Notes/Discussions

Do Jurors Share a Common Understanding Concerning Eyewitness Behavior?*

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It would seem that the American judiciary have traditionally viewed knowledge of variables affecting eyewitness behavior as a part of common understanding. The presumption would then be that there is a body of knowledge in this regard that is indeed shared and that this shared understanding conforms substantially to objective reality. Multiple-choice format questionnaires designed to tap such knowledge were administered to two somewhat disparate samples of college students (n = 176) and two samples of the citizenry at large in Washington D.C., 46 of whom had not had criminal trial jury experience in the previous five years and 43 of whom had. Across samples the typical respondent’s performance was significantly above chance but not at all high in absolute terms. This typical performance involved well above chance levels of accuracy on about half the items and not different from chance accuracy on the others. At least within the college student samples, certain demographic variables were not related to accuracy of response. Likewise, previous criminal trial jury experience did not improve accuracy for the Washington D.C. respondents by an amount that would be practically significant. It was concluded that the common understanding doctrine cannot in general be supported.

INTRODUCTION

The American judiciary have traditionally viewed knowledge of variables affecting eyewitness performance as a part of common understanding. This judicial viewpoint has been implicit in many decisions concerning the admissibility of psychologists as expert witnesses on the reliability of eyewitness accounts. For example, in United States v. Amaral (1973) the Court stated that expert testimony must meet four criteria in order to be admissible, one of these being that it must relate to a proper subject matter.

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As a recent article by Suggs (1979) makes clear, judges have often decided against allowing expert testimony on these very grounds. These negative decisions have been of two types, according to Suggs. The first view has been that the proffered expert testimony is a matter of common understanding and is therefore unnecessary and possibly prejudicial (e.g., Goodrich, 1975; *People v. Guzman,* 1975). A second view has been that such testimony invades the province of the jury in that it would be for the purpose of discounting the credibility of the eyewitness, and it has been traditionally the jury’s task to determine witness credibility (e.g., *United States v. Amaral,* 1973).

Reasoning of the first sort would appear based on two premises: (1) there is a body of knowledge concerning eyewitness behavior that is shared by jurists, trial attorneys, and jurors alike; and (2) this shared understanding of what effects certain variables may have on eyewitness testimony conforms very substantially to objective reality. Judicial reasoning of the second type likewise appears to be based on the same two premises. After all, this view presumes that only skillful direct and cross examination of the eyewitness are required to provide jurors with all the adjudicative facts needed to properly determine the probable reliability of the witness’ testimony. For a judge to presume thus certainly must imply that he/she believes that jurors’ intuitions in general are well informed as regards eyewitness behavior and the influences on it.

It should of course be pointed out at this juncture that the rules of evidence in most jurisdictions have been altered since the 1975 and earlier cases already cited. The Federal Rules of evidence became effective July 1, 1975, and since they have been looked upon as model rules, have been adopted virtually intact in many state codes. Rule 704 abolishes the legal grounds for excluding expert testimony on the basis that it might usurp the province of the jury. However, Rule 702 excludes expert testimony that is not helpful to the jurors as triers of fact, and Rule 403 provides for the exclusion of evidence that wastes time, confuses the issues, or misleads the jury. Hence there remain ample grounds for judges to continue to sustain a belief in the common understanding doctrine as applied to eyewitness behavior, based as it is on the two premises previously discussed. Consider, for example, the judicial reasoning in *Dyas v. United States* (1977), ‘‘We are persuaded that the subject matter of the proffered testimony is not beyond the ken of the average layman nor would such testimony aid the trier in a search for the truth’’ (p. 832).

A perfectly reasonable way to evaluate the validity of the common understanding doctrine is to submit its premises to empirical test. To date we know of only three attempts to do so besides the present inquiry, Loftus (1979, Chapter 9), Brigham (1981), and Yarmey and Jones (Note 1). Loftus administered a six-item, multiple-choice questionnaire to 500 registered voters in the state of Washington, all of them University of Washington students. Five of the six items were designed specifically to sample the students’ knowledge of some of the factors affecting reliability of testimony. The questions addressed were ones about which psychological research can give reasonably unequivocal answers: cross-racial identification, stress, violence of the event, weapon focus, and wording of questions asked of eyewitnesses. These five

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1The phrase ‘‘reasonably unequivocal’’ needs further comment. What is meant is that the answers to such questions are based on the results of replicable experiments. There is also very substantial consensus among researchers concerning the ‘‘correctness’’ of these answers. Such consensus is documented by Yarmey and Jones (Note 1) findings of an average concordance of 85.2% among a sample of 16 university researchers.
questions are the first five of the Knowledge of Eyewitness Behavior Questionnaire (KEBQ) that is reproduced in Appendix A.\textsuperscript{2} Accuracy of Loftus' respondents ranged from a low of 18% correct on the item concerned with the effects on witness accuracy of the level of violence to a high of 90% correct on the item testing knowledge of the effects of question wording. Mean accuracy across the five items was 54%, a performance that was significantly above the chance, guessing level of 25%.

