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Anyone who is interested in the issue of eyewitness memory would do well to read James Doyle's new book "***True Witness: Cops, Courts, Science, and the Battle against Misidentification***" (Palgrave MacMillan, 2005, \$24.95 but a much better price via Amazon.com). Steeped in both social science and the law, Doyle has written a definitive account of the one-hundred year war between scientists studying the shortcomings of memory and a legal system that relies heavily on eyewitness testimony.

True Witness is an original scholarly work that characterizes the history of this "science versus law" battle from its inception to its current state. It reads like a novel, complete with character development and delightful, sometimes humorous side stories. But it is the historical accuracy and perspective of True Witness that make this a great contribution to both social science and law.

Below I have prepared a few comments on each chapter and selected a few quotes.

Chapter 1: As Sure as I Can Be

This is a beautiful introduction to the DNA exoneration cases with special treatment of the Jennifer Thompson/Ronald Cotton case and the Kirk Bloodsworth case. Both cases are woven throughout each chapter of the book. The Gary Graham case is also used as fodder here to help make the point that without DNA evidence no one can be sure whether an identification was accurate or not.

Select quotes from this chapter:

"What the Ronald Cotton case, the Kirk Bloodsworth case, and all of the other mistaken eyewitness exoneration cases have in common is that – except for the actual criminal, of course – they are stories without villains" (p. 6)

"In the late 1990s, after absorbing nearly a century of hostility, derision, and patronizing neglect from the legal system, research psychologists seized on the DNA exoneration cases and launched one more effort to make the case that the science of memory must count in police stations and courtrooms" (p. 7)

Chapter 2: Professor Munsterberg Battles Dean Wigmore

Doyle has done some excellent research here on one of psychology's greatest figures, Hugo Munsterberg, a former chair of Harvard's Psychology Department and author of *On the Witness Stand* (1908). Munsterberg's well-documented and losing debate Dean John Henry Wigmore, the "titan of Anglo-American legal scholarship" is described in this chapter. Doyle does a brilliant job of analyzing why Munsterberg lost this battle to Wigmore. Consider a couple of the quotes below:

Select quotes from this chapter:

*"What Munsterberg had failed to grasp was that his knowledge about the reliability of **witnesses** was not sufficient to answer the legal system's concern for the reliability of the **verdicts**" (p 30)*

“When the psychologists are ready for the courts,’ Wigmore asserted, ‘the courts will be ready for the psychologists.’ But that was the expression of a wish, not the description of a reality, and by the time Wigmore wrote it Munsterberg had been dead for almost 20 years, felled by a stroke in the middle of a Radcliffe lecture.” (p. 33)

Chapter 3: The Lawyer’s Art

A fine chapter on the ineffectiveness of defense attorneys to deal with the issue of eyewitness mistakes. The Perry Mason dream turns into a nightmare in actual practice. This chapter includes a review of experimental work and the insights of a fine litigator.

Select quotes from this chapter:

“Lawyers place a mystic faith in the power of cross-examination, which no less a figure than John Henry Wigmore himself once described as ‘the greatest legal engine ever invented for the ascertainment of the truth.’” (p. 37)

“The great engine will not force Jennifer Thompson to question her own subjective confidence. In fact, it is far more likely that attempting to force Jennifer to question her own honest confidence in front of the jury would only succeed in forcing her to reaffirm it.” (p. 43)

Chapter 4: Nobody Likes a Smartass: Bob Buckhout Joins the Battle

Again, some excellent research on one of psychology’s most colorful and important figures in the history of the eyewitness research area. Doyle describes Buckhout’s life, his work on the Angela Davis case, his testimony in the Bloodsworth case (Bloodsworth was sentenced to death and then was exonerated by DNA only after Buckhout himself had died), and critics of Buckhout, including Egeth and McCloskey.

Select quote from this chapter:

“Buckhout was on an explicit mission to rescue Munsterberg’s reputation and Munsterberg’s insights from the Valley of Lost Things, but he had a temperament very different from his hero’s...Buckhout enjoyed the fight.” (p.52)

Chapter 5: The Cops, the Courts, and the Eyewitness

This chapter is much better than a review of legal rulings because Doyle really understands, better than any of the courts that issued the rulings, what is at stake, why these rulings actually miss the mark, and why the courts have not been able to deal with these problems.

