Chapter six.

eyewitness testimony.

In 2004 the author of this chapter was contacted by a solicitor (i.e. a legal representative) in Scotland whose client was accused of a serious crime. The evidence against the client involved eyewitnesses. The solicitor requested a written report on several psycho- logical factors that he considered relevant to the eyewitnesses’ evidence. Among these factors were the possible effects of (i) the consumption of a large amount of alcohol on witness perception and memory, (ii) being shown a photograph of a person on a later attempt to try to identify the perpetrator at an identification parade/line-up, (iii) the client being the only person in the line-up whose facial hair colour matched the witness’ original description and (iv) whether asking a witness during a trial if the perpetrator is present in court adds anything to the earlier identification (i.e. made at the line-up). The report led, in 2005, to its author being required to be at the court building during the defence part of the trial in case he was called to testify (i.e. in front of judge and jury). In the UK it is relatively rare for psychologists to testify (as expert witnesses) in criminal trials on factors that may influence the reliability of witness testimony. The major reason for this has been the traditional view of trial judges that what criminal psychology research has found out is already within the common knowledge of jurors and therefore that expert testimony on such matters is not required (the role of expert witnesses being to assist the court). In recent years in England the views of some judges has changed to some extent and they will allow expert witness testimony if this testimony is likely to inform jurors of matters of which they are likely to be unaware (so long as the expert testimony is based on reliable information such as quality research that has been published). In some countries, for example the USA, the rules about the admissibility of expert witness testimony, how qualified/experienced such experts need to be and the research on which their testimony is based should be published are different from in the UK.

However, in Scotland it seems that in criminal trials very few psychologists had ever been allowed to testify on factors that could influence eyewitness testimony. Thus the author of this chapter was reticent about travelling the hundreds of miles to Scotland only for it to be decided that he would not be allowed to testify as an expert witness. To his surprise, he was allowed to testify on the four factors mentioned above.

In 1974 the Government in England and Wales asked an eminent judge to chair a committee of inquiry to produce a report that would try to explain why honest witnesses can give mistaken testimony (e.g. identify the wrong person as being the crime perpetrator). The committee was set up in response to a number of factors including media focus on people who had been found guilty and put in jail based on witness testimony that was later shown to be mistaken. This committee’s report (known as the Devlin Report after its chairman) was published in 1976 and it called for more psychological insight and research to be provided on this topic, since rather little was available at that time. In response to this the author of this chapter invited a colleague (Brian Clifford) to join him in writing a book (published in 1978) entitled The Psychology of Person Identification which overviewed the various insights that psychological findings and theories were then able to offer. In the decades since then many thousands of research papers and dozens of books have been published on the topic. In England and Wales the many pupils who now choose psychology as one of the three or so specialist subjects they study in the last two years of school or college will cover the topic of eyewitness testimony, which has now become one of the major topics, worldwide, in psychology.

In the USA from the mid-1990s the Innocence Project (see the Recommended Further Reading list at the end of this chapter for the address of its web site) has found that many falsely convicted and imprisoned people were there based on honest but mistaken eyewitness testimony. The Project often proved that the convictions were false by very modern use of DNA testing (a procedure pioneered by Sir Alec Jeffreys here at the University of Leicester). In response The Attorney General of the United States set up a committee to produce guidelines for the police relating to the obtaining of eyewitness evidence. Some of the kinds of psychological research that informed these guidelines will be described in this chapter.

Some recent psychological research studies of witnesses to real-life crimes have confirmed the concern shown by the 1970s Government committee of enquiry and by the Innocence Project. For example, in Sweden a 2005 study examined the descriptions given to the police by twenty-nine witnesses who saw the assassination of the Foreign Minister (Anna Lindh). The accuracy of their descriptions of the perpetrator was gauged from comparison with the appearance of the assassin on a video-recording from a surveillance camera a few minutes before the killing. The wit- nesses’ descriptions of age, height and body build were largely inaccurate. (However, this study involved only one criminal who could have been particularly difficult to describe.)

