




The Opinion Pages

Is Another Bear Market Around the Corner?
If you have a \$500,000 portfolio, you should download the latest report by *Forbes* columnist Ken Fisher's firm. It tells you where we think the stock market is headed and why. This must-read report includes our latest stock market forecast, plus research and analysis you can use in your portfolio right now. [Click Here to Download](#)

FISHER INVESTMENTS®

[« Room for Debate Home](#)



[« Back to Discussion](#)

[+](#) SHARE | [✉](#) E-MAIL | [🖨](#) PRINT | [t](#) TWITTER | [👤](#) SIGN IN TO RECOMMEND

How Can Courts Trust Eyewitnesses?

How can courts use eyewitness testimony and lineup IDs without overemphasizing their reliability?

Debaters



Memory Fails Us

Sandra Guerra Thompson, professor, University of Houston Law Center



Procedures That Defy Science

Brandon L. Garrett, professor, University of Virginia School of Law



Doubting, and Blaming, Victims

Stacy Malone, Victim Rights Law Center



The Risk of Ill-Informed Juries

Elizabeth F. Loftus, professor, University of California, Irvine



What Is a Prosecutor to Do?

Emily Truman, prosecutor, Newark, N.J.



Preventing Wrongful Arrests

Amy Bradfield Douglass, professor, Bates College

The Risk of Ill-Informed Juries

Updated September 1, 2011, 11:32 AM

Elizabeth F. Loftus is a distinguished professor in the departments of psychology, criminology and law at the University of California, Irvine.

Jurors fulfill their societal obligations thousands of times each year when they hear eyewitness testimony and must decide whether to accept it and let it guide their legal judgments. But how well do they do this job? Psychological scientists have long known that many jurors hold misconceptions about the accuracy of eyewitness testimony and the specific ways it can go awry.

In one survey of over 1,000 citizens in Washington, D.C., that I helped to design, we showed that potential jurors frequently hold beliefs about the mind that are unsupported by the scientific literature or even contradicted by it. For example, many respondents believed that a cross-racial identification (identifying a stranger of a different race) would be just as reliable as or even more reliable than a same-race identification.

A more recent survey, this time with approximately 1,500 respondents from across the U.S., revealed more misconceptions about memory. For example, more than half agreed that "Human memory works like a video camera, accurately recording the events we see and hear so that we can review and inspect them later." No scientific experts given the same poll agreed with this proposition.

Despite their lack of knowledge about eyewitness memory, these poorly informed jurors are holding the fate of defendants in their hands. Now comes the New Jersey Supreme Court in Henderson (and a companion case) to show a sophisticated appreciation of this problem, and to propose a bold new solution. The

Despite their lack of knowledge about eyewitness memory, poorly informed jurors are holding the fate of defendants in their hands.

Advertise on NYTimes.com

Ads by Google

what's this?

[Forensic Psychology](#)

Learn from the experts CA School of Forensic Studies
[ForensicStudies.Alliant.edu](#)

[Car Accident Attorney](#)

Need A Car Injury Attorney You Can Trust? Get A Free Consultation!
[www.BarrettInjuryLaw.com](#)

[Owe Over 20K to the IRS?](#)

Resolve all IRS Problems with the Nation's Leading Tax Firm

now!
TaxResolution.com/TaxLawyer

The NANYANG MBA

Get The Global Edge With An Asian Touch. Download Brochure!
NanyangMBA.ntu.edu.sg

Los Angeles Child Custody

Protect your parental rights. Call us today for an appointment.
www.TheBestDivorceLawyer.com

Related Discussions

The Bias Against the Unemployed

Should employers be allowed to discard a résumé because the applicant is not currently working?

The Case Against Law School

Should the standard three-year law school model, followed by passage of the bar exam, be the only path to a legal career?

How Can the Asylum System Be Fixed?

Immigration courts approve most asylum claims, despite evidence of widespread fraud. Why is that?

Where to Now on Public Financing?

How will the Supreme Court's rejection of an Arizona matching-funds law affect the political landscape?

case changes the legal standard for assessing eyewitness evidence to produce one that will more successfully deter inappropriate conduct and will help jurors better evaluate eyewitness evidence.

After Henderson, defendants who can show some evidence of suggestiveness will be entitled to a hearing in which all factors that might have tainted the eyewitness evidence will be explored. The judge also will present to the jury more specific guidance on how to evaluate eyewitness evidence.

Had these new standards been in place in 2003, Larry R. Henderson's defense lawyer could have easily succeeded in showing suggestiveness: the eyewitness in his case failed to identify him at a photo lineup 13 days after a murder, until the investigating officers intervened and exerted "pressure" or "nudging." The courtroom would also have learned all about the factors influencing the eyewitness's memory – including consumption of crack cocaine, wine and Champagne. And Henderson's jury would have received "appropriate, tailored jury instructions" on how to weigh eyewitness testimony.

New Jersey has been at the forefront of reforms for dealing with eyewitness evidence and for its appreciation of the tragedy of wrongful convictions. With this latest case, it has shown innovative and bold leadership.

Topics: Law, New Jersey, crime, criminal justice

Room for Debate on Facebook

You like this. · Page · Insights

You like this. · Page · Insights

16,041 people like Room for Debate. 16,040 people like Room for Debate.

Facebook social plugin



Gordon Ramsay plays chicken

ALSO IN T MAGAZINE »

- T goes analog
- "The Vanities: Hollywood Parties 2000-2009"

nytimes.com

T MAGAZINE

PREVIOUS CONTRIBUTOR



Doubting, and Blaming, Victims

Stacy Malone

NEXT CONTRIBUTOR

What Is a Prosecutor to Do?

Emily Truman



3 Readers' Comments

Post a comment »

- ALL COMMENTS
- HIGHLIGHTS
- READER RECOMMENDATIONS
- REPLIES

1. Kurt
NY
September 1st,
2011 6:41 am

Of course most jurors are ignorant of the latest in certain areas of knowledge - they are not chosen for their smarts or expertise but because they're warm bodies who couldn't figure out a way to avoid having their time wasted for the benefit of the legal professionals who obviously don't give a rat's hindquarters how much of their time they waste. And, of course, lawyers on either side don't try to stack the jury during the pre-trial process?

Jurors are not supposed to be experts, and if they were, the attorneys in charge would make darned sure they were disqualified to serve. No, jurors are supposed to be laypeople to whom the professionals present their evidence and who will make an outsider's unbiased judgement based on that evidence.

So can the criticism of the jury pool. If fault is involved, it is the attorneys who fail to present their case in a sufficient manner.

Recommend

Recommended by 1 Reader

Report as inappropriate

2. Phyllis miller
Ellenville, NY
September 1st,
2011 6:57 am

I have had the experience of ID-ing a defendant, when I was a much younger woman, healthy and the criminal a "quick change" artist. He had the misfortune of approaching me in two different locations.

I recently was under the stress of moving house from Colorado to New York and was sick with an, as of then, undiagnosed case of shingles, added to which I am 72 years old. If something had required my accurate testimony, in these circumstances, it would have been useless.

I can understand how malleable a witness account could be. The possible