

**Chapter 1**  
**Psychology and the Law: Choices and Roles**

**Questions for Class Discussion and/or Essay Examinations**

1. As noted in Chapter 1, laws need to be developed and modified to keep up with the rapid changes in our lives and in society. Laws must also always take into consideration both individual rights and public safety. Discuss Edward Rosenheimer's case and the court process and decision that followed. What are some recent developments in technology and society, which are in need of regulation and/or have resulted in the development of new laws? (The Importance of Laws)
2. How does the psychological approach to the study of the law differ from the sociological approach? (The Psychological Study of Law)
3. Explain Kurt Lewin's position on behavior. In your explanation, use an example that pertains to the legal system. (The Psychological Study of Law)
4. Provide examples of the types of tasks that a forensic psychologist might do. (The Psychological Study of Law)
5. Chapter 1 presents four basic choices in the psychological study of the law. What are these four basic choices? Describe the dilemma that each choice presents. (Basic Choices in the Psychological Study of the Law)
6. What does it mean to say that the rights of the individual and the rights of the common good are in conflict? Give an example. (Basic Choices in the Psychological Study of the Law)
7. Contrast the crime control model and the due process model. (Basic Choices in the Psychological Study of the Law)
8. Discuss the maxim: "it is better that ten guilty persons shall go free than that one innocent person should suffer" in relation to the due process model of the criminal justice system. (Basic Choices in the Psychological Study of the Law)
9. Describe what the principle of equality means within the legal system. How does profiling violate that principle? (Basic Choices in the Psychological Study of the Law)
10. Discuss and provide different examples of the ways the principle of equality may be violated (e.g., discrepant treatment under the law based on financial or social status, race or ethnicity, gender, age, etc.). (Basic Choices in the Psychological Study of the Law)
11. Define profiling. Describe the evidence presented in Chapter 1 that suggests that profiling occurs. (Basic Choices in the Psychological Study of the Law)

12. What is the principle of proportionality? (Basic Choices in the Psychological Study of the Law)
13. Why is discretion in the application of the law important? What are some problems that can emerge when discretion is used? (Basic Choices in the Psychological Study of the Law)
14. How do different players in the legal system (i.e., police officers, prosecutors, juries and judges) exercise discretion? (Basic Choices in the Psychological Study of the Law)
15. Describe the case of Troy Davis. Define clemency, and indicate how this concept is relevant to Davis. (Basic Choices in the Psychological Study of the Law)
16. Review different cases in which clemency was granted. (Basic Choices in the Psychological Study of the Law)
17. Discuss the issue of sentencing disparity and race. What is an explanation for this disparity? (Basic Choices in the Psychological Study of the Law)
18. What is the relationship between sentencing disparity and determinate sentencing? (Basic Choices in the Psychological Study of the Law)
19. Describe an important component of procedural justice. (Basic Choices in the Psychological Study of the Law)
20. How do the state and the defendant benefit from plea bargaining? (Basic Choices in the Psychological Study of the Law)
21. Discuss the concept of plea bargaining and the related conflict between seeking efficiency and finding the truth. (Basic Choices in the Psychological Study of the Law)
22. What procedure does the civil system use to resolve most of its conflicts? Describe this procedure. (Basic Choices in the Psychological Study of the Law)
23. Discuss amicus curiae briefs and provide examples of cases in which they have played a role. (Basic Choices in the Psychological Study of the Law)
24. Contrast psychology and the law regarding the basis they use for forming opinions. Discuss examples of how the law requires absolute or “either-or” decisions and psychology relies on and provides answers in terms of probabilities (Basic Choices in the Psychological Study of the Law).
25. Describe the history of Supreme Court decisions on segregation and desegregation, from *Plessy v. Ferguson* (1896) on to *Brown v. Board of Education* (1954). Discuss this process with regard to *stare decisis*. (Basic Choices in the Psychological Study of the Law)

26. What does it mean to say that the law deals with absolutes, while psychology deals with probabilities? Provide examples with your answer. (Basic Choices in the Psychological Study of the Law)
27. Name and describe five roles that psychologists may play in the legal system. (Psychologists' Roles in the Law)
28. Discuss the ethical standards of conduct for psychologists who work within the legal system (i.e., differentiate between the five roles that psychologists can play). (Psychologists' Roles in the Law)
29. Describe the Tarasoff case. (Psychologists' Roles in the Law)
30. What is an expert witness? Who decides whether or not an expert witness testifies at a trial, and what is the basis of that decision? (Psychologists' Roles in the Law)
31. Discuss different examples of what psychologists might do as expert witnesses. (Psychologists' Roles in the Law)
32. The *Daubert* decision listed four factors that should be considered in assessing the validity and subsequent admissibility of an expert's testimony. Name these factors. (Psychologists' Roles in the Law)
33. Discuss the role of policy evaluator. Provide examples of the kinds of issues and questions they address and the ethical dilemmas involved. (Psychologists' Roles in the Law)
34. What are the two different ways that mental health professionals can become involved in litigation as a forensic evaluator? (Psychologists' Roles in the Law)
35. Review common ethical violations committed by forensic psychologists. Compare these violations and their treatment by the Ethical Principles of Psychologists and Code of Conduct (EPPCC), the Specialty Guidelines for Forensic Psychologists, and the Guidelines for Child Custody Evaluations in Divorce Proceedings. (Psychologists' Roles in the Law)
36. What kinds of activities does a trial consultant do? Discuss the differences between the roles of forensic evaluator and trial consultant. (Psychologists' Roles in the Law)

## Suggested Activities

### Class Discussions and Debates

1. Discussion: Request reactions from the class regarding the potential filing of charges against teenagers for “sexting” (i.e., sending nude and seminude photos by cell phone). Should laws regulate these activities? Possible source:

Friedman, E. (2009, Feb. 12). ‘Sexting’ teens may face child porn charges: Dad of sexting teen says son is being treated unfairly. ABC News. Retrieved from <http://abcnews.go.com/US/Story?id=6864809&page=1>

Also consider this opinion piece:

