CHAPTER

1

An Introduction to Forensic Psychology

LEARNING OBJECTIVES

- Provide a narrow and a broad definition of forensic psychology.
- Describe the differences between clinical and experimental forensic psychology.
- List the three ways in which psychology and the law can interact.
- Identify some of the major milestones in the history of forensic psychology.
- List criteria used in the United States to decide when expert testimony is admissible.

Jennifer Chen is a university student who wants to become a forensic psychologist. She has just finished watching her favorite movie, *The Silence of the Lambs*. In fact, Jennifer always seems to be watching movies like this. If she's not watching movies, Jennifer's watching television shows like *CSI* and *Criminal Minds*, or reading the latest true crime book. Fortunately, Jennifer's neighbor works as a probation officer and she has come into regular contact with forensic psychologists. This neighbor has repeatedly told Jennifer that forensic psychology isn't necessarily what you see in the movies. Jennifer finally decides to find out for herself what forensic psychology is all about and enrolls in a course, much like the one you are currently taking.

Although you may not appreciate it yet, **forensic psychology** is all around you. Every time you turn on the television or pick up the newspaper, there are stories that relate directly to the field of forensic psychology. Hollywood has also gotten in on the act. More and more often, blockbuster movies focus on issues that are related directly to the field of forensic psychology—whether it is profiling serial killers, selecting jury members, or determining someone's sanity. Unfortunately, the way in

Forensic psychology
A field of psychology that deals with all aspects of human behavior as it relates to the law or legal system

Gene Hackman's role as a jury consultant in John Grisham's *Runaway Jury* relates to a task that some forensic psychologists are involved in. However, much of what is seen in this Hollywood movie is an exaggeration of what actually occurs in jury selection.

which the media portray forensic psychology is usually inaccurate. Although forensic psychologists often carry out the sorts of tasks you see depicted in the movies, the way in which they carry them out is typically very different from (and certainly less glamorous than) the typical Hollywood image. One of our primary goals throughout this book is to provide you with a more accurate picture of what forensic psychology is and to encourage you to think more critically about the things you see and hear in the media. See the In the Media box on the next page for further discussion about this issue.

WHAT IS FORENSIC PSYCHOLOGY?

So, if Hollywood hasn't gotten it right, what exactly is forensic psychology? On the surface, this seems like a relatively simple question to answer, and it is undoubtedly an important question to ask. When being introduced to a new field of psychology, as you are now, one of the first questions you probably ask yourself is "What am I going to be studying?" Although providing a clear and comprehensive definition of the discipline is obviously a logical way to begin a textbook on forensic psychology, this task is far more difficult than it seems because there is no generally accepted definition of the field (Brigham, 1999). Indeed, experts in this area don't even agree on what the field should be called, let alone how it should be defined (Ogloff, 2002). For example, you will often see forensic psychology being referred to as legal psychology or criminological psychology.

Much of the ongoing debate about how forensic psychology should be defined centers on whether the definition should be narrow or broad (Brigham, 1999). A narrow definition of forensic psychology would focus on certain aspects of the field while ignoring other, potentially important aspects. For example, a narrow definition of forensic psychology might focus on clinical aspects of the field while ignoring the experimental research that many psychologists (who refer to themselves as forensic psychologists) conduct.

IN THE MEDIA The Reality of Reality TV

Crime has always been a popular topic for TV shows and researchers are interested in understanding the role that TV plays in shaping the perceptions and attitudes of viewers toward crime-related matters. Recently, this line of research has taken on a new twist due largely to the introduction of crime-based reality TV. And no crime-based reality show has been more popular than the U.S.-based *Cops*, originally introduced by Fox network in 1989.

If shows like *Cops* are influencing the perceptions and attitudes of viewers (e.g., toward the police and their response to crime), one obvious question to ask is whether this is problematic. Of course, asking this question leads to a range of other questions, such as whether these shows present an accurate portrayal of crime and the legal system's response to it. These types of issues have recently been explored by researchers and some of the results might surprise you.

For example, despite the fact that its producers refer to the show as "unfiltered television," an analysis of *Cops* indicates quite the opposite. In contrast to how the show is pitched to viewers, some researchers have argued that *Cops* "offers a very particular and select vision of policing" (Doyle, 2003, p. 34). Indeed, rather than referring to *Cops* as reality TV, Doyle suggests it is probably best seen as *reality fiction*, a "constructed version of reality with its own biases, rather than a neutral record" (p. 35). Once one understands how shows like *Cops* are actually produced, this argument probably becomes more convincing.

Consider the following examples, highlighted by Doyle (2003):

- While the producers of *Cops* state that the show allows viewers to share a cop's point of view in "real time," this is not actually true. As Doyle shows, while each of the seven- to eight-minute vignettes that make up a *Cops* episode does tend to unfold in a linear fashion, the sequence of events is not typically presented in real time. Instead, the various parts of the vignette that are ultimately aired have often taken place over many hours, only to be edited together later. In fact, according to Doyle, each hour of *Cops* airtime is typically edited down from between 50 and 60 hours of actual footage.
- Clever techniques for giving the illusion of real-time flow are also regularly used by the editors of *Cops*. For example, as Doyle reveals, although it appears as if the visual and sound elements of *Cops* were both captured simultaneously, this is often not the case. Rather, "sound is edited to overlap cuts in the visuals . . . [with the continuing sound suggesting] continuity in time, as if the viewer has simply looked in a different direction during continuous action . . . although in fact an hour's worth of action and dialogue could have been omitted between the cuts" (p. 36).
- *Cops* is also made more realistic by ensuring that the camera crew is never seen, even during those segments of the episode when police officers are driving the camera crew to and from incidents. This involves considerable editing (e.g., of civilians reacting to the cameras). It also ensures that viewers are never left with the impression that what they are watching could ever have been impacted by the presence of TV cameras.
- Unsurprisingly, the stories selected for ultimate airing on a *Cops* episode are also delivered in a way that ensures certain audience reactions. As pointed out by Doyle, a range of story-telling techniques are used to encourage viewers to identify with the police, but not with suspects. For example, most *Cops* vignettes are hosted by a particular officer who we get to know throughout the vignette. Suspects in all vignettes remain nameless; they are criminals who have given their consent to be shown, but who otherwise remain anonymous and detached from the viewer.

So, as you proceed through this course, take some time to think about the shows that you watch. Think also about how these shows may be impacting your perceptions and attitudes toward the topics we cover and whether this is a good thing or not. Of course, reality fiction can make for great TV, but perhaps it should not shape our perceptions and attitudes about crime-related matters as much as it sometimes does.

This appears to be how many leading psychologists, and the professional associations to which they belong, prefer to define the discipline. For example, reflecting on the petition made to the American Psychological Association in 2001 to recognize forensic psychology as a specialization, Otto and Heilbrun (2002) state that "it was ultimately decided that the petition . . . should define forensic psychology narrowly, to include the primarily clinical aspects of forensic assessment, treatment, and consultation" (p. 8).

According to this definition, the only individuals who should call themselves forensic psychologists are those individuals engaged in clinical practice (i.e., assessing, treating, or consulting) within the legal system. Any psychologist who spends all of his or her time conducting forensic-related research—for example, studying the memory of eyewitnesses, examining the decision-making processes of jurors, or evaluating the effectiveness of offender treatment programs—would not technically be considered a forensic psychologist using the narrow definition of forensic psychology just presented. For reasons such as these, many psychologists have problems with using narrow definitions to define the field of forensic psychology.

