PSYCHOLOGY AND THE LAW: AN OVERTURE[1]

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INTRODUCTION

1976 is an auspicious birth year for the first chapter on the state of the psychology/law interface. Although it has not been 200 years since these two fields—concerned with the rules of and for human behavior—initiated collaboration, the history of psychology and law dates back to the first decade of the twentieth century. While Freud in 1906 in Vienna (42) was lecturing judges on the practicality of psychology, others in the United States circa 1910 were also connecting the classroom (psychological laboratory) with the courtroom (law). In 1908, Munsterberg of Harvard University's psychological laboratory attempted in his book, *On the Witness Stand,* to apply psychology to legal problems by demonstrating that the psychological processes of perception and memory must be considered in evaluating courtroom testimony (128). In 1909, Healy established in Chicago the first psychological clinic to be attached to a juvenile court—a first also for law; in 1915, he wrote *Honesty:*

[1]The collection of literature and materials pertinent to this chapter, stressing current but selected topics, was concluded in July 1975. For historical and critical reasons other germinal works published in the decade preceding 1975, which is also generally under review, are mentioned as are several still in press. Some of the ideas herein were presented in preliminary form at a plenary session entitled "Law and Society: Progress of A Decade" at the Law and Society Association's First Research Colloquium, June 5–7, 1975, at the State University of New York, Faculty of Law and Jurisprudence.

[2]The author wishes to express deep appreciation to those individuals whose supportive services and intellectual interests aided in the preparation of this manuscript: to Gary Engstrand and William Hafling, graduate students in psychology and law, for continuing efforts in the critical search for significant materials; to graduate students John Drozdal, Ann Juergens, and Christine Kegler and undergraduate Elizabeth Irby, whose seminar questions and papers fed my ever-growing pile of ideas and references; to undergraduate research assistant Patricia Smolka for devoted ministrations in the manuscript's preparation; to my secretary, Kay Adams, for supportive services beyond typing; and to Felice J. Levine, critic and colleague in matters regarding psychology and law.

A Study of the Causes and Treatment of Dishonesty among Children (67). By 1913, Watson, expressing his dissatisfaction with psychology, suggested that jurists could utilize data in a practical way as soon as psychologists could obtain them (191).

Discussion of a rapprochement between psychology and the law among psychologists in the United States is thus old and recurrent (e.g. 9, 24, 35, 111, 118, 142, 151, 172, 174, 183, 184, 194). The task of this chapter is to trace the nature of this relationship, especially over the past 10 years. To this end, several tacks are employed:

(*a*) A brief description of historical trends.

(*b*) An examination of current indicators from the past decade, covering conferences, patterns of research publication, organizational responses, academic programs, and educational materials.

(*c*) A selective survey of research, focusing on these topics: legal socialization, including cross-cultural and developmental dimensions and issues in children's rights; the judicial process, including decision making in the adversary system, eyewitness identification, the jury decision process, and the role of psychologists in jury selection; the criminal justice process, with perspectives on the roles of psychologists and alternative models for justice.

(*d*) Along with the survey of research, consideration is given to issues and recommendations concerning both research and reform.

The usual disclaimers made by contributors to the *Annual Review of Psychology* about the selection bias of the author, the enormity of the field (in this case, the fields), the incompleteness of the coverage, the press of time and timeliness are all in order. Given the problems of breadth and interpretation in defining the psychology/law interface, the author adds to these the criterion of attending only to those empirical events and research endeavors by psychologists working alone or in concert with lawyers that revealed an interest in law and legal instituitions. Although many psychologists are investigating areas or processes that have implications for the law, for purposes of this initial report intensive analysis was given primarily to those efforts that were explicitly psychology-and-law directed in terms of the design of the endeavor (experiment) or the discussion of the results. I hope this chapter can serve as the overture inviting further consideration of the issues and area. Only psychologists and lawyers together can provide the orchestration.

HISTORICAL CONTEXT

In his perceptive and comprehensive book of 1961, *Legal and Criminal Psychology,* Toch defined legal psychology as a "science" that "*studies* the process whereby justice is arrived at, examines the people who take part in this process, and looks into their purposes, motives, thoughts, and feelings" (184, pp. 3–4). Inevitably analysts of the relationship of psychology and law, regardless of the school of psychology or law, highlight the union as promoting and understanding justice in or out of formal legal settings. Certainly even before 1910 with the classic experiments relating testimony and evidence to perception and memory by Stern (170), Munsterberg (128), and Whipple (193), law was acknowledged as a fit concern for

psychology and vice versa. But examinations of the relationship between psychology and law in potential areas of study or collaboration indicate that after the first flirtation little happened through the mid-1960s.

The scattered attempts during the 1920s, 1930s, 1940s, and 1950s by psychologists or lawyers (e.g. 23, 41, 82, 113, 127, 146) reflected little progress in the rapprochement between psychology and law. The major empirical work on law in the 1940s, 1950s, and early 1960s was heavily anthropological, sociological, or psychiatric (30, 88, 107, 171). There were few calls for advancing a legal psychology, despite psychologist Clark's contribution to the historical 1954 *Brown vs Board of Education* case. The psychological input was primarily as an expert witness or in other forensic capacities. Even Toch's generally comprehensive volume, using then current work, sought to "spell out and define" the status of the field "without benefit of interaction" (184, pp. ix, vii). Beyond Marshall's *Law and Psychology in Conflict* (111) that reported experiments by lawyer Marshall and psychologist Mansson on the vagaries of evidence, recall, and courtroom behavior, there was little demand for a legal psychology. Not until the late 1960s and early 1970s was the exchange between psychologists and lawyers on matters of justice and law anything more than sparse and sporadic.

It is difficult to pinpoint the vari
social/political crises, modernization, and the press for relevance accounted for the burgeoning and renewed interest of psychologists in the law or the reverse? Is it perhaps the recognition that individuals *and* institutions have rights, roles, and responsibilities? Perhaps it is the recognition that not only education but the law as well is an important mobility belt for the rights-deprived. Perhaps recent efforts toward mutual research and reform by psychologists and lawyers signal an increased awareness of their role and responsibility in working with "subjects" or "clients" as patients or prisoners—pressing for rights and legitimate claims in and outside of institutions. Or perhaps the present interest parallels a general concern about the rising crime rates and violence patterns. For psychologists this trend may reflect a desire to extend knowledge about human behavior and consider "how legal policies and institutions could be employed to decrease the appalling level of violence in our society" (L. Berkowitz, personal communication, 1975). For lawyers it may reflect the view that "the pressure of our present predicament pushes us—as we have not been pushed for a long time—toward an effort at comprehension. We must come to perceive and understand the moral and psychological forces that underlie law generally and give it efficacy in human affairs" (45, p. 1).

While commentators increasingly are mindful that psychology's unique contribution is its brands of empiricism, they also acknowledge that frequently psychological insights are directed uncritically and too quickly to the basic problems of justice and the legal process (e.g. 32, 53, 77, 103, 118, 166, 172; G. Bermant and J. Davis, personal communications, 1975). Therefore, as psychologists begin to elaborate their commitments to law, they must be cognizant of and clear about the nature of their limitations. For these and other reasons, Campbell's creative approach to methodology and policy (research and reform) is persuasive. In reviewing Campbell's application of psychological methods for introducing and assessing changes

brought about by legal events (24), Meehl cogently depicted the strengths of this approach:

> There is need for a change in the political atmosphere . . . toward a more open recognition that we do not know exactly how to proceed. . . . The mandate should not be to stamp out crime (or poverty, or discrimination, or inflation) but the mandate should be to embark, wholeheartedly but skeptically, upon the social experiment to see whether or not it works. . . . Only in such a political [legal] atmosphere can the psychologist reach the full potential of his contribution to the amelioration of social problems (117, pp. 29–30).

The present chapter aims to review the rapprochement between law and psychology building upon the principles of Campbell's counsel—both methodological and conceptual (e.g. 24–26, 151).

CURRENT INDICATORS: EMPIRICAL EVIDENCE

There are two terms, interstitial and interfacial, that describe the possible relationship between two bodies of matter—in this instance, law and psychology. The history of the relationship between psychology and law over the first half-century indicates communication more in the mode of two separate and distinct parts of a body divided by space (i.e. interstitial). In contrast, the events of the past 5 to 10 years reveal movement toward the creation of a common boundary (i.e. interfacial). Slowly the disciplines of psychology and law have grown to view their relationship and respective responses to understanding human behavior as complementary, interlocked, and coincident. As both fields increasingly address fundamental problems and assumptions of law, justice, and the individual in society, the potential of mutual, interfacial exchange is evident.

Conferences

At the Law & Society Association's First Research Colloquium in June 1975, a psychologist joined ranks with a political scientist, anthropologist, sociologist, and lawyer to compose the panel for the plenary session entitled, "Law and Society: Progress of a Decade." Of the 100 workshop panelists on the program, only 4 were psychologists (2 of whom were also lawyers), and the others were lawyers (about 40) and social scientists (primarily sociologists and political scientists). But 10 years ago at such a research colloquium the "psychological" representatives both presenting and attending would have been psychiatrists or, if psychologists, probably clinicians with forensic expertise. In 1975 the forensic psychologist is but one of several specialists active at the psychology/law interface. Social, experimental, and child psychologists frequently function as expert witnesses and equally importantly are contributing research on fundamental assumptions about legal phenomena. They are indeed "empiricizing" by scientific research the study of law (e.g. 32, 62, 124, 150, 151, 172, 181, 183, 189; also 174, pp. 2–4)—advancing the possibility for more productive and systematic *questions* and *answers* to traditional conceptual debates.

The Law & Society Research Colloquium is particularly encouraging when it is juxtaposed to the National Science Foundation's (NSF) Assessment Conference on "Developments in Law and Social Sciences Research," held 2 years earlier, April 1973. Of 20 participants at that conference, only two were psychologists and one presented psycholegal research funded by this agency (129). But perhaps anticipating future trends, law professor Friedman, one of 13 lawyers, called for increased law and psychology efforts:

> [A] couple of areas, so far neglected, will enjoy . . . something of a minor boom. One is psychology and law. This is long overdue. There has been some interest in psychiatry or psychoanalysis and law, but this has diminished. As far as psychology itself is concerned, . . . [i]n recent years . . . a few scholars have turned to problems of attitude and behavior rather than perception: compliance and deviance, the relative efficacy of rewards and punishments, application of learning theory to law, and so on. Some of these interests are not absolutely new, but they have gotten a new lease on life. At present, no more than two or three law schools have given joint appointments in psychology and law. There is bound to be more action in the future (129, p. 1070).

While the preceding 5 to 10 years were characterized by a paucity of research colloquia or assessment conferences involving psychologists, the proliferation during the 1974–1975 period is indicated by at least three other events. The First Annual Convention of the American Psychology-Law Society (APLS) occurred in June 1974. A year later in June 1975, the Battelle Institute convened a conference on "Psychological Factors in Legal Processes," and in October that same year, the First Bi-Annual Law-Psychology Conference was held at the University of Nebraska. Unlike other or earlier conferences, the latter three meetings focused on psychology and were populated by practitioners and academicians drawn from child, experimental, and social psychology as well as from law. In addition to these conferences, the coming-of-age of the psychology/law movement from an interstitial to interfacial position is also illustrated by the psychology "establishment's" decision for this chapter—a first—in the *Annual Review of Psychology* series.

Patterns of Research Publication

The major difficulty encountered in researching the state of the law/psychology interface is the lack of adequate indexing systems in both law and psychology. As Caplan & Nelson noted (27, p. 205), *Psychological Abstracts* (*PA*) are virtually useless in assessing an interdisciplinary or untraditional relationship. Because of the bias in indexing ("labeling"), the areas of crime, juvenile delinquency, and drug addiction are grouped under the subheading of Behavior Disorder within the division of Clinical Psychology. There are now such headings as justice, rights, or punishment. However, a 10-year count of entries under descriptors generally related to law (e.g. crime, criminals, law, government, prisons, prisoner-inmates, and courts) provides some perspective on the extent and nature of the interface. For example, in 1965, 111 articles (excluding 8 in the courts category) were identified; in 1968, 493

items were indexed; in 1971, 592; and in 1972, 718 made *PA*.[3] Even with the limited *PA* system, growing interest in problems relating psychology and the legal process is evident. In 1973, *PA* changed its method of indexing the annual volume. Based on a new search system with some 70 descriptors drawn and created from the *PA* thesaurus (e.g. criminal law, legal decisionmaking, compliance, fairness, jury or forensic), 2221 articles were identified on both title and abstract contents for the period from January 1967 to December 1972 and 1771 for the period from January 1973 to May 1975. Comparing the earlier 6-year span to the most recent 2½ years revealed a significant and further increase since 1972 in the magnitude of research devoted to topics at the psychology/law interface.

