

## Chapter 1

### *Forensic Psychology: Promises and Problems*

#### Questions for Discussion or Essay Examination

1. Define forensic psychology.
2. What are some examples of activities encompassed by the term “forensic psychology”?
3. In what way does a narrow definition of forensic psychology limit the field?
4. Describe the difference between the two main divisions in the field of psychology.
5. Who was Hugo Munsterberg? What contributions did he make to forensic psychology? What were his goals? Was he successful?
6. Describe the work of early experimental psychologists (from 1885 to 1915) that was relevant to forensic psychology.
7. Describe the legal profession’s reaction to Munsterberg’s claims. What are some conflicts between the fields of law and psychology?
8. Describe the tensions between psychology and the law, especially with regard to the role of empiricism.
9. Distinguish between induction and deduction as reasoning procedures.
10. How would a psychologist determine “truth”? How would a lawyer?
11. In the legal system, what role does the adversary system play in determining the truth?
12. Why is the case of *Muller v. Oregon* (1908) important with regard to the impact of social science on the legal system?
13. Describe and evaluate some of the legal system’s criticisms of psychology’s methods and findings.
14. Describe the case of *McCleskey v. Kemp* (1987) and especially how it reflects the conflict between law and social science.
15. What role do aggravating and mitigating factors play in deciding whether to sentence a convicted defendant to death?
16. Describe the case of *Price Waterhouse v. Hopkins* (1989). What roles did psychologists play in this case? Did their participation have the desired effect?

17. What is it about judges that causes them to reject the findings of psychological research?

### Suggested Class Activities

1. Ideally, before any of the students have begun to read the textbook, ask each student to write a brief definition of forensic psychology. Select some of these to read to the class and use the diversity to support the claim of a range of perceptions of the field. How many definitions reflect a clinical specialization?
2. For class discussion: Should forensic psychology be limited to a specialization in clinical psychology?
3. Identify a current law student who was a psychology major as an undergraduate. Ask him or her to describe any conflicts experienced as a result of exposure to the two points of view.
4. A student oral report: Obtain the *McCleskey v. Kemp* (1987) decision by the Supreme Court and summarize the reasons for the decision and the dissent.
5. Source for a mini-lecture: Saks, M. J., & Baron, C. H. (Eds.). (1980). *The Use/Nonuse/Misuse of Applied Social Research in Courts*. Cambridge, MA: Abt Books. It reviews the roles of psychologists and social scientists in courts and the differences in orientation to problems between the law and the social sciences.
6. With regard to the *Price Waterhouse v. Hopkins* (1989) decision, some psychologists assisted Ann Hopkins in her claims of sexual stereotyping and job discrimination, but others did not. Review the criticisms of involvement by psychologists, described in the article by Barrett and Morris (1993) (see References in the text).
7. Ask students what they think Ann Hopkins', the plaintiff in *Price Waterhouse v. Hopkins*, life was like going back to work after her litigation. She wrote about her case and her experiences when it was over. Hopkins, A.B. (2005). *Price Waterhouse v. Hopkins: A personal account of a sexual discrimination plaintiff*. *Hofstra Labor & Employment Law Journal*, 22, 357-416.
8. Source for a mini-lecture: Loftus, E., & Monahan, J. (1980). Trial by data: Psychological research as legal evidence. *American Psychologist*, 35, 270-283. A ground-breaking article. Gives examples and then describes five issues: internal validity, external validity, consensual validity, probabilistic conclusions, and the psychologist's personal values.
9. Obtain a copy of Munsterberg's *On the Witness Stand*. How contemporary are the topics and the conclusions?
10. Obtain a copy of John Henry Wigmore's article in the *Illinois Law Review* (see References in the text), criticizing Munsterberg's conclusions. Would lawyers still offer these criticisms of current psychology? Why or why not?

11. The topic of the use of DNA evidence to exonerate previously convicted persons does not receive coverage in the book, but is certainly of great contemporary importance. The *Frontline* TV program titled “The Case for Innocence,” first shown on January 11, 2000, is highly recommended. One of the jaw-dropping aspects of the video is the refusal of some legal authorities, including appellate court judges, to change their decisions even in the light of DNA evidence. This case is quite an illustration of *stare decisis*. The video has an accompanying web link with extensive information about all of the cases covered. (<http://www.pbs.org/wgbh/pages/frontline/shows/case/>). The details of the profiled person’s exoneration are covered in the 2003 *Frontline* program “The Burden of Innocence,” which can be viewed online at <http://www.pbs.org/wgbh/pages/frontline/shows/burden/>. Another good resource in this regard, for discussion or other activities, is the Innocence Project website, at [www.innocenceproject.org](http://www.innocenceproject.org).
12. Have students find a movie (such as *Primal Fear*, *The Runaway Jury*, *Silence of the Lambs*, *Nuts*) or television show that deals with forensic psychology issues and have them evaluate the accuracy of the presentation. The book *Reel Justice: The Courtroom Goes to the Movies* (Bergman & Asimow, 2006) has reviews of courtroom films.
13. The following article provides a good introduction to students on what forensic psychology is and is not. Huss, M. T. (Spring, 2001). "What is forensic psychology? It's not silence of the lambs!" *Eye on Psi Chi*, 25-27  
[www.psichi.org/pubs/articles/article\\_58.asp](http://www.psichi.org/pubs/articles/article_58.asp)  
  
As mentioned in the text, Allen Hess also has an entry in the handbook of forensic psychology defining forensic psychology. Hess, A. (2006). Defining forensic psychology. In I. Weiner & A. Hess (Eds.) *The Handbook of Forensic Psychology, Third edition* (pp. 28-58). Hoboken, N.J.: John Wiley & Sons.
14. Student oral report: Assign each student or small groups of students to research the legal system of a country besides the United States. In their presentation or report, they should focus on the treatment of forensic psychology in each country. For example, how does the country define competency? What is the country’s standard for admitting expert testimony?
15. Students can debate the ability of psychology to influence the legal system. James Ogloff has an article looking at the history of psychology and the law, its successes and failures, as well as recommendations for the future of the field. Ogloff, J. R. P. (2000). Two steps forward and one step backward: The law and psychology movement(s) in the 20th century. *Law and Human Behavior*, 24, 457-483.

