Expert Psychological Testimony

Empirical and Conceptual Analyses of Effects

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Experimental psychologists increasingly are asked to give expert testimony in court, especially with regard to issues of eyewitness reliability. Whether or not experimental psychologists should give expert testimony on these matters is a controversial issue. The empirical literature suggests that potential jurors do not have a good understanding of the variables influencing eyewitness accuracy and that they cannot discriminate adequately between accurate and false eyewitness identification testimony. Experiments using expert testimony as a treatment variable, however, have not made a definitive case that expert testimony can benefit trial outcomes. The question of whether or not to give expert testimony must be broadened to consider not only the effects on verdicts but also the effects of expert testimony on the process by which verdicts are reached, the practices of police in subsequent investigations, the public's view of psychology, the practices of judges in subsequent cases, and the interaction between expert testimony and research activities.

INTRODUCTION

What responsibility has the psychologist to know and take account of the likely effects of expert testimony on the jury? This question, if approached superficially, has an obvious answer: A psychologist should attempt to assess the likely effects of his or her testimony and take appropriate account of that knowledge in deciding whether or not and how to give expert testimony. However, simple questions are often deceiving and the current question is no exception.

Complexities in the question arise at several levels. First, it is often overlooked that we not only have a responsibility to consider the effects of giving expert testimony, but also we must consider the potential effects of not giving expert testimony. The latter, i.e., not giving expert testimony, has received little attention. This is probably due to the fact that we usually think of not giving expert testimony as a "nonevent" or a control condition. In fact, however, the

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decision of a psychologist to not give expert testimony is an event; it is an event over which we have some control and it is an event that has consequences. In a sense, it is arbitrary to label expert testimony as the "event" to which we must be held accountable; we must also be held accountable for any untoward effects of our default decisions to refuse expert advice to the courts.

Complexities arise also when we consider what is meant precisely by the term "effects." That is, when we speak of the effects of expert testimony we need to specify the various domains in which effects can occur. Too often we are prone to think of the effects of expert testimony in a restricted fashion; when the issue is discussed we usually refer to effects on the jury without considering other possible effects. Should we not also consider the possible effects that expert testimony can have on future trials? Expert testimony on eyewitness evidence also could have effects on the methods by which police investigators subsequently go about the process of interrogating eyewitnesses or how they structure lineups. Even when we restrict our focus to the effects of expert testimony on the jury in a specific case, we must define what we mean by effects. Do we mean to focus only on deliberated verdicts or should we also concern ourselves with the process by which jurors reach verdicts as a function of expert testimony?

Finally, the issue is made complex by the fact that our current knowledge (as well as what we can expect to learn in the future) about the effects of expert testimony is limited. That is, there are certain questions about the effects of expert testimony that are difficult if not functionally impossible to answer in an empirical, definitive way. Because of this practical reality, there arises the question as to how much empirical evidence on the effects of expert testimony is sufficient to justify or prohibit the use of expert testimony by psychologists.

This article is divided into two sections. The first gives a brief overview of some empirical studies that have been directed at the question of what effects expert testimony (on eyewitness issues) has on jurors. Although the empirical studies have some merit, they also raise numerous questions. The second section is not empirical, but instead proposes a framework within which to consider the effects of expert testimony. The framework proposes several domains in which to consider the effects of expert testimony.

**EMPIRICAL STUDIES**

There have been a few attempts to test empirically the effects of expert testimony on the issue of eyewitness evidence. Elizabeth Loftus (1980) presented 360 people with a brief written summary of an actual assault case. Half of these people received expert testimony about factors affecting the accuracy of eyewitness identifications. Compared to those who did not receive expert testimony, recipients of expert testimony were less likely to convict the defendant and spent significantly more time discussing the eyewitness testimony during deliberations. Loftus' (1980) study helps make salient the difficulties of the expert testimony issue. Are these effects (i.e., fewer convictions and more time spent discussing
eyewitness factors during deliberation) positive effects or negative effects? This issue is discussed in more detail later.