Although the Loftus (1979) study provided information in some domains, it neglected a number of other important domains of knowledge concerning eyewitness behavior. Furthermore, her results were collected only from college students, and thus we still do not know whether such results can be generalized to respondents with different demographic characteristics. Nevertheless, the 54% accuracy figure previously cited provides little support for the notion of potential jurors sharing a set of well-informed intuitions regarding reliability of testimony.

Brigham (1981) recently surveyed 235 trial attorneys, finding that even they do not appear to share a completely common understanding of the effects of at least one major variable on witness accuracy. Fully 82% of criminal defense attorneys felt that high stress or arousal leads to less accurate facial recognition. However, only 32% of their prosecutorial colleagues agreed; 47% felt that high arousal leads to better recognition accuracy, while the remaining 21% felt that there is no systematic relationship between arousal level and facial recognition accuracy. The effects of relatively high arousal levels on testimony reliability is certainly one domain where psychological research can now provide reasonably definitive answers: High arousal impairs both accuracy and completeness of eyewitness report (Deffenbacher, Note 2). Thus 82% of defense attorneys sampled and just 32% of prosecutors appeared to share a well-informed intuition concerning a very important aspect of witnessing the more stressful criminal situation. This again is hardly arousing support for the premises underlying the common understanding doctrine.

Yarmey and Jones (Note 1) used a 16-item questionnaire with content rather similar to the KEBQ. In fact, seven of their items were selected from the pool of items making up the KEBQ. Their respondents were overwhelmingly Canadian, college students, townspeople eligible for jury duty, judges and attorneys, and law students. In addition, they contacted a sample of "experts," psychologists active in conducting research on variables affecting eyewitness performance. Their results indicated that experts had better informed intuitions in these matters than those of any other group surveyed and that substantial proportions of these other groups were not aware of many of the factors that affect eyewitness testimony.

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\textsuperscript{2}Though the content of these five items is exactly the same in both questionnaires, there are some very minor modifications in the manner of presentation of four of them in the KEBQ. Item 3 of the KEBQ has alternatives (a) and (b) in reverse order with respect to the comparable item on Loftus' questionnaire, while Items 2 and 4 have alternatives (c) and (d) reversed with respect to the same items of the earlier questionnaire. Item 5 has been reworded in an attempt to improve its fairness as a question. These minor changes have not at all affected the replicability of Loftus' (1979) results, as will be documented in this paper.
The rationale for the present inquiry is to replicate Loftus' (1979) results with other college student samples as well as more ecologically valid ones and to extend her results in at least two ways. The first extension is that of increasing the number of areas of knowledge sampled and increasing, in some instances, the number of items tapping a given knowledge domain. A second extension is that of determining whether juror demographic characteristics are related in any important way to the degree to which their intuitions are accurate concerning eyewitness behavior.

WASHINGTON STATE SAMPLE

The KEBQ was first administered to another group of University of Washington students. Obtaining KEBQ data from the same institutional setting should certainly have provided the most direct test of the replicability of Loftus' (1979) results. In addition, however, the KEBQ had the virtue of testing knowledge of several aspects of eyewitness behavior not tapped by her earlier questionnaire.

Method

Respondents were 76 undergraduates in their first day of a course in cognitive psychology. They had no specific preparation in the psychology of eyewitness behavior but typically would have had at least one psychology course prior to enrolling for this one. Sixty-five percent of these persons were women, while 35% of them were men. The group was largely Caucasian (88%). Minority group members included 9% Asian Americans, 2% American Indians, and 1% Black Americans. The age distribution was as follows: over 30 (14%), 25–29 (13%), 23–24 (15%), 21–22 (33%), 20 and under (24%), with the median age being 21. Ninety-five percent of the sample were registered voters who were therefore eligible for future jury duty; none reported any previous experience as a criminal trial juror.

