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The benefits of legal psychology: Possibilities, practice and dilemmas

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The law is in some ways an obvious area where psychology could be of benefit. Many of the problems the law and legal procedures deal with are essentially psychological in nature. Law, like psychology, is fundamentally concerned with how people think, feel and behave; with the causes and modification of behaviour; and with the processes of perception, memory and decision theory. At the same time, law is a particularly difficult area for psychologists to tackle, not only for scientific, but also for ethical and political reasons. The role and functions of legal institutions such as juries and courts are by no means straightforward and the *prima facie* relevance of psychology can be deceptive. Moreover, even when psychology clearly has a relevant contribution to make, attempts to exert real influence on legal decisions or policy can be frustrating. A certain amount of scepticism on the part of lawyers is healthy. But the influence of psychology in legal contexts frequently has less to do with the quality of the psychology than with professional, political and organizational considerations.

Given the breadth of the field, this article is inevitably selective in the research and practice discussed. I shall not attempt to offer a comprehensive review of current work and its possible benefits. Rather, I aim to illustrate the range of topics, and the possibilities and difficulties in legal psychology using examples of recent research and attempts to influence legal decisions and legal policy. I first sketch briefly the growth of legal psychology.

The growth of legal psychology

The past 20 years have seen an extraordinary growth in both the volume and range of research on legal topics ranging from the reliability of eyewitnesses to the competence of children to consent to treatment. Explicit attempts to apply psychology both to individual legal cases and to broader policy issues have become much more frequent. The fact that psychology is applied does not necessary imply that it is of benefit: the benefits to law of some legal psychology have been dubious. But the field is rapidly becoming more sophisticated.

Early history

Recent developments in law and psychology are part of a wider intellectual and political movement. During the 1970s and 1980s there has been a marked increase in activity, not only in law and psychology, but throughout the field of social sciences and the law, including economics, sociology and anthropology. Developments

within the discipline of law itself have created an intellectual climate much more receptive to ideas from the social sciences. The Realist movement in the US in the 1920s and 1930s initiated a fundamental shift of focus away from 'law in books' to 'law in action' and an empirical rather than exclusively normative perspective. Leading American legal scholars such as Karl Llewellyn, John Henry Wigmore and John Maynard Hutchins explicitly recognized that questions they were centrally concerned with were psychological in nature (e.g. Hutchins, 1933; Llewellyn, 1931; Wigmore, 1913). Lawyers themselves became much more interested in empirical evidence about law in practice.

Research on the reliability of evidence, or 'witness psychology' has a history stretching back even further to the turn of the 20th century. A flurry of work began in Germany and later in the US, attempting to apply new discoveries about perception, memory, and physiological reactions associated with emotions, to the evaluation of witness reports. For discussion of early attempts to apply psychology to legal questions see Bersoff (1986), Loh (1981), Melton, Monahan & Saks (1987), Twining (1985).

Although legal scholars such as Wigmore and Hutchins opened the door 60 or 70 years ago to the application of psychology to legal questions about evidence, little of practical significance materialized for another 50 years. The invitation came too soon and was based on an overoptimistic view amongst lawyers of what could be expected of the social sciences, inevitably soon replaced by disappointment. Hutchins (1933) wrote for instance, '...the law of evidence is obviously full of assumptions about how people behave. We understood that the psychologist knew how people behave...' (pp. 43–44).

Recent developments

In 1966 a major study in social sciences and law, *The American Jury* (Kalven & Zeisel, 1966) marked the beginning of a period of rapid expansion. Tapp (1976) estimated that psychological articles related to law published in English language journals had risen from just over 100 in 1965 to thousands per year by the mid-1970s. The rate has risen dramatically during the 1980s. It is no longer unusual to find articles on legal topics in psychology journals. In 1977 the first issue of the specialist law and psychology journal *Law and Human Behavior* was published. Many other indicators of the growth of the field, especially in the US, could be given. They include the creation of the American Psychology Law Society in 1968; the Division of Criminological and Legal Psychology (DCLP) of The British Psychological Society in Britain in 1977, and Division 41 (Psychology and Law) of the American Psychology Association (APA) in 1981. Conferences and symposia on law and psychology topics have become regular. For example, the DCLP holds or sponsors two or three a year. Division 41 of the APA holds a biennial conference.

As well as research, undergraduate and postgraduate training in legal/forensic psychology is spreading. Monahan & Loftus (1982) report that a third of all graduate psychology departments in the United States now offer courses related to law. Several joint law/psychology programmes exist in the US (Grisso, Sales & Bayless, 1982). Ross & Sales (1985) report the results of a survey of legal/forensic

opportunities in clinical psychology training programmes in the US. The survey showed a high, and increasing proportion of sites offering some legal/forensic training – 77 per cent as compared with 55 per cent reported five years earlier by Levine, Wilson & Sales (1980). Developments are occurring more slowly in the UK, but there is a steady trend. A survey of undergraduate psychology departments in the UK, in 1986, revealed that 12 out off the 23 institutions responding offered courses in forensic/legal psychology (Hollin, personal communication). A complementary unpublished survey that I carried out of clinical and educational psychology courses found that all 16 clinical courses for which details were supplied included a forensic component, some very substantial. Fewer educational psychology courses did so (five out of nine); but all respondents felt that legal psychology ideally should be included. However, course tutors commented that a one-year course does not leave much time for new material to be added.

The range of law and psychology

The activity all the above indicators represent is taking place across a wide front. Virtually every area of psychology has some actual or potential practice relevance to law. Research in perception and memory has been applied to questions about the reliability of witnesses; research in decision making to a range of legal decisions including sentencing, parole and the granting of bail; child psychology to legal decisions involving children; and social psychology to the dynamics of juries, courtroom procedures, legal skills, and the questioning of witnesses and suspects. Clinical and educational psychologists regularly undertake court work (for reviews see Lloyd-Bostock, 1988, 1981; Monahan & Loftus, 1982).

