



Psychology and Law, Overview

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the field is founded were present a century ago. Research at the time, and much of the work since, has taken place in the areas of perception and memory, as well as abilities, intellectual performance and social relations, areas in the list of problems related by Muensterberg. All of these areas are treated in the present section of this encyclopedia, and while they would all be recognized by turn-of-the-19th-century psychologists, their elaboration since that time has been considerable. Legal psychology has grown in many ways, and has multiple foci.

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GLOSSARY

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1. INTRODUCTION

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If experimental psychology is to enter into its period of practical service, it cannot be a question of simply using the ready-made results for ends which were not in view during the experiments. What is needed is to adjust research to the practical problems themselves and thus, for instance, when education is in question, to start psychological experiments directly from educational problems. Applied Psychology will then become an independent experimental science which stands related to the ordinary experimental psychology as engineering to physics.

The time for such Applied Psychology is surely near, and work has been started from most various sides. Those fields of practical life which come first in question may be said to be education, medicine, art, economics and law.

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This bit of advocacy was written by Hugo Muensterberg in 1907, and makes clear that both the vision and the empirical research program on which

2. IMPORTANT ATTRIBUTES OF THE FIELD

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There are certain attributes of psychology that set it apart from other fields with relationships with law (e.g., social work, psychiatry). These attributes form common themes across the articles in this section. The field of psychology and law displays an interesting diversity of approaches to its application, which reflects the full diversity of the underlying field. Its approach is at base scientific, and in the analysis of policy, practice, and evaluation, the goals are theoretical and empirical clarity. The orientation is, for the most part, one of engaging problems at a practical level, using available theory and new research to develop pragmatic responses tailored to the demands of situation and context—just as Muensterberg foresaw.

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p0020 The field of psychology and law exhibits a distinctive scientific character. The field is committed to testing standards that are based in measurement theory and developed according to scientific standards that distinguish this professional enterprise from that of others, e.g., social workers, psychiatrists. Validated measures and tests exist for some topics (e.g., competence to stand trial, competence to consent to treatment, and competence to waive Miranda rights), but are not yet developed for others. The cutting-edge developments in the field are precisely the formation of new tests and measures, new empirically validated techniques and procedures, and policies founded in empirical research.

p0025 The potential contributions of psychology to the various demands of law are by no means fully realized. As psychologists embark on analysis of many domains in the psychology and law interface, alternative approaches and explanatory hypotheses are framed and tested using multiple data sources—a part of the fields of history of philosophy of science and methodology.

p0030 Psychology has a special role of assisting courts in making retrospective assessments of what occurred and in eliminating lies and distortions (i.e., in serving justice). The contexts in which these needs appear are vast. Witnesses to events of all kinds, from bank robberies to traffic accidents, are relied upon to provide accurate information for legal processes. Those alleging the occurrence of a crime, either as a witness or as a victim, are evaluated for accuracy and for incentives to distort. Report of memory for events is a large part of many fact-finding activities in law. Psychology's special role emerges from the fact that records of events and the accounts of them come from human memory and the perceptual and cognitive processes that both record and report them—both selectively. The report of a police officer, for example, comes from memory, and even when it is written contemporarily with the event, the selectivity typical of human attention requires understanding and interpretation, especially if the officer's report conflicts with the reports of others. Psychology is uniquely positioned to address memory for events and other forms of experience, as well as intentional distortion and deception. No other field of study is so focused on these processes.

p0035 Memory for narrative integration of information, making judgments, and studying the effects of personal history, attitudes, and belief systems are all aspects of legal processes. Some take a central role and assume

great importance. Jury decision making is a strong traditional area of psychology and law. The integration of new information into existing attitude and belief systems in the context of whatever constraints are placed on judgment by the court is an important area of understanding for scholars to pursue. Research in this area has the potential for important contributions to our understanding of why long-term trends of injustice (e.g., racial discrimination in all areas of opportunity and legal protection, gender inequality in ownership and employment) were able to continue and how and why change occurs.

Criminal suspects and litigants have incentives to fabricate, mislead, exaggerate, and confabulate. These incentives and the difficulties they present to fact finders extend through many areas, including forensic mental health assessment. As noted by Heilbrun and Lander in their article on assessment in this section,

A defendant might be inclined to exaggerate or minimize symptoms or capacities, depending on the possible implications of each in litigation. Others exaggerate or fabricate symptoms and problems. Yet others minimize or deny symptoms that are genuinely experienced. Response style is a term used to describe how an individual reports his or her own symptoms, behaviors, and problems, and is used to classify an individual's responding as (1) reliable, (2) exaggerated/malingering, (3) defensive, or (4) uncooperative. Self-reported information from an individual who is not reliable will have significant inaccuracies. This principle emphasizes the value of third party information (records and interviews of collateral observers) in both detecting and correcting these inaccuracies.

The role of psychologists in a legal context is often structured very differently from other contexts. For example, there is an important distinction between therapeutic and forensic roles. Ten differences elaborated by Heilbrun (2001) include (1) the purpose for which the evaluation is conducted, (2) the nature of the relationship between the evaluator and the individual being evaluated, (3) the need for a formal notification of purpose, (4) who is being served, (5) the nature of the standard(s) applied in the evaluation, (6) the sources of data considered, (7) the response style of the individual being evaluated, (8) the need to clarify the reasoning and limits of knowledge, (9) the nature of the written report, and (10) the expectation of expert testimony.

