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Forensic Psychology 101

Linda Gomberg, JD, PhD

SPRINGER PUBLISHING COMPANY
This book is dedicated to my family: My husband, children, grandchildren, and the babies. I am blessed that there are too many of you to name, but you are what it’s all about and . . .
I love you more . . .

Many months pass between the submission of a manuscript and its publication. During this time our oldest daughter lost her brave fight with cancer. This book, then, is also dedicated to the memory of our amazing and beautiful Dorinne.
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Recently, I met with the president of a college where I was trying to establish a collaborative partnership. I always begin my instruction with an explanation of the locations of our campuses primarily because our flagship campus is located in Chicago; however, we have campuses in other locations such as those in Southern California, where we are. I then proceed to discuss the various programs and the types of degrees offered. I elaborated on the various direct and nondirect services our graduate psychology programs could offer, and the president was genuinely engaged. I talked about our Clinical Forensic Psychology program, the faculty in our department, the curriculum, and other academic and logistical aspects. I should add that this president's undergraduate degree concentration was psychology, and while her PhD emphasis was student development, her master's degree had a dual focus on counseling and student development; given her background, I knew she was familiar with the clinical and nonclinical aspects of the field of psychology. Although I knew she had an understanding of the field and that my explanation of our program offerings held her attention, I anticipated the question that is always asked, and then it came: What exactly is forensic psychology?

I recall my first encounter with Linda at a MMPI-2 training intensive during our graduate studies. Based on our outward appearances, most would probably wonder why we gravitated to each other. We are different in many ways with regard to basic demographics such as race, ethnicity, and age, probably the most notable statistic:
Linda takes great pleasure in reminding me that she is old enough to be my mother, and at times has acted as such. However, I believe that what transcends those differences is our mutual curiosity about how systems and theories are driven by our analytical approach. We are also rarely satisfied with the short answers about why things are the way they are, mostly because we believe in the Socratic philosophy of questioning. We are not easily impressed by experts, having seen our fair share of people calling themselves that or being designated as such, only to learn the irreparable damage those experts have caused. We are highly critical—but if you pass our litmus tests, then we will fully support the theory, idea, or position. As we engaged our facilitator and our colleagues during the training, I came to admire and appreciate Linda’s contribution to the discussion from the lawyer’s perspective, and I would like to think that she appreciated my perspective as well. I knew then that we would have many more conversations about the law and psychology. What I had not expected was how I began widening my viewpoint of psychology to include a more substantive understanding of pertinent legal aspects. In fact, at the time I had not realized that much of what I was doing for myself as a mental health professional, for my clients while acting at times as their advocate, and for the profession of psychology was firmly rooted in and shaped by the law. One of the benefits of having Linda in my life was getting the legal perspective and knowledge without having to attend law school.

My graduate studies focused on clinical psychology; however, I worked with a number of forensic populations before, during, and after my doctoral program. Due to my experiences in forensic settings, I believe that all clinicians would benefit from knowing about what forensic psychology is. In fact, while forensic psychology is not a new area of focus, with the Specialty Guidelines for Forensic Psychology having been developed and published by the American Psychological Association (APA) in 1991, the APA recognized it as an official specialty only in 2001, with subsequent recertification occurring in 2008. One of the primary challenges with the guidelines is that the goals set forth are “aspirational” and, therefore, differ from standards, which are mandatory. With this in mind, there is probably great variability in the depth and breadth of training and practical application of forensic psychology. I have great confidence in
our profession and am equally confident that excellent resources are readily available, because I have attended trainings and own forensic resources. Nevertheless, I have yet to find a singular forensic resource created by a lawyer with a psychologically informed perspective. Forensic Psychology 101 is a resource that is essential reading for those new to the area as well as for seasoned professionals.

I know that one of Linda’s dreams was to write a book, and I was thrilled when she told me the circumstances that led to her dream becoming a reality. I believe that Linda’s scholarly contribution to the field will be a great benefit. When Linda approached me about contributing to her book, I was honored and eagerly accepted. It is my hope that as you read this book, your knowledge of forensic psychology will increase and that you will appreciate the intersection of law and psychology as much as I have come to appreciate the intersection of the lawyer and the psychologist who formed an unlikely friendship, which remains to this day.

Loren M. Hill, PhD
Department Chair
Director of the Forensic Training Institute
Clinical Forensic Psychology Department
The Chicago School of Professional Psychology
Southern California
Preface

THE GOAL AND THE AUDIENCE

Forensic Psychology 101 is for students who want to know more about the law, students who want to know more about a psychology sub-specialty, and anyone who just wants to know more. The goal is to take the reader on his or her own learning experience, to create an environment of inquiry. The goal is not to answer questions; it is to create them.

When I first began writing this book, I intended for it to be an overview (after all, it is 101) of the topic at hand: forensic psychology. It was to be the book I wished my master’s- and doctoral-level students had read prior to enrolling in a forensic psychology graduate program, the book that would provide a firm foundation on which they could build their knowledge during the years to come. It could also be the book I handed to friends and acquaintances who asked me to explain forensic psychology to them.

