Sensitizing Jurors to Factors Influencing the Accuracy of Eyewitness Identification: Assessing the Effectiveness of the *Henderson* Instructions

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New Jersey v. Henderson (2011)

• “To help jurors weigh [eyewitness] evidence, they must be told about relevant factors and their effect on reliability” (Chief Justice Rabner, 2011).

  • Based on established psychological research
  • Explain stages of memory
  • Memory fallibility
  • Outline specific estimator and system variables that affect reliability
Safeguard Effects

- **Sensitivity**
  - Expert testimony (Cutler et al., 1989; Devenport et al., 2002)
  - (I-I-Eye) Instructions (Pawlenko et al., 2013)

- **Null**
  - Expert testimony (Devenport & Cutler, 2004)
  - *(Telfaire)* Instructions (Greene, 1988)

- **Skepticism**
  - Expert testimony (Cutler et al., 1990)
  - *(Revised Telfaire)* Instructions (Greene, 1988)
  - *Henderson* Instructions (Berman et al., 2015; Yokum & Papailiou, 2014)

- NJ Supreme Court opined that, “...with enhanced jury instructions, there will be less need for expert testimony” *(New Jersey v. Henderson, 2011, p. 998).*
Study 1 Methods

• Participants
  • 209 community members and 243 undergraduates

• Trial stimulus
  • 40-75 minute video reenactment of attempted rape trial

• Measures
  • Belief in the eyewitness (0-100% likelihood of correct ID)
  • Witness ratings (detective, $\alpha = .87$; eyewitness, $\alpha = .84$)
  • Verdict (dichotomous)
Study 1 Design

• Quality of witnessing conditions
  • Good: 45 second exposure duration, no weapon, and one day time delay
  • Poor: 10 second exposure duration, weapon presence, and one month time delay

• Quality of ID conditions
  • Good: 6 person lineup, unbiased lineup instructions, and no feedback
  • Poor: Showup, no lineup instructions, and feedback

• Safeguard type
  • Case specific Henderson (skepticism)
  • Case specific expert testimony (sensitivity)
  • Research enhanced Henderson (sensitivity)
  • Henderson + expert (greatest sensitivity)
  • none
Results: Mediation

Figure 1. Mediational model displaying the effect of system variables on verdict mediated by eyewitness credibility ratings (PROCESS Model 4; Hayes, 2013).
Results: Mediation

$\beta = -0.58$, $95\%$ CI $[-0.93, -0.22]$

$\beta = 0.58$, $95\%$ CI $[0.41, 0.76]$

Total effect, $\beta = -0.94$, $95\%$ CI $[-1.56, -0.33]$
Direct effect, $\beta = -0.71$, $95\%$ CI $[-1.36, -0.07]$
Indirect effect, $\beta = -0.34$, $95\%$ CI $[-0.60, -0.13]$

Figure 2. Mediational model displaying the effect of expert testimony on verdict mediated by detective credibility ratings (PROCESS Model 4; Hayes, 2013).
Conclusion

• We tested two key assumptions made by NJ Supreme Court
  1. Sensitivity with instructions
  2. Instructions = expert testimony
• No effects for all forms of *Henderson*
• Juror sensitivity to police practices
• Skepticism with expert testimony
• No sensitivity to witnessing conditions with or without safeguards

• Modify *Henderson*, incorporate I-I-Eye features
  (Pawlenko et al., 2013)
  • Prompts, not case specific
Second Study: Methods

• Participants
  • 481 jury eligible community members via mTurk.com

• Trial stimulus
  • Abbreviated trial transcript, defendant accused of robbery

• Design
  • 2 (Quality of witnessing conditions: good, poor) x 3 (Instruction type: general Henderson, general Henderson + prompts, none)
    Modified general Henderson prompt, e.g.,

    For how long did the eyewitness view the perpetrator?
    Does this enhance or impair his/her accuracy?
Instruction x Witnessing Conditions

Belief in Eyewitness

- Control: 75.83
- General Henderson: 61.44
- Henderson + prompts: 74.86

Verdict

- Control: 0.68
- General Henderson: 0.46
- Henderson + prompts: 0.45

- Control: 0.66
- General Henderson: 0.38
- Henderson + prompts: 0.35

$d = .64$, 95% CI [.35, .93]

$d = .78$, 95% CI [.48, 1.08]

$b = .88$, 95% CI [.30, 1.46]

$b = 1.29$, 95% CI [.69, 1.90]
Conclusion

• *Henderson* + prompts
  • Belief in the eyewitness and convictions increased when evidence was strong...slight decrease when evidence was weak
  • Similar pattern for control, but smaller effects

• Are these instructions serving their purpose?
Future Directions

- Research implications
  - Replication is needed for general acceptance
  - Disentangle the effects
  - What about other system and estimator variables?

- Practical implications
  - What factors should be included?
  - Should courts implement instructions without general acceptance?

“To be effective, [instructions] cannot rely on a dated, analytical framework that has lost some of its vitality. Rather, they must be informed by sound evidence on memory and eyewitness identification, which is generally accepted by the relevant scientific community. Only then can courts fulfill their obligation both to defendants and the public” (Chief Justice Rabner, 2011).
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