Cynthia Willis-Esqueda
Brian H. Bornstein *Editors*

The Witness Stand and Lawrence S. Wrightsman, Jr.

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Introduction

Cynthia Willis-Esqueda and Brian H. Bornstein

This book is based on the substantial influence of Dr. Lawrence S. Wrightsman, Jr. It is a means to honor his many contributions to the field of psychology and law and allow for current scholars to demonstrate the significance (both theoretical and professional) of an outstanding researcher, teacher, colleague, and friend. By virtue of his conducting research on so many of the core topics in the discipline, the book provides an overview of the current status of the field of psychology and law and places the contributions of Wrightsman within that field.

The field of psychology and the law turned 100 years old in 2008—that year marked the centennial of the book by Hugo Münsterberg, titled *On the Witness Stand*, which contained remarkably prescient chapters on many contemporary topics, including eyewitness accuracy, confessions, hypnosis, and criminal psychology (now called forensic psychology; for a contemporary assessment of Münsterberg's work, see Bornstein & Meissner, 2008). That book is honored in the title, since it is also the title of two co-edited volumes by Lawrence S. Wrightsman. This book is meant to highlight the contributions of Lawrence S. Wrightsman, who has produced some 45 books on psychology and law, including his landmark textbook *Psychology and the Legal System*, over a nearly 50-year career. The book is designed to stand alone as an integrated digest of the various ways in which psychology informs legal practice and legal outcomes.

Following the publication of Münsterberg's book, the field of psychology and law did not receive much attention until 1954, when a brief by 32 "Concerned Social Scientists" influenced the Supreme Court in the *Brown v. Board of Education* decision.

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The acknowledgment of a brief on psychological issues associated with a legal case (signed by Kenneth C. Clark and Stuart Cook, among others) was the first major example of how psychology might be of use to legal understanding. While the theoretical notions about how law is bound to social forces and interests were highlighted by legal scholars, such as Pound (see Gardner (1961) for a review), psychologists were bereft of formal interest in psychological processes that occurred within the legal system. And, indeed, after *Brown* there was another lull until the mid-1970s, when many social psychologists, including Wrightsman, despaired over the field's failure to be relevant to public policy (Deaux & Wrightsman, 1988). This "crisis in social psychology," as exemplified by other calls for real-world relevancy (Deaux & Wrightsman, 1988), led to a profusion of research that had addressed modern day problems. Predictably, and in light of Münsterberg's work, research on witness memory was a foremost topic. But in the last 30 years the field of psychology and law has mushroomed and broadened into such disparate topics as jury and judicial decision making; confessions and interrogation techniques; alibi witnesses, informants, and snitches; expert witnesses; jury selection; mentally ill offenders; and hate crimes. Wrightsman's writings and research have had an impact on each of these. Moreover, public policy makers are now paying attention to, and adopting, psychologists' research-based recommendations. Impressive examples include the adoption by the U.S. Department of Justice of guidelines for police in collecting evidence from eyewitnesses to crimes (Technical Working Group on Eyewitness Evidence, 1999) and the Supreme Court decision in *Lawrence v. Texas* (2003) that ruled unconstitutional any laws prohibiting sexual relations between homosexual persons.

This volume provides "state-of-the-art" chapters on a number of topics at the forefront of psycholegal research. The contributors' expertise covers the vast majority of topics that now define the field of psychology and the law: eyewitness identification, interrogations and confessions, expert testimony, jury and judicial decision making, discrimination, and forensic assessment and treatment. The book provides an overview of the various approaches to, methodologies used, and findings of psychology and how that discipline informs our understanding of the legal system. Fittingly, many of the contributors were students or close professional associates of Larry. The chapters thus honor Larry's past contributions to the field, but they are also significant indicators of what current knowledge is and where the field is headed for the future.

The breadth of topics covered reflects Larry Wrightsman's expansive contributions and sets the stage for any scholar or would-be scholar in the field, as evidenced in Chap. 2. In Chap. 2, John (Jack) C. Brigham, himself a Ph.D. student of Stuart Cook (one of the signers to the amicus brief in *Brown*) and a colleague of Larry's for over 40 years, offers an overview of the contributions of Larry's work in the context of a growing discipline. *A Pioneer in Injecting Social–Psychological Knowledge into the Legal System* is how Brigham characterizes Larry's contributions. This chapter situates the influence of Larry's training on his subsequent research and writing career, with an insider's view of how a successful academic like Larry can expand theories and techniques learned in an established discipline

into a new field. Larry's early work in psychology and law issues helped to transform that field into a new, interdisciplinary field of study.

