

True Witness: Cops, Courts, Science, and the Struggle against Misidentification

By James M. Doyle

Palgrave MacMillan (2005), 223 pp.

Book Review by Saul Kassin

Every now and then, a scholarly book comes along that breaks the mold. By combining history, psychology, law, biography, and a flair for prose normally reserved for good paperback novels, James Doyle's *True Witness* is one of those books.

Doyle is an odd duck: A veteran trial lawyer from Boston and a self-trained expert on eyewitness testimony. In 1987, he coauthored with Elizabeth Loftus the first of three editions of an important eyewitness book for lawyers; in 1999, he served as a member of the Technical Working Group that produced the groundbreaking NIJ *Guide* for law enforcement.

True Witness is a book that is both scholarly and entertaining at the same time. In it, Doyle tells the story of a one-hundred year war between the scientists of psychology and the legal system, a feud between the intellectual descendants of Hugo Munsterberg and John Henry Wigmore. The book opens with descriptions of the infamous and tragic eyewitness cases involving Gary Graham, Kirk Bloodsworth, and Ronald Cotton (who was misidentified by Jennifer Thompson of PBS Frontline's *What Jennifer Saw*)—three innocent men who were prosecuted, convicted, and imprisoned on the basis of a false identification. Doyle aptly refers to these cases, and other exonerations stemming from mistaken eyewitnesses, as stories without villains. From there, he tells the story of how the field of eyewitness psychology was born, how it stalled, and developed, and where it stands today.

Describing eyewitness research as “a striking combination of basic science and immediate application” (p. 94), Doyle weaves a colorful narrative history by focusing a spotlight on some of the field's leading figures, their science, and their forays into the legal system. Doyle is mindful of the fact that framing a complex story through the lives of a few great figures can distort by oversimplification. Yet he is convinced, and I am inclined to agree, that this history makes sense when told in this way. Exhibit A: “If anyone but Janet Reno had been Attorney General...” Any eyewitness psychologist today can fill in the rest.

Focused as such on leading figures, Doyle takes the reader from the parent Hugo Munsterberg of 1908 to his modern day descendants Robert Buckhout, Elizabeth Loftus, and Gary Wells. This list of leading actors is supplemented by a strong supporting cast of other eminent scholars who have made substantial contributions such as Steven Penrod, Roy Malpass, Jack Brigham, Rod Lindsay, Ronald Fisher, and Brian Cutler, as well as such protagonists from the “outside” as John Henry Wigmore, Jennifer Thompson, Ebbe Ebbesen,

Barry Scheck, and Janet Reno. This approach makes good storytelling sense. Importantly, too, Doyle has his finger firmly on the pulse of the *intradisciplinary* and *interdisciplinary* tensions that have both animated and inhibited progress, bringing us to the present and a hopeful but uncertain future.

Doyle's biographical research into Harvard professor Hugo Munsterberg, author of *On the Witness Stand* (1908), is a fascinating tribute to one of the most colorful and precocious scientists in the history of psychology. Munsterberg was present at Wundt's “creation” of psychology in Leipzig. He was then recruited to Harvard by no other than William James, was named the second president of the APA, and is deservedly called the “father of applied psychology” for his pioneering applications to law, organizational behavior education, and theater. In law, Munsterberg anticipated a great deal of what we know today about eyewitness accuracy, error, and confidence (he also wrote insightfully about false confessions). More than I had realized, he was also a fearless promoter of psychology in the popular press: “Munsterberg became a Carl Sagan or Stephen Jay Gould of his era... a TV talk pundit before his time” (p. 17).

Doyle thoroughly researches the most significant episode in Munsterberg's bold incursion into the law: His exchange with John Henry Wigmore, Dean of Northwestern Law School and a “towering scholar.” In 1904, Wigmore wrote the first edition of his classic *Treatise on Evidence*. He went on to establish the first forensic crime laboratory in the country and championed legal aid and legislation to compensate the wrongfully convicted long before these were popular. Everyone who studies psychology and the law knows that Wigmore wrote a scathing critique of Munsterberg's call to arms. Doyle sets the record straight on this heavyweight encounter, however, by debunking the myth that Wigmore's critique, which he published in *The Illinois Law Review*, was a “savagely, bloodthirsty slaughter of psychology, psychologists, their children, and old people” (p. 28). It turns out that Wigmore agreed with much of what Munsterberg had to say about eyewitness problems and he later espoused similar views. But Wigmore had framed his attack by putting Munsterberg on trial, so the points of agreement were swallowed up by the harsh tone of this adversarial medium. Describing Munsterberg as “the psychologists' first general,” Doyle notes that he had “launched ill-prepared troops in a premature frontal assault across badly chosen ground and into the teeth of a strongly defended position” (p. 9). As for Wigmore, Doyle finds that like Munsterberg he had rhetorical capacities “equipped with an accelerator but no brake” (p. 30).