The possible benefits to law take several forms. The most direct applications arise when psychologists explicitly contribute to a specific legal issue or problem. For example, they may contribute as experts in particular cases; teach legal skills; or actively attempt to influence policy making. As well as such explicit applications, psychological research can indirectly inform legal policy and legal decision making by providing a more sophisticated understanding of how aspects of the legal system work, or of substantive topics (for instance gambling or children's reactions to divorce) with which the law is concerned. I first describe and comment on some examples of the research; and then move on to discuss means of influencing law, and ethical and practical issues that recur in legal psychology.

Research in law and psychology

Several major areas of research in law and psychology have their own specialist literatures – eyewitness psychology; juries; children and the law; procedural justice; sentencing and others. Most of the published material is North American. Britain lags considerably behind the US and also Canada in the development of legal psychology. The field is dominated at present by research on the reliability of eyewitnesses.

Eyewitness research

Eyewitness research has yielded many findings of practical significance for legal processes. Nonetheless it must be said that the amount of attention devoted by psychologists to questions about eyewitness testimony is out of proportion to its legal significance. Saks was moved to entitle a recent editorial to *Law and Human Behaviour* 'The law does not live by eyewitness testimony alone', and to suggest that, worthwhile though eyewitness research is, psychologists might turn their attention to the many other possible legal topics. Law and psychology, he warns, is in danger of seeking to know 'more than anyone would want to ask about a narrow assortment of issues' (Saks, 1986). In contrast, topics in civil rather than criminal law have scarcely been touched. My own research on accident victims' perspectives on compensation is almost completely isolated (Lloyd-Bostock,1984*b*). I return below to some possible reasons for the narrowness of focus in legal psychology.

The earliest research on witness reliability, at the beginning of the 20th century, centred on the courtroom and the evaluation of evidence presented to the courts (Munsterburg, 1908). A certain amount of work is still directed at evaluating the evidence of courtroom witnesses (e.g. Loftus, 1979) and in the US several psychologists regularly act as experts on eyewitness reliability in individual cases. But today the research emphasis has moved to the process of gathering information prior to any court hearing, whether or not that information ever becomes evidence in a courtroom. In particular the identity parade has been the subject of much research (for example, Malpass & Devine, 1983; Shepherd, Ellis & Davies, 1982; Wells, 1988). Identikit, Photofit and related methods have also been researched (for example, Davies, 1983).

A particularly influential series of studies by Loftus and her colleagues examines the effects of suggestive or misleading questioning on the accuracy of later witness accounts (e.g. Loftus & Ketcham, 1983). Loftus claims that suggestive or misleading questioning can modify the memory trace itself in a direction consistent with the suggestion being made. Others have disputed this and there is some evidence to suggest that misleading information does not actually destroy correct information that has been encoded (Bekerian & Bowers, 1983). But the phenomenon itself is not disputed. Reports of what is remembered about events, especially peripheral details, can be altered by asking leading questions and conveying misleading information. In addition, the evidence is consistent that the confidence–accuracy relationship is broken down by repeated questioning (Shepherd *et al.*, 1982). The implications of research in this area for police questioning procedures and for evaluating the accounts of witnesses who have been questioned repeatedly or in a leading manner, are clearly far reaching.

An important line of related research is concerned with methods of maximizing the amount of accurate information elicited from witnesses while minimizing erroneous recollection. Geiselman, Fisher and others have developed the 'cognitive interview', applying basic principles of cognitive psychology to evolve methods of questioning that can be learnt and used by the police (Fisher & Geiselman, 1987; Fisher, Geiselman, Raymond, Jurkevich & Warhaftig, 1987; Geiselman, Fisher, Mackinnon & Holland, 1985). The 'cognitive interview' is still evolving, but a key element is

'context reinstatement', encouraging the witness to reconstruct mentally the circumstances of the event. Interviewers are also taught to allow a witness to exhaust what he or she has to say on a topic before switching to another and to avoid switches to and from episodic and semantic memory. After only a few hours of training a group of high school students in one study were able to obtain nearly twice as much accurate information from witnesses as had police of many years' experience in a comparable previous study. Across several studies the 'cognitive interview' elicited 25–35 per cent more correct information than did a standard police interview, without generating any more incorrect information (Fisher & Geiselman, 1988). Moreover, it appears that under normal circumstances (i.e. where there has been no shock amnesia) the cognitive interview yields at least as good results as does hypnosis in facilitating recall, yet does not heighten suggestibility (Fisher & Geiselman, 1988). The use of hypnosis for forensic purposes has been persuasively criticized as dangerously increasing the suggestibility and confidence of witnesses (Gibson, 1982; Orne, Soskis, Dinges & Orne, 1984).

The 'cognitive interview' is a good example of eyewitness research that has a clear and direct application, in this instance to police interviewing. A video training package in the technique is available that can be used by the police. Sanders (1986) conducted interviews with a representative sample of police in the state of New York about their experiences with eyewitnesses. It emerged that they would most value help on precisely this topic – methods of minimizing problems with recall. Recognition procedures (where several leading psychologists have devoted extensive research effort) were seen as comparatively unproblematic and infrequent. More general research on memory errors were seen as even less helpful to the police, who claimed to be well aware of eyewitness fallibility. However, non-psychologists consistently overestimate the extent to which research findings in this field merely reinforce common knowledge (Yarmey & Jones, 1983).

Interrogation and confession

In contrast with interviewing willing witnesses, where police receive little or no training, the techniques of interrogating suspects are extensively taught in the US. The problem is that the techniques are sometimes too 'effective', eliciting confessions and damaging statements from innocent but vulnerable or suggestible suspects. The Royal Commission on Criminal Procedure in 1980 drew the attention of psychologists in Britain to police interrogation procedures and the reliability of confessions (Irving, 1980; Irving & Hilgendorf, 1980). The research confirmed that a similar repertoire of techniques to those taught in the US are used in Britain. The Act following from the Royal Commission, *The Police and Criminal Evidence Act, 1984* came into force in January 1986, and Irving is currently conducting a repeat of his observational study of police interviews to see what effects implementation of the Act is having. The contribution of psychologists to the Royal Commission, and the Act itself and subsequent implementation are reviewed by Lloyd-Bostock & Shapland (1986).

