THE HANDBOOK OF FORENSIC PSYCHOLOGY

FOURTH EDITION

EDITED BY IRVING B. WEINER AND RANDY K. OTTO

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The Handbook of Forensic Psychology
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Preface

The potential for psychologists to assist the legal system has been recognized since the early 20th century, but only within the past 50 years has psychology begun to realize this potential in meaningful ways. This progress has included newly developed professional organizations, such as the American Psychology-Law Society and the International Association for Correctional and Forensic Psychology; graduate, internship, and fellowship programs in the specialty area (listed in www.ap-ls.org/education/GraduatePrograms.php); organizations devoted to certifying qualified practitioners, such as the American Board of Forensic Psychology and the American Board of Police and Public Safety Psychology; such scientific journals as Law and Human Behavior, Behavioral Sciences and the Law, and Criminal Justice and Behavior; and books devoted to the interface of psychology and law. This specialty area has continued to grow rapidly since the previous edition of the Handbook of Forensic Psychology was published in 2006, with increasing numbers of psychologists becoming involved in forensic practice and research and a steady flow of new ideas and information becoming available.

This fourth edition of the Handbook of Forensic Psychology, like its predecessors, aims to provide an authoritative and comprehensive resource for understanding the theoretical foundations of forensic psychology, becoming familiar with the expanding research base in this specialty, and learning to apply forensic concepts artfully in everyday practice. To this end, the contributors to this volume, as in the prior three editions, are accomplished scholars and practitioners in their respective areas. Some are prominent academicians who conduct research and offer consultation. Others are actively engaged service providers who also make significant contributions to the literature. Several have degrees in law as well as psychology. These authors were asked to delineate the enduring issues in an area of their specialty and frame these issues in the light of contemporary research and prevailing conceptual formations.

Although similar in focus and structure to previous editions, the present volume has been substantially rewritten and updated to enhance its value. The content and sequence of the chapters have been reframed to increase their relevance to the practice of forensic psychology and encompass both recent research findings and developments in statutory and case law. As testimony to the fresh perspectives in this fourth edition, the Table of Contents identifies 48 authors and co-authors, of whom 24 are new contributors to the Handbook.
The present volume comprises six parts. Part One concerns the context of forensic psychology and begins with chapters on the history of forensic psychology and on defining the nature of forensic psychology. Chapter 3 then provides information about and guidelines for accessing the legal literature. Chapter 4 alerts forensic psychologists to ethical and legal considerations that should guide their work, with specific attention to the American Psychological Association ethics code and the Specialty Guidelines for Forensic Psychology. Chapter 5 describes training models and resources in forensic psychology for faculty developing programs of instruction and for students and general practitioners seeking specialized education or supervised experience in forensic psychology.

Part Two comprises five chapters concerning applications of psychology in civil proceedings. Chapter 6 addresses family law procedures and issues related to conducting evaluations of children and their parents involved in disputed custody. Chapter 7 discusses personal injury litigation, with particular attention to considerations in psychological assessment. Chapter 8 reviews the impact of recent congressional legislation on identifying and treating educational disabilities. Chapter 9 examines issues related to the assessment of persons’ competence to execute a variety of legal rights in civil contexts. Chapter 10 concludes this section with guidelines for conducting evaluations in cases of alleged child abuse or neglect.

Part Three deals with applying psychology in criminal proceedings and covers three critical considerations of concern to triers-of-fact. Chapter 11 provides guidelines for assessing competence to stand trial. Chapter 12 traces the development and current applications of the concepts of criminal responsibility and legal insanity. Chapter 13 delineates the related nuances of criminal intent and diminished capacity.

Part Four presents information on seven special applications of forensic psychology. Chapter 14 leads off with a discussion of violence risk research and assessment, and Chapter 15 follows with an overview of emerging roles for psychologists in law enforcement. Chapter 16 reviews considerations related to evaluating jury decision making and promoting juror competence. Chapters 17 and 18 review developments related to the evaluation of testimony given by adults and children. Chapters 19 and 20 then provide accounts of the development of lie detection and hypnosis and describe current and emerging trends in forensic uses of these procedures.

Part Five of the *Handbook* looks at effective communication of expert opinion in forensic cases. Chapter 21 focuses on the essentials of writing appropriate and useful reports, and Chapter 22 discusses the admissibility of expert testimony and key considerations in communicating one’s work and opinions to legal decision makers.