THE BACKGROUND

I expected to cover the breadth of the topic with little or no depth—that would and could come later for those who actually did enroll in
a graduate program. For those who just wanted to learn what forensic psychology was all about, this book would be enough, or maybe it would whet their appetite to learn more. Initially, I made the mistake of doing what I cautioned first my law students and later my forensic psychology students never to do: I assumed, presumed, and predicted. I assumed I could glide through the chapters addressing the major topics in forensic psychology and plug in the references as required. After all, I write and teach my school’s introductory course. I presumed I knew everything there was to know about the major topics that would be covered. I have books filled with notes and PowerPoint presentations that I created for my students as well as other presentations on social media, social psychology, and sex offenders. Finally, I predicted the writing would be easy. I enjoy writing, taught English, and actually have a master’s degree in the subject.

But as I began the process and found myself checking and rechecking laws, cases, and the current state of psychological theory on almost every topic I decided to write about, I became so engrossed in what I was learning that the actual writing had to wait while the notes piled up. State laws changed in January; the United States (U.S.) Supreme Court handed down decisions in June. Many of us continued to wait for a new Diagnostic and Statistical Manual of Mental Disorders (DSM) to be published. From the time DSM-5 was published in 2013, “everyone” was sure the fifth version would soon be replaced by a 5.1. Of course, we are still waiting. I was accumulating a great amount of information and soon realized that the topic of forensic psychology is so broad and deep that there would always be something else to learn.

One of the first things I learned is that titles matter. In some states, including mine, calling oneself a psychologist when unlicensed is misleading and prohibited. Therefore, unlike some of the psychologists I interviewed, I cannot call myself a forensic psychologist—at least in my state. Although I am licensed to practice law and have a PhD in psychology that makes me license eligible, I have never logged the requirements to sit for the exam.

The next thing I learned, however, is that there are many ways to “practice” forensic psychology, and I have a dream job that allows me to do just that. I am a teacher of forensic psychology who is constantly fascinated by and learning more about the intersection of law and psychology and wondering how we were ever able to distinguish
the two. I am a researcher who, with my students, is constantly finding new constructs that lend themselves to law and psychology. Although I started by studying privacy through the lenses of psychology and the law, together my students and I have researched the legal and psychological aspects of empathy, false confessions, confidence, child custody, and all forms of deception detection in various contexts and through the perspectives of law enforcement, juries, witnesses, and the lay public. The possibilities are endless, and forensic psychology students are curious and creative.

So what this book became is my learning experience. There are no limits to the possibilities of subtopics in forensic psychology, and studying one topic gives rise to wanting to know more about a topic raised within that interest area—and so on. There are questions everywhere, and the answers invariably raise more questions, and that is what forensic psychology is really about.

The book is divided into three parts. Part I gives an overview and describes the origins of forensic psychology. Chapter 1 is a history lesson of sorts in that the roots of psychology and the law are explored individually and in their coming together. One of the more well-known cases, *The Queen v. McNaughton* (1843), set the scene for the origins of forensic psychology some time before psychologists started thinking about the value of psychology in the courts. In reality, it is one of the few times that the law was actually ahead of psychology. Chapter 2 builds on this foundation by examining the origins of our legal system, the United States Constitution and the ways that its provisions have been utilized by the three branches of government, particularly by the courts. Beginning with Chapter 3, the last chapter in Part I, the chapters each describe one aspect of forensic psychology. Chapter 3 brings the first two chapters together by describing how two major constructs, context and perception, are integral to understanding both disciplines.

The four chapters of Part II specifically address the role of forensic psychology in the courts by beginning with the topics that seem to be of the utmost interest to readers and students: criminal matters
and ethical issues. Chapter 4 includes various types of crimes, pleas, and punishment relevant to forensic psychology issues and practice. Many of these types of cases eventually get to the U.S. Supreme Court and provide not only endless publicity for the parties and attorneys, but also opportunities for forensic psychologists who participate in the courts in these criminal matters in various capacities. Chapter 5 parallels the information given in Chapter 4 with a discussion of civil matters, including the roles of witness testimony (both expert and eye) and jury selection. A nationally recognized expert is profiled in Chapter 5. Forensic psychologists’ roles in family court are varied and are the subject of Chapter 6. Such topics as “psychological autopsies,” suicide prevention, and the forensic psychologist’s role in the complex matters presented by our changing society and family systems are also addressed. Part II concludes with Chapter 7 and the forensic psychologist’s role in the juvenile justice system. Although there are always some overlaps and some omissions, each of the chapters in Part II identifies specific roles for the forensic psychologist within the legal context of the chapter and conjectures about what that role might have been in each of the illustrative cases.