The KEBQ is a 14-item, four-alternative, multiple-choice questionnaire that is reproduced in full in Appendix A. Across items the degree of expert consensus concerning the correct answers was fairly high at an average 82.4% concordance among Yarmey and Jones' (Note 1) sample of university researchers. Concordance figures on individual items ranged from a low of 44% on Item 10 to a high of 100% on Items 6 and 13.3 As noted earlier, the first five items are the same five utilized by Loftus (1979). In addition to the domains of knowledge tapped by these items (mentioned in the Introduction), there are items concerned with the quality of memory for faces, photobiased lineups, the relationship of eyewitness accuracy and confidence, age of the witness, effects of the amount of training or experience on witness accuracy, accuracy of estimates of the duration of criminal events, and the advantages and disadvantages of specific questions of witnesses relative to free report on their part. Knowledge concerning cross-race identification and photobiased lineups is tapped by two items each.

3A bibliography of studies supporting the correct answer to each question will be supplied upon request.
Table 1. Percentage of Washington State Respondents Selecting Each Alternative Response for Each Item of the KEBQ

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aPercentage selecting the correct alternative appears in italics.
bSignificantly greater than chance performance by a two-tailed z test.

Results and Discussion

Raw data collected from this sample are displayed in Table 1. Respondents averaged 49.6% correct on the 14 items of the KEBQ, an accuracy level statistically reliable in nature, that is, significantly greater than a guessing-level performance of 25.0%, \( t(75) = 9.18, p < .001 \), 2-tailed. In addition, as can be gleaned from the table, there was better than chance, guessing-level performance on eight of the 14 items. Such performance was obtained on items dealing with cross-race identification, stress effects, weapon focus, the wording of questions addressed to witnesses, photobiased lineups, age of the witness, and estimation of the duration of criminal events.

With this sample the same pattern of results was obtained as with Loftus (1979). Respondents in both the present and former samples performed at above chance levels on Items 1, 2, 4, and 5, and at chance on Item 3. Overall accuracy level on the first five items of the KEBQ was 62%, not a great deal higher in a practical sense than the 54% level of Loftus’ respondents but nevertheless significantly greater in a statistical sense, \( t(574) = 13.40, p < .001 \), 2-tailed.

Whether one considers the 62% accuracy rate on the first five items or the 43% rate for the last nine, the present college student respondents were not just guessing. That is, their intuitions were sufficiently well informed that they performed well above chance on some items, far enough above the threshold for nonguessing behavior, in this instance 36% accuracy, that average performance across all 14 items was likewise well above guessing level. But certainly not all items were responded to with above chance accuracy. Respondent intuitions were not at all adequate to the task when asked questions concerning the effect of violence level on the accuracy of the eyewitness, the
relationship between witness accuracy and confidence, the quality over time of memory for faces, effects of training or experience on identification performance, effects of allowing a witness free versus constrained reporting, and the truth of the assertion that cross-race identification is more difficult than own-race identification.

Even performance on the other eight items was not terribly impressive in absolute terms. It is reasonable to assume that laypersons and the legal profession would not be impressed with anything less than 85% and 89% accuracies on Items 2 and 5, ones dealing, respectively, with effects of high stress on victim identification ability and the effect of the leading question on fidelity of witness response. Despite accuracy levels being significantly above guessing-level performance, even psychologists would not likely be impressed with accuracy rates on more than three additional items, Items 6, 11, and 13. Psychologists might be somewhat sanguine about the levels of respondent knowledge evidenced here with respect to photobiased lineups and the ability to estimate duration of criminal events. This is because the four-alternative, forced-choice $d'$ score, an unbiased measure of the capacity to discriminate the correct from incorrect alternatives for these latter three items, was at a value greater than 1.00 in each instance. But even adding these three items to the total of ones about which respondents were reasonably knowledgeable, one still is talking about only 36% of the sample of items. If the present sample of respondents are at all representative of a reasonably intelligent set of jurors, then clearly jurors could still use a bit of tutoring concerning variables affecting eyewitness behavior. How this might be achieved will be addressed later in this paper.

NEBRASKA SAMPLE

In a first effort to test the generality of findings with the KEBQ as well as their replicability, it was administered to another group of college students, a group differing in a number of ways from the somewhat more traditional student found on the University of Washington (UW) campus. The University of Nebraska at Omaha (UNO) is not a residential campus. More than 80% of its students work full or part time. Furthermore, the UNO student also quite likely scores lower on college entrance exams than does his/her UW counterpart—at least UNO students score lower than University of Nebraska-Lincoln students, a student body roughly comparable to that of UW. Finally, the UNO student is a bit older, he/she typically being in his/her midtwenties rather than early twenties.

