

Michigan Law Review

Volume 81 | Issue 4

1983

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Michigan Law Review

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Recommended Citation

Michigan Law Review, *Legal Psychology: Eyewitness Testimony--Jury Behavior*, 81 MICH. L. REV. 1012 (1983).

Available at: <https://repository.law.umich.edu/mlr/vol81/iss4/37>

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LEGAL PSYCHOLOGY: EYEWITNESS TESTIMONY — JURY BEHAVIOR.
By *L. Craig Parker*. Springfield, Ill.: Charles C Thomas. 1980. Pp.
vii, 185. \$22.75.

In *Legal Psychology*, L. Craig Parker presents an overview of the legal and psychological concepts of eyewitness testimony and jury behavior. The author attempts to integrate the discipline of psychology into legal practice in order to overcome the reluctance of the legal profession to employ psychological concepts. After a brief outline of the other contexts in which these disciplines interact, Parker examines a large volume of psychological research pertaining to two discrete areas — eyewitness testimony and jury behavior. As a complement to these studies, he reviews Supreme Court decisions relevant to these subjects. Unfortunately, his discussion only infrequently goes beyond this summary format. Parker fails to suggest any guidelines for the practical application of psychology to the practice of law. *Legal Psychology* is, consequently, unlikely to have a significant impact on either psychological or legal literature.

Parker first attempts to provide some background on the interface of law and psychology. He begins by briefly summarizing the legal-psychological overlap involved in areas ranging from eyewitness testimony to legal socialization. This is followed by a historical survey of those psychological studies with legal implications. This somewhat haphazard section leaves the lay reader overwhelmed, not only by the large number of studies surveyed, but also by their tenuous relevance to the book's subject matter. Although this survey may be of interest to psychologists, it is too unwieldy to be of use to lawyers. Parker does underscore the undeserved nature of the legal field's ambivalence towards psychology, but, in general, this overview of the interface fails to give the lay reader the intended background.

Parker then examines the field of eyewitness testimony in detail. His thesis throughout is that the present legal rules ignore the research conclusions: judges and juries are insensitive to the inaccuracies that are part of most eyewitness testimony (p. 30). Parker finds it incongruous that the judiciary continues to stress the weight of eyewitness testimony when both experimentation and actual mistaken identifications demonstrate that this testimony is frequently inaccurate.

Parker focuses on the variables that might result in differing eyewitness testimony for identical situations. Unfortunately, these variables, which range from race to religion, sex to socioeconomic background, are presented through an unorganized series of experimental results.¹ Parker underlines an experimental variable as affecting eyewitness testimony and applies his talent for criticism to the experiment's methodology. This leaves the reader confused as to the actual significance of these variables. A section on the importance of these variables and their applicability to the legal

1. One reviewer indicates that Parker's list of experiments was not comprehensive and omitted studies that had contributed significantly to this particular field. See Wells, *Gaps and Canyons in Psycho-Legal Research* (Book Review), 27 *CONTEMP. PSYCH.* 55, 56 (1982).

issues surrounding eyewitness testimony² would have been helpful. The judiciary is unlikely to adopt psychological principles without guidelines for accurately doing so.

This failure to provide direction is even more apparent in Parker's section on memory testing. The research in this area presents excellent possibilities for practical application in a legal context. Parker surveys studies ranging from the effect of mug shot displays on memory retention (interference) to tests on the comparative accuracy of identification between artist's sketches and composite portraits. An experiment on the number of incorrect identifications resulting from the nonverbal cues of the person conducting the trial identification seems, for example, an obvious candidate for legal implementation. Parker again declines the opportunity to summarize this psychological data in a way that would indicate a direction for legal reform.

Parker does attempt, through Supreme Court decisions,³ to illustrate the legal perspective on eyewitness testimony. He finds that the decisions fluctuate from excellent analyses applying recent psychological studies⁴ to decisions based solely on intuition.⁵ A case not discussed by Parker underscores his frustration with legal rulings. In *United States v. Crews*⁶ the Court, without the benefit of psychological studies, held that a witness' courtroom identification rested on an independent recollection and was not the result of illegally obtained pretrial identification.⁷ The research in this area, however, indicates that the initial identification becomes a reinforcement for all future identifications. The illegal pretrial identification would then prejudice the defendant at trial (p. 110). This supports Parker's theme that the courts often ignore or reject the findings of experimental psychology.

Yet Parker again fails to provide proposals to remedy the deficiencies. He points out that the Court has attempted to safeguard defendants by requiring the presence of a lawyer at the identification. The lawyer, however, is unlikely to know how to protect his client in this situation. Parker stresses the prejudice and bias which pervades many identifications, but he fails to provide practical instruction for the lawyer who has a client in a lineup. Parker merely discusses suggestions, such as videotaped lineups, made by other commentators without recommending any (pp. 110-15).

Parker thus adds very little to the understanding or prevention of inaccurate eyewitness identifications. Legal commentators have long recognized the unreliability of this sort of testimony.⁸ The key legal problem —

2. Parker has been criticized for failing to discriminate between variables that can be used in a practical context and those that have only questionable value for those in the legal field. *Id.* at 56.