## Suggested Websites

1. The Supreme Court of the United States has a detailed website that can be searched by topic or by case and is a great way to get reprints of the cases discussed in this chapter.

<http://www.supremecourtus.gov>

2. To learn more about Hugo Munsterberg and his impact on psychology, direct students to the following link. Here they will find links to some of the best sites devoted to Munsterberg's work.

<http://academic.udayton.edu/GregElvers/hop/person.asp?key=86>

Students can also read *On the Witness Stand* online at:

<http://psychclassics.yorku.ca/Munster/Witness/>

3. Students interested in learning more about what sort of careers are related to forensic psychology, can go the *Careers in Forensic Psychology* website to learn more. The site also offers a brief history of the field as well as important terms.

[http://www.wcupa.edu/\\_ACADEMICS/sch\\_cas.psy/Career\\_Paths/Forensic/Career08.htm](http://www.wcupa.edu/_ACADEMICS/sch_cas.psy/Career_Paths/Forensic/Career08.htm)

4. The website for the American Psychology-Law Society (AP-LS) has a wealth of information there about the Society and about forensic psychology in general.

[www.ap-ls.org](http://www.ap-ls.org)

5. The American Psychiatric Association has information on forensic psychiatry.

<http://www.psych.org/>

6. All About Forensic Psychology is an introductory site with information on the history of forensic psychology as well as brief overviews of major research areas. It is a UK site, and has information and examples from both within and outside the United States.

<http://www.all-about-forensic-psychology.com/index.html>

7. Dr. Robert Morecook's website, "So You Want to Be a Forensic Psychologist" gives a very brief introduction to forensic psychology. It also lists the colleges and universities that have forensic psychology programs.

<http://www.geocities.com/Athens/7429/forensicpsychprep.html>

Multiple Choice Questions

- Type: Con  
Easy
1. Although the textbook uses a broad definition of forensic psychology applicable to many topics, some psychologists define forensic psychology more narrowly, considering it a specialization of \_\_\_\_\_ psychology. (p. 3)
- A. experimental
  - B. social
  - C. developmental
  - D. clinical\*
- Type: Con  
Easy
2. What is an example of a clinical application of forensic psychology? (p. 3)
- A. Specializing in eyewitness reliability
  - B. Child custody evaluation\*
  - C. Jury selection
  - D. Studying pretrial publicity effects
- Type: Con  
Difficult
3. Given a *narrow* definition of forensic psychology, which of the following would NOT be considered a part of forensic psychology? (p. 5)
- A. Assessment of competency
  - B. Expert testimony on rape trauma syndrome
  - C. Expert testimony on eyewitness accuracy\*
  - D. Evaluation for child-custody determination
- Type: Fact  
Easy
4. Which of the following is NOT given a special designation by the American Psychological Association (APA)? (p. 4)
- A. Industrial psychology\*
  - B. School psychology
  - C. Clinical psychology
  - D. Counseling psychology
- Type: Fact  
Moderate
5. When was the first separate juvenile court established in the United States? (p. 5)
- A. 1785
  - B. 1820
  - C. 1899\*
  - D. 1955
- Type: Fact  
Easy
6. Hugo Munsterberg is often considered the founder of what field? (p. 6)
- A. American psychology
  - B. Child psychology
  - C. Forensic psychology\*
  - D. Cognitive psychology

- Type: Fact  
Easy
7. At the time, how did the legal field react to Hugo Munsterberg's contributions to the legal system? (p. 8)
- They praised and accepted Munsterberg's contributions.
  - They strongly criticized Munsterberg's contributions.\*
  - They ignored Munsterberg's contributions.
  - They were bitterly divided about Munsterberg's work.
- Type: App  
Difficult
8. Which of the following was NOT an activity Hugo Munsterberg tried to bring into the legal system? (p. 7)
- The establishment of minimum sentences for the criminally insane\*
  - The introduction of experimental psychology to laypersons
  - The demonstration of the fallibility of memory
  - His availability as an expert witness in highly publicized trials
- Type: Fact  
Moderate
9. The first research on memory and errors in eyewitnesses' memory was done where? (p. 9)
- Germany
  - France
  - The United States
  - Research began in all these countries within the same period of 20-30 years\*
- Type: Fact  
Moderate
10. During what period did research on memory and eyewitness accuracy begin? (p. 9)
- The 1880s into the early 1900s\*
  - Right after World War I
  - The 1950s
  - The latter half of the 1970s
- Type: Fact  
Easy
11. The attack on Munsterberg's claims for the power of forensic psychology were spearheaded by (p. 8)
- Louis Terman.
  - Alfred Binet.
  - Elizabeth Loftus.
  - John Henry Wigmore\*
- Type: Fact  
Easy
12. During what period was there little scientific activity in forensic psychology? (p. 9)
- During the period right before and after the 20<sup>th</sup> century.
  - From WWII to the 1970's.\*
  - From the 1970s to the 1990's.
  - The current period.

