

Behavioural Issues Coursework

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Scottish criminal justice is a very complicated area of study. There are many different topics of thought that surround the Scottish criminal justice system, in terms of both physical and mental areas. The criminal justice system stems out into a number of different other subject areas mainly because criminal justice affects so many different fields in society. It's not just simply about police arresting criminals, the accused going to court and ending up the criminal goes to prison. There are many other extending factors connected with the process. There are many different officials involved each putting input into different areas of the process. As mentioned it is not just the police courts involved in the process but other types of people are influential in making the system work. Psychologists are an integral part on many different levels throughout the criminal process. They help people understand why a crime was committed and help other authorities with the convictions of accused people. There are number of things that psychologist can do to help in the conviction for example criminal profiling can be very useful when trying to catch a person. Also psychologists are used for research methods, trying to establish how important different aspects are. Eye witness testimony is one of the areas that psychologists are very interested in. Important areas that are considered are characteristics of the witness and accused. Also memory and perception are major factors when evaluating eye witness testimony.

The psychologists, as mentioned, take into account, when evaluating eye witness testimonies various characteristics and features of the interview. They consider all of these different things to decide whether or not the statements that are given are accurate, full and useful. In 1995, two criminal psychologists decided it was necessary to undertake studies into this particular area of eye witness testimonies. They felt the need to identify factors that must be taken into account when judging the value of the account given by the witness. Cutler and Penrod, after completing, their investigation into the subject they decided that there were seven main factors that must be considered.

“A contrary finding is reported by Cutler, Dexter and Penrod (1990) who found that judges' instructions failed to increase the scepticism . . . concerning eye witness evidence”

(Feldman, 1993: p120)

The first of these factors relates to the actual eye witness themselves. It takes into account various individual and personal characteristics of the actual witness. The first section measures stable characteristics of the witness. These characteristics are items that are personal to the individual at the time of the incident. Police can judge similar testimonies to similar types of people because many people may fall into the same brackets when evaluating using stable characteristics. Things that would be considered in this area would be the age of the witness, their gender and other things like personality etc. The second factor that Cutler and Penrod identified was fairly similar to the first area of the study. It again relates to the witness personally and again is related to considering the characteristics of the witness as well. These sets of

characteristics this time however, are ones that will be different for each different witness. So a witness for one crime could be a twenty year old female who is very outgoing and intelligent and a similar description for a different witness of another crime could be seen. They could however have different levels of usefulness. Even though they have the same stable characteristics they would most probably have different malleable characteristics affecting their testimonies. Malleable characteristics would be things like level of intoxication, personal experience and personal judgments. The third factor that the two criminal psychologists, Cutler and Penrod, felt important and should be considered is aspects of the actual testimony itself. When a witness gives a testimony they are expected to give an accurate account of what actually happened during the incident in question to the best of their ability. A problem that many police officials and psychologists have experienced is that some witnesses have fabricated testimonies and some times left crucial information out sometimes accidentally but sometimes on purpose to protect themselves or someone else. So therefore aspects such as completeness and consistency must be considered while judging the value of a witness testimony. It has become apparent however that these three factors have little weight when deciding the exactness of the testimony and the other four factors have a much stronger influence.

The first three factors that Cutler and Penrod felt must be considered related directly to the actual witness themselves. They did also, however, recognise the need to consider characteristics relating to the accused person as well. These characteristics would obviously have a considerable effect on the testimony also. The first area that is connected to the actual accused person is similar to the first factor, referring to the witness. Cutler and Penrod acknowledged the need to consider the stable characteristics of the accused just like those of the witness with some differences. Things that would be considered are features like again gender, age etc but other things like good looks and individuality would. These are examples of stable characteristics that would be considered when evaluating the witness statement. The second area that relates directly to the perpetrator themselves is another factor that was mentioned above relating the witness. It is important also to consider the malleable characteristics as well as those of the witness. These characteristics are as mentioned above are ones that will vary between every perpetrator that comes up. So characteristics such as facial form and any disguises or mask that the accused may have been wearing at the time of the incident will be considered. These are the two factors that Cutler and Penrod related to the actual accused person. They are the fourth and fifth areas in their overall study.

