

Research Note

Mock-Juror Belief of Accurate and Inaccurate Eyewitnesses

A Replication and Extension*

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In response to lawyers' critiques of earlier staged-crime, mock-jury studies, 16 eyewitnesses to a staged crime were videotaped while being questioned by lawyers in a real courthouse. Accurate and inaccurate eyewitnesses were questioned by experienced or inexperienced lawyers for the prosecution and defense. Subsequently, 178 University of Alberta undergraduates served as mock-jurors and attempted to detect the accuracy of the witnesses based on their taped testimony. As in the previous research, the overall rate of belief was quite high (69%), and the subjects believed the testimony of accurate and inaccurate eyewitnesses at about the same rate (68% vs. 70%, respectively). Lawyers' experience failed to influence verdict. Confidence of the eyewitness was significantly related to belief of their testimony. The data replicate the previous findings and demonstrate that lack of expertise of the questioners does not account for the failure to detect eyewitness accuracy in this paradigm.

Wells, Lindsay, and their colleagues (Lindsay, Wells, & Rumpel, 1981; Wells, Ferguson, & Lindsay, 1981; Wells & Leippe, 1981; Wells, Lindsay, & Ferguson, 1979; Wells, Lindsay, & Tousignant, 1980) have conducted a series of experiments related to credibility of eyewitness identification testimony when presented

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in court. In their research, students witnessed staged events and then attempted to make identifications from photographic arrays. Those making identifications from the lineups were asked if they would be willing to testify in mock trials. The trials were subsequently videotaped and shown to mock juries. The results of these studies revealed that the mock-jurors were unable to discriminate on the basis of the testimony between eyewitnesses who had identified the guilty party and those who had identified an innocent person. The confidence of eyewitnesses rather than their accuracy was the major determinant of belief. Unfortunately, confidence is not a good predictor of eyewitness accuracy (Deffenbacher, 1980; Wells & Murray, 1984).

Presentations of these results to legal professionals generated some common questions and criticisms focused primarily on the possible lack of generalizability of the results. Lawyers were particularly likely to be concerned about the nature of the questions asked during the trial and the experience of the "lawyers" asking the questions. Some lawyers became skeptical of the value of the research when told that the "lawyers" were senior undergraduate and graduate students in psychology who followed a predetermined script and did not pursue issues after obviously inadequate responses by the witnesses. Many felt that any competent lawyer would do a much better job and perhaps produce more useful results. The appropriateness of this critique led to this current study, which used more realistic questioning techniques.

The procedures followed in this study parallel the prior staged-crime, mock-trial studies but enhance the mundane realism of the trials. The trials were held in a real courtroom after a substantial delay subsequent to a staged event. Lawyers were recruited to question the witnesses. The lawyers were free to use any questioning style or technique that they felt was appropriate. Under these conditions, it was hoped that a more realistic representation of the legal system would be obtained.

METHOD

The staged crime (theft of a calculator) was similar to those previously employed in this area (e.g. Lindsay & Wells, 1980). Introductory psychology students at Queen's University were recruited to participate in a study of "complex information processing." From 1 to 4 students participated in each session. A detailed description of the staging of the crime and the results of the identification procedures can be found in Lindsay and Wells (1985). For the current study, it is sufficient to know that following the brief staged crime, the participants were asked to describe the thief (a 22-year-old, male Caucasian) and then attempted to identify him from one of two sets of photographs. The confederate's photograph was either included in the set of pictures (criminal present lineup) or replaced with that of a similar looking but innocent suspect (criminal absent lineup). The lineups were 6-picture arrays in which the foils all fit the general description and appearance of the confederate.

Eyewitnesses who identified either the guilty party from the criminal present lineup (54%) or his innocent replacement from the criminal absent lineup (25%) were asked if they would be willing to testify in a mock trial. The names and phone numbers of those who agreed to participate further were recorded. Overall, 67% of accurate and 86% of inaccurate witnesses agreed to testify. From 1 to 5 weeks later, the eyewitnesses were phoned and trial dates and times were scheduled. (Analyses that covaried the delay between crime and trial produced no differences from the results reported below.)

The trials were held in Courtroom 2 of the old provincial courthouse in Kingston, Ontario. Thirty-six volunteer lawyers were recruited from the community to participate in the study. The first author met each eyewitness at the courthouse and introduced him or her to the prosecuting attorney. The lawyers were permitted as much time as they wished to discuss the facts of the case and the questions to be asked with the eyewitnesses before the trial began. Most took between 5 and 15 min; none used more than 25 min for this purpose. The witness was called to the stand, questioned by the prosecuting attorney, cross-examined by the defense, questioned by the prosecutor again, and then excused.