Heilbrun and Lander remind us that it is only in the past 50 years that courts have been using psychologists as opposed to other mental health professionals to

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provide information on assessments. Recognition of the role of psychology is still lagging in some communities, and many courts still require a medical degree from the professionals whose opinions they seek. It is only in the last 25 years that expert testimony by experimental psychologists has been widely used in court in matters involving memory and eyewitness identification.

^{p0055} The role of expert witness is quite different from the role of researcher and teacher. An important example is ultimate opinion testimony. A researcher specializing in eyewitness identification will rarely speak with the witness(s) who made the identification, and so is sometimes asked how he or she can talk about the accuracy of the eyewitness identification without examining the witness. The answer is straightforward and contains an important constraint on the role of an expert in contrast to the fact finders in the legal system (e.g., juries, judges). The important factors influencing eyewitness identification are either facts elicited in depositions, hearings, or in trial or facts about the construction and administration of the eyewitness identification materials and process. These are all external to the witness him- or herself. It is a misconception (and maybe a stereotype) that experimental psychologists testifying as expert witnesses on eyewitness testimony make psychological assessments of the witness. The question also contains a trap and another misconception. Eyewitness experts do not offer conclusions about the accuracy of the eyewitness identification. On the contrary, they discuss the events and conditions that are known to influence the accuracy of identification. It remains the province of the jury (or other fact finder) to consider these factors in their own consideration and judgment about the probable accuracy of the identification. Offering an opinion about the accuracy of the identification is known as ultimate opinion testimony, in that it offers an ultimate opinion about an issue that is to be decided in the trial process. The role of the expert in this instance is to inform the jury so that in their evaluation of the evidence they can consider the expert's information—a kind of teaching role for the expert. It is important to keep the decision making in the hands of those placed in that role by the legal process; this clearly structures the role of experts in court and related proceedings.

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3. ARTICLES IN THIS SECTION

^{p0060} Nowadays, forensic psychologists are frequently consulted by courts or lawyers to provide information

about a party's mental state or a party's decision-making ability or capacity, although some judges and other court personnel remain confused about the differences in training and expertise offered by a psychologist, a psychiatrist, a social worker, or other mental health professionals. The articles by Poythress, Heilbrun and Lander, and Martindale and Gould serve to clarify the nature and scope of empirically based contributions that psychologists can make by providing forensic mental health evaluations in civil and criminal cases.

The extent to which an individual is personally responsible for his or her conduct is critical in many situations involving both criminal and civil legal issues. For example, a defendant who engages in behavior that is illegal, but who is unaware of what he or she is doing, or who does not appreciate the significance or consequences of these actions may be entitled to a defense against criminal charges on this basis. Similarly, someone who is easily influenced because of a learning disability or some other psychological impairment can not be expected to take charge of his or her own affairs to the same degree as someone without any mental impairment, and once his or her disability is established, may require assistance in the form of a legal representative or guardian. Expert testimony or a report from a mental health professional such as a psychologist may assist the courts in understanding the cognitive limitations of any impairment, temporary or permanent, as it bears on a legal issue. Psychologists who are trained in forensic assessment and evaluation can help courts to resolve such legal issues.

Defenses to criminal charges premised on a mental disease or disorder are often unpopular in the community because of common erroneous assumptions about the frequency and consequences of such a plea. Research on the public perception of the number of defendants who plead not guilty by reason of insanity shows the number is often exaggerated, and moreover, that the public wrongfully assumes that defendants who enter such a plea are released into the community. In fact, the insanity defense, which applies only to the defendant's state of mind at the time the alleged offense was committed, is used in fewer than 1% of all criminal cases, and when proposed it is unsuccessful 74% of the time. In addition, the consequence of entering a plea of insanity is often a period of incarceration in a psychiatric hospital longer than the offender would spend in prison if convicted of the crime charged.

Other defenses proffered on grounds of diminished capacity or limited mental responsibility are similarly

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unpopular and controversial, as they, too, are often thought to permit culpable offenders to circumvent punishment for their transgressions. Expert assessment and expert testimony is common in these cases to explain how varied mental or neurological conditions may produce situations in which the conduct of the accused is unintended, e.g., because it was involuntary, perhaps a form of automatism, caused by events such as a head injury or a condition such as sleepwalking, hypoglycemia, epilepsy, consumption of alcohol or drugs, or dissociation. Certain mental conditions or disabilities may exonerate a defendant from criminal responsibility if the offender lacks the capacity to form the necessary criminal intent, e.g., defenses that the offender was suffering from battered woman syndrome, post-partum depression, sexual addiction, urban survival syndrome, false memory syndrome, post-traumatic stress syndrome, multiple personality disorder, or schizophrenia.

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3.1. Legal Competency

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The article on legal competency by Poythress delineates the types of decision-making abilities or competencies at discrete moments in the civil and criminal legal process about which courts most frequently seek advice from psychologists trained in forensic assessment and evaluation. The accompanying tables and charts succinctly illustrate the legal standards or issues in the cases and the related psychological competencies that bear on them. Three elements that must be addressed by a forensic psychologist in each case involving an assessment of fitness or competency are (1) the presence of a mental condition that causes an impairment, (2) specifications of the functional impairment, and (3) the distinct legal abilities key to the case that are affected.

