

Flaws in expert testimony could lead juries to acquit guilty defendants, says UCSD psychologist Ebbe Ebbesen

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FLAWS IN EXPERT TESTIMONY COULD LEAD JURIES TO ACQUIT GUILTY DEFENDANTS, SAYS UCSD PSYCHOLOGIST

Are jurors getting "the truth, the whole truth, and nothing but the truth" when they're told by courtroom experts how to judge testimony from eyewitnesses? According to legal decision-making expert Ebbe Ebbesen, not only are juries not getting the "whole truth," but this expert advice may also be helping to acquit guilty defendants.

"This raises the interesting possibility that the many experts who have testified for the defense in criminal trials and have told jurors not to trust their own intuitions (regarding eyewitness testimony), have not only misrepresented scientific findings in psychology," said Ebbesen, "they may have helped acquit guilty defendants as well."

Research conducted by Ebbesen and Vladimir Konecni, both professors of psychology at the University of California, San Diego, suggests that the confidence an eyewitness expresses in their identification of a suspect is directly related to their accuracy. In criminal court trials, juries are currently told by court experts (usually research psychologists) to disregard an eyewitness's level of confidence in making a positive identification.

According to Ebbesen, jurors are currently told that eyewitnesses who have brief exposure to the suspect following a long delay before they are asked to identify that person, are much less accurate in their identification. Moreover, juries are told that these two variables -- length of initial exposure and the time lapse between exposure and identification -- should be used as benchmarks for gauging the accuracy of an eyewitness's testimony, and that other variables such as the level of confidence exhibited by the eyewitness are insignificant.

Ebbesen argues that while these principles about eyewitness memory may be true in a general sense, they may not be valid in assessing accuracy in cases where the eyewitness exhibits a high level of confidence.

"It isn't that I am against psychologists testifying," said Ebbesen. "It is that I believe the testimony they are currently giving about eyewitnesses is incorrect, and not supported by the evidence. The research on which these expert opinions are based does not reflect real courtroom situations -- it's really more of a textbook explanation of how eyewitness memory works. I also believe that we would be much better off if we (psychologists) had procedures that allowed us to assess witnesses and speak about each witness's accuracy."

Previous research about eyewitness accuracy has failed to take into account that virtually no eyewitnesses are used by the defense or prosecution who do not display a high level of confidence in their ability to accurately identify the suspect, Ebbesen explained.

A major flaw in this previous research, according to Ebbesen, is that it combines the results for witnesses who would never appear in court (those with a low level of confidence) with those who would appear in court (eyewitnesses with a high level of confidence).

"In actual court trials," noted Ebbesen, "virtually all eyewitnesses make their identifications of the suspect with great confidence because witnesses who are less than absolutely confident make poor prosecution witnesses -- their credibility is easily attacked in cross examination.

"In addition, witnesses who do not identify the suspect as the culprit, either in a lineup or from photographs, are not used by the prosecution, because members of the jury might assume that someone else may have committed the crime they witnessed," he added.

Expert testimony is allowed on eyewitness memory because of a 1984 California Supreme Court decision that basically said that most jurors were misguided about eyewitness memory, and would therefore benefit from being instructed by experts about certain principles that were allegedly accepted in the scientific community.

Unfortunately, said Ebbesen, the ruling also clearly limited the testimony of eyewitness experts to "general principles" and not to whether an actual eyewitness is or is not accurate. Consequently, courtroom experts' instructions to a jury to disregard an eyewitnesses' expression of confidence in identifying the suspect could result in hampering a jury's ability to pass judgment on a suspect in cases where the exposure to the suspect was brief and the duration of time between the crime and the trial was long. Both of these characteristics, Ebbesen noted, are quite common in many crime situations.

Ebbesen's findings are based on a study of memory for human faces involving 195 students. The students were shown a group of color slides of faces (with different exposure times and varying lengths of time following the initial exposure) and were then tested for recall of the faces they had seen along with faces they had never seen. The exposure times ranged from three to 11 seconds for each slide and the time intervals ranged from one hour to 336 hours later.

When participants in the study said they thought they had seen a face before, but admitted they were uncertain, the identifications were in error 40 percent of the time. But, when respondents said they were absolutely confident they had seen a face before, only 4 percent of the identifications were false.

In testing for the influence of the duration of exposure and the length of time following exposure, only 1 percent of those who were absolutely confident that they had seen a face were incorrect after a one-hour interval, and only 8 percent were wrong two weeks after the exposure. According to Ebbesen, a similar pattern of results appeared for duration of exposure.

Ebbesen, former chair of UCSD's Psychology Department, has taught psychology at the university since 1971. In addition to eyewitness memory, Ebbesen is currently conducting research projects on prosecutor decision-making, change of venue, jury selection processes, and jury attitudes about the death penalty.

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