Social Psychology of Law and the Courtroom
The case of Kelly Michaels demonstrates why reliability and validity show up in every psychology textbook. They deserve to be integrated into your life. Her story also might inspire you to become a forensic psychologist.

“It’s like public execution, but you stay alive to go at it again, and again, day after day,” Kelly Michaels told Oprah Winfrey in 2003 (you can search for the interview on YouTube). It started when the police knocked on her door as the 23-year-old aspiring actress was getting ready for work at the Wee Care Day Care. Her name had been mentioned in a case of child sex abuse. The police took her for questioning and released her after hearing her story. She thought the short nightmare was over. But they came back and accused her of playing the piano nude, “Making poopie cakes with the children, inserting silverware into the children… just horrible things.”

It became the longest trial in New Jersey history and cost multiple millions of dollars. And it was all an illusion. In the absence of direct physical evidence, the prosecution used anatomically correct dolls as they interviewed pre-school aged children about what had happened and where they had been touched. But here’s the catch. Most of the prosecution’s interviewers were biased to believe that Kelly Michaels had abused the children. For example, to confirm what they already believed, the detectives asked children leading questions such as, “Where could Miss Kelly have touched you?” The detectives had not been psychology majors, or they had forgotten what they had learned, because they did not recognize their own leading questions.

Instead, the detectives believed that they were measuring what they intended to measure when children touched or played with the doll’s genitalia. They failed to consider that the children might have played with any unusual feature on a naked doll simply because it was a novelty (see Bruck & Ceci, 2009). After three years of legal proceedings and millions of dollars, they still did not understand reliability, validity, or confirmation bias. They sent an innocent Kelly Michaels to prison for 47 years (she served five of them, until the decision was overturned).

After reading this chapter, you will be able to answer the following questions:

**Core Questions**

1. How do psychology and law fit together?
2. What career opportunities unite psychology and law?

**Learning Objectives**

1. Apply the goals and methods of psychology to law and courtroom situations.
2. Compare and contrast various careers that combine psychology and applied law.

**HOW DO PSYCHOLOGY AND LAW FIT TOGETHER?**

**Learning Objective 1:** Apply the goals and methods of psychology to law and courtroom situations.

*Forensic psychology* is the application of psychological theory to legal processes. This relatively wide subfield applies research and theory from many areas of psychology to a wide variety of contexts. Six categories of application are shown in Table X.

Some of these categories fit easily with standard training in psychology. For example, you are probably more prepared than you realize to start down a path of conducting
particular kinds of assessments and program evaluation. However, as with many partnerships, the relationship between psychology and the law is sometimes both intimate and contentious. It is intimate because law and psychology seem to be working on the same important social problem: individual and social self-regulation (see Goldstein, 1968). But the relationship between them can become contentious because their professional cultures often are in conflict. Many of the attitudes, training experiences, and professional values of lawyers and psychologists simply will not easily fit together.

**Common Goals:**
**Reliability and Validity**

The anatomically correct dolls that helped send Kelly Michaels to prison are part of a psychological test. The test is intuitively appealing, but it has two ways of being wrong. In this context, a false positive occurs when a therapist decides that a child has been abused when he or she hasn’t. A false negative occurs when a therapist decides that a child has not been abused when he or she has. In addition, the theoretical orientation of the therapist will lead to different interpretations. Refusing to touch the doll could indicate abuse to a Freudian who interprets not touching as repression or denial. However, playing enthusiastically with the doll could also be interpreted as signs of abuse.

Using anatomically correct dolls to test small children for signs of sexual abuse was popular for many years. But from the very beginning, there were concerns about its reliability and validity (Friedemann & Morgan, 1985). In fact, the California Supreme Court decided that it could not determine if using anatomically correct dolls was a valid way to assess child sex abuse. So the court referred the problem back to the scientific community (see Yates & Terr, 1988, p. 254), ruling that “use of the dolls . . . is admissible in court only if it has been accepted as generally reliable in the scientific community.”