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The article begins by orienting practitioners to the context of the task by outlining a framework within the law that psychologists are well advised to understand in order to offer more helpful information to the courts. A helpful conceptual tool for practitioners and psycholegal researchers is a table listing the five aspects of legal competencies identified by Grisso (2001), as it sets forth those aspects of the task most clearly within the province of the forensic psychologist, and those aspects most clearly within the province of the fact finder (judge or jury). In particular, it is important to note that the legal standards or tests for fitness vary from one circumstance to the next. Accordingly, the psychologist must appropriately tailor the information

critical to the fact finders in applying the legal standard that applies in a given case. Many of the competence tests and standards pertinent to civil cases have received less research attention than those pertinent in criminal cases, i.e., criteria relevant to determinations of fitness to make decisions about guardianship, treatment, research participation, and testamentary capacity.

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A point of significance is the limited utility of a diagnosis in many legal proceedings. Although the goal or end point of many clinical mental health inquiries is a diagnosis, legally, the diagnosis itself is of little value to a court charged with determining whether someone meets the criteria for a defense of insanity or otherwise lacks fitness to proceed to trial. The fact finder seeks a functional description or understanding of the nature and scope of an individual's impairment from the consulting expert. A diagnosis by a mental health professional of a mentally disabling condition or disorder does not guarantee that the applicable legal test will be met, but the diagnosis may be of some relevance. Severe mental disturbance or lack of a diagnosis neither guarantees nor is fatal to a claim of incompetence or insanity.

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The terms insanity and incompetence are legal, not psychological, concepts. The legal test for insanity varies from one jurisdiction or community to another, although most tests incorporate the offender's cognitive awareness of the consequences of the conduct at issue. Tests that address some of the "irresistible impulse" standards have in some cases devolved into a question as to whether the accused would engage in the same conduct were there a policeman present. In some states or countries, the standard of "guilty but mentally ill" has been adopted as a variant of "not guilty by reason of insanity." In other communities, legal policy reforms have established that voluntary conduct that produces diminished capacities, such as drinking alcohol or taking drugs, obviates resort to this defense. Policies along these lines conform with the results of studies of juror decision making in insanity cases, which revealed that jurors often take into account the offender's capacity to make responsible choices and whether the offender was negligent or reckless in bringing about his or her mental disability.

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In his article, Poythress adroitly sets controversial topics such as the insanity defense in context by pointing out the infrequency of its use and its low success rate. He also emphasizes the importance of and demand for many other fitness determinations by psychologists, such as fitness to stand trial, or when the

death penalty applies, fitness to be executed. Although it is difficult to obtain precise figures of the number of evaluations prepared annually on issues of fitness or competence, approximately 5% of all criminal defendants are assessed for competence to stand trial. Thus, it is estimated that between 25,000 and 39,000 psychological evaluations for competence to stand trial are performed annually in the United States, making this one of the most frequently requested psychological services. Of the group of offenders evaluated for this purpose, a relatively small proportion, 12%, is found incompetent.

p0105 This article provides an excellent overview of methodological issues facing professionals who are bound to offer evidence-based conclusions to the court. The article includes practical advice to practitioners, such as avoiding controversy as an expert by refusing to prepare a report that addresses more than one type of fitness. Similarly, psychologists are advised to avoid making any statement about the “ultimate legal issue.” As Poythress points out, to do so mixes moral and professional standards.

p0110 Poythress also illustrates the significance of a clear understanding of the relevant comparative group in interpreting the test outcomes of standardized test instruments. Over the past decade, more test instruments designed to address legal competence and fitness have been developed and studied, thus the dearth of available forensic tests is decreasing. One of the drawbacks in developing evidence-based instruments is finding appropriate control groups and obtaining permission to conduct randomized trials on relevant forensic populations to produce comparative data and appropriate test norms.

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3.2. Forensic Mental Health Assessment in Legal Contexts

p0115 The article by Heilbrun and Lander on forensic mental health in legal contexts complements the work of Poythress by providing a more hands-on, practically oriented discussion. Heilbrun and Lander include step-by-step guidance on how to conduct a forensic mental health assessment, including advice on how to structure a report intended for use by the court. Heilbrun and Lander lead the forensic practitioner through 29 steps for conducting a forensic mental health assessment, starting with the initial consultation and ending with expert testimony. This article leads practitioners through substantive considerations at each of three

major steps in conducting forensic assessment, namely, preparation, data collection, and data interpretation. For each step, the authors itemize the standards or guidelines that provide parameters for sound practice. Thus, this article is of value in outlining the various pertinent authorities: legal, ethical, scientific, and practical or clinical.

One of the vital themes developed for sound forensic practice is the importance of gathering information from multiple sources to permit more extensive scrutiny of the reliability of the information gathered in the context of litigation. Heilbrun and Lander state the following:

A single source of information is usually less accurate than multiple sources considered together. This is particularly applicable in forensic mental health assessment, as some of the information sources can be particularly distorted. A defendant might be inclined to exaggerate or minimize symptoms or capacities, depending on the possible implications of each in litigation.

