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## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>About the Editors</td>
<td>ix</td>
</tr>
<tr>
<td>List of Contributors</td>
<td>x</td>
</tr>
<tr>
<td>Preface</td>
<td>xv</td>
</tr>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Psychology and Law: A Subdiscipline, an Interdisciplinary Collaboration or a Project?</td>
<td>1</td>
</tr>
<tr>
<td><em>David Carson</em></td>
<td></td>
</tr>
</tbody>
</table>

### PART 1 PSYCHOLOGICAL ASSESSMENTS FOR THE COURTS

| Chapter 1.1 Adults’ Capacity to Make Legal Decisions | 31 |
| *Glynis H. Murphy and Isabel C.H. Clare*            |    |
| Chapter 1.2 The Assessment and Detection of Deceit   | 67 |
| *Aldert Vrij*                                        |    |
| Chapter 1.3 Assessing Individuals for Compensation  | 89 |
| *Richard A. Bryant*                                  |    |

### PART 2 PERSPECTIVES ON SYSTEMS: PSYCHOLOGY IN ACTION

<p>| Chapter 2.1 Interviewing by the Police | 111 |
| <em>Rebecca Milne and Ray Bull</em>           |    |
| Chapter 2.2 Violence Risk: From Prediction to Management | 127 |
| <em>Kirk Heilbrun</em>                        |    |</p>
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Authors</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.3</td>
<td>Risk: The Need for and Benefits of an Interdisciplinary Perspective</td>
<td>David Carson</td>
<td>143</td>
</tr>
<tr>
<td>2.4</td>
<td>Beyond ‘Offender Profiling’: The Need for an Investigative Psychology</td>
<td>David Canter and Donna Youngs</td>
<td>171</td>
</tr>
<tr>
<td>2.5</td>
<td>Uses, Misuses and Implications for Crime Data</td>
<td>Tom Williamson</td>
<td>207</td>
</tr>
<tr>
<td>2.6</td>
<td>Crime Prevention</td>
<td>Katarina Fritzon and Andrea Watts</td>
<td>229</td>
</tr>
<tr>
<td>2.7</td>
<td>The Development of Delinquent Behaviour</td>
<td>Friedrich Lösel</td>
<td>245</td>
</tr>
<tr>
<td>2.8</td>
<td>Children in Disputes</td>
<td>Judith Trowell</td>
<td>269</td>
</tr>
<tr>
<td>2.9</td>
<td>Child Defendants and the Law</td>
<td>Peter Yates and Eileen Vizard</td>
<td>287</td>
</tr>
<tr>
<td></td>
<td><strong>PART 3  PERSPECTIVES ON COURTS: TRIALS AND DECISION MAKING</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.1</td>
<td>Juror Decision-Making in the Twenty-First Century: Confronting Science and Technology in Court</td>
<td>Bradley D. McAuliff, Robert J. Nemeth, Brian H. Bornstein and Steven D. Penrod</td>
<td>303</td>
</tr>
<tr>
<td>3.2</td>
<td>Assessing Evidence: Proving Facts</td>
<td>Michael J. Saks and William C. Thompson</td>
<td>329</td>
</tr>
<tr>
<td>3.3</td>
<td>Advocacy: Getting the Answers You Want</td>
<td>David Carson and Francis Pakes</td>
<td>347</td>
</tr>
<tr>
<td>3.4</td>
<td>Expert Evidence: The Rules and the Rationality the Law Applies (or Should Apply) to Psychological Expertise</td>
<td>David L. Faigman</td>
<td>367</td>
</tr>
<tr>
<td>3.5</td>
<td>Decision Making by Juries and Judges: International Perspectives</td>
<td>Edith Greene and Lawrence Wrightsman</td>
<td>401</td>
</tr>
<tr>
<td>3.6</td>
<td>Restorative Justice: The Influence of Psychology from a Jurisprudent Therapy Perspective</td>
<td>Eric Y. Drogin, Mark E. Howard and John Williams</td>
<td>423</td>
</tr>
</tbody>
</table>
Chapter 3.7 Proactive Judges: Solving Problems and Transforming Communities
Leonore M.J. Simon

PART 4 PERSPECTIVES ON POLICY: PSYCHOLOGY AND PUBLIC DEBATE

Chapter 4.1 Drugs, Crime and the Law: An Attributional Perspective
John B. Davies

Chapter 4.2 Psychological Research and Lawyers’ Perceptions of Child Witnesses in Sexual Abuse Trials
Emily Henderson

Chapter 4.3 Alleged Child Sexual Abuse and Expert Testimony: A Swedish Perspective
Clara Gumpert

Chapter 4.4 Eyewitnesses
A. Daniel Yarmey

Chapter 4.5 Psychological and Legal Implications of Occupational Stress for Criminal Justice Practitioners
Jennifer Brown and Janette Porteous

Chapter 4.6 Therapeutic Jurisprudence: An Invitation to Social Scientists
Carrie J. Petrucci, Bruce J. Winick and David B. Wexler

