Memory & the Law – Part 2: Applying Memory to the Legal System

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I. Eyewitness Memory

II. Alibis Provided by Suspects & Witnesses

III. Interrogations of Suspects
I. Eyewitness Memory

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Brandon Moon (2005)
17 years in prison

- **Convicted** of three counts of aggravated sexual assault from an April, 1987, incident in El Paso, TX

- **Eyewitness ID:** the day after the attack, the victim went to the police station and provided information for a composite sketch; the next day, she viewed a photographic array and indicated that Moon looked like the perpetrator, “but she couldn’t be sure”; finally, one day later, she viewed a live lineup and identified Moon (the only person in both lineups)

- **Forensic Evidence:** a serologist testified that he tested the rape kit and bedding, and that Moon was a possible contributor of the semen recovered from the evidence, but that the victim's husband and son were excluded.
Understanding eyewitness (mis)identification...

- What can research tell us about factors that influence eyewitness memory?

- How can we apply this knowledge to mitigate the role of misidentification in wrongful conviction?
What can research tell us about eyewitnesses?

• Accurate or inaccurate identifications derive from:
  1) the cognitive structures (encoding capabilities), fears, or values that a witness brings to the situation
  2) the opportunities and constraints afforded the witness at the time of the situation
  3) the information a witness encodes about the offender from the initial viewing of the event
  4) the history of the encoded information from the initial viewing to the time of the identification request
  5) the circumstances surrounding the identification
  6) the witness’s expectations about testimony and the task of giving evidence, including information obtained from others
What can research tell us about eyewitnesses?

1) the cognitive structures (encoding capabilities), fears, or values that a witness brings to the situation
   ✓ inattention or distraction during the incident
   ✓ cognitively impaired or limited cognitive ability (drug or alcohol)
   ✓ focus on salient aspects of the incident (“weapon focus”)
   ✓ stress or affective response to the incident
   ✓ interracial/ethnic biases (“cross-race effect”)

What can research tell us about eyewitnesses?

2) the opportunities and constraints afforded the witness at the time of the situation
   ✓ distance from the perpetrator or incident
   ✓ lighting at the time of the incident
   ✓ amount of time afforded to view the perpetrator or incident
   ✓ clarity of view (obstructions, moving images, etc.)
   ✓ disguises worn by the perpetrator
What can research tell us about eyewitnesses?

3) the information a witness encodes about the offender from the initial viewing of the event
   ✓ amount of information
   ✓ quality of the information
   ✓ stereotyped nature of the information

What can research tell us about eyewitnesses?

4) the history of the encoded information from the initial viewing to the time of the identification request
   ✓ length of the retention interval ("forgetting curve")
   ✓ interference from subsequent experiences
   ✓ suggestive questioning by investigators
   ✓ information from co-witnesses or media sources
   ✓ repeated retrieval of the information (positive and negative effects)
What can research tell us about eyewitnesses?

5) the circumstances surrounding the identification

- multiple lineup procedures (repeated exposure)
- instructions provided to the witness
- biased administration of the lineup
- quality of the lineup as constructed
What can research tell us about eyewitnesses?

6) the witness’s expectations about testimony and the task of giving evidence

✓ post-identification feedback (confidence inflation)
✓ preparation for testimony (selective recall)
Can we mitigate the role of (mis)identification in leading to wrongful conviction?

• Training seminars (such as this one) that educate attorneys and judges to recognize factors that lead to eyewitness misidentification…

• Expert testimony that educates jurors on factors that lead to eyewitness misidentification…

• Policy reform and training of law enforcement on scientifically-validated procedures that reduce witness misidentifications…

Policy reform and training of law enforcement…

• There is broad consensus within the scientific community regarding reforms that should be enacted by the criminal justice system.
Policy reform and training of law enforcement…

1) Use of appropriate interview protocols (cognitive interview).
2) Blind administration of the lineup (technology-based)
3) Lineup composition to ensure fairness
4) Unbiased lineup instructions
5) Appropriate collection of confidence statements and avoidance of feedback
6) Recording of the lineup administration (video preferably)

Conclusions…

• Eyewitness misidentification clearly contributes to wrongful conviction of the innocent (and leads to other errors)

• Scientific methods have improved our understanding of the misidentification problem, including factors associated with it and possible reforms for mitigating the problem

• Expert testimony, the education of attorneys and judges, and policy reforms coupled with training for law enforcement can provide important protections against the incidence of wrongful convictions
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Think back to this past Wednesday, May 19th.