Finally, Part III clarifies and expands on the roles of the forensic psychologist and attorney in court proceedings. Chapter 8 provides an outline of the similarities and differences between the professions, and also distinguishes the role of the clinical or therapist psychologist. Chapter 9, as the final chapter in this book, appropriately addresses the growing future of forensic psychology. Areas that are not necessarily court based, but are certainly areas of interest and work for the forensic psychologist, are introduced. The final chapter completes the circle that was the objective of this book: By the time it is read, there should be little doubt as to what forensic psychology is and which roles the forensic psychologist can have that distinguish her or him from all other mental health professionals.

Each chapter begins with an overview and an explanation of how forensic psychology is a function of that topic. An important part of each chapter is the relevant case or sometimes cases that explain the chapter topics. The cases are presented as “briefs” so that the important facts, issues, and holdings are readily noted.

The most effective method of explaining how forensic psychology works would be to hear about it from a forensic psychologist.
The “Focus on Careers” sections begin with Chapter 3 and continue through Chapter 7. At least one forensic psychologist actively working in that particular area is profiled in each of the chapters. Chapter 8 changes the perspective, however, and introduces two working attorneys whose practices have always included the input of forensic psychologists.

Beginning with Chapter 2 and continuing throughout each chapter, an “In the News” section is featured. Newspapers, technological media, and other news sources are filled with examples of the need for forensic psychology and forensic psychologists. The chapters all conclude with a Summary and Discussion Questions. They are questions that have no right or wrong answers—questions I would love to hear responses to, questions I wish I could discuss.

So, please join me in learning the basics, meeting the professionals, and entering the world of a very special profession. You will find there is something for everyone, and always something more to explore!
First and foremost, I want to acknowledge the only person who read every single chapter of this book as I wrote and rewrote it. While he certainly bears no responsibility for whatever may not work in these pages, he deserves accolades for patience in reading, suggesting, and honesty. So, to my husband, Raymond Gomberg, MD: Thank you!

This book would never have been written if not for Jerri Lynn Hogg, PhD, and Loren M. Hill, PhD. Jerri Lynn has been a one-person cheering section, encouraging my writing and professional activities since we were students, when she became my professor, and as colleagues who are a very close 3,000 miles apart. If not for her, I would not have met Debra Riegert of Springer, who deserves not only acknowledgment, but also a major thank you for her encouragement, enthusiasm, and focus on what this book should be. Was it luck that Jerri Lynn and I happened to “stop by” at the Springer table after presenting at APA in Denver in 2016? If so, I am happy to acknowledge my very good fortune in having the right friend and colleague and the right editor.

It is similar to the good fortune I experienced when I met Loren Hill during my first year of graduate school. She was transitioning from law enforcement to psychology to teaching, and I was transitioning from teaching and law practice to psychology. How many years later was it when Loren said: Have I got a job for you! If not for Loren Hill, I would not have my dream job teaching in a Forensic Psychology Graduate program for The Chicago School of Professional Psychology. She was and is my friend, my colleague,
and now the chair of my department. If my dream job had not materialized, this book certainly would never have been written.

If not for Loren Hill, I also would not have known several of the busy professionals who were kind enough to be interviewed for this book. I am honored to call Drs. Jim Earnest, Jay Finkelstein, Clive Kennedy, Sammie Williams, and Adam Yerke my colleagues. They are all experts, and their stories could each fill a book. Dr. Trisha Elloyan and Michael Fisher were both my students, many years apart and in two different professional schools. Trisha was my student in the Clinical Forensic PsyD program at The Chicago School of Professional Psychology, and Michael preceded her by more than two decades when he was my law student at Western State University College of Law. I have learned so much from both of them. I have also learned a lot from the other attorney whom I interviewed for this book: Stephan DeSales not only fascinates with his stories of his varied criminal cases, he also provided me with an idea for a whole section of this book, leading me to look into cases and psycholegal defenses I may not have thought of without the suggestion. Finally, thank you to Stuart Hochwert for time and expertise in guiding me through the initial process. How fortunate I am that my children have such accomplished friends.

To all of those people and to my students past, present, and future, you are my idea people, and I am most appreciative.
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OVERVIEW