- Type: App  
Difficult 13. Which of the following is NOT a psychological research topic relevant to the real world of the legal system? (p. 11)
- A. Jurors' understanding of the definition of insanity
  - B. Children's competence as eyewitnesses
  - C. Bullet trajectories and victims' wounds\*
  - D. Validity of the battered woman syndrome
- Type: App  
Moderate 14. Which of the following is the first step in deductive reasoning (p. 14, Box 1-3)
- A. test a hypothesis
  - B. replicate a study
  - C. collect data
  - D. formulate a theory
- Type: App  
Difficult 15. Which of the following is NOT one of the tensions between the law and psychology as described in Chapter 1 of the textbook? (p. 12, Box 1-2)
- A. Psychology's empirical versus law's authoritarian epistemology
  - B. Psychology's use of deontology versus law's use of consequentialism\*
  - C. Psychology's descriptive versus law's prescriptive discourse
  - D. Psychology's nomothetic versus law's ideographic focus
- Type: Con  
Moderate 16. \_\_\_\_\_ are human creations that evolve out of the need to resolve disagreements. (p. 12)
- A. Values
  - B. Morals
  - C. Laws\*
  - D. Opinions
- Type: Con  
Moderate 17. Which of the following describes Sherlock Holmes' procedure of developing a number of possible solutions, then eliminating them one by one ("When you have eliminated all the possibilities but one, that remaining one, no matter how improbable, must be the correct solution")? (p. 12, Box 1-2)
- A. Transductive reasoning
  - B. Deductive reasoning
  - C. Inductive reasoning\*
  - D. Conductive reasoning
- Type: Con  
Moderate 18. \_\_\_\_\_ are standards for decision making. (p. 12)
- A. Values\*
  - B. Morals
  - C. Laws
  - D. Opinions

- Type: Con Moderate 19. According to John Carroll (1980), \_\_\_\_\_ deals in morality, social values, social control, and the application of abstract principles. (p. 13)
- religion
  - law\*
  - education
  - social science
- Type: Con Moderate 20. According to John Carroll (1980), \_\_\_\_\_ deals in knowledge, truth, and derives abstract principles from specific instances. (p. 13)
- religion
  - law
  - education
  - social science\*
- Type: Con Easy 21. For which of the following occupations would empirical evidence be the most important element in determining truth? (p. 13)
- Psychologist\*
  - Trial judge
  - Police officer
  - Defense attorney
- Type: Con Moderate 22. What does it mean to say that observations in a study are reliable? (p. 13)
- They are consistent over time.
  - Different investigators can produce similar results.
  - The cause of them can be determined.
  - They can be generalized to other populations.
- Type: Fact Easy 23. Regarding the use of psychics in criminal investigations, psychologists generally (p. 15, Box 1-4)
- believe that psychics can help.
  - reject the use of psychics.\*
  - favor the use of psychics only as a last resort.
  - favor the use of psychics who have gone through experimental tests.
- Type: Con Moderate 24. As indicated in the textbook, the nature of the adversary system leads to some trial attorneys valuing \_\_\_\_\_ over the quest for truth. (pp. 15)
- punitive sentencing
  - personal intuition
  - conflict resolution\*
  - professional ambition
- Type: Fact Easy 25. Which of the following best corresponds to *stare decisis*? (p. 15)
- “An eye for an eye”
  - “Let the decision stand”\*
  - “Search for the truth”
  - “The state shall decide”

- Type: Con Easy 26. For which of the following would *stare decisis* serve as a guiding principle? (p. 15)
- Social scientist
  - Police officer
  - Appellant
  - Appellate judge\*
- Type: App Difficult 27. Which is NOT a criticism leveled against psychology when applied to the legal system? (pp. 17-18)
- The lack of ecological validity in much psychological research
  - Going beyond research data to make moral judgments
  - The use of irrelevant past cases in making decisions about current issues\*
  - Its intrusion upon, and possible subversion of, legitimate activities of the legal system
- Type: Con Difficult 28. Why is *Muller v. Oregon* (1908) considered a landmark case? (p. 16)
- Its acceptance of social-science evidence rather than law cases and statutes\*
  - Its clarification of the insanity defense
  - Its emphasis on victim impact statements
  - Its refusal to allow expert testimony
- Type: App Moderate 29. When it comes to research's influence on court decisions, psychological research has (p. 16)
- become the sole determinant of court decisions.
  - influence court decisions sometimes.\*
  - no influence.
  - no influence now, although in the past had a large influence.
- Type: Con Moderate 30. Which of the following describes a Brandeis brief? (p. 16)
- A brief which calls for a mistrial based on a judge's lack of impartiality
  - A brief which is organized around the best intuitive argument for the case
  - A brief which focuses on empirical evidence rather than reviewing past cases and statutes\*
  - A brief which relies on a famous Supreme Court decision by Justice Brandeis
- Type: App Easy 31. Which of the following is NOT considered an aggravating factor, when determining the punishment after a murder conviction? (p. 19)
- A rape of the victim
  - Torture of the victim
  - Kidnapping of the victim
  - The killing was done in self-defense\*

- Type: Fact Moderate 32. *McCleskey v. Kemp* (1987) challenged the death penalty on the grounds that the applications of the sentence are racially biased. Which of the following represents the percentages of murder sentences that were death sentences, depending on the race of the *victim*? (p. 19)
- 7% if Black, 15% if White
  - 15% if Black, 50% if White
  - 1 to 2 % if Black, 11% if White\*
  - 18% if Black, 25 % if White
- Type: Fact Moderate 33. In *McCleskey V. Kemp* (1987) the court decided to (pp. 19-20)
- to overturn *McCleskey*'s conviction on the grounds that the death sentence is administered in a racially biased manner.
  - reject *McCleskey*'s appeal because there was no evidence to suggest equal-protection was violated. \*
  - reject *McCleskey*'s appeal because the statistical analysis used to support his claims was done incorrectly.
  - overturn *McCleskey*'s conviction on the grounds that there were no aggravating factors present.
- Type: Fact Moderate 34. According to Baldus and his colleagues (1990), which magnitude of Moderate aggravating factors will create the largest "race-or-victim" effect in sentencing convicted murderers? (p. 20)
- Low
  - Mid-range\*
  - High
  - Extreme
- Type: Fact Moderate 35. In 1994 what happened to legislation that would allow people sentenced to death to challenge their sentences using statistical evidence of past racial discrimination in executions? (p. 21)
- The legislation passed both houses and became law.
  - The U.S. Congress passed it, but the president vetoed it.
  - The House of Representatives passed it, but the U.S. Senate rejected it.\*
  - The legislation was rejected by both houses.
- Type: Con Moderate 36. In *Price Waterhouse v. Hopkins* (1989), Ann Hopkins sued her employer for sex discrimination. Based upon a majority opinion in the case, which of the following statements represents the significance of the social psychologist's testimony about sex stereotyping on the court's decision? (pp. 21-22)
- It hurt Ann Hopkins' case.
  - In the court's opinion, it made little, if any impact, in the court's decision.\*
  - It played a significant role but other ever was needed.
  - It was all the evidence necessary for the court's decision.