PART 5 LEGAL PSYCHOLOGY, PSYCHOLOGICAL SCIENCE AND SOCIETY

Chapter 5.1 Methodology: Law’s Adopting and Adapting to Psychology’s Methods and Findings
Brian Clifford

Chapter 5.2 Interviewing and Assessing Clients from Different Cultural Backgrounds: Guidelines for all Forensic Professionals
Martine B. Powell and Terry Bartholomew

Chapter 5.3 Psychology and Law: A Behavioural or a Social Science?
Stephen P. Savage

Table of Cases

Table of Statutes

Index
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David Carson is Reader in Law and Behavioural Sciences in the Faculty of Law at the University of Southampton. He tries to be practical, preventive and interdisciplinary in his teaching and writing, and to promote those goals in his organisational work. He has developed courses on how to be skilful as an expert witness in court and how to reduce the likelihood of being criticised or sued for poor risk-taking, particularly in child protection and mental disorder contexts, simultaneously producing both valuable evidence for courts and better risk decisions. These have been provided, many times, for experienced practitioners.

He was organiser of the first international ‘Psychology and Law’ conference, sponsored by the American Psychology-Law Society and the European Association of Psychology and Law, which took place in Dublin in 1999. He was also invited to organise a second such conference, which are to become regular events, now also sponsored by the Australian and New Zealand Association of Psychiatry, Psychology and Law. The second conference takes place in Edinburgh in 2003.

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Ray Bull is Professor of Criminological and Legal Psychology in the Department of Psychology at the University of Portsmouth. He has published extensively on research topics at the interface of psychology with legal contexts, especially investigative interviewing.

In 1995 he was awarded a higher doctorate (Doctor of Science) in recognition of the quality and extent of his research publications. He is regularly asked by lawyers to write expert reports in connection with criminal and civil proceedings (over 60 to date) and has testified as an expert witness in a number of trials. In 2001/2 he was a member of the small team that was commissioned by the government to write *Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses, including Children.*
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To be asked to edit one edition was impressive enough, but to be asked to edit a second edition is... well... also impressive. And it is not really a second 'edition'. While some authors from the first edition have kindly joined us in this second, and some topics are similar, most chapters and authors are entirely new and fresh.

The organising principles of this edition are different from the first, in which we sought to stress the legal contexts and links between psychology and law. In this edition we have tried to highlight developments in, and roles for, psychology and law, but a number of principles remain common to both editions. We believe that there must be a 'dialogue' between the disciplines and professions, explicitly from a level starting point. Law may have been both an independent discipline and a profession for much longer than psychology, but it does not follow that the latter must adopt the former's perspectives or assumptions, let alone perpetuate them. There is an important role for psychology in the provision of expert evidence to the courts in individual cases. But that is neither the beginning nor the end of psychology's role! We must accept the reality of the law, and we must accept that that is what the courts will decide and enforce, but we are not obliged to accept that that is how it must be when psychological research or insights tell us otherwise. So, for example, several chapters in these Handbooks emphasise the potential of psychology to inform law reform.

We are also concerned about an artificial and premature narrowing of 'psychology and law'. For many the phrase seems to refer to psychologists interested in the law and practice as it relates to criminal justice and mental health matters. We consider that to be frighteningly narrow. We believe that psychology has a great deal to offer to all areas of law, civil as well as criminal, procedural as well as substantive. Professional issues, for example distinguishing clinical from educational and occupational, or disciplinary distinctions, for example abnormal from social psychology, should not restrict the development of an understanding of how the behavioural sciences can inform and improve the law and laws. It is not just that social and occupational psychologists and other behavioural scientists, for example, should be welcomed at psychology and law conferences and be represented in such books and journals, but that this developing interest and topic will be diminished by their absence.
We believe that psychology and law is not just a theoretical and applied subject but has considerable opportunity for both reflecting and advocating change. And this edition particularly reflects this belief. There are several chapters, particularly in Parts 3 and 4, which relate the dramatic organisational developments in our subject area. For example, important and exciting developments, which challenge many preconceptions about how our courts should operate, are taking place in the growth of restorative justice interventions around the world and in problem-solving courts in the USA in particular. Whether psychology and law should, explicitly, recognise that it is inevitably concerned with the promotion of justice, albeit granting that that will involve value disputes, is discussed, by one of us, in the opening chapter.

Part 1 of this Handbook considers psychology in, perhaps, its most traditional context—that is, providing information for the courts. Murphy and Clare update their chapter in the first edition, examining when and how psychology can, or could, help the courts to decide who is capable of making which legal decisions. Then Vrij examines what courts and judicial agencies might learn about how to assess and detect deception, and Bryant examines issues involved when assessing individuals for compensation purposes. We would ask readers to question whether the law and courts, in their particular countries, allow themselves to know about and be informed sufficiently on these topics.