By their very nature, broad definitions of forensic psychology are less restrictive than narrow definitions. One of the most commonly cited examples of a broad definition of forensic psychology is the one proposed by Dr. Curt Bartol, who is profiled in Box 1.1. Dr. Bartol and his wife, Anne, define the discipline as "(a) the research endeavor that examines aspects of human behavior directly related to the legal process . . . and (b) the professional practice of psychology within, or in consultation with, a legal system that embraces both civil and criminal law" (Bartol & Bartol, 2006, p. 3). Thus, unlike the narrow definition of forensic psychology provided above, which focuses solely on the *application* of psychology, this definition does not restrict forensic psychology to applied issues. It also focuses on the *research* that is required to inform applied practice in the field of forensic psychology.

Throughout this textbook, we adopt a broad definition of forensic psychology. Although we will often focus on the application of psychological knowledge to various aspects of the U.S. legal system, our primary goal is to demonstrate that this application of knowledge must always be based on a solid grounding of psychological research. In line with a broad definition of forensic psychology, this research frequently originates in areas of psychology that are often not obviously connected with the forensic area, such as social, cognitive, personality, and developmental psychology. The fact that forensic psychology is such an eclectic field is just one of the reasons why it is such an exciting area of study.

THE ROLES OF A FORENSIC PSYCHOLOGIST

What is consistent across the various definitions of forensic psychology that currently exist is that individuals who call themselves forensic psychologists are always interested in issues that arise at the intersection between psychology and the law. What typically differs across the definitions is the particular focus the forensic psychologist takes. For example, by looking at the definitions provided above, it is clear that forensic psychologists can take on the role of clinician or researcher. In reality, however, these roles are not mutually exclusive and one individual can take on more than one role. Indeed, some of the best-known forensic psychologists, many of whom will be profiled in this book, are both clinicians *and* researchers, while others are clinicians, researchers, *and* legal

BOX 1.1 Researcher Profile: Dr. Curt Bartol

Dr. Curt Bartol

Undecided about what he was going to do with his life, Dr. Curt Bartol's undergraduate major at the University of Maine changed almost weekly, beginning with engineering but quickly shifting to premed, business, forestry, wildlife management, and finally to psychology. His professional career followed a similar shifting, fortuitous odyssey. After a stint in the military, he became a social caseworker, attended graduate school in social work, and became a casework supervisor in child welfare. Although social work was a rewarding personal experience, it did not satisfy the strong interest in research that Dr. Bartol had discovered while majoring in psychology.

In 1968, Dr. Bartol enrolled in a graduate program in clinical psychology at Northern Illinois University. Still fascinated with well-executed research, he changed his Ph.D. concentration to personality/social psychology and worked with Professors Randall B. Martin and Martin F. Kaplan. His research interests and doctoral dissertation focused on the personality theory of Hans J. Eysenck, a theory that moved him in the direction of studying criminal behavior.

Four years later, Ph.D. in hand, Dr. Bartol began teaching at Castleton State College in Vermont. Vermont provided him with his first opportunity to consult with the law enforcement community, something he continues to do today. He also taught at the police academy and served on executive boards, including one offering several years of consultation services to the Behavioral Science Unit of the FBI.

Dr. Bartol's serious involvement in police psychology began shortly after receiving his Ph.D. when he was asked to teach a course in abnormal psychology at a state police academy. Shortly thereafter, law enforcement agencies began seeking his help in dealing with various psychological issues, such as job stress, interactions with people with mental disorders, screening and selection, profiling, and fitness-for-duty evaluations. In addition to a heavy teaching load, he soon found himself sliding into longer and longer hours of consulting and training. He became a certified police academy instructor in crisis intervention, interviewing and interrogation, hostage and crisis negotiations, and criminal psychology, and he helped establish standards for psychological evaluation procedures and methods.

These experiences rapidly expanded into providing psychological services to virtually every law enforcement agency in Vermont. Soon, other state and federal agencies requested clinical and research services from Dr. Bartol and it dawned on him that the workload was getting out of hand. However, this experience also emphasized to him that psychologists interested in providing services to law enforcement have many opportunities. This service is especially appreciated by police agencies if it is research based and has considerable validity in its application.

The informality of a small college setting also helped Dr. Bartol launch his incredible writing career. He wrote his first book, *Criminal Behavior: A Psychosocial Approach*, in 1980 with his wife, Dr. Anne Bartol. This was followed shortly by another book written with Anne, entitled *Psychology and Law,* and many others, including *Introduction to Forensic Psychology* and *Current Perspectives in Forensic Psychology and Criminal Behavior.* Other recent books that Dr. Bartol has coauthored include *Juvenile Delinquency and Antisocial Behavior: A Developmental Perspective* and *Juvenile Delinquency: A Systems Approach.* Currently, he and Anne are working on a text on offender profiling.

In 1986, Dr. Bartol became book review editor of the prestigious journal, *Criminal Justice and Behavior.* Ten years later, he became editor of the journal, a position which he has held for

(*continued*)

BOX 1.1 *Continued*

15 years. Editing this journal is extremely time consuming, but also very satisfying. Dr. Bartol says that it helps him stay current with cutting-edge research and allows him to help young scholars get their work published.

After 32 years of college teaching, Dr. Bartol decided that he wanted to spend more time writing, editing, and in his private practice in forensic psychology. Although retired from teaching, Dr. Bartol has fond memories of the college classroom. Over the years he says he has always been invigorated, pleasantly surprised, and touched by interactions with students, and he strongly believes that, while students expect competence and expertise from their professors, they also appreciate compassion, a sense of humor, honesty, and flexibility. Reflecting back on his time as a professor, one of the things he says he has learned is that students interested in becoming forensic psychologists should focus on receiving a broad, research-based education, and it does not necessarily have to be a degree or concentration in forensic psychology.

Dr. Bartol now lives in New York with his wife, Anne, and his loyal Vizsla, J.D. (abbreviation for Juvenile Delinquent). His positive days in forestry continue to influence him and he enjoys planting and identifying trees on their acres of land. In addition to finding aquatic plants and flowers for their fish pond, Dr. Bartol most enjoys romping with his four grandkids and decorating a wooded trail for them with ornaments, lights, and surprises pertinent to the season.

scholars. Since we will continually touch upon these various roles throughout the upcoming chapters, we will briefly clarify what each role entails.

The Forensic Psychologist as Clinician

Clinical forensic psychologists
Psychologists who are broadly concerned with the assessment and treatment of mental health issues as they pertain to the law or legal system

Clinical forensic psychologists are broadly concerned with mental health issues as they pertain to the legal system (Otto & Heilbrun, 2002). This can include both research and practice in a wide variety of settings, such as schools, prisons, and hospitals. For example, clinical forensic psychologists are often concerned with the assessment and treatment of people with mental disorders within the context of the law. On the research side, a frequent task for the clinical forensic psychologist might involve the validation of an assessment tool that has been developed to predict the risk of an offender being violent (e.g., Kropp & Hart, 2000). On the practical side, a frequent task might involve the assessment of an offender to assist in making an accurate determination of whether that offender is likely to pose a risk to the community if released. Other issues that clinical forensic psychologists are interested in may include, but are certainly not limited to, the following:

- Divorce and child custody mediation
- Determinations of insanity and fitness to stand trial/plead guilty
- Providing expert testimony in court on questions of a psychological nature
- Personnel selection (e.g., for law enforcement agencies)
- Conducting critical incident stress debriefings with police officers
- Designing and conducting treatment programs for offenders

Clinical forensic psychologists in the United States must be licensed psychologists. The educational requirements to obtain a license vary across states, but most require a doctoral degree in psychology or a related discipline (Ph.D., Psy.D., or Ed.D.) (De Vaney Olvey, Hogg, & Counts, 2002). The licensing process also requires that applicants write a

standardized exam that tests the applicant's knowledge of psychology, with many states also requiring additional exams, such as an ethics examination (De Vaney Olvey et al., 2002). Finally, to successfully obtain a license, applicants must undergo supervised practice in an appropriate setting under the watchful eye of an experienced clinical supervisor, though the number of required hours varies from state to state (De Vaney Olvey et al., 2002).