Psychology and lawyers have similar goals that include gathering evidence that is both reliable and valid. In addition, both want the best for their clients and both have some interest in promoting social justice. So it seems as if there ought to be some degree of meaningful overlap – and there is. However, the points of contention are also fundamental to each discipline.

Consider a few archival case studies from both psychology and law.
Different Philosophies: Advocacy Versus Objectivity

Law generally determines what is right by virtue of precedent, or prior authority; psychology determines what is right by virtue of empirical observations. Law can only react to and process ongoing events; psychology gets to choose what it studies. The practice of law is based on advocacy; the practice of psychology requires objectivity. Consequently, trying to fit psychology into law has often been difficult – and this tension between psychology and law has been present from their first interactions.

Hugo Münsterberg. The relationship between psychology and the law got off to a shaky start. When psychologist Hugo Münsterberg published his book On the Witness Stand (1908), he was hoping to influence the legal system to accept evidence from psychology in the same way it accepted evidence from other branches of science. He was unsuccessful. Costanzo and Krauss (2015, p. 2) described the book’s “icy reception from legal scholars.” One reviewer gave it a “savagely, satirical critique” for Münsterberg’s “exaggerated claims for psychology.” Even worse, the book was not well received by fellow psychologists.

Louis Brandeis. The next occurrence was more promising. That probably was because a future Supreme Court justice, Louis Brandeis, understood irrational human psychology better than Hugo Münsterberg understood the law. Brandeis cited social science as he argued in favor of improving wages and limiting the workday to 10 hours. The case of Muller v. Oregon (see Woloch, 1996) involved a woman working long hours in a laundry factory. Brandeis argued from a social science perspective that excessive work hours produced negative social consequences such as infant mortality and children harmed by neglect.

It was data more typical of sociology than psychology, but it was a start. In these first two examples, the psychologist (Hugo Münsterberg) was trying to push psychology’s big ideas through a very small door of legal acceptance. He was ineffective – maybe even counterproductive. But the lawyer (Louis Brandeis) was trying to pull something relatively small (some social science data) through that same small door. His data were specific and limited. He was much more effective – and his success created opportunities for others.

Mamie Clark and Kenneth Clark. We introduced you to the Clarks in Chapter X [FILL IN LATER] when we described Mamie Clark’s original Master’s thesis. She originated a series of studies that influenced the 1954 Supreme Court case that ended legal school segregation, Brown v. Board of Education. But the consequences of that legal victory demonstrate critical differences in how psychologists and lawyers define success.

The lawyers who prevailed in Brown v. Board of Education were happy about their legal victory. But the Clarks were, over time, profoundly disappointed because so little changed. The lives of most of the children that they were trying to empower continued to suffer from institutional and cultural discrimination. A longer view, if they had lived to see it, might have given the Clarks some comfort.
The Social Psychology of False Confessions

Kelly Michaels, from the chapter’s opening, told Oprah Winfrey, “I was absolutely terrified because you were completely defenseless . . . you’re being accused, you’re being attacked, you can’t do anything except say the words, ‘I am innocent.’” She probably could have received a shorter sentence if she had been willing to plead guilty. An accused person, whether innocent or guilty, can plead guilty to a lesser crime than the one they are charged with and receive a lighter sentence. The alternative is to roll the dice and hope that a jury finds you not guilty.

A Confession Does Not Equal Guilt. It is easy to assume that any confession – even by torture – is an admission of guilt. But there are reasonable alternative explanations. In the United States, many trials involved Black defendants who had confessed – but only after being beaten (Kassin, 1997; Kassin & Wrightsman, 1985; Wrightsman & Kassin, 1993; Wrightsman, Neitzel, & Fortune, 1994). This situation persisted until Brown v. Mississippi started to alter the legal landscape. In that case, the Supreme Court ruled that a trial “is a mere pretense” if a conviction has been “obtained by violence.” Jurors tend to accept confessions as authentic even when the confessions (a) have been discredited; (b) are ruled inadmissible; and (c) the judge has instructed jurors to disregard the confession (Kassin & Sukel, 1997; Kassin, Williams, & Saunders, 1990).

