

Psychology



and the Legal System

Wrightsman
Greene
Nietzel
Fortune

FIFTH EDITION

**5th
Edition**

Psychology and the Legal System

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*Dedicated to Franz Joseph Haydn, who wrote:
"Since God gave me a joyful heart, He will forgive
me for having served him joyfully"*

About the Authors

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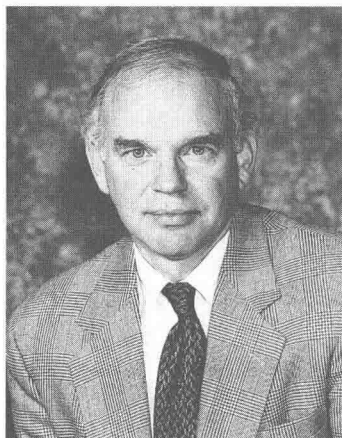
Lawrence S. Wrightsman (Ph.D., University of Minnesota, 1959) is a social psychologist and Professor of Psychology at the University of Kansas, Lawrence. Wrightsman is an author or editor of 10 other books relevant to the legal system, including *Forensic Psychology*, *The American Jury on Trial* (co-authored with Saul M. Kassir), and *Judicial Decision Making: Is Psychology Relevant?* He was invited to contribute the entry on the law and psychology for the recently published *Encyclopedia of Psychology*, sponsored by the American Psychological Association and published by Oxford University Press. His research topics include jury selection procedures, reactions to police interrogations, and the impact of judicial instructions. He has also served as a trial consultant and testified as an expert witness. Wrightsman is a former president of both the Society for the Psychological Study of Social Issues and the Society of Personality and Social Psychology. In 1998 he was the recipient of a Distinguished Contribution Award from the American Psychology-Law Society. This award has been made on only seven occasions in the 30-year history of the organization; the preceding awardee was U.S. Supreme Court Justice Harry Blackmun.

Photo: Barry Kaplan



Edie Greene earned her Ph.D. in cognitive psychology and law at the University of Washington in 1983. She served as postdoctoral research associate at the University of Washington from 1983 until 1986, when she joined the faculty at the University of Colorado, Colorado Springs. She is currently Professor of Psychology. From 1994 to 1995, Greene was a fellow in Law and Psychology at Harvard Law School. In 2001 she received her college's award for Outstanding Research and Creative Works. She has been invited to lecture at the National Judicial College and at continuing legal education programs nationwide. Greene has received several federally funded grants to support

her research on jury decision making and eyewitness memory. She has acted as a trial consultant on jury selection, trial strategies, and jury decisions and has, on numerous occasions, testified as an expert witness on jury behavior and eyewitness memory. She is the author of more than 70 articles and book chapters and has written a book on jury damage awards for the American Psychological Association series *Law and Public Policy: Psychology and the Social Sciences*.



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William H. Fortune (J.D., University of Kentucky, 1964) is Alumni Professor of Law at the University of Kentucky, Lexington, where he currently serves as the Chair of the University Senate. He formerly served as Academic Ombud for the University of Kentucky and Associate Dean of the College of Law. He is the author of five books and numerous journal articles. His most recent publications include *Kentucky Criminal Law* (with co-author Robert Lawson), published in 1998, and the second edition of the *Modern Litigation and Professional Responsibility Handbook* (with co-authors Richard Underwood and Edward Imwinkelried), published in 2001. Fortune has taught a number of law school courses, including criminal law, criminal procedure,

evidence, and professional responsibility. Fortune served as one of the drafters of the state of Kentucky's rules of evidence and rules of professional responsibility. He currently chairs the Kentucky Justice Council committee, which is charged with rewriting the Kentucky criminal laws. On three occasions he has taken academic leave to serve as a public defender in state and federal court. With Michael Nietzel, Fortune regularly teaches a course in law and psychology to undergraduate and graduate law students.