One of the most common questions that undergraduate students ask us is "What is the difference between forensic psychology and **forensic psychiatry**?" In fact, many people, including those in the media, often confuse these two fields. To some extent in the United States, clinical forensic psychology and forensic psychiatry are more similar than they are different and, as a result, it is often difficult to separate them clearly. For example, both clinical forensic psychologists and forensic psychiatrists in this country are trained to assess and treat individuals experiencing mental health problems who come into contact with the law, and you will see psychologists and psychiatrists involved in nearly every component of the criminal justice system. In addition, clinical forensic psychologists and forensic psychiatrists often engage in similar sorts of research (e.g., trying to understand the origins of violent behavior).

Forensic psychiatry
A field of medicine that deals with all aspects of human behavior as it relates to the law or legal system

However, there are also important differences between the two fields. Probably the most obvious difference is that psychiatrists, including forensic psychiatrists, are medical doctors. Therefore, forensic psychiatrists undergo training that is quite different from the training clinical forensic psychologists receive, and this leads to several other distinctions between the fields. For example, in contrast to a psychiatrist's general (but not sole) reliance on a medical model of mental illness, psychologists tend to view mental illness more as a product of an individual's physiology, personality, and environment. See Box 1.2, which looks at some other important forensic-related disciplines practiced in the United States that are often confused with the field of forensic psychology.

The Forensic Psychologist as Researcher

A second role for the forensic psychologist is that of experimenter, or researcher. As mentioned above, although this role does not necessarily have to be separate from the clinical role, it often is. As with clinical forensic psychologists, **experimental forensic psychologists** are concerned with mental health issues as they pertain to the legal system, and they can be found in a variety of criminal justice settings. However, researchers in the forensic area are usually concerned with much more than just mental health issues. Indeed, they can be interested in any research issue that relates to the law or legal system. The list of research issues that are of interest to this type of forensic psychologist is far too long to present here, but they include the following:

Experimental forensic psychologists
Psychologists who are broadly concerned with the study of human behavior as it relates to the law or legal system

- Examining the effectiveness of risk assessment strategies
- Determining what factors influence jury decision making
- Developing and testing better ways to conduct eyewitness line-ups
- Evaluating offender and victim treatment programs
- Studying the impact of questioning style on eyewitness memory recall
- Examining the effect of stress management interventions on police officers

Not only do clinical forensic psychologists differ from experimental forensic psychologists in terms of what they do, but they also differ in terms of their training. The forensic psychologist who is interested primarily in research will have typically undergone Ph.D.-level graduate training in one of many different types of experimental

BOX 1.2 Other Forensic Disciplines

Nowadays, people are being bombarded by media portrayals of various forensic disciplines, beyond just forensic psychology and forensic psychiatry. Although this does much to promote the respective specialties, it can also be the source of a lot of confusion. Listed below are brief descriptions of just a few forensic specialty areas.

- ***Forensic anthropology.*** Forensic anthropologists examine the remains of deceased individuals to determine how they might have died and to establish facts about them, such as their gender, age, appearance, and so forth.
- ***Forensic art.*** Often working in conjunction with other forensic scientists, forensic artists use art to aid in the identification, apprehension, and conviction of offenders. Forensic artists might accomplish this by drawing sketches of suspects, reconstructing faces of deceased victims, or determining how missing children might look as they age.
- ***Forensic entomology.*** Forensic entomologists are concerned with how insects can assist with criminal investigations. For example, forensic entomologists can help determine when someone died based on an analysis of insect presence/development on a decomposing body.
- ***Forensic odontology.*** Forensic odontologists study the dental aspects of criminal activity. For example, forensic odontologists might assist the police in identifying deceased individuals through an examination of dental records or they might help determine whether bite marks found on an individual were made by an adult or child.
- ***Forensic pathology.*** Referred to as coroners in some states, forensic pathologists are medical doctors who examine the remains of dead bodies in an attempt to determine the time and cause of death through physical autopsy.
- ***Forensic podiatry.*** Forensic podiatrists use their knowledge of how the feet and lower limbs function to assist with police investigations and court proceedings. Advice provided by these individuals might relate to the degree of match between footprints found at crime scenes and the footwear of potential suspects. Forensic podiatrists can also assist in determining whether gait patterns caught on security cameras match those of a particular suspect.

Sources: "Forensic entomology: The use of insects in death investigations" by G. Anderson from *Forensic Disciplines*, International Association for Identification (2012).

graduate programs (and no internship is typically required). Only some of these graduate programs will be devoted solely to the study of forensic psychology. Others will be programs in social, cognitive, personality, organizational, or developmental psychology, although the program will typically have a faculty member associated with it who is conducting research in a forensic area.

Regardless of the type of graduate program chosen, the individual's graduate research will be focused primarily on a topic related to forensic psychology (e.g., the malleability of child eyewitness memory). As can be seen in the short list of topics provided above, research in forensic psychology is eclectic and requires expertise in areas such as memory processing, decision making, and organizational issues. This is one of the reasons why the training for experimental forensic psychology is more varied than the training for clinical forensic psychology.

The Forensic Psychologist as Legal Scholar

A third role for the forensic psychologist, which is far less common than the previous two, but no less important, is that of legal scholar. According to Brigham (1999), forensic

psychologists in their role as legal scholars "would most likely engage in scholarly analyses of mental health law and psychologically oriented legal movements," whereas their applied work "would most likely center around policy analysis and legislative consultation" (p. 281). Because this role is less common than the role of clinician or researcher, we will not deal with it as much throughout this textbook. However, it is important to briefly mention the impact that academic institutions in the United States have had on the development of this role. Most importantly perhaps is the role played by the University of Nebraska, the first institution to develop a joint program in psychology and law (Melton, 1990; University of Nebraska, 2010). Developed in 1974, this program still "specializes in training scholars who will be able to apply psychology and other behavioral sciences to analyses of empirical questions in law and policy." The program at the University of Nebraska has also served as a model for subsequent programs (in the United States and further afield) that are now helping to train psychologically informed legal scholars.

THE RELATIONSHIP BETWEEN PSYCHOLOGY AND LAW

Not only is forensic psychology a challenging field to be in because of the diversity of roles that a forensic psychologist can play, it is also challenging because forensic psychology can be approached from many different angles. One way of thinking about these various angles, although not the only way, has been proposed by Craig Haney, a professor of psychology at the University of California, Santa Cruz. Haney (1980) suggests there are three primary ways in which psychology and the law can relate to each other. He calls these relationships **psychology *and* the law**, **psychology *in* the law**, and **psychology *of* the law**. Throughout this textbook, we will focus on the first two relationships, psychology and the law and psychology in the law. Clinical and experimental forensic psychologists are typically involved in these areas much more often than the third area. Psychology of the law is largely the domain of the legal scholar role and, therefore, we will only touch on it very briefly.

Psychology and the law

The use of psychology to examine the operation of the legal system

Psychology in the law

The use of psychology in the legal system as that system operates

Psychology of the law

The use of psychology to examine the law itself

Psychology and the Law

In this relationship, "psychology is viewed as a separate discipline [to the law], examining and analyzing various components of the law [and the legal system] from a psychological perspective" (Bartol & Bartol, 1994, p. 2). Frequently, research that falls under the category of psychology *and* the law examines assumptions made by the law or the legal system, asking questions such as these: Are eyewitnesses accurate? Do certain interrogation techniques cause people to make false confessions? Are judges fair in the way they hand down sentences? Is it possible to accurately predict whether an offender will be violent when released from prison? When working within the area of psychology *and* the law, forensic psychologists attempt to answer these sorts of questions so that the answers can be communicated to the legal community. Much of forensic psychology deals with this particular relationship. Therefore, research issues that fall under the general heading of "psychology and the law" will be thoroughly discussed throughout this textbook.

