e.g., the *Law and Society Association,* the *American Board of Forensic Psychology,* the *Society for Empirical Legal Studies*) have law and social science as their main concern. There are even a handful of "double doctorate" programs that award a Ph.D. in psychology and a J.D. in law, and well over half of all university psychology departments now offer an undergraduate course in psychology and law (Bersoff et al., 1997; Burl, Shah, Filone, Foster & DeMatteo, 2012). The relationship between the two disciplines has expanded and deepened over the past 40 years. This is clearly a boom time for the field. The future is uncertain, but there is reason for optimism.

A CLASH OF CULTURES

Many scholars have found it useful to think of psychology and law as fundamentally different cultures (Bersoff, 1999; Carroll, 1980; Goldberg, 1994). This section explores the nature and consequences of these cultural differences. The concept of **culture** has been defined in a variety of ways. One pioneer in cross-cultural psychology wrote that, "Culture is reflected in shared cognitions, standard operating procedures, and

unexamined assumptions" (Triandis, 1996, p. 407). Culture has also been defined as, ". . . the set of attitudes, values, beliefs, and behaviors shared by a group of people, and communicated from one generation to the next" (Matsumoto & Juang, 2007, p. 7). People from a particular culture tend to share basic assumptions about the relative importance of competing goals, how disputes should be resolved, and what procedures to follow in striving for goals.

When anthropologists and psychologists contrast different cultures, they focus on the relative prominence of beliefs and behaviors. Different cultures do not fit neatly into discrete categories; they fall along different points on a continuum. By comparing the cultural tendencies of law and psychology, we can understand why psychology and law have sometimes become frustrated with each other and we can see how the two disciplines might work together more productively. Many of the difficulties in the interactions between psychology and law can be traced to underlying differences in goals, methods, and styles of inquiry.

Goals: Approximate Truth versus Approximate Justice

One basic source of tension between psychology and law is that "psychology is descriptive and law is prescriptive" (Haney, 1981). That is, psychology tells us how people actually behave, and the law tells us how people ought to behave. The primary goal of psychological science is to provide a full and accurate explanation of human behavior. The primary goal of the law is to regulate human behavior. And, if someone behaves in a way that the law forbids, the law provides for punishment. Put somewhat idealistically, psychological science is mainly interested in finding truth, and the legal system is mainly interested in rendering justice. Although neither absolute truth nor perfect justice is fully attainable, scientists must strive for an approximation of truth and courts must strive for an approximation of justice.

In his classic study of cultural differences, Geert Hofstede found that cultures could be usefully differentiated on the dimension of "uncertainty avoidance" (Hofstede, 1991). Cultures high on this dimension develop elaborate rules and rituals in an effort to promote clarity and stability. Legal culture ranks high on uncertainty avoidance. Because people expect the courts to resolve disputes, the legal system must assimilate the ambiguities of a case and render a final, unambiguous decision. Putting an end to a dispute requires a clear, binding ruling. People are found guilty or set free, companies are forced to pay damages, child custody is decided, and criminals are sent to prison. While it is true that an investigation or a courtroom trial can be characterized as a search for the truth, that search is conducted in service of a judgment: guilty or not guilty, liable or not liable. And, if a defendant is found culpable, the judgment becomes one of consequences: How much money should the defendant pay in damages? What kind of probation should the court impose? How long should the prison sentence be? To resolve a conflict, a conclusion must be reached. Because the legal system can never achieve perfect justice, it must settle for approximate justice in the form of conflict resolution. In a democracy, it is crucial to resolve disputes in a way that *appears* fair and promotes social stability. Although citizens may disagree with many specific decisions of the courts, they must have faith in the overall fairness of the system.

In contrast, uncertainty is intrinsic to the scientific process. No single research study is ever conclusive, and no finding is truly definitive. Over time, uncertainty is reduced, but all conclusions can be revised or reversed by contrary data. The scientific process emphasizes the use of testable hypotheses, valid and reliable measures, statistical standards for accepting a conclusion, and replications of findings

over time. The ultimate "truth" of a particular explanation of human behavior may be unknowable but, over time and multiple investigations, theories are revised and psychologists are able to construct increasingly useful explanations of human behavior. Judgments made by scientists are not dichotomous (like guilty or not guilty); they are probabilistic. That is, scientific conclusions are stated in terms of probabilities. Indeed, the tendency for scientists to talk in terms of likelihoods and to couch their conclusions in caveats and qualifiers is something the courts (and the general public) find frustrating. In science, no conclusion is final and current understandings are tentative and subject to revision.