A study by Harmon Hosch and colleagues (Hosch, Beck, & McIntyre, 1980) produced results similar to those obtained by Loftus (1980) on measures of the amount of time spent discussing eyewitness evidence during deliberation. In addition, Hosch et al. found that expert testimony on eyewitness matters served to increase the amount of time that deliberators spent discussing other relevant, noneyewitness evidence. Expert testimony was not shown to affect verdicts; however, verdicts were subject to floor effects in the Hosch et al. study (i.e., all juries acquitted the defendant). Once again it is not clear whether these effects of expert testimony are desirable or undesirable. One person, for example, could argue that the Loftus study and the Hosch et al. study indicate the “damage” done by expert testimony in that it increases the difficulty of convicting those who obviously are guilty. Another person could argue that people are overly willing to believe eyewitness evidence and, therefore, the expert testimony had a desirable effect. Clearly there is a need to develop a criterion that is definable operationally on which to base conclusions about whether or not some effect of expert testimony is desirable.

One attempt to develop a paradigm in which a criterion exists for examining the effects of expert testimony is a study by Wells, Lindsay, & Tousignant (1980). Specifically, Wells et al. staged thefts for 108 unsuspecting eyewitnesses, obtained identifications of the thief from a photo lineup, and cross-examined the eyewitnesses. The thefts were staged under poor, moderate, or good witnessing conditions and yielded 33%, 50%, and 74% accurate identifications, respectively, among those making an identification. From each of these conditions eight eyewitnesses who accurately identified the thief and eight eyewitnesses who falsely identified an innocent person had their cross-examinations videotaped and presented to subject-jurors. The subject jurors’ task was to determine whether the eyewitness had accurately identified the thief or whether the eyewitness had falsely identified an innocent person. Previous studies (Lindsay, Wells, & Rumpel, 1981; Wells, Lindsay, & Ferguson, 1979) suggest strongly that subject-jurors functionally are incapable of performing above chance at this task. [These studies show that subject-jurors are slightly more likely to believe eyewitnesses in the good witnessing conditions than in the moderate or poor witnessing conditions. However, they cannot distinguish between accurate and inaccurate witnesses within conditions.] The purpose of the Wells et al. (1980) study was to see if the subject-jurors’ performance in separating accurate from false eyewitness identification testimony could be improved by giving subject-jurors expert testimony.

The Wells et al. (1980) study indicated that expert testimony did not significantly improve subject-jurors performance in distinguishing accurate from false eyewitness identification testimony. The principal effect of expert testimony in this study was one of decreasing the subject-jurors’ willingness to believe the eyewitness identification testimony; the expert-testimony recipients believed eyewitnesses 41.5% of the time, the control subject-jurors believed eyewitnesses 61.5% of the time, and eyewitnesses actually were accurate 50% of the time.
Thus, there was no evidence for *improvement* or better judgment on the part of eyewitnesses as a function of expert testimony.

At this point, therefore, we must acknowledge fully that there has not been a persuasive demonstration in the published literature that expert testimony on eyewitness matters improves the judgments of jurors. What does this mean? Does it mean that expert testimony on eyewitness matters does not aid the trier of fact? Or does it mean that we have not yet devised and carried out the appropriate empirical tests of the issue?

A recent experiment (Wells & Wright, 1983) suggests that the latter is true. In this experiment, a theft was staged 90 times for as many unsuspecting persons who were then informed that it was staged for their benefit and who were then asked to make an identification of the thief from a photographic array of six persons. Half of the time the thief was present in the photo array and half the time the thief was replaced by another person. One third of these witnesses had witnessed the theft under good conditions in that the thief was in full view for 25 seconds, the thief was only 3–4 meters from where the witness was, the thief looked directly at the witness five times, and he never covered his face. One third of the witnesses had observed the thief under moderate viewing conditions in that the thief was in full view for only 15 seconds, the thief was 6–7 meters from the witness, the thief looked at the witness only two times, and he covered his face with his coat for part of the time. The other one-third of the witnesses had poor viewing conditions in that the thief was in view for only five seconds, the thief was 10–12 meters from the witness, the thief glanced at the witness only once and he covered his face with his coat for most of the time. When asked to view the photo lineup, everyone agreed but there were profound differences in accuracy. Of those who made identifications (n = 75), the good, moderate, and poor witnessing conditions yielded 69%, 52%, and 38% false identifications, respectively. Note, however, that the interest here is not so much in why these witnesses were inaccurate or accurate, but rather the interest is in whether or not subject-jurors can detect the accuracy or inaccuracy of these witnesses under cross-examination and whether expert testimony can improve the detection abilities of the subject-jurors.