Lithwick, D. (2009, Feb. 14). Textual misconduct. What to do about teens and their dumb naked photos of themselves. Slate. Retrieved from <http://www.slate.com/id/2211169>

2. Discussion: Request reactions from the class on the acceptability of a civic organization with a “males only” policy at its Friday night dinners. Is there a gender difference in their views?
3. Discussion: One of the dilemmas in our society is the question of whether or not the law should uphold the rights of specific individuals or protect society in general. For example, should citizens be required by law to wear seat belts? Without the use of seat belts, injury and death rates increase along with other costs to society (e.g., higher medical insurance premiums). Ask students to consider the rights of individuals versus the common good. Alternatively, have students survey community members regarding their use of seat belts. Evaluate the kinds of reasons people give for not wearing their seat belts (i.e., what percentage of these responses emphasize the rights of the individual over the rights of society as discussed in the chapter?).
4. Discussion: Another issue that is relevant to the issue of upholding the rights of individuals versus protecting society in general is the push to ban smoking in public establishments. For example, in January of 2006, legislators passed a smoking ban in New Jersey that bans smoking in indoor public spaces that includes virtually all bars and restaurants (it does not include the gambling areas of Atlantic City’s 12 casinos). New Jersey was the 11<sup>th</sup> state to pass such a law. Protestors said it violated their rights; Governor Richard Codey stated, “I’m saving you from second hand smoke.” The case presented in Chapter 1 pushes this issue even further: Should cities be able to limit smoking in residences such as apartments where residents share walls etc? Have students comment on this debate. You can start by having students indicate which side they agree with; is their agreement influenced by whether or not they smoke?

5. Discussion: Another issue relevant to the rights of individuals versus the protection of the public is the recent push to ban inmates from posting pen pal ads online. Websites such as WriteAPrisoner.com list such postings, but some states have a policy that inmates not solicit pen pals (they can *write* to pen pals). Representatives from states such as Florida claim that such policies protect the public (see <http://www.dc.state.fl.us/>). Critics claim that the rights of inmates are being violated. What do students think?
6. Discussion: Was the arrest of Henry Louis Gates, Jr. an example of racial profiling? Mr. Gates, an African American scholar at Harvard, was arrested on July 16, 2009 and charged with disorderly conduct after a neighbor called police to report a robbery in progress at Mr. Gates' home. Review the details of this case and discuss.
7. Discussion: Should the life of a criminal after his or her sentence mean the difference between life and death? Consider the case of Troy Davis and the request of clemency. Davis was convicted of killing a police officer and sentenced to die, but maintained his innocence and sought clemency. His clemency request was denied. What do students think?
8. Debate: Should Employers Limit Secondhand Smoke? Possible sources: For a "Yes" response see L. Zellers, M. A. Thomas, and M. Ashe, and a "No" response by R. A. Levy and R. B. Marimont see Issue 8 in R. Goldberg (Ed.) (2010). *Taking sides: Clashing Views on Drugs and Society* (9<sup>th</sup> ed.). Guilford, CT: Dushkin/McGraw-Hill.
9. Debate: Debate the issue of same sex marriage. Possible source for a collection of arguments for and against the issue: Sullivan, A. (2004). *Same-sex marriage: Pro and con: A reader*. Vintage.
10. Debate: Should trial consultants be allowed? Do students have any reservations about consultants assisting defense lawyers in their selection of a jury? Does the fact that trial consultants often assist rich defendants influence the validity of the assumption that everyone is treated equally by the courts?
11. Discussion: Review common ethical violations committed by forensic psychologists. Compare these violations and their treatment by the Ethical Principles of Psychologists and Code of Conduct (EPPCC), the Specialty Guidelines for Forensic Psychologists, and the Guidelines for Child Custody Evaluations in Divorce Proceedings.
12. Discussion: Provide descriptions of the different roles psychologists can play in legal contexts. Have the class separate into groups according to the roles they prefer and discuss the reasons for their choices and correct any inaccurate assumptions.
13. Discussion: Review the different tasks and responsibilities of psychologists who serve as forensic evaluators and those who serve as trial consultants. Review the relevant ethical guidelines for each.

## Research Activities and Assignments

1. Research Activity: This activity is from Michelle McCauley from Middlebury College and provides a nice introduction to the work of legal/forensic psychologists. Michelle notes that at the start of the semester, students often have an incorrect schema for what a legal or forensic psychologist does. She asks them to find a movie (not *12 Angry Men*), television episode, or book which includes legal psychology, and discuss how the research and/or the psychologist is presented. The students are then asked to consult the relevant literature and determine the extent to which the media's portrayal was accurate.
2. Research Activity: Visit <http://gaylife.about.com/od/samesexmarriage/a/legalgaymarriag.htm> to find out where same sex marriage is legal.
3. Research Activity: Have students design and conduct a survey to assess public opinion regarding the crime control versus due process models. Possible questions to include are suggested in Chapter 1 (i.e., "Do you approve of a three-strikes law?" "In a criminal trial, is it up to the person who is accused of the crime to prove his or her innocence?" "Is it better for 10 guilty people to go free than one innocent person to suffer?").
4. Research Activity: As suggested above, the arrest of Harvard University professor Henry Louis Gates launched a nationwide discussion of racial profiling. Go to CNN's poll to see if people generally believed that the police made an error in arresting Gates. The poll can be found at <http://www.cnn.com/2009/POLITICS/08/04/obama.gates.poll/index.html?iref=newssearch>. Students can conduct a similar poll in their own neighborhood (perhaps using a scenario that they create).
5. Research Activity: Ask students to interview criminal attorneys about the purpose of a trial—finding truth versus resolving conflicts. Would the attorney represent a defendant who had committed a crime that the lawyer found to be immoral?
6. Research Activity: Request a volunteer to sit in a roped-off section of the class, labeled in a demeaning manner of some kind. Before the end of class, get reactions from the class, relating it to the issue of desegregation, and especially to the procedure used by the University of Oklahoma in regard to George McLaurin.
7. Research Activity: Have a student interview a judge who is reluctant to allow expert testimony concerning the accuracy of the testimony of an eyewitness. What reasons does he or she give for this opinion? If a judge is not available for interview, have students identify and review published legal decisions and/or case opinions addressing the issue of expert testimony on the accuracy of eyewitness testimony.