Others exaggerate or fabricate symptoms and problems. Yet others minimize or deny symptoms that are genuinely experienced. Response style is a term used to describe how an individual reports his or her own symptoms, behaviors, and problems, and is used to classify an individual's responding as (1) reliable, (2) exaggerated/malingering, (3) defensive, or (4) uncooperative. Self-reported information from an individual who is not reliable will have significant inaccuracies. This principle emphasizes the value of third party information (records and interviews of collateral observers) in both detecting and correcting these inaccuracies.

Other researchers, such as Rogers, have developed forensic instruments to assist practitioners in discerning distorted responses from litigants who seek to appear better or worse than they are in reality.

A second major theme of forensic mental health assessment in legal contexts, developed by Poythress, Heilbrun, and Lander, is acknowledgement of the distinction between psychologists who are retained to perform a therapeutic role, e.g., by treating offenders, and those who are retained to perform an evaluative forensic role. The full nature of the distinction is appreciated when one considers the ten differences between these roles elaborated by Heilbrun (2001), outlined previously in this article.

Psychologists are often consulted to assess parental competence in the context of a marital dissolution, where decisions about the placement of children in

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the custody of one, both, or neither of the parents must be made by a court. One parent may be mentally ill, or there may be allegations of physical or emotional abuse or neglect by a parent; in such cases, the courts must determine whether that parent is unfit to raise the children. More frequently, courts must grapple with the question of which type of custodial arrangement will promote the child's best interests.

p0135 Psychologists who are well versed in the research on psychological effects on children of divorce and custodial arrangements can play a significant role in assisting courts with determinations about parental fitness. Family life has traditionally held a sacrosanct position within most legal systems. Over time, social and cultural factors regarding who has worked outside of the home and who has been a primary caregiver for a child have shifted the status and rights of children, women, mothers, and fathers. In recent years, definitions of the family have undergone a dramatic change, particularly regarding the nature of nuclear and extended families. About one-half of all Australian and North American children born in the 1990s will be raised by a solo parent, and many children have no siblings. The rise of "no fault" divorce laws has contributed to these changes and has removed much of the stigma previously associated with marital dissolution. However, in certain cultures, remaining married to a spouse who takes on a new partner provides more benefits and social advantages to the ousted wife and children than does the option of divorce.

p0140 Along with changes to the definition of family, the concept of the psychological parent has developed. Accordingly, the rights of grandparents, step-parents, gay parents, and other domestic partnerships have influenced trends in custodial determinations. The extent to which children are consulted regarding their preferences, and the age at which this occurs, varies from one community to another.

p0145 The contributions of and participation of psychologists as researchers and practitioners in issues relating to marriage, divorce, and child custody have been welcomed by legal practitioners. Research has contributed to our understanding of circumstances that promote healthy adjustment in children, and can assist in assessing custodial options such as sole versus joint custody. Eight studies that compared children's adjustment in intact families versus joint custodial arrangements showed no adjustment differences in the children. Data from 33 studies indicated that (1) no causal relationship has emerged between the type of custodial arrangements and children's adjustment; (2)

when the parents are in extreme conflict, children experience adjustment difficulties no matter what the custodial arrangement; (3) more parental conflict ensues between ex-partners when one parent retains sole custody than when custody is joint legal and physical; and (4) the ongoing involvement of the father with the child is predicted by the relationship between the parents, not by the relationship between the father and the child.

3.3. Child Custody

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p0150 The article on child custody by Martinson and Gould traces the four major doctrines relied upon by courts in making custody decisions: (1) the "tender years" doctrine for children under the age of 7, favoring maternal custody; (2) the "psychological parent" rule, favoring the primary caregiver; (3) the "least detrimental alternative," favoring the stability and ongoing relationships in the child's life; and (4) the "best interests of the child." Although the latter is the prevailing standard, it has repeatedly been criticized as too vague, e.g., regarding the time frame to take into consideration when it is applied.

p0155 This article also outlines the key features of ethical practice standards, such as the American Psychological Association Guidelines on Custody Evaluations (1994). These guidelines assume the legal criterion is the best interests of the child. In line with the distinction between functional and diagnostic criteria noted earlier, the guidelines emphasize that evaluators must avoid focusing on the psychopathology of parents except to the extent that it affects parenting skills and fitness. The guidelines echo the need to use multiple methods of data gathering, such as observations, interviews, contacting third parties or collaterals courses, obtaining school reports and records, as well as formal psychological assessments, in order to offer a more reliable recommendation to the courts.

p0160 Because the stakes are high in custody disputes, practitioners are advised to take steps to uncover efforts by the parties undergoing evaluation to exaggerate positive information or minimize negative information. The principle of substantiating one's opinion with evidence to back it up is critical to avoid recourse to clinical opinions that are more susceptible to attack. Many of the recommendations for successful forensic consultation in child custody cases can be applied to other areas of forensic practice.