Psychology in the Law

Once a body of psychological knowledge exists in any of the above-mentioned areas of study, that knowledge can be used in the legal system by psychologists, police officers,

lawyers, judges, and others. As the label indicates, psychology *in* the law involves the use of psychological knowledge in the legal system (Haney, 1980). As with psychology and the law, psychology in the law can take many different forms. It might consist of a psychologist in court providing expert testimony concerning some issue of relevance to a particular case. For example, the psychologist might testify that, based on his or her understanding of the psychological research, the eyewitness on the stand may have incorrectly identified the defendant from a police line-up. Alternatively, psychology in the law might consist of a police officer using his or her knowledge of psychology in an investigation. For example, the officer may base his questioning strategy during an interrogation on his knowledge of various psychological principles that are known to be useful for extracting confessions. Many of the research applications that we focus on in this textbook fit nicely with the label "psychology in the law."

Psychology of the Law

Psychology *of* the law involves the use of psychology to study the law itself (Haney, 1980), and it addresses questions such as these: What role should the police play in domestic disputes? Does the law reduce the amount of crime in our society? Why is it important to allow for discretionary decision making in the criminal justice system? Although often not considered a core topic in forensic psychology, there does appear to be a growing interest in the area of psychology of the law. The challenge in this case is that to address the sorts of questions posed above, a set of skills from multiple disciplines (e.g., criminology, sociology, law) is often important and sometimes crucial. The new focus in North America and elsewhere on the role of the forensic psychologist as legal scholar will no doubt do much to assist in this endeavor, and we are confident that in the future more research in the area of forensic psychology will focus on issues surrounding psychology of the law.

THE HISTORY OF FORENSIC PSYCHOLOGY

Now that we have defined the field of forensic psychology and discussed the various roles that forensic psychologists can play, we will turn to a discussion of where the field came from and where it is currently headed. Compared to other areas of psychology, forensic psychology has a relatively short history, dating back roughly to the late nineteenth century. In the early days, this type of psychology was actually not referred to as forensic psychology, and most of the psychologists conducting research in the area did not formally identify themselves as forensic psychologists. However, their research formed the building blocks of an emerging field of psychology that continues to be strong today. See Figure 1.1 for a timeline of some significant dates in the history of forensic psychology.

Early Research: Eyewitness Testimony and Suggestibility

In the late nineteenth century, research in the area of forensic psychology was taking place in both North America and Europe, though as indicated above, it wasn't being referred to as forensic psychology at the time. Some of the first experiments were those of James McKeen Cattell (who is perhaps better known for his research in the area of intelligence testing) at Columbia University in New York (Bartol & Bartol, 2006). Cattell, a previous student of Wilhelm Wundt, who developed the first psychology laboratory in

1843	Daniel M'Naughten is found not guilty by reason of insanity in the assassination attempt on the British prime minister. This leads to the development of the "M'Naughten rule" for determining insanity.
1893	James McKeen Cattell of Columbia University conducts the first experiments in North America on the psychology of testimony.
1896	One of the earliest examples of a psychologist testifying in a criminal trial. Albert von Schrenck-Notzing's testimony deals with the effect of pretrial publicity on memory.
1908	Hugo Munsterberg's *On the Witness Stand* is published in the United States. A year later, John H. Wigmore's famous critique of Munsterberg's work appears.
1909–1913	In a series of articles, Guy Whipple introduces North American psychologists to the classic European experiments on eyewitness testimony.
1911	Julian Varendonck conducts a series of classic studies on the suggestibility of children in order to inform his courtroom testimony on the reliability of child witnesses.
1917	William Marston develops the first modern polygraph. In the same year, Louis Terman pioneers the use of psychological testing for personnel selection in U.S. law enforcement agencies.
1921	In *State v. Driver,* a North American psychologist testifies in court as an expert witness for the first time. However, the testimony is rejected.
1923	In *Frye v. United States,* the courts speak specifically to the issue of when expert testimony should be admissible.
1954	A brief written by social psychologists is cited in a footnote of the famous *Brown v. Board of Education* decision outlawing school segregation. The citation helps validate psychology as a discipline.
1964	Famous personality psychologist, Hans. J. Eysenck, publishes *Crime and Personality* in which he proposes his biosocial theory of crime, viewed by some as the first testable theory of criminal behavior proposed by a psychologist.
1968–1969	The American Psychology-Law Society (AP-LS) is founded. A few years later, the AP-LS journal *Law and Human Behavior* begins publication.
1980-1981	The American Psychological Association's (APA) Division 41, Psychology and Law, is established. Four years later, AP-LS merges with Division 41.
1993	*In Daubert v. Merrell Dow Pharmaceuticals Inc.,* the U.S. Supreme Court lays out specific criteria for determining when scientific evidence can be admitted.
2001	The American Psychological Association formally recognizes forensic psychology as a specialty discipline.

FIGURE 1.1
Some Important European and North American Developments in the History of Forensic Psychology

Sources: "Some Important European and North American Developments in the History of Forensic Psychology", based on Bartol & Bartol, 2004; Brigham,1999.

Leipzig, Germany, was one of the major powerhouses of psychology in North America. After developing an expertise in the study of human cognitive processes while in Leipzig, Cattell conducted some of the first North American experiments looking at what would later be called the psychology of eyewitness testimony (e.g., Cattell, 1895). Cattell would ask people to recall things they had witnessed in their everyday life (e.g., "In which direction do apple seeds point?"), and he found that their answers were often inaccurate.

At around the same time, a number of other psychologists began studying eyewitness testimony and suggestibility (see Ceci & Bruck, 1993, for a review). For example, the famous French psychologist Alfred Binet conducted numerous studies in which he showed that the testimony provided by children was highly susceptible to suggestive questioning techniques. In a study discussed by Ceci and Bruck (1993), Binet (1900) presented children with a series of objects for a short period of time (e.g., a button glued to poster board). After viewing an object, some of the children were told to write down everything that they saw while others were asked questions. Some of these questions were direct (e.g., "How was the button attached to the board?"), others were mildly leading (e.g., "Wasn't the button attached by a thread?"), and still others were highly misleading (e.g., "What was the color of the thread that attached the button to the board?"). As found in numerous studies since this experiment, Binet demonstrated that asking children to report everything they saw (i.e., free recall) resulted in the most accurate answers and that highly misleading questions resulted in the least accurate answers.

Shortly after Binet's study, a German psychologist named William Stern also began conducting studies examining the suggestibility of witnesses (Bartol & Bartol, 2006; Ceci & Bruck, 1993). The "reality experiment" that is now commonly used by eyewitness researchers to study eyewitness recall and recognition can, in fact, be attributed to Stern. Using this research paradigm, participants are exposed to staged events and are then asked to recall information about the event. In one of Stern's experiments, participants were exposed to a scenario that involved two students arguing in a classroom setting until one of the students drew a revolver (Stern, 1910). As was the case with Binet, Stern found that eyewitness testimony can often be incorrect, and he was perhaps the first researcher to demonstrate that an observer's level of emotional arousal can have an impact on the accuracy of that person's testimony.

Early Court Cases in Europe

Around the time that this research was being conducted, psychologists in Europe also started to appear as expert witnesses in court. Unsurprisingly, given the research being conducted at the time, much of the testimony that they were providing dealt with issues surrounding the accuracy of eyewitness testimony. For example, in 1896, Albert von Schrenck-Notzing was probably the first expert witness to provide testimony in court on the effect of pretrial publicity on memory (Bartol & Bartol, 2006). The case took place in Munich, Germany, and involved a series of three sexual murders. The court case attracted a great deal of attention from the press of the time, and Schrenck-Notzing testified that this extensive pretrial press coverage could influence the testimony of witnesses by causing what he called "retroactive memory falsification" (Bartol & Bartol, 2006). This referred to a process whereby witnesses confuse actual memories of events with the events described by the media. Schrenck-Notzing supported his expert testimony with laboratory research, and this research is in line with more recent studies that have examined the effects of pretrial publicity (e.g., Ruva, McEvoy, & Bryant, 2007).