At this point, a random sample of eight accurate eyewitnesses and eight inaccurate eyewitnesses from each of the three witnessing conditions were cross-examined by someone who was blind to the accuracy or inaccuracy of individual eyewitnesses as well as being blind to the witnessing conditions. These cross-examinations were videotaped. The cross-examination was identical to that used in Wells, Lindsay, & Tousignant (1980), which grilled the witness on what she or he saw. The videotaped cross-examinations were then presented to subject-jurors whose task was to decide whether the eyewitness identification testimony was accurate or inaccurate. A total of 300 subject-jurors were used. Half of these subject-jurors were not given the benefit of expert testimony and the other half were given expert testimony. Within the expert testimony–no expert testimony conditions, subject-jurors were assigned randomly to view either an accurate or inaccurate witness from one of the three viewing conditions.

The expert testimony was also presented on videotape and it told the sub-
ject-jurors three things. First, it encouraged the subject-jurors to pay attention to witnessing conditions and provided two examples; the witness’ opportunity to view the perpetrator and the amount of time the witness attended to the perpetrator. They were warned, however, that witnessing conditions are difficult to discern as knowledge of such conditions depends on reports from the very witness whose memory is being questioned. One example was provided in noting that witnesses tend to overestimate short durations of time. The second point stressed by the expert was a warning against assuming that witnesses who are good at listing trivial details are necessarily accurate in identifying the perpetrator. They were warned that there are studies indicating that an eyewitness’s memory for trivial peripheral detail may actually portend poorly for the likelihood that the witness encoded the perpetrator’s facial characteristics. Finally, the expert testimony indicated that the evidence suggested that the confidence or certainty of an eyewitness’s identification testimony bears little or no relationship to the eyewitness’s accuracy. Some witnesses are confident of almost everything while others are not confident about anything. Thus, confidence is more a characteristic of the person than a characteristic of the situation. Importantly, subject-jurors were told specifically that this means not only that a high-confident witness is not necessarily correct, but also that a low-confident witness is not necessarily incorrect.

Results are presented in Table 1. Replicating earlier studies (Lindsay, Wells, & Rumpel, 1981; Wells & Leippe, 1981; Wells, Lindsay, & Ferguson, 1979; Wells, Lindsay, & Tousignant, 1980), the no-expert-testimony conditions showed that subject-jurors were as likely to believe the identification testimony of inaccurate identification witnesses as they were to believe accurate witnesses. With expert testimony, however, an average of 15% difference in belief of accurate vs. inaccurate witnesses emerged across viewing conditions (z = 1.88, p < 0.05, one tailed). In addition, the no-expert conditions failed to produce significant differences between good and poor viewing conditions in terms of subject-juror belief and the patterns of belief across viewing conditions is not linear. The expert conditions, however, yielded significant differences between good and poor viewing conditions (z = 1.75, p < .05 one tailed) and the trend shows linearity.

Table 1. Per Cent Belief of Accurate and Inaccurate Witnesses Across Viewing Conditions as a Function of Expert Testimony

<table>
<thead>
<tr>
<th>Viewing conditions</th>
<th>Poor (38% accuracy)</th>
<th>Moderate (52% accuracy)</th>
<th>Good (69% accuracy)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No expert testimony</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accurate witnesses</td>
<td>52%</td>
<td>52%</td>
<td>56%</td>
</tr>
<tr>
<td>Inaccurate witnesses</td>
<td>56%</td>
<td>48%</td>
<td>60%</td>
</tr>
<tr>
<td>Expert testimony</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accurate witnesses</td>
<td>52%</td>
<td>60%</td>
<td>68%</td>
</tr>
<tr>
<td>Inaccurate witnesses</td>
<td>40%</td>
<td>44%</td>
<td>52%</td>
</tr>
</tbody>
</table>