8. Paper Assignment: Have students write a paper on any of the conflicts presented in Chapter 1. For example, should there be a law against smoking in public spaces? Consider the rights of individuals versus the common good.
9. Research and Paper Assignment: This idea comes from Michelle McCauley from Middlebury College. She asks her students to write an amicus research brief as if they are employees of a professional organization (e.g., American Psychological Association). The challenge is that students must provide a realistic view of the research, and not just provide the view that they wish to be true. Michelle reports that students find this task to be more interesting and realistic than the typical literature review assignment.
10. Paper Assignment: Have students write a short paper on the role they would play and the steps they would take if they were to work as a trial consultant on a criminal case involving mental health issues. Have students choose the kind of case and the psychological/legal issues involved.
11. Class Activity: Have students participate in a mock *Daubert* hearing.
12. Class Activity: Provide students with a hypothetical scenario in which they have been hired as policy evaluators and have been asked to develop and evaluate the effectiveness of a new, innovative mental health program for inmates. Have students form groups and discuss how they would develop and assess the program and address any issues that arise should the program not work or meet expected goals.

### **Class Speakers/Guest Lecturers**

1. Speaker: Have a forensic psychologist speak to the class about the type of work he or she does and different career opportunities in this field.
2. Speaker: Bring in a clinician to talk about Tarasoff.
3. Speaker: Have a psychologist who has testified as an expert witness speak to the class about their experience (e.g., What information did the expert have to provide to be qualified? How did the expert prepare for direct and cross examinations? How was the expert's experience working with attorneys and in a courtroom setting?).
4. Speaker: Have a trial consultant come talk to the class. See the American Society of Trial Consultants website ([http://www.astcweb.org/public/consultants/consultant\\_locator.cfm](http://www.astcweb.org/public/consultants/consultant_locator.cfm)) for possible contacts.
5. Speaker: Have an attorney or judge who has experience working in the area of criminal or mental health law and with mental health issues or a mental health population come and speak about his or her experience.

6. Speaker: Have a psychologist who works in the area of mental health and legal policy and policy development discuss what is involved in and what kind of education and training is required for this kind of work.

### Media Activities

1. Video (VHS/DVD): *The Law* (1995). This 20 minute video details how the state governments impact our everyday activities (e.g., driving a car). Go to [http://ffh.films.com/id/8471/The\\_Law.htm](http://ffh.films.com/id/8471/The_Law.htm) or call 1-800-257-5126 to order.
2. Video (Online): Diane Sawyer of ABC News hosts this online discussion between parents and teens on the topic of sexting. Go to <http://abcnews.go.com/video/playerIndex?id=7353171> to play this video (approximately 12 minutes).
3. Video (VHS/DVD): *Racial Profiling and Law Enforcement: America in Black and White* (1998). Call Wallen Blake Media at 1-888-879-5919 or visit their website to order this 41 minute ABC News program (<http://www.srpublications.com/>).
4. Video (VHS/DVD): *Race on Trial*. This 23 minute ABC News program examines whether people of different races are treated differently by the American justice system. Call Wallen Blake Media at 1-888-879-5919 or visit their website to order (<http://www.srpublications.com/>).
5. Video (VHS/DVD): *Trial consultants: Stacking juries or keeping trials fair?* This 14 minute program should provoke much discussion as it illustrates many of the activities conducted by trial consultants (including choosing the defendant's wardrobe and recommending an eyelash curler to accentuate his eyes!). Call Films for the Humanities & Sciences at 1-800-257-5126 or visit their website to order (<http://ffh.films.com/>).

### Suggested Readings

1. Goldstein, A. M. (2003). Overview of forensic psychology. In A.M. Goldstein (Ed.). *Handbook of Psychology, Vol. 11, Forensic Psychology*. New York: John Wiley & Sons, pp. 3-20.

Description: Topics covered include a description of the roles that forensic psychologists play and a brief history of the field of forensic psychology. Students may also be interested in the chapter by Packer and Borum on *Forensic Training and Practice* (pp. 21-32).

2. Huss, M. T. (Spring, 2001). What is forensic psychology? It's not Silence of the Lambs! *Eye on Psi Chi*, 25-27.

Description: Matthew Huss provides a look at forensic psychology, with a special focus on training and careers.

3. Ewing, C. P. (2008). *Trials of a forensic psychologist: A casebook*. Wiley.  
 Description: Provides an account of 10 highly engrossing trials and illustrates the role that forensic psychology played in these trials.
4. Herek, G. M. (2006). Legal recognition of same-sex relationships in the United States: A social science perspective. *American Psychologist, 61*, 607-621.  
 Description: Gregory Herek reviews the research relevant to the issues in the debate over same sex marriage.
5. Horowitz, M. J. (1999). *The Warren Court and the pursuit of justice*. New York: Hill and Wang.  
 Description: This book provides an account of how the Warren Court's civil rights and civil liberties decisions affected constitutional law.
6. Eberhardt, J. L., Davies, P. G., Purdie-Vaughns, V. J., & Johnson, S. L. (2006). Looking deathworthy: Perceived stereotypicality of black defendants predicts capital-sentencing outcomes. *Psychological Science, 17*, 383-386.  
 Description: As indicated in Chapter 1, individuals may be discriminated against (i.e., given longer sentences) depending on the typicality of their look with regard to their racial group. The above cited article extends this idea; they found that in cases involving a white victim, more stereotypically black defendants were more likely to be sentenced to death.
7. Bersoff, D. N. (1987). Social science data and the Supreme Court: *Lockhart* as a case in point. *American Psychologist, 42*, 52-58.  
 Description: Excellent example of how legal opinion contradicts solid social science evidence.
8. Wrightsman, L. S. (1999). *Judicial decision making: Is psychology relevant?* New York: Kluwer.  
 Description: Considers the American Psychological Association's *amicus* attempts to influence the Supreme Court.
9. Wrightsman, L. (2008). *Oral arguments before the Supreme Court: An empirical approach*. Oxford University Press.  
 Description: Provides a view of the only work of the Supreme Court that is completed in public. Wrightsman analyzes the transcripts of the oral arguments and considers, for example, the behavior of advocates before the court.