Following this case, Julian Varendonck, a Belgian psychologist, was called on to be an expert witness in a 1911 case involving the murder of a young girl, Cecile. Ceci and Bruck (1993) describe the case:

> Two of Cecile's friends who had played with her on the day of her murder were awakened that night by Cecile's mother to ask of her whereabouts. One of the children replied that she did not know. Later that night, she led the police to the spot where the children had played, not far from where Cecile's body was found. In the next month, the two children were repeatedly interviewed by authorities who asked many suggestive questions. The children quickly changed their original testimony of not knowing about Cecile's actions on the day of her murder. They provided details of the appearance of the murderer as well as his name. Because of an anonymous letter, the police arrested the father of one of the playmates for the murder of Cecile. On the basis of the details of the case, Varendonck was convinced of the defendant's innocence. He quickly conducted a series of studies with the specific intent of demonstrating the unreliability of children's testimony. (p. 406)

According to Ceci and Bruck (1993), in one of his studies, Varendonck (1911) asked a group of children to describe a person who had supposedly approached him in front of the children earlier that morning. Although this person did not exist, Varendonck was able to demonstrate, in line with more recent studies, that many of the children were easily led by suggestive questioning. Based on these findings, Varendonck concluded to the court that the testimony provided by the children in this case was likely to be inaccurate and that, as a group, children are prone to suggestion.

Advocates of Forensic Psychology in North America

Although it was not until years later that psychologists began testifying on similar issues in North America, psychology in North America was making great strides in other areas of the criminal justice system. Perhaps one of the most important landmarks was the publication in 1908 of Hugo Munsterberg's *On the Witness Stand* (Munsterberg, 1908). Another student of Wilhelm Wundt, Munsterberg is considered by many to be the father of applied psychology (Bartol & Bartol, 2006). Coming from Germany to Harvard University in 1892, he quickly established a name for himself (Brigham, 1999). In his book, Munsterberg argued that psychology had much to offer the legal system. Through a collection of his essays, he discussed how psychology could assist with issues involving eyewitness testimony, crime detection, false confessions, suggestibility, hypnotism, and even crime prevention.

Unfortunately, Munsterberg presented his ideas in a way that led to heavy criticism from the legal profession (Bartol & Bartol, 2006). This is unsurprising given the way in which he wrote. Consider the following quotation from the introduction to his book:

> The lawyer and the judge and the juryman are sure that they do not need the experimental psychologist. They do not wish to see that in this field pre-eminently applied experimental psychology has made strong strides. . . . They go on thinking that their legal instinct and their common sense supplies them with all that is needed and somewhat more . . . if the time is ever to come when even the jurist is to

> show some concession to the spirit of modern psychology, public opinion will have to exert some pressure. (Munsterberg, 1908, pp. 10–11)

Munsterberg's biggest critic was John Henry Wigmore, a well-respected law professor at Northwestern University in Chicago. Wigmore is known for many things, most notably his *Treatise on Evidence*, which is a critical examination of the laws of evidence. In the field of forensic psychology, however, what Wigmore is most commonly known for is his ruthless critique of Munsterberg's book. Through a series of fabricated "transcripts," Wigmore (1909) put Munsterberg on "trial," where he was sued, and found guilty of "claiming more than he could offer" (Brigham, 1999, p. 276). Wigmore criticized Munsterberg for the lack of relevant research publications to back up his claims and, more generally, for the lack of applied research in the field of forensic psychology as a whole.

Due perhaps in large part to Wigmore's comprehensive attack on Munsterberg's work, North American psychologists working in areas that we would now define as forensic psychology were largely ignored by the legal profession for a period of time. However, according to some, Munsterberg was still instrumental in pushing North American psychologists into the legal arena (Bartol & Bartol, 2006).

Forensic Psychology in Other Areas of the Criminal Justice System

After the publication of Munsterberg's controversial book, forensic psychology in North America gradually caught up to what was happening in Europe. Not only were theories of crime being proposed at a rapid rate (see Box 1.3), these theories were informing

BOX 1.3 Biological, Sociological, and Psychological Theories of Crime

While an in-depth discussion of crime theories is beyond the scope of this book, efforts to develop such theories are clearly an important part of the history of forensic psychology. During the past century, a variety of biological, sociological, and psychological theories of crime have been proposed and tested. Below are brief descriptions of some of these theories.

Biological Theories of Crime

- ***Sheldon's (1949) constitutional theory.*** Sheldon proposed that crime is largely a product of an individual's body build, or somatotype, which is assumed to be linked to an individual's temperament. According to Sheldon, endomorphs (obese) are jolly, ectomorphs (thin) are introverted, and mesomorphs (muscular) are bold. Sheldon's studies indicated that, due to their aggressive nature, mesomorphs were more likely to become involved with crime.
- ***Jacobs, Brunton, Melville, Brittain, and McClemont's (1965) chromosomal theory.*** Jacobs and her colleagues proposed that chromosomal irregularity is linked to criminal behavior. A normal female has two X chromosomes, whereas a normal male has one X and one Y chromosome. However, it was discovered that some men possess two Y chromosomes, which, it was proposed, made them more masculine and, therefore, more aggressive. According to Jacobs and her colleagues, this enhanced aggressiveness would result in an increased chance that these men would commit violent crimes.

- ***Mark and Ervin's (1970) dyscontrol theory.*** Mark and Ervin proposed that lesions in the temporal lobe and limbic system result in electrical disorganization within the brain, which can lead to a "dyscontrol syndrome." According to Mark and Ervin, symptoms of this dyscontrol syndrome can include outbursts of sudden physical violence, impulsive sexual behavior, and serious traffic violations.

Sociological Theories of Crime

- ***Merton's (1938) strain theory.*** Merton proposed that crime is largely a product of the strain felt by certain individuals in society (typically from the lower class) who have limited access to legitimate means (e.g., education) for achieving valued goals of success (e.g., money). Merton argued that while some of these individuals will be happy with lesser goals that are achievable, others will turn to illegitimate means (e.g., crime) in an attempt to achieve the valued goals.
- ***Sutherland's (1939) differential association theory.*** Sutherland proposed that criminal behavior is learned through social interactions in which people are exposed to values that are favorable to violations of the law. More specifically, Sutherland maintained that a person is likely to become a criminal when he or she learns more values (i.e., attitudes) that are favorable to violations of the law than values that are unfavorable to it.
- ***Becker's (1963) labelling theory.*** Unlike most other theories of crime, Becker proposed that deviance is not inherent to an act, but a label attached to an act by society. Thus, a "criminal" results from a process of society labelling an individual a criminal. This labelling process is thought to promote the individual's deviant behavior through a self-fulfilling prophecy, defined by Becker as a prediction, which is originally false, but made true by the person's actions.