A 2004 study in Norway compared security camera video- recordings of robberies at banks and post offices with witnesses’ descriptions of the perpetrators. It found that forty-four per cent of the height descriptions were ‘accurate’ and a further thirty-four per cent were ‘partly accurate’ but that forty per cent of the age descriptions were ‘incorrect’. (However, it should be noted that all the robbers had covered their faces in one way or another.) This study further found that witnesses who gave fuller descriptions were not more accurate. A study in the Netherlands that compared witness descriptions to those convicted of robberies also found that witnesses to these real-life crimes who gave fuller descriptions were not more accurate. It found that these descriptions contained largely rather general descriptors (e.g. ‘tall’) and few identifying details. In England a 2003 study of witnesses’ performance at real life identification parades/line-ups found that those who had provided more detailed descriptions to the police were more likely to pick out the suspect but the extent to which their descriptions actually matched the suspect was not related to whether the suspect was picked out or not.

Psychological research on factors that may influence witness testimony has actually been conducted for over eighty years. This research has tended to focus on (i) aspects of the witnesses (e.g. alcohol consumption), (ii) aspects of the crime (e.g. weapon usage) and (iii) aspects of the police investigation (e.g. whether a photograph of a man was shown to the witness some days before they saw him in a line-up). The third of these aspects can be improved in the light of psychological research but the first two usually cannot. Nevertheless, research on these aspects can inform decisions as to whether witness evidence can be relied upon.

The most crucial contribution of criminal psychology to better evaluation of eyewitness testimony has been to try to make investigators, courts, and juries aware that memory does not act like a tape recorder. Thousands of psychological research studies have found that (i) during an event we can only focus on certain parts of it,

(ii) we do not put all these parts into memory and (iii) when we try to retrieve from memory the (limited amount of) information that actually is in there about the event we (a) cannot retrieve all that is there and (b) we ‘add’ to what is retrieved based on our expectations.

aspects of witnesses.

Much of the research on aspects of witnesses has found that these have little effect on performance (e.g. Whether the witness was female or male, a member of the public or a police officer, confident or not, intelligent). These are important findings. For example, jurors or judges might mistakenly think that a confident witness should be relied on more than a non-confident witness.

However, a topic that only recently has begun to receive the attention of criminal psychologists is that of elderly witnesses. Research has found that people over the age of sixty-five years make more mistakes than younger adults when trying to pick out from a set of photographs the person they saw previously com- mitting a (mock) crime. This seems especially so when the set of photographs does not, in fact, contain the perpetrator (but similar people to him, as required by police ‘regulations’ in several countries). This is not due to poor vision but may well be due, research results suggest, to elderly witnesses having difficulty remembering (and/or grasping the reason for) the instruction (required to be given by the police in England) that the perpetrator ‘may or may not be’ among the photographs. Research has also found that young children will choose someone from a photo- spread when the originally seen face is not there.

Another aspect of witnesses that some research has found to be important is whether they are familiar with the nature of the appearance of the perpetrator. For example, if the perpetrators were from a part of the world with which the witness was not familiar, the witness may have greater difficulty in (i) describing them and picking them out from a set of similar-looking people (e.g. in a set of photographs or in a line-up). There is now quite an extensive research literature available on what is termed ‘cross-racial’ identification (though this phrase is rather inappropriate). Such research has often, but not always, found that people are better at identifying faces of ‘types’ they have extensive experience of than types they have limited or no experience of. (However, in many of these laboratory based studies the participants initially have been shown many faces, each very briefly, to later recognize among an even larger set rather than initially just one or two faces, as in most crimes, to later identify from several.) One of the current leading psychological explanations of these findings is that people are able to encode (i.e. put into memory) more information concerning the types of faces they are familiar with. An interesting point that arises from research on this topic is that, if it is indeed more difficult for witnesses to successfully identify a person from a different ‘type’, then such an identification, if correct, should carry more weight (e.g. in court).

Another important aspect of humans that psychology has studied is their expectations about the type of person who would commit crime. For example, we expect bad things to have been committed by nasty people and good things by attractive people. A seminal experiment conducted in Scotland illustrates this well. Members of the public were provided, by the psychologists, with experience of seeing a face and later trying (from memory) to reconstruct a likeness of it using sets of photographs of eyes, noses, chins and so on. Then these participants were (unknown to them) all shown the same face but half of them were led to believe it was of a murderer whereas the other half were led to believe it was a lifeboat man. Their facial reconstructions were shown to other participants (who knew no details of the experiment). This second group of participants were each shown one of the reconstructions and were asked to rate the ‘person’ on a number of personality characteristics. Those who were shown reconstructions made by people who were led to believe that the original face was of a murderer rated him as more dishonest and more unattractive than did those shown the reconstructions made by people who were led to believe that the original face was of a lifeboat man.