A search of the *Index to Legal Periodicals* from September 1964 to August 1974 evidenced an analogous increase in the number of entries for three psychologically related categories. For the categories "psychology" and "mental health," there were approximately as many entries (36 and 63 respectively) for the 1-year period, September 1973 to August 1974, as there were for any preceeding 3-year period (1970–73, 1967–70, 1964–67). The most dramatic increase in 1973–74 was under the "psychiatry" listing. For that 1-year period, 129 entries were identified in contrast to 49, 60, and 14 during prior 3-year periods. Overall for the three categories, the total entries during the 1964 to 1974 period were: psychology, 157; mental health, 276; psychiatry, 252. (The precipitating issues for the disproportionate "psychiatry" increment seem to be involuntary commitment, patients' rights, and predictions of dangerousness.) But beyond the currency of these topics, the 1973–74 data suggested a general trend toward greater attention to psychological considerations in legal periodicals. If anything, this pattern is understated—since some literature placed elsewhere by the *Index* editors would have been categorized under "psychology" by this author.

Another informative indicator could be found in the programs for meetings of the American Psychological Association (APA). Although the Central Office had no archival data or listing of presentations "relating to the interface of psychology and law during the last ten years" (C. Won, personal communication, 1975), an inspection of annual programs from 1965 to 1975 disclosed a remarkable increase in symposia, workshops, paper sessions, and invitational addresses by psychologists and lawyers. While in 1965 there was only a single presentation, by 1974 and 1975 the numbers jumped to 28 and 33 respectively, not including those dealing with alcoholism, drugs, or juvenile delinquency. Also in 1975, the APLS, which previously had co-sponsored its program with relevant APA divisions, convened eight independent sessions at APA including four symposia, two paper sessions, and two

[3]The category "courts" was dropped by *PA* after 1967. A frequency distribution for all categories from 1965 to 1972 is available from the author. Counts are not available after 1972 because *PA* switched its method of indexing. Brodsky reported analogous patterns related to crime. In calculating the number of publications reported in the *PA*, he found that until 1950 such articles constituted less than 2.5% of the total publications while in the "1966–1970 period, for the first time, the rate of increase of publications in this area kept pace with the overall increase in American psychology" (21, p. 9).

workshops. Additionally in 1975, two major APA addresses (28, 137) dealt directly with psychology/law issues.

Organizational Responses

Increasingly over the past decade, psychologists have been engaged in research or in providing services at the psychology/law interface within and beyond psychological organizations. In 1972, Brodsky reported that:

> Between the American Psychology-Law Society, the International Academy of Forensic Psychology, and the American Association of Correctional Psychologists, about 800 psychologist-members identify themselves as having substantial interest in law, justice, or corrections. Since 1967, APA has had a Task Force on Crime, Delinquency, and Social Disorders and, since 1970, a Task Force on Standards for Service Facilities. The APA Division of Psychological Aspects of Disability has an ad hoc Committee on the Public Offender. Division 9, the Society for the Psychological Study of Social Issues (SPSSI), has several active committees, and probably represents the highest level of organized interest in the APA (21, p. 10).

SPSSI continues to be the most active division in the law and justice area. In 1974 it sought through its Justice and Law Coordinating Committee to integrate the activities of the five Committees on Law and Crime, Socialization and the Law, Police, Courts, and Corrections, while also maintaining the Committees on Privacy and Rights of Children.

The expanding interest of other divisions in matters of law and justice is also evident. For example, the December 1972 Division 8 Newsletter featured an article on social science and law (29). A perusal of the 1975 APA annual program showed that beyond 8 and 9 at least seven other divisions were reporting or supporting some type of activity of a psycholegal nature. While in 1975 Division 9 still maintained the highest level of organized interest in the APA, Divisions 8, 12, 13, 14, 18, 22, 25, and 27 were all running close behind.

Similarly APA's Board of Social and Ethical Responsibility for Psychology (BSERP) in 1973–75, alone and in concert with other APA boards (e.g. Board of Scientific Affairs, Board of Professional Affairs), accelerated attention to issues related to the criminal justice system and the areas of human rights, privacy, and confidentiality. In addition to BSERP's Task Force on the Role of Mental Health Workers in the Criminal Justice System (1975), the Task Force on Children's Rights (1975), the Task Force on Privacy and Confidentiality (1975), and the Commission on Behavior Modification (1974), the Board of Scientific Affairs recently initiated efforts for a Task Force on Law and Psychology (H. Pick, personal communication, 1973; E. Loftus, personal communication, 1975). The contemplated Task Force would identify research programs of potential value in assessing and improving the legal system and promote further activity while maintaining concern about the possible misuse of psychological findings,

Another indicator of institutionalized professional interest is refl
APA's official journal, the *American Psychologist*. Increasingly from 1973 to 1975, articles on law-related topics appeared. While many dealt with applied issues such

as the rights and kinds of treatment for offenders, the utilization and training of psychologists for the criminal justice system, and law enforcement, others considered the problems of scientific method in psychological research, compliance, attitudes toward law, and legal socialization (e.g. 55, 75, 80, 103, 144, 147, 165, 166).

Beyond the undertakings mentioned thus far, there are other worthy psychology/law efforts outside of the traditional framework of APA. By 1975, APLS had expanded its membership drawn from psychologists and lawyers to over 500, a substantial growth pattern from its inception in 1968 after an APA symposium entitled "Psychology and the Law." The basic aim of APLS is "to promote exchanges between the disciplines of psychology and law in regard to areas of mutual interest such as teaching, research, administration of justice, jurisprudence, as well as other matters at the psychology-law interface" (81, p. 8). In its August 1975 Newsletter, APLS initiated a column entitled "Law-Psychology Update."

From the legal profession too efforts toward rapprochement have been forthcoming. By 1976 one social psychologist will have been a research social scientist for 10 years at the American Bar Foundation, the research affiliate of the American Bar Association (ABA). By 1975 the ABA had invited a number of psychologists to join interdisciplinary commissions that function to advise ABA committees and councils. For example, three psychologists sit on the Advisory Commission for the ABA's Special Committee on Youth Education for Citizenship and two sit on the Commission on the Mentally Disabled. Further, in October 1974, the ABA's Institute of Judicial Administration sponsored, as part of its Juvenile Justice Standards Project, a conference of about 60 participants on "Moral Development and Juvenile Justice" to which 10 psychologists were invited, with 2 presenting position papers. In concert with lawyers, judges, economists, sociologists, philosophers, and journalists, this group sought to evolve an adequate justice model and an ethical treatment mode.

Beyond activity under way in professional organizations, the extent of support provided to research by the federal funding agencies is an important index of interest.[4] Government is another organizational system that both influences and reflects

should likewise by considered. (Local or state patterns are not reviewed.)

Initially the National Institute of Mental Health (NIMH), especially through its Center for Studies in Crime and Delinquency, provided funds for research, training grants, and fellowships. Accordingly, using information provided by Shah, Chief of the Center, Brodsky reported:

> Just under half of the research grants active in fiscal year (FY) 1972 had psychologists as principal investigators. The majority of the remaining principal investigators were sociologists. Only 2 of 52 training grants went to psychologists. . . . most NIMH support

[4]Although there are private sources for funding, they are typically less substantial than the federal government grants and are more inclined to support lawyers and sociologists—traditional partners in research. On occasion the Russell Sage Foundation and the Ford Foundation have departed from this pattern, but overall private organizations have not substantially advanced psycholegal research to date.

> for psychology graduate programs not necessarily in psychology and law comes from another branch of NIMH. Overall, 28% [47 out of 171] of the recipients were psychologists, a figure that corresponds closely to the proportion of crime and law enforcement dissertations written by psychologists (21, p. 10).

In 1975 Shah indicated that probably the majority of projects in the law and mental health area were covered by the Center after 1968 (personal communication, 1975). An examination of the Center's active research grants from June 1967 to December 1976 revealed an increase in the number of psychologist-directed projects to about 40%. Equally important, the projects were becoming broader in scope and greater in variety (e.g. differential treatment for delinquents, interpersonal relationships of prisoners, effects of film or television violence, personality factors in aggressive and antisocial behavior, empirical and legal bases for dangerousness, criteria for adequacy of treatment, information integration in juror judgments, gene-environment interactions and criminality, abnormal mother-infant behavior, and child abuse). These studies were directed as much to basic as to applied problems, to children as to adults, and to civil as to criminal justice systems.

Less actively but significantly, NSF through its law and social science section has supported several well-known projects co-directed by psychologists (e.g. Free Press-Fair Trial, Human Behavior and the Legal Process). Funds also available through NSF-RANN (Research Applied to National Needs) auspices indicate interest in psychologically oriented legal research.

It is the Law Enforcement Assistance Administration (LEAA) that seems to have had the most profound impact on law-related research directed by psychologists in the mid-1970s. Perhaps because of the general community apprehension regarding crime since the late 1960s, funds have been made available through LEAA, the Department of Justice, and the Youth Development and Delinquency Prevention Administration. New legislation regarding child abuse affords another source for training and research grants. However, psychologists may have to be as wary of "justice" ("crime") monies in the 1970s as they should have been of "poverty" monies in the 1960s. Regardless of the source of their support, psychologists must continuously evaluate their efforts to provide methodologically and ethically sound research that facilitates understanding the human capacity to function in and create a just legal order.

Academic Programs

Over the past 10 years and particularly the last 5, another institutional system—education—has also indicated its support of rapprochement between psychology and law through academic programs in law and social science at the undergraduate and graduate levels as well as in law schools. Ladinsky's 1975 report provides a comprehensive, current, and useful description. Noting "a substantial development over the past 12 years" (98, p. 1), Ladinsky described the 1950s as the birthtime of "genuine cross-disciplinary research efforts"

tal Authority: The Community and the Law (30) and Zeisel, Kalven & Buckholz's

Delay in the Court (198) as key indicators of this trend. He also reported that "the amount of formal teaching remained insignificant" (p. 6). In essence, the picture has changed for research and teaching in law and social science and even in law and psychology, but not overwhelmingly.

The 1960s brought the Russell Sage (RS) Foundation's cross-disciplinary programs in law and social science, primarily in sociology, political science, and anthropology, to the University of California at Berkeley, Northwestern University, University of Wisconsin at Madison, and the University of Denver. While small grants, usually fellowships, were made elsewhere, it was not until 1972 that RS launched a law and psychology program at Stanford University, the last of its law-social science projects. Further, within the past 5 years, several RS Law and Social Science Fellows in the Yale University program have been psychologists who contributed visibly to psychology as well. The "vital breakthrough generally in the law and social science partnership" is evident by the continuation of such programs with and without Russell Sage or other agency funds (98, pp. 5–6).

Sorely lacking in most of these programs or their offspring is the presence of psychologists in substantial numbers. To the best of this author's knowledge, beyond Stanford University and the University of Denver (with one psychologist each on the law faculty), only the University of Nebraska at Lincoln by 1975 had officially inaugurated a jointly administered law/psychology studies program leading to a JD (Juris Doctor) and PhD in psychology (i.e. Experimental, Social-Personality, Community-Clinical). Students at Northwestern may enter the joint-degree program in law and psychology and at other universities (e.g. Minnesota, Harvard, Chicago) may devise two-degree programs, but only Nebraska has a program that specifically aims "to produce lawyer-psychologists whose training will provide all the necessary skills to do basic and applied research and writing on issues and problems in our legal system, in general, and the criminal and correctional system in particular" (Program Description 1975, p. 1).

Furthermore, the criminal justice/correctional system direction in the Nebraska program is noted as well in programs at other graduate and undergraduate centers. The University of Alabama, the John Jay College of Criminal Justice, and the School of Criminal Justice at State University of New York at Albany have programs at both the graduate and undergraduate levels with substantial psychological input. Other examples of universities with undergraduate and master's degree programs and psychologists on their faculties include the University of California at Irvine, University of Illinois, University of Washington, and University of Minnesota. An increasingly important center for undergraduate training in social science and law with some psychological orientation is the Five College Legal Studies Program—Amherst, Mount Holyoke, Smith, Hampshire, and the University of Massachusetts. Apparently law and society, crime and society, and/or criminal justice studies majors, housed in colleges of liberal arts, provide alternatives to majors in sociology, political science, psychology, or economics. And psychologists are likely to be participating in such programs. As Gormally & Brodsky observed (55, p. 928), "the 40-year trend toward diminished involvement of psychologists in justice work seems . . . reversed."

Educational Materials

With typical course titles like "Law, Justice and the Individual in Society," "Legal and Psychological Aspects of Moral and Altruistic Behavior," "Legal Socialization: Impact of Legal and Criminal Justice Systems," "Rights of Children," "Law and Society," "Psychology and the Criminal Law," and plain old "Psychology and Law," the problem of materials for classroom and research purposes is primary. While "output in research articles, monographs, and textbooks in American social science and law has been very extensive over the past 12 years" (98, p. 20), an up-to-date textbook or reader does not exist for the psychology/law field. Previously published books emphasize law and anthropology, sociology, psychiatry, or political science rather than psychology (cf 44). Ladinsky's bibliography of materials through the 1960s and the early 1970s corroborates that, while some sources are interdisciplinary, they are usually inclusive of social sciences other than psychology. Thus, for the most part, those in teaching or research at the interface of psychology and law have had to develop their own materials, drawing from original research contributions and selecting from texts, readers, and casebooks in the broad field of law and the social sciences. Except for efforts in the 1930s, the best, if not only, psycholegal textbook in the 1960s was a 14-chapter volume edited by Toch (184). Marshall's book (111), a research monograph, is a conceptual and empirical document on the problem of eyewitness identification, thus providing a powerful, although somewhat specialized, pedagogical frame.