Psychological Theories of Crime

- ***Bowlby's (1944) theory of maternal deprivation.*** Bowlby argued that the early separation of a child from his mother prevents effective social development from taking place. Without effective social development, Bowlby hypothesized that children will experience long-term problems in developing positive social relationships and will instead develop antisocial behavior patterns.
- ***Eysenck's (1964) biosocial theory of crime.*** Eysenck believed that some individuals (e.g., extraverts and neurotics) are born with cortical and autonomic nervous systems that influence their ability to learn from the consequences of their behavior, especially the negative consequences experienced in childhood as part of the socialization and conscience-building process. Due to their poor conditionability, it is assumed that individuals who exhibit high levels of extraversion and neuroticism will have strong antisocial inclinations.
- ***Gottfredson and Hirschi's (1990) general theory of crime.*** Gottfredson and Hirschi argue that low self control, internalized early in life, in the presence of criminal opportunities explains an individual's propensity to commit crimes.

research conducting by North American psychologists. This research was also being practically applied in a wide range of criminal justice settings. For example, as Bartol and Bartol (2004) highlight, forensic psychologists were instrumental in establishing the first clinic for juvenile delinquents in 1909, psychologists began using psychological testing for law enforcement selection purposes in 1917, and 1919 saw the first forensic assessment laboratory (to conduct pretrial assessments) set up in a U.S. police agency. After these events, psychologists in the United States began to be more heavily involved in the judicial system as well, starting with the case of *State v. Driver* in 1921.

Landmark Court Cases in the United States

Unlike their European counterparts who had provided expert testimony in courts as early as the late nineteenth century, the first time this happened in the United States was 1921 (*State v. Driver*, 1921). However, according to Bartol and Bartol (2006), the *Driver* trial was only a partial victory for forensic psychology. This West Virginia case involved the attempted rape of a young girl. The court accepted expert evidence from a psychologist in the area of juvenile delinquency. However, the court rejected the psychologist's testimony that the young girl was a "moron" and, therefore, could not be believed. In its ruling the court stated, "It is yet to be demonstrated that psychological and medical tests are practical, and will detect the lie on the witness stand" (quoted in Bartol & Bartol, 2006, pp. 11–12).

A number of more recent U.S. court cases are also enormously important in the history of forensic psychology. Perhaps the best-known case is that of *Brown v. Board of Education* (1954). This case challenged the constitutionality of segregated public schools (Benjamin & Crouse, 2002). Opponents of school segregation argued that separating children based on their race creates feelings of inferiority, especially among African American children. On May 17, 1954, the U.S. Supreme Court agreed. In the Court's ruling, Chief Justice Earl Warren stated,

> Segregation of White and colored children in public school has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law, for 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 the 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. Whatever may have been the extent of psychological knowledge [in previous court cases] this finding is amply supported by modern authority. (Benjamin & Crouse, 2002, p. 39)

Beyond the obvious social importance of this ruling, it is important in the field of forensic psychology because of a footnote that was attached to the last sentence of the ruling—the famous footnote 11. The "modern authority" that the U.S. Supreme Court was referring to in this ruling was research in the social sciences demonstrating the detrimental effect of segregation. At the top of the list of seven references included in footnote 11 was the work of Kenneth Clark, an African American psychologist who taught psychology at City College in New York City and studied how prejudice and discrimination affected personality development. This was the first time that psychological research was cited in a U.S. Supreme Court decision and some have argued that this validated psychology as a science (e.g., Benjamin & Crouse, 2002).

The last court case that we will discuss here is *Jenkins v. United States* (1962). The trial involved charges of breaking and entering, assault, and intent to rape, with the defendant, Jenkins, pleading not guilty by reason of insanity. Three clinical psychologists were presented by the defendant, each of them supporting an insanity defense on the basis that the defendant was suffering from schizophrenia at the time of the crimes. At the conclusion of the trial, the judge instructed the jury to disregard the testimony from the psychologists because "psychologists were not qualified to give expert testimony on the issue

of mental disease" (American Psychological Association [APA], 2007). The case was appealed. As part of the appeal, the American Psychological Association provided a report to the court stating their view that clinical psychologists are competent to provide opinions concerning the existence of mental illness. On appeal, the court reversed the conviction and ordered a new trial, stating that "some psychologists are qualified to render expert testimony on mental disorders . . . the determination of a psychologist's competence to render an expert opinion . . . must depend upon the nature and extent of his knowledge and not simply on the claim to the title 'psychologist'" (APA, 2007). This decision helped to increase the extent to which psychologists could contribute directly to the legal system as expert witnesses.

Despite the fact that he wasn't a forensic psychologist, Kenneth Clark made an extremely important contribution to this field. The citation of his work by the U.S. Supreme court in *Brown v. Board of Education* showed that psychological research could play a role in the courtroom.

Although the landmark U.S. court cases we have discussed so far have been fundamental in shaping forensic psychology, many other court cases have also been influential. A brief discussion of some of these cases is provided in Box 1.4. We will provide a more detailed discussion of some of the cases in the relevant chapters when we focus on research relating to these rulings.

Signs of a Legitimate Field of Psychology

Although the field of forensic psychology has perhaps not come as far as many forensic psychologists would have hoped in its relatively short history, it has now become a recognized and legitimate field of study within psychology. Indeed, forensic psychology now appears to have many of the markings of an established discipline. This is reflected in numerous ways, as highlighted by Schuller and Ogloff (2001). First, a growing number of high-quality textbooks have been published that provide the opportunity to teach students about forensic psychology. This is particularly so in the United States. Second, a large number of academic journals are now dedicated to various aspects of the field, and more mainstream psychology journals are beginning to publish research from the forensic domain at a regular rate. Third, a number of professional associations have now been developed to represent the interests of forensic psychologists and to promote research and practice in the area. The largest of these associations in North America is the American Psychology-Law Society (AP-LS). Fourth, new training opportunities in forensic psychology, at both the undergraduate and graduate level, are being established in North America, and existing training opportunities are being improved. Finally, and perhaps most importantly, in 2001 the American Psychological Association formally recognized forensic psychology as a specialty discipline.

MODERN-DAY DEBATES: PSYCHOLOGICAL EXPERTS IN COURT

Since the field of forensic psychology has become more widely accepted, forensic psychologists have increasingly been asked to provide expert testimony in court. The variety of topics that forensic psychologists testify about is very broad indeed, including, but not limited to, competency to stand trial, custody issues, malingering and deception, the accuracy of eyewitness identification, the effects of crime on victims, and the assessment of dangerousness. In order for forensic psychologists to increase the extent to which they can contribute to the judicial system in this way, it is important for them to become more knowledgeable about the law and the legal system. This includes becoming more

BOX 1.4 Influential U.S. Court Cases in the History of Forensic Psychology

While it is obviously not possible to provide an exhaustive review of influential U.S. court cases that relate to the field of forensic psychology, the small sample of cases provided below illustrates the wide variety of issues that impact the field:

- ***Dusky v. United States (1960).*** The U.S. Supreme court outlines the standard for determining competency to stand trial, which includes an ability to consult with counsel and possessing a reasonable understanding of the court proceedings.
- ***Miranda v. Arizona (1966).*** The U.S. Supreme Court rules that statements made in police interrogations will be admissible only if the defendant was informed of and understood his or her right to consult an attorney and the right against self-incrimination.
- ***United States v. Wade (1967).*** In recognizing the important role that eyewitness testimony can play in legal proceedings, the U.S. Supreme Court rules that a defendant has the right to have his or her attorney present during pretrial police line-ups.
- ***In re Gault (1967).*** The U.S. Supreme Court rules that juveniles involved in criminal proceedings must be accorded the same rights as adults (e.g., the right to counsel).
- ***Griggs v. Duke Power Co. (1971).*** Emphasizing the importance of job analyses in personnel selection (e.g., in law enforcement), the U.S. Supreme Court finds that selection tests must target criteria that are directly related to the job for which the test is required.
- ***Neil v. Biggers (1972).*** The U.S. Supreme Court concludes that eyewitness evidence resulting from suggestive police procedures should not necessarily be viewed as inadmissible if certain criteria are met (e.g., the eyewitness displays a high level of confidence in his or her identification).
- ***Tarasoff v. Regents of the University of California (1976).*** The Supreme Court of California rules that mental health professionals have a duty to warn a third party if they have reasonable grounds to believe that their client intends to harm that individual.
- ***Batson v. Kentucky (1986).*** Confirming the importance of an impartial and representative jury, the U.S. Supreme Court rules that a prosecutor's use of peremptory challenges cannot be used to exclude jurors based solely on their race.
- ***Foucha v. Louisiana (1992).*** The U.S. Supreme Court rules that a person who is found not guilty by reason of insanity cannot be held indefinitely in a psychiatric facility if the person no longer suffers from the mental illness that served as the basis for the original commitment.
- ***Daubert v. Merrell Dow Pharmaceuticals (1993).*** The U.S. Supreme Court establishes criteria for determining when expert testimony should be admitted into court.
- ***State v. Michaels (1994).*** The Supreme Court of New Jersey rules that highly suggestive or coercive interviewing techniques used on children can lead to unreliable testimony and, thus, such tactics require a pretrial hearing to determine the appropriateness of the procedures employed.
- ***Roper v. Simmons (2005).*** The U.S. Supreme Court rules that it is unconstitutional to impose the death penalty on juvenile offenders.
- ***United States v. Binion (2005).*** The U.S. Court of Appeals for the 8th Circuit rules that malingering (feigning mental illness) during a competency evaluation can be considered an obstruction of justice and can lead to an enhanced sentence.