There is now a rich psychological research literature about false confessions, when people report doing something they didn’t really do (see Kassin, 1997, 1998; McCormick, 1992; Wrightsman & Kassin, 1993) and the various psychological reasons why someone might admit to doing something they never really did. Costanzo and Krauss (2015, p. 39) organized the literature about false confessions into the four situations summarized in Table X.
Instrumental, Coerced Confessions. An instrumental confession means that the person has a reason for confessing. A coerced confession means that it is forced. In criminal cases, the instrumental, coerced confession is most common. In fact, instrumental coerced confessions arguably have become the most contentious issue that the American Psychological Association has faced in several decades. It’s not difficult to understand why a person being tortured would confess – they want the torture to stop! And that’s why torture is not an effective technique for getting information.

Instrumental, Voluntary Confessions. Instrumental, voluntary confessions are given for a reason that is typically known only to the person confessing. Costanzo and Krauss (2015) provided several examples of purposeful, voluntary confessions. A parent might “take the fall” to protect a child from harm. Someone seeking notoriety might confess to gain attention. The serial killer Henry Lee Lucas falsely confessed to several murders that he did not commit in an effort to secure his name and reputation as among the elite killers of all time. “Peculiar” was how Costanzo and Krauss summarized many of the motives for these voluntary false confessions.

Authentic, Coerced False Confessions. In contrast with instrumental confessions, authentic confessions occur when the person honestly believes they committed the crime in question – even when they didn’t. For example, Clifton Lawson admitted to a brutal murder on camera and gave details that could only be known by someone who had been there (Kassin & Wrightsman, 2012). But Lawson had a very low IQ and was anxious; he was simply telling his interrogators what he believed they wanted him to say. And the details of the murder? He had learned them during the long hours sitting in the police station, listening to the officers as they discussed the case. He barely avoided conviction and seemed confused about whether he had actually committed the crime. This confession can be considered coerced because it never would have happened if Lawson had been treated more fairly and with more respect.

Authentic, Voluntary False Confessions. These cases generally involve someone with mental illness or severe psychological pressure, suffering from a delusion. Someone really believes that he or she committed a crime and confesses to something that he or she did not do. The (unverified) story of Himmler’s missing pipe suggests that innocent people being punished may come to believe that they must have done something wrong. The Nazi leader had lost his favorite pipe during a tour of a concentration camp. Six people confessed to stealing it before he discovered it in his own vehicle.
Psychologists and the APA Torture Scandal

Unfortunately, in psychology’s recent history, some members of the American Psychological Association secretly promoted instrumental, coerced false confessions. Some of the APA’s leadership secretly coordinated with the White House, C.I.A. and the Department of Defense to create a new ethics policy. It amounted to this: If a health professional were monitoring the interrogation, then it wasn’t torture. Psychologists helped them change the rules (secretly) so that they could ignore the existing evidence about coerced confessions and keep on trying to torture meaningful information out of suspects.

We don’t have to look far for the powerful situation that pushed their ethics off balance: the terror attacks of September 11, 2001. The situation after 9/11 was panicky and impulsive. A few days after the attack, one of my Tom’s neighbors said, “I know it’s wrong to think this way but I just want to go bomb somebody . . . anybody.” It was a bad time to make big decisions. The lessons learned – and still to be learned – are summarized in many articles (see Ackerman, 2015; Richardson, 2016).

The Social Psychology
of Eyewitness Testimony

If you are ever a juror on a case with an eyewitness, you need to be extremely cautious.

The problem is that memory is malleable – and that means that it can be manipulated. The misinformation effect occurs when exposure to false information or leading questions about an event leads to errors in recall of the original event. Most research on how eyewitnesses fall victim to the misinformation effect is based on the construction hypothesis, the idea that memories are not just sitting in our heads, ready to be accessed like computer files. Instead, they are constructed as needed at the time we’re asked to use them – and they are subject to bias, stereotypes, probabilities, and wishes (Loftus, 1975; Loftus & Zanni, 1975).