Despite the general paucity, more recently some specific efforts have been made in terms of research and teaching needs. Since 1969 a number of special journal editions have been published both in psychology and law. The February 1969 issue of *Psychology Today* on the theme "Does the Law Work for You?" included articles by psychologists, psychiatrists, prisoners, and lawyers. In May 1970, the Law & Society Association's *Review* published a special issue on "Compliance and the Law" with contributions primarily from psychologists. According to Editor Galanter, however, the number of articles in the *Review* by psychologists or about psycholegal issues remains negligible: Only 3.5% of the total manuscripts submitted during 1972–74 were in the psychology/psychiatry category. Another example of journal interest was the 1971 issue of the *Journal of Social Issues* (*JSI*) on "Socialization, the Law, and Society" (174). That 13-chapter offering edited by Tapp was an interdisciplinary effort of both psychologists and lawyers. More recently, the *Stanford Law Review* devoted the June 1974 issue to a symposium on "Law and Psychology" and continued its dual commitment to this area in the next issue where the lead article was on legal socialization (181).

Among the books with an interdisciplinary format is an expanded version of the *JSI* symposium to 26 chapters, edited by Tapp & Levine and forthcoming as a SPSSI-sponsored volume entitled *Law, Justice, and the Individual in Society* (182). Partially published in psychology journals and law reviews during the early 1970s, the jointly authored book by psychologist Thibaut and lawyer Walker, *Procedural Justice: A Psychological Analysis* (183), is likely to be as monumental and controversial an empirical study as Kalven & Zeisel's *The American Jury* was in 1966 (88).

And, as one might expect, two further examples of psycholegal offerings are in the criminal justice area. Brodsky's edited book *Psychologists in the Criminal Justice System* (21) contains 14 chapters, and Monahan's edited volume *Community Mental Health and the Criminal Justice System* (125) includes 21.

In addition to these materials available for teaching and research, two new journals are specifically oriented to the dual perspectives of psychology and law: *Criminal Justice and Behavior,* published since 1974, and the *Journal of Law and Human Behavior,* planned for 1976–77. As these new efforts further suggest, even in the space of 5 years the coterminal interests and colloborative efforts of psychologists and lawyers are on the increase. Selected books and research reports, available and forthcoming, are reviewed in the subsequent section.

SELECTED THEMES

The topic "psychology and the law" shares the complexities of a symphony or opera: It is difficult to hum all the tunes simultaneously or to say that all the solos are equally salient or important. The overture provides a sampling of the entire piece, and, in like manner, this chapter reviews several motifs. To this composer there are currently three key areas of the interface of psychology and the law. They include (*a*) the legal socialization process, (*b*) the judicial process, and (*c*) the criminal justice process. Within this triadic framework the basic issue for psychology and the law—the acquisition and administration of justice and the corollary issues of rules, rights, and responsibilities vis-à-vis individuals and institutions—can be examined, drawing upon both empirical efforts and commonsense experiences of psychologists and lawyers.

In choosing these three themes, which embrace the community, courtroom, and corrections, I aim to characterize the growing attention paid by developmental, social, and clinical psychologists to the roles of the law and to their roles in the law. The range of issues at the nexus of psychology and law serves to underscore the fact that the law is not simply a system of social control nor the product or possession of one institution. No longer are the problems of law and order, justice and society —or their investigation and treatment—solely the domain of the legal theoretician or clinician. The corpus of materials relevant to the legal process appearing during the past several years in the psychological literature attests to the contrary. In the 1970s the phrase "psychology and law" means more than forensic psychologist. It means that more than one species of psychologist, solely or in concert, is working with more than one species of lawyer at the interface. It means, too, that communication and collaboration between and within both disciplines are occuring across levels (e.g. practitioner and researcher) and fields (cf 172).

Topics of traditional interest to the psychologist such as socialization, decision-making, information processing, perception, memory, cognition, attitudes, group dynamics, and interpersonal relations all have relevance for various aspects of the legal system. Further, psychologists are more actively translating traditional legal terms into behavioral constructs and also examining them by systematic empirical designs. In pursuing this work, psychologists and lawyers alike must be receptive

not only to viewing research and reforms as experiments, but also to accepting the innovative, inferential, and interactive aspects of both the scientific and social enterprise. As my review of the selected solos commences, the cautions addressed by Judge David Bazelon at a conference of correctional psychologists serve as a reminder:

> Regretfully, I must tell you that the papers prepared for this conference . . . do nothing to allay my increasing doubts and uncertainties about what it is that psychologists or any other behavioralists can offer. . . . The issue is not whether psychology is good, but what it is good at. . . . Why should we even consider fundamental social changes of massive income redistribution if the entire problem can be solved by having scientists teach the criminal class—like a group of laboratory rats—to march successfully through the maze of our society? In short, before you respond with enthusiasm to our plea for help, you must ask yourselves whether your help is really needed, or whether you are merely engaged as magicians to perform an intriguing side-show so that the spectators will not notice the crisis in the center ring. In considering our motives for offering you a role, I think you would do well to consider how much less expensive it is to hire a thousand psychologists than to make even a miniscule change in the social and economic structure. . . . The critical issue . . . is whether the fundamental postulates of your discipline make it impossible for you to reach the central problem. . . . (13, pp. 149–50, 152).

The Legal Socialization Process

Legal socialization is a construct of the 1970s. It refers to the process of dealing with the emergence of legal attitudes and behaviors and describes the development of individual standards for making sociolegal judgments and for using the law and legal systems for problem solving. While the 1960s and to some degree the 1950s yielded extensive work, first
gists (e.g. 3, 4, 34, 59, 68, 69, 83, 84, 121, 122, 159, 160) and then in moral development primarily from psychologists of both a cognitive-developmental and social learning persuasion (e.g. 10, 11, 14, 61, 71, 93, 94, 110, 136, 149, 187), it was not until the 1970s that the term "legal socialization" came into being (172; 174, pp 4–5; 178). The transition period commenced in approximately 1968, and by 1974 the field had received sufficient legitimation to yield a SPSSI Committee on Socialization and the Law (1970), a special issue of *JSI* (174), APA symposia in both 1973 and 1974 (see e.g. 6, 7), and reference in a major personality and culture book (104) as well as in an *Annual Reviews* chapter (79).

To some degree, legal socialization—emerging from political socialization and moral development—overlaps these two research traditions. In fact, it is likely to be categorized frequently under political socialization or moral development research in textbooks or reviews. There are, however, important differences among these three realms of ideological socialization with regard to contexts of learning and expression, indicators of authority, and topics of research. Although all three focus on the growth of ideas especially in youth and increasingly into adulthood, the moral development research in the tradition of moral psychology and moral philosophy emphasizes general "valuation" processes, and the political development literature primarily provides descriptive information on attitudes and opinions relevant to

political-legal settings. There are many excellent reviews of political socialization and moral development research that trace the development, dimensions, and differences within and between these areas (e.g. 40, 70, 91, 92, 94, 97, 110, 159, 160, 168, 196). Thus the task herein is primarily to consider the emergence of legal socialization and legal development as an identifiable research and reform area, not to review either political socialization or moral development.

CROSS-CULTURAL/DEVELOPMENT DIMENSIONS Tapp's idea for the legal socialization approach germinated during her involvement in a six-country, seven-culture study [Denmark, Greece, Italy, India, Japan, US (black & white)] of some 5000 urban preadolescents in grades 4, 6, and 8. This study, known as the Compliance Project (CP), had as its overall focus children's perspectives on authority, rules, and aggression. Secondary themes were dimensions of children's socialization into various compliance systems (family, school, religion, local or national government, friendship circle) and their judgments of aggressive confrontations, reported respectively in Parts I and II (68, 122).[5] Among the first cross-national psychologically oriented studies in political socialization of children, CP was directed by an interdisciplinary team of an educational psychologist (Hess), an anthropological psychologist (Minturn), and a social-political psychologist (Tapp)—all of whom shared developmental interests. In addition to the influence
socialization study (34, 69), the CP was significantly affected by the interdisciplinary makeup of the six national teams in both the development of instruments and the ultimate research design. Typical of political socialization research in the 1960s, this effort is best described as an empirical survey with four instruments and minimal or mixed theoretical orientations.

The range of potential inferences from the CP for "rule systems" suggested the demarcation of legal socialization and legal development as distinct from political and moral. As initially constructed by Tapp and developed with Levine, this conceptualization was not intended to imply a restrictive focus on the institution of law (101, 172–182). Rather these terms characterized an approach to understanding the processes and products of reasoning about "legal" norms in a multiplicity of legal or "rule" systems—from church to community, government to games. Almost simultaneously Hogan & Henley (77) advanced a broad rule-oriented perspective for analyzing the process of rule acquisition, justice orientations, and compliance modes. These psychological models and others that have emerged in jurisprudence (15, 45–47, 140) are consistent with the assumptions of a rule-guided or law-consciousness sense (e.g. 77, 123).

From a "developmental" perspective, Tapp's initial work in legal socialization described children's legal values and assessed the effect especially of age-related changes while attending as well to sex, social class, and national differences (173, 175, 178, 180). This work, derived in part from the CP, considered the utility of

[5]Hess, Minturn & Tapp conducted this cooperative, cross-cultural study along with European and Asian field teams under the direction of S. Skyum-Nielsen (Denmark), V. Vassiliou (Greece), B. Kuppuswamy (India), M. Cesa-Bianchi (Italy), and A. Hoshino (Japan).

cognitive developmental and social learning assumptions for interpreting cross-cultural and developmental data. Various samples were included in analyses primarily of open-ended interviews but also of group-administered instruments: (*a*) 406 middle school boys and girls of high and low socioeconomic status (SES) in seven cultures; (*b*) 124 US black and white children of both low and high SES in grades 4, 6, and 8; and (*c*) 115 high SES, US white children from kindergarten through college.

The data from these samples revealed commonalities across cultures and the saliency of the age or developmental variable. With few exceptions black and white US preadolescents, like children in the other six cultures, were astonishingly similar in viewing human nature and the need for rules, the justice of rules, the legitimacy of rule-breaking, the power of enforcement, and the justice of punishment. Above all, developmental processes affected children's conceptions of justice and the role of law. The kindergarten to college data permitted further elaboration of these developmental patterns. Questions on the function of rules, the dynamics of legal compliance, the changeability and breakability of rules, and the nature of justice elicited parallel changes from kindergarten to college in youth's defining their role relationships to law. For example, most middle school children (73%) maintained that rule-breaking was permissible if the rule was less important than the reason for breaking it, but by college such circumstantial rationales (35%) were superseded by concerns about the morality of the rule (53%). Such data on the "legal value" system of middle class US youth indicated the utility of the cognitive developmental frame and also the value of attending to modeling, role portrayals, and reinforcements by adult socializing agents.

In the search for a theoretical and methodological framework, Tapp & Levine found that both the cognitive developmental, stage theory (93, 94, 138, 139) and the social learning models (10, 11, 14, 70, 71, 149) offered useful perspectives for work in legal development. As Maccoby cautioned in a review of moral development research, "both formulations will turn out to be right to a degree" (110, p. 253). Thus, although to these investigators a cognitive theory of legal development provided "a set of working hypotheses useful in attempting to clarify and describe the legal worlds of individuals and institutions" (181, p. 19; see also 176), Tapp & Levine's legal socialization research was directed at illuminating the "natural" and "social" ethic underlying modes of legal reasoning. In this work, the cognitive developmental theories introduced by Piaget (138, 139) and advanced by Kohlberg (94) had substantial impact. Also integrating jurisprudential notions of Rawls (140) and Fuller (45, 46), Tapp & Levine articulated a model of legal reasoning that classifies empirically derived interview categories according to three cognitive developmental levels (101, 175–177, 179, 181). From the theoretical vantage of this model, legal levels denote "a person's basic problem-solving strategies and conceptual framework [toward] law" (181, p. 2).

While Tapp & Levine adapted both Piaget and Kohlberg's sequencing notions to the realm of law, they characterized legal levels in Kohlberg's terminology—preconventional, conventional, postconventional. To illustrate the continuities between cognitive moral development and the development of one's legal reasoning capacity,

Tapp & Kohlberg (177), in an initial exercise crossing theories and methods, demonstrated the utility of a cognitive framework for studying legal development. The findings presented therein and the more detailed analyses by Tapp & Levine are consistent with other research using a stage-sequence approach (e.g. 39, 56, 61, 121, 148). While the data disclosed a shift in conceptualization from a preconventional law-obeying, to a conventional law-maintaining, to a postconventional law-making orientation, overall the conventional law-and-order-maintaining perspective was modal in the US and cross-culturally. Apparently individuals had the cognitive ability to reach "higher" levels of legal reasoning, but the question remained whether the socializing settings and figures accelerate, retard, or fixate legal development.

In a comprehensive and integrative article on "Legal Socialization: Strategies for Achieving an Ethical Legality" (181), Tapp & Levine considered the role of socializing agents and institutions. Adopting a biosocial interactive model, they emphasized evaluating the "match" (or "mismatch") between social inputs and the individual's natural capacity. To assess this relationship, they attended to adult data on graduating law students, elementary and high school teachers, incarcerated prisoners, as well as to the cross-cultural preadolescent and US developmental data. Basically for adult groups, like the college sample, the characteristic mode of reasoning was conventional. Further, the commonalities between the adult and child data suggested that crystallization occurs during the adolescent years and that substantial consistency is demonstrated during adulthood.