Part Six concludes the *Handbook* with consideration of some important aspects of providing services to offenders. Chapter 23 discusses principles of effective correctional rehabilitation in both prison settings and the community, and Chapter 24 provides a behind-the-bars guide to conducting psychotherapy with offenders. Chapter 25 continues this theme with specific attention to diagnostic and treatment
procedures useful in working with sexual offenders. Finally, the Appendix provides readers with the full text of the Specialty Guidelines for Forensic Psychology.

We would like to thank our authors for their valuable contributions to this volume, both those who revised chapters that appeared in previous editions and those who joined us for the first time in this edition. We also want to acknowledge with appreciation the guidance and support of the John Wiley & Sons editorial staff, particularly Patricia Rossi, Executive Editor, and Kara Borbely, Editorial Program Coordinator. Finally, we recognize and honor the contributions of our colleague Allen Hess, who served as co-editor of the first three editions before his untimely death. Readers familiar with previous editions of the Handbook will recognize his fingerprints on this edition as well.

Irving B. Weiner
Randy K. Otto
Contributors

Anne M. Bartol, PhD
Bartol Consulting and Writing
Glenville, New York

Curt R. Bartol, PhD
Bartol Consulting and Writing
Glenville, New York

Ashley B. Batastini, MS
Department of Psychology
Texas Tech University
Lubbock, Texas

Daniel Bederian-Gardner, MA
Department of Psychology
University of California
Davis, California

Douglas Boer, PhD
Department of Psychology
University of Waikato
Hamilton, New Zealand

Charles R. Clark, PhD, ABPP
Independent Practice
Ann Arbor, Michigan

Lois O. Condie, PhD, ABPP
Department of Neurology
Harvard Medical School
Boston, Massachusetts

David M. Corey, PhD, ABPP
Independent Practice
Lake Oswego, Oregon

David DeMatteo, JD, PhD
Department of Psychology
Earle Mack School of Law
Drexel University
Philadelphia, Pennsylvania

Kevin S. Douglas, LLB, PhD
Department of Psychology
Simon Fraser University
Burnaby, British Columbia, Canada

Michele Galietta, PhD
John Jay College of Criminal Justice
City University of New York
New York, New York

Alexandra R. Garcia-Mansilla, PhD
Queens TAC Mental Health Jail Diversion Program
New York, New York

Paul Gendreau, PhD
Department of Psychology
University of New Brunswick
Saint John, New Brunswick, Canada

Claire Goggin, PhD
Department of Criminology and Criminal Justice
St. Thomas University
Fredericton, New Brunswick, Canada
Stephan L. Golding, PhD, ABPP
Department of Psychology
University of Utah
Salt Lake City, Utah

Gail S. Goodman, PhD
Department of Psychology
University of California
Davis, California

Lorraine W. Greene, PhD, ABPP
University Counseling Center
Tennessee State University
Nashville, Tennessee

Jennifer L. Groscup, JD, PhD
Department of Psychology
Scripps College
Claremont, California

Stephen D. Hart, PhD
Department of Psychology
Simon Fraser University
Burnaby, British Columbia, Canada

Allen K. Hess, PhD
Department of Psychology
Auburn University at Montgomery
Montgomery, Alabama

Sue D. Hobbs, MA
Department of Psychology
University of California
Davis, California

William G. Iacono, PhD
Department of Psychology
University of Minnesota
Minneapolis, Minnesota

Jonni L. Johnson, MA
Department of Psychology
University of California
Davis, California

Susan L. Kay, JD
Vanderbilt University Law School
Nashville, Tennessee

Michael E. Keesler, JD, MS
Department of Psychology
Drexel University
Philadelphia, Pennsylvania

Daniel A. Krauss, JD, PhD, ABPP
Department of Psychology
Claremont McKenna College
Claremont, California

Daryl G. Kroner, PhD
Department of Criminology & Criminal Justice
Southern Illinois University
Carbondale, Illinois

Michael J. Lawler, PhD
School of Health Sciences
University of South Dakota
Vermillion, South Dakota

Thomas R. Litwack, PhD, JD
John Jay College of Criminal Justice
City University of New York
New York, New York

Roy S. Malpass, PhD
Department of Psychology
University of Texas at El Paso
El Paso, Texas

Liam E. Marshall, PhD
Rockwood Psychological Services
Kingston, Ontario, Canada

W. L. Marshall, PhD
Rockwood Psychological Services
Kingston, Ontario, Canada
Macaria Mendoza, MA
Center for Public Policy Research
University of California
Davis, California

Jeremy F. Mills, PhD
Department of Psychology
Carleton University
Ottawa, Ontario, Canada

Robert D. Morgan, PhD
Department of Psychology
Texas Tech University
Lubbock, Texas

James R. P. Ogloff, JD, PhD
School of Psychology, Psychiatry, and Psychological Medicine
Monash University and Institute of Forensic Mental Health
Victoria, Australia