Although some variance existed in the style and duration of direct examination, the witness always explained where the crime occurred, the time of the crime, their reason for being there (to participate in an experiment), and what they saw while in the room. All prosecutors asked for and obtained an in-court identification of the accused. Cross-examinations were much more variable in style, duration, and content than the direct examinations and provided few regularities. The extent of the variance is indicated by the range in duration—from about 3 to over 35 min. Redirect questioning was brief and generally consisted of having the witness reaffirm the identification. Following the questioning of the witness, each lawyer provided a summary statement,¹ again in his or her own words. The camera was focused on the witness most of the time, but each lawyer was shown several times during the trial and, of course, while giving a summary statement.

A total of 18 trials were taped, but 2 were discarded owing to technical problems during the sessions. The remaining 16 trials included testimony from eight eyewitnesses who had identified guilty and eight who had identified innocent suspects. The experience of the lawyers was also manipulated. Experienced lawyers ($n = 16$) had passed the bar at least 5 years before the research was conducted ($M = 12$), and the inexperienced lawyers ($n = 16$) were senior law students with some legal aid experience. The experienced prosecutors had all worked as Crown prosecutors, and all of the experienced lawyers had criminal trial experience and had dealt with cases involving eyewitness identification. Of the 16 experienced lawyers, 15 were male. The inexperienced lawyers had all observed criminal trials and all but 3 had some courtroom experience (though only 6 in

¹ One trial did not include summary statements. After questioning the eyewitness, the lawyer for the defense claimed that he had so thoroughly discredited the witness that there was no need for a summary as the judge would dismiss the case. The prosecuting attorney agreed. Regardless of the decision that a judge may or may not have made, 73% of mock jurors who saw the tape of this trial voted guilty.

criminal cases). None of the inexperienced lawyers had prosecuted a case. All of the inexperienced lawyers were males. The experienced lawyers were noticeably older and generally better dressed than the inexperienced lawyers. In general, the experience level of the lawyers was quite apparent. Four trials were conducted with each of the possible combinations of experienced and inexperienced lawyers for the prosecution and defense. Overall then, the design was a $2 \times 2 \times 2$ hierarchical design with two trials nested within each condition. Each trial included a unique combination of eyewitness, prosecutor, and defense lawyer.

The tapes of the 16 trials were sent to the second author, who collected the mock-juror data at the University of Alberta. A total of 178 introductory psychology students viewed the trial tapes in small groups with each group viewing one tape. Students participated in partial fulfillment of a requirement for course credit. Following the trial, the participants independently answered a series of questions about the trial—indicating the probability that the accused was guilty, whether they would vote guilty or not guilty, and the perceived confidence of the eyewitness—and gave ratings (on 9-point, Likert-type scales) of the impact of a number of aspects of the lawyers and their performance. After completing the questionnaire, the participants were debriefed and their questions about the research were answered.

RESULTS

The initial analyses of variance indicated that the effect of trials nested within conditions was not significant for any of the dependent variables. As a result the error estimate used in the subsequent analyses pooled the trials' effects with the variance of subjects within trials. Verdict decisions were analyzed with orthogonal chi-square procedures (Winer, 1973).

Detection of Eyewitness Accuracy

Eyewitnesses who had identified the guilty party led 68% of the mock jurors to vote guilty. Those who identified an innocent suspect convinced 70% of mock jurors to vote guilty. Furthermore, the accuracy of eyewitness identification did not interact with defense and/or prosecution lawyers' experience to influence verdict.

Impact of Lawyers' Experience on Verdict

Both experienced and inexperienced prosecutors won their cases 69% of the time. Similarly, experienced and inexperienced defense lawyers lost their cases 69% of the time. The interaction of prosecution and defense experience also failed to reach significance $\chi^2(3, N = 178) = 1.62$, n.s. Apparently, the testimony of the eyewitness outweighed any impact of lawyers' experience.