Other continuing work stimulated by the Royal Commission is that by Gudjonsson on the suggestibility of suspects under interrogation (Gudjonsson, 1984; Gudjonsson

& Clark, 1986). Gudjonsson's suggestibility scale (the GSS) approaches suggestibility as an individual difference, in contrast with the experimental approach of Loftus and others, described above, which investigates the conditions under which eyewitnesses in general are susceptible to suggestion. The contrasting approaches are debated in Gudjonsson (1987); Gudjonsson & Clark (1986); Irving (1987); Schooler & Loftus (1986).

The courtroom

Along with eyewitness testimony, the jury has had more than its fair share of attention from psychologists. However, other aspects of courtroom processes have been researched, or, more questionably, speculated about on the basis of research in other contexts (for reviews see Bray & Kerr, 1982; Saks & Hastie, 1978). Topics include sentencing (Fitzmaurice & Pease, 1986; Konecni & Ebbesen, 1982; Pennington & Lloyd-Bostock, 1987); language in court (O'Barr, 1982) and the perceived fairness of different procedures (Lind & Tyler, 1988). While the emphasis has been overwhelmingly on criminal courts, civil courts have also received some attention – for example, the work of Vidmar on the small claims court (Vidmar, 1984) and McCoun on civil juries (McCoun, 1987). Work on perceptions of justice and fairness under different procedures spans a wide range of courts, both civil and criminal, and is a particularly promising area for future research (Lind & Tyler, 1988).

Much of the new growth in legal psychology during the 1960s and 1970s was in research directed at the jury. An unfortunately large slice of the experimental research on the jury during the 1970s had very low external validity. Mock jurors were too often students; the 'courtroom' an ordinary classroom; and the case a brief written summary. Some simulations investigated jurors' responses to events that simply would not occur in the courtroom. For example, civil procedures were confused with criminal (see Vidmar, 1979; Weiten & Diamond, 1979, for critiques). I return below to the question of external validity.

Hans & Vidmar (1986) provide an excellent up-to-date overview of jury research, concentrating on the US literature. But the practical difficulties of studying real juries remain formidable, especially in Britain. Juries are used less frequently in fewer types of case in Britain than in the US, and study of the jury has all but fizzled out on this side of the Atlantic.

Jury selection

Two lines of American jury research have had particular prominent practical impact in recent years. One is applications to jury selection. The essence of the method is a local study to identify the demographic and biographical charcteristics of people likely to be favourably disposed toward the client's side of the case. This information is then used to guide the rejection of potential jurors during the 'voire dire' which is a routine preliminary to every jury trial in the US. Potential jurors are questioned and attorneys may exercise a specified number of 'peremptory challenges', for which no reasons need be given. (In addition the court may reject jurors 'for cause'.)

Typically about six peremptory challenges are allowed but in trials for very serious crimes 12 or more may be allowed. Sometimes the demographic study is combined with a more detailed study of how potential jurors might react to particular items of evidence. The information is then used to plan how the case will be presented (for examples, see Hans & Vidmar, 1986).

Systematic jury selection and studies of potential jurors' reactions to evidence, have coincided with winning in a growing number of cases. However, there are grounds for remaining sceptical about some of the more extravagant claims made for jury selection. Systematic jury selection is most suited for cases where a juror's attitudes and beliefs are likely to dispose him or her strongly one way or the other, such as cases with political overtones. It will not help in every type of case. If the evidence is very strong or very weak no amount of jury selection will overcome that. At best the method can improve the probability of a favourable reaction to the case if there is a range of relevant attitudes and backgrounds among potential jurors. The term 'systematic' is probably more appropriate than the term 'scientific' jury selection (a description quite often used by its advocates).

'Death qualification'

A second line of work on juries that has immediate practical relevance is that on 'death qualified' juries. In the 27 states of the US where the death penalty is retained, it is routine practice to allow jurors to be eliminated from the jury if they would be unwilling to convict in a case where the death penalty is a possibility. As a result, juries in such cases are made up of people who claim to have no moral or religious objection to the death penalty. There is a considerable body of research data showing that such juries are likely to be conviction-prone (Ellsworth, 1985; Haney, 1980; 1984).

In the case of *Witherspoon v. Illinois* (1968) the Supreme Court ruled that the practice of excluding jurors who object in principle to the death penalty did not violate the defendant's constitutional rights. But the ruling was tentative and the Court left open the question of whether further research might establish that death qualified jurors are more disposed towards conviction. The case of *Lockhart v. McCree* (1986) opened up the issue again. McCree was convicted of murder in 1978 in Arkansas, by a death qualified jury. His appeal eventually reached the Supreme Court. Bersoff (1987) gives an account of the history and progress in the case. Psychological data were brought to bear in the case through the procedure of an *amicus curiae* brief. The use of the *amicus curiae* brief by the APA as a means of influencing judicial policy making is discussed by Tremper (1987). Participation in a case as an *amicus curiae* ('friend of the court') entitles an organization such as the APA to submit a brief addressing one or more points of law at issue in the case. The brief need not support one side or the other, but in this instance it did so. In the *Lockhart* case the brief, prepared by Donald Bersoff and David Ogden (APA, 1987; Bersoff, 1987) critically reviewed the research evidence on death qualified juries. It argued that death qualification violates defendants' rights. The brief also responded to attacks on social science evidence made in an *amicus curiae* brief submitted by 26 states in support of Arkansas.

The outcome of the case is interesting from several points of view. The Supreme

Court ruled against the defendant in a majority decision. But the majority held that, even if the social science data had shown that death qualified jurors were conviction prone, the constitution still would not prohibit the process of 'death qualifying' jurors in capital cases. In other words, no matter how clear cut the empirical psychological evidence had been, it would not have affected their judgement. Nonetheless, the majority also felt it necessary to set out what it saw as 'serious flaws' in the 15 studies cited in support of the defendant's case; picking off the studies one by one, and ignoring the fact that they all clearly point to the same conclusions.

The dissenting opinion accepted the APA view that the research evidence provided a 'solid empirical basis' for the defendant's case. Bersoff (1987) details the arguments of both the majority and the dissenting minority and comments:

> The way in which the Supreme Court used the social science data in *Lockhart* is not unexpected... Courts will cite psychological research when they believe it will enhance the elegance of their opinions but data are readily discarded when more traditional and legally acceptable bases for decision making are available (p. 57).