Randy K. Otto, PhD, ABPP
Department of Mental Health Law and Policy
University of South Florida
Tampa, Florida

Christopher J. Patrick, PhD
Department of Psychology
Florida State University
Tallahassee, Florida

Steven Penrod, JD, PhD
John Jay College of Criminal Justice
City University of New York
New York, New York

Lisa Drago Piechowski, PhD, ABPP
Department of Clinical Psychology
American School of Professional Psychology
Washington, DC

Gianni Pirelli, PhD
Department of Psychology
Greystone Park Psychiatric Hospital
Morris Plains, New Jersey

Daniel J. Reschly, PhD
Peabody College of Education and Human Development
Vanderbilt University
Nashville, Tennessee

Jennifer K. Robbennolt, JD, PhD
College of Law
University of Illinois
Champaign, Illinois

Ronald Roesch, PhD
Department of Psychology
Simon Fraser University
Burnaby, British Columbia, Canada

Stephen J. Ross, PhD
Interdisciplinary Arts and Sciences
University of Washington, Tacoma
Tacoma, Washington

Bruce D. Sales, PhD, JD
Department of Criminal Justice
University of Indiana
Bloomington, Indiana

Alan W. Scheflin, LLM
Santa Clara University School of Law
Santa Clara, California

Ellen M. Scrivner, PhD
Executive Fellow
Police Foundation
Washington, DC

Philip M. Stahl, PhD, ABPP
Independent Practice
Queen Creek, Arizona
Barbara Stanley, PhD  
Department of Neuroscience  
New York State Psychiatric Institute  
New York, New York

Heidi Strohmaier  
Department of Psychology  
Drexel University  
Philadelphia, Pennsylvania

Colin G. Tredoux, PhD  
Department of Psychology  
University of Cape Town  
Cape Town, South Africa

Ivan D. Vargas, JD  
Center for Public Policy Research  
University of California  
Davis, California

Irving B. Weiner, PhD, ABPP  
Department of Psychiatry and Neurosciences  
University of South Florida  
Tampa, Florida

Patricia A. Zapf, PhD  
John Jay College of Criminal Justice  
City University of New York  
New York, New York
PART ONE

CONTEXT OF FORENSIC PSYCHOLOGY
CHAPTER 1

History of Forensic Psychology

CURT R. BARTOL AND ANNE M. BARTOL

In the course of writing this chapter over four editions of this *Handbook*, we have learned a few lessons. In the first edition, we asserted that psychologists do not care about the history of their profession but are instead drawn to contemporary issues and theories. We learned that this was a simplistic generalization, so in subsequent editions we acknowledged that our initial statement had been rash. Psychologists (perhaps most of them) do care about history, as is apparent from numerous articles published in professional journals reviewing historical trends, the continuing publication of a journal devoted to the history of psychology, and special interest divisions of professional organizations, such as Division 26, Society for the History of Psychology, of the American Psychological Association (APA). We have also learned that there is some danger in proclaiming an event or a person a historic “first” or a “father,” because these proclamations may be challenged, usually with kindness but not always with good humor.

Psychology, like other disciplines, needs historical insights. It needs to understand whence it came in order to assess where it is going. A perusal of journals and books published at the turn of the 20th century, for example, may spark interest in a concept long forgotten or a predecessor whose theories and research deserve to be revisited. Yet delving into early works reminds us of false starts and the occasional damage they did, such as the work of Henry H. Goddard (1914) on feeblemindedness during the early 1900s and the self-promotion of Hugo Münsterberg. However, we have also learned that hindsight is imperfect; people are sometimes overlooked, and the historical discoveries may be incomplete. We thus approach this chapter once again with humility. To paraphrase the phrase that “journalism is the first rough draft of history,” we say here that this chapter is our fourth rough draft of the history of forensic psychology, with emphasis on its American origins.

In these early years of the 21st century, forensic psychology remains a young branch of applied psychology, having been recognized by the APA as a specialty in 2001 and recertified in 2008. Even before that, in 1991, Specialty Guidelines for
Forensic Psychologists (Committee on Ethical Guidelines for Forensic Psychologists [hereafter Committee], 1991) were adopted by the American Psychology–Law Society, which is Division 41 of the APA. These Guidelines were recently revised, renamed Specialty Guidelines for Forensic Psychology (APA, 2013), and accepted by the APA Council of Representatives. (The Specialty Guidelines are reprinted as the appendix to this volume with permission of the APA.) Interestingly, although forensic psychology was initially viewed as primarily clinical in nature—such as by providing assessments to the courts—its scope has broadened to encompass the practice of psychology as it provides expertise to the law in a very wide range of contexts (see APA, 2013; Committee, 1991).