In addition to comparing youth and adults, Tapp & Levine considered the potential of select legal institutions in the US and cross-culturally for stimulating individual legal development. Based on published data and field reports on the US, Latin America, Asia, and Africa, they determined legal levels (i.e. "leveled") various approaches to the delivery of legal services to the "poor"—the "rights-deprived." A historical analysis indicated a shift from a preconventional level to a conventional level provision of legal services; further, the conventional level presently prevailed. If this work or the research on the moral structure of a prison (96, 153) and on the Stanford prison experiment (63, 64) are indicative, agents in conventional or preconventional rule systems, who themselves reason at such cognitive levels, are unlikely to accept conventional reasoning or stimulate postconventional thought. To foster the development of both the individual and institution, Tapp & Levine recommended four legal socialization strategies (acquisition of legal knowledge, mismatch and conflict, participation, and legal continuity) for community and school. In concluding, these investigators argued that various types of theories, empirical evidence, methods, and data are necessary in order to examine their contentions. Much as Thibaut & Walker noted one year later (cf 183, Chap. 11 & 12), Tapp & Levine stipulated that both their "social-scientific, interdisciplinary, problem-solving perspective" and the legal socialization recommendations would be contrary to a postconventional legality unless guided by principles of fairness and justice and "built upon" experimentation from the dual perspectives of law and psychology (181, p. 71).

The research of Tapp and colleagues in legal socialization and at the psychology and law interface continues in projects designed to ascertain further the validity of a levels theory of legality. For example, in 1972 Levine (101) commenced a preliminary study on dimensions of legal reasoning using approximately 90 children from grades 5, 10, and 11. This research tests directly the relationship between an individual's legal and moral reasoning, assesses the relationship between legal reasoning and self/other acceptance, and evaluates if an individual's legal level predicts behaviors and conception of rights, roles, and rules. Likewise, since late 1973 Tapp and her students have been engaged in five
of legality to personality, ethnicity, and socializing experiences. Participation in a jury selection project provided a naturalistic setting for aspects of the initial pilots. Follow-up field studies were undertaken with impanelled and challenged jurors and their kin as well as with adult/child and parent/child (N = 100) respondents drawn from jury wheels and a related community survey. The aim of these studies in legal socialization is to consider the biosocial variables affecting the development of legal reasoning in individuals. Therefore, in addition to assessing the relationship between age, personality styles, and sociality for legal level, Tapp throughout this work focuses on the "match" and interaction of parent/adult/child to legal reasoning, assessing such variables as self/other acceptance and authoritarianism.

Also in the 1970s three illustrative applications of the Tapp-Levine legal reasoning model were undertaken. Each piece of research took as one point of departure the Tapp & Kohlberg article that appeared in the initial 1971 *JSI* symposium on "legal socialization." Two of the efforts, one by Bloom (18) and the other by Fields (38), were cross-cultural projects: The Bloom study sought to demonstrate that social principledness and social humanism—aspects of moral and legal forms of thought—were underlying and independent dimensions of politico-moral reasoning "rather than merely culture-specific
contexts of primarily university students in Hong Kong, France, and the US (N = 120, 76, and 52 respectively), Bloom identified these factors and delineated behavior-relevant correlates. His effort constituted one of the first to connect social psychological and cognitive developmental theories cross-culturally. The Fields' study, yielding direct evidence for the legal levels construct, was a particularly intriguing investigation. Administering TAT cards and replicating the questions presented in Tapp & Kohlberg in an interview with Protestant and Catholic children from Belfast and Dublin (N = 44), Fields reported that the Belfast sample remained at the lowest level of reasoning while the Dublin children demonstrated the same developmental trends evident among US youth. It is precisely this difference that undergirds the view (96, 160, 175–179, 181, 199) that the "experience" (the legal level of the social system or socializer) does affect the "natural" level of legal or moral development.

This interest in the role of socializers and "social input" led also to the third study by Simpson (167) of 784 teachers, 65 of whom were interviewed on the legal reasoning questions. Simpson's goal in part was to examine the Tapp & Kohlberg assertion that "the role of the educator or socializer is to stimulate and facilitate

youth to higher cognitive positions" (177, p. 85). She found that the majority of teachers' attitudes, values, and beliefs could be described in terms of (*a*) the nature of authority and justice vis-à-vis norms, rules, and laws; (*b*) the nature of individual self or personality as related to society; and (*c*) the school as an arena for studying law and the development of teachers. Simpson reported that over two-thirds of the sample valued procedures protecting individual rights (p. 6), but—with more years of teaching—they were more likely to rank *equality* and *freedom* low and *responsibility* high (p. 9). Furthermore, congruent with Tapp & Levine's findings on adults generally and teachers in particular (181), conventional reasoning strongly predominated—though instances of preconventional and postconventional responses among young and older adults appeared.

As indicated by the direction of these studies, various samples and methods are being employed for refining an approach to analyzing legally relevant cognitions. Ultimately the value of such projects rests on answering questions about the limits of law and the psychological limits of the human capacity—how far can individual reasoning go, especially as affected by the institution of law. These are the central concerns and questions of others as well working on socialization questions at the interface of psychology and law.

Although Hogan does not consider the age variable, he represents one departure from the cognitive-structural-stage model that is particularly relevant to understanding legal development. With Henley (77), he reminded psychologists interested in problems of law, justice, and compliance that a paradigm viewing humans as rule-guided potentially encourages a more comprehensive study of behavior. Thus his primary efforts have been directed toward the construction of an interdisciplinary model that can be described in terms of five dimensions: moral knowledge, socialization, empathy, autonomy, and a dimension of moral judgment ("ethics of personal conscience" and "ethics of personal responsibility"). All five concepts are basic to the structure of an individual's moral conduct. Over the past 5 years, Hogan and colleagues have operationalized these dimensions (72–74, 76) and considered interrelationships and antecedents.

While there are other psychologists whose work bears relevance to legal socialization, Hogan's contributions are particularly pertinent because they raise questions about rule acquisition modes, suggest an alternative multidimensional framework of compliance, and stimulate critiques of various approaches to understanding the relationship between moral development and moral thought and conduct. In Hogan's view, a major problem in US society and psychology is a stress on individualism and an ambivalence toward modes of compliance (75). Noting four modes of individualism (romantic, egocentric, ideological, alienated), Hogan—in the jurisprudential tradition of Hart (65)—maintained that "[b]ecause most historically sanctioned institutions express or satisfy man's need for social attention, regularity and aggression, these institutions, far from being necessary evils (as in an individualistic perspective), often give form and meaning to individual lives" (75, p. 537). Attributing problems of individualism to cognitive theories of moral development (cf 92), Hogan posed a role-theoretical perspective. Yet he draws upon the same

mentors (i.e. 114, 116) whom Kohlberg (94) integrated in his theory and upon whom Tapp & Levine (176, 181) also drew in further articulating a cognitive legal model. Although Hogan and colleagues specify points of departure worthy of attention between their perspective and that of the cognitive developmental, social psychological frame, the question remains whether these distinctions are more apparent than real.

Hogan's views on the limitations of cognitive developmental theory are part of a more general concern voiced during the mid-1970s. Particularly the Kohlbergian model, as distinct from the Piagetian, has been under attack or critical review by both supporters (e.g. 78, 145, 181, 188) and nonsupporters (e.g. 12, 75, 97, 168) as culturally biased, empirically limited, insufficiently interactive, rigidly invariant, or inadequate methodologically. These viewpoints cannot, however, dismiss the primacy of the finding in Kohlberg's and others' work that age trends are more persuasive than sex, social class, or national differences. Generally this finding seems to be consistent even with researchers using other instruments and in other countries (e.g. 1, 3, 48, 50, 51, 58, 60, 121).

Since the late 1960s and early 1970s the age variable has been the *dominant* component in the work of psychodynamically oriented Adelson and his colleagues (1–4, 48, 50, 51). In these studies, such topics as the growth of the idea of law, legal guarantees for individual freedom, individual rights and the public good were investigated by probing, in-depth interviews about the formation of a political order and legal system in a new Pacific society. The data base was approximately 450 male and female adolescents, aged 11 to 18 years, in the US, West Germany, and Great Britain (with 50 youths comprising a longitudinal sample interviewed at either 13 and 15 or 15 and 18).

The primary result in this set of studies, for example in Gallatin & Adelson (50, 51) and Adelson's integrative piece on "The Political Imagination of the Young Adolescent" (1), was that the years from 12 to 16 are a "watershed" for political thought on matters of government and law. In response to traditional philosophical or jurisprudential questions on the purpose of law, the action to be taken when law is violated and hard to enforce, the nature of crime and justice, and the reciprocal obligations of the citizen and the state, the major effect was age. Sex did not account for differences in youth's ideas, and social class effects were variable. Like other work in legal socialization, moral development, and political socialization, the overall potency of developmental trends was the most striking finding.

Work by Gallatin (48) further underscored the impact of development on changing conceptions. In 1970 with Adelson & O'Neil, Gallatin undertook a study of the "process by which political [law, government] thinking itself evolves" (48, p. 2). The sample for the study was comprised of 463 black and white children in grades 6, 8, 10, and 12, primarily from lower class backgrounds. In addition to the questionnaire originally constructed for the 1963 Adelson et al studies, items were added on five "contemporary problems": crime and delinquency, police-community relations, poverty and unemployment, class distinctions and discriminations, the political process and dissent (p. 70). Again analysis of the questionnaire responses revealed

a distinctively developmental pattern—by grade 12 children were typically well equipped to handle their franchise. Of particular interest to this review are the explicit findings related to psychology and the law:

> [Increasingly with age] teenagers . . . become less inclined to offer punitive solutions for youth law-breaking and more likely to favor rehabilitative programs (p. 83). . . . [W]hat seems to develop during adolescence is the perception that government is a kind of social contract. . . . [The] community is perceived as having certain collective rights . . . like "public welfare" and "national security." But the individual citizen is seen as having guaranteed certain reciprocal rights as well . . . "privacy," "freedom of speech" and so forth (48, pp. 83, 128).

ISSUES IN CHILDREN'S RIGHTS Friedman's articulation of the idea of right as a social and legal concept invited psychologists and lawyers alike to examine the acquisition of a rights consciousness (43). From the framework of a cognitive interactional model of development (181), how individuals come to view law and legal institutions and develop a conception of their roles in legal systems is significantly affected not only by the content of what they are taught but by the process of teaching as well. The treatment that children and youth experience, the operational definitions they receive about their *own* rights and roles, and the nature of their interactions with peers and adults (e.g. parents, police, judge) are the social inputs that relate to legal development. Beyond then the independent significance of the treatment of children, the issue of children's rights is important as a statement about society and its legal socializers. Therefore, in this section I review contemporary activity in children's rights as a case in point to explore the research and reform possibilities for psychology/law collaboration.

Over the past 5 years attention to the rights of children has increased dramatically. The 1973 book, *Beyond the Best Interests of the Child,* by lawyer-psychoanalyst Goldstein and psychoanalysts Freud & Solnit (54), is an index of contemporary ferment about the rights and relationships of the young. In a controversial reconceptualization of child welfare law, Goldstein et al called for a reordering of the criteria of children's rights and children's services. Essentially this psychoanalytic triad adopted "the least detrimental alternative" because the courts have inadequate knowledge of the psychological needs of the child and are incompetent to supervise human development adequately. To some degree, past performance of the court generally, and the juvenile and family (social) courts particularly, tends to support that assumption. However, in this psychiatric-legal effort to confront the problems of the abused and/or neglected child, the result was embarrassingly devoid of extensive or "hard" evidence and impressively rich with proposed guidelines based primarily on singular cases from professional experience.

As observed in the critique by Katkin, Bullington & Levine (89), *Beyond the Best Interests of the Child* by all standards is an "intellectual event" whose value is diminished by the absence of systematic empirically based analysis of the problems and by a distinct psychoanalytic orientation. In essence, these reviewers concluded that the book is the "wrong way to employ social science to solve problems of social policy" (89, p. 669). Given the research and reform perspective that guides this

chapter. I can only underscore that, while this volume was presumably psychologically oriented, the model for "evidence" was primarily psychoanalytic documentation. Thus the Goldstein et al book raises for the psychological sciences basic questions about the nature of the proposed reforms and the proper transformation of social science knowledge into the form and forums of law.

The *Harvard Educational Review's* (*HER*) 1973–74 special issue on "The Rights of Children" (66) left many of the same questions unanswered. Intended to "restructure the inquiry to take into account the standpoint of the child" (p. v), this volume dealt with conceptions of children's rights, advocacy for children, and social policy for children. The stress was on the importance of competence and choice, the problematic role of control by the court, and the difference between children's rights and needs. Further, the contributors to this symposium (e.g. Judge Polier) emphasized that, although some legal attention has been directed toward safeguarding the rights of children accused of being "delinquent," far less activity has occurred related to the rights of nondelinquent children. Unfortunately, while the pages of this excellent "call-for-action" were populated by experts in law, education, sociology, philosophy, psychiatry, and criminology, there was no psychologist—social, developmental, or clinical—evident. This omission was an oversight both on the part of *HER* and of psychologists.