Whether we make our living in clinical practice, academia, research, or a combination of these fields, as psychology professionals we tend to label, sort, categorize, and define. For clinicians, this may be the best path to take to arrive at a diagnosis and/or course of treatment, which usually requires matching symptoms to criteria listed in the latest edition of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* of the American Psychiatric Association, the “bible” universally used by mental health clinicians regardless of theoretical orientation, degree level, or theoretical approach. For the practitioner, the *DSM* has already provided the sorting and categorizing. For academics, who search for how best to explain a construct to students, while being mindful of what has worked in the past and what needs updating and revision for today’s students, the sorting, labeling, and awareness of changing definitions are
ever-present concerns. For pure researchers, the task might be the testing process through which a new probability is created; researchers need to establish parameters by explaining their methods, operationalizing terminology, and finally sorting and categorizing their findings (Popper, 2002). Rarely, however, in discussions about psychology (or within courses with "psychology" in their titles) is the discipline mentioned without a preceding adjective. To name just a very few examples, those modifiers provide us with social psychology, cognitive psychology, experimental psychology, developmental psychology, abnormal psychology, media psychology, and even general psychology (American Psychological Association [APA], n.d.). The APA encourages this labeling and categorizing by dividing itself into 54 individually named divisions. Although members can and do belong to more than one division, their choices most often are determined by their interests, experience, and education. In fact, speaking just for myself, I belong to Divisions 41 and 46 of the APA. I belong to the former, officially named the American Psychology-Law Society, for several reasons: I teach in a graduate-level forensic psychology program; I am an attorney with a juris doctor degree and have a PhD in psychology, and my professional, academic, and research interests all seem to have a connection to the nexus of psychology and the law. I joined and am active in Division 46, the Society for Media Psychology and Technology, because my PhD in psychology was earned with an emphasis in media. Further, the dual memberships speak to my overlapping professional/academic interests. This area is forensic psychology—a subset of social psychology that combines the understanding of law and the study of human behavior. In my case, forensic psychology was the natural evolution of my professional interests. Whatever your reasons, I hope you find your place in the profession as well.

Of course, we all know labels are not all that unusual in any profession. Medical doctors divide their interests into specialties; lawyers specialize and join bar association divisions that best describe their area of civil or criminal practice; school teachers are equipped to teach certain grades and/or subjects. For these and other professions, however, the specialty is often self-explanatory and evident in their one-word titles: Pediatricians treat children, cardiologists treat hearts, neurologists treat brains and spinal
cords, and so forth. Does anyone need an explanation when told she is talking to a criminal defense attorney or a family law attorney? These professions and their specialties are self-defining.

This is not the case when first meeting a psychologist. An individual who introduces himself as a social psychologist, for example, may be a person who has completed a program with an emphasis in social psychology teaching in a media psychology program. It is the interaction and/or influence of media on behavior that leads to this classification (APA, n.d.; Ferguson, 2016). Even then, two types of media psychologists are recognized; in fact, media psychology continues to be thought of as both psychology dispensed from the media and psychology about the media and its influence. Dr. Phil McGraw (2017), a well-known television personality, is probably the most recent example of the former, and many of the books and articles published at least from the beginning of this 21st century through the present represent a plethora of writings from the latter. Clinical psychologists often define themselves through the therapy they use or the individuals they treat: Cognitive-behavioral therapy, psychodynamic therapy, and family systems therapy are just a few of the more well-known forms. Mental health professionals may even have their titles defined for them; in some states the law influences psychology by dictating which mental health professionals are allowed to call themselves psychologists (e.g., Clinical Psychologists Licensing Act, 2015; Psychology Licensing Law, 2003).

DEFINING FORENSIC PSYCHOLOGY

And that last point brings us to the topic of this book: forensic psychology. What’s in the name? The simplest definition is probably the least often offered one: Forensic psychology is psychology practiced and/or studied for any legal purpose. It is the study of psychology for, about, and within the law. Media influence seems to have impacted the discipline by narrowing or even misleading general understanding of this field; the psychology part seems to have been omitted. Students and others who are new to the study frequently say they are interested in the “criminal mind,” want to become
profilers or “expert witnesses,” (the criminal mind part), and/or are fascinated with DNA, fingerprinting, and the various other forms of evidence and evidence collection portrayed on television. As a professor and frequent applicant interviewer in a forensic psychology graduate program, I have found that much of my time is spent not only explaining what I do, but also explaining what I (and forensic psychology) do not do.

As for the group that thinks forensic psychology pertains only to the criminal justice system, I try to broaden the understanding of the various other areas of forensic psychology that are so much a part of the field: civil law, family law, and juvenile justice. New students may lack knowledge of the definition of “forensic” and have most likely not yet formulated what it means to be a psychologist. Media, represented most frequently these days by fictional television programming, get the blame for the lack of understanding of the actual roles of DNA, fingerprinting, and other tangible evidence used in law enforcement and the criminal justice system. These laboratory items have nothing to do with the world of psychology—they are evidentiary items produced by the research and investigation of the methods of the physical sciences or what is sometimes referred to as “hard science.” Yes, sadly, psychology continues to be referred to as a “soft science” among much of the lay public and certainly among some of those who consider themselves to be “hard” scientists. The more accurate terminology for psychology is “social science,” and the fact is that forensic psychology, in particular, is evidence based and rests on a strong scientific foundation (APA, 2011; Psychology, n.d.).

So, for all interested individuals, from the potential students who watch the television shows, to the current undergraduate and graduate students and the general public, this book is written to clarify what forensic psychology is and does. Beginning with the simplest definition for forensic psychology and going on to dissect and explain each of the words that make the specialty unique, the goal is to create a picture of the discipline, whether the reader is already involved in forensic psychology, wants to be involved in some capacity in that world, or is merely interested in understanding it.