This broad view of forensic psychology was not always supported. According to Ronald Roesch, for example (cited in Brigham, 1999, p. 279), “Most psychologists define the area more narrowly to refer to clinical psychologists who are engaged in clinical practice within the legal system.” A few years later, Brigham and Grisso (2003) modified this somewhat, noting “Many psychologists define forensic psychology more narrowly to refer to clinical psychologists who are engaged in clinical practice within the legal system. The distinction here is between psychologists who bring scientific information to the courts for their consideration in cases and psychologists who evaluate individuals and testify about them in reference to a legal question” (p. 392, emphasis added). In recognizing forensic psychology as a specialty in 2001, the APA itself adopted the narrow approach, to include “the primarily clinical aspects of forensic assessment, treatment, and consultation” (Otto & Heilbrun, 2002, p. 8). However, as noted, the Specialty Guidelines take a broader view.

In this chapter, forensic psychology is being viewed broadly. It is both (1) the research endeavor that examines aspects of human behavior directly related to the legal process (e.g., eyewitness memory and testimony, jury decision making, and criminal behavior) and (2) the professional practice of psychology within or in consultation with a legal system that encompasses both criminal and civil law and the numerous areas where they intersect. Therefore, the term forensic psychology refers broadly to the production of psychological knowledge and its application to the civil and criminal justice systems. It includes activities as varied as these: courtroom testimony, child custody evaluations, law enforcement candidate screening, treatment of offenders in correctional facilities, assessment of plaintiffs with disability claims, research and theory building in the area of criminal behavior, and the design and implementation of intervention and prevention programs for youthful offenders. A review of the table of contents of this Handbook indicates a similarly broad focus.

In the pages to follow, after an introductory section covering seminal contributions, we review developments in four major areas of forensic psychology: legal psychology, correctional psychology, police psychology, and criminal psychology. Readers will undoubtedly recognize that there is considerable overlap in these categories and in the subheadings. Correctional psychology, for example, presupposes some understanding of criminal psychology. Assessment, which we cover under legal psychology, is an essential tool of the trade for psychologists, and it
underlies all practice. Nonetheless, for purposes of identifying historical trends and landmarks, discussion of these four distinctive areas is warranted.

We focus on forensic psychology rather than forensic psychiatry, which has its own well-documented and rich history, probably centered on the early work of Isaac Ray, who is considered by some the father of forensic psychiatry (Brigham & Grisso, 2003). We also do not delve into the origins of the sociology of law, referred to as sociological jurisprudence, or the legal realism movement within the law itself. This movement, born during the first third of the 20th century, advocated a partnership between the law and the social sciences (Ogloff, Tomkins, & Bersoff, 1996).

In addition, we emphasize the work of forensic psychologists in the United States and, to a lesser extent, Canada, although we give due recognition to the work of European psychologists, who dominated the field prior to World War I. We review the achievements of psychologists from the end of the 19th century and extend our discussion into the 1970s, when forensic psychology came of age (Loh, 1981). The reader interested in more detail about the issues and individuals discussed might check landmark summaries of psychology and law published by Whipple (1909, 1910, 1911, 1912, 1913, 1914, 1915, 1917), Hutchins and Slesinger (1929), Louisell (1955, 1957), Tapp (1976), Loh (1981), and Monahan and Loftus (1982). More recently, Brigham and Grisso (2003) and Mülberger (2009) have published historical pieces on this topic, the latter with a strong emphasis on German influences. On the whole, however, developments from the 1980s forward are addressed in the works of other contributors to this Handbook.

LEGAL PSYCHOLOGY

Legal psychology refers to psychological theory, research, and practice directly pertinent to the law and legal issues. It focuses on psycholegal research and contacts with judges, lawyers, and other law-related professionals in a wide range of contexts. The origins of legal psychology can be traced to the work of experimental psychologists in Europe in the 19th century, particularly in relation to the psychology of testimony (Mülberger, 2009; Sporer, 1982, 2008) and most particularly to the testimony of children, whose memory of events was considered unreliable (Lipmann, 1911). We discuss this work shortly.

U.S. ORIGINS

Do chestnut or oak trees lose their leaves earlier in autumn? Do horses in the field stand with head or tail to the wind? In which direction do the seeds of an apple point? What was the weather one week ago today?