Another implication of the differing goals of psychological science and the legal system is that psychology emphasizes the characteristics of groups, while the law emphasizes individual cases (Goldberg, 1994). Psychological scientists conduct research to uncover general principles of human behavior. Because individuals are idiosyncratic, knowing how one person behaves does not necessarily tell us how everyone else behaves in the same situation. The reverse is also true; knowing how people behave in general does not necessarily tell us why a specific defendant behaved in a particular way. This situation often creates problems. If a 10-year-old boy walks into his fourth-grade classroom with a loaded gun and shoots one of his classmates, a psychologist might be called to testify. A developmental psychologist might testify about the cognitive abilities and moral reasoning of 10-year-olds. A social psychologist might summarize the results of research about how children are affected by watching violence on television or in video games. But, in court, the essential questions must be: "Why did *this boy* kill another child?" and "What should happen to reform or punish *this boy*?"

A related point is that, "the law emphasizes the application of abstract principles to specific cases" (Carroll, 1980). Lawyers, plaintiffs, and defendants cannot bring an idea to court and ask the court for a ruling. They must bring a specific case with particular characteristics. A judge's ruling may set an important new precedent, but the immediate goal is to make a decision about a specific case. Consequently, the law evolves one case at a time. The law's emphasis on the individual defendant or plaintiff explains why courts have been more receptive to clinical psychologists than to other types of psychologists. Clinicians examine and draw conclusions about a particular person. Like lawyers, they are oriented toward the individual case.

Methods: Rulings versus Data

The law is based on authority; psychology is based on empiricism (Goldberg, 1994). Whereas law advances through the accumulation of rulings produced by courts, psychology advances through the accumulation of data produced by scientists.

Because cultures differ in the amount of deference and obedience given to people in positions of authority, this dimension (sometimes called "power distance") is often used to differentiate cultures. The legal system is explicitly hierarchical (i.e., it would rank high on power distance). If a court of appeals overrules the decision of a lower court, the lower court must accept the ruling. Higher courts simply have more authority. And if the Supreme Court issues a ruling, the matter is settled—at least until the high court agrees to take up the issue again. (Figure 1.1 shows the hierarchical structure of the U.S. court system.) In comparison, psychology is much more egalitarian. Although there are power relations within scientific communities (e.g., editors of prestigious journals and directors of funding agencies hold considerable power), the structure is far more democratic. Any researcher, even a low-status one, can conduct a study that challenges a prevailing theory of human

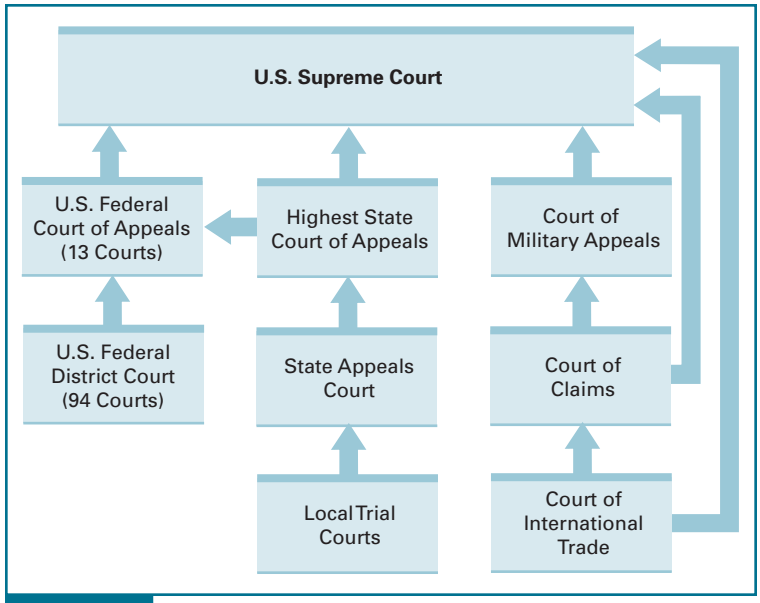


FIGURE 1.1 Basic Structure of the U.S. Court System

behavior. If the data are compelling, the theory must be modified.