Although Forensic Psychology 101 is not meant to cover the entire subject area with the depth and breadth that this continually growing subject deserves, each of the chapters attempts to
explain at least one subtopic that is part of the vast discipline of forensic psychology. As a whole, the book is written first to introduce the discipline to those who have yet to decide on the specifics of a career, being mindful that whatever the label and whatever the age, we are never too old to be introduced to new ideas or to find a new career. This book, then, is offered to help clarify and explain the many roles of a forensic psychologist within the discipline.

**BACK TO THE BEGINNING**

Because the term “forensic psychology” had to originate somewhere at some time, it seemed appropriate to the title of this chapter to take a historical look back. The *Oxford English Dictionary* (OED; 1989) provides the derivation of “forensic,” which can be traced back to 1659. The word is said to have derived from the Latin word for “forum,” and was apparently used to describe various types of legal/courtroom undertakings, such as court pleadings. In giving an example of the word’s use as an adjective, the OED disappointingly uses “forensic medicine.” However, since multiple searches produced no consensus regarding the first use of the word “psychology,” finding a first use of the two words together was obviously not realistic. So, finally giving up on what turned out to be more of a quixotic-like quest than a linguistic one, the search turned to actual application (Cervantes & Grossman, 2003; Simpson, Weiner, & Oxford University Press, 1989).

**Psychological Origins**

The search for a first application of the term “forensic psychology” finally produced reportable results. As with most psychological inquiries, the results were not linear, but often meandering and even a bit murky. However, although exact dates might be somewhat conflicting, varying from 1893 to 1896, and no doubt he never used the word “forensic,” James McKeen Cattell is recognized by most as the first psychologist to combine the law and psychology in his research
(i.e., History of Forensic Psychology, 2013; Parrott, 1997). In fact, in 1895, the experimental psychologist Cattell wrote:

As a last example of the usefulness of measurements of the accuracy of observation and memory I may refer to its application in courts of justice. The probable accuracy of a witness could be measured and his testimony weighed accordingly . . . The testimony could be collected independently, and be given to experts who could affirm for example that the chances are 19 to 1 that the homicide was committed by the defendant . . . (pp. 65–66).

Cattell experimented with the accuracy of the memories of 56 junior psychology students at Columbia University to arrive at this groundbreaking idea. Previously and in contradiction, researchers were of the opinion that “useful applications of the material sciences have no parallel in the case of the mental sciences” (Cattell, 1895, p. 765). Cattell posed a series of both academic and practical questions testing the memories and powers of observation of these 56 students. From their responses, he inferred that individual recollections, when compared and contrasted, were more reliable and valid than were group responses after collaboration. He applied his theory to jury deliberations and concluded that in court, the “independently formed verdict of three jurors if concordant would probably have more validity than the unanimous verdict of 12 jurors in consultation” (Cattell, 1895, p. 76). Unfortunately, his tests were not considered reliable, and James Cattell terminated these experiments (Parrott, 1997).

The fact remains, however, that there does not seem to be an earlier researcher or theorist who addressed the usefulness of psychology, or “mental science” as Cattell called it, in the courtroom. Hugo Munsterberg has been referred to as the “father of forensic psychology” due to the publication of his book, On the Witness Stand: Essays on Psychology and Crime (1908), but his work followed Cattell’s by at least 12 years (Huss, 2009).

Interestingly, and possibly as the stimulus for further research discussed earlier, both Cattell and Munsterberg studied under Wilhelm Wundt, the “father of experimental psychology,” in Leipzig, Germany, before returning to the United States to assume their respective
Cattell, born in the United States, left to study under Wundt, who had opened the first psychology laboratory in Leipzig, Germany, sometime between 1875 and 1879 (Boring, 1950; Harper, 1950). Munsterberg, younger than Cattell by 3 years and born in Germany, was also Wundt’s student. The students received their doctorates from Wundt 1 year apart, and both returned to the United States to take prestigious positions at major universities. One can only conjecture how Wilhelm Wundt’s mentorship influenced his famous students’ interest in what we now call forensic psychology.

**Legal Origins**

Although much more will be said in Chapter 2 about the United States (U.S.) Constitution and the legal system it created, using a case from England as the first case to illustrate this very American discipline might seem odd without a short explanation. Why would a country that fought a war to gain its freedom from a country that was “destructive” of the rights of “Life, Liberty and the pursuit of Happiness,” take that country’s legal tradition (U.S. Declaration of Independence, 1776, para. 2)? Historically, there are only two major legal traditions: common law and civil law (O’Connor, 2012). England became a common law country in the Middle Ages, while other countries of Europe retained civil law. The main difference between them is that the former bases its legal system on cases and case precedent or judge-made law, while the latter begins with written or codified laws, known as statutes. Presumably, when the first settlers from England came to the American colonies, they brought their familiar legal traditions with them and continued those traditions because they were what they knew (Molina, n.d.). There is no question that the United States remains a common law country, but two and a half centuries later, many state systems are a mixture of common and civil law (Common Law and Civil Law Traditions, n.d.).