When J. McKeen Cattell posed these questions to 56 college students at Columbia University in March 1893, he was probably conducting one of the first American

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1. We are grateful to Dr. Craig Bennell, Department of Psychology, Carleton University, for recommending additional readings on the history of forensic psychology in Canada.
studies, albeit an informal one, on the psychology of testimony. The questions he asked his students were similar to those that “might naturally be asked in a court of justice” (Cattell, 1895, p. 761). His subjects were allowed 30 seconds to consider their answers, then told to write their responses and indicate their degree of confidence in each answer.

When Cattell conducted his informal and preliminary study, it was reasonably well established that eyewitness accounts of events were unreliable and incomplete. As we will see shortly, both French and German psychologists were familiar with the powerful influence of suggestion over sensation and perception, having conducted substantial research in these areas. The specific conditions under which testimony was inaccurate were not known, however. Cattell (1895) noted: “An unscrupulous attorney can discredit the statements of a truthful witness by cunningly selected questions. The jury, or at least the judge, should know how far errors in recollection are normal and how they vary under different conditions” (p. 761). But Cattell himself was surprised at both the degree of inaccuracy he uncovered and the wide range of individual differences in the levels of confidence expressed by the students. Answers to the weather question, for example, were “equally distributed over all kinds of weather which are possible at the beginning of March” (p. 761). Some students were nearly always sure they were correct, even when they were not, while others were consistently uncertain and hesitant in their answers, even when they were correct.

Cattell’s study probably was the genesis of modern forensic psychology in the United States, because it sparked the interest of other researchers in the psychology of testimony, which remains to this day a dominant research interest among legal psychologists. Joseph Jastrow immediately replicated Cattell’s “experiment” at the University of Wisconsin and obtained similar results (Bolton, 1896). Aside from this brief flirtation, however, American psychologists did not immediately embrace the study of legal issues. Psychologists in Europe seemed more intrigued—they had long been interested in the psychological concepts involved. First, Alfred Binet (1900) replicated Cattell’s project in France. In addition, he summarized relevant experiments on the psychology of testimony that were being conducted in Europe, and he eventually called for a “science psycho-judiciaire” (Binet, 1905; Binet & Clarparedé, 1906).

**European Origins**

Most significant for the historical development of forensic psychology was the apparent fascination Cattell’s experiment and Binet’s work held for (Louis) William Stern (1902, 1910, 1939), who had received his doctorate in psychology at the University of Berlin under the tutelage of Hermann Ebbinghaus. In 1901, Stern collaborated with the criminologist F. v. Liszt in an attempt to lend realism to the Cattell design. Stern and Liszt conducted a “reality experiment” in a law class, staging a bogus quarrel between two students over a scientific controversy.
As Stern later recounted it, the argument accelerated until one student drew a revolver (Stern, 1939). At this point, the professor intervened and asked for written and oral reports from the class about aspects of the dispute. Although the witnesses were law students who, Stern asserted, should have known the pitfalls of testifying, none could give a faultless report. The number of errors per individual ranged from 4 to 12. Moreover, the researchers found that inaccuracies increased with respect to the second half of the scenario, when excitement and tension were at their peak. They concluded—tentatively—that “affective reactions inhibit exact observation and reliable remembrance” (Stern, 1939, p. 11).

By his own account, Stern (1939) was more interested in basic research than its application. “Indeed, when I began in 1901 to examine the correctness of recollection among my students, I was determined by theoretical interests in the realm of memory rather than by any practical considerations. Yet once confronted with the results, I realized the importance of this research beyond the borders of mere academic psychology” (p. 4).

Throughout that first decade of the 20th century, Stern was an active researcher in the psychology of testimony. He also helped establish and edited the first journal on the psychology of testimony, *Beträge zur Psychologie der Aussage* (*Contributions to the Psychology of Testimony*), which was published in Leipzig. The journal was superseded in 1907 by the much broader *Zeitschrift für Angewandte Psychologie* (*Journal of Applied Psychology*), edited by Stern and his colleague Otto Lipmann. In a cautionary note about his research, Stern stressed that most witnesses did not intentionally falsify their reports. Rather, the subtle and common problem created was one of unintentional falsification: “Subjective sincerity does not guarantee objective truthfulness,” he wrote (1939, p. 13). In his research, Stern concluded among other things that: (1) leading and suggestive questions contaminate the accuracy of eyewitness accounts of critical events; (2) there are important differences between adult and child witnesses; (3) lineups are of limited value when the members are not matched for age and physical appearance; and (4) interceding events between an initial event and its recall can have drastic effects on memory. Therefore, modern forensic psychology began as legal psychology with empirical research on the psychology of testimony.