Part of the method of law involves deference for past rulings. All cultures are shaped by history, but they differ in how much value they place on history. In some cultures, people make offerings to the spirits of their ancestors and believe that those ancestors actively intervene in the affairs of the living. Although lawyers and judges don't pray to their ancestors for guidance, the past is an active force in their professional lives. As Oliver Wendell Holmes observed, "Law is the government of the living by the dead" (Holmes, 1897, p. 469). Attorneys and judges are obliged to place current facts in the context of past rulings. They must link the present to the past. When lawyers argue in front of judges, they cite **precedents:** past decisions on legal issues in cases that are as similar as possible to the current case. The persuasiveness of a legal argument rests to a substantial extent on whether the argument can be tied to existing precedents. In making their rulings, judges are strongly constrained by the doctrine of ***stare decisis*** or "let the decision stand." The idea is not to move too far from established precedent. Each precedent is, ". . . a statement simultaneously of how a court *has* held, and how future courts *ought* to hold" (Llewellyn, 1931, p. 72).

In contrast, psychological scientists live in a more future-oriented culture. They believe that our current understanding of human behavior can and should be continually revised in light of new and more extensive data. Scientific theories are made to be broken. New techniques, better measures, and more inclusive sampling of participants continually force psychologists to modify their explanations of human behavior. Progress may be slow at times; but, as long as research continues, it is inevitable.

Style of Inquiry: Advocacy versus Objectivity

In the U.S. legal system, a judge or jury makes the decision of guilt or liability after hearing evidence and arguments. Lawyers acting as adversaries attempt to reveal evidence in the context of the **adversarial system.** A fundamental assumption of the U.S. system is that truth will emerge from a contest between opposing sides. Lawyers advocate for a particular version of events and a particular interpretation of evidence. They actively promote a one-sided view of the facts. Attorneys make opening statements and closing arguments to advance their version of the evidence, they call witnesses who will support that version, they challenge the assertions of witnesses called by the opposing side, they raise objections, and they try to rattle witnesses and undermine their credibility. Lawyers even do a bit of acting at times; for example, they might feign disbelief or outrage at the testimony of a witness who challenges their version of events.

Indeed, attorneys *must* be advocates for their clients. The American Bar Association (ABA) **Code of Professional Responsibility** requires that lawyers "represent

their clients zealously within the bounds of the law." Some lawyers put it even more bluntly:

> **Lawyers make claims not because they believe them to be true, but because they believe them to be legally efficacious. If they happen to be true, then all the better; but the lawyer who is concerned primarily with the truth value of the statements he makes on behalf of clients is soon going to find himself unable to fulfill his professional obligation to zealously represent those clients. Another way of putting this is to say that inauthenticity is essential to authentic legal thought (Campos, 1998).**

There are ethical limits on zealousness. Lawyers cannot knowingly permit witnesses to lie under oath (this is called **"suborning perjury"**). But the fact that lawyers are sometimes required to vigorously defend people or corporations that have done terrible things is one reason that lawyers, as a group, are not held in high esteem among members of the general public.

In contrast, scientists must strive for objectivity. Of course, humans are not capable of perfect objectivity. It is not uncommon for researchers to disagree about the correct interpretation of data or to zealously defend a theoretical point of view. In this sense, scientists sometimes behave as advocates. It is also true that values infiltrate the research process—values influence which topics scientists choose to investigate, how they interpret their data, where they publish their findings, and whether they attempt to apply their findings. Science is a human process shaped by human choices. Whenever choices are made, values and biases inevitably come into play. However, even if a particular researcher strays from an objective reading of his or her data, others who view the data will be more dispassionate (or at least biased in a different direction). And, if a researcher collects data using biased methods, the findings are unlikely to be published or taken seriously by others in the scientific community.

Objectivity is an ideal that resides not only in the individual researcher but, more importantly, in the scientific community as a whole. Individual researchers strive for an objective reading of their data. And, although a particular scientist may be too invested in a particular theory to be fully objective, science is an ongoing, public, self-correcting process. Research findings are published as articles or presented at conferences and subjected to criticism by other scientists. Scientists' confidence in the validity of a conclusion rests on the findings of multiple researchers using different research methods. Only over time, through the sustained, collective efforts of many scientists, is the ideal of objectivity achieved.

The Importance of Bridging the Two Cultures

Given the fundamental differences in the cultures of psychology and law, and the difficulty of changing the legal system, why bother trying? After all, many psychologists have the luxury of choosing which topics to investigate. Research questions are often guided by the curiosity of an individual researcher. Other areas of applied research (for example, business and education) are often more welcoming to the insights and techniques of psychologists. So why take on the burden of trying to influence the legal system?

There are good reasons. First, law is important. The law shapes our lives from womb to tomb. It dictates how our births, marriages, and deaths are recorded. It regulates our social interactions at school, work, and home. The legal system has