Loftus (1975) demonstrated how easily memories could be pushed around by small influences in how a question was worded. She had participants view a one-minute film of a multi-car accident and then write out a brief description of what they had just witnessed. The crash itself lasted only four seconds. The experimenters then asked participants a series of questions about the accident and found that the participants’ confidence in their observations was not just sitting in our heads, ready to be accessed like computer files. Instead, they are constructed as needed at the time we’re asked to use them – and they are subject to bias, stereotypes, probabilities, and wishes (Loftus, 1975; Loftus & Zanni, 1975).

For example, the survey asked some participants, “Did you see a broken headlight?” and other participants, “Did you see the broken headlight?” The word “the” in the second version is a presupposition, wording that assumes something (here, the participants could infer that there was a broken headlight – and if they had been paying attention, they should say “yes” to this question). In reality, there was not a broken headlight – but participants who received the presupposition version of the question were significantly more likely to say “yes.”

In other versions of this experiment, Loftus (1975, p. 562) focused on leading questions by emphasizing that, “Our concern is not on the effect of the wording of a question on its answer, but rather the answers to other questions asked some time afterward.” For example, early on in the survey participants received, Loftus asked people either:

(1) How fast was Car A going when it ran the stop sign?

(2) How fast was Car A going when it turned right?
The critical question was not how fast the car was going, but whether or not they believed that they had witnessed seeing a stop sign. Later in the survey, everyone was asked whether they saw a stop sign. Importantly, no stop sign existed in the actual event – but when people had been subtly introduced to the idea of a stop sign in an earlier question, 55% now said yes, they had seen a stop sign. In contrast, only 35% of people who had been asked about the car turning right reported seeing a stop sign. People now remembered false things about what they had witnessed simply because of the process of being asked leading questions.

The most famous version of this experiment was included in a 1974 report by Loftus and Palmer. They showed people a car accident and then asked half of the participants each of these questions:

(1) About how fast were the cars going when they smashed into each other?
(2) About how fast were the cars going when they bumped into each other?

As you would expect, the word “smashed” elicited higher speed estimates. But the more interesting finding was that one week later, everyone was asked whether they had witnessed broken glass. Even though there had not been any broken glass, broken glass seemed plausible as a result of a car accident, especially one with “smashing” cars – so people who had received that question a week earlier were now more likely to invent a memory of broken glass.

The participants in these studies had their memories manipulated by researchers asking leading questions – and the “eyewitnesses” had no idea that their memories had been altered. They were probably being honest when they remembered what they thought they saw. Consider the implications of this research on how real-life eyewitnesses might change their memories based on questions they receive from the police, from lawyers, or even from their own family members who ask about what happened. These participants, acting as witnesses, had constructed plausible memories and then convinced themselves that they were telling “the truth, the whole truth, and nothing but the truth.” But they were wrong.

The Main Ideas

1. Forensic psychology is the application of psychological theory to legal processes. It is most effective when both psychologists and legal representatives (such as lawyers, jurors, etc.) trust reliability and validity.

2. Several case studies in the history of law can be used to see how the application of psychology to law evolved over time.

3. One example of a modern application of psychology to law is in research on false confessions. For example, a typology by Costanzo and Krauss (2015) identifies four different reasons people might give false confessions.

4. Another application of psychology to law is research on eyewitness testimony and the misinformation effect, which occurs when memories are changed based on exposure to post-event incorrect information or leading questions.

**CRITICAL THINKING CHALLENGE**

- Why do you think it took a relatively long period of time for lawyers, judges, and juries to make use of psychological research that is relevant to various aspects of criminal justice procedures? Alternatively, why did it take psychology
so long to devote research to everything psychological that occurs before, during, and after a crime?

- Which of the four reasons to provide a false confession do you think is most common— and which do you think would be most likely to lead to a false confession from you, personally?