Part 2 examines examples of how psychology is being, and could further be, developed to assist a wide range of professionals and practitioners in undertaking tasks which could have legal implications, particularly if not well performed. Milne and Bull consider police interviewing techniques. If this task is poorly performed what hope can there be for the later stages in the criminal process? Heilbrun examines what we know about assessing and managing dangerous people. But the emphasis is on how we use and manage the information we gain and not just how we might present it to courts. Carson follows this with an appeal for greater interdisciplinary cooperation on the understanding and practice of risk-taking. While courts and lawyers need to know more about the topic, he suggests that psychologists could end up victimised if they do not consider the implications of their roles in the total process.

There follow three chapters identifying the potential of psychology to better inform understanding and practice in criminal justice and policing. Canter and Youngs articulate the case for not restricting the subfield to offender profiling but rather recognising that as an example of how psychology can help investigations. Williamson identifies the many problems that arise when that most basic of needs for any organisation, clear data, is not provided. He refers to data on crime which is regularly misused by other actors. Fritzson and Watts then consider the potential of psychology to inform action to prevent crime, not just to identify and respond to it. This prevention theme, which we suggest is not usually given the prominence it deserves, is also taken up by Løsel who examines a wealth of sources to identify key factors both predictive and protective of childhood delinquent conduct. Part 2 then ends with chapters by Trowell, on the implications of disputes for children, and child psychiatrists Yates and Vizard, on the debate surrounding the competence of children to commit crimes.
Part 3 focuses on trials. McAuliff, Nemeth, Bornstein and Penrod examine the potential for assisting those who have to make decisions about disputed facts. Greene and Wrightsman compare such decision-making by country and between judges and juries. Saks and Thompson place the focus on the disputed evidence. Faigman considers the contribution of expert evidence to court decisions, and the rationale that should underpin the process. Carson and Pakes identify some of the mechanisms that lawyers can use to encourage witnesses to say what they want the courts to hear. This Part ends with a discussion of restorative justice developments in the USA and the UK by Drogin, Howard and Williams, and a description of the proactive judges in the problem-solving courts which have been developing, particularly in the USA. There are those who decry the relative absence of lawyers in the psychology and law ‘movement’. We would suggest that such critics should consider such developments as those which are often led by judges and lawyers. They demonstrate a willingness, by many, to think and to act radically. The real problem may be those who restrict their image of the developing field to the traditional one of experts, accepting the law’s limited perspective, to inform them about a particular case. Much more is going on and, as this Part demonstrates, much more could take place.

Part 4 identifies the role of psychology as a major contributor to debates about the law, and its potential for reform. The controversy surrounding ‘recreational’ drugs is one which deserves information and challenge. And Davies does that. Meanwhile Henderson, a lawyer, examines the perceptions with which lawyers approach child witnesses in sexual abuse trials. Again, if we do not consider our own and others’ perceptions of the issues we both work on, then we are unlikely to communicate efficiently. Gumpert provides a Swedish perspective on allegations of child sexual abuse and how expert testimony is utilised. Eye-witnessing remains, and is likely to remain, a cornerstone of evidence in many criminal trials. It is also a source of much valuable research. Yarmey reviews this. Is it not time that we acknowledged how much is already known, and the potential for developing both ‘consensus statements’ and agreement to promote them with different governments? Brown and Porteous, psychologist and lawyer, examine developments in England and Wales, in particular, on the causation and extent of workplace stress. Compensation claims had been growing. Ironically, once the chapter was completed, the Court of Appeal for England and Wales greatly restricted previous decisions. The Part ends with a description of the extensive work that has been undertaken, under a therapeutic jurisprudence perspective (or ‘lens’). Most of that work has been undertaken by lawyers and, again, demonstrates an openness to learning from the behavioural sciences. Petrucci, Winick and Wexler (the latter two being the originators of the approach) invite social scientists to try the perspective in their writing about law and practice.

Part 5 seeks to ask broader questions about the relationship between psychological and other methodologies. Clifford extends his valuable analysis in the first edition with another chapter which examines the problems facing collaboration between psychologists and lawyers. Powell and Bartholomew consider professional and practical issues of good practice when working with clients from different cultural backgrounds. Finally Savage, a sociologist, addresses important questions surrounding whether
psychology and law pays sufficient attention to the social sciences. Is sufficient attention being given to such issues as class, power, ethnicity in a psychology and law which often seems to assume an individualistic analysis?

It was most gratifying that the first edition not only sold well but led to a paperback edition. We hope the same for this edition and thank our publishers for their hopes. We thank our contributors, with a sincerity and depth of feeling which we are unlikely to have communicated in that to and fro—over dates and lengths and editorial changes sought—which is an inevitable feature of the publishing process. Thank you! We must not assume that any of them wish to be identified with our particular vision of the potential of psychology and law, but we admire their willingness to take up the challenge we offered them. Finally, we believe in the internationalism of psychology and law. This second edition, as the first, surely demonstrates how it is developing in so many countries. That can only be beneficial.

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Introduction

Psychology and Law: A Subdiscipline, an Interdisciplinary Collaboration or a Project?