- Type: Con Moderate 37. The case of *Price Waterhouse v. Hopkins* is important because (pp. 21-23)
- A. psychological research and theory on sex stereotyping was presented in court by an expert witness.\*
  - B. the Supreme Court admitted testimony on the battered woman syndrome.
  - C. for the first time, a Supreme Court opinion acknowledged that psychological research was the determining factor in its opinion.
  - D. Hopkins, who was to be executed, received a new trial.
- Type: Con Easy 38. According to Chapter 1, which profession would be most likely to describe facts in terms of their probabilities? (p. 16)
- A. Law enforcement officer
  - B. Psychologist\*
  - C. Attorney
  - D. Judge
- Type: Fact Moderate 39. In the case of *Lockhart v. McCree* (1986), the majority opinion by Justice Rehnquist contradicted psychological research and (p. 17)
- A. rejected the use of surveys to determine pretrial publicity.
  - B. upheld the use of death-qualified jurors\*.
  - C. rejected the admissibility of a psychologist testifying about gender-based discrimination.
  - D. upheld the use of probabilistic reasoning in a closing argument.
- Type: Fact Moderate 40. Which of the following is NOT one of the reasons that Tanford (1980) offered to describe the reluctance of the courts to rely upon empirical research? (p. 24)
- A. Judges are conservative and perceive social scientists to be liberal
  - B. Judges are human and it is human nature to be unscientific
  - C. Judges perceive science as a threat to their power and prestige
  - D. Judges already have extensive experience with social science and do not need further assistance\*



## Chapter 2

### *Forensic Psychologists: Roles and Responsibilities*

#### Questions for Discussion or Essay Examinations

1. Define psychopathy. How is it measured?
2. What are the activities of a trial consultant?
3. Describe some of the ethical issues facing a trial consultant.
4. Describe some potential conflicts between trial consultants and the attorneys they work with.
5. What ethical issues may arise for a forensic evaluator?
6. Distinguish between expert witnesses and fact witnesses.
7. Describe some of the ethical issues facing the psychologist as an expert witness.
8. Discuss the likelihood that an expert witness would be penalized (how?) for their testimony.
9. What are some topics for which psychologists have served as expert witnesses?
10. Evaluate Margaret Hagen's book *Whores of the Court*. Do you agree or disagree with her premise? Why or why not?
11. Describe some potential (ethical?) conflicts between psychologists who act as expert witnesses on the one hand and lawyers or judges on the other.
12. Saks described three different perspectives for expert witnesses faced with the task of relating their field's state of knowledge and the matter at trial. What are they?
13. Contrast the Frye test, the Federal Rules of Evidence, and the *Daubert* decision with regard to the standard for admissibility of expert testimony.
14. Describe the facts in the case of *Daubert v. Merrell Dow Pharmaceuticals Inc.* What was the decision? Why was the decision of importance to forensic psychologists?
15. What has been the aftermath of the *Daubert* decision on the courts? How was the decision's relevance extended by the *Kuhmo Tire Co. v. Carmichael* decision?
16. How do judges feel about the *Daubert* decision?

17. What is an *amicus curiae* brief? What is its purpose? Give an example.
18. What role or roles did psychologists and other social scientists play in the *Brown v. Board of Education* decision? Were they effective?
19. Describe and evaluate the findings and conclusions of the doll study by Kenneth Clark and Mamie Clark.
20. What are death-qualified jurors? Has the Supreme Court ruled on their acceptability?
21. How consistent should results be, or how sure should a psychologist be, of the reliability of his or her findings, before the psychologist offers a conclusion to the legal system based on the findings? What standards of proof might be applied?
22. What role did an *amicus* brief by the American Psychological Association play in the decision on *Bowers v. Hardwick* (1986)?
23. Contrast an *advocacy* brief and a *science-translation* brief. Give an example of each.
24. Describe four temptations of forensic psychologists to go beyond what is acceptable, when they interact with the legal system.

### Suggested Class Activities

1. As a flagrant example of the temptations in forensic testimony, the example of Dr. James Grigson is illustrative. Grigson (a forensic *psychiatrist*, not a psychologist) concluded that Thomas Andy Barefoot had a “100% chance” of committing future violent acts-- Grigson had not even examined him. Report on the Supreme Court’s astounding decision on appeal: *Barefoot v. Estelle*. 463 U. S. 880 (1983). For more on Grigson, see:
 

Ewing, C. (1991). “Preventive detention and execution: The constitutionality of punishing future crimes.” *Law and Human Behavior*, 15, 139-164.

Rosenbaum, R. (1990, May). “Travels with Dr. Death.” *Vanity Fair*, pp. 140-147, 166-174.
2. The book *Whores of the Court: The Fraud of Psychiatric Testimony and the Rape of American Justice* has generated a lot of discussion (as to be expected with that title!). The author is Dr. Margaret Hagen, a developmental psychologist at Boston University. (The book was published in 1997 by HarperCollins.) Dr. Hagen has generously provided via e-mail a number of reviews of her book. Contact her via: [hagen@bu.edu](mailto:hagen@bu.edu); the book and reactions to it provide lively material for a class lecture or debate on the propriety of psychologists testifying as expert witnesses.
3. Interview a judge who has been reluctant to allow expert testimony concerning the accuracy of eyewitnesses. What reasons does he or she give for this judicial opinion?

