

Witness Accuracy

“I put it to you that lawyers’ questions can have an adverse influence on witness accuracy”

Dr Mark Kebbell, currently a British Academy Postdoctoral Fellow in the School of Psychology at the University of Birmingham, describes his research on jurors’ perceptions of eyewitness evidence.

Imagine you have witnessed a robbery. A police officer interviews you about what you saw and six months later you are called to give evidence in court. You are likely to be concerned about giving evidence in front of a Judge and Jury. You might be worried about what you can remember and what the barrister will do. You might ask yourself ‘Will the barrister try to confuse me with his questions? Will I be able to answer his questions? Will I be a good witness?’ To shed light on these issues the British Academy funded a Postdoctoral Research Fellowship looking at the influence of lawyers’ questions on witnesses’ answers. The research has two complementary strands. The first is to document the types of questions that lawyers ask with a particular emphasis on cross-examination. The second is to test the influence of these questions on witness accuracy and credibility.

To document the kinds of questions lawyers ask we looked at sixteen serious cases (e.g., rape, robbery, assault) in which witness evidence was crucial. Each lawyer’s question and witness’s answer was coded. The results showed that witnesses were constrained into giving short answers. Eighty-three percent of questions in

cross-examination required simply a ‘yes’ or ‘no’ answer meaning that witnesses had little opportunity to provide their own account. Furthermore, many of the questions were potentially confusing to witnesses. Frequently, witnesses were asked questions involving negatives (e.g., ‘When he was kissing you, you were kissing him back, were you not?’), leading questions (e.g., ‘All right, because you are not in fact very good with times and dates are you?’), multiple questions (e.g., ‘Did you feel upset when you arrived at the discotheque? Well let me put this to you. You appeared your normal happy self when you got there and in no way distressed because nothing had happened.’), questions involving complex syntax (e.g., ‘This is certainly right, is it not, it was not that you proposed getting the police involved, or was it?’), and complex vocabulary (e.g., ‘Was John being gregarious?’). All of these questions could plausibly reduce witnesses accuracy because witnesses are unable to understand the question. Perhaps, it is possible they could have been able to answer accurately if the question was simply phrased.

However, studying lawyers’ questions in real cases is limited by the fact that we cannot be absolutely

sure what influence a question has on a witnesses' answer because we do not know what really happened in the alleged crime. We can only speculate. To overcome this problem, experimental models of lawyers' questioning were constructed. Mock witnesses viewed a videotaped crime and were individually questioned about the incident one week later. Half the participants were asked questions using the five categories of confusing questions mentioned above (negatives, leading, multiple questions, complex syntax, and complex vocabulary); the remaining half were asked for the same information using simply phrased equivalent questions. Witness confidence in the accuracy of answers was measured.

Confusing questions dramatically reduced witnesses' accuracy and they rarely asked for questions to be explained or repeated. Confusing questions also suppressed confidence-accuracy relationships compared with the condition where simplified alternatives were asked. That is to say there was less of a correspondence between how confident witnesses were and how accurate they were. Ironically, witnesses were *more* confident in the accuracy of their answers but *less* accurate with the confusing lawyers' questions. What appears to happen is that the witnesses react to attempts to discredit them with confusing questions by increasing their confidence regardless of their

accuracy. This experiment demonstrates the importance of ensuring that lawyers ask witnesses simple clear questions.

Taken as a whole this work has a number of implications for improving the accuracy and credibility of witness evidence in court. First, it allows us to inform witnesses about the type of examination and questioning to expect in court and how to deal with this. For instance, to give advice in how to cope with multiple questions and to inform prospective witnesses that it is acceptable to ask for a question to be clarified. This information is particularly relevant to those who are often called to give evidence (e.g., police officers, expert witnesses). Second, by identifying what is likely to happen in court it is possible to screen and predict who will be a good witness in court to allow informed decisions to be made about the likelihood of a prosecution being successful. Third, it allows us to make well founded suggestions concerning how vulnerable people (e.g., witnesses with learning difficulties or intimidated witnesses) are examined to ensure they give evidence as accurately and credibly as possible.

Dr Kebbell has also been awarded a British Academy research grant to fund the direct expenses of his continuing research into witness accuracy.