Preface

The publication of the fifth edition of *Psychology and the Legal System* has brought together a new set of authors, and with this change has come what we hope is an enlarged and enlightening book that will continue to help students learn about the accomplishments and challenges of legal psychology. Edie Greene, well known for her research on the psychology of jury decision making, has joined the team. Her expertise in a variety of areas has expanded our ability to cover several new topics and has added fresh perspectives on much of the content that has been retained, but updated, from prior editions.

The current team includes three psychologists (one trained in cognitive psychology, one in clinical psychology, and the third in social psychology), who have largely devoted their professional careers to studying and participating in the legal system. They are joined by one law professor, who is an expert on criminal law and a former public defender. We continue to strive for the right mix of psychology and legal analysis in the text. The book's emphasis remains on psychological science and practice, but we also summarize the legal history of many key topics and present the current status of relevant legal theories and court decisions.

For centuries the legal system has exerted an immense influence on people's everyday activities. But as we enter the 21st century, the legal system has become a focus of special interest for the general public and scholars alike. From the Supreme Court's school desegregation decision of 1954 to its recent ones concerning the acceptability of practices as diverse as physician-assisted suicide and "cyberporn" on the Internet, the courts have had an impact on individual lives. Matters of law and psychology have become standard fare in the media. Whether they involve allegations of police corruption, criminal trials of the rich and famous, multi-billion-dollar civil litigation, charges of racism in the criminal justice system, or debates about the utility and morality of capital punishment, headlines and lead stories seem increasingly to focus on some aspect of legal psychology. Although this attention appears to cater to an almost insatiable curiosity about crime and other types of legal disputes, it also engenders a growing ambivalence about the law. Many citizens are suspicious of the police, but the police are still the first officials most of us turn to in a serious emergency or crisis. Attorneys are often held up to ridicule, but the number of people entering the legal professions is still growing. Juries are frequently criticized for their decisions, but, if given a choice, most litigants want their cases decided by juries rather than judges.

This pervasiveness of the law demands analysis and, in the last three decades, scholars from a wealth of disciplines have studied the legal system. As one of these perspectives, psychology has much to offer. The purpose of this book is to examine the legal system through the use of psychological concepts, methods, and research results. The

primary audience for *Psychology and the Legal System* is those students taking a course in psychology and the law or the criminal justice system, as well as others who seek to know more about the discoveries and practices of legal psychology. This book may also be used as a supplement in those psychology courses that emphasize applied social psychology, social issues, or policy analysis. In addition, it covers a number of topics relevant to law school courses that introduce law students to social science findings and applications.

Organization

We have continued to organize the book around four basic conflicts that pervade a psychological analysis of the law: the rights of individuals versus the common good, equality versus discretion as ideals that can guide the legal system, discovering the truth or resolving conflicts as goals that the legal systems strives to accomplish, and science versus the law as a source of legal decisions. These conflicts generate dilemmas that persist and recur, whether the topic is the behavior of the police, rights of persons with mental illness, the training of lawyers, or the decisions rendered by juries. Society demands responses to these conflicts, and psychology provides methods and empirical results that bear on their resolution.

Improved Pedagogy

The text offers several devices to aid student learning. Each chapter begins with a chapter outline and a set of orienting questions. Answers to these questions serve as a detailed summary at the end of each chapter. Key terms are boldfaced in the text and listed at the end of each chapter; they are then defined in a glossary. Frequently used concepts are cross-referenced. Relevant Web sites are listed so that students can pursue topics of special interest to them in more depth. This fifth edition contains updated coverage of the scholarship occurring in the major areas of legal psychology, and more than 500 new references have been added.

New Features and Revisions

Several new features, which highlight individual cases, court decisions, and resources, have been introduced.

- ◆ *The Science of* boxes present a research topic, a specific experiment, or a methodological procedure that demonstrates how the scientific method can and should be used to analyze psycho-legal questions and resolve controversies in the field.
- ◆ *The Case of* boxes summarize real cases or trials in order to illustrate or explain an important legal concept or psychological principle covered in the chapter.
- ◆ Internet resources are featured within the chapter content (see *The Case of Billy Burgess: Entrapment on the Internet*, for example) as well as on page xxii.