Describe some of the psychological conclusions on time overestimation, weapons effects, the confidence-accuracy relationship, the effects of stress, and cross-racial identifications. How does the judge react to the claim that most jurors are not familiar with these findings?

4. Arrange a debate between two members of the Psychology department faculty about the propriety of a psychologist serving as an expert witness (either in general or on a particular psychological topic).
5. The *Daubert v. Merrell Dow* decision continues to be examined by the courts and in law reviews. Review with the class the differences between the *Frye* test and the Federal Rules of Evidence, with regard to the admissibility of expert testimony. The facts of the case are of interest to students, as well as the ways that the plaintiff's attorneys used "gray area" experts and research procedures. Was the judge right in not allowing the case to go to trial? Ask a local judge to meet with the class and discuss the problem of deciding whether expert testimony is admissible. Compare the judge's reactions to those of a self-described "simple country judge;" see Gless, A. G. (1995). Some post-*Daubert* trial tribulations of a simple country judge: Behavioral science evidence in trial courts. *Behavioral Sciences and the Law*, 13, 261-291.
6. The following two articles discuss the ability of judges to determine the admissibility of testimony.

Kovera, M. B., & McAuliff, B. D. (2000). "The effects of peer review and evidence quality on judge evaluations of psychological science: Are judges effective gatekeepers?" *Journal of Applied Psychology*, 85, 574- 586.

Gatowski, S. I., Dobbin, S. A., Richardson, J. T., Ginsburg, G. P., Merlino, M. L., & Dahir, V. (2001). "Asking the gatekeepers: A national survey of judges on judging expert evidence in a post-*Daubert* world." *Law and Human Behavior*, 25, 433-458.

7. Book report:  
This book looks at the decision making processes of the Supreme Court Justices:

Wrightsmann, L. S. (2006). *The Psychology of the Supreme Court*.  
New York: Oxford University Press.

8. Source for a mini-lecture:  
Greene, E., Schooler, J., & Loftus, E. F. (1985). "Expert psychological testimony." In S. M. Kassin & L. S. Wrightsmann (Eds.), *The Psychology of Evidence and Trial Procedure* (pp. 201-226). Newbury Park, CA: Sage.
9. Mini-lecture on the dangers of a psychologist as an expert witness: Watch out for the cross-examination! Source:

Spence, Gerry. (1986). *Trial by Fire: A True Story of a Woman's Ordeal at the Hands of*

*the Law*. New York: William Morrow. This book is a description of the suit by Kimerli Pring (Miss Wyoming) against Penthouse magazine. See the cross-examination of Herbert Clark, a Stanford psychology professor.

10. Provide more details on the decision in *Lockhart v. McCree*, by reporting on the following article:

Bersoff, D. N. (1987). "Social science data and the Supreme Court: *Lockhart* as a case in point. *American Psychologist*, 42, 52-58.

Also review and report on the conclusions of psychologist Rogers Elliott that the research on death-qualified jurors is not that strong:

Elliott, R. (1991). "Social science data and the APA: The *Lockhart* brief as a case in point. *Law and Human Behavior*, 15, 59-76.

11. Articles for class discussion:

These are very useful articles for class discussion because they include a list of research-based statements about which psychologists might testify, plus the percentage of psychologists who agree with each. They are highly recommended.

Kassin, S. M., Ellsworth, P. C., & Smith, V. L. (1989). "The 'general acceptance' of psychological research on Eyewitness Testimony: A survey of experts." *American Psychologist*, 44, 1089-1098

The new version of the survey can be found in:

Kassin, S. M., Tubb, V. A., Hosch, H. M., & Memon, A. (2001). "On the 'general acceptance' of eyewitness testimony research: A new survey of the experts." *American Psychologist*, 56, 405-416.

Note that not all psychologists agree that we should be testifying in such cases. For a critique of the above article, see:

Elliott, R. (1993). "Expert testimony about eyewitness identification: A critique." *Law and Human Behavior*, 17, 423-436,

And a response by the original authors:

Kassin, S. M., Ellsworth, P. C., & Smith, V. L. (1994). "*Deja vu* all over again: Elliott's critique of eyewitness experts." *Law and Human Behavior*, 18, 203-210.

12. If there is a need to supplement material on eyewitness identification, consider:

Cutler, B. L., & Penrod, S. D. (1995). *Mistaken Identification: The Eyewitness, Psychology and the Law*. New York: Cambridge University Press.

It is impossible to overestimate the usefulness of this book for supplementing lecture material and providing in-depth information. It describes several cases with wrongful convictions, examines the use of expert witnesses and reviews relevant court cases, describes the relevant psychological research (with an explanation of meta-analysis), evaluates voir dire and cross-examination as safeguards against wrongful convictions (Verdict: Not effective), and describes lack of jurors' knowledge.

13. Three white men were separately tried for dragging an African American man, James Boyd, Jr., to death near Jasper, Texas, in 1999. The same psychiatrist, Edward Gripin, testified in each trial. For the first two, he reported the presence in the defendant of white supremacist dogma and racial bias. For the third defendant, he found no such proclivities. How would he make such a determination? What are the temptations he might experience in deciding what to say, or not to say?
14. A topic needing further exploration is the interpretation (or misinterpretation) of research results that leads to a denigration or ridicule of the field of scientific psychology. A recent example is the public and Congressional reaction to the article by Rind and others on college students' long-term reactions to having been sexually abused as children, titled "A meta-analytic examination of assumed properties of a child sexual abuse using college samples." *Psychological Bulletin*, 124, 1998.
15. Interview a psychologist who has served as an expert witness. Is it difficult to remain objective and not be sympathetic to one side? What was the nature of the cross-examination of the expert witness? Which of Saks' three roles for an expert witness are reflected in your interviewee's stance?
16. Mini-book review: Peter Huber's 1991 book, look for examples of what he called "junk science." (See references.) Does the class agree or disagree? Why or why not?
17. References regarding the Hare Psychopathy Scale and measures of psychopathy:

Tengstrom, A., Grann, M., Langstrom, & Kullgren, G. (2000). Psychopathy (PCL-R) as a predictor of violent recidivism among criminal offenders with schizophrenia. *Law and Human Behavior*, 24, 45-58.