Fast forwarding past the sixty-plus years in which applications of psychology to eyewitness testimony laid dormant, Doyle picks up the action with a chapter on Robert Buckhout entitled “Nobody Likes a Smartass.” “Brandishing the fallen banner of Hugo Munsterberg” (p. 52) in his 1974 *Scientific American* article on eyewitness testimony, Buckhout was on a mission. Then being an undergraduate psychology major at Brooklyn College I had visited Buckhout’s Center for Responsive Psychology and was an unwitting subject in one of his staged assault studies, so I can vouch for Doyle’s characterization of Buckhout as someone with “an unconquerable impish streak” who “enjoyed a good fight” (p. 52). Buckhout—the original modern-day eyewitness expert—seized fame from the Angela Davis trial, where he appeared in court with charts, slides, and a tachistoscope to attack the videotape model of memory. After Davis was acquitted, the word spread: “More and more lawyers began to believe that in eyewitness cases the defense finally had a friend, and the prosecutors had an enemy: Bob Buckhout” (p. 58).

I suspect that some psychologists will argue that Doyle focused too much of the spotlight on Buckhout, a zealot who did not publish in peer-reviewed journals and whose eagerness to give expert testimony preceded the science, a charge leveled by his many critics. One might even argue that Buckhout did more harm than good. On the other hand, Buckhout did reintroduce Munsterberg to a new generation of psychologists and a field may well benefit, as minority influence research would suggest, from the presence of a colorful spokesperson with the audacity to overstep existing boundaries—and to do so with unwavering conviction.

Whatever criticisms may follow from the attention to Buckhout, Doyle knows he is on rock-firm footing when he states that if anyone deserves star billing in this story, it is Elizabeth Loftus.

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Born Elizabeth Fishman, and once a self-described “boy-crazy teenager,” Loftus picked up where Buckhout left off in the courtroom. Fresh out of graduate school at Stanford, however, she also established herself as a dedicated and prolific cognitive scientist whose eyewitness-framed studies of postevent information effects profoundly transformed old conceptions of human memory. Doyle describes some of her major research publications, her commitment to the laboratory experiment, her massively popular and influential book, *Eyewitness Testimony*, first published in 1979, and her deep sense of commitment to George Miller’s call to give psychology away (which she fully articulated in her “Silence Is Not Golden” rejoinder to Eggh and McCloskey, in 1983). Doyle characterizes Loftus as a “dedicated and meticulous social scientist who led with—and was often led by—her heart” (p. 87).

Triggered by advances in DNA technology, the National Institute of Justice study of the first 28 DNA exoneration cases (most of which contained one or more eyewitness identifications in evidence), Scheck and Neufeld’s emerging Innocence Project network, and an Attorney General in Janet Reno who was horrified and motivated by the errors, the legal system, finally, was ready to hear what eyewitness researchers had to say. And, finally, thanks to the most recent research on various lineup effects, the research community was ready too. Doyle recounts how Buckhout invited an Ohio State University graduate student by the name of Gary Wells to take part in an eyewitness symposium at APA in 1976. Wells accepted the invitation despite an admonition from his mentor that “the whole eyewitness thing” was a dead end. Wells the scientist (who is also a pool shark) participated but then kept his distance from Buckhout the political activist.

Shortly after receiving his Ph.D., Wells started his research program with Rod

Lindsay, and in 1978 he published a paper in *JPSA* in which he introduced the distinction between estimator variables and system variables. In a reference to Wells’ facility with a pool cue, Doyle refers to this article as a “break out shot” (a billiards term for a shot that opens up the table and creates new opportunities for the shooter) for the way it articulated a new mission: That it is better to prevent eyewitness error than fight it after the fact in expert testimony. This new focus underlies the most recent and sophisticated eyewitness studies on such controllable system factors as lineup composition, mode of presentation, pre-lineup instructions, and post-identification feedback (for an excellent review, I would recommend Cutler and Penrod’s 1995 book, *Mistaken Identification*). This is the mission that culminated in the *NIJ Guide* for law enforcement and now fuels the reforms being considered and adopted in several states. Referring to the status of both the science and the application today, Doyle brings the story full circle: “The path, which started with Munsterberg seventy years earlier, had found its way to the pinnacle of the criminal justice system” (p. 166), “It was a body of work Wigmore himself would have applauded” (p. 163).