Laura Smalarz, Sarah M. Greathouse, Gary L. Wells, and Karen A. Newirth provide Chap. 3: *Psychological Science on Eyewitness Identification and the U.S. Supreme Court*: *Reconsiderations in Light of DNA Exonerations and the Science of Eyewitness Identification*. Eyewitness research has been at the forefront of psychology and law since the work of Münsterberg, and just over 100 years later, it is starting to have significant impacts on how the legal system (law enforcement, attorneys, and courts) interact with and evaluate eyewitnesses. Yet despite advances in many jurisdictions, the U.S. Supreme Court is, in many respects, behind the curve in paying attention to the issue (Wells & Quinlivan, 2009). In their chapter, Smalarz et al. review the issues surrounding the accuracy and meaning of eyewitness identification in light of the mounting evidence, from DNA exonerations, that eyewitness error is a leading cause of false convictions (Wells & Olson, 2003). They argue that the Court's current jurisprudence does little to suppress unreliable identifications or provide a disincentive for suggestive procedures. Their proposed solution is to eliminate suggestive procedures from the eyewitness identification process and ensure that courts and juries evaluating identification evidence have appropriate, scientifically supported tools to help them weigh that evidence appropriately.

Eyewitnesses are not, of course, the only type of witnesses to testify at trial. A leading scholar in the field of witness credibility, Stanley Brodsky, along with Ekaterina Pivovarova, examines the testimony of witnesses. Such testimony is a central component of the legal process. In depositions and trials alike, witnesses report what they have seen, have heard, or know related to the litigation issues. In the case of expert witnesses, the testimony extends further to the methods they have used, the results, the conclusions they have drawn, and the opinions that they have formulated from those conclusions. The Federal Rules of Evidence specify five bases on which individuals may be qualified as experts: knowledge, education, training, experience, and skills. Nevertheless, within the psychological study of witnesses, including expert witnesses, researchers do not focus on witnesses' qualifications (with the exception of competency concerns, especially regarding child witnesses or mentally impaired witnesses). Instead the emphasis is placed on how judges and jurors perceive witnesses.

A common approach to witness credibility is to investigate the relative contributions of central processing by jurors or judges of the probative content of testimony versus the peripheral processing of characteristics such as credentials or the manner in which the testimony is presented (Petty & Cacioppo, 1996). As Brodsky and Pivovarova describe, much of the contemporary research on peripheral processing and witness credibility has focused on the nonverbal behaviors, traits, and attitudes of effective and ineffective witnesses and the related jurors' characteristics that influence impression formation and legal decision making.

Brodsky and Pivovarova describe research from the Witness Research Lab, where the psychological meaning of witness behavior has been examined. The first goal has been the study of the effects of various witness behaviors, which have been methodically varied in videotapes of standardized scenarios. In the study of witness

behaviors, the chapter outlines the effects of race and gender of witnesses on credibility and meaning. Confidence and witness self-efficacy have been the focus of other studies.

Another important contribution by Brodsky has been the development of reliable and meaningful outcome measures for the study of witness behaviors and testimony. Here, Brodsky has made a lasting contribution in understanding the psychological experience of being a witness. This chapter serves, then, to introduce the empirical foundation for expert and lay witnesses who wish to improve credibility. More importantly, it serves as a foundation for future work on the meaning of being a witness and how the legal system treats and reacts to witnesses.

