Introduction

Psychology and the Criminal Justice System

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More than 100 years ago, the interface of psychology and law reached popular consciousness with the publication of Hugo Munsterberg's *On the Witness Stand: Essays on Psychology and Crime*. In a book familiar to psycholegal researchers, Munsterberg systematically demonstrated how legal issues could be informed by research in psychology. His perspective on the potential for intersection between the disciplines was quite expansive, with chapter titles including such topics as "Untrue Confessions" and "The Memory of the Witness." In arguing for stronger connections between the fields of psychology and law, Munsterberg observed that psychology was historically "in complete detachment from the problems of practical life" but had "reached a stage at which it seems natural and sound to give attention also to its possible service for the practical needs of life" (Munsterberg, 1908, p. 7).

In the 110 years since Hugo Munsterberg published *On the Witness Stand,* psychology has certainly given "attention" to the practical problems confronting systems of justice around the world. Importantly, the "attention" from psychology predated the relatively recent introduction of DNA technology, which has now exonerated more than 300 wrongfully convicted individuals in the United States alone (*www.innocenceproject.org*). These DNA exonerations buttressed specific long-standing critiques of common procedural elements in criminal trials. For example, the fact that approximately 75% of wrongfully convicted individuals were mistakenly identified by eyewitnesses vindicated researchers who long claimed that police procedures unnecessarily increased the chances of mistaken

identifications (e.g., Wells, 1978). Beyond the specific procedural details of eyewitness identifications, the DNA exonerations have prompted renewed attention to other systematic flaws in how justice functions, including how normal human decision making produces biased outcomes and how systems are biased against people of color, poor people, and people without adequate representation.

In applying psychology to the law, researchers have developed both broad and deep connections. The connection is broad insofar as research addresses all areas of the system, including those aspects that occur early in the process of adjudicating offenses, such as cognitive bias in investigations, criminal profiling of offenders, plea-bargaining decisions, and deception detection. The interface of psychology and law also extends to events that occur later in the process of adjudication, such as pretrial assessments of competence and criminal responsibility, expert testimony in criminal trials, and evaluations of future dangerousness for convicted offenders. The application of psychology to law is also broad in other ways: Research examines people who are not psychologists but who interact with the system in a wide array of contexts—from the actual people charged with violating the law (i.e., criminal or civil defendants) to those responsible for investigating alleged crimes (e.g., police detectives, forensic examiners), and those given responsibility for making the ultimate decision about a defendant's fate (i.e., judges, juries).

The connection between the fields of psychology and law is also deep. Consider the vast array of research on eyewitness memory, Munsterberg's ostensible inspiration for *On the Witness Stand*. In 2018, 110 years after Munsterberg encouraged psychologists to turn their attention to eyewitness memory, the field has an impressive record of producing concrete recommendations for law enforcement, from how to structure lineups and photospreads to how to interview children and victims. In learning about eyewitness memory and performance, psychological scientists have also developed useful theoretical models of memory, including models that explain the propensity for human memory to produce inaccurate information. More narrowly, psychologists have developed a deep understanding of how and why eyewitnesses make identification choices (or do not). Perhaps even more impressive, psychologists have found ways to translate science-based recommendations into improved practice, providing a model for the application of other evidence-based improvements to justice systems in the process.

The current volume is a testament to the fact that law is no longer "absurdly neglected" by psychology, as Munsterberg lamented in 1908. Indeed, the breadth and depth of research described in the following chapters is an affirmation of the extent to which psychological principles and methodology are uniquely suited to providing a sophisticated understanding of phenomena relevant to the intersection of psychology with the law. However, as with any scientific endeavor, our understanding of the topics

at the interface of psychology and law is not complete. Therefore, in the chapters that follow, authors explain areas of consensus (where available) and areas of uncertainty or disagreement. In addition, they outline specific directions for future research. In asking authors to review extant literature and generate guidance for future research, we hope that each chapter will accomplish three main goals. First, we hope each chapter serves as an overview for upper-level psychology students new to the field. In reading each chapter, students should learn something about the basic methods in the area, any consensus on experimental findings, and challenges confronting researchers in the area. Second, we hope that expert readers with a background in psychological research will find new perspectives to guide their own thinking in the area. To that end, where possible, we have asked authors to describe new research paradigms or, if none exist, the necessary conditions for developing new paradigms in a given research area. Third, we have tried to ensure that chapters are readable for criminal justice system professionals who lack a formal background in psychology—for example, police officers, lawyers, and judges.