3. *Moore v. Illinois*, 434 U.S. 220 (1977); *United States v. Ash*, 413 U.S. 300 (1973); *Kirby v. Illinois*, 406 U.S. 682 (1973); *Stovall v. Denno*, 388 U.S. 293 (1967); *Gilbert v. California*, 388 U.S. 263 (1967); *United States v. Wade*, 388 U.S. 218 (1967).

4. *See United States v. Wade*, 388 U.S. 218, 228-36 (1967).

5. *See Moore v. Illinois*, 434 U.S. 220 (1977).

6. 445 U.S. 463 (1980).

7. 445 U.S. at 473.

8. *See, e.g.*, E. BORCHARD, *CONVICTING THE INNOCENT* (1932); E. LOFTUS, *EYEWITNESS TESTIMONY* (1979); P. WALL, *EYE-WITNESS IDENTIFICATION IN CRIMINAL CASES* (1965); Le-

devising procedures to reduce the risks of erroneous identifications without crippling criminal law enforcement — has already been resourcefully undertaken by other observers.⁹ The need, therefore, is less for another demonstration that eyewitness testimony is suspect than for the political determination to do something about it. Parker's book is highly unlikely to contribute to this last objective.

Parker next examines the research and legal practice on jury decision rules. After a succinct review of the Supreme Court cases on jury size and unanimous decisions,¹⁰ Parker again enters the realm of psychological literature.¹¹ He emphasizes that when the courts have used psychological studies in their rationale, they have often relied on research of limited credibility. Parker does an excellent job of pointing out the weaknesses in the experiments on jury decision rules. Weaknesses include the homogeneity of the subject sample (frequently college students) as opposed to the heterogeneous sample required for jury selection, and the inherent differences between deciding a hypothetical case and an actual case. Again, the thorough criticism of these psychological hypotheses leaves the reader insecure as to their importance. The overall thrust of the results is that the decisions of a six-person jury and a nonunanimous twelve-person jury may infringe upon a defendant's rights. Parker stresses, however, that because of "outstanding weaknesses" these studies are of questionable value to the judiciary (p. 141). This subject, however, does illustrate the promise of experimental research on legal issues. Parker emphasizes the limitations of this research without minimizing psychology's potential. The reader is left with the hope that future research may resolve the lingering uncertainty.

Parker also analyzes some of the research on jury behavior. He divides his analysis into two sections. First he reviews the studies on nonlegal factors, such as sex, race and status, that can influence jury decisions. Unfortunately, the data generated by these studies seems too piecemeal to advance knowledge much beyond the intuitive level. Parker's next section, on the use of social scientists in jury selection, reinforces this skepticism. He comments on the legal arguments espousing the dangers of stacking the jury. Parker, however, hesitates to give any credence to the alleged benefits of experimental psychology to jury selection procedures. Lawyers should note that in order for psychological techniques to have any significant effect, the psychologist must have an unusually comprehensive background in this area and the evidence must be sufficiently ambiguous for jury biases to influence the ultimate decision. Until further developments occur in this

vine & Tapp, *The Psychology of Criminal Identification: The Gap from Wade to Kirby*, 121 U. PA. L. REV. 1079 (1973).

9. See, e.g., Sobel, *Assailing the Impermissible Suggestion: Evolving Limitations on the Abuse of Pre-Trial Criminal Identification Methods*, 38 BROOKLYN L. REV. 261 (1971) (suggesting, among other things, "blank lineups" — lineups in which the suspect does not initially participate).

10. Recent cases that Parker does not include in his discussion are *Burch v. Louisiana*, 441 U.S. 130 (1979) (The Court held that the provisions of the Louisiana Constitution that permitted nonunanimous six-person jury decisions were unconstitutional.), and *Brown v. Louisiana*, 447 U.S. 323 (1980) (The Court held that the decision in *Burch* was retroactive.).

11. Wells suggests that psychologists may find M. SAKS, *JURY VERDICTS* (1977), a more thorough work on jury behavior. Wells, *supra* note 1, at 56.

field, Parker suggests that the intuition of the individual lawyer may be just as productive a tool for jury selection as experimental psychology.

An additional chapter tying these loose ends of psychological research together would be useful to both lawyers and psychologists. While Parker bemoans the reluctance of lawyers to use psychology, the reader is left unsure of what Parker feels should be psychology's contribution to the law. He outlines flaws in the research, but does not deal directly with the concerns of lawyers. A legitimate concern is that psychological studies are oversimplified and, therefore, are not applicable to real life situations (p. 17). As a summary of recent Supreme Court law and psychological studies, Parker's presentation is often unorganized. The reader is required to decide for himself which principles are relevant to the legal problems. The discipline of legal psychology has a vast opportunity for selecting those experimental results that are valid and designing methods of applying them to legal procedure. A better understanding of legal issues, however, is important to any book hoping to influence psychology's effect on the law. *Legal Psychology* fails to address the concerns of lawyers, and hence fails in its intended goals.¹²

12. Parker's book is also reviewed by Wells, *supra* note 1.