Criminal psychology research has also found that the general public share ideas of what certain types of criminal look like (e.g. drug dealer, company fraudster). However, these commonsense beliefs may not be valid or reliable.

aspects of the crime.

Much of the psychological research relating to aspects of the crime has produced findings that do support commonsense (e.g. the effects of poor street lighting). One of the topics where the research findings differ from surveys of common sense beliefs is that concerning the effects of levels of violence. Many people assume that the more violent the event the more memorable it will be. A growing number of research studies have scientifically examined the effects on witness testimony of emotion/stress/arousal or of the presence of a weapon.

Most psychological research experiments on the effects of strong emotion or of stress or fear have found that witness memory is restricted to the more ‘central’ parts of the event so that while witness testimony for some aspects of the event could be enhanced, memory for other (i.e. less central) aspects is poorer. This may well be partly due to where the witness focuses attention. However, in experiments it is extremely difficult to engender strong emotion or fear due to ethical reasons.

While I was writing this chapter, the media in the UK and around the world were publicizing the fact that an innocent Brazilian man was shot dead on the London underground railway in the police hunt for the people who had bombed this passenger railway some days earlier. After the shooting the first media reports included witness information (e.g. about his behaviour and outer clothing) that suggested that he could have been a bomber. However, some days later it became known that his clothing was not ‘bulky’ (possibly concealing a suicide bomb) nor did he leap the ticket barrier while being pursued by the police.

The police were very alert to the possibility of suicide bombing and their stress/emotion/arousal may have caused them to ignore (non-central) cues that could have indicated that the man they were following was the wrong one. (They appeared to have followed him from a residential building where a suspected bomber was thought to be staying.) Furthermore, the act of following a suspected bomber will have increased police arousal and this increased arousal would have combined with the fear of the (possible) bomb. Research we conducted in the late 1990s at the University of Portsmouth (with the help of police firearms officers) examined the effects on shooting behaviour of arousing events in the preceding minutes. Earlier research had found that armed police officers (like other humans) can misattribute arousal caused by preceding events as being caused by the (possibly armed) man and therefore shoot him when he, in fact, was not armed.

A considerable number of psychological experiments have studied the so-called ‘weapon focus’ effect. Among the first experiments were rather straightforward ones which showed, for example, that during the witnessed event people who saw a man getting out a gun from his pocket looked for longer at this item (and therefore less at the man) than did people who saw the same event but with the man getting out a cheque book. The people who saw the gun also were able to remember less about the whole event. Recent studies have been more complex. For example, the author of this chapter was asked to assist the editor of a research journal to decide whether an article (and the research study it described) was good enough for publication. The article was on weapon focus and in its research study some of the witnesses to the (staged) event saw a man get out a gun and some did not. Some of the witnesses saw the man get out part of a frozen chicken, which may seem very odd until one realizes that the researchers had designed their experiment to see if it was the unusualness/ unexpectedness of the object (i.e. chicken, gun) rather than it being a weapon that had affected the witnesses. Other similar studies (e.g. using a stalk of celery) seem to have confirmed that what some call the weapon focus-effect is not restricted to weapons.

One of our studies found that among witnesses who had experience with guns, the more frequent the experience (i.e. as members of the Territorial Army) the less was there a weapon focus effect. In another of our studies thousands of police case files were examined to find the several hundred in which real-life witnesses had been shown by the police identification parades/line-ups that included the suspect plus several other people of similar appearance. In several dozens of these cases a weapon was involved in the crime that had been witnessed. The data analysis found that witness line-up performance was not poorer when a weapon had been involved.

This rare, real-life study casts doubt on the notion that when a crime involves a weapon witnesses/victims focus too much of their attention on it (and/or get over aroused) to the detriment of memorizing what the criminal looked like. On the other hand, the presence of a weapon might subsequently have caused such real life witnesses to be, for example, more motivated and/or more careful at the line-ups than the non-weapon witnesses. This lack of clarity concerning the effects of something (i.e. a weapon) is typical of the many issues that psychology tries to explain. Human beings are very complex and adaptable and therefore it is really not surprising to find that although something like a weapon or stress/arousal may impair one aspect of our psychological activity it may also enhance other aspects. This complexity issue also applies to aspects of the investigation.