During these early years, European psychologists interacted much more regularly with the law than their American counterparts did. Despite the fact that Stern and Binet, for example, did not initially intend that their research on suggestibility and reliability of observation be applied to the law, they eventually did recommend such an application. Thus European, particularly German, psychologists conducted experimental research, lectured, and consulted with jurists, particularly in the latter half of the 19th century and into the 20th (Müllerberg, 2009; Sporer, 1982).

*Courtroom Testimony.* Pinpointing the origins of courtroom testimony by psychologists in Europe is not easy. Sources differ, often depending on the nature of the forum (e.g., civil versus criminal court, preliminary hearing versus trial) or its
context (informal conversation with a judge versus formal testimony). Hale (1980) suggests that the earliest testimony by a psychologist in a criminal court occurred in 1896, when Albert von Schrenck-Notzing testified at the trial of a Munich man accused of murdering three women. The murders had received extensive and sensational press coverage in the months prior to the trial, and Schrenck-Notzing (1897) opined that this pretrial publicity, through a process of suggestion, probably led numerous witnesses to retroactive memory-falsification. Witnesses could not distinguish between what they had seen and what the press reported had happened. Schrenck-Notzing supported this opinion with social framework testimony (Mohan & Walker, 1988) in the form of accounts of laboratory research on memory and suggestibility. Although the accused was convicted on the basis of solid evidence, Schrenck-Notzing’s direct application of the psychology of suggestion to court processes helped stimulate the interest of both German jurists and psychologists (Hale, 1980).

However, Karl Marbe, a psychology professor at the University of Wurzburg, credited himself with the first court appearance, 15 years later. “The first German psychological legal expert opinion was my testimony in a case of sexual assault in Wurzburg in 1911, in which I had to discuss the question of the testimony of children” (Marbe, 1936, p. 184). In that case, several German adolescent girls had accused their teacher of sexually molesting them. Marbe persuaded the jury that the girls’ statements were unreliable, and the teacher was exonerated.

Also in 1911, several psychologists testified in a Belgian murder trial in which a man was accused of raping and killing a 9-year-old girl. Two of the child’s playmates had apparently seen the murderer but gave inconsistent and contradictory accounts. Among the psychologists retained by the defense was Julian Varendonck, who designed a series of experiments based on questions suggested by information obtained at the preliminary hearing. Varendonck’s subjects were children of approximately the same age as the two witnesses (8 to 10). He found that they were inaccurate in their recall of important events. Over the objection of the prosecution, he was allowed to present the results of these experiments as well as the general research on the psychology of testimony that was available at that time. Whipple (1912) wrote that Varendonck’s testimony “elicited violent outbursts from the court authorities, but it reached the jury and induced a verdict of ‘not guilty’” (p. 268), Whipple added that the psychology of testimony had “found its way formally into the court room and saved a man’s life.” The jury found the defendant not guilty.

Varendonck, it should be noted, was vehemently opposed to any use of child witnesses in the courtroom. In contrast, both Binet (1900) and Stern (1939) believed that errors in recollection, whether by children or adults, were more a reflection of leading, suggestive courtroom questioning than of any “natural” tendency to distort reality.

In 1912, Marbe became one of the earliest European psychologists to testify at a civil trial, offering expert opinion on the psychological issue of reaction times as applied to a train wreck near Müllheim. Marbe was asked to testify as to the probable
effect of alcohol both on the mental status of the engineer and the reaction time of
the fireman and guard applying the brakes. Based on reaction time experiments,
Marbe testified that the train could not have been stopped in time to avert a disaster.
As he did in the criminal case, Marbe appears to take credit for paving the way for
other psychologists: “Since that time, through my agency and that of others, a mass
of psychological expert testimony has been submitted, bearing continually upon
new circumstances” (Marbe, 1936, p. 184).
Although Mülberger (2009) wrote that other psychologists were testifying in civil
courts even before Marbe’s time, it is difficult to find written documentation of who
they might have been. Marbe, along with Stern, has been credited with developing
forensic psychology in Germany (Sprung & Sprung, 2001). In essence, it is not
difficult to find illustrations of psychologists who had impact on the nascent field
of legal psychology, but ranking their contributions chronologically must be done
with caution.

European psychologists at the turn of the 20th century and until World War I
also were delving into the area of guilt deception, the precursor of the lie detection
doctor of today. In 1904, psychologists in Germany, Austria, and Switzerland were busy
developing a lie detection test for use in criminal investigations. The test was a
word association/reaction time task in which key words were embedded in a list of
innocuous words. Presumably, the slower the reaction time in recognizing the key
words, the more likely the respondent was trying to deceive. Barland (1988), who has
reviewed this history in impressive detail, notes that this approach did not catch on
because it was inefficient, time consuming, and often yielded inconclusive results.

