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25 Years of Eyewitness Science.....Finally Pays Off

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When I stumbled into psychology and law research back in the mid 1970s as an outgrowth of my basic memory research, hardly any psychologists were working in that area. A psychology professor at Brooklyn College, Bob Buckhout, was doing the odd study here and there on eyewitness testimony, mostly describing them in his own in-house journal called *Social Action and the Law*. I remember one fascinating piece from those early years entitled “Nearly 2,000 Witnesses Can be Wrong.” It described a finding of an unusual study in which a TV station staged a mugging for the nightly news. The announcer showed a lineup of six men and viewers called in to register their choice as to which person was the criminal. Only 14% were correct, not very different from chance. Although not well known today, Buckhout’s role in launching an interest in eyewitness research was important, and for posterity it is ably recounted in attorney James Doyle’s (2005) wonderful history called “True Witness.”

By 1988, when APS was born, there were a number of serious researchers doing far more sophisticated studies and publishing them in the major psychology journals (e.g., Cutler, Penrod, & Martens, 1987; Wells & Turtle, 1986). By then, I and my collaborators had published scores of studies, and I had testified on the science of eyewitness testimony in over 100 trials. But psychologists were also frequently not permitted as experts on this topic. Judges ruled that the expert testimony on memory would invade the province of the jury. That is, it is up to the jury to decide whether a particular witness was in a position to see and to faithfully remember what was being claimed. Another concern from judges was that the proposed testimony was common knowledge to the jury and was therefore not a proper subject matter for expert testimony.

Early on, the eyewitness research was embraced primarily by criminal defense attorneys who knew the perils of trying a case that included prosecution eyewitness evidence along the lines of “that’s the man, I’ll never forget that face as long as I live.” But the work was largely ignored or dismissed by prosecutors, many courts, and legislatures. The mid 1980s did see one important event

(for the field and for me personally) involving a criminal case decided by the Arizona Supreme Court (*State of Arizona v. Chapple*, 1983). Dolan Chapple had been convicted of murder based largely on the eyewitness evidence of two individuals who had identified Chapple’s photograph more than a year after the murder. The defense had tried to introduce expert testimony on eyewitness issues but the judge refused to admit it claiming that the proffered testimony was all within the common experience of jurors. The Supreme Court reversed the criminal conviction because an eyewitness expert had been excluded. Over the next two decades, a string of other higher courts would similarly reverse criminal convictions on this basis. And a smattering of trial courts clearly reacted more favorably to this type of expert opinion. For example, *People of New York v Jeffrey Williams* (2006) dealt with a case of robbery in which the defendant sought to introduce expert testimony regarding a number of issues, such as double-blind lineups, confidence malleability, and cross-racial identification. The court ruled that the testimony was grounded in scientific research that was generally accepted by the relevant scientific community. Moreover, it was likely to benefit jurors by providing them with “a better perspective and significant information beyond their common knowledge and experience.”

But the biggest boost to public appreciation of eyewitness research came as a result of progress in forensic DNA testing. It was DNA that helped exonerate many wrongfully convicted individuals in the mid 1990s, and today over 300 innocent people owe their freedom to that testing (Innocence Project, 2013). These cases taught us that faulty eyewitness testimony was a major factor in wrongful convictions, present in roughly three quarters of those cases (see Garrett, 2011). It was getting nearly impossible for law enforcement and the legal community to ignore these wrongful convictions. U.S. Attorney

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General Janet Reno convened a group of legal professionals and eyewitness scientists to produce a guide for law enforcement on handling of eyewitness evidence (Technical Working Group for Eyewitness Accuracy, 1999); a training manual followed a few years later. These documents included science-based recommendations for effectively collecting eyewitness evidence, such as guidance on the instructions given to the witness and on how the identification “tests” ought to be constructed.

But wait, there’s more. Because so many previous courts had ruled that eyewitness experts were inadmissible on the basis of such evidence being a matter of common sense, the experts responded with a new line of research. This research was not about the factors that affect the accuracy of eyewitness testimony, but rather about whether people in general and jurors in particular are knowledgeable about those factors. Many such studies have now been published. For example, in a survey of over 1,000 citizens in Washington, DC, we showed that potential jurors frequently hold beliefs that are contradicted by science. For example, many respondents believe that a cross-racial identification would be just as reliable or even more reliable than a same-race identification (Schmechel, O’Toole, Easterly, & Loftus, 2006). Appreciating the problem that poorly informed jurors are holding the fate of identified defendants in their hands, the New Jersey Supreme Court proposed an innovative solution (*State v. Henderson*, 2011). The court ruled that if a defendant in a New Jersey criminal case can show some evidence of suggestiveness to a witness (e.g., by the police at a lineup), the defendant is entitled to a hearing during which all the factors that might have tainted the eyewitness evidence are explored. If the judge still decides to admit the eyewitness evidence, it must be accompanied by explicit juror instructions that provide specific guidance on how to evaluate the eyewitness evidence.

So over the 25-year lifetime of APS, we see a success story. Today, expert testimony has an easier time being

admitted. Courts are more favorably commenting on our science. This slow-to-start, but exponentially growing, collaboration between psychologists, legal professionals, and others has done a great deal to change the justice landscape for people accused of crimes (Stebly & Loftus, 2013). Who could ask for a more rewarding payoff for decades of cumulative work?

Declaration of Conflicting Interests

The author declared no conflicts of interest with respect to the authorship or the publication of this article.

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