10. The Integrationist. (1982, August 23). *New Yorker*, 37-73.

Description: This is an in-depth profile of Dr. Kenneth Bancroft Clark, the psychologist whose studies helped to produce the *Brown v. Board of Education* decision. The manifestations of this issue as well as how it affected Clark's life are discussed.

11. Friedman, L. (2004). *Brown v. Board of Education: The landmark oral argument before the Supreme Court*. The New Press.

Description: On the 50<sup>th</sup> anniversary of this landmark decision, these transcripts were published to be read by a general audience.

12. Bollas, C., & Sundelson, D. (1996). *The new informants: The betrayal of confidentiality in psychoanalysis and psychotherapy*. Northvale, NJ: Jason Aronson, Inc.

Description: These authors cover the impact of the *Tarasoff* decision, mandated child abuse reporting laws, and managed-care reporting requirements. Bollas and Sundelson argue that psychoanalysts have the right and obligation to protect patient confidentiality.

13. A 2001 issue of *Behavioral Sciences & the Law* (Volume 19, issue 3) is devoted to *The Clinician's Duty to Warn to Protect*. Considers *Tarasoff* from a variety of perspectives (e.g., assessing the risk of violence in *Tarasoff* situations).

14. Knapp, S., & VandeCreek, L. (2004). Using case law to teach professional ethics. *Teaching of Psychology*, 31, 281-284.

Description: In this article, Knapp and VandeCreek (2004) use different case law concerning the issues of client confidentiality, competency, and informed consent practices (specifically, *Tarasoff v. Regents of the University of California et al.* (1976), *Jaffee v. Redmond* (1996), and *Osheroff v. Chestnut Lodge* (1985) to teach professional ethics.

15. Ewing, C. P., & McCann, J. T. (2006). *Minds on Trial: Great cases in law and psychology*. New York: Oxford University Press.

Description: This text includes a chapter which specifically addresses the issues involved in the *Tarasoff* case.

16. Bersoff, D. N. (2008). *Ethical conflicts in psychology* (4th ed.). Washington, DC: American Psychological Association.

Koocher, G. P., & Keith-Spiegel, P. (2008). *Ethics in psychology and the mental health professions: Standards and cases* (3rd ed.). New York: Oxford University Press.

Descriptions: The texts provide information on the *Tarasoff* issue and other ethical conflicts in forensic psychology and the general practice of psychology. The latter includes case examples that can be used in student discussions.

17. One of the topics covered in Chapter 1 is the role of the expert witness. The articles cited here will be helpful if you want to provide further discussion or readings on this topic:

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.

Description: This article includes a list of research-based statements over which psychologists might testify and the percentage of psychologists who agree with each statement, which may be useful for class discussions.

For a critique of the Kassin et al. (1989) article, see:

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

A response to this critique by the original authors:

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

Note that in light of the *Daubert* decision, a more recent survey of experts was conducted and the findings are discussed 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.

18. Leo, R. (2004). Beating a bum rap. *Contexts, 68-69*.

Description: Richard Leo writes about being an expert witness.

19. Sales, B. D., & Shuman, D. W. (2005). *Experts in court: Reconciling law, science, and professional knowledge*. Washington, DC: American Psychological Association.

Description: The authors examine the use of expert witnesses (focusing on mental health experts) in civil and criminal trials. Topics include an explanation of how the standards of admissibility for expert testimony have changed.

20. Hagen, M. A. (1997). *Whores of the Court: The fraud of psychiatric testimony and the rape of American justice*. New York: Harper Collins.

Description: Read this for concerns regarding expert testimony.

21. Vidmar, N., Lempert, R. O., Diamond, S. S., Hans, V. P., Landsman, S., MacCaoun, R., Sanders, J., Hosch, H. M. Kassin, S., Galanter, M., Eisenberg, T., Daniels, S., Greene, E., Martin, J., Penrod, S., Richardson, J., Heuer, L., & Howowitz, I. (2000). Amicus brief: *Kumho Tire v. Carmichael*. *Law and Human Behavior*, 24, 387-400.

Description: Students can read more about jury responses to expert testimony in this *amicus curiae* brief.

22. 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.

Description: As noted in Chapter 1, the *Daubert* decision recommended that judges evaluate the validity of scientific evidence when attempting to determine the admissibility of that evidence. This requires that judges become familiar with scientific methodology. Kovera and McAuliff address some of the issues inherent in this decision-making.

See also:

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.

McAuliff, B. D., & Groscup, J. L. (2009). *Daubert and psychological science in court: Judging validity from the bench, bar, and jury box*. In Skeem, J. L., Douglas, K. S., & Lilienfeld, S. O. (Eds.). *Psychological science in the courtroom*. Guilford.

23. Faigman, D. L. (1995). The evidentiary status of social science under *Daubert*: Is it “scientific,” “technical,” or “other” knowledge? *Psychology, Public Policy and Law*, 1, 960-979.

Description: Faigman (1995) considers what the *Daubert* ruling means for psychologists providing expert testimony. He uses the topics of eyewitness identification and repressed memories to illustrate how *Daubert* should be implemented.

24. Andrews, C. K. (2005). Trial consulting: Moving psychology into the courtroom. In R. D. Morgan, T. L. Kuther, & C. J. Habbens (Eds.), *Life after graduate school in psychology: Insider's advice from new psychologists* (pp. 257-274). New York: Psychology Press.

Brodsky, S. L. (2009). *Principles and practice of trial consultation*. Guilford.

Description: To learn more about how trial consultants spend their time, read the above chapter and/or book.

See also:

Posey, A. J., & Wrightsman, L. S. (2005). *Trial consulting*. New York: Oxford University Press.

Description: Topics include a look at the activities of trial consultants, the empirical research on the topic, and suggestions for reforms for improving the profession.

