Comment

Eyewitness Identification and the Local Psychologist

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The quartet of articles on eyewitness identification by McCloskey and Egeth, and Loftus (May 1983) represents an excellent example of the ability of the American Psychologist to provide a forum for the discussion of topical issues in the discipline. The broader and perhaps central issue addressed, however, concerned the relative reticence that psychologists should display when asked to serve as an expert witness. This issue is of concern to both experimental psychologists and practicing clinicians.

As a "local psychologist," I occasionally experience the situation that Loftus describes in which an attorney calls asking me to testify on some psychological aspect of a civil or criminal case. F. Lee Bailey, I am sure, would not hesitate to call upon McCloskey, Egeth, or Loftus when he needs a psychological expert. Local attorneys, however, especially in rural areas, tend to call on their local mental health center psychologist, local private practicing psychologist, or possibly a psychologist from the state university. The reasons they do so usually involve cost and the lack of knowledge as to whom the nationally acclaimed expert psychologists are. Local attorneys also allege that rural jurors often see the testimony of a local "good doctor" as more credible to the jury than that of an outsider who is not a member of the community.

Be that as it may, most of the local psychologists I know agree that their first task when receiving such calls is to determine what specific questions the referring attorney wants answered. Many attorneys are general legal practitioners and have little experience in using expert psychological testimony. The psychologist must, therefore, first identify the information needed. Next, the psychologist has to determine if psychology, the science and/or the practice, can provide the information needed. If so, the psychologist then has to make a realistic appraisal of his or her own professional ability to provide the information. Somewhere in this process, the psychologist also has to determine if the benefits (fees paid, personal satisfaction, moral obligations to society and the profession, etc.) outweigh the drawbacks (time commitments, hostile cross-examination, possible embarrassment to the individual or the profession, etc.) to the extent that he or she is willing to become involved.

McCloskey and Egeth focus on the ability of psychology the science to provide needed information regarding perception and memory in eyewitnesses. They suggest that such ability is certainly questionable if based on current empirical findings. Loftus, on the other hand, thinks more of the empirical evidence but, notwithstanding, sees the moral obligation to the innocent, mistakenly accused defendant as outweighing any lack of empirical certitude. And so, we have a classic academic standoff in which both opinions cannot, but either might be, correct.

Where does this leave the local psychologist, who, in reality, will continue to receive the vast majority of attorneys' referrals? Presumably, each of us will try to become familiar with the research in the area of eyewitness identification. Then we will each have to decide if the data are convincing enough for us to take a stand on the stand.

One of the better tales told around our courthouse concerns a case tried by one of the more pompous but less experienced members of the local bar. He was trying to impeach a prosecution witness who had testified to having seen the defendant commit the crime. After establishing that the incident occurred late at night, at some distance, in an area where there were no street lights, the defense counsel demanded, "Then tell the jury, just how far can you see in the dark?" The witness, a simple country fellow, paused for a moment and then replied, "Well, I can see the moon. How far is that?" As you might have guessed, the jury found the defendant guilty.

REFERENCES


Do the Eyes Have It? More on Expert Eyewitness Testimony

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McCloskey and Egeth (May 1983) argued against psychologists giving expert testimony on eyewitness matters. I also have developed a thesis of skepticism (Wells, 1978), but the foundations of some of McCloskey and Egeth's ar-
Arguments are misleading. Two major points are especially in need of clarification.