Bersoff concludes, however, that the submission of the APA's brief in this case has enhanced its credibility in court. The court was unable simply to ignore the social science data, and indeed a full 25 per cent of its opinion concentrated on the psychological evidence. The case also holds lessons for social scientists who might wish to contribute to future decisions. Although the case was not a victory for psychology in the sense of winning the case, the episode marks a step forward in psychologists' efforts to influence judicial policy making in the US.

Children and the law

Both in America and Britain psychologists have been increasingly involved in cases and legal issues concerning children (see Melton, in press). One major area is the effects of divorce on children and the implications for custody decisions (e.g. Richards, 1986; Wallerstein & Kelly, 1980). Another is the child as witness. Both in Britain and in America the plight of child victims as witnesses has caused public concern. Research on the reliability of children as witnesses and on the emotional effects on children of appearing in court has found a comparatively ready audience among policy makers (see the edited collections by Davies & Drinkwater, 1988; Goodman, 1984).

It is interesting to set reforms and proposals for reform in this area against the attempts of psychologists in the US to influence judicial policy making over death qualification. While research on death qualified juries provides grounds for strong empirical claims, research on child witnesses leaves many questions open. The political climate and public concern have nonetheless ensured that while it is extremely difficult to affect policy on death qualification, where child witnesses are concerned many reforms have occurred in the US during the 1980s, and a series of rapid reforms seem to be within grasp in Britain. The Criminal Justice Bill (on its way through parliament at the time of writing) contains a proposal to allow children to give live evidence by closed circuit television, in order to reduce the trauma of a court appearance. An amendment has been set down proposing the use of videos of early

interviews with children in criminal cases (at present excluded by hearsay rules). The Home Secretary has also announced that the government will move an amendment to abolish the rule prohibiting conviction on the uncorrobated and unsworn evidence of a child citing psychological evidence in support of the proposal.

These are reforms that most psychologists working on child witnesses would welcome, but most would say that much more research is needed. For example, if videotapes of early interviews are to be admitted as evidence, methods of conducting interviews with a view to the tapes, eventually becoming evidence in a criminal case will need to be developed. At present many such interviews are conduced in a leading manner for therapeutic reasons to enable a child to overcome difficulties in telling the story.

Work by Jones (1987) provides promising evidence that early interviews can serve both legal and therapeutic goals. Jones (1987) presents a case history in which videotaped interviews with a three-year-old child, including early interviews soon after the event in question, were allowed as a substitute for the child herself appearing in a Colorado court. Had this procedure not been allowed, it is most unlikely that the case would have been brought at all with such a young child. The child had been kidnapped, sexually assaulted and abandoned to die in a cesspit. By chance she survived and was rescued. She was able to give a full and accurate account of her ordeal, and to identify the man involved. Jones (who was the child's psychiatrist) shows how with care an early interview can be conducted so as to provide the basis for therapeutic work and also serve as later evidence in a court case. For example, anatomically correct dolls were kept out of the child's sight for the first part of the interview, avoiding unnecessary suggestion. Jones also comments that in an interview conducted six months later the child was not as spontaneous and not able to provide as much detail, confirming the value of recording early interviews. The case also confirms that a child as young as three can provide full and accurate information. In Britain conviction would not have been possible in these circumstances.

Jones & McQuiston (1986) have prepared a short guide on interviewing sexually abused children, but there is need for much more work if videotaped interviews are to become widely accepted as evidence. More research is also needed on the suggestibility and reliability of children as witnesses, and the effects of court appearances. A major study of the emotional effects of giving evidence is under way in Denver (Goodman *et al.*, 1988). More specific research questions are raised by the reforms proposed or already introduced. Research is needed for example to examine how well a child communicates with the court via a video link. Research on videophones and video-conferencing has found that providing visual as well as auditory information can be detrimental rather than enabling communication (Short, Williams & Christie, 1976). While the court may wish to see the child, there may be no need for the child to see the person asking the questions.

External validity of research in legal psychology

The central methodological issue in legal psychology is that of external validity, especially of laboratory simulations. The inevitable trade-off in research methods

between internal and external validity in turn involves questions of theory and the goals of the research in question. For a variety of reasons, internal validity has been too readily emphasized over external in legal psychology.

The main reason is that much of the research (eyewitness research and jury research are examples) derives from theoretical interests within psychology rather than from questions specifically about law and legal processes; and is geared towards publication in recognized psychology journals. Its primary audience is often other psychologists. It is therefore judged rigorously in terms of internal validity and the advancement of psychological theory, but less rigorously in terms of its external validity and practical usefulness.

Monahan & Loftus (1982) point out that the prominence that ought to be given to concern with external validity depends on the goals of the research. But they imply that external validity becomes an issue only when the research claims to be of practical use. They write:

> ...to the extent the research proffers applied 'implications' it legitimately is subject to scrutiny on the grounds of external validity. To the extent the research emphasizes theoretical integrity, it legitimately is subject to scrutiny on the grounds of internal validity (p. 462–3).

To the extent research aims to offer *any* insights or claims to tell us *anything* beyond the immediate research context, it is subject to scrutiny of external validity. It is hard to envisage research in legal psychology that has no such aims.

It would be counterproductive to demand high external validity for every study in legal psychology. A single piece of research on its own rarely provides the basis for practical conclusions. Research with low external validity can be valuable – indeed essential – as part of a programme of applied research. But it is legitimate to demand that researchers should be clear about the purposes of a study and what inferences can and cannot be drawn from it. Monahan & Loftus cite an example used by Bray & Kerr (1979) of research on the carcinogenic effects of saccharin on the rat bladder. As they rightly point out, such research can be of great value in forwarding our knowledge of the effects of saccharin on the human bladder, by guiding further research, alerting us to possible risks, and so on. As they suggest, research on mock jurors can relate similarly to actual juries. But it is not usual to present research on the rat bladder as research on the 'mock human' bladder.

Several studies in legal psychology have demonstrated that the external validity of even quite realistic-seeming simulations cannot be taken for granted. Konecni & Ebbesen (1979), for example, used multiple methods to study bail setting and sentencing. Their work on sentencing involved six data-collection methods – interviews with judges; questionnaires to judges; rating scales for judges, students and attorneys; simulations using judges, probation officers and students; observation and coding of sentencing hearings; and analysis of archival material in the court files. Their results showed that a very different picture of the factors affecting sentencing decisions would be reached by each of these methods, casting doubt on the external validity of simulation research even when judges are used as subjects.