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Unfortunately, there are a number of reasons to remain cautious in interpreting these results. First, although the observed effects are reliable, it is not clear to what extent the expert testimony used in this study generalizes to real-world settings or to other paradigms. Perhaps, for example, it is restricted to this staged-theft, cross-examination paradigm. Second, the subject-jurors did not engage in group deliberation. Although a previous study (Wells, Ferguson, & Lindsay, 1981) suggests that group deliberation does not affect the general pattern of results in this paradigm, it would be important to know whether the benefits of expert testimony are enhanced or mitigated by using group deliberation conditions. In addition, the expert was not cross-examined in this study, as is done routinely in actual cases. Finally, the expert testimony preceded rather than followed the eyewitness testimony.

In spite of these problems, this study provides evidence indicating that there are some conditions in which triers of fact can benefit from expert testimony regarding eyewitness factors.

Before ending this section on empirical studies, a few other studies deserve mention. Although not technically studies of expert testimony on eyewitness issues as treated thus far in this chapter, these studies have merit regarding the issues. First there are several analyses of the juror or lay person regarding what she or he "knows" about eyewitness testimony. These include studies by Brigham (1981), Brigham and Bothwell (1983), Brigham and Wolfskeil (1983), Deffenbacher and Loftus (1982), Loftus (1979: Chapt. 9), Wells (1984), and Yarmey & Jones (1983). Another set of studies has examined the so-called "discrediting failure" hypothesis or juror credibility hypothesis regarding eyewitnesses and is characterized by studies by Cavoukian (1980), Hatvany and Strack (1981), Loftus (1974), Saunders, Vidmar, and Hewitt (1983), and Weinberg and Baron (1982). These latter studies have adopted an approach in which eyewitness testimony is presented as evidence in a simulated or written trial case and is then discredited in an apparently persuasive manner. For example, the Loftus (1974) study discredited the eyewitness by presenting expert optometric testimony indicating that the eyewitness was functionally blind. Assuming a normative decision-making strategy on the part of subject-jurors, the conviction rate in the discrediting conditions should approximate that found in conditions in which no eyewitness testimony was given. The results of this procedure are mixed. Loftus, for example, found the expert optometric testimony had little or no effect (perseverance) whereas Weinberg and Baron found normative levels of discounting of the eyewitness. Saunders et al. seem to have found some of the limiting conditions in this paradigm and their chapter provides the best account to date of the factors operating in these situations that produce both perseverance and discounting of the eyewitness testimony.

A PROPOSED FRAMEWORK

The concern about the effects of expert testimony is relatively recent in psychology. As a result, we have no clear guiding principles regarding what "ef-
fcts’’ are of concern to us, what is meant by positive vs. negative effects of expert testimony, and what kind of evidence is needed in order to say that expert testimony should or should not be proffered by experimental psychologists.

One possibility is to adopt the practice of the judiciary which, while variable across jurisdictions, generally argues that expert testimony should not be given if it invades the province of the jury as the trier of fact or if it wastes the time of the jury by dwelling on matters that are within the realm of common sense. In other words, we could leave the question to the discretion of the courts. The current U.S. Federal Rules of Evidence, for example, make helpfulness to the trier of fact the primary consideration in deciding whether or not to allow expert testimony.

As psychologists, however, we are not satisfied with these legal criteria. Instead, we tend to be concerned with whether or not the testimony has positive effects in a variety of domains. In the framework proposed herein, I argue that there are several domains of effects resulting from expert testimony. There is, of course, the effect of expert testimony on the verdicts rendered by jurors. There are other effects as well, however, such as the effect of expert testimony on the process by which jurors reach a verdict; the effect of expert testimony on the practices of police investigators as to how they gather and interpret eyewitness evidence; and the effect of expert testimony on the profession. As well, we should not overlook the fact that the judiciary itself has “theories” of eyewitness accuracy which they act upon (e.g., see Neil vs. Biggers, 1972) and their theories may not hold up well to empirical observations (see Wells & Murray, 1983).