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Which is it? Is psychology and law a subdiscipline and, if so, of psychology, of law or both? Is it an example of two disciplines collaborating towards greater understanding of their interrelationship, and if so is it best described as psychology in law, law in psychology or psychology and law? Should it be broadened to ‘behavioural sciences’ rather than just ‘psychology’? Or is it a coming together, a commitment, of psychologists and lawyers to improve the quality and efficiency of our laws and legal systems? Clearly we do not have a consensus on such issues. Does that matter? Do we need to decide? Are we missing anything by not identifying, debating and tackling such issues?

This Handbook contains chapters that exemplify each of the three approaches: subdiscipline, collaboration and ‘project’. But it does not follow that the authors would argue that their approach is the only appropriate position or approach. How we ‘do’, or what we write, in psychology and law does not, necessarily, reflect what we would like to see happening at the macro or organisational level. As individuals and groups we tend to focus on a narrow range of topics, with a view to gaining recognition for our expertise. This chapter will argue that we have not, to our loss, paid sufficient attention to the structural and thematic issues in this developing interest area. Organisational arrangements, particularly internationally (between national and regional bodies) and structurally (between researchers and practitioners but also between psychologists and

* I am most grateful to Ray Bull for his comments on drafts of this chapter, but he must not be assumed to agree with any of it.
2 INTRODUCTION

lawyers), are poorly developed. Where ‘psychology and law’ is going, and should go, is still a matter of conjecture. Important opportunities will be lost unless we attend to these topics.

Psychology and the law are both inherently concerned with the analysis, explanation, prediction and, sometimes, the alteration of human behaviour. Of course there is much more to the study and practice both of psychology and of law. But there is this enormous overlap in interests, in clients, in topics, in issues: from identifying (e.g. see chapter by Yarmey in this volume) who has committed a particular crime to understanding why he or she did it and deterring or preventing (see Fritzon and Watts, in this volume) its repetition; from interviewing people (e.g. see chapter by Milne and Bull in this volume), in order to learn more about past events of which they may have recall, through assessing the credibility and reliability of what they say (e.g. see chapter by Vrij in this volume), to making complex decisions based on that information. Some emphasise the overlap to demonstrate how great is the common interest (e.g. Lloyd Bostock, 1988; Schuller and Ogloff, 2001). We could also list successes, for example on identification evidence, assessments of capacity to make legal decisions (e.g. see chapter by Murphy and Clare in this volume) on interviewing witness to collect more useful information about a past event, to demonstrate how much has been achieved. But that would also serve to emphasise how remarkably little use is made of that knowledge base. Legislatures and courts do not rush, or even have systems, to ensure that they take account of the latest research on, for example, identification evidence or false confessions, despite its importance for improving justice and confidence in the legal system.

Are the relations between lawyers and psychologists underdeveloped? We cannot agree an answer to that question without a consensus on what is possible. But its impact has been limited, it is submitted, when we consider what could have been achieved by now. For example, are psychologists or behavioural scientists regularly appointed members of law reform commissions, or similar? Do all lawyers have some education in the scientific analysis, prediction or shaping of human behaviour? So why has psychology and law so relatively little to show? Why, when the potential for valuable and practical collaboration is so great, is the ambition so restrained? This chapter will encourage debate about such questions. It will suggest that a more adventurous and challenging programme for relating the disciplines and professions could, and should, be adopted. It will argue that psychology and law should be a ‘project’, as well as a ‘collaboration’ and subdiscipline. It will differ from other overviews of the developing relationship between the disciplines (e.g. Kapardis, 1997; Haney, 1980; Schuller and Ogloff, 2001). The basis for interdisciplinary cooperation and intraprofessional collaboration is recognition of a need for, and a commitment towards achieving, greater (quality, quantity, efficiency and effectiveness) justice. To the extent that this necessarily involves value choices, it is political. Thus it is inimical to those who perceive ‘science’ as pure and objective. But this is inevitable and a feature of the subject-matter. As such it should be acknowledged openly.
TERMINOLOGY

‘Psychology’ or ‘Behavioural Sciences’?

The area of interest is generally known as ‘Psychology and Law’. Should it be? Those are the terms used by two of the three major associations with interests in this area: the American Psychology-Law Society (AP-LS), the European Association of Psychology and Law (EAP&L), and the Australian and New Zealand Association of Psychiatry, Psychology and Law (ANZAPPL). By contrast the main academic journals associated with the area often use broader terms: for example, primarily associated with (although not always edited or published within) North America are: *Law and Human Behavior, Behavioral Sciences and the Law, Psychology, Public Policy and the Law* (which is also registered as a law journal within the United States tradition). In Europe there are: *Psychology, Crime and Law* and *Legal and Criminological Psychology* and there was *Expert Evidence*, arguably the most interdisciplinary in its original design (by the editors of this volume) and format. In Australia there is *Psychiatry, Psychology and Law*. Perhaps the goal, with journals, is to have as broad a title as is possible, without losing sight of the core topic. Relevance to other disciplines—for example, lawyers, criminologists, psychiatrists—is suggested by several journals, but the core audience is psychologists. Membership of editorial boards is predominantly by psychologists. Many are dually qualified as lawyers but known, predominantly, as psychologists. But this is not dissimilar from other journals. For example the *International Journal of Evidence and Proof*, which has attracted some important papers from psychologists and might be thought to be interdisciplinary by virtue of title and topic, only has lawyers on its Editorial Board. The ‘marketing truth’ would appear to be that, however open and broadly based a journal may appear in terms of its title and organisation, it needs to be written for a discrete disciplinary audience. It is ‘nice’ if other disciplines read it but its economy must not be based upon an assumption that it will be.