This failure to influence verdict was not the result of the mock jurors' failure to perceive differences between experienced and inexperienced lawyers. Experi-

enced prosecutors were rated as significantly more experienced than inexperienced prosecutors ($M = 5.87$ vs. 3.97 , respectively, $F(1,174) = 52.89$, $p < .001$). Similarly, the experienced defense lawyers were rated as significantly more experienced than their inexperienced counterparts ($M = 7.36$ vs. 4.68 , $F(1,174) = 70.33$, $p < .001$). Other measures support these overall ratings. The experienced as opposed to inexperienced prosecutors were rated as having done a better job ($M = 6.10$ vs. 4.78 , $F(1,174) = 24.87$, $p < .001$) and as having given better summations ($M = 5.85$ vs. 4.84 , $F = 12.89$, $p < .001$). Compared to the inexperienced defense lawyers, experienced defense lawyers were rated as having done a better job ($M = 6.24$ vs. 7.17 , $F(1,174) = 22.15$, $p < .001$), having revealed more flaws in the eyewitness' testimony ($M = 5.52$, vs. 6.37 , $F(1,174) = 10.36$, $p < .002$), and having given a superior summation ($M = 6.11$ vs. 7.04 , $F = 19.58$, $p < .001$).

Confidence and Verdict

As in the other studies, eyewitness confidence was a better predictor than eyewitness accuracy of the verdict given by mock jurors. Although significant, the correlation between perceived confidence and verdict was lower than found previously ($r = .29$, $df = 176$, $p < .001$). The correlation of witness self-rated confidence and verdict was negative but nonsignificant ($r = -.07$, $df = 176$, n.s.). It should be pointed out that self-rated confidence was measured only at the time of identification, and thus the witness' confidence during the trial may have been quite different from the level initially reported some weeks earlier.

DISCUSSION

The results of the current study replicated some findings previously reported in the literature. Given no other evidence than a single eyewitness identification, most mock jurors voted guilty. Indeed, the rate of belief was noticeably higher than the rate of correct identification, indicating once again that jurors may be over-believing of eyewitnesses. The rate of guilty votes was not significantly different when the eyewitness had identified an innocent rather than a guilty person. Perceived confidence was significantly related to mock-juror decisions to vote guilty, although the relation was much weaker than in previous studies (which produced correlations of approximately .5). The differences in the relation of confidence to belief may be the result of methodological changes from the earlier studies. The delay between obtaining the identification and the taping of the trial was much greater in this study, and some of the witnesses were clearly less confident at the trial than they were at the time of the identification. In addition, the earlier studies specifically asked the witnesses on the stand to state how certain they were of their identification. In the current study, lawyers did not consistently ask for statements of certainty, and when they did, scales were not used to describe confidence. As a result, it may have been more difficult for mock jurors in this study to judge the confidence of the eyewitness than was true of earlier studies.

More importantly, the current study has eliminated an alternative explanation for the failure to find discriminating belief in the previous studies, namely, the use of inexperienced people with no legal training as questioners. Even experienced lawyers, free to question the witness as they chose, were unable to lead mock jurors to believe accurate eyewitnesses more than inaccurate eyewitnesses. An equally interesting and somewhat provocative finding was the failure of experienced lawyers to win their cases when opposed by relatively inexperienced senior law students. Many of the experienced defense lawyers expressed some frustration with the case, claiming they had little to work with. They felt that eyewitness identifications in general were difficult to discredit—obviously they were correct. However, experienced prosecutors also failed to be more effective than their inexperienced counterparts. Apparently, lawyers' in-court questioning experience and/or skill are relatively unimportant in cases based exclusively on eyewitness identification. These results lend support to the conclusions drawn from the earlier research that the courtroom is not the place to redress eyewitness errors. Experienced lawyers will not reduce the problem of false eyewitness identifications in court. The solution to eyewitness misidentification lies in control of the identification procedures employed by police. A growing literature on identification procedures consistently demonstrates that appropriate procedures reduce false identifications with little or no attendant loss of correct identifications (Cutler & Penrod, 1988; Lindsay & Wells, 1980, 1985; Lindsay, Wallbridge, & Drennan, 1987; Malpass & Devine, 1981; Wells, 1984a). Continued attention to the issue of eyewitness identification procedures will, in the long run, have a beneficial impact on the justice system and can be applied more consistently and with greater certainty than attempts to influence the decisions of juries.²

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² Although expert testimony may improve jury decisions (e.g., Cutler, Penrod, & Stuve, in press; Wells, 1986), even correct disposition of cases does not eliminate the negative effects of false identifications. Innocent lives can be ruined by the emotional and financial fallout of mistaken identifications leading to trial even if the accused is acquitted. Although police may be reluctant to adopt new procedures, particularly if they are rewarded primarily for clearing their case load, continued demonstrations that superior procedures exist will increase pressure on the police to improve their methods as well as offer the foundation for expert testimony when improper procedures are followed. This process of change may be slow, but it is worth pursuing.

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