

VIRGINIA LAW REVIEW

VOLUME 97

OCTOBER 2011

NUMBER 6

TRIBUTE

LARRY WALKER: AN INTELLECTUAL PIONEER

*Paul G. Mahoney**

IT is hard to picture Larry Walker in retirement. He looks not a day older than when I arrived in Charlottesville twenty-one years ago and remains an energetic and enthusiastic teacher, scholar, and participant in the intellectual life of the Law School. I think of Larry in much the way I do our colleague Glen Robinson—regardless of his chronological age, he is always intellectually in his prime.

Larry is a native of South Carolina who gradually worked his way north to Virginia. He graduated from Davidson College in 1959 and from Duke Law School in 1963. After law school, he served in the Army, practiced law in Atlanta, and served as counsel to the Senate Judiciary Committee. He then received an S.J.D. degree from Harvard to prepare for an academic career, which he began at the University of North Carolina Law School.

Larry taught Civil Procedure among other things, and like many teachers of that subject, routinely explained the logic behind procedural rules with reference to widely shared assumptions about human behavior and psychology. But he found himself wondering *why* lawyers took those assumptions to be true.

That led him to seek out John Thibaut, a social psychologist at UNC whose research focused on perceptions of fairness. They set

* Dean, David and Mary Harrison Distinguished Professor, and Arnold H. Leon Professor, University of Virginia School of Law. This tribute is based on remarks at Professor Walker's retirement ceremony in May 2011.

out together to study the fairness of legal procedures—not from the standpoint of moral theory or intuition but as perceived by the parties to a legal dispute. In doing so, Larry can fairly be called one of the pioneers in the use of experimental methods in law.

Theirs was interdisciplinary research at its finest, making important contributions both to law and psychology. At that time, research on perceptions of fairness in psychology focused almost entirely on the distribution of resources. Thibaut and Walker opened a rich vein of research by turning attention to subjects' perception of the fairness of the *procedure* by which a distribution was determined. Their research was part of a revolution in social psychology that affected not only thinking about law, but about business and public policy, among other things.

The work was no less revolutionary in the legal academy. In the 1970s, law and social science meant law and economics, and law and economics meant the application of microtheory to the analysis of legal rules. Thibaut and Walker's work, by contrast, drew on psychology and used empirical methods to test theory instead of using theory to explain doctrine.

One of their early experiments involved the resolution of a simulated dispute between experimental subjects.¹ They compared two dispute-resolution procedures, one adversarial in the style of Anglo-American litigation and one inquisitorial in the style of continental European adjudication. They found that subjects perceived the adversarial system, which gives the parties themselves more control over the evidence and arguments presented, as more fair than the inquisitorial system. Later work found that experimental subjects were more likely to conclude that the substantive outcome of litigation was fair if they had first concluded that the procedure was fair.²

Larry visited here and, fortunately for Virginia, accepted an offer to join our faculty in 1978. Shortly after his arrival, the Law School became the first American law school to hire a non-lawyer

¹ See John Thibaut & Laurens Walker, *Procedural Justice: A Psychological Analysis* (1975) (summarizing several articles that reported the findings of a series of Thibaut and Walker's laboratory experiments comparing "adversarial" and "inquisitorial" procedures).

² See Laurens Walker, E. Allan Lind & John Thibaut, *The Relation Between Procedural and Distributive Justice*, 65 Va. L. Rev. 1401 (1979).

psychologist as a full-time member of the faculty. John Monahan's hire was a testament to the Law School's strong emphasis on interdisciplinary study. It also gave Larry the opportunity to continue collaborating with an outstanding psychologist. Thus began a long and productive partnership that has produced some of the most influential and thoughtful scholarship on law and social science methods ever written, a collaboration that Larry has identified as the highlight of his professional career.

John and Larry's first project was a casebook, *Social Science in Law*, the first of its kind, published in 1985 and still widely in use today in its 6th edition.³ The casebook project forced them to think broadly and systematically about the use of social science research in legal disputes. John and Larry concluded that social science was used in litigation for three basic purposes. The first two were not novel: social science methods could be used to establish case-specific facts. Empirical results and theory from the social sciences could be used as a source of authority that could inform doctrine. The third, however, was novel; they noted that social science research is often used as a "framework," as they put it, to guide the court in determining facts. For example, research into the accuracy of visual memory can help a factfinder decide how much weight to assign to an eyewitness's testimony about a perpetrator's height or clothing. This taxonomy of the use of social science research shaped John and Larry's research agenda for several years and produced a series of articles that to this day inform the use of social science in litigation.⁴ They then turned to a number of discrete problems of social science methodology within law.⁵

To his faculty colleagues, Larry's infectious good humor and openness have been as important as his intellectual contributions. Larry's boisterous, exuberant laugh communicates uninhibited

³ John Monahan & Laurens Walker, *Social Science in Law: Cases and Materials* (6th ed. 2006).

⁴ See, e.g., *United States v. Hessling*, 845 F.2d 617, 621 n.1 (6th Cir. 1988); *Tuli v. Brigham & Women's Hosp.*, 592 F. Supp. 2d 208, 210 n.2 (D. Mass. 2009).

⁵ See John Monahan & Laurens Walker, *A Judges' Guide to Using Social Science*, 43 *Ct. Rev.* 156 (2007); John Monahan, Laurens Walker & Gregory Mitchell, *The Limits of Social Framework Evidence*, 8 *Law, Probability & Risk* 307 (2009); Laurens Walker & John Monahan, *Sampling Evidence at the Crossroads*, 80 *S. Cal. L. Rev.* 969 (2007); Laurens Walker & John Monahan, *Scientific Authority: The Breast Implant Litigation and Beyond*, 86 *Va. L. Rev.* 801 (2000).

pleasure and has rung frequently through these halls for the past thirty-three years. He is a wonderful friend as well as a wonderful colleague. He and his wife Sharon have been a delightful presence at the Law School and we all hope to have the benefit of their friendship for many years to come.