The essential paucity of data or research in the area of children's rights and the meaning of rights generally is awesome, especially in light of the general press for rights by children and parents, patients and prisoners, "subjects" and students. The policy statements in *HER*—proposed, for example, respectively by Rodham, Mnookin, Mondale, Worsfold, and Edelman—require research or experimental reforms of various sorts. Similarly, a key issue for research work by psychologists is one totally missed in *HER*'s special issue on children's rights: how children themselves understand the concept. The research to be reviewed herein covers attitudes toward children's rights, privacy, child abuse, and child custody. As this array of topics suggests, despite calls for action and concerns of psychologists, particularly developmental ones, there has been little research on children's rights and less on children's concepts of them. In fact, a large proportion of the literature from both the legal and/or psychological realms is heavier on rhetoric than research.

Wrightsman and colleagues, in a series of working papers (197), responded to the complex issues, definitions, and examples used by the advocates of children's rights —from nutrition needs to legal rights. Seeking clarification on "what is thought of as a right," these investigators aimed to measure "attitudes regarding children's rights" (197, p. 1). Guided initially by Webster's dictionary definition of a right and based on a reading of various reform and research statements (e.g. SPSSI Committee on Children's Rights), Wrightsman et al considered rights in terms of three aspects: potential vs actual rights, conceptions of rights as nurturance vs self-determination, and five content areas.

Recently these researchers constructed a Children's Rights Attitude (CRA) Scale of 150 Likert-type statements in the areas of health, education/information, economic, safety/care, and legal/judicial/political. The conceptualization of ten subscales (the two orientations X five areas) has been administered to samples of high

school students, teachers and undergraduate majors in education. Importantly, Wrightsman & colleagues recognized that people's attitudes toward children's rights may be affected by their perceptions of children's age. Therefore, items on alternative forms of CRA dealt with four age groups from "up to 6 years of age" to "15–18," and respondents were instructed to envision a specific age level. From a legal socialization perspective, this aspect of the research is valuable because it addresses the relationship between attribution of rights to children and notions about child development.

The Wrightsman et al pilot studies focus on measuring the attitudes of adolescents and adults about children's rights. Such items as "contracts with children should *not* be binding unless the children's parents also sign" probably could not be administered to elementary or junior high school samples. In contrast to the work of Wrightsman's group, there are studies of children's general "rights" conceptions. The strength of the latter work is that it directly considers children's *own* views—although as yet, not specifically about children's rights. Several investigations, recently completed or currently under way, fall into this camp.

For example, Zellman & Sears (199), studying attitudes toward freedom of dissent among 1384 children in grades 5 through 9, found that the right of free speech was more readily accepted as an abstract slogan than applied in concrete situations. This pattern held comparatively with adults. While children 12–14 years old were generally more tolerant of free speech than those 9–11 years old, even by age 11 most children acknowledged the existence of such a right, and tolerance did not markedly increase with age. The single most important determinant of endorsing the free speech right was self-esteem—suggesting that socialization experiences that encourage tolerance for others and incorporate tolerance from others would effectuate greater acceptance of rights in real-life contexts.

Likewise, Gallatin's research in the 1970s reflects an interest in the development of the concept of rights. The Gallatin & Adelson cross-cultural, developmental study (50, 51) emphasized legal infringements on liberty and legal guarantees of individual freedom. Similarly, the research (48) based on 1970 black and white samples revealed that older children were more capable of weighing one set of rights and interests (individual) against another (community). Thus, in the 1963 study 12% of the 11-year-olds and 65% of the 18-year-olds thought that laws about individual freedoms (e.g. speech, religion) should be permanent; in the 1970 research, 7% of the children at grade 6 and 74% of the children at grade 12 expressed this view (48, 51). Gallatin (49) posited two types of rights: negative rights that are rights to noninterference (e.g. speech) and positive rights that are guarantees of opportunities (e.g. education). These two concepts are generally analogous to the self-determination and nurturance orientations discussed by Wrightsman et al (197). Overall, Gallatin found that developmentally a similar orientation to both concepts of rights emerged for blacks and whites and across national groups.

In the early 1970s, Tapp & Levine also modified their measure and model of legal reasoning to incorporate conceptions of rights. Additional questions have been administered to samples of adults and children by both investigators regionally.

Preliminary empirical codes suggested a progression in reasoning modes from an egoistic to an interpersonal to a societal and ultimately to a rights-consciousness perspective. Beyond including the rights questions as a dimension of legal reasoning, Tapp and investigators are also considering the content of responses. For example, paralleling Gallatin's negative and positive rights notions, the two major definitional dimensions being examined are "absence of restraint" and "equality of opportunity." Furthermore, since the sample in Tapp's studies is in part comprised of actual jurors, those data permit testing a problem at the core of legal socialization—the interaction as modulated by experience between conceptions of individual rights and institutional expectations (e.g. perceptions of the role of courts, judge, and jury).

Using completely different tacks, Wolfe & Laufer (195) and Parke & Sawin (135) considered the concept of privacy rights. Wolfe & Laufer focused on "the developmental aspects of the problem of human privacy" (195, p. 1). Parke & Sawin attended to developmental and situational factors related to children's use of privacy rules (e.g. knocking on doors) and markers (e.g. closing doors) in regulating family members' access to personal space areas. Based on an open-ended interview data from 287 volunteer school children aged 5–17, Wolfe & Laufer reported that the ability to define privacy is a function of age, first
and then increasing in complexity between ages 11 and 13. At all ages the four meanings of privacy most frequently used were: being alone, controlling access to information, no one bothering me, and controlling access to spaces. Two factors influencing the meanings of privacy were age and own room versus shared room. The latter—the use and meaning of access to space especially bedrooms—had a substantial effect on privacy conceptions in both studies.

Methodologically Parke & Sawin differed from Wolfe & Laufer, who used individual interviews and viewed the decrease in volunteer response rate with age as an unobtrusive measure of privacy (response rate was lowest, 60%, for ages 15–17). Parke & Sawin mailed a questionnaire to parents of 112 middle class children, ages 2–17, who were participating in the Fels Longitudinal Study. The instruction to parents stated that the project was concerned with ways in which space is typically organized and used at home. These investigators obtained a return rate of 85%, but since the study was not explicitly about privacy, this higher rate does not contradict Wolfe & Laufer's point about response as an unobtrusive measure.

Zeroing in on rules regarding use of bathrooms and bedrooms and the resultant definitions of privacy, Parke & Sawin also found that privacy is a developmental variable—with "the most dramatic shift in privacy behavior [occurring] during adolescence" (135, p. 10). In addition, size of home was a determinant of privacy —less privacy with fewer facilities. On balance, both studies (135, 195) reached distinctly similar conclusions: privacy behaviors and concepts follow a clear developmental pattern; privacy is a mechanism of social interaction management tied to familial patterns of socialization; the manifestation and conceptualization of privacy is affected by an ecological space perspective; and the study of social behaviors is best pursued in naturalistic settings with multimethods. These two studies with different theoretical and empirical traditions provide excellent examples of "the

importance of considering the interactions of developmental, situational, ecological, and child-rearing variables in the development of children's social behavior" (135, p. 12). This approach is especially necessary when data may be used to make or support policy decisions.

A related issue—research on assuring confidentiality and privacy with regard to social and behavioral research data—is still in the formulative stage. While not reviewed in detail, work is under way or anticipated by psychologists that delineates problems and strategies for (*a*) eliciting, maintaining, merging, and disseminating confidential social research data; and (*b*) assuring access to archival data without jeopardizing individual privacy. The reader is referred to Boruch's materials for an excellent synthesis of the issues as well as reports and models addressing the problem of related costs, benefits, and legal implications of social research (e.g. 19, 26). Trachtman, considering the effects of invasion of privacy on children in schools, heralded efforts "focused on protection of children, not psychologists" (185, p. 45). The Appendix to the 1971 Brief for Respondents in *Laird vs Tatum* (No. 71–288) on "Chilling Effect: A View from the Social Sciences" serves also as a reminder that privacy and confidentiality are two "rights" requiring attention. For psychologists interested in the psychology/law interface, this is an area for systematic research pregnant with possibilities because civil and criminal as well as public and private assumptions are much in dispute.

Child abuse is a further topic in children's rights that critically relates to the process of socialization generally and legal socialization particularly. As yet there is no research on children's conceptions of abuse or abusive situations. In two integrative pieces, psychologist Parke reviewed the problem of child abuse (133, 134). His national and cross-cultural analysis with Collmer (134) considered the scope and definition of the problem, alternative theoretical models (i.e. psychiatric, sociological, social-situational), parent and child roles, and research-based recommendations on abuse control. The authors pressed for rigorous evaluation and assessment of all facets of the child abuse problem and unobtrusive, action-oriented but "carefully designed field intervention experiments" (134, p. 83; see also Campbell 24). Considering the social psychology of child abuse, Parke (133) also assessed the implications of the "abuse" label, reviewed the interaction of cultural, familial, and community roles, and analyzed the possible resocialization of abusive families using, for example, the legal system and societal-community control. In this piece Parke argued that "the socialization of families into abusive patterns is a multiply-determined [modifiable] process" (133, p. 27). Basic to his approach is the view that child abuse is both a socio-psychological and a legal problem (p. 29). Therefore, in an evident shift from a strictly social-learning paradigm and in an apparent effort to conceptualize a multifaceted problem from a more integrative and interdisciplinary perspective, Parke incorporated legal-judicial (e.g. 66, 140) and other psychological perspectives (e.g. 177, 181) relevant to child-rearing and children's rights.

These psychological and developmental approaches to the notions of privacy and abuse illustrate the difficulty and necessity of researching complex problems in real-life settings. Moreover, they emphasize the problems in transmitting what is

known or translating what is *knowable* to the legal system. Perhaps then it is fitting that this section end with a review of an interdisciplinary team that demonstrated the potential of empirically oriented psychology joined with law.

The psychology/law effort by Ellsworth & Levy (35) applied selected social science data to legislative reform of child custody adjudication. They reported research studies on deviant and neglected groups and in a methodological analysis described the difficulties in scientific research. But it is the research review on divorce, broken homes, father separation and absence, remarriage and step-parenthood, and parental deprivation, along with suggestive hypotheses for future research, that are most valuable. Despite a paucity of specifically relevant psychological data in 1969 (and little more can be reported at this date), Ellsworth & Levy constructed a critical review of present and/or obtainable data of direct relevance to judges and legislators and of indirect utility for breaking the barriers between law and psychology. In contrast to the book by Goldstein et al (54) with which I began this section, these investigators argued for the importance of psychological criteria, stressed empirical studies, considered the psychological effects of courtroom decisionmaking, and suggested a paradigm "to test the law's hypotheses, while profiting from the methodological rigor possible with a scientific approach" (35, p. 215). Their work strikes a delicate balance between behavioral science findings and suggestions for formulating legal policy. Like the other research described thus far, there is evidence of increased use of an interdisciplinary paradigm in the systematic formulation and investigation of issues that are "empirical" or "factual" in psychology and law.

The Judicial Process

A key issue uniting law and psychology is justice and the role of law for achieving a just social order. A scan of newspapers or research literature reveals much concern about crime and about law enforcement security (e.g. 9, 52, 57, 80, 103, 166). Ignoring white collar crime, in the US alone "crime" is up 18% in 1975 over 1974, and 45% of Americans fear walking at night (Gallup Poll in *Minneapolis Tribune,* July 28, 1975, pp. 1, 4). Because our concern should be as much for justice and law as for order and law enforcement, in this review I address both issues. This section focuses on research analyses of the judicial process specifically: (*a*) decisionmaking in the adversary systems; (*b*) eyewitness identification and evidence; and (*c*) juries and jurors. The next major section emphasizes the criminal justice process.

DECISIONMAKING IN THE ADVERSARY SYSTEM The 1970s brought major theoretical and methodological constructs from moral philosophy (140) and jurisprudence (e.g. 46, 65) to various psychologists interested in procedural justice. (See the earlier section on "Legal Socialization Process" for other applications of these constructs by Fuller, Hart, and Rawls.)

Many in law and psychology have considered the conditions of fairness in the adversary system in and out of the courtroom, but few have approached this topic with as much novelty, ingenuity, and comprehensiveness as psychologist Thibaut

and lawyer Walker. Between 1971 and 1975 they conducted their simulated laboratory studies on the ubiquitous student (undergraduate and law in US and non-US locales) and integrated their findings into a book that concentrated on the nature and impact of procedures in adversary and inquisitorial legal systems (183).[6] In their work Thibaut & Walker's topical decisions were influenced in part by the general absence of such social science research and by the lack of integrative, analytic concepts from legal scholars. Their efforts were guided by the view that the principal formal device for dispute settlement—courts—has "much potential for creating widespread justice or injustice" (pp. 1–2). Thus the *fundamental question* for these investigators and their colleagues was: What procedures are just? Their *special concern* was in litigation procedures in developed societies; the *basic variable* for assessing the justice of all forms of dispute resolution was the distribution of control; the *major finding* was the superiority of the adversary system and trial procedures for attaining justice; and the *key requirement* for procedural justice was optimal control distribution among role participants.