In reading through this book, it will become apparent that statutory law often follows judge-made law (common law) in the United States, and just as statutes follow judge-made law, so the law follows psychology. The Amicus Curiae brief filed by the APA in the case of *Hall v. Florida* (2014) in Chapter 4 is an example of the law following psychology.
Tarasoff v. Regents of the University of California (1976) is a precedent-setting example of how case law precedes statutory law in the common law tradition. Briefly, Prosenjit Poddar, a University of California student, sought psychological help from the school’s mental health services. During treatment, he told the therapist he was going to kill Tatiana Tarasoff. The therapist told his superiors, who called the police. After investigating, the police released Poddar, but no one told anyone in the Tarasoff family what Poddar had said. Poddar then killed Tatiana Tarasoff, and the Tarsoffs sued the university and all parties involved. The California Supreme Court reversed the lower court’s decision to dismiss the case and stated that the therapist owed a duty of reasonable care to protect Tatiana (Tarasoff v. Regents, 1976). California and the vast majority of states now have statutes codifying that decision (see e.g., CA Civil Code § 43.92; Reamer, 2016).²

So, while Cattell may have been the first to give a specific voice to the potential use of psychology in the courtroom (at least in the United States), in the tradition of the common law, the United States adopted a precedent-setting English case in what was one of the first psychologically based verdicts in a criminal case.

SPOTLIGHT ON CASES

The Queen v. Daniel McNaughton (Bousfield & Merrett, 1843)

The case that best illustrates the beginnings of forensic psychology as we know it, with all its testimony, argument, and verbal analysis, was compiled into a 78-page booklet by a law student and a stenographer who claimed in the Preface that they did so because they knew the case was destined to make new law (Bousfield & Merrett, 1843). All forensic psychology students learn that 52 years before Cattell wrote about the potential use of psychological testimony in the courtroom, Daniel McNaughton decided to kill the Prime Minister of England, Robert Peel. Although he killed Peel’s secretary by mistake, McNaughton’s defense to the murder charge was that he was being persecuted by the unpopular Prime Minister, could not
escape him, and would finally have peace if he killed him (White, 1927). In spite of the fact that McNaughton had traveled from his home in Glasgow, Scotland (where Peel was not), to Peel’s home at 10 Downing Street in London (where Peel was) to commit this homicide, the witnesses, the defendant, and the law’s application to the facts convinced the jury that McNaughton was insane at the time of the murder and was, therefore, not guilty by reason of insanity.

While the prosecution conceded that the (English) law was such that insanity was an absolute defense to murder, the point was made that several earlier cases, with facts showing odd behavior on the part of the defendants, still resulted in guilty verdicts, and this result should not be different. However, the judge’s charge to the jury was very specific in that if all the testimony presented by lay witnesses, the defendant, and many medical experts proved that McNaughton was incapable of “distinguishing between right and wrong,” then he was not legally responsible for the death of the victim (Bousfield & Merrett, 1843, p. 74). Interestingly, the judge made very clear to the jury that in his opinion the medical testimony was “on one side and there is no part of it which leaves any doubt in the mind” (Bousfield & Merrett, 1843, p. 74).

Although one might question why this English case became precedent setting for the “not guilty by reason of insanity” plea in the United States, the facts and circumstances of the Queen v. McNaughton (1843) provide a near-perfect example from which to begin to understand just how forensic psychology works. In this instance, the construct is insanity—a legal term that requires a legal definition for the courtroom but a scientific explanation, psychological or psychiatric, for its application (Tighe, 2005). The testimony of the medical experts who examined McNaughton provided the application to the individual with their expert knowledge of what James Cattell (1895) called the “mental senses” (p. 765).

The Progeny of McNaughton

Various cases and statutes have been tweaking this definition ever since. While the legal definition of insanity—that is, not knowing the difference between right and wrong—became the McNaughton Rule, and is today a recognized plea in the vast majority of American states, there
are other definitions utilized in the various states as well (Lilienfeld & Arkowitz, 2011). Interestingly, the American Law Institute added a second prong to the insanity test in 1962 by expanding, in its Model Penal Code, the definition of someone who is legally insane (at the time of the commission of the act) to include anyone with a relevant mental defect who could not control his or her behavior; the defect, however, could not be the result of drugs or other substances (Allen, 1962). What is interesting about the date of this amendment is that it was not until that same year that psychologists were even allowed to testify as experts in the courts in the United States (Jenkins v. United States, 1962).

Prior to the decision in Jenkins v. United States (1962), the federal courts had not allowed psychologists to testify as experts because they were not medical doctors. However, in reviewing the lower court’s decision not to consider opinion testimony by psychologists regarding the diagnosis of a mental disorder, the court, after going through the rigorous education experienced by doctoral level psychologists stated that “the Ph.D. in Clinical Psychology involves some—and often much—training and experience in the diagnosis and treatment of mental disorders” and concluded that psychologists’ testimony could and should be admitted at the discretion of the judge (lines 637 and 638).