In Chap. 5, Saul Kassin provides a review of the theoretical underpinnings for false confessions and legal concerns. The latest research on the causal features involved with confessions is also reviewed. As indicated in the chapter's subtitle, *From Colonial Salem*, *through Central Park*, *and into the 21st Century*, false confessions are not a new phenomenon. From colonial times, and probably throughout history, in countries all over the world, many innocent people have confessed to crimes they did not commit in criminal justice, military, and corporate settings. Within psychology, Münsterberg wrote about "untrue confessions" in 1908, and the 1960s brought some interest in the issue with the work of Bem (1966) and Zimbardo (1967), who provided the first social psychological perspectives. Kassin and Wrightsman (1985) began to systematically examine the process of confessions and introduced a taxonomy with types of false confessions that served as a platform for current research. Since then, Kassin has published extensively on the issue of confessions and the features of confessions that will lead to inaccurate perceptions of guilt. In light of this background, and coupled with recent DNA exonerations which highlight the precariousness of confessions, this chapter reviews psychological research specifically aimed at three questions: Why do police often target innocent people for interrogation? Why do innocent people often confess as a result of that process? And why do prosecutors, judges, and juries invariably believe false confessions—resulting in wrongful convictions? This chapter, then, goes to the heart of a substantial feature of both criminal and civil law—the use of confessions to determine causality for behaviors that are illegal or harmful.

Before any jury trial begins in the USA, judges and attorneys evaluate venire persons (i.e., possible jurors) for signs that they may possess biases that would interfere with a juror's duty to evaluate the evidence fairly and make decisions that follow the law. Those jurors who are deemed biased may be excluded from the jury in a process known as jury selection. When social scientists began studying jury selection in the late 1970s, research focused on identifying predictors of jury verdicts and the development of measures to assess juror bias. Larry Wrightsman was at the forefront of this movement, developing the first scale of general juror bias (Kassin & Wrightsman, 1983). For decades, researchers have used the Juror Bias Scale and other measures of juror bias to predict juror verdicts. Only recently have researchers turned their attention to new questions about jury selection, including questions about how the process of collecting information from jurors (i.e., voir dire) might alter the responses obtained from potential jurors and the verdicts that seated jurors render.

In the chapter by Margaret Bull Kovera and Jacqueline Austin, the authors trace the history of jury selection research over the last three decades, drawing on the history of social psychological research on the attitude–behavior relationship. They also provide evidence from a new program of research that the behavior of both attorneys and jurors during the jury selection process makes the identification of juror bias more difficult, and they discuss the implications of this research for debates surrounding the continued use of peremptory challenges in jury selection.

Race has become a contentious issue within the law. *Race and its Place in the United States Legal System*, in Chap. 7, examines the conceptualization of race within the law and how such conceptualization has allowed race constructs to permeate legal reasoning and legal decision making. In this chapter, Cynthia Willis-Esqueda reviews the use of the social category of race within the law and the psychological place of race in the legal system. Race is not a biological human feature, but a socially created construct. Nevertheless, the construct of "race" was used in the earliest colonial experience in what would become the USA, and it continues to be used as an official designation of human groups. Thus, race carries psychological meaning in law and legal processes. It has been used to legally regulate nearly all aspects of social life (e.g., interpersonal relationships, public transportation, voting rights, citizenship rights, slavery, land acquisitions, housing, criminal sanctions, and employment). The importance of such meaning is evident in race bias that permeates each phase of the legal process today. For example, within criminal law, the USA leads the world in incarcerations (The Sentencing Project, 2014), and men of color are disproportionately the target of those incarcerations at local, state, and federal levels. In this chapter, the construction of race, slavery, and racial designations, colorism and the impact on legal issues, racial profiling, decision making, and sentencing are reviewed. The chapter examines methods to eliminate racial bias and provides recommendations to improve the minority experience within the legal system. The latter is particularly cogent, since people of color will be the majority population in the near future.

The modern field of psychology and law, which Larry Wrightsman helped to create, is, by definition, interdisciplinary. Chapter 8, by Brian H. Bornstein, addresses the question, "How interdisciplinary is interdisciplinary enough?" His conclusion is "the more the better." He argues that although interdisciplinary research has challenges and potential pitfalls as well as benefits, the benefits outweigh the drawbacks. The chapter begins with a discussion of the pros and cons of interdisciplinarity, followed by an application of these themes to research and training in law and social science. The chapter next considers the illustrative example of research on judging, one of the many topics on which Larry Wrightsman has conducted pioneering research (e.g., Wrightsman, 1999, 2006). The chapter concludes with recommendations for increasing interdisciplinary research and training opportunities in law and social science.