Building upon both social psychological (e.g. 90, 190) and jurisprudential legal constructs (46, 140), the authors proffered findings and field applications to stimulate "communication" and "best facilitate the adoption of just procedures" (183, p. 5). For example, to study the effect of third-party control in prelegal settings on disputants (134 undergraduates and 97 law students), the authors considered the relationships among five dispute-resolution procedures and eight dimensions of preference (e.g. attractive or aversive). In this and their other studies, Thibaut & Walker evaluated (*a*) the impact of determinative procedures and procedural requirements in the disputants' social environments on justice views, and (*b*) the impact of internal or external biases on justice attainment (e.g. presentation mode and order, sampling error in discovered facts, locus of control, role relationships, and information processing). After appraising various procedures for dispensing justice, they finally analyzed the normative standards of justice as fairness by utilizing a "veil of ignorance" paradigm (140).

From the analyses of their experiments, Thibaut & Walker concluded that the adversary legal process was judged by all subjects as the most preferable, fairest, satisfactory, and beneficial regardless of culture (140, pp. 81, 114–15). In *all* experimental conditions decisionmaker control decreased steadily while satisfaction and perceived fairness of the evidence increased as the method moved from inquisitorial to adversary (pp. 94, 106). All roles preferred minimizing decisionmaker control and maximizing self-control (p. 110). The simulation of the original position sufficiently incorporated the essentials of Rawls' "veil" construct to confirm that "Behind the veil of ignorance is created that conception of procedural justice that uniquely implies the adversary system" (p. 116).

[6]Collaborators on Thibaut & Walker's studies include V. Andreoli, B. Erickson, N. Freidland, R. Frey, C. L. Gruder, J. Holmes, P. Houlden, S. LaTour, and E. A. Lind, whose reports appear in psychological and legal periodicals. These reports and additional ones in press or preparation are variously listed in Thibaut & Walker's book, *Procedural Justice: A Psychological Analysis.*

To Thibaut, Walker and colleagues, the high degree of control by the disputants and the high degree of regulated contentiousness between the disputants are basic to the efficacy of the adversary system. Therefore they advocate the use of this model in, for example, litigating the controversial arena of welfare law, due process and the achievement of rights, and consideration of shifting control to the judge. Although this research may be a byproduct of what Hogan (75) called America's problem of overemphasizing "individualism," it certainly is evidence for the importance of participation and conflict, skepticism and information exchange as basic to institutional forms that increase capacities for self-control, choice, and competence (e.g. 61, 64, 160, 174, 181). On balance, this psycholegal analysis of procedural justice may prove both an irritant and provocateur to lawyer and psychologist alike. To those persuaded by the legal-philosophical models of Fuller and Rawls, this interdisciplinary effort will be cheered; to those who decry laboratory experiments, there will be the questions about reality and respondents; to those who seek an action research strategy, there will be recognition of an intellectual and empirical attempt to demonstrate congruent constructs basic to an experimenting society. Finally, Thibaut & Walker in acknowledging their biases (i.e. sample, setting) underscored that research about individual humans or human institutions cannot be value-free. While psychologists must be cautious about their techniques *and* findings, they must also investigate legal behaviors cognizant of ideological implications *and* concerned about evolving ethical and scientifically sound measures. The efforts by Thibaut & Walker et al generate a kind of intellectual and ideological excitement that can only further sensitize scientific and social experimentation.

The orchestration of the Thibaut-Walker group accentuates the controversy in both law and psychology about the adversary and inquisitorial systems. Some lawyers (e.g. 31, 99, 100) using social psychological findings especially on persuasion and communication continue to ferret out results defending the adversary system. Costopoulos's (31) review of psychological research, while broader than Lawson's (99), reached the same conclusions regarding the order of arguments, primacy-recency effects and jury decisionmaking—although earlier Lawson conceded that experimental work on order effects was conducted in settings too dissimilar from the courtroom. In contrast to those who applaud the adversary system, many distrust it. Long-time activist in the courtroom, clinical psychologist Redmount (141–143) represents that group. Basically Redmount concluded that juries are not trained or practiced in evidence or argument evaluation. He argued too that data presentation in the adversary system (e.g. fragmentary and disjointed evidence procedures, dramatic partisan revelations) militates against a reasoned and reasonable conclusion. Since to Redmount "Judgmental decision is more correctly a product of the adjudicators, the means of persuasion and the focal issues, and certain events and circumstances" (143, p. 254), he would use skilled adjudicators to get at truth fairly. The work of psychologist Haggard and lawyer Mentschikoff on arbitrated decisionmaking (62, 120) suggested a similar conclusion.

According to Haggard & Mentschikoff, "decisionmaking" has multiple meanings and is used in many contexts from executive, legislative, and judicial levels of government to an array of nongovernmental "legal" or norm settings (e.g. disserta-

tion committees, funding agencies, or baseball umpires). In a unique in situ approach, this lawyer and psychologist team (62, 120) addressed the problem and scope of "responsible decisionmaking" (i.e. decisions by third parties with the authority to affect others, from one person to an entire society). The Haggard-Mentschikoff research on institutionalized commercial arbitration (based on observations and simulated experiments at the American Arbitration Association) provides an interesting counterpoint to data reported by Thibaut & Walker (in simulated laboratory settings). Such comparisons should help sort the pros and cons for the adversarial vs inquisitorial systems as well as the effects of third parties in formal and informal "legal" settings.

Psychologist Haggard reported (62) on how 60 individual arbitrators in 20 panels made decisions and how groups achieved decision consensus after they heard tapes on a business contract cancellation and deliberated until they settled the dispute. The psychological data (e.g. questions on predeliberation and postdeliberation awards, measures of arbitrators' views of the central issues and evaluations of the parties, content analysis of the deliberations) provided a backdrop for lawyer Mentschikoff's formulating a model of the rules that guide arbitrators in dispute settlement. Although nonrational factors (e.g. private views, sense of affinity, or idiosyncratic aspects of deliberations) emerged, Haggard found that decisions were predominately "rational." As hypothesized, arbitrators' choice of the central issue in the dispute and how evidence was perceived were primary in their decisionmaking. Mentschikoff (120) further explored the role of the normative standards used to judge the parties' conduct during the dispute and at the hearing as well as to regulate the arbitrators' behavior at hearings and during subsequent deliberations. She identified substantive norms and fact-finding norms operative during the dispute; procedural norms, role norms, and status norms functioned during the arbitration. Noting that the "potential range [of] norms is theoretically infinite," Mentschikoff reported that in practice arbitrators' norms in commercial cases like many in civil courts are "relatively few and recurrent" (pp. 3–4). Affinity and communication are the two major personal interactional factors operative in identifying and endorsing norms. While "the absence of institutional pressure" may minimize "the problems in reaching consensus," Mentschikoff opined that "responsible decisionmaking in a context of adversary proceedings is predominantly a normative matter" (pp. 26, 31) where the expertise and prior experience of the arbitrator remains the single most important factor in both decisional and consensual processes.

Both the Thibaut & Walker and Haggard & Mentschikoff projects showed that a dispassionate search for ideal procedures is as complicated as the debate between advocates of the adversary and inquisitorial systems. Fortunately, psychologists and lawyers have pressed to study decisionmaking despite the systematic flaws in both disciplines and precisely because problems can be ameliorated only by understanding the nature of the "flaws" in the individual, the institution and their interaction. That much research is categorized under the topic of decisionmaking seems to be a phenomenon of the 1970s. This becomes apparent again in research on the jury and juror.

EYEWITNESS IDENTIFICATION AND EVIDENCE Lawyer Hutchins, recalling his 1929 work with psychologist Slesinger (82) noted, "as far as the searching of Law of Evidence is concerned, it was affected only incidentally. We hoped it would be affected ultimately by what we were trying to do" (37, p. 22). Some 45 years later, and almost 70 years since the initial efforts (see "Historical Context"), psychologists and lawyers still confront the problems of eyewitness evidence, but most law classrooms remain unaffected by the accrued knowledge on mediating psychological processes.

Prompted by the diminished judicial concern (*Kirby vs Illinois,* 406 US 682, 1972) after court attempts to confront the inherent dangers in eyewitness identification (e.g. *US vs Wade,* 388 US 218, 1967), Levine & Tapp (102) reviewed psychological research basic to illuminating problems of fallibility and suggestibility. Perhaps one of the most comprehensive reviews to date on the psychological aspects of identification, their survey and critical analysis is bolstered by recommendations for future research and pre- and in-court procedures. To demonstrate the use of systematically synthesized psychological evidence, they chose a specific area related to eyewitness evidence—pretrial confrontation.

By undertaking an observational-interview field study, Levine & Tapp sought to bring empirical clarity to the problem of faulty witness or victim identification at lineups. In addition, they examined the traditional forensic literature, the research on processes that limit valid identification (e.g. perception, memory, perceptual selectivity, differences in mnemonic abilities), and the studies on social influences that modulate sensory processes (e.g. emotional state, motivation, stereotypes, prejudice). In distinguishing among factors that affect perception or memory of a criminal event and the psychological (social structural) variables operative during an actual identification proceeding, Levine & Tapp depicted the dimensions (e.g. group pressure, role conceptions, expectancy) that potentially affect decisionmaking processes and data-gathering validity. Like Thibaut & Walker's research (183) and Haggard & Mentschikoff's (62, 120), Levine & Tapp aimed to unravel complex phenomena by specifying identifiable relationships. Although many questions are left unanswered, their article provides those interested in this problem of the judicial process with an informed base to advance research and reform.

The recent research and reviews of Loftus (108, 109) and Buckhout (22) complement the analytic and descriptive reports of Levine & Tapp (102) as well as Marshall and associates (111, 112). The studies of Loftus and of Buckhout, done respectively in laboratory and field settings, reiterated the long known and psychologically verified findings on the inaccuracy of eyewitness evidence. For example, Loftus found that in simulated settings with over 100 student "jurors" the structure of written questions (e.g. the use of *a* vs *the*) or the event descriptors (e.g. smashed vs collided) significantly affected responses related to time, speed, and distance. These results are coincident with the general finding that eyewitness testimony is notoriously variable and consistently inaccurate. Furthermore, like Marshall et al (112), Loftus found that mode of interrogation had less effect on accuracy than timing. The questions asked immediately of 490 respondents introduced new, but not necessarily correct, data, and this was found to alter the recollection (109).

Mindful of the repeated point that simulated contexts are less stressful and partisan than normally encountered by real witnesses, Buckhout tried in situ settings to reduce potential artifacts and bias (22). He videotaped a staged assault on a professor witnessed by 141 students: 60% of the witnesses—including the attacked professor —chose the wrong man!

Regardless of time or technique then, most sets of data indicated that valid recall is altered by variables such as psychological processes of perception or motivation that mediate reconstruction of a remembered event. Perhaps more discouraging is the evidence that the essential finding on the unreliability of eyewitness testimony was made by Munsterberg nearly 70 years ago. Yet although numerous experiments have verified eyewitness error-proneness, such evidence is still deemed more reliable than other kinds of evidence (e.g. circumstantial). Despite repeated research and educational efforts, psychologists have had little impact on the law's unwarranted reliance on eyewitness reports.

JURIES AND JURORS Creation of a setting consistent and conducive to just decisionmaking is paramount in any legal system, but particularly in an adversary one where the "verdict" reflects the "judgment" of one's peers. Among psychologists concerned with social behavior perhaps the oldest, best known, and continuous work has been in jury research. That the dynamics of the jury process have caught and maintained the imagination and ire of both citizens and scientist is intriguing, given that less than 3% to 5% of all US crimes ever come to trial! However, in the present social and scientific renaissance the concern is not that so few conflicts come to court but with the procedures by which judgments are processed. At least in the US in the 1970s "trial by jury" seems to be a test of the larger society's commitment to a just legal order for all. The role of psychologist in several trials of national prominence evoked much debate on the ethical, legal, theoretical, and practical aspects of such psycholegal cooperation. In this section two motifs that recently have captured the time and attention of psychologists in and out of real courtrooms are described: the jury decisionmaking process and the jury selection process.

The jury decision process Research on decision processes in juries conducted over the past decade are well presented in the recent, critical, and comprehensive chapter by Davis, Bray & Holt (32). Therefore, I do not reiterate the details of those studies or several others that due to publication dates and space limitations cannot be specifically covered (e.g. 16, 20, 130). In addition to building a model of the decisionmaking process, Davis et al responded to a strong psychology/law research trend and aimed to examine jury research in terms of the theories that may be tested or developed from empirical findings. Explicitly psychological in approach, excluding legal/philosophical or small group research, Davis et al reported a "bewildering" and "disorderly" array of studies that produced many findings but little systematic theory. In their critical review they found more efforts devoted to *juror* than *jury* behavior—a pertinent division of past jury research. As a result of analyses of both types of jury research, the Davis group (32), unlike Thibaut & Walker (183), argued that few legal prescriptions can or should be drawn directly on a one-to-one basis from empirical studies (p. 2).