The organisers of conferences are keen to distinguish their area from others, to be different, and this can cause problems of perception. For example, many if not most members of the EAP&L are interested in criminology. But neither the EAP&L’s objectives nor meetings are usually limited to such topics. So membership of more explicitly criminological associations, or narrowing of conferences to such topics, may prove attractive at least until psychology and law becomes as recognised a subdiscipline as it now is in North America. There is certainly a great danger, particularly within the EAP&L and the journals published in Europe, that ‘psychology and law’ is perceived as limited to criminal justice issues, albeit sometimes widened to include mental health law. There is a particular risk that the potential of psychology to inform issues in civil law will be underinvested. But, perhaps, it is the inexplicit which will cause the greatest damage to ‘psychology and law’ conferences. Nowhere is it stated that practitioners are not welcome. However, at least by reference to recent meetings of the AP-LS and EAP&L, practitioners have been grossly underrepresented. It is not just that this area has such potential for practical application, but also that it is relevant to
so many professions. Why do so few police officers, for example, attend psychology and law conferences? Psychiatrists, nurses, prison governors, etc.?

Why is it not ‘Behavioural Sciences and Law’? If the focus, or the engine powering, of the interest in this area was interdisciplinarity, or the concern was intraprofessional collaboration then, it is submitted, it would be. The judge or other lawyer, whether a practitioner or an academic, is unlikely to care about the disciplinary and occupational distinctions which separate psychologists and psychiatrists, for example. Both of the disciplines and professions—psychology and psychiatry—have useful information to offer to courts and to law reform organisations. And many other disciplines and professions have much that is very important to offer. For example, consider the contribution of economists, such as Nobel prize winner Herbert Simon (1959, 1960), to our knowledge of how and why human beings make the decisions they do. Consider its potential impact on judicial decision-making, on reducing miscarriages of justice, if only we could better develop the links both in research and application.

Psychology cannot—and nobody realistically suggests that it does or could—explain all, completely or sufficiently, areas of human behaviour occurring in legal contexts. An understanding of the behaviour of tenants (of a housing complex), for example, needs to include contributions from economics, sociology and politics, at the very least. While psychology has contributed significantly to our current understanding of criminal behaviour it would be inappropriate to ignore the contributions of several other disciplines, traditions and methodologies. The critical question is whether focusing, relatively narrowly, on ‘psychology’ hinders inquiries, limits theories or falsifies conclusions.

So Should it be Psychiatry, Psychology and Law?

Psychiatrists, in contrast with psychologists (although they have overlapping interests in physiology and neurology), undertake a medical education and have a medical qualification. Medical education, largely because of its duration and consequent cost, is broadly perceived as a ‘professional education’. It is undertaken with a view to becoming a practitioner. In that regard there is a similarity with the study of law. In the United States law is a post-graduate degree. In the United Kingdom, at least, a law degree exempts its holders from part of their professional training. In both countries students invariably choose the course with an expectation of practising. Law and psychiatry courses are rarely undertaken purely out of intellectual curiosity, perhaps unfortunately. That is more likely to be the case with the study of psychology. Indeed, in popular formats, articles on psychological topics help to sell many popular magazines and books. Indeed popularised psychology may be as important to magazines and general bookshops as law, law enforcement and the courts are to the visual media of television and film.

A greater ‘affinity’ between judges, practising lawyers and psychiatrists may be perceived. Various explanations may be offered. For example, both law and medicine are much older professions and have been recognised subjects for study in universities for
much longer than psychology. There are, also, similarities and differences in social status and earnings between the three groups in many countries. But, it is submitted, a very important factor is the role that psychiatrists play in court. Unlike most other professions appearing before courts, psychiatrists often hold a ‘key’ to the disposal of the case. By giving evidence that a psychiatric disposal is appropriate, and being able to offer a service (a hospital bed or outpatient treatment), the psychiatrist can remove a difficult human problem from the courts. On other occasions, by affirming that a particular test applies, the psychiatrist can provide the judge with a solution to a case. For example, a psychiatrist may give evidence that a defendant was suffering from ‘diminished responsibility’ even when, as in England and Wales at least, the tests are legal and moral rather than medical (Gunn et al., 1993). Such evidence allows a judge to deal with the case in a particular manner, a conviction for manslaughter rather than murder in England and Wales (Homicide Act 1957, s. 2). Redding, Floyd and Hawk (2001) provide empirical support for this. In their study lawyers preferred psychiatrists’ evidence to that of psychologists and sought evidence on the ultimate legal issue even though it was legally prohibited!