Select quotes from this chapter:

“Manson v Braithwaite told lower court judges to keep their hands off identification issues: Whether an identification was accurate or not was an issue for the police in the first instance, for the jurors in the last resort” (p. 80)

“For all of Wigmore’s encouragement of a friendly alliance and all of Buckhout’s agitation for attention to experimental demonstrations of eyewitness fallibility, no state

appellate had criticized a judge for excluding expert testimony on the science of eyewitness memory, and many appellate courts had upheld the exclusion of experts.” (p 81).

Chapter 6: Elizabeth Loftus and the Science of Memory

An interesting bio on Loftus that establishes her rightful place in the history of the eyewitness issue. Nice descriptions are given of some of her classic experiments and her impact is described in an appropriately weighty manner.

Select quotes from this chapter:

“Elizabeth Fishman was born in Los Angeles in 1944, and grew into a self-described typical boy-crazy teenager. But when she was 14, her mother, who had been treated for depression, was found drowned in a swimming pool in circumstances that were never fully explained.” (p. 87)

“Loftus showed that the mind of the eyewitness was for every practical purpose a part of the crime scene.” (p98)

Chapter 7: The Accelerating Study of Eyewitness Memory

A short but meaningful chapter that describes aspects of the progress and frustration that the eyewitness research area began to undergo in the wake of Loftus. Saul Kassin’s survey of eyewitness researchers is used as a device for telling about this progress. Here and elsewhere in the book one finds reference to the roles played by researchers such as Steve Penrod, Roy Malpass, Sul Fulero, Ron Fisher, John Turtle, Amy Bradfield, Mike Leippe, Brian Cutler, Jack Brigham, Rod Lindsay, and others.

Select quotes from this chapter:

“According to the consensus of the experts, the storage of eyewitness memories was far more complex than common sense would indicate. If there was a ‘memory tape’ at all, it was an unstable one.” (p. 104)

These experimental results concealed a mountain of effort. Each ten-page article recounting an experiment in a learned journal was the product of intense and often worrisome labor in the decidedly unglamorous surroundings of university psychology labs at places like Alberta, Plattsburgh, El Paso, and Ames, Iowa.” (p106)

Chapter 8: The Government Wins When Justice is Done in Its Courts: Three Prosecutors

Doyle delves into the minds and culture of the prosecutor in this chapter. Three prosecutors are given special treatment: Linda Fairstein, Head of Sex Crimes at the Manhattan DA’s Office; J. W. “Jay” Carney, a Massachusetts DA who prosecuted Dennis Maher, later became a defense attorney, and assisted in freeing Mahr based on DNA evidence; and Janet Reno, U.S. Attorney General during the Clinton years, who has become one of the of important figures in advancing the use of eyewitness research.

Select quotes from this chapter:

“Fairstein remembers a rape victim who was a graphic artist: you couldn’t understand her testimony until you understood what a visual person she was. The psychologists couldn’t do that. The best psychologists could say was that some eyewitnesses made mistakes. So what? The prosecutors knew that already, and they had taken it into account. Did the psychologists think the prosecutors were idiots?” (p. 117)

“In the James Richardson case, Reno experienced something few prosecutors have the opportunity to experience. She had been personally responsible for investigating a wrongful conviction, and for righting – to the extent that anyone could - the wrong that had been done to James Richardson.” (p 123)

“The DNA tests proved that Maher had been innocent all along. Carney had sent an innocent man to prison for 19 years. Carney insisted on seeing Maher and apologizing personally, and Maher accepted his apology. (p 125)

Chapter 9: DNA to the Rescue (of Some)

The roles of Barry Scheck, Peter Neufeld, Ben Loeterman (emmy award winning producer of Frontline story on the Cotton case), Janet Reno ... it is all here in a beautiful narrative. Good background and personal stuff on all these people that helps augment the story. Here, we see the foundation laid for Janet Reno’s bold move to order the National Institute of Justice to develop guidelines on eyewitness evidence and to make use of the research done by psychologists.

Select quotes from this chapter:

“Scheck’s talents unsettle those who are uncomfortable around very smart people, and they cause distrust among people who identify him completely with the Simpson case.” (p131)

“Loeterman’s success as a documentary producer - he had won several Emmy awards by this point – can be traced to his recognition that documentary producer is not a data compiler, but a storyteller.”