p0165 Commentators have pointed out that one consequence of the implementation of no fault divorce laws

is the greater likelihood of resorting to mediation to resolve issues of custody. In many jurisdictions, parties litigating in family court must participate in mandatory mediation or family conferences prior to attending any court hearing, and in other jurisdictions, referral to mediation is routine. More custody cases are resolved via mediation than by trial. Research on uses of mediation in family cases is more extensive than in other areas of the law. Mediation may produce more losses for mothers and gains for fathers and can have both positive and negative effects. Success of mediation has more to do with the readiness of the parties for the procedure. The best candidates for mediation are those who are cooperative in resolving conflicts. There is no evidence that the psychological functioning of parents enmeshed in conflict can be enhanced by mediation, or that mediation can change the relationship patterns of parents who are angry, volatile, disengaged, or withdrawn. Researchers also caution against generalizing from measures of satisfaction with mediation.

p0170 The approaches to evaluation and assessment outlined by Poythress, Heilbrun, Lander and Martindale and Gould establish core principles that can be applied to all forms of forensic assessment, including evaluations in other areas, such as civil damages to assess the nature and scope of injuries following an accident or following a statutory violation, such as employment discrimination.

p0175 Just as children have been given greater and more careful attention in many legal processes than in the past, their testimony has achieved greater acceptance. They have been seen more frequently as victims of crimes and therefore as witnesses. Many nations have experienced an increased focus on children and their welfare in a wide range of legal contexts. As divorce rates have increased, the question of how to provide for the children has come more into focus. In that context alone, there has been an increased concern for the abilities of children to know their own minds, to give accurate testimony, to withstand the pressures of family members, and to participate in the legal process. Although many of these concerns focused on protecting children from becoming victims of their situation, many children do indeed become victims, often within the family. Various kinds of abuse are observed, from neglect, to beating, to sexual abuse. Abuse that in the past would not have come to light in public or in legal proceedings came to the attention of professionals working for public agencies charged with overseeing (among other things) child welfare. As these events are reported, questions inevitably arise regarding the abilities of

children to remember the important events, report their memory, differentiate between what they experience directly from what they have been told, and withstand the pressures of testimony and cross-examination in the presence of strangers and the imposing atmosphere of the courtroom. There are also concerns about the appropriate means of interviewing children to get the most reliable information with the least cost to the child.

3.4. Children's Testimony

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p0180 Quas and Beck divide the research questions that have been asked in this area into three major categories: characteristics of the child, characteristics of the to-be-remembered event, and characteristics of the interview. Age is a rough way of indexing the cognitive and social changes that occur with psychological development. Many changes occur as children grow and age: their general knowledge, sense of what is important, and ability to interpret and remember events all change in important ways. Other factors (e.g., intelligence, temperament, emotional reactivity) are also important influences on the child's memory and ability to provide reliable testimony. The authors point out that it is difficult to apply knowledge of these factors to make judgments about the validity of a given child's report. However, such information can assist in deciding how best to interview the child, and how to protect the child during the process. The recent move in the United Kingdom to identify and moderate treatment of vulnerable witnesses is of particular interest in this connection.

Event characteristics are of interest here just as they are in other areas of eyewitness memory. p0185 Quas and Beck review the major findings from research with children. Emotional events, for example, are remembered better than neutral events, although peripheral aspects of an emotional event may not be well remembered. But again, applying this knowledge is not always straightforward. What is central to a child may not be what is central to an adult, and as with adults, children vary with regard to what aspects of an event they consider central or peripheral. Like adults, children learn generalized accounts of common, repeated events. But more so than adults, they fail to differentiate between the common characteristics of an event and the unique ones, often failing to report unique events and common, expected events that did not occur in the instance of interest.

The characteristics of both interviews that lead to p0190 erroneous reports and those that lead to more accurate

and complete reports have been the subject of a very large portion of research on children's testimony. To some degree this was driven by the nature of the court cases that were very much in the public eye in both North America and Europe. The conclusions reached for children are very similar to those developed by Aldert Vrij for interviewing adults. Free recall questions are fairly accurate (although they may be incomplete), and suggestive questions lead to errors, in the direction of adopting the suggested information.

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3.5. Interviewing and Interrogation

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Obtaining information from persons associated with a criminal event (and certain other events such as food poisoning, accidents, and workplace events) is a process that is both important and fraught with possibilities for error. Some errors are intentional—e.g., withholding self-incriminating information—while others are mired in the complexities of retrieving precisely accurate memories. The difference between these cases is the difference between interrogations and interviews. This and the related topic of detecting deceitful testimony are treated in the article by Vrij on interviewing and interrogation.

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Posing suggestive questions to victims and other witnesses risks the integrity of the resulting information. When witnesses are asked leading questions containing one possible answer to the question, e.g., "Was the car red?", when the answer is "Yes" it is not clear whether it is because the car was in fact red or because the witness has no memory of this fact but answers "Yes" because of a judgment that the questioner probably knows the right answer and is looking for confirmation. Alternatively, the suggestion may actually modify the witness's memory. On subsequent occasions, the witness may confidently and spontaneously answer "Red" and experience the attribute of "red" associated with that object and event, firmly believing it was red.

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One alternative to asking leading questions is to ask questions containing multiple choices, but these are still limiting and leading, albeit in a broader sense. The best practice is the use of open questions, often a number of open questions, sequentially. For example, "Tell me everything you can remember about the car," followed by "What was the color of the car?" if color is not mentioned. In general, it is better to begin with the more open questions, probing with more open questions, and ending with specific questions (leading, in the end) to elicit specific responses. However, if the

witness cannot come up with "Red" in response to "What color was the car?", asking "Was it red?" yields interpretable information only if the answer is "No." These topics are discussed in more detail by Vrij.