In one of its most enjoyable sections of this book, Doyle takes the reader inside the *NIJ Technical Working Group* that a determined attorney general had assembled. He details how she came upon Wells to lead the group, how prosecutors on the panel fought tooth and nail to derail the proceedings, and how a consensus was achieved. Doyle was a participant, so he is able to supply a first-hand look at the politics and the inner workings. Blow by blow, he describes the starts and the stops, the bobbing and weaving, the name calling and yelling, the factions that formed and divided the group, the compromises, and the deals that were ultimately made, all of which enabled the *Guide* as a final product.

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week after the final event was imagined or experienced, and their statements were analyzed using Criteria-Based Content Analysis (CBCA) or Reality Monitoring (RM). Higher scores, associated with truthfulness using CBCA and RM, were obtained for repeatedly experienced and imagined events versus those experienced or imagined once. Using CBCA or RM, 44% and 53% of the statements based on true events were classified correctly, respectively, and 64% and 73% of statements regarding imagined events were correctly classified, respectively.

Tizzard-Drover, T., & Peterson, C. (2004). **The influence of an early interview on long-term recall: A comparative analysis.** *Applied Cognitive Psychology, 18*, 727-743.

Canadian children ($n = 141$) from three age groups (3-4, 5-7, 8-9 year olds) who were treated at an emergency room were placed in one of three interviewing conditions: interviewed 1 year after treatment, interviewed immediately and 1 year later, or interviewed immediately, 6 months, and 1 year later. Overall, children recalled more about the injury than the treatment and older children recalled more than younger children. The more interviews children had, the more they remembered at the 1 year follow-up.

Weber, N., Brewer, N., Wells, G. L., Semmler, C., & Keast, A. (2004). **Eye-witness identification accuracy and response latency: The unruly 10-12 second rule.** *Journal of Experimental Psychology: Applied, 10*, 139-147.

Results from 3,213 experimental witnesses were consistent with previous research suggesting that accurate identifications are made quicker than inaccurate identifications. Results indicate that using the 10-12 second rule to distinguish accurate and inaccurate identifications may be inappropriate and suggest a larger range (5 to 29 seconds).

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La Jolla Attractions

La Jolla is a beautiful area and great place to be in early Spring. The area has incredible attractions, including beautiful beaches (from bicycling to surfing), a large bay (with cruises), and world famous animal parks and aquariums (the San Diego Zoo, Wild Animal Park, Sea World, Birch Aquarium). The Museum of Contemporary Art, Cabrillo Monument, and Mission San Diego de Alcala are nearby. Terrific restaurants and great shopping (from the Gas Lamp Quarter to downtown) abound.

In short, La Jolla is a fantastic place to vacation . . . as well as conference. The Hyatt Regency at La Jolla (the conference hotel) has agreed to extend discounted room rates to those who would like to come early to, or stay late after, the conference.

For a list of local attractions provided by Frommer's, please see the hotel website at: <http://lajolla.hyatt.com/property/areaguide/localinfo/index.jhtml?hotelId=2154&level=0>

Conference & Hotel Registration

The conference website provides links for online conference and hotel registration. See <http://www.csun.edu/~apls2005/>

The conference rates per night for the hotel are: \$160 (single or double occupancy), \$185 (triple), and \$210 (quadruple). To receive these rates you must make your reservation by February 5, 2005 and identify yourself as being part of the American Psychology and Law Conference. Please book your room early to ensure availability. You may book by going to <http://lajolla.hyatt.com/groupbooking/apls> or calling 858-552-1234.

Transportation

Downtown La Jolla and the beaches are approximately four miles away from the conference hotel, and can be

accessed via a quick taxi ride or 10-15 minute bus ride.

The hotel is located 10 miles from the San Diego International Airport. Transportation from the airport to the hotel comes in the form of taxis and shuttles. Unless you are traveling in a group (where a taxi is a wise choice), the least expensive option is the Xpress Shuttle, which costs \$11 each way. You may also wish to rent a car (AVIS provides discounts to members of APA). If so, please note that the hotel charges guests \$16/day for parking in their garage.

We look forward to seeing you in La Jolla!

Jennifer Skeem and Bradley McAuliff
Conference Co-Chairs

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True Witness is a good read. You may disagree with Doyle's "Great person" approach to history, you may think that certain great persons were short-changed in his account, and looking ahead you may be more optimistic or pessimistic about whether psychology's successes in this arena mark "the arrival of a tipping point" or "nothing more than a group of dead ends" (p. 205), a question Doyle raises in a final chapter entitled, "An Endgame." Either way, eyewitness researchers will enjoy this book, for sure, but so will other AP-LS members, historians of psychology, criminal justice professionals, and students—which is why this book now appears on my undergraduate psychology and the law syllabus.

Saul Kassin is Professor of Psychology at Williams College in Williamstown MA. He has authored or co-authored many books, book chapters, and journal articles on police interrogations and confessions, jury decision making, and eyewitness testimony.