Overall, this is a moderate revision, with the following major changes:

- ◆ Chapter 3, on legality, morality, and justice, has been substantially rewritten and now includes such topics as commonsense justice, good Samaritan and duty to assist laws, more on attribution theory, and a discussion of the just world hypothesis.

- ◆ Chapter 7, on crime investigation and witnesses, has been broadened to include material on children in the courtroom (formerly found in Chapter 17) and more on lineups. In addition, there is discussion of the National Institute of Justice study, titled *Eyewitness Evidence: A Guide for Law Enforcement*, on mistaken IDs and DNA identification.
- ◆ Chapter 16, on the psychology of victims, now covers sexual harassment, battering, violent crime victims, physical and sexual abuse of children, posttraumatic stress disorder, and rape. The chapter discussion includes Wiener's research on decision making.

The Fifth Edition

Specific topics that receive special or expanded attention for the first time in this edition include hate crimes, alternative dispute resolution, racial profiling, duty to assist laws, commonsense justice, school and workplace violence, the current status of *Miranda* rights, battered women and battered women syndrome, adjudicative competence, crime victimization and posttraumatic stress disorder, sexual harassment, risk assessment, and the special provisions for the sentencing of sex offenders.

We continue to increase our attention to the psychological dimensions of several of the topics in the text. This emphasis should be especially apparent in our treatment of such topics as jury decision making in civil cases, the psychology of victimization, new guidelines for conducting lineups, the impact of expert testimony, and jury reform.

As the main drama in both criminal and civil litigation, the jury trial has always had a special hold on psychologists' interests. Studying the behavior of jurors and the decisions of juries affords researchers an opportunity to bring many areas of psychology to bear on the questions of how and why juries return their verdicts. Research on attention, perception, and memory; the study of attitude formation and change; the analysis of social influence; and the examination of how individual juror characteristics relate to decision tendencies are all topics that have flourished during a century of psychological scholarship on the jury. We include three chapters on the jury, examining both criminal and civil litigation from the perspectives of trial processes (Chapter 13), jury composition and jury selection (Chapter 14), and jury decision making and competence (Chapter 15).

This edition includes a thorough, authoritative revision of every chapter.

- ◆ Chapter 2, on psychologists and the legal system, greatly expands the discussion of the *Daubert* case, which will help students to understand the role of social scientific evidence and how this evidence is evaluated.
- ◆ Chapter 4, on the legal system and its players, has been rewritten regarding courts, judges, and alternative dispute resolutions, and now includes the material on juvenile courts formerly found in Chapter 17.
- ◆ Chapter 5, on the theories of crime, includes updates of crime statistics, reflecting the decrease in crime rates in recent years. Featured boxes discuss hate crimes and juvenile crime. There is new material on biological factors in crime, specifically serotonin levels and subcortical abnormalities, and a brief discussion of female crime—its relative frequency and possible unique dynamics.