Psychologists have worked with attorneys since Münsterberg's day, but trial consulting as a profession did not become well established until roughly the 1970s (Posey & Wrightsman, 2005; Wiener & Bornstein, 2011). Since then, it has increased dramatically. As a graduate student of Larry Wrightsman, Amy Posey became

interested in the ways that social psychologists are involved in the trial process, particularly in trial consulting. Chapter 9, *From War Protestors to Corporate Litigants*: *The Evolution of the Profession of Trial Consulting*, provides a description of the trial consulting profession, especially focusing on its history and the primary activities of trial consultants. The chapter includes a critique of the profession, highlighting empirical and ethical concerns, and discusses the ways in which the profession has worked to address those concerns. Thus, in the trial consulting arena, Posey seeks to broaden the field of psychology and law to examine the ways in which the discipline can best serve the trial process.

Chapter 10, by Edie Greene and Kirk Heilbrun, provides the meaning of psychology and law scholarship as a part of undergraduate education. As authors of the eighth edition of Lawrence Wrightsman's popular textbook, *Psychology and the Legal System* (Greene & Heilbrun, 2013), Edie Greene and Kirk Heilbrun trace the history of undergraduate education in psychology and law and Wrightsman's influence thereon. They describe the organizing framework featured in every edition of *Psychology and the Legal System*, namely the broad psychological and philosophical issues that Wrightsman termed "dilemmas" at the intersection of the two fields. The chapter explores in depth two of these dilemmas: rights of individuals versus the common good, and equality versus discretion. In particular, they comment on the research, law, and policies relevant to those issues. In doing so, Greene and Heilbrun illustrate how the two disciplines of psychology and law have independently and jointly examined topics of broad societal concern and provided complementary perspectives on their resolution.

The last chapter in this volume comes from Larry Wrightsman. His comments are typical of the scholar and the man himself. He is humble, astute, and aware of the unfinished research that still engulfs the psychology and law field. His ability to see beyond psychological theories generated for one area of behavior and utilize those theories to understand and explain the behaviors that occur in the theorizing and practice of law is evident from his own description of his work. More importantly, Larry reminds scholars who study psychology and law (and any discipline) to focus on the source, in order to understand why behaviors occur and what can be done to transform them. In the end, Larry's approach to his scholarly work derives from the legacy of his own training in psychology. He reminds us that psychology is really a discipline to be given away (Lewin, 1946). Consequently, through his research, teaching, and numerous textbooks, Larry Wrightsman has given much to the field of psychology and law. Our greatest hope is that the present volume, and the future research it will stimulate, continues to give in his honor.

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Larry Wrightsman: A Pioneer in Injecting Social-Psychological Knowledge Into the Legal System

John C. Brigham

For over five decades, Lawrence S. Wrightsman has exemplified a remarkably productive *social problem*s orientation in applying social-psychological knowledge, theories, and research findings to important areas of American society. His contributions to psychology as a writer, a teacher, and a researcher, are vast. It is my great pleasure to begin this volume with a brief overview on Larry Wrightsman's life and work. Larry has been my good friend and mentor for more than 40 years, and I owe him a great debt of gratitude. The quotations that I use here are taken mostly from a short autobiographical statement that he wrote at the request of his students.

Larry Wrightsman was born on Halloween in Houston, Texas in 1931. His father was a petroleum engineer for a pipeline company in Texas and his mother taught high school English before their marriage. Larry was an only child and remembers playing with the neighborhood kids, riding bikes, and going to baseball games, but also being alone a lot, reading and enjoying his stamp collection. Larry went to public schools in an affluent part of Houston, completing his public school education at Lamar High School. In the early 1940s, he was the youngest child selected from the Houston area to compete in the "Quiz Kids" radio program out of Chicago. He was the only team member still in elementary school. The team performed in the Houston Coliseum and he did well, leading him to reflect much later that perhaps he "peaked" at age 10, and that "intellectually for me it was all downhill from there."

Wrightsman had planned to attend Rice University in Houston but at the last minute decided that it would be better to go away for college, so he entered Southern Methodist University in Dallas as a pre-business major. He chose SMU, he recalled later, mostly because he was a fan of the football team. He joined a fraternity and served as chapter president for a while, but was ousted because he would not permit a certain hazing activity during initiation week. He became editor of the University newspaper, the *SMU Campus*, and completed his B.A. in psychology, minoring in

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journalism, in 1953. He stayed at SMU and received his M.A. in psychology in 1954. After working for a short time as a newspaper reporter for the *Houston Post*, he decided to further his graduate education in psychology. He was interested in the measurement of intelligence and his advisor at SMU told him that the two best places were the University of Iowa and the University of Minnesota. He wanted to leave Texas, and since Minnesota was farther away from Texas than Iowa was, he applied to Minnesota. Minnesota was almost "a foreign experience" for him, not only because of the cold weather but also because of the Scandinavian names and accents. He had no idea that he had a "Texas accent" until he got to Minnesota and was told so in no uncertain terms.