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For more than 20 years, techniques based on context reinstatement have been known to enhance the recall of information, even after significant time delays. The most commonly used of these techniques is the cognitive interview (CI). CI techniques are based on the premise that the witness has the information wanted by the interviewer, that the information is organized by the witness according to meaningful criteria applied by the witness at the time of encoding or organizing the information for retention, and that the retrieval of this information must be organized by the witness (not the interviewer) in ways that fit the organizational criteria imposed on it by the witness in the first place. This set of assumptions requires that much of the social interaction—as well as the cognitive interaction—about the recall process be in the hands of the witness. Witnesses are therefore encouraged to take an active part in the interview, to recall and report everything, and to return to previously discussed topics if additional details have been recalled. Witnesses are also encouraged to report the events under investigation from the perspective of other actors present during the events. Research indicates that context reinstatement techniques greatly increase the gross amount of memory reports. The ratio of correct to incorrect items recalled does not change, however, so while the amount of material produced is greatly increased, its efficiency at differentiating correct from false reports is unchanged. Nevertheless, having much more to work with is a great advantage to investigators.

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The Reid technique is the single most popular approach to the interrogation of uncooperative suspects. It is used to obtain confessions from people who investigators believe are guilty. Of course, the detection of guilt or innocence is well known to be a judgment prone to error, and the confession is meant to establish guilt, so the technique is to some degree circular. Its adherents defend it as being nearly perfect, producing confessions from the guilty but not from the innocent. However, there is an increasing catalog of cases in which Reid-like techniques are associated with false confessions and wrongful conviction. The technique has achieved a negative reputation in psychological research circles because of certain components of the technique, such as altering the suspect's decision-making environment by lying about the nature and strength of the evidence against him, by painting the

picture of his situation as hopeless, and creating a (false) understanding that confession is the only way he can obtain any leniency (something usually outside the investigators control). Vrij's article reviews the Reid technique and provides an extended analysis of its difficulties.

p0220 Vrij offers as an alternative a technique used increasingly in the United Kingdom as a response to a series of notorious British miscarriages of justice involving false confessions. The technique involves the extensive use of detailed knowledge of the crime by the investigating officers and the skillful use of questioning techniques.

p0225 False confessions have received a great deal of attention in the popular press in the last few years, and many nations have their own catalog of prominent cases. Vrij distinguishes three types of false confessions: voluntary, coerced-compliant, and coerced-internalized. Voluntary false confessions are given with no special effort from investigators. The famous case of Henry Lee Lucas, who is estimated to have confessed to more than 600 murders is offered as an example. Coerced-compliant confessions are those that result from the pressures and incentives of an interrogation. Coerced-internalized false confessions occur when people become convinced that they actually did commit the crime even though they have no memory of the event. Analysis of these forms of confession is provided, and means of detecting false confessions are discussed.

p0230 Law enforcement personnel often display great confidence in their ability to detect deceit in suspects they are interviewing. The bad news is that in controlled studies, people are able to detect truthfulness a bit above the level of chance expectation but detect lies somewhat below the level of chance expectation. Studies using law enforcement personnel, as compared with college students, find similar accuracy rates. Some professionals (e.g., U.S. Secret Service officers and others with a special interest in deception) perform better than chance levels. Vrij reviews a number of common pitfalls in the deceit detection process, discusses cultural differences in social interaction norms that interfere in the process, and debunks some popular beliefs about the behavior of liars. Techniques for improving deceit detection are reviewed, e.g., attention to the content of a witness's speech leads to more effective assessments of deceit than does attention to non-verbal behavior.

p0235 Another form of error, although rarely intentional, is that made by eyewitnesses when they are asked if the perpetrator is among the persons shown to them in a

"lineup." The prevalence rate of such errors is not altogether clear. However, the problem has persistently attracted attention for more than 100 years and is not easy to dismiss. The most recent incarnation of attention to this problem is found in the work of the Innocence Project, which as of April 2004 has documented 143 exonerations of wrongfully convicted persons. Eyewitness identification errors are the single most important contributor to these wrongful convictions. The malleability of memory is an important contributor. New information can be incorporated into old memories, and the source of memories is often forgotten. It is often not possible to tease out the origins of what appear to be intact and accurate memories. In addition, it is not uncommon for aspects of a typical event to be incorporated into memory for a specific event in which certain of the typical elements were not present.

3.6. Eyewitness Testimony

The misinformation effect, discussed by Levine and Loftus in their article on eyewitness testimony, is an important example. They show how the wording of a question can lead to the intrusion of non-existent elements into reports of memory. Similarly, the strength of the verb used to characterize an event (e.g., "How fast were the cars going when they smashed/collided/bumped/contacted ...?") affects the answer. Not surprisingly, the effects are stronger when the actual memory is weaker. And the passage of time only fosters integration of the new or modified elements into an altered but apparently unitary memory.

The authors review the relatively new and somewhat surprising findings on the subject of creation of new memories of personal events that in fact never happened. Suggestions made by trusted others are important ways in which non-existent events can be created in memory. But imagining an event oneself can also result in the creation of memories, as the fact that the event was only imagined is itself a memory that may be forgotten.