Readers familiar with the interface of psychology and law will note the connections between the current volume and *Psychology and Law: An Empirical Perspective,* edited by Neil Brewer and Kipling Williams (2005). Indeed, there are similarities between the two volumes. For example, both volumes are designed to appeal to audiences looking for in-depth coverage of psychological research relevant to the interface of psychology and law. To that end, both volumes avoid the broad-based coverage typical of introductory textbooks in psychology and law. Instead, we invited authors to focus their attention on key findings that form the foundation of relevant research areas. As noted above, we also asked authors to provide information about areas of controversy (where relevant) and describe potential directions for future research. In this way, we hope that each chapter will be understandable to advanced undergraduate audiences but still provide a unique perspective that will engage a seasoned reader of psychology and law literature.

We have also retained our focus on social and cognitive forensic research. This is reflected in the chapter topics that are consistent across the two volumes. These chapters cover fundamental questions in psychology and law that have inspired decades of research designed to address basic principles of memory and decision making and the role of social factors in legal context. These include chapters on important topics such as eyewitness recall (Lane & Houston, Chapter 5), eyewitness identification decisions (Sauer, Palmer, & Brewer, Chapter 9), false memories (Zaragoza, Hyman, & Chrobak, Chapter 8), jury decision making (Peter-Hagene, Salerno, & Phalen, Chapter 14), children as victims and witnesses (Lyon, McWilliams, & Williams, Chapter 7), interviewing victims and witnesses (Hope & Gabbert, Chapter 7), and deception detection (Gunderson & ten Brinke, Chapter 4).

In other important ways, the current volume departs significantly from the 2005 Brewer and Williams text. First, those readers interested in topics in which researchers seem not to have been so active in recent years may be disappointed. For example, topics such as the influence of pretrial publicity and the comprehension of judicial instructions—covered in detail in Brewer and Williams—were not specifically targeted here. For these topics, we believe the Brewer and Williams volume still provides comprehensive treatment of these important issues.

Second, we have enhanced our focus on cognitive and social forensic research by adding chapters on some key topics that were neglected in the Brewer and Williams (2005) volume, including judicial decision making (Mitchell, Chapter 16) and expert testimony (Marion, Kaplan, & Cutler, Chapter 13). Additional new chapters include Chapter 3, on false confessions and interrogations, in which Madon, More, and Ditchfield present a detailed analysis of the (in)famous Reid technique for extracting confessions from criminal suspects (Inbau, Reid, Buckley, & Jayne, 2013). In Chapter 11, Wilford, Shestak, and Wells take on the question of how defendants make decisions about plea bargains, including the potential relevance of theoretical models of decision making in the plea-bargaining context. In Chapter 2, by Charman, Douglass, and Mook, forensic decision errors—increasingly implicated in cases of wrongful conviction—are differentiated in terms of categorical errors (e.g., erroneously judging two fingerprints to be a match) versus continuous errors (e.g., inappropriately weighting evidence in assessments of guilt). The difference in these errors is highly relevant in designing interventions to minimize the risk of forensic errors. Finally, in Chapter 10, White and Kemp provide a compelling analysis of why it is so difficult to recognize faces and how technology may (or may not) enhance our abilities in the future. With the inclusion of these additional important topics, we are optimistic that researchers from many different areas of psychology and law will find much to interest them.