aware of what the role of an expert witness is, the various ways in which psychology and the law differ from one another, and the criteria that courts consider when determining whether psychological testimony should be admitted.

The Functions of the Expert Witness

According to Ogloff and Cronshaw (2001), an expert witness generally serves one of two functions. One is to provide the court with information that assists them in understanding a particular issue, and the other is to provide the court with an opinion. Understanding these functions is important because they are what separate the **expert witness** from other witnesses who regularly appear in court (e.g., eyewitnesses). To be clear on this issue, in contrast to other witnesses in court, who can testify only about what they have directly observed, expert witnesses can provide the court with their personal opinion on matters relevant to the case and they are often allowed to draw inferences based on their observations (Ogloff & Cronshaw, 2001). However, these opinions and inferences must always fall within the limits of expert witnesses' areas of expertise, which they typically get through specialized training and experience, and the testimony must be deemed reliable and helpful to the court.

Expert witness

A witness who provides the court with information (often an opinion on a particular matter) that assists the court in understanding an issue of relevance to a case

The Challenges of Providing Expert Testimony

Providing expert testimony to the courts in an effective way is not a simple task. This probably explains why in the past few years numerous manuals have been published for the purpose of assisting expert witnesses with the task of preparing for court (e.g., Brodsky, 1991, 1999). In large part, these difficulties arise because of the inherent differences (often conflicts) that exist between the fields of psychology and law. Numerous individuals have discussed these differences, but we will focus on one particular attempt to describe them.

According to Hess (1987, 1999), psychology and law differ along at least seven different dimensions:

1. ***Knowledge.*** Knowledge gain in psychology is accomplished through cumulative research. In the law, knowledge comes through legal precedent, logical thinking, and case law.
2. ***Methodology.*** Methodological approaches in psychology are predominantly nomothetic. In other words, the goal is to uncover broad patterns and general trends through the use of controlled experiments and statistical methods. In contrast, the law is idiographic in that it operates on a case-by-case basis.
3. ***Epistemology.*** Psychologists assume that it is possible to uncover hidden truths if the appropriate experiments are conducted. Truth in the law is defined subjectively and is based on who can provide the most convincing story of what really happened.
4. ***Criteria.*** In terms of a willingness to accept something as true, psychologists are cautious. To accept a hypothesis, results must be replicated, and conservative statistical criteria are used. The law decides what is true based on a single case and criteria that are often more lenient.
5. ***Nature of law.*** The goal in psychology is to describe how people behave. Law, however, is prescriptive. It tells people how they should behave.
6. ***Principles.*** Good psychologists always consider alternative explanations for their findings. Good lawyers always convince the judge and jury that their explanation of the findings is the only correct explanation.

7. ***Latitude.*** The behavior of the psychologist when acting as an expert witness is severely limited by the court. The law imposes fewer restrictions on the behavior of lawyers (though they are also restricted in numerous ways).

Understanding these differences is important because they help us to appreciate why the courts are often so reluctant to admit testimony provided by psychological experts. For example, after considering how psychology and the law differ with respect to their methodological approach, it may not be surprising that judges often have difficulty seeing how psychologists can assist in court proceedings. Indeed, numerous legal scholars have questioned whether the general patterns and trends that result from a nomothetic psychological approach should ever be used in court. As Sheldon and Macleod (1991) state:

> The findings derived from empirical research are used by psychologists to formulate norms of human behavior. From observations and experiments, psychologists may conclude that in circumstance X there is a likelihood that an individual . . . will behave in manner Y. . . . [N]ormative data of this sort are of little use to the courts. The courts are concerned to determine the past behavior of accused *individuals*, and in carrying out that function, information about the past behavior of *other individuals* is wholly irrelevant. (emphasis added, p. 815)

Currently, little attempt has been made to understand these differences between psychology and law, or their implications for the field of forensic psychology. Once we gain such an understanding perhaps forensic psychologists will be in a better position to assist the courts with the decisions they are required to make. We believe that research conducted by forensic psychologists will greatly assist in this endeavor. This research will also increase our understanding of the criteria the courts use for determining the conditions under which they will accept expert testimony from psychologists.

Criteria for Accepting Expert Testimony

In order for a forensic psychologist to provide expert testimony in court, he or she must meet certain criteria. In the United States, criteria of one sort or another have been in place since the early twentieth century. In fact, until relatively recently, the admissibility of expert testimony in the United States was based on a decision handed down by the courts in *Frye v. United States* (1923). Frye was being tried for murder and the court rejected his request to admit the results from a polygraph exam he had passed. On appeal, the court also rejected requests to allow the polygraph expert to present evidence on Frye's behalf (Bartol & Bartol, 1994). In the ruling, the court spoke specifically to the issue of when expert testimony should be admitted into court. The court indicated that, for novel scientific evidence to be admissible in court, it must be established that the procedure(s) used to arrive at the testimony is/are generally accepted in the scientific community. More specifically, the court stated, "while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs" (*Frye v. United States*, 1923, p. 1).

General acceptance test

A standard for accepting expert testimony, which states that expert testimony will be admissible in court if the basis of the testimony is generally accepted within the relevant scientific community

This criterion came to be called the "**general acceptance test**," and although it formed the basis of admissibility decisions in the United States for a long time, it has

been heavily criticized. The major criticism centers on the vagueness of terms such as "general acceptance" and "the particular field in which it belongs" and whether trial judges are able to make appropriate determinations of what these terms mean. As just one example of where problems might emerge, consider a defense lawyer who would like to have a criminal profiler provide expert testimony in court (as you will see in Chapter 3, a profiler is someone who attempts to predict the personality and demographic characteristics of an unknown offender based on how that offender's crimes were committed). How should the trial judge decide whether the profiler used generally accepted profiling techniques? If the courts turned to the profiling community (typically consisting of specially trained law enforcement personnel) to make this determination, the answer would most likely be far more favorable than if they had asked forensic psychologists who conduct research in the area of criminal profiling (e.g., Alison, Bennell, Mokros, & Ormerod, 2002). So, whom should the judge turn to and believe? In what "particular field" does criminal profiling belong?

THE *Daubert* CRITERIA This issue of vagueness was addressed more recently in the U.S. Supreme Court decision handed down in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993), when more specific admissibility criteria were set. Daubert sued Merrell Dow because he believed a morning sickness drug his mother ingested while pregnant, which was produced by the company, led to his birth defects. At trial, Merrell Dow presented experts who provided evidence that the use of the drug Bendectin does not result in birth defects. In turn, Daubert provided evidence from experts who claimed that Bendectin could lead to birth defects. The state court and the appeal court both rejected the testimony provided by Daubert's experts on the basis that the methods they used to arrive at their results were not generally accepted by the scientific community. On appeal before the U.S. Supreme Court, Daubert's lawyers challenged the state and appeal courts' interpretation of "general acceptance."