Method

These respondents were 100 UNO undergraduates in two Introduction to Psychology classes. Their participation was voluntary and came after giving informed consent. This sample was more nearly balanced between men and women with there being 56% women and 44% men. But as before, the group was overwhelmingly Caucasian, 94%; 5% were Black American, while 1% was Spanish American. The ages ranged from 17 to 51, with the median age being 24. Additionally, just 61% of the sample were registered voters who were therefore eligible for future jury duty. None reported any previous experience as a criminal trial juror.
Table 2. Percentage of Nebraska Respondents Selecting Each Alternative Response for Each Item of the KEBQ

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aPercentage selecting the correct alternative appears in italics.  
bSignificantly greater than chance performance by a two-tailed z test.  
cSignificantly less than chance performance by a two-tailed z test.

Results and Discussion

The raw data collected from this sample are reported in Table 2. Respondents averaged 42.7% correct on the 14 items of the KEBQ, an accuracy rate not high in absolute terms but still significantly greater than a guessing-level performance of 25.0%, \( t(99) = 13.01, p < .001, \) 2-tailed. Perhaps average performance was lower for the Nebraska sample than for the Washington sample, \( t(174) = 10.18, p < .001, \) because the Nebraska student jurors were a less select sample in terms of educational background and intellect. Nevertheless, the 6.9% superiority in accuracy for the Washington student jurors is of arguable practical significance, given the fact that both they and their Nebraska colleagues scored at least less than a 50% accuracy rate.

In addition, perhaps not at all surprisingly, none of the within-sample demographic differences were related to accuracy of response. That is, two-tailed \( t \) tests of the difference in average proportion correct were not significant for men versus women, for individuals less than the median age versus those above the median, and for registered versus unregistered voters. Though Caucasian and Black sample sizes were too disparate in size to conduct a proper statistical test, there is nothing in the present data to suggest any difference in performance, means percent correct being 42.6 and 42.8, respectively.

Here again, an accuracy level of 57% on the first five items of the KEBQ was very similar to that of Loftus’ (1979) registered voters, 54%. Because of the large numbers of respondents involved, however, the present accuracy rate was reliably greater in a statistical sense than that of Loftus’ earlier sample, \( t(598) = 5.61, p < .001, \) 2-tailed.

In any event, it was certainly the case that the pattern of both Loftus’ (1979)
results and that of the Washington State sample of the present study were replicated. Again, performance was above chance on Items 1, 2, 4, and 5, and at chance on Item 3. There was likewise little difference in pattern of responding between the Washington State and Nebraska samples across the remaining 9 items of the KEBQ. The only difference worthy of comment occurred on Item 9. Apparently both sets of respondents were not aware of the counterintuitive nature of research findings concerning the effects of experience or training on identification performance. Both samples performed at the same absolute level, 16% correct, but the greater sample size in the Nebraska case resulted in a 16% rate being significantly less than chance.

Hence it is reasonable to conclude that Loftus’ (1979) findings have not only been replicated on one somewhat similar and one somewhat disparate college student sample but also that the findings have been extended in two important ways. The number of domains of knowledge regarding eyewitness behavior were increased in the construction of the KEBQ, yielding the same general result as previously, namely, that college students are somewhat knowledgeable concerning some aspects of eyewitness behavior and not at all knowledgeable regarding other aspects. Moreover, there is a very consistent pattern about which topics they do and do not seem knowledgeable. Although it is perhaps not surprising, certain obvious demographic characteristics of respondents are not at all related to the degree of which their intuitions are accurate concerning variables affecting eyewitness performance. Therefore the present findings should be generalizable to other samples of reasonably intelligent, mostly middle class, mainly Caucasian respondents. In particular, age, sex, and condition of eligibility for juror duty should in no way limit the applicability of these findings. It is true that the present samples are younger than a typical American jury is likely to be (even though nearly a quarter of the Nebraska sample was over 30), but given our results, age should not matter unless one assumes a quantum increment or decrement in relevant common sense as old age is approached.

WASHINGTON D.C. SAMPLE

Data from this final group of respondents have been included in order to provide a stronger test of the ecological validity of Loftus’ (1979) findings and to provide a test of whether previous criminal jury trial experience serves to educate one’s intuitions with respect to eyewitness behavior. The previous two samples could not provide the latter test inasmuch as they included no one reporting such experience. It is important to note that the original purpose of collecting questionnaire data from this particular group was to find out what local citizens believed were the effects of certain variables affecting eyewitness behavior, variables likely operative in an actual criminal case handled by the Washington D.C. Public Defender’s Office. The fact that the questionnaire items were germane to an actual case was not disclosed to the respondents. Rather, the survey was described as being one that would be helpful in future criminal cases involving identification issues.