A problem with ‘psychiatry and law’ is that it connotes, and regularly appears to be limited to, ‘mental health law’. Certainly that is a significant and substantial area of law. It encompasses many important topics: liberty of the individual through detention issues, freedom of decision and action through decisions about capacity. But it overwhelmingly focuses on solving problems with or for individuals. Should a particular person be detained because mentally disordered and with certain kinds and degrees of problems? Should treatment be imposed because of mental disorder, lack of capacity and perceived need? Mental health law is very applied. That is not a criticism! The point is that by limiting ‘psychiatry and law’ to, or equating it with, ‘mental health law’ we close off or reduce opportunities for enriching our understanding of human behaviour, individual and social, through psychiatric research and insights. And any limits in our understanding of human behaviour will, consequentially, follow through into less than ideal legal responses. ‘Psychiatry and law’ ought not to be limited to mental health law. A greater understanding of the brain and mind could challenge and invigorate several legal assumptions about human behaviour. New techniques for mapping brain activity are leading to major questions being asked about such assumptions as free will, consciousness, subjectivity (e.g. see Libet, Freeman and Sutherland, 1999). These have major implications for law.

The distinctions, and divisions, between psychiatry and psychology may be exaggerated. Organisational differences, based upon education routes, may be more important than is necessary for the functional duties. It has been suggested that psychologists are as (or more) competent to treat neuroses, the more behavioural mental disorders. Psychiatrists could specialise on the psychoses. Psychologists are increasingly being recognised as the lead discipline with regard to treating, or responding to, personality disorders (Blackburn, 1993). They have certainly been prominent in the analysis and prediction of dangerousness (Monahan et al., 2001). An official inquiry into abuses at a secure mental health hospital in England, chaired by a judge, readily meted out criticism of individuals (Fallon et al., 1999). It received a recommendation that the
principal provider of therapy, for those with personality disorders only, should be forensic psychologists. But it dismissed the proposal insisting that medical supervision and leadership was necessary (paras. 4.5.6–4.5.9). Its reasoning was cursory, which was all the more surprising giving its finding that there were major problems with the quality of medical supervision. It should not be impossible to devise a scheme whereby a psychologist is the responsible clinician, in practice and law, even if he or she is required by legislation, or just by the implications of the ordinary law of negligence, to have regard to psychiatrists’ and other doctors’ analyses, assessments and recommendations. But the problems start further back. The terms ‘treatment’ and ‘patient’ tend to prejudge the issue. We do not have to accept that people require ‘treatment’ for their behaviour. That approach presupposes a medical model and context that is rarely given. Unfortunately such issues are not taken up when we limit ‘psychiatry and law’ to ‘mental health law’.

A distinction is regularly drawn between normal and abnormal psychology. The former is concerned with understanding and predicting the behaviour of ‘ordinary’ people, those who would not be considered patients or criminals, for example. ‘Normal’ psychology might be utilised when seeking an understanding of, for example, decision-making by jurors. After all, jurors are supposed to be representative of the broader community. But then the legal context, of trials and jury rooms, are hardly normal experiences. It is very difficult to replicate conditions equivalent to a trial, and the experience of a jury, in jury research (see chapter by Greene and Wrightsman, in this volume). Indeed the legal contexts for human behaviour can create a number of unique circumstances making inference and generalisation very difficult. So it is submitted that both ‘psychiatry’ and ‘psychology’ are far too narrow perspectives for analysing human behaviour in legal contexts and that ‘behavioural sciences’ is to be preferred. However, while ‘behavioural sciences’ is a broad enough expression it does not actively involve, or recognise the need for the perspectives and support of, social sciences such as sociology, economics, politics, cultural studies and history.

A ‘Behavioural’ or a ‘Social’ Science?

Psychiatry and clinical psychology are alike in their tendency to focus on individuals, although ‘individual’, here, could include families and similar small units. It is not just that their knowledge base is built upon studies of individuals but also that the clients of practitioners are individuals. The economy for psychological and psychiatric services involves individuals, not groups or communities. Which is the egg and which the chicken? That there is an economic demand for ‘individual psychology’ must feed through into an impetus, or value imperative, for research that will prove useful to that form of treatment and action. There are subdisciplines of social psychology and social psychiatry. Few clinical psychologists and psychiatrists would deny or diminish the importance of community and social contexts in explaining or treating their patients’ problems. Social, or community, psychology and psychiatry have a contribution to make. But ‘sick’ housing estates do not have a procedure, provision or account to pay for community psychological or psychiatric services. Practitioners are likely to focus on the perceived problems and/or needs of an individual within a family before, if
ever, deciding that it is more appropriate to analyse and deal with the problems in terms of family or other group dynamics or problems.

But there have to be limits, in practice. Forever arguing that there are alternative perspectives is easy. We would quickly tire of (and unable and unwilling to pay) the medical practitioner who, rather than telling us what our problem was, let alone providing treatment, insisted on discovering the views of doctors from other medical specialties—nurses, professions allied to medicine, psychologists, complementary practitioners, and yet more. Alternative perspectives, theories, methods may have something to contribute but it is a case of core and penumbra. Some alternative disciplines, perspectives, theories and methods will more often have/more to offer, in practice. But it is critical that we do not close the door on, or exclude, alternative perspectives, disciplines, etc. And a key question is whether, in the development of interest in ‘psychology and law’, doors are being closed intentionally or otherwise.