Edens, J. F., Poythress, N. G., & Lilienfeld, S. O. (1999). Identifying inmates at risk for disciplinary infractions: A comparison of two measures of psychopathy. *Behavioral Sciences and the Law*, 17, 435-444.

Gendreau, P., Goggin, C., & Smith, P. (2002). Is the PCL-R really the "unparalleled Measure" of offender risk? A lesson in knowledge cumulation. *Criminal Justice and Behavior*, 29, 397-426

Walsh, T. & Walsh, Z. (2006). The evidentiary introduction of Psychopathy Checklist-Revised assessed psychopathy in U.S. courts: Extent and appropriateness. *Law and Human Behavior*, 30, 493-507.

Edens, J.F., Campbell, J.S., & Weir, J.M. (2007). Youth psychopathy and criminal recidivism: A Meta-Analysis of the psychopathy checklist measures. *Law and Human Behavior, 31*, 53-75.

18. The *Daubert* decision and its follow-ups continue to be of interest. Donald Bersoff chaired a symposium at the American Psychology-Law Society convention in New Orleans in March, 2000, titled: Impact of *Daubert*. A multi-page hand out from that session, *The Admissibility of Psychological Evidence Six Years after Daubert: Floodgates or Gatekeeping*, authored by Donald N. Bersoff, Lori Peters, and Erik Nabors, listed a multitude of cases referring to *Daubert* factors. Also, the special issue of *Psychology, Public Policy, and Law* for March 1999 is highly recommended. The citation is: Shuman, D. W., & Sales, B. D. (Eds.). (1999).

Special theme:

*Daubert's* meanings for the admissibility of behavioral and social science evidence. *Psychology, Public Policy, and Law, 5* (No. 1).

These two editors also authored an article on *Daubert* for an earlier issue of this journal: Shuman, D. W., & Sales, B. D. (1998). The admissibility of expert testimony based upon clinical judgment and scientific research. *Psychology, Public Policy, and Law, 4*, 1226-1252.

Other recent articles, actually case studies, on the *Frye* standard and *Daubert*:

Gorman, B. J. (1999). Facilitated communication: Rejected in science and accepted in court--A case study and analysis of the use of FC evidence under *Frye* and *Daubert*. *Behavioral Sciences and the Law, 17*, 517-541.

McKinzey, R. K., & Ziegler, T. G. (1999). Challenging a flexible neuropsychological battery under *Kelly/Frye*: A case study. *Behavioral Sciences and the Law, 17*, 543-551.

19. Should a physician's testimony also satisfy the *Daubert* standard? See Henderson, J. H., Grams, D., & Presti, D. (2000, May 29). How "reliable" should a physician's diagnosis be? *National Law Journal*, pp. B18-B19. How reliable should a clinical psychologist's testimony about diagnosis based on the MMPI? The Rorschach?
20. A recent article relevant to the temptations of forensic psychology is: Nicholson, R. A., & Norwood, S. (2000). The quality of forensic psychological assessments, reports, and testimony: Acknowledging the gap between promise and practice. *Behavioral Sciences and the Law, 24*, 9-44.
21. From McCauley, M. (2007, Summer). Using writing assignments when teaching psychology and law. *AP-LS News*. Have students write their own amicus brief on some topic currently being debated in court. They should review research on the topic and summarize it to support their opinion.

### Suggested Websites

1. The *Daubert* decision, and its effect on the court system, can be further investigated on the web.

<http://www.daubertontheweb.com/>

2. Students can search APA *amicus* briefs by name or subject at the APA PsychLaw website. The website provides information on all of the topics the APA has submitted briefs for, as well as the briefs themselves.

<http://www.apa.org/psychlaw/amicus.html>

3. The American Academy of Forensic Psychology has information on training in forensic psychology. There is also a link to ethical guidelines for forensic psychologists.

<http://www.aafp.ws/>

4. Dr. Robert Hare's website contains information on the study of psychopathy. Here you will find information on Dr. Hare's assessment tools as well as information on books and articles relating to psychopathy.

<http://www.hare.org/>

5. It would be interesting for students to look at how lawyers might prepare for their own and the other side's expert witnesses. The National Association of Criminal Defense Lawyers has their magazine online with advice on how to cross examine expert witnesses.

<http://www.nacdl.org/public.nsf/freeform/championmag?OpenDocument>

Vincent DiCarlo graduated from Cornell Law School and served as an assistant district attorney in Brooklyn. On his website, he provides advice on how to attack and defend an expert witness.

<http://www.dicarlolaw.com/ExpertWitnesses.htm>

6. The Washburn University School of Law in Topeka, KS maintains a website devoted to *Brown v. Board of Education*. The website has information on the case and its players.