The spurious relationship between confidence in the accuracy of a memory and its actual accuracy is briefly discussed. It is a strong belief on the part of many people, some of whom will serve as jurors or fact finders in legal contexts. Even though confidently given accounts of events may be convincing, the confident manner of reporting is in itself no indication of the validity of the recollection. Only a very small

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relationship is found between confidence and accuracy. And to make matters worse, confidence is easily manipulated independently of accuracy, making it an even less useful factor.

p0255 The role of emotion in memory is an interesting area of study. Emotional events appear to be well remembered, but it appears that this is primarily for central events, or those that have important meaning for the observer. Peripheral events appear to be more poorly remembered. Studies of activation of brain areas and their relation to memories of emotional events can help to clarify our interpretation of the memory–emotion relationship.

p0260 The confrontation of a criminal by victims and other witnesses captures interest and imagination; when the accusing finger points at the perpetrator of a crime, it is the moment of justice. However, this is no simple imposition of justice at a personal level. Everything about the identification process has meaning for the outcome, and eyewitness identification is notoriously fallible. Mistaken identification is the single most important contributor to known cases of wrongful conviction. Because the identification and the preparations for it have a central role in a significant proportion of criminal cases, concern for identification procedures has attracted the attention of law enforcement agencies, non-governmental organizations concerned with justice, and the research community.

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3.7. Eyewitness Identification

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Tredoux, Meissner, Malpass, and Zimmerman introduce the topic of eyewitness identification and set forth some of the complexities of this area of applied research. The authors distinguish three stages in the eyewitness process: perceiving an event, storing and assimilating the information obtained, and remembering and acting upon the event. They review and discuss the ways in which factors related to these stages affect the result of the identification process.

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Any identification is dependent on the amount and quality of the information obtained from the original event. This is affected by the amount of time the witness had to view the event and the perpetrator, distance from the event, and its visibility, including lighting and conditions that obscure vision. Apart from external conditions, aspects of the witness are also important at the initial stage: stress, fear, and the presence of a weapon all influence the information-gathering process.

p0275 Certain enduring characteristics of witnesses are related to their performance. Their age (at least at the extremes) has some influence. Alcohol and other drugs also have effects. The “race,” sex, and occupation of witnesses have also been studied. While there is no general advantage of males or females in identification performance, there are some differences in memory for events that appear to be matters of attention rather than memory per se. While it is a popular belief that law enforcement officers will be better in facial identification, the small research literature on this topic does not support this idea. However, experience as an officer does relate to the quality of the descriptions they provide, both of persons and events. However, they also tend to misperceive innocent events as being criminal in nature. The race of the witness is unrelated to facial or event memory of reporting performance.

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p0280 Attributes of the perpetrator also contribute to accuracy of identification, in interesting ways. First, disguises are effective, especially those that cover the most informative areas of the face. There are also distinctive patterns of facial appearance. Typical faces are more difficult to distinguish from each other, while non-typical faces are more distinctive and easier to remember. Some faces can be characterized as having specific characteristics (such as “criminality”); observers agree on this, even though it is unrelated to actual criminality. The race of the perpetrator alone does not contribute to accuracy of identification, but the combination of the race of the perpetrator and the witness does. “Cross-race” identifications are more frequently in error than “own-race” identifications.

p0285 An important part of the investigative process is getting information from witnesses, about both the event and the appearance of persons taking part in the event. Verbal descriptions of perpetrators are notoriously sparse, but there are techniques that assist first responders in obtaining more useful descriptions and information.; some of these are described. Consequences of asking witnesses to describe the faces of perpetrators include short-term reduction in the ability to recognize the face described.

p0290 The technology of pursuing the identification of suspects by eyewitnesses includes such procedures as searching mug shot collections, constructing composite portraits, and constructing and administering lineup and other identification procedures. These topics are all discussed in this article. More detailed attention is given to the construction, evaluation, and administration of lineups.

^{p0295} It is important for law enforcement organizations to keep collections of facial images so that fair lineups can be constructed for criminal investigation. The authors point out that these collections and the means of perusing them are behind the available technology. Examining mug shots is a facial recognition process. Facial recall, however, externalizes a facial image in memory to a representation that can be shared. Verbal descriptions are a form of face recall; another is the construction of a composite portrait. Of course, if the portrait is constructed by another person through the witness's verbal descriptions and then approval by recognition, it is not exactly facial recall. But when the witness uses composite construction computer programs, the work of the eyewitness is more constructive. These are moot points, however. There is no evidence that composite construction is a reliable means of producing high-quality likenesses from memory. There are other dangers in their use: first, many investigators believe in their usefulness, and second, many times a witness is given a copy of their composite to keep with them. Evidence suggests that repeated viewing of a composite changes memory for the original face.

^{p0300} Lineups should be constructed to be fair in two respects: the suspect should not stand out from the other members of the lineup, and the fillers—the five other members of a six-person lineup—should be meaningful alternatives to the suspect. Quantitative methods for measuring the fairness of a lineup have been developed and can readily be applied by law enforcement personnel who create them. The authors describe these techniques and show their importance for effective use of identification evidence in an investigation and prosecution.