Third, we are conscious of the fact that our coverage of topics is by no means exhaustive. Indeed, in the 2005 Brewer and Williams volume, those students and researchers with clinical interests likely found much less to interest them than did those of cognitive or social psychological persuasions. Therefore, in the current volume we have extended coverage to encompass several key areas of clinical forensic research. For example, we now have an excellent chapter (Chapter 1) on criminal profiling by Fallon and Snook in which the authors present a thorough analysis of whether the practice of profiling constitutes pseudoscience. In Chapter 12, detailing the process whereby defendants are evaluated for competence to stand trial and/or insanity, Kois, Chauhan, and Warren present an accessible review of the basic psychological questions confronting forensic examiners charged with assessing defendants. In addition, they provide a fascinating perspective on cross-cultural differences in assessment of competence and insanity from countries representing a diverse set of justice systems, including

Australia, China, East Timor, Ghana, India, South Africa, and Taiwan. Finally, students and researchers interested in aggression, violence, and psychopathy will find detailed information in Chapter 15 by Polaschek on how these constructs are studied, critiques of existing empirical tools, and how research can be applied to individual cases.

We end the book with a chapter devoted to the tumultuous process of applying psychological research to policy and practice (Steblay, Chapter 17). In addition to providing a useful guide for students and researchers interested in applying their work to the "real world," this chapter reinforces our enhanced attention to clinical topics. In the Brewer and Williams (2005) volume, the final chapter addressed questions of how to translate psychological research into policy and practice in the context of eyewitness identification research. In the current volume, Steblay addresses the same challenge but expands the coverage to include broader questions, including, for example, how to generate recommendations for clinical issues when randomized controlled trials are not viable methods of data collection. Readers with an interest in the translation of all areas of psychological research to "real-world" problems will find a thoughtful perspective on the challenges and rewards of applying psychological science.

Research at the intersection of psychology and law is capable of providing specific, constructive explanations for—and solutions to—problems in the legal context. These problems include the most fundamental questions in the intersection of psychology and law: Is a suspect lying? Will an incarcerated individual be dangerous in the future? Is an eyewitness accurate? How can false memories be implanted? Is a defendant competent to stand trial? How are plea decisions made? How do juries, experts, and forensic examiners make decisions?

Explaining—and then solving—these problems is only possible when a sufficient body of research exists, that is, multiple empirical investigations providing converging support for a specific recommendation. However, as noted in Chapter 17, the mere existence of research in a legal context is not sufficient to produce demonstrable changes in systems of justice. In that chapter, Steblay argues that psychological scientists must also learn how to effectively communicate their research to legal audiences, develop collaborations with practitioners, and harness psychological knowledge about how cognitive errors can "afflict police investigators and triers-of-fact" (p. 422). Only then can psychological science be maximally applied to the range of contexts in which the methods of our field are ideally suited to providing concrete solutions.

Even when psychological scientists have generated a corpus of excellent research, communicated effectively with legal practitioners, and collaborated successfully with relevant experts, there is no guarantee that legal decisions will be informed by existing research, a fact bemoaned by United States Supreme Court Justice Sonia Sotomayor, who wrote in a dissent that "a vast body of scientific literature [in eyewitness identification research]

merits barely a parenthetical mention in the majority opinion" (*Perry v. New Hampshire,* 2012, p. 14). Justice Sotomayor's dissenting opinion was written in response to a case in which the defendant was challenging the eyewitness's identification. However, the sentiment would likely apply to many other areas in which psychological research could potentially inform judicial decisions. Consider jury research: A recent analysis indicates that only seven U.S. Supreme Court decisions have included reference to jury research published in *Law and Human Behavior,* the premier outlet for peer-reviewed research on juries (Rose, 2017). That so few empirical investigations have informed Court decisions speaks to the ongoing challenges of applying excellent psychological research to the courts. We hope that this volume will contribute to the development of research in the interface of psychology and law. Ultimately, we hope this research will result in specific improvements to systems of justice around the world.

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