In the eyewitness research area, it is now widely accepted that research settings need to be as realistic as possible, and some very realistic 'staged events' have been devised (Malpass & Devine, 1983). The problem of external validity has generally

been approached by starting with the laboratory and moving on to test how far results hold up in more realistic settings and in 'real life'. O'Barr's (1982) research on language in court reverses this sequence. The research began with an extended period of observation and recording of actual court proceedings, which provided the foundations for a later, experimental stage. But even staged events and experiments based on observation still require a leap to be made to the real thing. Yuille & Cutshall (1986) were able to take advantage of a real crime to see how far findings from experimental research were borne out. Twenty-one witnesses to an actual shooting were interviewed by the police, and 13 of them later took part in interviews for Yuille & Cutshall's research. The researchers found, for example, that the level of witnesses' accuracy was higher than the eyewitness research literature had led them to predict. It is worth emphasizing that, although Yuille & Cutshall's study challenges some findings obtained in less realistic settings, the study could not have been conducted in a coherent way at all without the existence of theory developed through previous largely laboratory research. It contrasts greatly with early attempts to study eyewitness reports in the 1900s, when researchers used realistic simulations, but could do little more with the results than describe a series of intriguing findings. Yuille & Cutshall's study illustrates well the value of using a combination of methods in tackling applied and 'real world' research.

The problems of capturing the 'real world' in an experimental, or at least reasonably methodological rigorous setting are now well recognized in legal psychology. But where legal questions are concerned, the 'real world' itself can be rather elusive. Friedman wrote of the law and society movement:

> it uses scientific method; its theories are in principle scientific theories; but what it studies is a loose, wriggling, changing subject matter, shot through and through with normative ideas (Friedman, 1986, p. 766).

As well as external validity, psychologists need to pay more attention to the problem of defining just what are the practical legal questions to which psychology might provide answers.

Defining applied problems in legal psychology

I have already suggested that psychologists have focused their attention rather narrowly within the potential range of legal topics. This tendency is linked to a more general problem in the field. Compared with other applied areas, legal psychology is particularly vulnerable to biased or narrow definitions of research questions. It is especially vulnerable when the practical problems researched are defined as much by psychologists as by lawyers, and from an angle commensurate with theoretical interests within psychology. If narrowness of focus and bias are to be avoided in psychological approaches to law, it is important to extend the basis of research to include lawyers', sociologists', and others' perspectives on legal phenomena, and definitions of practical 'problems'.

The problem is also partly one of failure to recognize some of the assumptions on which the research is proceeding. As members of the society whose legal system they are studying, psychologists inevitably have preconceptions about the nature and

functions of law and may approach psychology and law research on this basis. It may *seem* clear enough what juries, identification parades, courts, and so on are there for, but this can be deceptive. Greer (1971) suggested, for example, that one reason why attempts to apply eyewitness research had on the whole not been welcomed by lawyers was that psychologists had worked with a limited view of legal objectives – for instance, failing to grasp the fundamental point that establishing the truth is not the only, or perhaps even the main, goal of the criminal trial. Twining (1983) shows how psychologists have sometimes fallen into the trap of adopting uncritically only one of a number of competing perspectives on law, taken legal rhetoric too much at face value, and placed the courts and jury trials too much at the centre of the stage.

A fundamental difficulty for psychologists defining applied problems in this area is that there are alternative viewpoints amongst lawyers about how such problems ought to be defined. Academic and practising lawyers may have very different perspectives. There are differing traditions within legal scholarship which imply different roles for the psychologist; and legal sources (such as the *Devlin Report* and various texts on evidence) that have been influential in directing the attention of psychologists to particular issues, are themselves the products of particular trends and bodies of legal thought. But psychologists have tended to proceed as if the legal questions and problems to which they have directed their attention are reasonably clear, and that there would be broad agreement amongst lawyers on how these questions ought to be defined.

Twining (1983) shows the dangers in such assumptions. He contrasts two general approaches to the study of law – the 'expository tradition' and the 'contextual approach' – and examines how far biases generally associated with the former, much narrower approach are to be found in the legal and psychological literature on identification. In particular, he suggests that psychological research on witness reliability has been dominated by a view of the problem as primarily one of *admissible evidence* in the legal sense, which may ultimately be presented in court and used towards a decision on guilt, probably by a jury. This perspective is compatible with the much narrower legal tradition he outlines.

Adopting an approach closer to the contextual approach would mean that at least some of the questions psychologists have been investigating could be cast in a quite different form, while other, quite new questions would be raised. For instance, Twining (1983) suggests that much eyewitness research has proceeded as if the identification parade were solely an evidence-generating advice, leading to a contested trial. But the parade has multiple functions, and may, for example, at least as often serve the purpose of persuading a guilty suspect that the game is up and he or she might as well plead guilty – so that the need to introduce and assess identification evidence at the trial does not arise.

Moreover, studies of the identification parade generally implicitly assume that the only evil of misidentification is wrongful conviction. A great deal of research has therefore been devoted to possible ways of modifying parade procedures so as to maximize true identifications while also minimizing false positives. It is assumed that a parade on which an innocent suspect is not identified may be regarded as satisfactory. However, such a parade may have had extremely undesirable consequences. The

suspect may have suffered a great deal from 'misidentification' before being eliminated as a suspect following an identification parade. Many who suffer in this way probably never even take part in a parade at all. Yet researchers have proceeded as if the identification (or lack of identification) of major concern is that which takes place at the parade. What is more, the scale of the problem of misidentifications which do not result in a prosecution nor even in an identification parade, let alone wrongful convictions, may be far greater than the problem of wrongful conviction. It may, for example, cause as much harassment to innocent persons as did the notorious 'sus' laws. As Twining points out, no one really knows the scale of the problem because, despite the volume of literature, legal as well as psychological, on the topic, no one has done the necessary demographic work.