^{p0305} Many law enforcement agencies have policies governing the admonitions that are read to eyewitnesses during the identification process. The authors argue that one of the more important problems in eyewitness identification is the tendency for eyewitnesses to believe that they must choose someone from the lineup they are shown. Admonitions of various kinds have been developed in an attempt to correct this tendency, and to orient the eyewitness to the important nature of the identification decision.

^{p0310} Alternative forms of lineup procedures have been proposed and researched in the last decade. The authors describe and evaluate a series of these, and describe what is known about the use of lineups involving other modes than visual sensory ones. Finally, the authors consider the beliefs and knowledge held by

prospective jurors about eyewitness identification. This is information that feeds into the evaluation of the use of expert testimony in the evaluation of eyewitness identification. The balance between informing the jury and influencing the jury is an important one, and so it is important to know whether juries can benefit from expert assistance. Research indicates that lay jurors lack the requisite knowledge to appropriately evaluate eyewitness identification evidence.

3.8. Jury Decision Making ^{s0055}

^{p0315} Opportunities for laypersons to participate in legal decision making exist in many jurisdictions, most commonly provided through some form of jury service, although there is considerable variability in jury systems and the scope of the jury role and the types of cases in which the public participate around the world. Albertson, Farley, and Hans report on developments in the jury decision making area. Jury behavior is one feature of the legal system that has been the subject of extensive psychological research for several decades, starting with the University of Chicago Jury Project. The research database on jury studies is so vast that gaining an overview is challenging. A recent meta-analysis of jury research published in an 18-year period (1977–1994) revealed that studies of criminal cases far outstripped those about civil jury decision making (89 vs 11%). This study also provided some insight into the most frequently studied topics of jury behavior: the impact of litigation strategies, the influence of different types of witnesses, and the effects of juror or litigant characteristics. Nine distinctive subtopics addressed most often by researchers emerged: (1) criminal defense strategies, (2) capital punishment and sentencing, (3) characteristics of individual jurors, (4) judicial instructions to jurors, (5) general litigation strategies, (6) witness performance, (7) evaluation of evidence by jurors, (8) characteristics of offenders or parties, and (9) miscellaneous topics.

Jury researchers have employed a diverse array of methods and approaches to gain insight into factors that influence jury performance. These include (1) archival studies of jury verdicts in actual cases, (2) case analyses, (3) community attitude surveys (e.g., via telephone), (4) observations of trials and interviews of actual jurors, (5) experimental simulations, and (6) experimental or quasi-experimental designs using real juries. ^{p0320}

One of the limiting factors in studying jury decision making is that the deliberations that take place among ^{p0325}

jurors at the conclusion of the trial are typically confidential, and the observation or recording of jury deliberations in many jurisdictions is prohibited. This policy has impeded researchers from gathering much information about the scope of jury-initiated misconduct in actual trials. Researchers who rely on post-trial interviews can not accurately gauge the extent to which juror recall is accurate and reliable. At times, researchers have employed “shadow jurors” who attend courtroom trials and then are interviewed about their observations to infer what the actual jurors might think of the evidence. Occasionally, extra alternate jurors have been empanelled and their deliberations have been videotaped and analyzed to gain insight into how the information they heard and witnessed is used in reaching a verdict.

^{p0330} Research involving real jurors in actual cases, including archival studies of jury verdicts, is relatively rare, accounting for approximately 10% of the jury studies conducted over an 18-year period. Because this method is not very informative about the decision-making process of the jury, many researchers have adopted a mock trial paradigm in which simulated juries receive information akin to that presented in an actual case. The materials may range in realism from brief written descriptions or case summaries to extensive videotaped trials in which attorneys present opening and closing arguments and question witnesses via direct and cross-examination, and jury instructions on the law are provided to the mock jurors. A benefit of this approach is the more extensive empirical control gained by the researcher, permitting causal inferences to be drawn. When mock jurors are used, the extent to which they are similar to actual or potential jurors is an issue. Although much of this research has been conducted with psychology undergraduates, the use of jury-eligible participants has steadily increased, enhancing the generalizability of these results.

^{p0335} The unit of analysis studies by jury researchers has varied. In some cases, individual jurors are the target of the studies, while in others, group deliberations are included, and the unit of analysis is the jury. The article by Albertson, Farley, and Hans carefully outlines the major findings to emerge from both types of studies, i.e., those that have focused on individual jurors and those that have addressed the jury as a group. Studies of the deliberation process have increased in the past 30 years, and they have examined the influence of features such as the size of the jury, the way in which differences of opinion

between majority and minority groups are resolved, the influence of majority versus unanimity rules, and so forth.

The significance of distinctions between external validity and ecological validity have been highlighted by Bornstein (1999) and Vidmar (2004), specifically in discussing whether research conditions in simulation studies include sufficient features of real trials to render them adequately representative of actual trials, permitting researchers to draw on research findings to make policy recommendations regarding reforms to enhance jury performance. Questions of normative criteria against which jury performance should be assessed have also been raised, particularly since research has shown that many judges are susceptible to the same biases or weaknesses as are many jurors. The authors suggested that profitable future avenues of research might include the influence of juror and jury anonymity, options for jurors to become more active during the trial, and comparative jury studies.

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See Also the Following Articles

Intra-refs to be added.

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