

Oklahoma Law Review

Volume 34 | Number 1

1-1-1981

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Recommended Citation

David L. Woodward, *Book Review: Eyewitness Testimony, by Elizabeth F. Loftus*, 34 OKLA. L. REV. 205 (1981),
<https://digitalcommons.law.ou.edu/olr/vol34/iss1/48>

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BOOK REVIEW

Eyewitness Testimony. By ELIZABETH F. LOFTUS. Cambridge, Mass., London, England: Harvard University Press, 1979. Pp. 253. US \$15.00

There is a dearth of practical legal literature on the vast knowledge available in the social, behavioral, and physical sciences for use in the trial and appeal of cases, and a general refusal on the part of the bench and bar to treat the law other than as a closed system based on Victorian concepts and traditional methodology as noted by Graham Parker of Osgoode Hall.¹ Apparently because of some ungrounded fear, the bench generally refuses to accept methods of proof or legal analyses that are untraditional or are scientific in approach. A general review of the rules of evidence, with particular attention to the dependence on the memory of the witness, unassisted in most instances, requires an examination of the nature and mechanisms of memory itself.

Professor Elizabeth F. Loftus is particularly qualified to write in this regard. Her field is psychology; she was educated at the University of California at Los Angeles and Stanford University. She has authored and coauthored six books in the areas of learning, memory, psychology, and statistics in addition to *Eyewitness Testimony*. She has participated in the writing of more than one hundred learned articles for professional journals, and she has lectured internationally at colleges and universities and before professional legal organizations, in addition to those in other disciplines.

The book itself is organized into eleven chapters dealing, *inter alia*, with mistaken identification, impact of eyewitness testimony, the psychological theory involved with memory itself, common beliefs (and myths) about eyewitness testimony, and the application of the whole to the legal system. Unlike the ivory tower behaviorist, she has not included the plethora of unintelligible statistics and unfathomable charts, but, in layman's terms (from the point of view of a psychologist), has combined her findings with those of others in a style comprehensible to the casual reader yet adequately authoritative for unquestioned citation.

As an example, Loftus teaches us that in the acquisition stage of memory what is stored is affected by exposure time, that is, the actual length of time the incident consumes; detail salience, that is, not only the principal and obvious sub-events that occurred but also peripheral details; the type of fact observed, that is, some facts, by their very nature, are easier to perceive and recall; the degree of violence involved in the event. Further affecting memory are what she calls "witness factors" such as stress and the expectations of the witness, both from past experience and personal prejudices and temporary biases.

¹ Parker, *Criminal Law—Mens Rea—General Principles—Intoxication as a defense*. 55 CANADIAN B. REV. 691 (1977).

With reference to the second example, she asserts that additional problems are involved in recognizing people, including the notoriously difficult problems of cross-racial identification ("all Orientals look alike"); unconscious transference, the situation that exists when one has seen a particular person casually or as a bystander and unconsciously substitutes the identification of that person for the actual culprit; and photo-spreads and lineups, including detecting unfair lineups and the photo-biased lineup.

Extrinsic influences on memory are examined: newspaper articles, discussions, resolutions between "data-gathering" at the time of the episode and conflicting later-learned "facts" (accurate or otherwise), methods of questioning used at the scene and later.

Having appeared as an expert witness, she appreciates the problems of legal proof and relevancy of the subject matter. Her demonstrated understanding of police lineup/showup procedures and the infirmities sought to be cured by *United States v. Wade*,² *Gilbert v. California*,³ and *Stovall v. Denno*,⁴ are unusual for a nonlawyer and perceptive in analysis.

She has done her research well, not only in her discipline but also in the law. She has found and reports with favor Lord Devlin's report⁵ on in-court identification, which proposes directed verdicts of acquittal in cases of uncorroborated identification and special cautionary instructions when corroboration exists—a conclusion to which one will come when faced with the scientific arguments propounded.

The book is applicable not only to criminal law; its application is equally useful in the realm of civil trial practice.

Professor John Kaplan of Stanford, in his foreword to the book, has crystallized the issues presented:

Professor Loftus is undeniably right in suggesting that we are much too cavalier about eyewitness testimony. . . . [A]s the judges admit more material that might influence juries' decisions, they are becoming increasingly aware of the need to supervise more closely the sufficiency of the evidence, not only in formal terms, but as a practical psychological matter as well.

Read the book! It will change your attitude by making you aware of the shortcomings and pitfalls of eyewitness testimony and the improper regard in which it traditionally has been held.

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² 388 U.S. 218 (1967).

³ 388 U.S. 263 (1967).

⁴ 388 U.S. 293 (1967).

⁵ Devlin, Honourable Lord Patrick (chairman). Report to the secretary of state for the home department of the departmental committee on evidence of identification in criminal cases. London: Her Majesty's Stationery Office, 1976.