Influencing decisions and policy

The channels whereby psychology influences legal decisions and legal policy range from specific contributions in particular cases to the general diffusion of psychological ideas to decision makers and policy makers. For whatever reason, psychologists in the US, and to a degree Canada, have been more actively concerned than British psychologists to increase their influence upon the law (see, for example, Melton, 1987; Monahan & Loftus, 1982). With few dissenting voices (e.g. McCloskey & Egeth, 1983), there is a great confidence that psychology can contribute usefully in legal contexts and, indeed, owes it to society to do so. Melton, for example, writes, 'Although it is growing, the influence of psychology on the legal system is less than it should be' (Melton, 1987, p. 493); and that efforts to disseminate psychology to legal decision makers are 'consonant with psychologists' individual and collective ethical responsibility to promote human welfare' (p. 494).

Individual cases

Simply in terms of the numbers of psychologists concerned, psychology's contribution to individual cases is by far the largest practical input of the social sciences to law in practice. The reports of educational psychologists to the juvenile courts in Britain alone involve hundreds of psychologists. Moreover the work is growing. A recent survey by The British Psychological Society (Gudjonsson, 1985) showed a considerable increase in the frequency with which psychologists act as experts in the UK. Most of the work is done by clinical or educational psychologists as part of their NHS or local education authority employment. In the BPS survey over 92 per cent of psychologists who had given evidence in person in a court or tribunal were either educational or clinical psychologists. But an increasing proportion of the work is private.

In the US not only are there many more psychologists acting as experts, but also the range of issues on which they contribute is much wider. The kinds of questions on which psychologists give expert evidence are limited by what the courts will accept. At one time psychologists in Britain gave evidence in obscenity cases, for example. In theory psychologists could still act in prosecutions under the Obscene Publications Act (1959) and in Scotland they still do from time to time. But in

practice such work has virtually ceased in England following court decisions in the 1970s. In Britain the reliability of eyewitness testimony is also still regarded as a matter for the jury and ordinary common sense, and not for experts. In the US, in contrast, psychologists have given expert evidence on this issue with increasing frequency following Arizona and California Supreme Court decisions in 1983 and 1984 to overturn murder convictions in part because the trial court had excluded expert testimony on eyewitness identification (*State v. Chapple*, 1983; *People v. McDonald*, 1984).

Despite the restrictions imposed by the courts, there is a great and growing variety of questions on which psychologists in Britain and elsewhere do provide expert evidence. In criminal cases the questions are likely to concern the sanity, competency or dangerousness of an accused person (Haward, 1981*b*; Monahan & Loftus, 1982). A large slice of clinical psychologists' forensic work is in civil cases, especially in compensation cases where the victim has suffered a head injury. More controversially, some clinical psychologists also perform polygraph tests or forensic hypnosis, or give opinions on the reliability of statements made by suspects (see Gale, 1988; Gudjonsson & Haward, 1983; Haward, 1981*a*). A substantial amount of related clinical research (e.g. on the treatment of sex offenders) is carried out (e.g. Hollin & Howells, 1986).

Educational psychologists in England usually come into the juvenile court system as agents of their local social services departments in both civil and criminal cases. The emphasis in an educational psychologist's assessment is usually on intellectual ability, achievement and educational prospects. Standardized tests are almost invariably used, although as Moss & Sutton (1981) have shown, the recommendations made by the psychologist may bear no obvious relationship to the test results reported. Sometimes occupational psychologists become involved as expert in discrimination cases or provide information to clinical psychologists on employability and future earnings, which is embodied in the clinical psychologist's report to the court. Other specific matters on which psychologists have given expert opinions after carrying out special studies include whether two trade marks are likely to be confused by customers (Loftus, 1986) and whether a man operating a particular machine under time pressure would 'automatically' try to use both hands so that the machine guard should protect both (Haward, 1981*b*).

Dilemmas in the role of expert

In the great majority of legal cases where psychologists are involved no problems become apparent. But there are underlying tensions and pitfalls, and psychologists themselves are not always happy about the role of expert in legal cases. It is worth stressing that lawyers too face often similar dilemmas, especially within an adversarial system.

One recurring ethical dilemma for psychologists who see clients in a clinical therapeutic setting is the question, 'Who is the client?' Professional ethics place responsibility on the psychologist to protect the interest of the patient. But when a psychologist has been engaged by a lawyer, he or she in a sense has two clients – the lawyer and the patient. Their interests may well conflict. What should the

psychologist do if, for example, a suspect confesses to a crime but asks the psychologist not to tell anyone? As Haward (1981*a*) points out, the setting in which a clinical interview takes place is very conducive to this kind of confidence. Again, the interests of law and the client may conflict when forensic hypnosis is conducted to lift amnesia (Haward 1981*a*).

A second pervasive dilemma is the ethics of taking sides. A conference on ethical issues in expert testimony held at John Hopkins University in 1983 debated the question 'should the psychologist seek to act as an advocate or impartial educator?' (McCloskey, Egeth & McKenna, 1986). The image of the psychologist as impartial educator is certainly the one more in sympathy with most psychologists' ethical position and self-image. Unfortunately, where involvement in individual cases is concerned it is a role that is unlikely to be wanted or permitted by lawyers who engage psychologists to appear for one side or the other. Loftus (1986) describes, for example, how the questions asked of an expert witness naturally tend to be selective and may omit to elicit relevant, but unfavourable facts. She further illustrates the dilemma of taking sides when discussing her involvement in a case involving the confusibility of bank logos. Her results showed minimal confusion over the relevant logos. However, she points out that she could have designed a different study. She could have chosen to allow a much shorter time for studying the logos, or a much longer time between seeing the logos and trying to pick the one seen before. These procedures would undoubtedly have produced more errors and more confusion in general; and perhaps more confusion of the critical logos. As she writes, 'The ability to "control" the outcome of special purpose experiments presents a dilemma for the researcher' (Loftus, 1986, p. 70).

The ethics of taking sides is closely tied to the issue of how clear cut are the psychologists' findings and how definite he or she can therefore be in the opinion given. It can be extremely difficult for a clinical psychologist to provide a definite view on someone's mental state and capabilities; or to predict their future behaviour. If the issue is not clear cut, it is more likely that other points of view are possible, and the roles of impartial educator and of advocate are more likely to diverge.