Grouping the juror research by content themes (e.g. attitudes, values, and guilt; effects of judicial instructions; "just world" hypothesis), Davis et al uncovered many differences, especially in dependent variables (e.g. sentence length, parole eligibility, damage awards). The results seemed problematic too because of the stimulus materials (e.g. case summaries), heavy reliance on student or mock jurors, and instances of influence not necessarily representative of jury functioning as so often implied (32, p. 34). For example, Davis et al found no generally "good" predictor from demographic variables; pretrial publicity data were equivocal; arguments for order-effects were ambiguous; and authoritarianism seen in punitive sentencing seemed unrelated to frequency of guilt judgments or initial guilt determinations. Such varied, inconclusive, or equivocal findings warrant skepticism and criticism of research or theory that primarily uses individual "jurors" rather than interacting "juries"—even mock ones.

Davis et al grouped the jury research in this manner: *deliberation* before verdict emphasizing interaction; *verdict* under various deliberation conditions; and *sample surveys.* The latter group tended to use actual cases (e.g. polling real jurors); the former two used mock or simulated cases. Critical of methodological flaws here too, Davis et al nonetheless detected some orderly findings. For example, demographic variables still offered lawyers a means to control decision outcome; jury size (i.e. 6 vs 12) was largely irrelevant to outcome; and the jury foreman was usually a white, high SES male. Evidence that the judge's instructions about the law decidedly affected verdicts supports Kadish & Kadish's interpretation of the impact of judicial role on jurors' perceptions of the legitimacy of rule departure (85).

In reviewing the juror and jury research, Davis, Bray & Holt found no theory specifically designed for juror decisionmaking and many serious methodological difficulties ranging from obtaining empirical data (e.g. courtroom access, "real" stress) to dealing with legal/ethical constraints (e.g. changing legal procedures, privacy, and confidentiality rights). As a result they recommended a social decision scheme (SDS) model, further substantiated by recent experimental results (p. 58) and devoid of the difficulties inherent in individually oriented, social psychological theories (e.g. attribution theory, cognitive dissonance). Advantages of the approach include (*a*) using a logical, mathematically deduced model of jury verdict behavior when it is impossible, uneconomical, or unethical to obtain relevant empirical data (32, pp. 59–60); and (*b*) detecting extent of change not as readily identified by gathered empirical data (p. 61). To Davis et al, the SDS model is less likely to oversimplify and more likely to provide a simple, convenient way to deduce specific outcomes about juries for normative or descriptive use. For example, in a traditional study to determine the effect of jury size (6 vs 12), in order for the largest difference of 0.08 to be significant at the 0.05 level, 1116 persons would be needed (p. 55); in contrast, the SDS permits detecting small but real differences, yet is also capable of exploring decision outcomes of juries (p. 56, e.g. two-thirds or three-fourths majority).

In sum then, Davis et al begin to answer the call for badly needed supplemental theory to analyze juror or jury decisionmaking processes, attending to individual and group levels of behavior and to interacting members of a jury. The search for validity across theories, methods, and fields is a necessary orientation for psychology/

law research, found increasingly in the 1970s. There is again a kind of experimental and social excitement generated by the critique and by the SDS model proffered by Davis et al. Clearly the battle to watch is between the advocates of experimental social psychological models and those who advocate in situ social research. As important is the attempt by both sets of researchers to develop formal theories. What either thinks about the model's acronym--SDS—is a moot point.

Jury selection: Psychologist as expert or advocate? Whether the psychologist in the courtroom, acting as expert during the voir dire examination, advances the cause of justice has been a matter of intense debate in the 1970s, despite the fact that judges and lawyers have long used the "profile" technique and "experts" to justify decisions or selections (e.g. 33). The fervor of the recent debate is especially noteworthy since social scientists have participated in less than a dozen trials in the past 10 years (e.g. Camden 28, Gainesville, Ellsberg-Russo, Mitchell-Stans, Wounded Knee, Attica) and "there are perhaps 150,000 jury trials in the United States every year" (163, p. 1071). What is the reason for both the controversy and attraction to this aspect of the judicial process? Perhaps it is the symbolic representation of this society's commitment to obtain legal and social justice.

Critics argue that social science techniques threaten jury's impartiality (36) or produce stacked panels (86, 163). Advocates argue that, given the empirical battles over jury size and verdicts or eyewitness evidence, social science techniques protect the jury system—the only place for public participation in the judicial process (87). Proponents suggest that scientific analysis of demographic and personality data (e.g. religion, sex, education, authoritarianism, attitudes to capital punishment), used to develop profiles in the critical voir dire stage, aid judge and counsel in selecting a less biased jury, if not of one's peers (32, 87, 132, 150, 154, 155). Christie's unpublished "Probability vs precedence: The social psychology of jury selection" adds to the general point (see also 29), but still does not resolve the "fair" issue posed for both scientist and citizen (17).

Observers remind all sides concerned that the real questions are broader. They include whether social scientists are really manipulating juries; whether psychologists should get involved in social action research at all or only to test the relevance of their theories and findings to social problems; or whether selection of a fair, unbiased jury is analogous to a research problem and therefore a challenging opportunity to do research in the real world (e.g. 17, 24, 25, 29, 57, 80, 105, 115, 118, 150, 163; cf Christie's "Probability"). Others hint that instead of stacking the deck, social scientists working with juries have been finding out "how inequitable the much-vaunted American jury system is," and thus "the real boon" may be that their activities have encouraged both fairer jury selection procedures (163, pp. 1071, 1033) and reexamination of the administration of justice.

On the basis of their Black Panther trial experience, Rokeach & Vidmar concluded "that substantial bodies of social science findings obtained in other contexts for other purposes can at least sometimes be translated into applications that have real, palpable consequences in everyday life" (150, p. 27). However, there are only a few other reports that specifically describe data use from surveys, jurors' ratings, reputational measures, evaluation of jury interactional potential, and follow-up

studies relevant to the voir dire aspect of the jury selection process (29, 87, 154, 155). Another exception is the experiment of Padawer-Singer, Singer & Singer (132) using lawyers. They compared voir dire selected juries to those selected randomly and found significant demographic differences. Participation by both defense and prosecution led to the most "impartial" jury; also the lawyer voir dire created greater commitment from "actual" jurors (in a rigged courtroom) to the law and to their role. Overall, voir dire seems to be an essential safeguard in the administration of justice, whether observed in situ or in simulated settings (17, 32, 87, 131, 132, 150; cf Christie's "Probability").

Whatever the reasons for or results of psychology in an adversary system, the advocates of research have demonstrated that, beyond the voir dire problem, there are substantive gaps in psycholegal knowledge and a need for more systematic theory and research [e.g. on ideology or attitude toward punishment, see (124, 189)]. While a major difficulty in "natural" research settings is absence of control, perhaps a major asset is that each research experience demands a review or reorganization of theory and technique, policy and procedure—both psychological and legal. Participation in jury selection or research on jurors—both mock and real—has apparently had some effect if only to encourage debate on the utility of the techniques and findings. But, except for the publicized "success" of the "conspiracy" trials on which psychologists worked, there is little conclusive evidence or systematic evaluation of the results for either research setting. The question remains: What keeps the psychologist in the courtroom? One answer may be that while psychologists cannot "experiment" on a societal scale, they can add to their and society's knowledge by systematically documenting events. Another answer may be that they recognize the participatory, interactive component of social science and society. A third may be that research on decisionmaking in the judicial process provides psychologists with an opportunity to review and research the dilemma of their role and responsibility. As the next section reveals, the criminal justice process also allows psychologists to address the issue of the rights of individuals and institutions with forensic fervor.

The Criminal Justice Process

Despite the fact that the mental health and criminal justice systems in theory are distinct, they are often interrelated in confusing and contradictory ways. In 1972 psychologist Shah said, "It is not very clear how one set of societal processes for defining and dealing with deviant behavior (the concept of mental disease and mental health handling) are to be related to another set of societal processes for dealing with social deviance (the concept of crime and the criminal justice system)" (161, p. 97). In 1974 he commented again on their long, complex but undistinguished interaction: "[T]he voluminous literature that has accumulated on the topic . . . reveals something close to the syncopated chaos that one associates with the Tower of Babel" (162, p. 676). In 1976 lawyer/psychologist Shuman, reflecting also on the numerous contesting views, observed:

> Given the present state of knowledge even in biology and genetics, let alone in sociology and psychology . . . we are unable to state with sufficient specificity the basic "objectives"

> or "goals" about the prevention or suppression of criminal deviance. . . . The dearth of research is not due to lack of interest, nor to ignorance about alternatives to incarceration [for] we would not know what to do if it is convincingly demonstrated that institutionalization, in fact, is counterproductive (164, pp. 9, 16).

Because of these concerns and the preponderance of rhetoric over research, in this section I limit my attention to the role of psychology in the criminal justice system. My emphasis is not on the role of criminal law, but rather on that of the psychologist vis-à-vis criminals and prison settings.

PERSPECTIVES ON THE ROLE OF PSYCHOLOGISTS By the mid-'70s, the 200-year-old experiment in prison reform begun by the Quakers had clearly failed. Evidence from both lawyers and psychologists indicated that the type of rehabilitative treatment made little difference in recidivism rates. The question being asked by psychologists and lawyers as well as prisoners and recidivists was whether the legal or psychological systems served justice or merely delivered punishment (e.g. 5, 8, 158, 164, 169, 171, 186, 186a, 192; S. Brodsky, P. Meehl, personal communications, 1975). Simultaneously over the past decade, as the efficacy of the rehabilitative —or resocialization—ideal was challenged, criticisms were advanced about the medical model of treatment; the validity or utility of predictions of dangerousness or violence; the role of psychologists in the criminal justice system; and the ethical and legal rights of prisoners in psychological treatment (e.g. 21, 53, 55, 64, 96, 100a, 106, 119, 125, 126, 147, 152, 161, 162, 165, 186, 186a). Doubts about the efficacy of the rehabilitative role, traditional therapies, and nonconsensual treatment caused many psychologists to review their place in the criminal justice system. A series of landmark decisions in the 1960s and 1970s from "right to treatment" to "right to due process" supported constitutional guarantees of equal protection and immunity from cruel and unusual punishment (e.g. *Rouse vs Cameron,* 373 F. 2d 451, D. C. Cir. 1966; *Wyatt vs Stickney,* 325 F. Supp. 781, M. D. Ala. 1971; *Inmate of Boys' Training School vs Affleck,* 346 F. Supp. 1345, D. R. I. 1972). These decisions moved psychologists of all persuasions to reconsider if their methods threatened the rights of individuals and distorted further the role of penal institutions. The central questions are how, who, and what achieves justice and health best in "correctional" settings? As some mental health professionals in prison institutions had already learned (e.g. 186, 186a): in the name of care, civil liberties may be restricted; in the name of competence, coercion may ensue; and finally in the name of choice, indeterminate escapes to or from freedom may be offered—and justice muted.

Despite the confusion—both public and professional—surrounding psychology's place and purpose and the assertion that perhaps examination of value-ethical questions had been ignored heretofore because treatment had been minimally successful, a number of critical analyses and constructive reviews have been forwarded recently by both psychologists and lawyers (e.g. 21, 53, 117, 126, 147, 156, 158, 162, 164, 165, 192). While this array reveals fundamental philosophical and psychological differences about the nature of humankind, it also yielded several innovative paradigms for psychologists working with the incarcerated for "rehabilitative" (i.e. resocialization) or "therapeutic" (e.g. alcoholism) purposes. The major battles being waged in the literature are over the applications of behaviorism, the right and role

of choice in the therapeutic relationship, and the responsibility of psychologists both to the reality of the prison and to the person requiring the help. These issues are basic to understanding the emergence of both the community approach to corrections (e.g. 125) and the contractual or justice models (e.g. 53, 95, 158).

One basic descriptive overview of the problems and potentialities at the psychology/law interface came as an edited report (21) of a 1972 conference at which the participants discussed such issues as the application of psychological principles to corrections and courts, the impact of action research on policy, and an adequate education for correctional psychologists. At that meeting, Brodsky distinguished between "system-professionals" (traditional, within system workers) and "system-challengers" (advocacy, outside system workers). This distinction deserves attention because it offers psychologists a vehicle for interpreting and defining viable roles in the systems of psychology and penology.

Of value to both system-professionals and system-challengers is Monahan's critical, updated review of conceptual and empirical efforts to predict or prevent violence (126). Indeed, his review only underscored Megargee's earlier effort—and failure—to find any test to predict violence adequately: "None has been developed which will adequately *post*dict, let alone *pre*dict, violent behavior" (119, p. 145). Drawing heavily upon the work of others, Monahan vividly portrayed the confused definitions of violence and dangerousness; he reported, for example, that between 54% and 99% of those predicted "dangerous" are false positives. Culling a variety of empirical studies, he consistently found overpredictions. For Monahan, the key question is deterrence: How many false positives need be sacrificed to gain protection from one violent individual? After reviewing the psychological factors involved in overprediction, he concluded that since violent behavior is partially situation-determined, an ecological analysis is most compatible with a community mental health orientation. Various other contributions to Monahan's edited volume described the multifaceted model *in extenso* (125). Basically system-centered, the move is away from a medical (blame the individual) approach to one that emphasizes modalities of social and community support (e.g. diversion programs, training police in family crisis intervention).