- Now that you know about research on the misinformation effect, how confident are you that your own memories are really accurate? Can you identify any specific examples of how your own memories might have been manipulated or changed based on things that happened after the event in question?

WHAT CAREER OPPORTUNITIES UNITE PSYCHOLOGY AND LAW?

Learning Objective 2: Compare and contrast various careers that combine psychology and applied law.

Many undergraduate psychology students have a television problem that they don’t know about. They suffer from the CSI effect (Crime Scene Investigation effect): unrealistic expectations of forensic science that are created by watching fictional television shows (see Cole & Dioso-Villa, 2006; Scanlan, 2015). One colleague joked, with dark humor, “there just aren’t enough serial killers to go around” to employ the many students who want to become criminal profilers.

In reality, people who actually do criminal profiling are seldom trained in psychology. Scientific approaches for criminal profiling have not been established or even agreed upon. And the evidence for the accuracy and helpfulness of criminal profiling is so thin that it is seldom admitted in court nor considered as expert testimony (see Fulero & Wrightsman, 2009).

The False Television World of Forensic Psychology

Fortunately, we have data about the CSI effect. One study found that regular viewers of crime dramas would probably make slightly better burglars than if they watched other kinds of programs instead! They were more likely to know, for instance, that using gloves and wearing a hat would prevent certain evidence from being left at the crime scene (Vicary & Zaikman, 2017).

Not all television crime dramas are alike and particular episodes, of course, will feature different content. A comparison of the top three television crime drama franchises included Law and Order (1990-2010), CSI (2000-2015), and NCIS (2003-present; see Hust, Marett, Lei, Ren, & Ran, 2015). The focus of the study was on the degree to which viewers of crime dramas tend to accept myths about rape and their willingness to intervene if they observe sexual assault. When they surveyed 313 first-year college students, they found that:

(a) Exposure to the Law and Order franchise is associated with decreased rape myth acceptance and increased intentions to adhere to expressions of sexual consent and refuse unwanted sexual activity.

(b) The CSI franchise is associated with decreased intentions to seek consent and decreased intentions to adhere to expressions of sexual consent.
Exposure to the NCIS franchise was associated with decreased intentions to refuse unwanted sexual activity.

These are not strong patterns of behavior; this particular aspect of the CSI effect appears to be real but small. But as you make your own career decisions, beware of the CSI effect. It’s a reality check if you are considering a career that includes both psychology and the law.

**The Real World of Forensic Psychology**

So, let’s introduce you to the real, non-CSI world of forensic psychology. Costanzo and Krauss (2015) identified everyday working roles enacted by forensic psychologists. They include trial consultants, evaluators, and reformers; we added dispute mediators to the list.

**Trial Consultants.** *Trial consultants* typically try to influence the outcome of a trial in three ways: (1) by helping to select a sympathetic jury, (2) by developing trial strategies such as persuasion techniques, and (3) by assisting in witness preparation. Kressel (a social psychologist) and Kressel (a lawyer), in their book *Stack and Sway*, describe the variety of skills that psychologists can offer a jury. They explore the costs, the sociology, and the effectiveness of those efforts — and the public’s perception of unfairness when only the wealthy can afford the luxury of jury consultants (Kressel & Kressel, 2002).

Jury profiling and juror dynamics are among the most enduring television and movie plot devices [e.g., *Bull* (2016-present), *Runaway Jury* (2003), *Twelve Angry Men* (1957/1997)]. However, it is logically impossible to determine whether jury consultants have been effective, especially considering the fact that jury deliberation is confidential. Psychological jury consultants and researchers will therefore sometimes create mock juries to anticipate how different pieces of evidence might be processed by a real jury.

Understanding the psychological dynamics of a jury is not necessarily reserved for the super-wealthy — but neither is it practical for those with very little money. The more relevant observation is that, on a practical level, very few cases go to trial anyway (Galanter, 2005). Why? Because both sides decide to settle out of court — usually sometime shortly before one or both of the parties spend the last of their money on lawyers.