McCloskey and Egeth (1983) argue that there is little evidence that "the ratio of conviction of the innocent to conviction of the guilty is acceptably high" (p. 552). Throughout their article they argue outcome considerations with no apparent concern for process. The legal system, unlike much of the theorizing in psychology, makes a sharp distinction between process and outcome. Consider a hypothetical situation in which results from the voice stress indicator, a proven unreliable "lie detector," are used to convict a guilty defendant. Should we be satisfied because the outcome (convicting a guilty person) is valid? Should we be concerned because the process (reliance on the unreliable machine) is faulty? McCloskey and Egeth would have us believe that there is no problem here because the outcome was valid. Although we usually are concerned about process because of its implications for outcome, the legal system demands due process (as in the Fourteenth Amendment to the U.S. Constitution). It may strike some as an anomaly that an improved process in this case (i.e., discrediting the probative value of the voice stress indicator) harms the outcome (i.e., would yield acquittal of the guilty defendant). It should surprise no one, however, that process and outcome can be at odds in the justice system, such as when fabricated evidence (faulty process) is used to convict a guilty person (valid outcome). Contrary to Egeth and McCloskey's assumptions, if there is something wrong with the process by which jurors evaluate eyewitness evidence, there is justification for change regardless of whether the false conviction frequency is low or high.

Is there something wrong with the process by which jurors evaluate eyewitness testimony? The fact that "briefed" eyewitnesses produce more convictions than do eyewitnesses who are not briefed seems evidence enough (see Wells, Ferguson, & Lindsay, 1981), but McCloskey and Egeth focus instead on the "overbelief" issue, citing studies by Lindsay, Wells, and Rumpel (1981) and Wells, Lindsay, and Tousignant (1980). In the Lindsay et al. study, for example, eyewitnesses viewed a staged theft under good, moderate, or poor witnessing conditions, yielding accurate identifications of the thief from a photo array in 74%, 50%, and 33% of the cases, respectively. The eyewitnesses were then cross-examined, and subject-jurors had the task of deciding whether or not to believe the eyewitnesses. Belief rates for the good, moderate, and poor witnessing conditions were 77%, 66%, and 62%, respectively, indicating that belief of eyewitnesses exceeds eyewitness accuracy rates and that the slope of accuracy across conditions is steeper than the slope of belief rates across conditions.

Is this evidence of overbelief? McCloskey and Egeth (1983) argue that it is not overbelief:

The finding that the percentage of jurors believing a witness was higher than the percentage of witnesses who were accurate does not necessarily imply that jurors overestimated the probability that the witness was accurate. . . . A simple example serves to make this point. Consider a situation in which 90% of witnesses make an identification. If jurors accurately estimate the probability that a witness was accurate at .9, all jurors will probably make believe decisions, and the juror belief rate (100%) will exceed the witness accuracy rate. (p. 533)

On the surface their argument appears convincing because whenever the base rate for a dichotomous variable is over 50%, one should always guess that the most probable event will occur. The problem, of course, is that these studies included conditions in which the witness accuracy rate was 33%. Applying McCloskey and Egeth's logic would lead us to expect underbelief in those conditions. Specifically, if jurors accurately estimate the probability that a witness was accurate at .33, all jurors should make not-believe decisions. The results, of course, show the opposite; overbelief was most apparent in low witness-accuracy conditions wherein accuracy was only 33% but the belief rate was 62%. The current evidence on overbelief may not be definitive, but it was dismissed inappropriately in this case by focusing on only half of the design.

Finally, it should be noted that McCloskey and Egeth have attacked the weakest link between eyewitness research and legal application. System variable research, which investigates controllable variables that can improve eyewitness accuracy (e.g., variations in lineup structure), is grounded firmly in a defensible logic of application. It would be unfortunate if the more justifiable system variable applications of eyewitness research were lost in the expert testimony debate.

REFERENCES


Process and Outcome Considerations in Juror Evaluation of Eyewitness Testimony

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Wells’s (this issue) comments on process and outcome suffer from a confusion between the outcome of an individual trial and the outcome of trials in the aggregate. Wells uses outcome in the former sense; our discussion of juror overbelief in eyewitnesses was concerned with outcome in the latter sense (i.e., with the balance of convictions of the guilty and convictions of the innocent).

Wells suggests that we would be quite satisfied with the use of evidence that has no probative value (i.e., no bearing on the question of guilt or innocence) to convict a guilty defendant. In fact, we would find the use of such evidence highly inappropriate. Regardless of its effect in an individual trial, its overall effect would be negative. If a type of evidence that has no probative value is admitted and accepted by juries as indication of guilt, this evidence will contribute as much