***Daubert* criteria**
A standard for accepting expert testimony, which states that scientific evidence is valid if the research upon which it is based has been peer reviewed, is testable, has a recognized rate of error, and adheres to professional standards

In addressing this issue, the U.S. Supreme Court stated that, for scientific evidence to be admitted into court, it must (1) be provided by a qualified expert, (2) be relevant, and (3) be reliable (meaning scientifically valid). To assist judges in making the decision as to whether evidence is in fact valid, the U.S. Supreme Court laid out four specific criteria, now commonly referred to as the ***Daubert* criteria**. These criteria suggest that scientific evidence is valid if:

1. The research has been peer reviewed.
2. The research is testable (i.e., falsifiable through experimentation).
3. The research has a recognized rate of error.
4. The research adheres to professional standards.

Using this information read the scenario described in the Case Study box and see what challenges you might encounter as a judge when trying to apply the *Daubert* criteria.

Despite being a positive step in the right direction, what remains unclear with respect to the *Daubert* case is whether the criteria that were identified for assessing an individual's testimony have had their intended impact—to increase the quality threshold that needs to be met in order for expert evidence to be admitted into court. Currently, it appears that the criteria have increased the extent to which the courts scrutinize the qualifications of experts, but it does not seem to have had the same impact on assessments of reliability, or validity (Groscup, Penrod, Studebaker, Huss, & O'Neil, 2002). Indeed,

CASE STUDY

YOU BE THE JUDGE

Pretend for a second that you are a judge. The case before you attracted a great deal of media attention and involved a black defendant who allegedly committed a very violent armed robbery at a grocery store. During the investigation, two eyewitnesses came forward, both of whom were white. The defense attorney is trying to introduce testimony from a psychologist that suggests various factors in the case would impair the witnesses' ability to make an accurate identification. The testimony relates to problems with cross-racial identifications and the influence of post-event information on memory.

Your Turn . . .

Your decision as the judge in this case is to determine whether the witness should be allowed to present his testimony in court. Using the information contained in this chapter as a guide, what are the major issues that you would consider when making this decision? How would you go about determining if the witness is an expert and whether the evidence that the witness plans to introduce is necessary for assisting the court? How would you go about determining whether the evidence is valid? What challenges might you face in answering these questions and what sorts of things might assist you with your task?

while there are certainly exceptions (e.g., see Box 1.5), a review of court cases occurring before and after the *Daubert* ruling was handed down indicate that other factors (e.g., the potential for assisting the trier of fact) are often weighted more heavily than the *Daubert* criteria when determining the admissibility of expert evidence (Groscup et al., 2002).

BOX 1.5 *Daubert* in Action: *New Jersey vs. Fortin* (1999–2000)

On April 3, 1995, Vicki Gardner, a Maine state trooper, was sexually assaulted and killed by Steven Fortin, who pled guilty to the crime and was sentenced to 20 years in prison. In August 1994, Melissa Padilla was also sexually assaulted and killed in the city of Avenel, New Jersey. At the request of the state of New Jersey, retired FBI agent Roy Hazelwood conducted a linkage analysis on these cases, which involved an evaluation of the crime scene behaviors to determine if the two offenses were committed by the same offender (*New Jersey v. Fortin*, 1999a).

Based on his review of the cases, Hazelwood was prepared to present testimony that Fortin was responsible for the two crimes in question (*New Jersey v. Fortin*, 1999a). According to Hazelwood, the two crimes were highly similar, both in terms of behavior and motivation. Specifically, Hazelwood concluded that "in my 35 years of experience with a variety of violent crimes . . . I have never observed this combination of behaviors. . . . The likelihood of different offenders committing two such extremely unique crimes is highly improbable" (Turvey, 2008, p. 335).

Despite objections from the defense, the trial court judge admitted Hazelwood's testimony and Fortin was convicted for the murder of Melissa Padilla. In reaching its decision, the court used previous admissibility standards applied in *New Jersey v. Kelly* (1994), which focused on the general acceptance of an expert's testimony and whether the testimony provides information that goes beyond the common understanding of the court.

On appeal, the decision to admit Hazelwood's testimony was reversed. The appellate court reasoned that because linkage analysis involves the application of behavioral science, Hazelwood's testimony should be evaluated using admission criteria established for scientific evidence (*New Jersey v. Fortin*, 1999b). Based on an evaluation of *Daubert* criteria, the appellate court concluded that Hazelwood's linkage analysis was not sufficiently reliable (i.e., valid) to warrant its admission in court. In 2000, the Supreme Court of New Jersey agreed with this decision and upheld the ruling of the appellate court (*New Jersey v. Fortin*, 2000). They also pointed out additional *Daubert* criteria that were problematic in this case (e.g., a lack of peer-reviewed research in the area of linkage analysis).

Summary

1. Forensic psychology can be defined in a narrow or broad fashion. Narrow definitions tend to focus only on the clinical *or* experimental aspects of the field, whereas broad definitions are less restrictive and encompass both aspects.
2. Forensic psychologists can play different roles. Clinical forensic psychologists are primarily interested in mental health issues as they pertain to the law. Experimental forensic psychologists are interested in studying any aspect of human behavior that relates to the law (e.g., eyewitness memory, jury decision making, risk assessment, etc.).
3. Psychology can relate to the field of law in three ways. The phrase *psychology and the law* refers to the use of psychology to study the operation of the legal system. *Psychology in the law* refers to the use of psychology within the legal system as it operates. *Psychology of the law* refers to the use of psychology to study the legal system itself.
4. The history of forensic psychology is marked by many important milestones, both in the research laboratory and in the courtroom. Early research consisted of studies of eyewitness testimony and suggestibility, and many of the early court cases in Europe where psychologists appeared as experts dealt with similar issues. Hugo Munsterberg played a significant role in establishing the field of forensic psychology in North America and by the early 1900s, forensic psychologists were active in many different parts of the criminal justice system. Currently, forensic psychology is viewed as a distinct and specialized discipline, with its own textbooks, journals, and professional associations.
5. Expert witnesses differ from regular witnesses in that expert witnesses can testify about their opinions, whereas other witnesses can only testify as to what they know to be fact. In many jurisdictions in the United States, for an expert's testimony to be accepted, it must (1) be provided by a qualified expert, (2) be relevant, and (3) be reliable (meaning scientifically valid).

Key Concepts

clinical forensic psychologists *6*
Daubert criteria *21*
experimental forensic psychologists *7*
expert witness *19*
forensic psychiatry *7*
forensic psychology *1*
general acceptance test *20*
psychology and the law *9*
psychology in the law *9*
psychology of the law *9*

Discussion Questions

1. You are sitting on a panel of experts that has been charged with the task of redefining the field of forensic psychology. In your role as a panel member, you have to consider whether forensic psychology should be defined in a narrow or broad fashion. What are some of the advantages and disadvantages of adopting a narrow definition? What are some of the advantages and disadvantages of adopting a broad definition? Decide what type of definition you prefer and explain why.
2. The majority of forensic psychologists have no formal training in law. Do you think this is appropriate given the extent to which many of these psychologists are involved in the judicial system?
3. You have just been hired as a summer intern at a law office. One of your tasks is to assist in preparing for a high-profile murder case that has attracted a great deal of media attention. One of the lawyers has found out that you've taken this course and she wants to know whether the extensive pretrial press coverage the crime has received will make it difficult to find impartial jurors. Design a study to determine whether this is likely to be the case.
4. Put yourself in the shoes of an expert witness. You are supposed to act as an educator to the judge and jury, not as an advocate for the defense or for the prosecution. To what extent do you think you could do this? Why or why not?