Larry married Shirley Fish, a fellow graduate student, in 1955. During his second year in grad school, he enrolled in small graduate seminar taught by Stanley Schachter and, in his words, "I found him to be a stimulating and provocative teacher. He and I were very different—he was from New York City (and went back there every chance he got), he called me Yiddish names (which only later did I come to understand), and showered me with affection and aggression in almost the same breath." Wrightsman switched to social psychology and became a Schachter student, conducting his dissertation on the psychology of affiliation (Wrightsman, 1960). As he was finishing his dissertation he had job interviews at Duke (his first airplane flight), Dartmouth, and Indiana, but did not get a job offer. By May he was getting discouraged—his son Allan had been born that month and he did not yet have a job for the fall. But an interview at George Peabody College for Teachers in Nashville, TN came up, and he joined the faculty there in August of 1958. Although Peabody was a small school with an enrollment of only about 1800 students, it had 30 faculty members in psychology. The department chair, Nicholas Hobbs, was "truly one of the most impressive psychologists I have ever met … someone who encouraged his faculty to grow on their own." (Hobbs was also the first Director of Selection for the Peace Corps.) Wrightsman found the Peabody College psychology faculty to be a congenial group that shared a concern about studying social issues. He had no desire to continue Schachter's work because it involved the deception of subjects. Instead, he became interested in studying philosophies of human nature and constructed an attitude scale to measure these. From about 1962 to 1974 this was his primary research interest.

Given his social problems orientation, Wrightsman was interested in, and concerned about, the racial issues of the day. All of the schools that he had attended, even college, had been racially segregated, and it was not until he returned to the South after his Ph.D. in 1958 that he began to have any equal-status contact experiences with minority group members. During the 1960s, Wrightsman became the local coordinator in Nashville for the long-term "railroad game" research program directed by Stuart Cook, who was at the University of Colorado. Each iteration of the study involved a group of three female college students—an unprejudiced black woman, an unprejudiced white woman (both were confederates of the experimenter), and a highly prejudiced white woman (whose racial attitude had been measured earlier in a completely different setting under different sponsorship). The prejudiced white woman was the only true subject. There were two experimenters,

one black and one white. The "game" was described as a study of small group interactions sponsored by the military, and consisted of filling shipping orders as efficiently as possible, in a system involving 10 stations, 6 railroad lines, and 500 freight cars of 6 different types. The situation was designed to create equal status for the three participants—they trained, and were trained by, each other in the three roles that they would play. The black participant disconfirmed the negative stereotypes likely held by the subject, and the situation encouraged a mutually interdependent relationship that had a high "acquaintance potential," where the subject was given the opportunity to see the black confederate as an individual, not simply as an outgroup member. The social norms of the context situation, as expressed by the confederates and the experimenters, embodied group equality and tolerance. The women worked together in an equal-status environment for 2 hours a day, 5 days a week for 4 weeks, and were paid only after they had completed their 4-week stint.

When the subjects' racial attitudes were measured in a group setting several weeks after the game had ended (again in an entirely different location under different sponsorship), in 40–50 % of the cases the participants expressed significantly more positive racial attitudes on three separate racial attitude measures (Cook, 1969, 1984). Those who changed to this degree tended to have positive attitudes toward people in general, lower self-esteem, and a higher need for approval than those who did not (Cook & Wrightsman, 1967). This research program is, in my view, perhaps the pioneering research program studying the effects of equal-status contact on strongly held racial attitudes (Brigham, 2000). The program was aptly characterized by Smith (1994, p. 521) as "surely the most laborious and realistic laboratory study of attitude change ever attempted." The "railroad game" studies laid the foundation for the rise of research programs in the 1970s and 1980s, such as "jigsaw groups" and "cooperative learning groups," that utilized interracial contact situations as a means of reducing prejudice and racism.