Method

Respondents were 46 citizens of Washington D.C. who had not served as jurors in
a criminal case in the previous five years and 43 who had. The former group was solicited by two employees of the Public Defender’s Office within a 16 square block area centering on the courthouse. Cooperation was quite good, with only five persons refusing to fill out the questionnaire. Persons responding included business people, secretaries, workers on lunch break, and the like. The latter group of respondents was solicited from the jurors’ lounge and from a number of jurors leaving the courthouse after a two-week tour of duty. Cooperation was likewise quite good. Since the original purpose of data collection was only to find out what a representative sample of local citizens knew regarding certain aspects of eyewitness behavior, no attempt was made to gather any demographic information beyond that of whether a person had previous criminal case jury experience or not. But given what is known of jury demographics and those of the District of Columbia citizenry, it is not unreasonable to suppose that this sample was older than the other two in this report, that it contained a considerably higher proportion of Black Americans and other minority persons, and that its level of educational attainment was a bit lower. It would not be surprising if the typical socioeconomic status was somewhat lower as well.

The questionnaire contained six items, one ascertaining the extent of previous criminal case jury experience, and five multiple-choice items requiring knowledge of variables affecting eyewitness behavior. One of these latter items does not correspond directly to any of the items in Loftus’ (1979) questionnaire or in the KEBQ; however, the other four items do. Three correspond to Items 1, 2, and 3 of Loftus’ questionnaire and the KEBQ, while the fourth corresponds to Item 13 of the KEBQ.

Results and Discussion

For persons with no previous criminal jury experience, percent correct on items corresponding to Items 1, 2, 3, and 13 of the KEBQ were 20, 41, 20, and 54, respectively, with an average performance of 33.8%. Those with such experience averaged 36% correct, performance on the four items being 33%, 53%, 16%, and 42%, respectively. Previous criminal trial jury experience appeared to do little either to overall performance or to the pattern of responding. Though statistically significant, $t(87) = 2.75$, $p < .01$, the 2.2% superiority in accuracy for those with criminal jury experience is, again, of trifling practical importance. There is likewise considerable similarity regarding topics about which respondents in each group did and did not seem knowledgeable, both groups scoring significantly above chance on Items 2 and 13, while scoring at a level not different from chance on Items 1 and 3.

With one exception, the pattern of chance and nonchance responding on comparable questions was the same in both Washington D.C. groups as with the Loftus (1979), Washington State, and Nebraska groups. The present respondents showed no awareness of the cross-race identification effect, whereas substantially greater proportions of the other respondents did. Maybe being a college student sensitizes one to this issue, but the fact that a cross-section of the citizenry of the United States’ capital city is not aware of the typically greater difficulty of cross-race identification is interesting. This particular lack of knowledge runs counter not only to a fairly sizable scientific literature on the topic but also to a purportedly common belief of law enforcement officials who are directly involved with criminal identification (Brigham & Barkowitz, 1978).

The most consistent difference between the present results and those connected
with the samples already described was one of decidedly lower accuracy on the part of the District of Columbia citizens. On directly comparable items, Loftus’ (1979) respondents averaged nearly 13% higher than the Washington D.C. persons with criminal jury experience (46.7% vs. 34%) and nearly 20% higher than D.C. respondents with no criminal jury experience (46.7% vs. 27%). Both these differences were statistically reliable by two-tailed t tests (ps < .001).

Similar comparisons of Washington State and Nebraska samples with each of the D.C. subsamples showed the D.C. respondents to be consistently less accurate, ranging from an average of 16 to an average of 26 percentage points less accurate per comparable item. Hence, it would appear that the typical citizen of a large urban area in the United States may possess even less well informed intuitions regarding eyewitness behavior than might have been suspected on the basis of data discussed to this point. This does not totally invalidate the earlier reported findings—it simply means that those findings may apply just to samples of better educated and perhaps higher socioeconomic status persons. If this conjecture be true, then the college student data would provide the most optimistic estimate of the degree to which the lay public’s intuitions are informed concerning the effects of certain variables on eyewitness behavior.