**Dispute Mediation.** Remember, almost everyone settles out of court. Jury trials are rare. That has created another industry that appears to be good for psychologists: dispute mediation. Like other areas of overlap between psychology and law, the practitioners are not necessarily lawyers or psychologists — although that training is likely to help. But there are ways to obtain training and sometimes certification in dispute mediation, depending on the nature of the conflict (see Barsky, 2014; Love & Waldman, 2016).

There are as many career opportunities for mediators as there are ways for people to have conflicts with one another. On a large scale, there are dispute mediators between nations to resolve international conflicts (Ascher & Brown, 2014). Many civil disputes involve conflict over land, so particular training in agriculture, forestry, real estate, or boundary disputes may help individuals become better mediators for those circumstances (see Dhiaulhaq, De Bruyn, & Gritten, 2015).

Families, however, also get into conflicts that can be solved before siblings or others start taking one another to court (Eisenberg, 2016). A separate skill in divorce mediation can help families take better care of themselves and of children who are unavoidably drawn into the conflict. In those cases, the skills of a family therapist may be more applicable.
Judges frequently become advocates for dispute mediation in order to prevent unproductive lawsuits from clogging up the court system.

**Evaluation.** As a student, you already participate in the world of evaluation research. Completing a survey or rating scale of your professors or the class is evaluation. Websites such as RateMyProfessors.com demonstrate the desire for meaningful evaluation research. However, the world of evaluation research is much more sophisticated when people start assessing the consequences of new public policies, such as whether harsh sentencing guidelines for first-time drug offenders are biased against people of color, by age, or in other ways (Spohn, 2014). Every new law needs to be evaluated—or should be, because there are usually real lives or great amounts of money at stake.

Psychology students may not recognize the monetary value of the practical evaluation skills that they already have. Your knowledge of statistics and—more importantly—the design of experiments is a great advantage. Your scientific training can be put to excellent use in high-paying evaluation departments. You might even want to volunteer or shadow someone at your own university’s “institutional research” division to get a sense of how important their work is to the quality of students’ experiences.

**Reformers.** Perhaps the most important role that forensic psychologists have played is to challenge the accepted wisdom of the legal system, including work on vital social issues: false confessions (see Kassin, 2015; Kassin & Kiechel, 1996), eyewitness testimony (Loftus & Palmer, 1996), repressed memories (Loftus & Ketcham, 1994), children’s testimony, and the unreliability of anatomically correct dolls (see Ceci & Bruck, 1995). These (and many other) forensic psychologists often hold up a scientific stop sign that refuses to let dangerous assumptions go forward without being challenged.

These scholars have devoted much of their academic careers to these injustices and have, over time, rescued many innocent lives and restored the dignity of many innocent individuals falsely accused and imprisoned. Social psychologists Kassin, Fiske, Wrightsman, Ceci, and Loftus (and many others), have played important roles in both conducting the basic research related to forensic psychology and to applying it to causes related to social justice.

The case of Kelly Michaels was only one of a large collection of cases of false accusations of child sex abuse in day care centers. As the media reported one rolling accusation after another, it produced a moral panic, the widespread belief that a particular group threatens society (see Downes, Rock, Chinkin, & Gearty, 2013). Social psychologists are often on the front lines of resistance because they are more apt to recognize the signs of a developing moral panic.

**The Main Ideas**

1. The CSI effect creates unrealistic expectations of forensic science, created by watching fictional television. This effect has influence over both real-world forensic scientists and influence over many students’ expectations of possible careers.

2. Four careers that are possible in forensic psychology are trial consultants, dispute mediators, evaluators, and reformers.
CRITICAL THINKING CHALLENGE

- Why does television or movie portrayal of certain types of careers have such influence over people’s expectations, when viewers know and acknowledge that the situations are fictional? Can you think of a time when your views or perceptions of a career or certain situation was misguided, and you believe it was due to media influence?

- Which of the four careers in forensic psychology (trial consultants, dispute mediators, evaluators, and reformers) sounds the most appealing to you, personally, and why?

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