**Effects on Verdicts**

Empirical studies have demonstrated that expert testimony on eyewitness matters can reduce the likelihood of subject-jurors rendering guilty verdicts (e.g., Loftus, 1980). Some might argue that this illustrates that the subject-jurors were prone to accord too much credibility to the eyewitness evidence and such studies thereby verify the important role played by expert testimony. Others would argue that reduced convictions could be undesirable because it might make jurors too skeptical of what may be reliable evidence. Both of these arguments are weak and undeveloped. The fact is that shifts in the tendency to convict or acquit defendants in and of itself is neither desirable nor undesirable. Attempts to argue for response-shifts toward or away from conviction of defendants inevitably break down into value judgments regarding the trade-off between errors of convicting the innocent versus letting the guilty go free. We might, of course, be able to help policy makers assess the values of society on this matter and thereby clarify an appropriate trade-off level.

It seems, however, that the only meaningful way to determine whether expert testimony produces desirable vs. undesirable effects on jurors’ verdicts involves consideration of actual guilt or innocence of the defendant. A desirable effect of expert testimony, therefore, would be to aid acquittal of the innocent and/or aid conviction of the guilty. Undesirable effects involve aiding acquittal of the guilty or aiding conviction of the innocent. Thus, the important question is whether expert testimony improves the match between verdicts rendered and the
actual guilt or innocence of the defendant. Overall shifts from conviction to acquittal or vice versa as a function of expert testimony tell us little or nothing about the desirability or undesirability of expert testimony. Unfortunately, the truly meaningful question regarding improved verdicts as a function of expert testimony is difficult to test empirically. The study that I discussed earlier represents one approach. Recall that this approach involves the staging of small crimes for unsuspecting eyewitnesses whose subsequent cross-examination is presented to subject-jurors for judgment. By manipulating also the presence/absence of various forms of expert testimony, it is possible to see whether expert testimony helps the subject-jurors to discriminate between accurate and false testimony. Presumably, improvement in subject-jurors' abilities to discern accurate from false eyewitness testimony translates into an improvement in the match between verdicts rendered and the actual guilt/innocence of the defendant. Whether or not this paradigm is adequate for purposes of generalizing to expert testimony in actual cases is unclear at this point. However, without some sort of paradigm in which the eyewitness is known to be accurate or inaccurate according to some verifiable criterion (as when we stage crimes), it is not possible to test adequately the hypothesis that expert testimony is desirable or undesirable in terms of verdicts rendered as a consequence of such testimony.

Effects on Deliberation Process

Although I expect much controversy on this point, I argue that we should be concerned about the process by which jurors reach verdicts rather than concern only for the verdicts. Consider, for example, that defendant "X" is being tried for a given crime which he did in fact commit. Assume further that the evidence is weak, too weak in fact for conviction by jury. The prosecutor, however, uncovers new evidence which is unreliable in the sense that it is likely that such evidence could be obtained if the defendant was innocent as it was if he was guilty. Somehow, however, this evidence is presented in a persuasive fashion and it results in conviction of the defendant. This is an example of where the outcome is desirable in that the guilty party was convicted. The process by which the outcome was achieved, however, was undesirable in that unreliable evidence was accorded too much credibility by the triers of fact.

