

THE PSYCHOLOGY OF TESTIMONY

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Relatively only a small amount of experimentation has been conducted during the past year upon the psychology of testimony. Binet (2), indeed, who deserves credit for initiating the work in this field, speaks as if the earlier investigators had garnered substantially all the really valuable fruits of experimentation, and as if there remained but sparse picking for the investigator of today. But how can this be so, we are tempted to inquire, when the problem of testimony in its relation to historical investigation has hardly been touched upon and when the problem of adapting the results of the experimental study of testimony to the practical needs of jurisprudence still calls for solution?

We may note in the recent literature signs that the legal profession is showing greater readiness to consider the results of experimental psychology. Thus, Gmelin (5) has presented in an interesting manner the points of contact between the psychology of testimony and legal practice and has urged the prime need that every jurist should familiarize himself with the work of the laboratory. Duprée (3) has published in a popular form an extremely good summary of the net results of the laboratory studies of report, while Gross (7), the eminent criminologist and jurist, declares that all testimony, from whatever source, ought to be investigated critically with the aid of the doctrines of 'subjective criminal psychology,' and suggests that experimentation may some day enable us to classify witnesses into groups (by age, sex, training, temperament, etc.) and to state for what sort of observation and report each of these groups presents peculiar gifts or defects, so that, in a specific case, given the type of witness and the type of event to be reported, we may be able to predict whether the witness can tell the truth, even if he wants to.

Aside from these general discussions of the relation of the psychology of testimony to law, we may note in the recent literature four chief queries: First, how important for practical application are the conclusions drawn from the standard picture-tests? Second, is the testimony of children as unreliable as has been claimed? Third, can the religious oath be set aside without appreciable loss of accuracy in testimony? Fourth, how great and of what order is the unreliability of the testimony of mental defectives?

Gross seriously questions the importance for law of the 'discovery' in the laboratory of the possibility of classifying witnesses, by means of the picture-test, into those graphically (pictorially) minded and those not graphically minded. We can not, he says, argue from the outcome of this test to the grade of general intelligence of the witness, nor can we argue his ability to report correctly events that transpire in temporal sequence. For these reasons, Gross urges the extended use of the event-test in place of the picture-test, as being quite as simple to arrange, much more significant for the measuring of observation and report, and closer to the actual situation of the witness in court. Gerland (4), however, believes that the picture-test is significant for legal procedure, and that the test can be profitably carried out in court, both to test special ability to depict a scene and to test general ability to report.

Dr. Baginsky (1), the expert German specialist in children's diseases, declares that children are the most dangerous of all witnesses and demands that their testimony be excluded from court record wherever possible. Similar statements are made by Duprée. Gross, however, stakes his thirty years of experience in the court against the views of these physicians. He declares that a healthy half-grown boy is the best possible witness for simple events. He thinks that Baginsky may have been influenced by his professional contact with sick children, but that, more likely, he, like many another, has been led to generalize too hastily from a few instances of inaccuracy in children's testimony and without stopping to consider the equally numerous inaccuracies in the testimony of adults. Children, according to Gross, make different errors but no worse ones than do adults. In some respects, *e. g.*, freedom from prejudice, erroneous interpretation, emotion, intoxication, etc., a child is better fitted than an adult to give accurate report. The present writer would suggest that the whole matter could be very simply cleared up by an appropriate experiment. Why not subject observers of different ages to a graded series of event-tests?

Duprée, briefly, and Gmelin, at length, inveigh against the use of the religious oath, on the ground that the oath is a relic of primitive conditions, and contrary to the spirit of modern civilization, that it neither increases the veracity of the honest, nor keeps liars from lying, nor lends intelligence to the mentally defective, and that its abolishment would make one more desirable step in the separation of church and state. A simple affirmation of the witness, supported by the control that would be exerted by a plain statement from the

judge as to the punishment of perjury, would be just as effective in securing reliable testimony as the present religious oath.

A general account of the faulty testimony of defectives (the feeble-minded, epileptic, hysteric and insane) is contributed by Duprée, who warns emphatically of the peculiar danger that exists when the defect is latent or mild and unsuspected by the court. Especially interesting are cases of morbid confessions, and self-accusation (with or without the accusation of other innocent parties). Gregor (6) studied experimentally, by means of the picture-test, the reports of normal and of abnormal subjects under varying conditions of exposure and time-interval. Patients afflicted with various paralyses proved to be not appreciably poorer than normal subjects (nurses) when the conditions were favorable to report, but their reliability and their range of report fell off markedly and their resistance to suggestive questions was reduced when the conditions were unfavorable for report (long time-interval, interrogatory, etc.). Their defectiveness, in other words, is not so much in observation, as in the recall and critical organization and formulation of what had been observed.

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SUGGESTION

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Starch (8) tested the suggestibility of students by measuring the extent to which they changed their handwriting in copying material, (a) printed, (b) vertical script, (c) slanting script, (d) unusual large script. The 'unconscious' imitation was quite general and astonishingly great. Similar but less striking results would have been secured if the students' attention had not been called to the subject of hand-