There are good reasons for psychologists to tread carefully when applying the theories and research findings of psychology to specific legal cases. Again, the issue of external validity arises. Most psychological research is carried out in laboratory settings, and is not designed to answer applied questions, especially questions relating to a specific case. It is perhaps not surprising that anxiety should arise over whether psychology may be oversold in legal contexts, and that psychologists, in offering 'scientific' opinions may exceed what psychology can actually deliver. A significant undercurrent is the fact that psychologists may be paid for court appearances. In Britain fees may not be charged for work carried out within NHS or LEA employment but the distinction between such work and private work is not always clear. Buckhout (1986) remarked on an underlying resentment at the John Hopkins conference over payment and extended George Miller's often-quoted call to 'give psychology away...for reasonable fees and expenses' (p. 140).

In practice, in Britain at least, it is not so often a question of psychologists enthusiastically offering opinions as being pressed to express one. Clinical and educational psychologists rarely seek out work in connection with the courts, and

often perform it somewhat reluctantly. The work is mostly mundane, and can be a frustrating and disappointing experience. As psychologists gain more experience of acting as experts, and become familiar with the realities of the courts, they tend to become increasingly cynical about the role they are actually being asked to play. The metaphor of the circus recurs in discussion of psychologists as experts. Like psychiatrists, they are still viewed as 'trick cyclists' in certain quarters of the legal profession (Clapham, 1981). They were portrayed on the Broadway stage as a travelling circus in the Oz trial. Judge Bazelon warned psychologists to consider whether their help and advice are really needed, or whether they are merely engaged as an intriguing side show to distract attention from the crisis in the centre of the ring (Tapp & Levine, 1977).

Parker (1987) describes how psychological evidence in juvenile courts (usually in written reports) is used in a cursory and selective way. It is quite likely to be ignored altogether by the magistrates. When it does affect their decisions it is likely to be in ways unintended by the psychologists. In juvenile court cases, the psychologist contributes not as an independent witness, so much as one among several professionals, and his or her contribution is orchestrated by others. One could not expect psychologists to be enthusiastic about such involvement in lower court cases.

In higher courts the enthusiasm of some is dampened by the experience of appearing as a witness, and especially the experience of being cross-examined. Cross-examining lawyers interested in demolishing the psychologist's evidence may use all kinds of tactics to discredit the expert personally, and may seize on the mere possibility of error in the evidence. Any psychologist would have to agree that psychological diagnosis and prediction, and the generalization of research findings, are to some degree uncertain. Tunstall, Gudjonsson, Eysenck & Haward (1982) depressingly illustrate the frustration of giving evidence based on test data. They write, for example:

> The prosecuting counsel made use of a long series of fantastic anecdotes to demonstrate, falsely and illogically, the uselessness of the tests, and the trial judge himself followed suit. For example, he asked one witness whether, if a Fellow of the Royal Society obtained the same score on the test as X the FRS would also be considered subnormal. When the witness agreed, with qualifications, that he would, the judge remarked to the jury that they would know what to think of a test which described a Fellow of the Royal Society as subnormal (Tunstall *et al.*, 1982, p. 331).

The treatment psychologists and psychiatrists are sometimes exposed to in the witness box can come as a shock to the unprepared. (The treatment of psychiatrists at the hands of lawyers in the Sutcliffe case caused bitter resentment in the psychiatric community.) There is growing recognition among professional bodies, such as the Division of Clinical Psychology and the Division of Educational Psychology of The British Psychological Society, that psychologists need to be prepared during their training for work involving them as experts (see above and Carson, 1984; 1987). This, combined with their increasing experience, should make them tougher targets in the witness box.

Influencing policy

The advice of psychologists is quite often sought by (or offered to) lawyers over matters of legal policy rather than individual cases. Research findings can usually more readily be applied to questions of policy than to particular cases. A special study or clinical investigation is usually required if psychology is to make a valid contribution in individual cases.

In Britain psychologists have contributed to several Royal Commissions and Committees of Investigation, and their contribution is often published as part of the official inquiry reports. For example, Irving conducted a study of police interviewing for the 1980 Royal Commission on Criminal Procedure (Irving, 1980). Psychologists at the Medical Research Council Applied Psychology Unit in Cambridge carried out studies for the Fraud Trials Committee chaired by Lord Roskill (Roskill, 1986). The British Psychological Society (BPS) may prepare evidence (as it did to the Butler Committee on the mentally abnormal offender (BPS, 1973) or statements on issues such as the use of the polygraph (BPS, 1986). Whether these contributions make an impact, and whether it is the impact intended is another question (see, for example, Irving, 1985).

The American Psychological Association (APA) has assumed a more active role than the BPS in ensuring that psychology's voice is heard on relevant policy issues. In 1979 an *ad hoc* committee on legal issues (COLI) was established. The committee was recently described by its chair (Pat DeLeon) as the APA's '"think tank" on legal matters' (Monitor, 1987). A central task of the committee has been to examine proposals for APA *amicus curiae* briefs in strategic legal cases (Tremper, 1987; see above). The Committee aims also to build awareness among psychologists of how legislative and judicial processes work.

The English legal system differs in important ways from the US, making different approaches appropriate. It is harder for psychologists to influence judicial policy making. The *amicus curiae* brief has a different, much narrower use in Britain; and the range of issues on which psychologists can act as experts is more limited. The BPS Parliamentary Group is one potential channel for psychologists to take the initiative in influencing legal policy. There is no advantage in throwing psychology at every likely looking policy issue to come along. The BPS could adopt a stronger role in both encouraging and filtering attempts to influence law.

Influencing the teaching of law

Influencing the teaching of law has not proved easy. Legal psychology has had to fight for respectability within both law and psychology. The law and society movement in American law schools got under way 50–60 years ago. Donald Slesinger, the first psychologist to be appointed to a law faculty, joined the Yale law faculty in 1927. But the social sciences remain marginal in most law faculties and departments. Melton *et al.* (1987) note the growing number of psychologists being appointed to US law schools in recent years (including themselves), and cite figures to show that over 200 professors at nearly 100 law schools list themselves as teachers of 'law and social science'. A major book of cases and materials is now available for

teaching legal psychology to US law students and is selling well (Monahan & Walker, 1985). But psychologists in law schools are still a rarity. Friedman (1986) is anyway sceptical that too much significance should be attached to such signs of progress. He writes of the social sciences (making an exception of economics)

> To be sure they have a foot, or at least a toe, in the door of some law schools. Prestigious law schools offer courses in sociology, history or philosophy; or in psychology or anthropology of law. But everyone knows these are elegant frills, like thick rugs in the dean's office; they have nothing to do with 'real' legal education (Friedman, 1986, p. 777).