Chapter 10: Break Out Shot: Gary Wells and the System

Doyle, with far too much knowledge of my personal life and my proclivities with a pool cue, takes a term from pocket billiards, “break out,” to describe how my 1978 article affected the eyewitness research and application agenda. [A break out is a shot in pool that changes the strategic picture on the table and creates opportunities for the shooter when none had existed before the shot.] His extensive treatment of the 1978 article and my other work is described better than I could have described it myself. And, this chapter illustrates the nexus between reform and research.

Select quotes from this chapter:

“System variables research answered this challenge when it changed radically the angle from which research impacted the criminal justice system. It no longer suggested a blanket skepticism...it suggested the potential for improving eyewitness reliability.” (p149)

“When Janet Reno spoke up from the back row of Jeremy Travis’ meeting to say ‘I want to hear what Gary Wells has to say about eyewitness identification and why so many of these DNA cases involve eyewitness identifications,’ Wells’s heart was at his throat. Here was 20 years’ work – his own work, and his whole field’s work – on the line. Wells had gotten the ear of the Attorney General of the United States, and now he would have to deliver.” (p165)

Chapter 11: A Technical Working Group

In this chapter, Doyle’s accounts are first hand because he was part of the technical working group that Reno had put together. I knew Doyle well before we were placed in this provocative situation with cops and prosecutors from across the country, but my admiration for Doyle grew immensely. He is too modest to take credit for many of the progressive events that took place in this working group, but I can assure you that his role was huge. What other defense lawyer could possibly develop the trust and respect of cops and prosecutors?

Select quotes from this chapter:

“ ‘Bring everyone to the table’ was Janet Reno’s creed at the Justice Department, but they weren’t used to being at tables together, and once you got them to the table you didn’t know how they would behave.” (pp. 172-173).

“[In the beginning] Wells and the other researchers saw the prosecutors as their allies, even their beneficiaries. This illusion lasted until the third minute of the first meeting of the Planning Panel.” (p. 173)

“For the police on the panel, like Grand Rapids Detective Sgt. Ed Rusticus, this blind [lineup] testing idea was nothing more or less than a violent assault in the integrity of everyone who wore the badge.” (p 178.)

“The prosecutors didn’t walk out; the researchers didn’t walk out. In part, this was because each side felt that a walkout was exactly what their adversaries were hoping for. Gary Wells, for example, thought for a while that the prosecutors had the explicit strategy of trying to raise the frustration level so the researchers would drop the whole thing.”(p 185)

Chapter 12: A Road Ahead

This chapter is an up-to-date account of where we are now on the eyewitness identification issue with respect to reforming eyewitness identification lineups. Some of the antics of the National Association of District Attorneys regarding the final work of the Technical Working Group are described, but more important is the reform efforts in selected jurisdictions that have taken hold. These include New Jersey, Boston, North Carolina, Minneapolis, Santa Clara County (California), and Illinois. Nice acknowledgements here to key people in those jurisdictions who have played a large role in those reforms, including Hennepin (Minnesota) County Attorney Amy Klobuchar; New Jersey Attorney General John Farmer and New Jersey Assistant Attorneys General

Debra Stone and Lori Linskey; Chris Mumma, Richard Rosen, and Chief Justice Lake of North Carolina; Suffolk County (Massachusetts) DA Dan Conley, his first assistant Joshua Wall, and Police Superintendent Kathleen Otoole, and others.

Select quotes from this chapter:

“You had to wonder whether only states confronting seismic upheavals like those in Illinois and New Jersey would be willing to look at this issue at all.”(p196)

“North Carolina’s Chief Justice, I. Beverly Lake, Jr. is a solidly conservative Republican jurist, and not a knee-jerk liberal. But Chief Justice Lake took seriously his position at the pinnacle of North Carolina’s justice system, and besides, he had as his former law clerk a dynamo named Christine Mumma.” (p 196).

Chapter 13: An Endgame

I am fairly sure that Doyle struggled with this short chapter more than any other. After all, we don’t know the endgame. He uses the Gary Graham case again as fodder as well as coming back to the Cotton case and the Bloodsworth case. The chapter is at once optimistic and pessimistic.

Select quotes from this chapter:

“How many of these jurisdictions will by bringing their criminal justice system’s actors to the table as North Carolina, Minnesota, Boston, and New Jersey have done, and by confronting those officials with the lessons of science, produce, in the words of Amy Klobuchar, ‘stronger cases and more justice?’” (p 204)

“The science will not stay frozen.” (p 205)