The ‘tension’ between ‘psychology and law’ groups, for example in conferences, in courses with different emphases, journals, books, and criminology or ‘deviancy study’ groups, may be seen as a product of this issue. The former ‘groups’ are ‘happier’ with the more individualistic approaches of psychology while the latter ‘assume’ or emphasise the importance of social explanations. The tension is inevitable and, intellectually over time, will prove productive. But are the developing relationships and expectations of ‘psychology and law’ counter-productive because they avoid, deny or do not sufficiently ‘speak’ of and acknowledge these ‘tensions’?

For example, those who would call themselves ‘forensic psychologists’ or just psychologists interested in psychology and law would, overwhelmingly, be psychologists trained or practising in clinical or penal settings, or in child or family services. It is a large group but where are the educational, occupational and social psychologists? Their work is also intimately tied up with the law, in many more senses than just the legal regulation of their professional bodies. The ‘psychology and law’ journals, courses, conferences, books (of which this Hand book seeks to be an exception), are dominated by clinical and ‘forensic’ psychology. Indeed the word ‘forensic’, which originally simply meant connected with the law and legal system, appears to have been appropriated, at least in the UK, to a particular professional usage. Many still seem to assume that ‘psychology and law’ is limited to interests in and interaction with the criminal justice system, even when mental health law applications concern the civil law. Educational psychologists, at least in the UK, have a major legal role. Their reports can influence, even if not determine in as powerful a manner as can psychiatrists’ reports, how much special provision a child will obtain to help with his or her education. And if the child’s parents do not like the report then the psychologist can find himself, or herself, before a special tribunal defending the report and its recommendations. This is as much about law as mental health or prison parole legislation! Occupational psychologists could find their analyses challenged and/or adopted in and by industrial tribunals. And yet these psychologists do not seem to perceive ‘psychology and law’ as relevant to them. Why do they not wish to come to the party; or have they not been invited? Why should lawyers respect and be interested in the
development of ‘psychology and law’ if it is partial, with regard to the psychologists involved, and the range of explanations offered?

‘Law’ and What?

‘Law’ tends, naturally enough, to suggest lawyers. That includes judges and legal practitioners, as well as law academics. But many other disciplines are involved with ‘the law’. Police and social workers, for example, give effect to discrete areas of the law. They often know the law affecting their area of work better than many lawyers, at least until a case gets into the courts. But they are not ‘lawyers’. And those legislators who make the law, even if they rarely draft (particularly draft well) the law, are not thought of as ‘lawyers’. Is this significant? In terms of the model with which this chapter began, it is not significant if ‘psychology and law’ is considered only to be a subdiscipline. It should be significant if ‘psychology and law’ is to involve collaboration between disciplines. And it, most certainly, is very significant if it is to be a project wherein the goal, by developing the disciplines and working together, is to increase and improve the quantity and quality of justice experienced.

In all three senses—‘psychology and law’ as a subdiscipline, as collaboration or as a project—‘law’ is clearly the junior partner. Lawyers, certainly in the narrow sense, are rarely to be seen at psychology and law conferences, whether national or international. They are rarely represented on the editorial boards of the relevant journals, and more rarely still have editorial roles. And yet the interest is said to be in ‘psychology and law’ (rather than ‘psychology in law’) and lawyers are, or could be, major consumers of behavioural science. Most obviously they can introduce behavioural science, as expert evidence, into court proceedings. But they could draw upon behavioural science for the skills they need to improve their competence as lawyers, such as in interviewing clients, testing evidence and making decisions. And they could, and should, use behavioural science to inform the legislation they draft.

Psychology and law might be represented as a subset of the socio-legal approach, along with economics and law, history and law, etc. But the expression ‘socio-legal’ seems to be used in both broader and narrower senses (Cotterrell, 1984). In its broader sense it includes every approach to understanding law which includes its social setting. In this sense it includes behavioural sciences and law, as well as psychology and law. In its narrower sense it refers just to sociology and law which, depending upon particular theoretical approaches (e.g. Marxist), could include other social sciences such as economics and politics. In the broader sense behavioural sciences and law appears to be accepted as a subset of socio-legal studies, rather than the converse. Social factors, such as the distribution of power and other resources, cultural perceptions and understandings, are the context, or macro level, for understanding the more specific, or micro level, human behaviour.

Interest in socio-legal studies appears to have been (particularly in the sense of having active, interested and supportive organisations rather than isolated individuals), more long-standing than interest in behavioural sciences and law. Of course this depends
upon what is to be included within the terms. For example, realist approaches to law pre-date regular use of the term ‘socio-legal’ (Hunt, 1978). Realist approaches emphasise what ‘really’ happens in fact, in practice, rather than what is stated in the rules in the statute or case law. What, really, is the speed limit that the police will act upon rather than what is it stated to be in the formal legislation giving them their powers to intervene? (In the UK it seems to be 10% higher than the sign-posted limits.) The realists’ interest was in the effects of law rather than in the more traditional, for academic lawyers, interest in the detailed analysis of legal doctrine and terminology in legislation and precedent cases. But realism was a product of lawyers, including judges, looking ‘outwards’ rather than other disciplines looking ‘inwards’ to law and legal practice. It was an initiative by lawyers (Haney, 1980). Does that count, given that realist studies, even if empirical, are not necessarily or particularly interdisciplinary?