So, the roots of forensic psychology are based in the law and psychology. The McNaughton court was not playing psychologist when it called the jury’s attention to the medical testimony and rendered a judgment of not guilty by reason of insanity. The law could do that because the very definition of the crime required a showing of intent—as was defined by the law. And James McKeen Cattell was not playing at being a lawyer when his experiment convinced him that psychology could be used in the courtroom: Who better to explain how the mind did or did not form the requisite intent?

**AND HOW IT GREW: FORENSIC PSYCHOLOGY TODAY**

It is the mental health professional, today’s forensic psychologist, who provides the testimony that will help the trier of fact, usually...
the jury, to determine whether a particular individual is **not guilty by reason of insanity**. Despite so much documented interrelated law and psychology history, many writings attribute the origin of the true practice of forensic psychology to a somewhat recent recognition by the APA and its approval of the **Specialty Guidelines for Forensic Psychology**, which were originally adopted in 1991 and frequently revised (APA, 2011). Yet, the over 3,000-member division that has adopted the term and is responsible for the Specialty Guidelines calls itself the **American Psychology-Law Society**, not the Forensic Psychology Division. The much smaller organization (347 members listed) that does bear the specialty’s name, the **American Academy of Forensic Psychology** (AAFP), was founded in 1978. The AAFP collaborated with the APA’s Division 41 to write and promulgate the original specialty guidelines in 1991 (APA, 2011). In fact, even though law and psychology have been partners who are used to solving problems as partners, it does not appear that there is any real consensus as to when the actual term “forensic psychology” came into general use.

There’s little doubt that almost everyone who researches and/or teaches forensic psychology conceptualizes it somewhat differently. The subtopics and definitions vary and are arranged in multiple permutations depending upon the perspective of the teacher or author. However, the one consistency is the context: Just as the law is studied through the cases that give life to the statutes, forensic psychology is best understood by studying its place in the courts. Since this is true, the question must be asked once again: If we know that “forensic” has to do with the law and/or the courts, and “psychology” has to do with human behavior, does the origin of the term “forensic psychology” and how it is defined really matter (Psychology, n.d.)? The simple answer is yes. The rest of the chapters of this book explain why. For any interested party, the parameters must be defined and understood, and most are not familiar enough with the day-to-day workings of the law and its often inextricable relationship with psychology to fully grasp the methodology, ethics, careers, constructs, and general influence of the specialty and the mental health professionals who work within this specialized discipline—hence, this book.
WHAT TO EXPECT GOING FORWARD

The case of Daniel McNaughton (1843) and the research of James McKeen Cattell (1895) may seem to be unrelated as a practical matter, but together they serve to illustrate a broad foundation and the deep roots of today’s practice of forensic psychology. They can also be thought of as the root system from which the remaining eight chapters of this book, possibly to be viewed as the branches, grew (see Figure 1.1). The legal roots are established in Chapter 2 with a description of the relevant parts of the U.S. Constitution. Utilizing the growing tree for the analogy to explain the three branches of government is appropriate—if not very original. The first three articles of the Constitution set the framework for our federal government. With an emphasis on Article III, which establishes the judiciary to interpret the laws, the chapter details the making of federal law. Article I establishes the legislative branch (Congress) which makes the laws, and Article II provides for the executive branch (the President) to enforce the laws. The chapter explains the Tenth Amendment provision that allows for the states to have their own governments, including their own court systems and laws, and how this is all relevant to the practice of forensic psychology.

Forensic psychology can be looked at as applying the relevant psychological constructs to that basic legal understanding, and there are discussion questions and suggestions for further reading to supplement that foundation. Another part of achieving a basic legal understanding is reading and understanding cases. Law students learn how to read and understand cases by “briefing” them, utilizing descriptive captions to find the most important points of a case.

Chapter 3 completes the introductory section of the book, and begins the format that is followed throughout. In addition to giving an overview and explanation of how the chapter topic, behavior and the law, work, at least one relevant and usually United States (U.S.) Supreme Court case that illustrates the constructs in the chapter is presented. In Chapter 3, that is the 2015 case *Elonis v. United States*. Following the case is the first interviewed forensic psychologist, who describes what he does as a county employee. No matter what the topic of a particular chapter, the news always reveals something relevant, and Chapter 3 continues with an “In the News” section that
FIGURE 1.1  The growth of forensic psychology.

exemplifies the constructs of context and perception. Again and throughout the remainder of the book, a summary is followed by questions for discussion.

Chapter 4, the first of the four chapters of Part II, begins to explain the specific work of the forensic psychologist in specific legal situations. Chapter 4 takes the reader through a criminal trial, beginning with the crime and investigation, and ending with the sentencing
and post-trial motions and appeals. Along the route of the trial, the various junctures that require the expertise of a forensic psychologist are explored. Two forensic psychologists give their personal and professional insights as a sex offender evaluator and a prison psychologist. Because criminal law is that area where freedom and life can often be at issue, two U.S. Supreme Court cases relevant to forensic psychology practice are briefed. Atkins v. Virginia (2002) and Roper v. Simmons (2005) were landmark cases that may have been decided at least in part by Amicus Curiae briefs submitted by the APA.