DEVELOPMENTS IN THE UNITED STATES

At the turn of the 20th century, American psychologists remained comparatively
uninterested in applying research on topics related to law. One reason was that they
were just beginning to explore the broad psychological landscape and had little
inclination to specialize in law-related matters. This reticence was probably also
due to the influence of Wilhelm Wundt, who had trained many of the American
pioneers in his Leipzig laboratory (Cattell being the first). Wundt, a philosopher
and an experimentalist, was wary of applying psychology until sufficient research
had been conducted. He believed that the premature use of partial information
could be disastrous. His students often took this caveat quite seriously, although
some, like Cattell, eventually began to link the laboratory to the world outside.

One of Wundt’s not-so-cautious students was the German psychologist Hugo
Münsterberg, who arrived in the United States in 1892 at the invitation of William
James to direct the psychology laboratory at Harvard University. Münsterberg
spent 24 years trying to persuade the public that psychology had something to offer
virtually every area of human endeavor. Now acknowledged by many as the father
of applied psychology, he believed psychological knowledge could be applied to
education, industry, advertising, music, art, and, of course, law. His claims were
often exaggerated, however, and his proposals were rarely empirically based. He usually published in popular magazines rather than in scholarly journals (some of his colleagues called his a “Sunday-supplement psychology”). He also incessantly promoted himself and his native Germany, a practice that alienated him increasingly from his colleagues and the public as World War I approached. In fact, his ardent pro-German stance may have had as much to do with the public’s antipathy toward him as his abrasive personality.

Not surprisingly, the legal community vehemently resisted his intrusion into its territory (Hale, 1980), and there was much ado about this. Charles C. Moore (1907), a well-known attorney, referred to Münsterberg’s work as “yellow psychology” (a term that mirrored the sensational, often inaccurate yellow journalism of that era) and concluded that it provided nothing new or helpful to the court. Most noteworthy, the great legal commentator John Henry Wigmore (1909) found it necessary to assail Münsterberg in a satirical and devastating law review article. Wigmore’s attack was prompted by the publication of Münsterberg’s (1908) controversial best-seller *On the Witness Stand*, in which he proclaimed that the time was ripe to apply psychology to the practical needs of the legal system. The book—which was essentially a compilation of already published columns—dealt with a wide spectrum of topics, ranging from witness accuracy and jury persuasion to hypnosis and lie detection.

In 1914, Münsterberg published a study on group decision making, using Harvard and Radcliffe students as subjects, which he titled “The Mind of the Juryman.” In a conclusion not atypical of the times, he stated that “the psychologist has every reason to be satisfied with the jury system as long as the women are kept out of it” (p. 202). He based his conclusion on a finding that the female students in his study were less accurate in their final decisions than the male students. Interestingly, as will be noted shortly, one of his own students later arrived at a very different conclusion.

Münsterberg, always willing to give speeches, gave his inaugural lecture at Radcliffe College in 1894 and his last at the same location in 1916, when he suddenly died of a heart attack midsentence while lecturing his general psychology class (Landy, 1992). Landy wrote that “at the time of his death… Münsterberg was an object of public scorn and was well on the way to professional ostracism. By 1919, less than 3 years after his death, there was hardly any reference to any of his more than 10 books and dozens of articles in basic and applied psychology” (p. 787). Benjamin (2003) noted that Münsterberg “was one of the most despised individuals in America” (p. 734). Interestingly, in a recent article, Sporer (2008) correctly pointed out that much valuable information about early contributions of other individuals in legal psychology has been lost because of excessive focus on Münsterberg.

In similar fashion, Bornstein and Penrod (2008) sought to resurrect the long-ignored work of George Frederick Arnold, a civil servant in the British Empire who published *Psychology Applied to Legal Evidence and Other Constructions of Law* in 1906, 2 years before Münsterberg’s *On the Witness Stand*. Bornstein and Penrod admirably compared the value of these respective texts, noting that Arnold, even though he
was not an academician, displayed an impressive familiarity with the psychological literature of the day. They noted also that his style was dry and “reads like the serious academic tome that it is” (p. 763), whereas Münsterberg’s style was directed at a general, less serious audience. Bornstein and Penrod are to be commended for bringing attention to this obscure work, but the fact remains that Arnold’s overall contributions were not as far reaching as those of Münsterberg.

Münsterberg has been accused of being more an opportunist than a trailblazer, however (Kuna, 1978). It is tempting to blame his brashness, his apparently despicable demeanor, and his pro-German views for the tenuous and occasionally hostile initial relationship between psychology and law. Nonetheless, he undeniably pushed his reluctant American colleagues into the practical legal arena and made a seminal contribution to applied psychology in general and forensic psychology in particular.