<http://brownvboard.org/>

Multiple Choice Questions

- Type: Fact  
Moderate
2. The Hare Psychopathy Checklist-Revised is (p. 27)
- a multiple-choice test.
  - a self-report scale of personality characteristics.
  - now considered to be out-of-date.
  - a rating scale, completed by a clinician after an interview with the subject.\*
- Type: Con  
Easy
3. Which of the following is NOT a characteristic of psychopathy? (p. 27)
- Impulsivity
  - Pathological lying and manipulation
  - Overwhelming guilt and remorse\*
  - A continual willingness to violate social norms
- Type: Fact  
Easy
4. How many states license or certify trial consultants? (p. 28)
- 0\*
  - 13
  - 31
  - 50
- Type: App  
Moderate
5. Which of the following is the correct order of steps research (p. 27)
- Empirical testing, hypothesis generation, statistical interpretation, peer review
  - Hypothesis generation, empirical testing, statistical interpretation, peer review\*
  - Hypothesis generation, statistical interpretation, empirical testing, peer review
  - Hypothesis generation, peer review, empirical testing, statistical interpretation
- Type: Fact  
Moderate
6. What is NOT an guideline for ethical research as listed in Chapter 2? (p. 28)
- Do not fake data.
  - Do not draw false conclusions from data.\*
  - Do not do research without a license.
  - Do not plagiarize.
- Type: App  
Moderate
7. Which of the following is NOT something a trial consultant would do? (p. 28)
- Assist the lawyer in identifying major issues in a case
  - Prepare witness for the trial
  - Advise in jury selection
  - Generate evidence to be presented at trial\*
- Type: Fact  
Easy
8. Trial consultants are most often hired by (p. 28)
- law firms defending clients in civil cases. \*
  - district attorneys prosecuting big businesses.

- C. district attorneys in criminal trials.
- D. law firms defending clients in criminal cases.

- Type: App  
Difficult
9. Which of the following practices would be encouraged by the American Society of Trial Consultants? (pp. 29-30)
- A. The compilation of win-loss data
  - B. The trademarking or copyright of instruments or terminology
  - C. Sharing with the court all information, including any which can identify research participants
  - D. The strict adherence to standards of confidentiality\*
- Type: App  
Moderate
10. Which is NOT a possible example of a substantive conflict between trial consultants and their employer-attorneys? (p. 30)
- A. The appropriate theory of the case
  - B. Issues about invasion of the client's privacy\*
  - C. Which jurors should be excused
  - D. How witnesses should present themselves
- Type: Con  
Difficult
11. The fact that trial consultants largely view their work as "proprietary" illustrates the conflict between
- A. psychology and the law.
  - B. scientist and entrepreneur.\*
  - C. trial consultant and attorney.
  - D. advocate and forensic evaluator.
- Type: App  
Difficult
12. Which of the following is NOT an ethical issue with forensic evaluators? - (pp. 30-31)
- A. Disclosing when an interview is NOT confidential
  - B. Entering into a dual relationship with a client
  - C. Defending "junk science"\*
  - D. Skewing evaluation results
- Type: App  
Moderate
13. Which of the following is permitted to present opinions as part of testimony? (p. 32)
- A. Eyewitnesses
  - B. Expert witnesses\*
  - C. Fact witnesses
  - D. Law enforcement personnel, as witnesses, but no others
- Type: Fact  
Easy
14. Who always has the final say in determining an expert witness's admissibility? (p. 32)
- A. The scientific community
  - B. The district attorney
  - C. The defense attorney
  - D. The judge\*

- Type: Con Moderate 15. Which of the following questions best corresponds to a defendant's competence to stand trial? (p. 33, Box 2-3)
- Does the defendant have an adequate understanding of the legal system?\*
  - What was the defendant's mental condition at the time of the alleged offense?
  - What are the prospects for the defendant's rehabilitation?
  - Was the defendant of legal age at the time of the alleged offense?
- Type: App Moderate 16. Peter Huber's book *Galileo's Revenge* (1991) was critical of (p. 34)
- expert witnesses who testified for whatever side paid them.\*
  - judges who refused to allow scientific expert testimony.
  - trial consultants who worked only for rich clients.
  - corporations that made every effort to avoid being sued by individuals.
- Type: Fact Moderate 17. The term "junk science" refers to (p. 34)
- fields such as astrology and phrenology.
  - a "battle of the experts" between two conflicting scientific expert witnesses.
  - expert witnesses to use questionable methodologies to support preconceived opinions.\*
  - claims made by corporations based on unscientific research.
- Type: Fact Easy 18. It is almost impossible to prosecute an expert witness for \_\_\_\_\_(p. 34)
- perjury.\*
  - contempt of court.
  - falsifying data.
  - practicing without a license.
- Type: App Difficult 19. Which of the following of Saks' classifications of expert-witnesses would be the most likely to agree with the statement "My central role is to share the most faithful picture of my field's knowledge with those who have been assigned the responsibility to make decisions"? (p. 36)
- The mere conduit-educator\*
  - The philosopher-ruler/advocate
  - The hired gun
  - The fact witness
- Type: App Difficult 20. Which of the following of Saks' roles for expert witnesses would be most likely to agree with the statement "My primary responsibility is to present only information that agrees with my employer's values, not my own"? (p. 37)
- The mere conduit-educator
  - The philosopher-ruler/educator
  - The hired gun\*
  - The fact witness