While Chapter 5 may to some extent be the civil equivalent of Chapter 4, the issues revolve around money and property rather than life, death, and freedom. However, there are no fewer opportunities for the input of forensic psychologists. Civil matters include torts which are civil wrongs and breach of contract suits. Witness testimony, both expert and eye, and jury selection can be important factors in the outcome of a case. A nationally known forensic psychologist shares his experiences testifying for the defense and plaintiff in employment cases, and several cases covering rules of admissibility of expert testimony and various aspects of civil matters are presented.

Family court matters are the subject of Chapter 6, and the changing family structure is seen to have created new fields of practice for forensic psychologists. From the case presented about a modern marriage and divorce to child custody issues and the even more sobering subject of “psychological autopsies,” the forensic psychologist’s role in practice and research in family court is constantly expanding.

As a somewhat natural progression from matters of child custody and teen suicide, Part II concludes with Chapter 7 and the forensic psychologist’s role in the juvenile justice system. Two main areas of juvenile justice are addressed. Keeping in mind that the “best interest of the child” is the overarching policy of the courts, the areas are easily divided into that which happens to the child and that which the child makes happen. In the first category are education and care (see, for example, CA Welfare & Institutions Code § 300, 1937; Larry P. v. Riles, 1979). All children are entitled to a free and public education and to care and protection by their parents (or the state if necessary; Education for All Handicapped Children Act, 1975). Then there are the children who are categorized as delinquent, those children whose acts are status infractions such as breaking curfew or truancy and
those children whose acts would be crimes if they were adults (see, for example, CA Welfare & Institutions Code §§ 601 & 602, 1937). A forensic psychologist who specializes in the legal problems of at-risk children shares his experience in evaluating and treating these children.

The last two chapters make up Part III, Reconciling the Disciplines. The disciplines referred to are those of the forensic psychologist and the attorney. They must work closely together, but there can be conflict regarding the specific roles of each during the course of a case. Although Chapter 8 follows a similar format as the previous chapters, it deviates in that two attorneys share their experiences in working with forensic psychologists. These attorneys were chosen for their specialties; one is a criminal defense attorney, and the other is a family law certified specialist. As will be seen, these are the two legal areas that employ forensic psychologists on the most regular bases.

All chapters lead to Chapter 9. The growth of forensic psychology is explored in a very recent case regarding the influence of the APA. It also illustrates how the U.S. Supreme Court depends and expands upon precedent. Relevant newspaper articles are so frequent that supplements could continually be added. While Chapter 9 is the final chapter of *Forensic Psychology 101*, the goal is that it will serve as the first chapter in a very rewarding career.

**SUMMARY**

This first introductory chapter began with an overview of the various types of psychology and psychology practice. With that background, the focus was narrowed to forensic psychology, including its origins and application. The origin of the science was traced to legal and psychological roots that began not only separately but in two (maybe three) different countries, then came together somehow to form one inextricable discipline, and branched out to encompass almost all, if not all, aspects of the two disciplines at its foundation: psychology and the law. In describing the origins and the evolution of forensic psychology, the work of James Cattell, who was among the first to experiment with the use of psychology in the courtroom, and the case that gave us the McNaughton Rule were described. To explain
why the *Queen v. McNaughton* (1843) case has such historic relevance, some background regarding the United States’ use of the common law tradition from England was presented. An overview of the topics and format found in the remainder of the book was also provided.

**DISCUSSION QUESTIONS**

1. Although *Tarasoff v. Regents of the University of California* (1976) was a California case and did not have to be followed in other states, most states did enact some form of a *Tarasoff* law. Discuss why this case might have had such a far-reaching effect. You can find the case by using Google or another search engine: *Tarasoff v. Regents of University of California* 17 Cal.3d 425 (1976).

2. It is important to understand that the word “forensic” is merely a descriptor. Why do you think this is so?

3. There are many constructs that lend themselves to both psychological and legal research or even psycholegal research. Privacy is one of those constructs (as you will see in Chapter 2). Can you think of two or three others?

4. From this brief background provided in the chapter, what do you think would be the most interesting area of forensic psychology to work in?

**NOTES**

1. Some states restrict the title of psychologist to licensed individuals. Although forensic psychologists (people who have a background and/or degree in forensic psychology) may devote their professional time to academia and/or research, they cannot ethically call themselves psychologists according to the California, Illinois, and some other Boards of Psychology. In the interest of full disclosure, then, even though I am a licensed attorney and have a doctorate in psychology, because I am not licensed to practice psychology, I am an attorney and media psychologist.

2. In 2013, California amended its *Tarasoff* statute to eliminate the duty to warn. Some state statutes have both duties, some have one or the other, and some do not make the duty mandatory (See CA Civil Code §43.92).
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