25. Faust, D. (2011). *Coping with psychiatric and psychological testimony*. Los Angeles: Law and Psychology Press.

Description: This book provides guidance to attorneys for objecting to expert psychiatric and psychological testimony and includes techniques for utilizing the scientific literature in the expert's field to defeat the admission of the expert's testimony.

26. Poynter, D. (2004). *Expert witness handbook: Tips and techniques for the litigation consultant*. Para Publishing.

Description: This book serves as a comprehensive guide for litigation consultants and addresses the various issues involved in preparing and serving as an expert witness.

27. Bush, S. S., Connell, M. A., & Denney, R. L. (2006). *Ethical practice in forensic psychology: A systematic model for decision making*. Washington, DC: American Psychological Association.

Description: This book provides an overview of the interface of psychology and the law and a more in-depth look at the different issues and ethical questions raised when working as a psychological expert witness. It also discusses different ways to handle unethical behavior and ethical violations by expert witnesses.

28. Vasquez, M. J. T. (2012). Psychology and social justice: Why we do what we do. *American Psychologist*, 67, 337-346.

Description: This article discusses the various benefits, debates, and controversies that often accompany the application of psychological science and knowledge to complex social concerns and issues.

29. Skeem, J.L., Douglas, K.S., & Lilienfeld, S.O. (2009). *Psychological science in the courtroom: Consensus and controversy*. New York: Guilford.

Description: This text reviews a wide range of psychological issues and techniques that arise in the legal context. Several controversial issues in the field of forensic psychology are addressed including lie detection, child witnesses, eyewitness testimony, criminal profiling, and violence risk assessment,

See also:

McAuliff, B. D. (2009). Judging the validity of psychological science from the bench: A case in point. *Journal of Forensic Psychology Practice*, 9, 310-20.

Description: This article discusses judicial application of *Daubert* to psychological expert testimony in the context of the case of *U.S. v. Libby* (2006) and offers recommendations for testifying psychological experts.

### Suggested Websites

1. Go to the Oyez website ([www.oyez.org](http://www.oyez.org)) for more information about the following Supreme Court cases:  
  
*Blakely v. Washington* (2003)  
*BMW of North America v. Gore* (1996)  
*Brown v. Board of Education* (1954)  
*Daubert v. Merrell Dow* (1993)  
*Ewing v. California* (2003)  
*Kumho Tire C. v. Carmichael* (1999)  
*Miranda v. Arizona* (1966)  
*Plessy v. Ferguson* (1896)  
*United States v. Booker* (2005)  
*U. S. v. Grubbs* (2006)  
*Whren v. United States* (1996)
2. For information on education, training, and career opportunities in psychology and law (e.g., graduate programs, internships, conferences, job postings, funding options), visit the American Psychology-Law Society website (<http://www.ap-ls.org/>).
3. Chapter 1 introduces the issue of sentencing disparities. Visit The Sentencing Project at <http://www.sentencingproject.org/template/index.cfm>; it is a national project that promotes reforms in sentencing. The site includes a variety of statistics regarding incarceration in the United States such as a state-by-state breakdown of the racial and ethnic disparity in incarceration.
4. Students can read an example of an *amicus curiae* brief. The American Psychological Association (APA) has a website (<http://www.apa.org/about/offices/ogc/amicus/index.aspx>) devoted to APA *amicus* briefs (some are available only in summary form; others are full-text).

5. Each of the ethical guidelines discussed in Chapter 1 are online. The American Psychological Association's (APA) *Ethical Principles of Psychologists and Code of Conduct Including 2010 Amendments* can be accessed online (<http://www.apa.org/ethics/code/index.aspx>). The most recent version of the *Specialty Guidelines for Forensic Psychologists* is available from the American Psychology-Law Society website (<http://www.ap-ls.org/aboutpsychlaw/SpecialtyGuidelines.php>), which also provides a link to the *American Psychologist* publication of the *Specialty Guidelines for Forensic Psychologists* as adopted by APA Council of Representatives on August 3, 2011. The Guidelines for Child Custody Evaluations in Divorce Proceedings are available from the APA website (<http://www.apa.org/practice/guidelines/child-custody.pdf>). Additional APA Guidelines for practitioners, which address various practice issues can be found at <http://www.apa.org/practice/guidelines/index.aspx>. The Model Rules of Professional Conduct of the American Bar Association is also available online ([http://www.abanet.org/cpr/mrpc/mrpc\\_toc.html](http://www.abanet.org/cpr/mrpc/mrpc_toc.html)).
6. For a look at expert testimony, consider the case of Marty Tankleff. Marty Tankleff was 17 when he was arrested for killing his parents. When he didn't confess, one of the detectives pretended to receive a telephone call telling him that the father had received a shot of adrenaline and had revived from a coma long enough to blame Mr. Tankleff for the attack. A short time later, Mr. Tankleff broke down and confessed. He later recanted. Mr. Tankleff was convicted and sentenced to 50 years to life. After 17 years in prison, Mr. Tankleff's conviction was vacated. All charges against him have since been dismissed. Visit <http://www.martytankleff.com/> for more information on this case. This website includes the expert testimony (available as a PDF file) from Richard Ofshe and Richard Leo on the questionable nature of the confession. To get to this information, click on "Legal Briefs" from the main site, and then click on "Experts Testify on Marty's "Confession" – 6/2/02."
7. Information about The Individuals with Disabilities Education Act (IDEA) is available online (<http://idea.ed.gov/>). This site provides searchable versions of IDEA and many other relevant documents.
8. The American Society of Trial Consultants has a website (<http://www.astcweb.org/>) that provides an overview of trial consulting activities as well as links to a variety of trial consulting firms. A visit to some of these links will allow one to become more familiar with the tasks typically performed by trial consultants.
9. Personal accounts and comprehensive descriptions of different careers and positions in the fields of forensic psychology and psychology and the law can be found at <http://www.clinicalforensicpsychology.org/category/career-salary-info/career-profiles/>.
10. The kinds of cases involving mental health issues and the mental health issues that arise in both criminal and civil contexts are very diverse. For a review of a variety of recent legal decisions involving different mental health issues see <http://www.clinicalforensicpsychology.org/category/industry-info/developments-in-mental-health-law/>.