GENERAL DISCUSSION

A consistent result emerges from the data of our 265 respondents. This result holds regardless of geographic location of the urban area sampled from and regardless of the various demographic variables that may have been involved. It is that the typical respondent’s performance was above a chance, guessing level but not at all high in absolute terms. This does not imply that there was above chance responding to all items of the questionnaires involved. Rather, about half the items were responded to at an accuracy level well above chance, occasionally even at a fairly impressive accuracy level in an absolute sense. The respondents’ intuitions were not at all adequate to the task when queried about the remaining domains of eyewitness behavior, however. Performance on these latter items was not different from chance.

The fact that the Washington D.C. sample scored consistently lower on comparable questions certainly does not mitigate against the conclusion that there is considerable room for improved education of juror intuitions; it only strengthens the argument. It therefore underscores an obvious implication of the conclusion that juror intuitions might stand further edification regarding the vagaries of eyewitness behavior: The common understanding doctrine as applied to a knowledge of variables affecting eyewitness performance cannot be supported in general. Only in two domains of knowledge with respect to eyewitness behavior do the present findings lend any empirical support to the premises of the common understanding doctrine—and even here the support is limited to the college student samples. Between 79% and 89% of college student respondents agreed that extreme stress experienced as a crime victim would reduce one’s ability to perceive and recall details of the crime and that leading questions might affect the witness’ accuracy in responding.

Interestingly, the law amply recognizes the objective reality of the latter statement
but not that of the former. As Deffenbacher (Note 2) has recently pointed out, there is both venerable psychological theorizing and a sizable body of recent, forensically relevant studies that support the notion that high stress levels debilitate eyewitness memory. Though legal scholars have from time to time argued for the same (e.g., Hutchins & Slesinger, 1928; Marshall, 1966), perhaps it is time for the law to bring itself into line with the dictates of psychological theory, data, and juror opinions on this matter.

It could be objected, however, that the present data seriously underestimate the collective understanding of juries at real trials. After all, the law presumes that there is more wisdom in a panel of 12 jurors than in one. Juries deal with adjudicative facts under conditions of group discussion and deliberations, and even though only one person might have the proper interpretation of some fact of eyewitness behavior, he/she would have the opportunity to convince the remainder of the jury. What are the chances of a 12-person jury having at least one person with the right answer?

If we assume that the selection of one juror is independent of the selection of every other, then the probability of selecting a 12-person jury such that at least one person has the correct information can be determined by constructing the appropriate binomial distribution. Consider the response to Item 2 of the Washington D.C. citizens not having previous criminal trial jury experience. For the sake of argument, further assume that 41% is a valid index of the proportion of such persons having the correct information concerning the effects of high stress on the perceptual and memorial capacities of the victim of a crime. The likelihood of constructing a jury so that at least one person would have this information is given by the expression 1-(.59)\(^{12}\).59 being the proportion of persons not having the correct information. The resulting probability is .998. So it is virtually certain that such a jury would have someone with the right answer.

Social psychologists (e.g., Vinokur & Burnstein, 1974) have shown that groups will often shift their solution to a problem in situations where there are arguments of differential persuasiveness that not all group members share, as in the present case. If the further assumption were made that the correct information would indeed be persuasively communicated to the other jurors, then there would be no need to be concerned with the implications of the present data. The view would be that even in cases of substantial individual ignorance, the common understanding of the collective jury would be high.

The major difficulty with this view is the assumption that one or even a small minority of jurors could persuade the remainder of the validity of their argument concerning any topic on which there might be strongly held beliefs. The following vignette illustrates the nature of the difficulty. Juror 1 says: ‘‘She (the victim) said she was so frightened, she’ll never forget that face. I was once frightened like that and I’ll never forget it, either. I believe her. The guy’s guilty.’’ Juror 2 says: ‘‘Well, I think if you’re that upset, you might not be able to remember things as well. I once read somewhere that being frightened interferes with memory.’’ Juror 1 replies: ‘‘I just don’t believe that, because I’ll never forget what happened to me.’’

Fortunately, there are some very recent data bearing rather directly on this issue. Wells (Note 3) had half his 200 student jurors answer Yarmey and Jones’ (Note 1) questionnaire individually, as in the present study, and half answered the questions
following discussion of them in five-person groups. There was very definite evidence
for "group improvement." One item showing particularly impressive improvement
was one comparable to Item 6 of the KEBQ, one concerned with the effects of
photobiased lineups on reliability of identification. Only 44% of noninteracting per-
sons answered it correctly, while 65% of interacting ones did so. The probability that at
least one person in each of Wells' five-person groups should have known the correct
answer is 1- (.56)^5 or .945. Despite this high probability, however, the persuasiveness
of the arguments for the correct answer were clearly not universally compelling. More
than a third still insisted on an incorrect answer. Hence the impact of jury deliberations
on the reduction of individual ignorance may not be as straightforward as it might
seem.