- ◆ Chapter 6, on the police and the criminal justice system, includes new material on assessment and selection of police officers, police-community relations, jail diversion of the mentally ill, hostage taking and negotiation, bioterrorism, and partner violence—with specific discussion of how differences in research designs affect the answers to questions regarding partner violence.
- ◆ Chapter 8, on identification and evaluation of criminal suspects, features the new Internet case of entrapment and the new *Scheffer* case on the admissibility of polygraphs. The section on criminal profiling and the use of drug couriers has been revised, and the discussion on confessions has been updated.
- ◆ Chapter 9, on the rights of victims and the rights of the accused, updates the status of *Miranda* rights, in light of the *Dickerson v. United States* decision by the Supreme Court in 2000.
- ◆ Chapter 10, on what happens between arrest and trial, now includes a discussion of why safeguards fail as a lead-in to the change of venue. The section on bail has been revised.
- ◆ Chapter 11, on forensic assessment of competence and insanity in criminal cases, now includes discussion of the concept of adjudicative competence and the MacArthur instruments on competence. Juvenile competence is also covered. The relevance of the Ted Kaczynski case as well as other competencies are discussed.
- ◆ Chapter 12, on forensic assessment in civil cases, now contains all of the material on civil commitment and dangerousness that was formerly in Chapter 17 as well as new material on the *Daubert* and *Kumho* decisions regarding partisanship by experts, risk assessment, child custody standards and assessments, and civil competence.
- ◆ Chapter 13, on the trial process, updates the consideration of race and jury nullification.
- ◆ Chapter 14, on representativeness and selection in jury trials, includes new material on peremptory challenges, scientific jury selection, some of the conflicts between different goals of jury selection, and an expanded introduction to the O. J. Simpson case.
- ◆ Chapter 15, on the concerns and reforms of jury trials, now includes more on civil juries, complex cases, jury reforms, competence of juries, group dynamics as explanations for interesting or unexpected jury outcomes, and expanded discussion of decision making and the story model. The chapter update incorporates relevant psychological theories and research studies that affect juries.
- ◆ Chapter 17, on punishment and sentencing, now includes the rights of prisoners, plus discussion of what works in corrections and how juries understand mitigating factors. The section on capital punishment has been updated.

More Instructor Support

An instructor's manual, ISBN 0-534-25040-8, prepared with the assistance of Wendy Heath, is available from the publisher. It includes test questions, suggested activities, and additional Web sites and other sources of information for each chapter.

INFOTrac

InfoTrac[®] College Edition is available (free of charge) to students who purchase this book. InfoTrac is a fully searchable online university library that contains complete articles and images from over 700 scholarly and popular publications. Such access can help students with their independent research on topics relevant to psychology and law. Journals relevant to the study of psychology and law include (among others) *American Behavioral Scientist*, *American Criminal Law Journal*, *Annual Review of Psychology*, *Argumentation and Advocacy*, *British Journal of Criminology*, *British Journal of Psychology*, *Brown University Child and Adolescent Behavior*, *Canadian Journal of Criminology*, *Corrections Today*, *Criminal Justice Ethics*, *FBI Law Enforcement Bulletin*, *Journal of Social Psychology*, and the *Psychological Record*.

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Lawrence S. Wrightsman
Edie Greene
Michael T. Nietzel
William H. Fortune

Information on the Internet

A wealth of resources relevant to psychology and the law can be found on the Internet. Of most importance to readers are online discussion groups and Web sites.

Online Discussion Groups

A listserv list is a discussion group organized around a certain topic; one is basic to the topics in this book:

- ◆ A forensic psychology list: forensic-psych@maelstrom.stjohns.edu

Web Sites

The number of organizations with Web sites that have information related to psychology and the law is increasing. Here is a partial list:

- ◆ The organization of psychologists, lawyers, and students interested in the interface of psychology and the law, the American Psychology-Law Society (Division 41 of the American Psychological Association): <http://www.unl.edu/ap-ls/>
- ◆ The organization of professional trial consultants, the American Society of Trial Consultants: <http://www.astcweb.org>
- ◆ An organization on criminal profiling, including a journal, *Journal of Behavior Profiling*: <http://www.profiling.org>
- ◆ U.S. circuit court opinions: <http://www.law.emory.edu/FEDCTS/>
- ◆ A variety of legal resources: <http://www.findlaw.com>
- ◆ U.S. Department of Justice, Office of Justice Programs: <http://www.ojp.usdoj.gov>
- ◆ National Institute of Justice: <http://www.ojp.usdoj.gov/nij>
- ◆ Current ABA Journal articles: <http://www.abanet.org>
- ◆ American Psychological Association linking psychology and law: <http://www.psyclaw.org>
- ◆ American Academy of Forensic Psychology: <http://www.abfp.com>
- ◆ United States Supreme Court, including the court's schedule and transcripts of oral arguments: <http://www.supremecourtus.gov>

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