11. For a listing of legal cases and case summaries addressing different psychiatric or psychological issues see <http://bama.ua.edu/~jhooper/lm-abc.html>.
12. The website, <http://www.reidpsychiatry.com/>, offers an educational service for clinical and forensic psychologists, mental health professionals, lawyers, judges, and students and provides different information and updates pertaining to the field of psychiatry and the law.

## Test Bank

### Multiple Choice Questions

1. The purpose of laws is to
  - A. ensure public safety.
  - B. deter vigilantes.
  - C. serve as a mechanism for conflict resolution.
  - D. all of the above
  
2. Which amendment to the U.S. Constitution safeguards us against self-incrimination?
  - A. 1<sup>st</sup>
  - B. 4<sup>th</sup>
  - C. 5<sup>th</sup>
  - D. 6<sup>th</sup>

Answer: D

Reference: The Importance of Laws

Answer: C

Reference: The Importance of Laws

3. Edward Rosenheimer was charged with a hit-and-run accident, but he claimed that the law requiring him to report the accident to the police was unconstitutional because it forced him to incriminate himself, violating the U.S. Constitution's Fifth Amendment. This case eventually came before the New York Court of Appeals; what was this court's decision?
- A. Rosenheimer was released from custody because the law forcing him to incriminate himself was said by this court to be unconstitutional.
  - B. Rosenheimer was released from custody because the Court of General Sessions in New York State said that the hit-and-run regulation should be removed from the books.
  - C. The New York Court of Appeals concluded that the right to avoid self-incrimination did not outweigh the right of injured persons to seek redress for their sufferings.
  - D. The New York Court of Appeals concluded that the right of injured persons to seek redress for their sufferings did not outweigh the right to avoid self-incrimination.

Answer: C

Reference: The Importance of Laws

4. A researcher who is interested in the incidence of rape in different types of societies and the relationship of rape to the amount of male dominance in these societies is concerned with which approach to the study of law?
- A. anthropological
  - B. sociological
  - C. philosophical
  - D. psychological

Answer: A

Reference: The Psychological Study of Law

5. If a researcher is studying the role that social class plays in criminal behavior in a particular society, that researcher is most likely
- A. a psychologist.
  - B. a sociologist.
  - C. an anthropologist.
  - D. a philosopher.

Answer: B

Reference: The Psychological Study of Law

6. Psychology assumes individual characteristics affect how the legal system operates and the legal system affects individual characteristics and behavior. *Characteristics* may include:
- A. individual abilities
  - B. personal values
  - C. professional experiences
  - D. all of the above

Answer: D

Reference: The Psychological Study of Law

7. Most forensic psychologists are trained as

- A. social psychologists
- B. clinical psychologists
- C. experimental psychologists
- D. lawyers

Answer: B

Reference: The Psychological Study of Law

8. According to Kurt Lewin, what influences behavior?

- A. one's personal qualities
- B. one's environment
- C. both A and B
- D. what influences behavior can never be ascertained as behavior is too complex

Answer: C

Reference: The Psychological Study of Law

9. Which of the following would be an activity that a forensic psychologist would most likely do?

- A. evaluate whether a defendant was sane at the time the crime was committed
- B. determine if the DNA from the defendant matches the DNA collected at the crime scene
- C. investigate the role that social class plays in criminal behavior
- D. conduct a mock trial

Answer: A

Reference: The Psychological Study of Law

10. According to a 2011 Gallup poll, \_\_\_\_\_ of Americans favor same-sex marriage.
- A. 83%
  - B. 53%
  - C. 17%
  - D. 25%

Answer: B                      Reference: Basic Choices in the Psychological Study of the Law

11. In 2012, several states allowed same-sex marriage, including:

- A. California
- B. Florida
- C. Connecticut
- D. Maine

Answer: C                      Reference: Basic Choices in the Psychological Study of the Law

12. Most of the Supreme Court decisions that provided more explicit rights for suspects and defendants occurred

- A. during the 1950s.
- B. during the 1960s.
- C. during the 1970s.
- D. during the 1980s.

Answer: B                      Reference: Basic Choices in the Psychological Study of the Law

13. In more recent cases, the Supreme Court has ruled in favor of law enforcement as opposed to individuals suspected of breaking the law. For example, in *Florence v. Board of Chosen Freeholders*, the Court found

- A. Police can stop a motorist whom they believed violated traffic laws even if their ulterior motive is to investigate the possibility of drug dealing.
- B. Jail officials can strip search petty offenders even when there is no suspicion of carrying a weapon or contraband.
- C. Police no longer have to provide *Miranda* warnings in all custodial situations if certain exceptions are met.
- D. None of the above.

Answer: B                      Reference: Basic Choices in the Psychological Study of the Law

14. In contrast to the crime control model, the due process model would subscribe to which of the following statements?
- A. If the police are chasing a man, he must have committed a crime.
  - B. It is better for many guilty persons to go free than to convict one innocent person.
  - C. It is detrimental to society to require police to inform suspects of their *Miranda* rights.
  - D. The “three-strikes” law is in place to protect society from dangerous criminals.

Answer: B                      Reference: Basic Choices in the Psychological Study of the Law

15. Which of the following is a basic characteristic of the crime control model of the criminal justice system?
- A. The system should present obstacles to the conviction of defendants.
  - B. The suspect is assumed to be innocent.
  - C. Emphasis in the courts should be on the detection and prosecution of criminals.
  - D. Greater control needs to be exerted over the police in their investigation of suspects.