This hypothetical example is similar in many ways to my view of eyewitness evidence; regardless of whether or not the majority of convicted persons are in fact guilty, such convictions should not be attributable to an over-belief of eyewitness evidence. If this happens, then the process by which such convictions are achieved is inappropriate. Thus I argue that we should concern ourselves with whether or not jurors ascribe credibility to eyewitness testimony in a valid manner rather than being concerned simply with the verdict rendered. Assume, for example, that jurors believe that the voice stress indicator is a reliable indicator of lying. We know now, of course, that the voice stress indicator is totally inadequate as a device for detecting deception (e.g., Horvath, 1978). Suppose further that the jurors find a defendant guilty because of voice stress indicator data presented in court. Finally, assume that the defendant is in fact guilty of the
offense with which he is charged. Should we be unconcerned simply because the verdict matched the actual guilt of the defendant? Or, should we be concerned because the process by which the verdict was reached was in error? Most people would agree that we should be concerned with the process as well as the outcome. Therefore, when considering the effects of expert testimony, we must not define effects narrowly in terms only of outcome or verdict. Instead, we should consider whether or not we can improve the process by which evidence is evaluated. It may strike some as an anomaly that, in this example, strong scientific testimony regarding the invalidity of the voice stress indicator could result in a false outcome (i.e., acquittal) but an improved process.

Some would argue that process and outcome are linked intimately. This is true only in a trivial sense that is not germane to the issue at hand. In the current context it is easy to show that good vs. poor process and good vs. bad outcomes are in some sense separable. Structuring a lineup that is biased against a guilty suspect, for example, helps assure an apparently good outcome (i.e., conviction of a guilty person), but the process is poor. The general point, of course, is that in examining the validity of the verdicts, we must also be concerned with the process by which those verdicts are reached. Verdicts reached by bizarre or faulty processes are unacceptable, regardless of whether or not the verdict was correct, in part because of ritual functions fulfilled by the trial process. Indeed, much of American law is devoted to due process concerns, such as the fifth and sixth amendments to the U.S. Constitution, in a manner that separates the issues of actual guilt or innocence from the process by which convictions or acquittals are achieved. There clearly is a dependence between process and outcome. Evidence that is weighted inappropriately, for example, tends to produce wrongful convictions and wrongful acquittals. However, a faulty outcome is not the only reason to be concerned with a faulty process. Therefore, arguments that there are few faulty convictions in cases involving eyewitness evidence does not justify subject-jurors’ tendencies to be overly willing to believe such evidence, assuming that they are overbelieving.

Thus, in considering the effects of expert psychological testimony on the jury, we must not let verdicts dominate our conception of effects. Instead, we must give due consideration to the process through which jurors arrive at verdicts, assuring that eyewitness testimony is given neither too much nor too little validity.

**Effects on Police Practices**

I argued several years ago for a distinction between eyewitness research that studied variables that were under control of the criminal justice system and those that were not under system control (Wells, 1978). The former were called system variables and included such things as the structure of lineups, the nature of interrogations, and so on. The latter were called estimator variables and included such things as the race of the eyewitness and perpetrator, arousal at the time of witnessing, and so on. Although both types of variables can affect the validity of eyewitness reports, only system variable can be used to increase the validity of eyewitness reports in actual cases.
This distinction has relevance to the issue of expert testimony in many ways. Particularly relevant to the current discussion of the effects of expert testimony is the notion that expert testimony that addresses system variables can affect the way police obtain eyewitness evidence. This assumes, of course, that there is feedback such that the content of the expert testimony is made known to police investigators who in turn alter their procedures for obtaining eyewitness evidence so as to come in line with recommended procedures in future cases. It is difficult to document these kinds of effects of expert testimony. However, I am convinced that such effects have occurred already. On some recent visits to major police departments, I found it common for police investigators to explain certain procedures (such as the instructions given to eyewitnesses prior to viewing lineups) in terms of the need to avoid criticism by experts in court.

It can be argued that police investigators will not be motivated to improve the way in which they structure lineups and photo arrays and will not be sensitive to avoiding the use of leading questions until experts on eyewitness matters begin effectively to criticize current practices. This does not mean that current police practices in obtaining eyewitness evidence are uniformly poor. However, when poor procedures have been used in a case it would seem important to consider the fact that expert testimony may be a mechanism for helping to eliminate such procedures in future investigations.

Is it legitimate to attempt to change police practices via expert testimony in court? This question is tied intimately to an issue acknowledged by law, namely due process. It also is analogous to a number of other issues that have been addressed at the level of expert testimony; for example police use of hypnosis, lie detection devices, speed radar devices, and so on. In each case, testimony by experts has helped shape the procedures used by police so as to make those procedures come in line with modern scientific evidence. The point about stressing system variables in expert testimony must go both ways, of course. That is, when police follow sound procedures, in conducting a lineup for instance, we must be prepared to acknowledge that fact.