The interest in socio-legal studies in the United Kingdom, for example, if measured by the establishment of facilitating organisations or the creation of new journals, preceded the interest in psychology and law by about two or three decades. Is this significant? Well, consider the comparative competence of socio-legal and psychology and law studies to deliver robust research findings of practical value to government and research funding bodies. It is submitted that we ought to expect a greater interest in behavioural sciences and law than in socio-legal studies, from those agencies. It has a greater potential for research based upon a rigorous methodology, particularly in the control of variables. This is certainly not to question the value of socio-legal research or its potential for scientific credibility within the limits of ethically possible research. It is just to comment that the comparative interests in, and funding of, research between behavioural sciences and law and socio-legal studies is counter-intuitive. Again any testing of this hypothesis will depend upon agreement about terms. Is research by psychologists on legal topics—for example, children’s experience of being witnesses in court proceedings—psychological or interdisciplinary research? However we answer such questions the key point remains, it is submitted that there is nowhere near as much behavioural science research as might be expected, particularly in comparison with socio-legal research. This is particularly true of research emanating from law schools.

Within socio-legal studies law is the senior partner to other disciplines. The journal editors and conference organisers are in law departments. It is the product of a broadening of law, an adoption of a wider perspective, the recognition of a much wider range of factors and influences as relevant to understanding law in both its statement and its practice. A lack of training in research methodology handicaps many academic, socio-legal lawyers who might otherwise wish to undertake empirical research. In marked contrast with the USA, law is an undergraduate degree in the UK. That degree is focused on acquiring knowledge of substantive rules and a relatively narrow range of intellectual techniques for handling legal materials. It rarely contains training in research methodology, whether to enable its graduates to undertake appropriate empirical research or even to recognise good and bad science. Consequently, much socio-legal writing is more theoretical, or involves policy analysis, than is empirical. The objectives of socio-legal research are, perhaps, not as pragmatic as might be expected.
There are separate national and international organisations that proclaim a focus on psychology and law, psychiatry and law, and sociology and law, although the Australian and New Zealand Association of Psychiatry, Psychology and Law differs, slightly. There are separate conferences and journals. Assuredly there is some overlap in substantive topics. In particular there is extensive overlap where the focus is criminal justice, although different terms, such as ‘criminology’ and ‘deviancy studies’, betray different emphases. Perhaps the pragmatic and professional contexts have hastened this. There are some key figures, in psychology and law, who would be invited to speak at psychiatry, criminology, penology or, less likely, law conferences. And judges are likely to be invited to speak at other disciplines’ meetings and conferences although, it is submitted, that would be more due to their status and role in the legal system than to their intellectual discipline. But the rank and file adherents tend to ‘stick to their own’. There are, for example, among those interested in the causes of and responses to criminal conduct, separate groups for lawyers, psychologists, social scientists, and that is not counting professional groupings, such as prison psychologists.

There is a good economic reason why practising lawyers should not attend psychology and law conferences. Most are self-employed or must earn fees for their firm. Academics, and others who are salaried, continue to be paid whilst they attend a conference (or just a few). Indeed they will often be able to reclaim some of their expenses. Not only is time spent at a conference time when practising lawyers are not earning, but also they are unlikely to receive expenses to meet the costs of their attendance. The same appears largely true with judges even though they are salaried. But then what are these lawyers likely to learn at a ‘psychology and law’ conference that is useful to them? Critiques of a law—for example, tests for assessing the competence of a person with a mental disorder, or descriptions of a legal practice such as interviewing—may be interesting but they are not useful to them in their jobs. Lawyers do not have an economic interest in descriptions, particularly critical, of the law or legal practice. That too much faith is placed in the competence of eyewitnesses is of no economic interest to them while the law remains the same. They have a vested interest in the status quo for that is what they operate. They need to call and examine eyewitnesses (where this is permitted by the national law), operate tests of capacity, or persuade judges and juries by further elaboration of the skills of advocacy. Of course this does not stop individual lawyers being interested in and very concerned about, for example, the calibre of eyewitnesses. And they may be so concerned that they will spend time and money pressing for law reform. But it is not in their immediate economic interests. Indeed, if the law is changed they will have to spend time, which is not directly compensated, in learning the new rules. They have an economic interest in the law not being changed.

The point may be clearer if a comparison is made. Doctors, for example, have an interest in knowing about recent research. If a new diagnostic test or treatment becomes available for meningitis and it merits sufficient credibility and interest to be described in medical journals, then doctors, or at least those with patients who may present with meningitis, need to know about those developments. If they do not know about that research then they may, in due course, be found to have been negligent and