Answer: C                      Reference: Basic Choices in the Psychological Study of the Law

16. Secondary to the most recent recession, officials have sought different ways to reduce recidivism and rates of incarceration. These alternatives have included:
- A. diversionary, community-based treatment programs
  - B. educational and re-entry programs for inmates
  - C. substance abuse and mental health programs for inmates
  - D. all of the above

Answer: D                      Reference: Basic Choices in the Psychological Study of the Law

17. Currently, in the U.S., one out of every \_\_\_\_\_ Americans is either in prison or on probation or parole.
- A. 100
  - B. 54
  - C. 32
  - D. 15

Answer: C                      Reference: Basic Choices in the Psychological Study of the Law

18. The United States has 5% of the world's population and \_\_\_\_\_ of its prisoners.
- A. 2%
  - B. 5%
  - C. 10%
  - D. 25%

Answer: D

Reference: Basic Choices in the Psychological Study of the Law

19. The principle of equality is often at odds with the value of \_\_\_\_\_ when it comes to implementing laws and punishing offenders.
- A. proportionality
  - B. discretion
  - C. leniency
  - D. none of the above

Answer: B

Reference: Basic Choices in the Psychological Study of the Law

20. One might argue that the stop and frisk procedures used in New York City violate the principle of equality and rely on profiling, as 52% of stops between 2004 and 2009 were of \_\_\_\_\_ and 30% were of \_\_\_\_\_.
- A. African Americans; Caucasians
  - B. Hispanics; Caucasians
  - C. African Americans; Caucasians
  - D. African Americans; Hispanics

Answer: D

Reference: Basic Choices in the Psychological Study of the Law

21. Which of the following practices most clearly violates the principle of equality?
- A. racial profiling
  - B. proportionate sentencing
  - C. determinate sentencing
  - D. none of the above

Answer: A

Reference: Basic Choices in the Psychological Study of the Law

22. Determinate sentencing reflects which resolution of a choice presented in Chapter 1?

- A. equality, rather than discretion
- B. discretion, rather than equality
- C. common good, rather than individual rights
- D. individual rights, rather than common good

Answer: A                      Reference: Basic Choices in the Psychological Study of the Law

23. The principle of proportionality reflects the idea that

- A. there should be the same proportion of jurors sympathetic to the prosecution as to the defense.
- B. the defendant's punishment should be related to the magnitude of the offense.
- C. repeat offenders should receive extensive rehabilitation.
- D. a defendant who commits a relatively minor crime should receive a harsh punishment if the defendant is a habitual offender.

Answer: B                      Reference: Basic Choices in the Psychological Study of the Law

24. Despite the principle of equality, discretion is often displayed by

- A. prosecutors.
- B. police officers.
- C. juries.
- D. all of the above

Answer: D                      Reference: Basic Choices in the Psychological Study of the Law

25. Commuting a death sentence to life imprisonment is referred to as

- A. settlement negotiation.
- B. clemency.
- C. reversal.
- D. redemption.

Answer: B                      Reference: Basic Choices in the Psychological Study of the Law

26. Troy Davis was convicted of murdering a police officer and faced execution in Georgia. In an effort to save Davis, the Georgia Board of Pardons and Parole was presented with a \_\_\_\_\_ petition to commute Davis' sentence to life in prison.

- A. settlement negotiation
- B. clemency
- C. reversal
- D. redemption

Answer: B                      Reference: Basic Choices in the Psychological Study of the Law

27. The tendency of different judges to administer a variety of penalties for the same crime is referred to as \_\_\_\_\_; to counteract this, many states have implemented \_\_\_\_\_.

- A. biased sentencing; certain sentencing
- B. inequality in sentencing; mandatory sentencing
- C. sentencing disparity; determinate sentencing
- D. discretionary sentencing; strict sentencing

Answer: C                      Reference: Basic Choices in the Psychological Study of the Law

28. Determinate sentencing accomplishes which of the following?

- A. equality
- B. discretion
- C. individual rights
- D. sentencing disparity

Answer: A                      Reference: Basic Choices in the Psychological Study of the Law

29. John, the plaintiff in a civil trial, sued his employer for wrongful termination. Now that the trial is over, John is pleased that he had a chance to have his voice heard and feels he was treated fairly by the system. He sees the outcome as just even though the outcome was not in his favor. According to Chapter 1, this perception of the fairness of the procedures is an important component of

- A. fairness justice.
- B. procedural justice.
- C. plaintiff's revenge.
- D. the American Bar Association's ethical standard of practice.

Answer: B                      Reference: Basic Choices in the Psychological Study of the Law

30. What percentage of defendants plea bargain?

- A. 10-25%
- B. 35-50%
- C. 60-75%
- D. 90-95%

Answer: D                      Reference: Basic Choices in the Psychological Study of the Law

31. What is a possible benefit of plea bargaining?

- A. reduced trial costs and expenses
- B. increased efficiency in the criminal justice system
- C. reduced sentences and sanctions for defendants
- D. all of the above

Answer: D                      Reference: Basic Choices in the Psychological Study of the Law

32. In civil cases, what procedure parallels plea bargaining?

- A. damages negotiation
- B. settlement negotiation
- C. plaintiff/defendant agreement
- D. conflict resolution

Answer: B                      Reference: Basic Choices in the Psychological Study of the Law

33. *Amicus curiae* means

- A. let the decision stand.
- B. the sentence should be equivalent to the crime.
- C. friend of the court.
- D. the rights of defendants.

Answer: C                      Reference: Basic Choices in the Psychological Study of the Law

34. When faced with making legal decisions, judges are reluctant to make decisions that contradict earlier judicial decisions. This propensity is an example of the principle of

- A. *stare decisis*.
- B. equality.
- C. proportionality.
- D. determinant sentencing.

Answer: A                      Reference: Basic Choices in the Psychological Study of the Law

35. During a train trip in Louisiana in the 1890s, Homer Plessy wanted to sit in a “whites only” railroad car, but because of his ancestry (he had a black great-grandparent), he was not allowed, by law, to sit in this car. He took his claim to court; the U.S. Supreme Court eventually ruled that
- A. he should have been allowed to sit anywhere he wanted.
  - B. the statute that segregated railroad cars by race did not fail to give Plessy equal protection under the law.
  - C. the statute that segregated railroad cars by race failed to give Plessy equal protection under the law.
  - D. none of the above (this case never went to the Supreme Court)

Answer: B

Reference: Basic Choices in the Psychological Study of the Law

36. George McLaurin was the first black student admitted to the University of Oklahoma’s graduate school of education. After enrolling in the program, McLaurin was segregated from his classmates. In *McLaurin v. Oklahoma State Regents* (1950), the Supreme Court concluded that
- A. McLaurin should not have been admitted to the graduate school.
  - B. McLaurin’s rights as a student were not violated by the segregation.
  - C. the restrictions set up by the University of Oklahoma impaired and inhibited McLaurin’s ability to study, discuss and exchange views with other students.
  - D. the restrictions set up by the University of Oklahoma did not impair nor inhibit McLaurin’s ability to study, discuss or exchange views with other students.