Effects on the "Profession"

It has been argued that we should consider how expert testimony by psychologists on eyewitness matters affects the public's impression of psychology (e.g., Egeth & McCloskey, 1983). This is consistent with my view that we consider not only the effects that expert testimony has on the jury, but that we weigh and balance other effects as well. Unfortunately, while I acknowledge that we should concern ourselves with the question of how expert testimony might reflect on psychology as a profession, my bias as an experimentally oriented psychologist leads me to be skeptical about the prospect of ever getting a solid empirical grasp on this issue.

One scenario of relevance to the public's impression of psychology concerns what happens if or when psychologists give conflicting views. This so-called "battle of the experts," wherein one psychologist testifies for the defense and another for the prosecution or plaintiff, each psychologist giving different expert
testimony, has the potential for harming the public’s view of psychology. It could be argued that as long as psychologists stick closely to empirical data there will be no significant conflict among experts on eyewitness matters. Unfortunately, although remaining faithful to the published empirical literature will minimize the potential for conflicting testimony, it is naive to believe that conflicting expert testimony cannot occur under these conditions. Every major scientific journal in psychology has published heated debates regarding simple empirical phenomena. Surely the complexities involved in eyewitness testimony leave plenty of room for debate regarding the empirical observations. Therefore, I am in agreement with those who would argue that expert psychological testimony on eyewitness issues should use a “friend of the court” system. That is, ideally psychological experts should be called to give testimony for the court rather than for the prosecution or defense; an unlikely scenario perhaps, but one that should be promoted.

As indicated earlier, we must keep sight of the fact that not giving expert testimony is a decision, an action that has consequences and effects, just as giving expert testimony is a decision that has effects. Does a refusal to give expert testimony to triers of fact regarding eyewitness issues improve the public’s view of psychology as a profession? Or does it reinforce the public’s impression that psychologists are unwilling or unable to impart their knowledge to the benefit of the legal process?

Clearly, the potential effect of expert testimony on the profession of psychology is something that we must all consider. Furthermore, we should push for changes from current practices so that there is established a friend-of-the-court system for our testimony. Meanwhile, the potential for harm to the profession can be minimized by approaching expert testimony on eyewitness issues with a rule of thumb wherein the testimony we would give would be the same whether we are called by the defense or the prosecution.

Other Effects

Although the four effects discussed thus far are fairly comprehensive, there are other effects that deserve some mention. First, there are effects of experimental psychologists interacting with the court system that serve to alter subsequent research. In one case, for example, it was asserted during cross examination that my testimony as an expert was irrelevant because the eyewitnesses in my experiments (and those of others) knew, at the time a lineup was staged, that the theft which witnesses originally thought to be real, was in fact staged. This comment lead eventually to an experiment that tested whether or not such a factor was critical for generalizing the results of available research (Murray & Wells, 1982). Thus our research may become more relevant to the courts as a function of experiences resulting from expert testimony.

Another effect of expert testimony may occur at pretrial decision levels. Judges who have heard trials in which expert testimony is offered, for example, may take such testimony into account in subsequent cases while hearing arguments at a preliminary inquiry as to whether or not eyewitness identification evidence should be suppressed (e.g., when lineups are biased).
Yet another effect of expert testimony may be the way in which attorneys handle their cases subsequently. It is possible, for example, that defense attorneys facing cases where eyewitness evidence is critical may be less likely to recommend to their client that he or she plea bargain, choosing instead to fight the case on arguments of eyewitness unreliability. Prosecutors, on the other hand, may be more likely to offer plea bargaining packages for fear that the eyewitness evidence will no longer carry the case to the outcome desired. Whether these effects are desirable or undesirable is unclear. My point is that such effects can occur and the experimental psychologist should give some thought to the long-term effects that can occur rather than consider only the particular outcome of the trial in which she or he is considering testifying.

REFERENCES