Another potential criticism of the present data is that our subjects' responses to
these items may not really involve the same task as that confronting jurors at a real
trial. It is certainly the case that a multiple-choice test places answers into a context of
abstraction removed from the particulars of a specific case. Testimony at a trial with
regard to any one fact would be judged in the context of other facts established through
direct and cross examination of witnesses.

While this may be true, it does not alter the situation described by the data of the
present investigation, as well as those of Brigham (1981), Loftus (1979), Wells (Note
3), and Yarmey and Jones (Note 1). There would appear to be gross individual and
even collective ignorance of the actual implications of a good many adjudicative facts
that bear on the reliability of eyewitness testimony. When this ignorance is not
corrected, jurors may not be able to evaluate properly the implications of any one
concrete fact, inasmuch as the implications drawn from the factual context may well
themselves be faulty.

Since a number of identification issues do not seem typically to be part of jurors'
understanding, how can their understanding of these issues be improved? Two possi-
bilities may be suggested: judicial instructions to the jury and/or admittance of expert
psychological testimony. A number of scholars have commented upon the relative
merits of these two approaches and have argued that the advantages of the latter
approach outweigh its disadvantages both in an absolute sense and in comparison to the
approach of employing only model instructions for the judge to give the jury (cf., e.g.,

APPENDIX A:
KNOWLEDGE OF EYEWITNESS BEHAVIOR QUESTIONNAIRE

Choose the one best answer for each of the following.
1. Two women are walking to school one morning, one of them an Asian and the other
white. Suddenly, two men, one black and one white, jump into their path and attempt
to grab their purses. Later, the women are shown photographs of known purse
snatchers in the area. Which statement describes your view of the women's ability to
identify the purse snatchers?
(a) Both the Asian and the white woman will find the white man harder to identify
than the black man.
(b) The white woman will find the black man more difficult to identify than the white man.
(c) The Asian woman will have an easier time than the white woman making an accurate identification of both men.
(d) The white woman will find the black man easier to identify than the white man.

2. When a person experiences extreme stress as the victim of a crime, there will be:
(a) generally a greater than normal ability to perceive and recall the details of the crime.
(b) generally the same ability to perceive and recall the details of the crime as under normal conditions.
(c) a majority of people who will become better at perceiving and recalling crime details whereas others will become worse at it.
(d) generally a reduced ability to perceive and recall the details.

3. Suppose that a man and a woman both witness two crimes. One crime involves violence while the other is nonviolent. Which statement do you believe is true?
(a) Both the man and the woman will remember the details of the nonviolent crime better than the details of the violent crime.
(b) Both the man and the woman will remember the details of the violent crime better than the details of the nonviolent crime.
(c) The man will remember the details of the violent crime better than the details of the nonviolent crime and the reverse will be true for the woman.
(d) The woman will remember the details of the violent crime better, and the man will remember the details of the nonviolent crime better.

4. Consider a situation in which a person is being robbed. The robber is standing a few feet from the victim and is pointing a gun at him/her. The victim later reports to a police officer, "I was so frightened, I’ll never forget that face." Which of the following do you feel best describes what the victim experienced at the time of the robbery?
(a) The victim was so concerned about being able to identify the robber that he/she didn’t even notice the gun.
(b) The victim focused on the robber’s face and only slightly noticed the gun.
(c) The victim focused on the gun which would interfere with his/her ability to remember the robber’s face.
(d) The victim got a good look at both the gun and the face.

5. Suppose a person is mugged in a darkened hotel hallway. He/She is later asked questions about the incident. (1) “Did you see a scar on the left side of the assailant’s neck?” or (2) “Did you see the scar on the left side of the assailant’s neck?”
(a) There is no important difference between these two questions in information provided to the witness.
(b) The slight difference in question wording would make no difference in witness accuracy since the witness would know whether or not he/she had seen a scar.
(c) Even a slight difference in question wording such as that here might affect the witness’ accuracy in responding.
(d) When asked to remember a stressful event, a witness would certainly not be affected by a difference in wording as small as the distinction between a and the.