Where were you, what were you doing, and who were you with between 8:30 and 9:30pm?

Who could verify your whereabouts?

Do you have any objective records that could verify your whereabouts?
Generation Domain…

• Autobiographical Memory – memory for one’s life events

• An implicit assumption in the criminal justice system suggests that people facing potential imprisonment should be able to recollect their prior actions

• Memories for one’s life events are not that detailed, however, and are often characterized by schematic representations of what one generally does – absent many of specifics and absent good temporal tags
Believability Domain...

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<th>Difficult to Fabricate</th>
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<tr>
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Fig. 1. A taxonomy of alibi believability.
Horgan, Meissner, et al. (2008)

• Assessed true and false alibis provided by individuals for either 5 or 12 days earlier (N = 172).

• Alibis were provided at two testing intervals, allowing participants to seek “evidence” in support of their alibis and to assess “consistency” of the alibi provided.

• An additional sample of participants (N = 53) were asked to assess whether the alibi was “true” or “false”.

Alibi Typology
Distinguishing True vs. False Alibis

Coffman et al. (2005)

Horgan et al. (2008)
Conclusions…

• Alibis are difficult to provide, particularly following lengthy delays following the incident; and they are often characterized by schematic patterns

• True and false alibis are generally indistinguishable in terms of the typology of evidence, and true alibis are generally judged to be “false” when they have been provided following a lengthy delay (i.e., they lack sufficient details to convince perceiver and begin to look more like false alibis)

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Interrogation of Suspects

While interrogations generally involve the application of social influence methods to elicit information from a suspect, there are several facets of the process that invoke memory issues:

- interrogative methods that involve “memory distrust”
- “interrogative suggestibility”
- the elicitation of information involving significant delays
- the recall of the investigator in the absence of audio or video recording of the interrogative session
Typology of False Confessions

• **Voluntary False Confessions**
  Desire to protect someone or for notoriety/attention, inability to distinguish reality from fantasy

• **Coerced-Compliant False Confessions**
  False confession for some immediate instrumental gain, despite the knowledge that they did not commit the crime

• **Coerced-Internalized False Confessions**
  False confession due to the belief that they actually committed the crime
Coerced-Internalized False Confessions

• Two key interrogative methods that lead to internalization:

  1) Maximization tactics that increase the suspect’s perceptions of the evidence against him – including the introduction of “false evidence”

  2) A memory vulnerability or interrogative approach that leads the suspect to “distrust” his own memory

Interrogative Suggestibility

• Some individuals are more susceptible to the influence of interrogative methods, and are therefore more likely to provide a false confession

Suggestible individuals include:

  o children and juveniles
  o mentally disabled (or low IQ)
  o mentally ill
  o chronic drug/alcohol use
    (and certain prescription drugs)
Interrogative Suggestibility

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Interrogative Suggestibility

The susceptibility of an individual to give into leading questions and interrogative pressure.

This characteristic can be measured for a given individual by a licensed clinical psychologist (Gudjonsson Suggestibility Scale).

Conclusions…

• Interrogations are susceptible to the various failures of memory, including suggestibility and interrogative methods that can produce false confessions.

• Interrogations that are focused on events that occurred weeks, months, or years prior need to understand the practical limits of recall

• Investigators who conduct an interrogation and subsequently rely upon their notes as the evidential record of the interrogation are likely to produce evidence that is biased and incomplete.
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