World War I placed in abeyance most of the exploration in applying psychology to law, although the war and early postwar years saw a few landmarks in American forensic psychology, including the gradual acceptance of psychologists as expert witnesses. The first psychologists, along with other social scientists, were also appointed to law school faculties during these years.

Psychologist Donald Slesinger, a protégé of Robert M. Hutchins, made his mark during the years immediately following World War I. Although he had no formal legal training, Slesinger was appointed by Acting Dean Hutchins as a one-year Sterling Fellow to the Yale Law School in 1927. The following year, he became a research assistant. In 1929, he was appointed associate professor, teaching a course in the psychology of evidence, which appears to qualify him as the first psychologist granted faculty status in an American law school. In 1930, Slesinger followed Hutchins to the University of Chicago, where he served as professor of law and, briefly, as dean of the law school.

Several years earlier, psychologist William Marston had been the first to receive a faculty appointment as professor of legal psychology when he joined the faculty at American University in 1922. Marston was by far the most influential psychologist associated with the legal system during this era. He was a student of Münsterberg but did not have his mentor’s penchant for alienating the legal community and much of the American public. He received a law degree in 1918 and a PhD in Psychology in 1921, both from Harvard. Marston’s interests were multifaceted. (He was even the originator, cartoonist, and producer of the successful comic strip *Wonder Woman*, under the pen name Charles Moulton.) Although admitted to the Massachusetts bar, Marston soon gave up his law practice to concentrate on psychology.

As a laboratory assistant in psychology at Radcliffe College, Marston (1917) had discovered a significant positive correlation between systolic blood pressure and lying, which became the basis of the modern polygraph. In fact, Marston was the psychologist who testified in the landmark case *Frye v. U.S.* (1923), the case that set the original standard for the acceptance of expert testimony in federal courts.
Although his continuing work in lie detection (Marston, 1920, 1921, 1925) represents one of his major contributions to the forensic area, it was by no means the only one. He frequently consulted with attorneys, police, and other criminal justice personnel, and his evidence was determinative in the acquittals of several defendants accused of murder. It is likely, therefore, that Marston—along with Lewis Terman and psychologists associated with the New York City Psychopathic Clinic (both to be discussed later in the chapter)—qualifies as one of the first psychological consultants to the criminal justice system in the United States.

Marston also conducted the first serious research on the jury system (Winick, 1961). Using subjects in simulated jury conditions, he found in a series of studies (Marston, 1924) that written evidence was superior to oral evidence; free narration, though less complete, was more accurate than cross-examination or direct questioning; a witness’s caution in answering was a good indicator of accuracy; and female jurors considered evidence more carefully than male jurors (compare with Münsterberg’s conclusions about female jurors, mentioned earlier). Because of his legal background and his cautious style, Marston’s ideas and research were more acceptable to the legal community than Münsterberg’s had been, although there is little evidence that the legal system put his findings to extensive use. This is not surprising because some of his recommendations (e.g., free recall rather than directed questions and cross-examinations) were inapposite to the adversarial process in the United States, and others would have required fundamental changes in court procedures. Interestingly, the German psychologist Stern, discussed earlier, had cautioned his colleagues that experimental research in psychology might be of more relevance to the inquisitorial process used in European courts, where a neutral jurist asked questions of witnesses, than to the adversarial process in the United States (Stern, 1939).

Also during this time period, various reviewers took on the task of documenting the progress of legal psychology. Hutchins and Slesinger, for example, coauthored numerous summary articles on its status (1927, 1928a, 1928b, 1928c, 1929). Slesinger wrote another article with Marion Pilpel in 1929, surveying 48 articles written by psychologists on issues relating to the law that had appeared in professional journals up to that time. Eleven were concerned with the psychology of testimony, 10 with deception, 7 with intelligence and crime, and 6 with criminal behavior. The remainder focused on general topics such as the scientific method or legal research. Fifteen of the 48 articles had been written by German psychologists.

Like applied psychology in general, legal psychology was somewhat dormant between the two world wars and did not regain its energy until the late 1940s and 1950s. In addition to Marston’s work, the period did see scattered research on how juries formed opinions and verdicts (Weld & Danzig, 1940; Weld & Roff, 1938), a master’s thesis on the relationship between narrative and interrogative methods of questioning (Cady, 1924), another study on questioning and testimony (Snee & Lush, 1941), and a survey of legal and psychological opinions about the validity of some of Wigmore’s rules of evidence (Britt, 1940).