6. A robbery is committed. Later, the clerk who was robbed at gunpoint identifies
someone from a set of photographs as the person who perpetrated the crime. Still later, the clerk is asked whether the robber is present in a lineup of several somewhat similar individuals. Which of the following statements is true?
(a) Guilty or not, if the person identified in the photos is present, he/she is likely to be identified from the lineup as well.
(b) Having seen the photos, the witness (victim) is not likely to choose someone from the lineup if the robber is not present.
(c) If the robber is present in the lineup, having seen his/her photo previously does not add significantly to his/her chances of being identified from the lineup.
(d) The effect of viewing the photos on accuracy of identification later at the lineup is not affected by how good a look the witness got of the robber.

7. Under less than optimal viewing conditions, such as those of a violent crime, which of the following statements would be true?
(a) The relationship between a witness’ stated confidence and his/her accuracy of identification is moderately strong.
(b) The relationship between confidence and accuracy is zero.
(c) The relationship between confidence and accuracy is very strong.
(d) The relationship between confidence and accuracy is very strong only for those of above average intelligence.

8. Which of the following statements do you feel best represents the truth about an eyewitness’ memory for faces seen only once?
(a) Even after several months, memory is still 90%–95% accurate.
(b) Amazingly enough, physically attractive and unattractive faces are remembered no better over the long term than are faces of average attractiveness.
(c) Memory accuracy drops after only two weeks to a level where a face seen once before becomes indistinguishable from those never before seen.
(d) It is 6–12 months before memory accuracy drops to a level where a face seen once becomes indistinguishable from ones never before seen.

9. Concerning the effects of the amount of training or experience a person has had in making eyewitness identifications, which of the following statements seems most reasonable to you?
(a) Police officers in general are better than civilians at recalling details of another person encountered for only a few seconds.
(b) When asked to watch a busy street for incidents of an illegal nature, civilians report more “possible” thefts than do police.
(c) It appears to be quite difficult to train people to become better at recognizing faces seen previously.
(d) Only police officers with 20 years or more experience possess greater ability than civilians to recognize faces seen previously.

10. Sometimes during a criminal trial the age of the eyewitness is assumed to be a factor in the accuracy of identification. Which statement do you think describes the actual relationship between age and identification accuracy?
(a) Ability to recognize previously seen faces increases steadily to early adulthood and then declines after age 60.
(b) Ability to recognize faces increases up until the early school years and then remains constant through old age.
(c) Face recognition ability remains relatively constant in accuracy after 3–4 years of age.
(d) Because of their much greater experience, people over age 60 have greater ability to recognize faces seen under brief and/or stressful viewing conditions than do young adults.

11. Suppose an armed robbery took place in a grocery store. The entire incident lasted 4 minutes. If 100 people saw the robbery and were asked how long it had taken:
(a) some would say less than 4 minutes, some would say more than 4 minutes, but the average would be about 4 minutes.
(b) a few would say less than 4 minutes, most would say more than 4 minutes, and the average would be more than 4 minutes.
(c) most would say less than 4 minutes, a few would say more than 4 minutes, and the average would be less than 4 minutes.
(d) in general, people are fairly good at estimating time durations and most estimates would be very close to 4 minutes.

12. Witnesses to crimes are sometimes asked by the police to tell what happened in their own words, in other words to report freely. Sometimes the police ask them specific questions. Compared to a free report, witnesses’ answers to specific questions are:
(a) more accurate and complete.
(b) less accurate and complete.
(c) more accurate, but less complete.
(d) less accurate, but more complete.

13. Suppose a house were burglarized and the resident got a glimpse of the burglar through the window. At a later lineup the resident attempts to make an identification. Assume there is a 10% chance that the resident will be mistaken. Now in addition to the above facts, assume that the resident were first shown photographs by the police, but recognized none of the people in the photos. Assume further that the person the resident later picked in the lineup was shown in one of the photos that had earlier been viewed. The chance of an incorrect identification in this latter situation would then:
(a) remain about 10%.
(b) decrease below 10%.
(c) increase above 10%.
(d) decrease below 10% for women and increase above 10% for men.

14. Appropriate to the situation where people of one racial group view those of another, you may have heard the expression, "They all look alike." Which of the following statements best reflects your personal view of this expression.
(a) It is true.
(b) It is a myth.
(c) It is more applicable to whites viewing nonwhites than the reverse.
(d) It is more applicable to nonwhites viewing whites than the reverse.

REFERENCE NOTES


REFERENCES


United States v. Amaral. 1973. 488 F. 2d 146 (9th Cir.).