- Type: App  
Difficult 21. Which of the following of Saks' types of expert witnesses would be most likely to agree with the statement "I am comfortable presenting only certain evidence because I believe the other side is responsible for presenting evidence which conflicts with my own"? (p. 36)
- A. The mere conduit-educator
  - B. The philosopher-ruler/educator\*
  - C. The hired gun
  - D. The fact witness
- Type: App  
Moderate 22. Which of the following focuses on the importance of the general acceptance of an expert's testimony, emphasizing its relevance? (p. 37)
- A. The Warren Standard
  - B. The Federal Rules of Evidence\*
  - C. The Frye Test
  - D. The Daubert Rule
- Type: App  
Moderate 23. "Well-recognized standards regarding the principles or evidence for a particular field should determine the admissibility of expert testimony" describes which of the following? (p. 37)
- A. The Warren Standard
  - B. The Federal Rules of Evidence
  - C. The Frye Test\*
  - D. The Daubert Rule
- Type: App  
Moderate 24. In determining admissibility of expert testimony, which of the following uses criteria such as whether scientific evidence has been peer-reviewed, is testable, has a recognized rate of error, and adheres to professional standards? (pp. 37-38)
- A. The Warren Standard
  - B. The Federal Rules of Evidence
  - C. The Frye Test
  - D. The Daubert Rule\*
- Type: Fact  
Easy 25. The case that led to the Supreme Court decision in *Daubert v. Merrell Dow* (1993) involved (p. 37)
- A. an expert witness who assessed the quality of tire design.
  - B. whether repressed memories were scientifically accepted.
  - C. whether silicone breast implants caused auto-immune reactions
  - D. whether the morning sickness drug Bendectin had damaging side effects.\*
- Type: Con  
Easy 26. In a summary judgment (p. 38)
- A. the judge lets expert witnesses decide the case rather than a jury.
  - B. a trial is avoided; the judge rules after evaluating the evidence.\*
  - C. the jury makes a judgment based on a summary of the case by the judge.
  - D. the jury supplements its verdict by giving the reasons, in writing, for it.

- Type: Fact Easy 27. In the decision of *Kuhmo Tire Co. Ltd. v. Carmichael* (1999), the Supreme Court expanded the *Daubert* decision to (p. 41)
- other experts besides scientists.
  - experts whose methods do not meet acceptable standards.
  - Both A and B\*
  - Neither A nor B
- Type: Con Easy 28. In the *Brown v. Board of Education* decision in 1954, the values of the social scientists who submitted an amicus brief (p. 41)
- conflicted with the eventual decision by the Court.
  - were in line with the eventual decision by the Court.\*
  - had no influence on the eventual decision by the Court.
  - were in line with the minority opinion of the Court.
- Type: Fact Moderate 29. Clark and Clark (1952) concluded what from their study of Black children in segregated and non-segregated environments? (p. 42)
- Black children in segregated areas were more adjusted to feeling inferior and did not engage in as much denial.\*
  - Black children in rural communities experienced less racism than children from urban communities.
  - Black children in non-segregated areas were more psychologically prepared to deal with racism.
  - Black children in segregated areas demonstrated less of an effect to their self esteem than children from non-segregated areas.
- Type: App Difficult 30. Which of the following was NOT an argument used by the psychologists in their *amicus curiae* brief submitted in the case of *Lockhart v. McCree* (1986)? (p. 43)
- The death penalty is administered in a racially-biased manner.\*
  - The jury-selection process in capital trials produces a jury that is conviction-prone.
  - Death-qualified juries are unrepresentative because a higher percentage of certain classifications of people are excluded.
  - None of the above
- Type: Fact Easy 31. In *Bowers v. Hardwick* (1986), the U. S. Supreme Court (pp. 45-46)
- agreed with the decision of the Georgia Supreme Court.
  - were persuaded by APA's *amicus* brief and reversed Georgia's law prohibiting homosexual behavior.
  - maintained the legality of laws prohibiting homosexual behavior.\*
  - declared Georgia's laws that criminalized homosexual behavior to be unconstitutional.

- Type: Fact  
Easy 32. Hafemeister and Melton (1987) concluded that when secondary social-science sources were cited in cases, they were most often originally published in (p. 46)
- law reviews or government reports.\*
  - textbooks.
  - social psychology journals.
  - Psychology Today*.
- Type: Fact  
Moderate 33. In which case, did the Supreme Court agree with the opinion of APA's *amicus* brief? (p. 46)
- McCleskey v. Kemp* (1987)
  - Schall v. Martin* (1984)
  - Bowers v. Hardwick* (1986)
  - Atkins v. Virginia* (2002)\*
- Type: Con  
Easy 34. Which of the following is used to describe a brief which is submitted by the APA when it possesses knowledge the Court otherwise might not have? (p. 42)
- A guild-interest brief
  - A science-translation brief\*
  - An advocacy brief
  - A moral-position brief
- Type: App  
Easy 35. When composing an *amicus* brief, Saks (1993) suggested that psychologists should (p. 47)
- assert opinions on the ultimate issue in the case.
  - represent a consensual view of social scientists.\*
  - focus on constitutional law.
  - let others apply their research findings.
- Type: App  
Moderate 36. Which of the following best represents the danger of the advocate role in expert testimony? (p. 48)
- It confuses the jury.
  - It must present more than one explanation for the individual's behavior.
  - It sacrifices intuition for empiricism.
  - It compromises the objectivity of the expert.\*
- Type: App  
Easy 37. Attorneys "shopping around" until they find an expert who will say what they want contributes to expert witnesses (pp. 48-49)
- doing a cursory job.
  - promising too much.
  - substituting advocacy for objectivity.\*
  - presenting their information in a confusing manner.
- Type: Con  
Difficult 38. Which of the following was NOT one of the themes found by those who reviewed Margaret Hagen's book, *Whores of the Court?* (p. 35, Box 2-4)
- Forensic clinical psychologists are not scientifically competent.
  - Forensic clinical psychologists are economically motivated.

- C. Forensic clinical psychologists are driven by missionary liberal motives.
- D. Forensic psychologists are uninformed about legal procedure.\*

Type: App 39. Which of the following is NOT a temptation of forensic psychology and a risk in  
Difficult its use? (pp. 47-50)

- A. Promising too much
- B. Doing a cursory job
- C. Maintaining a dual relationship and competing roles
- D. Presenting ambiguous and irrelevant information\*

Type: Con 40. The competency hearing of Florida death-row prisoner Alvin Ford,  
Moderate described in Chapter 2, reflected which kind of temptation in forensic  
psychology? (p. 49)

- A. Promising too much
- B. Doing a cursory job\*
- C. Maintaining dual relationships and competing roles
- D. Presenting ambiguous and irrelevant information