The contributions of both Silber and Shah in Monahan's community based, ecologically oriented volume portrayed the ambivalence of psychologists regarding their role in prisons and in the community. Silber wryly concluded that "it is one of life's little ironies that treatment is attacked because it does not help prisoners . . . when in fact the prisoner's chance of receiving treatment is almost zero [and] [t]herapy has not been given the chance to work" (165, p. 242). He stressed that the most effective contribution is made when the mental health worker functions as a therapist and stays on the periphery. In contrast, Shah viewed many mental health concepts as inadequate and was attracted to a system-challenger's role that seeks legal safeguards in handling social deviance. Subsequently he formulated well the conflict facing contemporary correctional psychologists:

> To intervene coercively in the life of an individual on the assumption, or even very real expectation, that he might in the future display dangerous behavior, raises very serious constitutional issues and appears to run afoul of very basic societal values pertaining to

> the primary importance of personal liberty and the general prohibition against preventive detention (162, p. 702).

This ambivalence about role and attraction to legal or judicial rationales was insightfully presented earlier in the 1968 interdisciplinary discussion by Livermore, Malmquist & Meehl (106).

The current debate on the most "just" and "right" mode of treatment for obtaining mental health and social justice is as often on the docket of lawyers as psychologists. A recent impressive analysis of the relationship between therapy—in this case behavior modification—and the law was undertaken by lawyer Wexler in 1973. He focused on the assent-dissent issues for individuals in situations of total institutional control, whether a hospital or a prison (192). Wexler's review of a spate of court decisions suggested that many activities emerging as absolute rights are the very activities that the behavioral psychologists would employ as reinforcers (i.e. contingent rights). His arguments emphasized that while there is no inherent set of "rights" implied by determinism (or probably any other type of therapy used to modify behavior), the principles underlying the "right to treatment" and traditional civil liberties may conflict. As Wexler duly noted, "In the psychologist's view it would surely be an ironic tragedy if, in the name of an illusory ideal such as freedom, the law were to deny the therapist the only effective tools he has to restore the chronic psychotic to his health—and his place in the community" (192, p. 17).

Taking a decidedly different stance toward the role of psychologists, lawyer/psychologist Shuman maintained that in our "state of knowledge about punishment and resocialization, except for extremely brief emergency confinement, incarceration as currently practiced is almost guaranteed to be dysfunctional. . . . Whether institutionalizing people under compulsory restraint is necessarily antithetical to resocialization is an open question" (164, p. 15). Hardly persuaded by the Skinnerian view that the more humane way to deal with individuals is to absolve them from the responsibility of being free, Shuman rejected the notion that unhealthy deviance is sufficient basis for involuntary or indeterminate therapy in the name of health and justice. After analyzing several solutions to deviance—institutionalization, conditioning, and biological reconstruction—Shuman suggested that the criminal law system may be "more expensive than it is worth" (164, p. 21) and perhaps ought be replaced by a law of torts framework. He proposed that we speculate carefully what life would be like if only tort remedies were available for deviant conduct. Shuman concluded with this observation: "A society without criminal law would necessarily be one where the price for real, universal freedom is never too high. In such a society, witches would not be burned, and even objectionable people would not be compelled to accept the 'benefits' of incarceration, conditioning, or corrective social surgery" (164, p. 25).

THE JUSTICE MODEL Bearing in mind these criticisms of both criminal law and correctional methods, I now examine some proposals of contractual-consensual and justice models. Though these efforts have various origins from clinicians in hospitals to developmentalists in prisons, they have mutual applicability because of the captive quality of the populations and the total nature of the institutional settings. The notions of both a contractual-consensual relationship and the justice model emerged

noticeably in the 1970s. In part, they were products of the collapse of the medical model, the reaction to various techniques of behavior modification from psychoanalysis to behaviorism, the methodological criticism of predictions of violence and dangerousness, the debate over indeterminate sentencing, the controversy over the discretionary powers of the prison officials including psychologists, the concern over the purposes of institutionalization, and the conflict between psychological therapies and constitutional rights.

Among the more interesting and impressive suggestions to ameliorate the knotty psychological, legal, and ethical problems were those from behaviorally inclined psychologists Meehl (106, 117), Goldiamond (53), and lawyer/psychologist Schwitzgebel (157, 158). In 1970 Meehl reminded lawyers that only the first of four aims of the criminal law—isolation of the offender—was being met; the other three—rehabilitation, general deterrence, and retribution—had remained unattained. Aware of the limited success of psychologists in prison settings, he cautioned lawyers about the primitive state of personality assessment and commended Skinner's behavior modification approach. He argued that most other therapy techniques do not "know how to rehabilitate criminals. . . . So you might as well let a zealous Skinnerian try *his* hand at it, because the available evidence shows that we are not accomplishing much of anything with the present conventional methods" (117, p. 22). In 1975 he maintained that same position and underscored the theoretical and practical sense of behavior modification as well as the individual's right to treatment for an emotional problem (e.g. schizophrenia) regardless of setting (P. Meehl, personal communication, 1975). So defined, the role of the psychologist is one principally accountable to the person, not the prison—the individual, not the institution. It is precisely this orientation that has moved both psychologists and penologists to review the nature of their relationship and responsibility to the individual and to the institution.

Elaborating these issues further, Goldiamond (53), in a truly perceptive and instructive paper on ethical and constitutional issues raised by applied behavior analysis, outlined a constructional approach whereby during the "custody" of a patient or criminal, any additional activity required should be *with* him and not *to* him. He emphasized that "Experimental and applied analysts of behavior have reason to be concerned, as people, regarding the possibilities for individual damage or ineffectiveness which may ensue; as citizens, regarding the constitutional issues involved; and as professionals whose discipline and opportunities may be affected" (p. 4). Goldiamond then attempted to define the psychologist's role as both researcher and practitioner in an institutional setting. While his contractual construction leaves some unanswered questions (e.g. what is "voluntary consent" in an institution restraining freedom?), he introduced an approach for use in total institutional settings that is thoroughly consistent with "(*a*) the constitutional requirements of mutual contracting and limitation of power, (*b*) other ethical obligations which the Constitution exemplifies, (*c*) the therapeutic needs of the patient (or other consumer), and (*d*) the investigative and analytic requirements of behavior analysis" (p. 14). Duly noting behavior modification's movement toward explicit contracts as part of its scientific rationale, Goldiamond importantly stressed the necessity of constitutional requirements rather than redefining the humanity of the clients

(p. 45)—whether prisoners, mental patients, or other subjects of institutional control.

Psychologist-lawyer Schwitzgebel, who in other work in behavioral electronics proposed using implanted devices to monitor parolees (e.g. 156), also realized the ethical and constitutional questions raised by such techniques (157, 158). Recently he readdressed the issue of patients' rights and liabilities (and psychologists' too) through an explicit consideration of treatment contracts (158). Ever sensitive to the responsibility that demonstrating the "benefit" falls upon the institution, not upon the patients who "pay" for treatment ineffectiveness with their freedom, Schwitzgebel articulated a contractual model based on informed consent that optimally would increase the opportunities for choice and self-determination and protect patients from unwarranted intrusions upon their persons or personalities. Schwitzgebel described the basic characteristics, advantages, and disadvantages of the consensual model, emphasizing that treatment procedures become increasingly effective as the contracts become more specific. He noted too that the accountability of the psychologists is increased, not lessened, by this "tort" model because of the often complicated therapeutic relationships.

Schwitzgebel, like Goldiamond and Meehl, persuasively argued that the best defense against coercive or imposed treatment in the name of justice or health are conditions that encourage choice and mutual exchange. The results of the Stanford University prison experiment underlined too the difficulty of establishing such conditions in "correctional" contexts without explicit contractual understandings. In a simulated experiment designed to study interpersonal dynamics, individuals while role-playing *unknowingly* became socialized into criminality, be they prisoners or guards (63, 64). Both "prisoners" and "guards" were observed continuously for behavioral manifestations using multiple, social psychological measures (e.g. videotaping, verbal interactions, sociometric ratings, authoritarianism measures). Within six days, the behavior of 21 stable, representative, middle-class Caucasian males became pathological and antisocial. The experimenters assessed the emergence of these patterns not as the product of deviant personalities but as the result of a pathological situation that rechanneled and distorted the behavior of normal individuals.

Beyond reporting the experiment in traditional terms, Haney & Zimbardo (64) vividly conveyed the power of prison situations to socialize individuals into dehumanizing roles. Using four scenarios to describe the experiences of two guards and two prisoners—one each from real and simulated prison settings—Haney & Zimbardo dramatized the impact of social-situational variables in controlling behavior and the lack of individual consistency across situations. In addition to considering the process of institutional socialization, they analyzed as well the phenomenology of imprisonment and the professional's difficulty in not perpetrating dehumanization. In sum, Haney & Zimbardo saw the psychologist's role in social institutions to be "a critical one in order to humanize impersonal structures and neutralize the harm" (64, p. 2).

An appealing but controversial paradigm for handling such problems as dehumanization is the just community approach to corrections, proposed by developmental psychologist Kohlberg and colleagues working within prison settings and in

concert with prison staff (95). Their goal is to facilitate individual and institutional movement to more ethical and humane levels of interaction. The investigators examined the "moral"—not "moralistic"—atmosphere of two prison settings in part to test Kohlberg's 20-year-old theory of moral development. Their justice model of prison intervention was variously explicated in the mid-1970s (95, 96, 153).

Using interviews and participant observations, they asked whether the justice structure of a prison could be conceptualized in terms of stages of moral development and how perceptions of the justice practices of the inmates were ordered by the moral atmosphere of the prison. The in situ research team found that the Cheshire inmates operated basically on standards of fixed rule and/or manipulation of rules —a pattern consistent with other reported prison research. As importantly they found "Inmates tended to reason at lower levels on dilemmas placed within the prison context. Even 'conventionally reasoning inmates' . . . reverted. . . . *Independent* of stage, inmates perceived justice practices of the institution in Stage 1 (punishment and obedience) or Stage 2 (instrumental exchange) terms" (96, p. 7). The power of the situation was as evident here as in the simulated Stanford setting (63, 64). While some minor movement in moral stages occurred using the traditional methods of group discussions, "the low stage 'moral atmosphere' of the reformatory placed a 'ceiling' " on expected moral maturing (96, p. 7). Likewise, the prison's authority system supported punishment-oriented compliance, and the rigid structuring of roles blocked role-playing or shifts in perspectives. Although a cognitive theory of moral development marked their approach, there were social-situational variables lurking in this model.

Based on this in situ experiment, Kohlberg and his colleagues defined a just correctional community, trained an intervention staff, and tested the justice model at the Niantic State Farm for Women. Using justice strategies as a treatment (i.e. stressing community process and moral justice to represent "treatment" rather than phrasing "treatment" in psychological terms), they aimed to "stimulate the development of the offender's values and moral judgment to a higher level, and to stimulate correspondence of judgment and action" (p. 12). Details of their training procedures are described elsewhere (95). Of great interest in evaluating the potential of a justice model are the reports on the emergence of a self-governing prison structure where inmates were "disciplined" by their own board, where 90% of meetings were called by inmates, and where both staff and inmates had a single vote. Although the long-term results of the just community approach to "rehabilitation" await further testing and follow-up work, in 1974 only 5 of 33 inmates had returned to prison (153). The notion of justice as treatment emphasizing participation, exchange, choice, and shared community responsibility is consistent with the "official morality" of the US Constitution. If this method continued to work in US correctional contexts, then there would be further evidence that a "major force for change in small-group rehabilitation is the *moral pressure* of the group on its members and the *moral evaluation* of the individual by the staff and other members of the group" (96, p. 13).

What is fascinating about this psychology/law interface is the commitment across various psychological orientations to assure a relationship between prisoner (patient) and psychologist of choice and cooperation, not coercion and control. Al-

though each psychologist stressed different variables, the concern for social exchange between "equals" was explicit and implicit (e.g. constructional contracts, just communities). Doubtless it may be difficult to put into effect justice models or rehabilitation treatments based on consensual contracts. But evidently psychologists of different persuasions (e.g. Meehl, Goldiamond, Schwitzgebel, Kohlberg, Zimbardo) are incorporating concepts of mutuality and reciprocity, participation and consent, exchange and choice in their therapy and research. As psychologists begin to denote the dimensions of a "just" or "constitutional" or "ethical" relationship between psychologist and patient, they can assume a pivotal role in altering the major behavior control systems—criminal justice and mental health. After all, the question of who and whether individuals become victims of these systems is as much a psychological as legal problem.

CODA

My subtitle, "An Overture," was a musical metaphor as well as a recognition of the selective and initial quality of this new *Annual Review* topic. Since I was guided also by the idea that a union of psychology and law promotes both science and justice, how could I revert to a conventional coda merely recapitulating themes? Like a complex concerto, work at the psychology/law interface has several movements, each with themes and subthemes. I chose to sketch three basic themes—the legal socialization, judicial, and criminal justice processes—because they seemed representative of the movement of the individual through the legal system as well as the shift from an interstitial to an interfacial mood in psychology and law—patent in the scoring of discordances. The potentiality and poignancy of these and other themes at the psychology/law interface seem to chasten the putative purities of our mutual theories, but the evidence of recent interdisciplinary and empirical work bodes well for both research and reform. While it is evident that the intertwining of psychology and law, like science and justice, is a difficult orchestration, such a possibility seems greater, though no less difficult or discordant, in the 1970s than it did in the 1900s. The difference may be that we compose with greater systematic sophistication—and in concert.

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