During the 1968 presidential election, Wrightsman (1969) conducted a clever study that he entitled "Wallace supporters and adherence to 'law and order.'" In 1968, Davidson County TN passed a regulation requiring automobiles to display a tax sticker, to be purchased for a $15 fee. Wrightsman and his students canvassed over 1600 parked automobiles to assess whether each had the required sticker and also had a bumper sticker supporting Wallace, Nixon, or Humphrey for president, or had none. Although Wallace portrayed himself as the "law and order" candidate, cars bearing his bumper stickers were significantly *less* likely to have the required auto tax sticker, even when the age and the condition of the cars were controlled for: about 75 % of the Wallace cars had stickers, compared to about 87.5 % of the Nixon and Humphrey cars and 81 % of the controls. This study was often cited in the ensuing years in debates about the consistency (or inconsistency) between attitudes and behavior.

In the early 1970s, George Peabody College was absorbed by Vanderbilt University and Wrightsman decided to look for a change of scene. In 1976, he accepted a 5-year term as chair of the Psychology Department at the University of Kansas. Although he recalled that he found it a difficult job, in an atmosphere that

was "much more competitive" than Peabody had been, he remained a highly productive member of the KU faculty through his retirement in 2007.

Larry Wrightsman's contributions as a textbook writer in social psychology and in the field of psychology and law are legendary. In all, he has authored almost 50 books. It began in the late 1960s—while on sabbatical at the University of Hawaii, he was approached by Terri Hendrix, an editor at the new publishing firm of Brooks/Cole, to do a reader in social psychology. That book, *Contemporary Issues in Social Psychology* (Wrightsman, 1968), was the first of many that he was to publish with Brooks/Cole (which later became Wadsworth). A couple of years later, he invited me to co-edit the subsequent three editions of this reader, an invitation that I gratefully accepted (e.g., Brigham & Wrightsman, 1982). At the request of Brooks/Cole, Wrightsman revised an introductory psychology textbook written by the late Fillmore Sanford for several more editions (e.g., Wrightsman, Sigelman, & Sanford, 1979). He co-edited a book on mixed motive games (Wrightsman, O'Connor, & Baker, 1972) and in the same year published *Social Psychology in the Seventies*, a landmark social psychology textbook (Wrightsman, 1972). This textbook continued through six editions into the 1990s, with Kay Deaux and later Frank Dane joining him as coauthors (e.g., Deaux, Dane, & Wrightsman, 1993). In the 1970s, he also published a book summarizing his research on assumptions about human nature (Wrightsman, 1974; second edition in 1992), and volumes on personality development into adulthood (Wrightsman, 1988, 1994a, 1994b). He collaborated with Selltiz and Cook on the third edition of *Research Methods in Social Relations* (Selltiz, Wrightsman, & Cook, 1976) and co-edited volumes on measures of personality and social-psychological attitudes (Robinson, Shaver, & Wrightsman, 1991), measures of political attitudes (Robinson, Shaver, & Wrightsman, 1999), and measures of legal attitudes (Wrightsman, Batson, & Edkins, 2003).

In the 1980s, Larry Wrightsman turned his attention, and his prolific writing skills, to the analysis of how social-psychological knowledge could be applied to the legal system. He was a pioneer in the emergence of "psychology and law" as a vibrant subdiscipline. After he arrived at the University of Kansas, he began a research program on jury decision making. During his third year there, Saul Kassin arrived as a postdoctoral student and they became frequent collaborators for the next 30 years. After his term as chair ended, Wrightsman received a fellowship to spend the year at the KU law school, where he sat in on law classes and developed materials for an undergraduate class in psychology and law, which he began teaching 1982. This eventuated in the publication of *Psychology and the Legal System* (Wrightsman, 1987). This pioneering and influential textbook for psychology and law classes went through five editions with Wrightsman and his coauthors (e.g., Wrightsman, Greene, Nietzel, & Fortune, 2002). Two newer editions have been authored by Greene and Heilbrun (2010), entitled *Wrightsman's Psychology and the Legal System*.

In addition, Larry has written numerous other books that cover a wide spectrum of psychology-law issues, including the psychology of evidence and trial procedure (Kassin & Wrightsman, 1985); courtroom and jury issues (Kassin & Wrightsman, 1988; Wrightsman, Kassin, & Willis, 1987; Wrightsman, Willis, & Kassin, 1987);