Answer: C

Reference: Basic Choices in the Psychological Study of the Law

37. Whereas lawyers are typically adversarial and engage in “either-or” thinking, psychologists are expected to be \_\_\_\_\_ and think more in terms of \_\_\_\_\_.
- A. subjective; absolutes
  - B. subjective; probabilities
  - C. objective; absolutes
  - D. objective; probabilities

Answer: D

Reference: Basic Choices in the Psychological Study of the Law

38. Tatiana Tarasoff was killed by Prosenjit Poddar, a graduate student at The University of California. Tatiana's parents sued; the case was heard by the Supreme Court of California. The *Tarasoff* case is important because
- A. it gave a legal definition of "dangerousness."
  - B. it clarified the tax-exempt status of racially segregated colleges.
  - C. it concluded that psychologists could assist in jury selection if they provided their questionnaire responses to the other side.
  - D. it specified that psychotherapists have a duty to use reasonable care to protect identifiable, potential victims from clients in psychotherapy who threaten violence.

Answer: D                      Reference: Psychologists' Roles in the Law

39. A basic scientist's work

- A. is done simply for the joy of understanding.
- B. is not intended to be applied.
- C. can be applied to the law.
- D. all of the above

Answer: D                      Reference: Psychologists' Roles in the Law

40. Two psychologists, separately, do research on whether pornography causes men to attack women. The first, Dr. A. is interested in testing his theory of arousal and its effects on aggressive behavior. He has no interest in reducing violence rates in the real world. In contrast, Dr. B. does her research because she wants to reduce the number of incidents in which women are victims of violent men. Based on this information, which of the following statements is correct?

- A. Both Drs. A and B. are applied scientists.
- B. Both Drs. A and B. are basic scientists.
- C. Dr. A. is a basic scientist; Dr. B. is an applied scientist.
- D. Dr. A. is an applied scientist; Dr. B. is a basic scientist.

Answer: C                      Reference: Psychologists' Roles in the Law

41. In order for a person to testify as an expert witness

- A. he or she must have had formal training.
- B. both sides in the trial must agree to allow the testimony.
- C. the judge must agree to admit the testimony.
- D. the expert witness must have examined or tested the defendant.

Answer: C                      Reference: Psychologists' Roles in the Law

42. The expert witness

- A. is hired by one side, but is supposed to remain impartial.
- B. is hired by one side, and is supposed to support that side, and only that side.
- C. is legally considered an advocate when hired by one side.
- D. is not allowed to be paid for their time.

Answer: A

Reference: Psychologists' Roles in the Law

43. The *Daubert* decision listed four factors that judges should consider in assessing the validity and subsequent admissibility of the expert's testimony. Which of the following is not one of these four factors?

- A. whether the expert's theory or technique can and has been tested
- B. the strength of the argument for the pertinent side
- C. whether the expert's theory or technique has been evaluated by peer review
- D. the extent to which the expert's technique and claims have been generally accepted by the relevant scientific community

Answer: B

Reference: Psychologists' Roles in the Law

44. Which of the following decisions led to judges acting as gatekeepers who evaluate potential expert testimony using the standards of science?

- A. *Blakely v. Washington* (2003)
- B. *Ewing v. California* (2003)
- C. *Daubert v. Merrell Dow* (1993)
- D. *United States v. Booker* (2005)

Answer: C

Reference: Psychologists' Roles in the Law

45. A psychologist is asked to determine if Project New Chance, a program to help welfare recipients obtain and keep employment, has achieved its goals. How would we best label this psychologist's role?

- A. basic scientist
- B. pure scientist
- C. policy evaluator
- D. advocate

Answer: C

Reference: Psychologists' Roles in the Law

46. A police department decides to develop “community watch” groups in some neighborhoods in order to reduce the crime rate. A psychologist is called in to assist the police department in designing and critiquing this innovation. How would we best label this psychologist’s role?

- A. policy evaluator
- B. advocate
- C. basic scientist
- D. pure scientist

Answer: A                      Reference: Psychologists’ Roles in the Law

47. Which of the following would be an activity conducted by a trial consultant?

- A. conduct community attitude surveys
- B. prepare witnesses to testify
- C. advise lawyers on their presentation strategies
- D. all of the above

Answer: D                      Reference: Psychologists’ Roles in the Law

48. Trial consultants have been criticized for

- A. falsifying research data.
- B. rigging the jury.
- C. encouraging defendants to lie.
- D. not defending their clients “zealously.”

Answer: B                      Reference: Psychologists’ Roles in the Law

49. One of the justifications given by trial consultants for their methods is that

- A. they work for the underprivileged.
- B. they’re not radically different from that of politicians.
- C. jury members are informed of their recommendations.
- D. all of the above

Answer: B                      Reference: Psychologists’ Roles in the Law

### **True or False Questions**

1. Laws regulating the areas in which people may smoke cigarettes illustrate the conflict between individual rights and public safety.

Answer: True

Reference: Basic Choices in the Psychological Study of the Law

2. Troy Davis was granted clemency.

Answer: False

Reference: Basic Choices in the Psychological Study of the Law

3. In recent years judges have been allowed to use more discretion in sentencing.

Answer: True

Reference: Basic Choices in the Psychological Study of the Law

4. Jay is in therapy, and he has recently told his therapist that he is planning on killing his stepmother. According to the *Tarasoff* decision, the therapist has the duty to warn the stepmother that Jay is a potential threat.

Answer: True

Reference: Psychologists' Roles in the Law