At least in the US psychologists have a toe hold in law schools. To my knowledge, there are no psychologists in any law departments in Britain.

Psychology's possible input to law teaching includes legal skills training (see Lloyd-Bostock, 1988). At present this input remains largely potential rather than actual. The relevant bodies have resisted suggestions that training in the skills of interviewing, negotiating and drafting legal documents is both possible and desirable. Again, the US, and also Canada, Australia and other Commonwealth countries have been more active than Britain.

Such skills courses as are available in Britain are usually planned and run by lawyers, not psychologists, e.g. at Warwick University, and at Kingston Polytechnic. The best non-technical, practical interviewing book for English lawyers was written by a lawyer (Sherr, 1986). At a workshop in 1986 on professional legal skills at Nottingham University, principally organized by a psychologist (Karl Mackie), psychologists were conspicuous by their absence, despite extensive mailings and advertising in psychological journals and newsletters. Recognition is now growing among the legal profession that more skills teaching should be provided for practising lawyers, and there is potentially a clear role for psychology in these developments.

Disseminating legal psychology

Clearly if psychology is to have influence, the main priority is to reach the relevant audience. Impact is impossible if nobody hears the message. Melton (1987) makes several practical suggestions about how to reach legal decision makers. He notes, for example, that juvenile judges and court workers report reading *Psychology Today* much more frequently than major law reviews, and that most trial judges report seldom reading professional literature at all (Grisso & Melton, in press); but that publication in major law reviews is important when judges or lawyers are seeking information about a particular topic.

New York police in Sander's (1986) study, referred to above, were unaware of the psychological literature on eyewitnesses. That is not surprising since the overwhelming bulk of it is published in psychology journals aimed at a peer group of psychologists. There is a strange paradox in much of the eyewitness literature, and in legal psychology more generally. On the one hand, it claims the merit of being useful, applied research. On the other, the questions researched are to a large extent defined without reference to those who might find the work useful and the results published where those who might be able to use them will not read them. The point should not be exaggerated (see, for example, work on the cognitive interview

described above). But to a large extent the psychological literature on eyewitness testimony has become self-generating. New research grows out of previous research. Legal psychology, in common with other applied areas, has been too much geared to colleagues within psychology (cf. Lloyd-Bostock, 1984*a*, Melton, 1987).

A less direct route than publication whereby psychology influences law is by influencing ordinary thinking, partly through the media and popular writing. The 'scientific' explanations of psychology do not remain the property of psychology, but filter through to become part of common-sense understandings. For instance, the influence of Freud on popular thinking is profound. Sometimes applied psychologists complain that after a while their suggestions come to seem so obvious to the people they are advising that they no longer get any credit for the them, but instead are told that psychology has nothing to add to common sense.

Often rather distorted versions of psychological ideas become current – the popular meanings of 'extravert', 'schizophrenic' or 'inferiority complex' are examples. More relevant here, we see theories rejected, refined or superseded within psychology surviving for much longer in received common-sense wisdom and influencing legal discussion and decisions. For example, psychoanalytic thinking, and in particular the notion of the 'psychological parent' continues to have a powerful effect on child custody decisions (Richards, 1986). If psychologists urge lawyers to act on plausible theories and advice, and these theories and advice subsequently turn out to need revision, it may be difficult to backtrack and undo their influence (cf. Lloyd-Bostock & Clifford, 1983).

Conclusion

This article is concerned with the 'benefits' of psychology, and I have concentrated on legal psychology as an overtly applied enterprise. The focus has been the practical impact of psychology on law, rather than the study of legal phenomena for their inherent theoretical psychological interest. A sharp distinction is sometimes drawn between social science *in* law and social science *of* law. Friedman (1986), for example, views social science *in* law as peripheral to the law and society movement, just as forensic medicine is peripheral to the sociology of medicine. The distinction usually carries an evaluative meaning. Social science *in* law works within a framework defined by law, serving legally defined ends. Social science *of* law is its own master. Perhaps for this reason Monahan & Loftus (1982) characterize research in the field of legal psychology as the psychology *of* law. There is also an implication that social science of law is ethically less dubious than social science in law. Psychology of law offers insights rather than solutions to practical legal problems. Its practical value is more diffuse: legal decisions and legal policy may benefit from relevant psychological insights into legal processes.

Where psychology is concerned, the difference is more one of emphasis in the goals of research than a clear dichotomy. Legal psychology is a wide and diverse field held together by shared interests in understanding and perhaps influencing law, legal decisions and legal policy. The step from 'understanding' to 'influencing' is often blurred. But Friedman's distinction highlights a fundamental question. If psychology is to be of practical use to law, who more precisely is it supposed to benefit? Once

again who is the client? Lawyers? police? defendents? children? society? Psychology *in* law at least confronts the question. Like it or not, and however they characterize their work, psychologists who work on legal topics enter a sphere of societal and personal values. As psychologists increase their influence on law, legal decisions and legal policy, ethical questions loom larger. Research and practice in legal psychology frequently raises questions of legal ethics, as well as ethical dilemmas within psychology.

Several trends are coming together which indicate that legal psychology *will* increase in influence, in the US in particular. As I have discussed, expertise at influencing cases and policy making is being built up. The rather narrow focus of research in legal psychology is broadening, and methodological issues are being confronted. Contact between lawyers and psychologists and joint training is also growing. As legal psychology becomes established in its own right it is becoming less constrained by the traditions of the discipline of experimental psychology. As a result psychologists are beginning to shift the emphasis of their concerns towards greater external validity and practical relevance, and are becoming more aware of the wider context of their work as part of the multidisciplinary field of social sciences and law, rather than simply a branch of applied psychology.

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