“Some faces are rarely falsely recognised, some frequently; the former are those typically rated as highly unusual”

(Loftus 1981, as cited in Feldman, 1993: p 120)

The first five areas that Cutler and Penrod identified were seen to be related to individuals who were directly involved in the testimony. This could be either the witness themselves or the accused person. The last two factors that Cutler and Penrod identified, related to the situation the witness interview surrounds. These could be factors could affect the testimony largely or on the other hand could have a very minor affect on the witness' interview. The sixth out of the seven areas that were identifies is connected to the actual incident itself and the aspects surrounding it. There are lots of things that could affect the witness at the time of incident that would

in turn affect the testimony. The amount of stress for one would be a factor. The witness may be frightened and would obviously remember less than someone with less stress upon them. Another example would be the length of time the incident occurred, so a quick assault would vary from a lengthy hostage situation. The last factor that Cutler and Penrod identified again relates the environment surrounding the taking of the witness statement. The two psychologists recognised that although events at the time of the actual incident are important, aspects that occur after the event has taken place are important also. These issues are ones that are more psychological than many of the others. Examples of these types of factors would be the length of time between the incident occurring and the witness testimony, unconscious transference and identification dynamics. These factors would affect the witness statements in such ways that testimony given would have been more accurate if the interview had taken place closer to the time of the incident. Transference is when the witness begins to confuse his/her memory of the incident with another event believing a different individual to be the perpetrator of the original crime. Overall Cutler and Penrod have effectively analysed the factors that would need to be considered when evaluating a witness testimony using the seven aspects mentioned.

To a criminal psychologist, however, it is not just the external factors surrounding an eye witness' testimony that they would be interested in. The whole point of a witness testimony is to ask a witness of a crime or similar incident questions about the incident and expect them to remember details of the perpetrator, events that occurred and any other details that would help convict the accused. With this in mind it would be suggested that psychologists would be very interested in memory and perception surrounding an eye witness, as they would be integral parts to the testimony. Dealing firstly with perception, the basic definition is the assortment, arrangement and the understanding of information that is received through our senses. Perception as the name suggests is basically how we perceive the world around us. The process of perception can be broken down into three main areas; sensation, attention and perception. These three areas can be seen as a sort of chain of events when something is being perceived. The first thing that happens is the sensation stage. This is when different stimuli is picked up by the body's sensory organs like eyes, ears and nose etc. these could be in the form of sounds, sights or smells etc. The second stage of perception is known as the attention stage. When the signals come in from the senses, they only get to the brain if they are picked to be paid attention to. This is induced by various factors such as the regularity, combination and intensity of the external senses that comes in. An example would be the noise of traffic outside a person's window while writing an essay would not be paid attention to, even though it can still be heard. The final stage, the actual perception stage, is the most important of the three. At this stage the stimuli that has made it to the brain is made sense of. Meaning is given to these stimuli based on three internal aspects known as 'set'. The first is motives, which means that it is made sense of in conjunction with what we need physically and mentally. The second, emotions, means that stimuli are perceived in terms of our personal thoughts and feelings at the time of the incident. The third factor is that our past experiences will affect the interpretation, i.e. things that have been experienced previously similar to the incident in question will be considered for example fear.

“memory is not a videotape recording of events”
(Brewer, 2000: p43)

The other important area when considering an eye witness testimony is the memory. This basically is how much the witness can remember about an incident or event. Many people would believe memory to be one single entity, but there are actually three different parts. The sensory information storage, the short term and the long term memory are the three. The first part, the sensory information storage, is the least important of the three stages. Information that comes into our memory for about half a second and is gone. In this store it will retain much more information than will be used in the future. It only stores the information a short time period and will choose which information is important and disregard all other parts of information. The second area of the witness' memory is their short term memory. This is the part of the memory where things can be held for a period of seconds to minutes. Many psychologists believe that there are seven slots in which banks of information can be held for a period of time. From this stage the memories that are currently held can go one of two ways. They could be replaced in the short term memory by new or similar pieces of information and therefore would be forgotten. On the other hand, the memory could be saved longer and could make its way into the long term memory. The long term memory is the most important of the three. This is when information is stored in memory from a matter of minutes to years. The long term memory uses two forms in which to remember something for years. The first is semantic code which uses written words or spoken words and encodes them in the memory. The second form is imagery code. This, as the name suggests, is the person being able to remember images. This is more related for a criminal witness as most of the time they are required to remember images of an event that took place in front of them.

In conclusion, it can easily be seen that eye witness testimony is a very interesting area in the world of criminal psychology. There are a number of factors that are relevant when evaluating and considering evidence given by an eye witness. The work carried out by Cutler and Penrod helps to see the various issues that would affect an eye witness testimony. The seven factors cover everything that the police would take into account when cross-examining the witness as well. Also, the memory and perception of the witness is very important. Perception would be how the witness perceived the incident and criminal psychologists would be very interested in why they have perceived it in such a way. Memory goes without saying is very important. It relates to what the witness can remember about the incident. This could be using the short term memory for remembering a car registration plate and giving that information to attending police officers. It could also relate to the long term memory where a witness would remember aspects of a criminal incident weeks, months or even years after it occurred. All in all, eye witness testimonies can be a very important topic to the Scottish Criminal Justice system.

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