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Knowledge of Eyewitness Identification Issues: Survey of Public Defenders in New South Wales

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Under the *Evidence Act (Cth, 1995, NSW, 1995, Tas, 2001)* the admissibility of expert evidence is determined not only by the qualifications and experience of the expert, but also by the probative value of the testimony itself. These criteria often serve to preclude an eyewitness expert from appearing in court, thereby leaving legal professionals to challenge the reliability of eyewitness identifications themselves. Little is currently known, however, about the knowledge and opinions of legal professionals, in particular public defenders, on eyewitness identification issues. The present study surveys an opportunity sample of Australian legal practitioners, using a modified version of the questionnaire developed by Kassin, Ellsworth, and Smith (1989) in order to compare respondents' answers with those of eyewitness experts. The results of the present survey are encouraging, with public defenders showing both high levels of agreement among themselves, and a consensus with experts on the majority of eyewitness issues. In light of these findings we suggest that further research should be undertaken to investigate the relative impacts of judicial instruction and expert evidence on eyewitness issues.

Key words: expert testimony, eyewitnesses, judges, juror knowledge, legal system, memory.

Australian courts have shown some reluctance to allow eyewitness experts to give testimony about the factors known to influence the likely accuracy of an eyewitness identification (*R v Smith*, 2000, NSWCCA 388; *Smith v The Queen*, 2001, 206 CLR 650, 75 ALJR 1398). Given this, it is important to assess the knowledge and opinions of legal professionals, and to compare them with those of eyewitness experts. During the last 25 years, research psychologists have conducted several survey and questionnaire studies to investigate the knowledge and opinions held by

legal professionals on eyewitness identification issues. Surveys of law students (McConkey & Roche, 1989; Noon & Hollin, 1987; Yarmey & Jones, 1983), law enforcement personnel (Benton, Ross, Bradshaw, Thomas, & Bradshaw, 2006; Potter & Brewer, 1999; Wogalter, Malpass, & McQuiston, 2004), lawyers (Potter & Brewer, 1999; Rahaim & Brodsky, 1982; Yarmey & Jones, 1983) and judges (Benton et al., 2006; Wise & Safer, 2004; Yarmey & Jones, 1983), have provided estimates of the extent to which the opinions of legal professionals correspond with the

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evidence-based knowledge of eyewitness researchers. The consistent finding emerging from these studies has been that, when compared to the opinions of eyewitness experts, legal professionals demonstrate a limited appreciation for the factors known to influence the reliability of eyewitness identifications (Benton et al., 2006; Penrod & Cutler, 1999). This in turn has fuelled doubts that legal professionals can adequately defend accused persons when trials involve eyewitness identification evidence.

Before expert opinion evidence can be deemed admissible in many courts in Australia, it must first be established that the person testifying has specialized knowledge, for example, based on the person's training, study or experience and that the opinion of that person is wholly or substantially based on that knowledge (section 79 *Evidence Act 1995 (Cth, NSW); 2001 (Tas)*). In addition to these criteria, if the prejudicial value of the expert's evidence is considered to outweigh the probative value, the judge has a discretion to exclude the experts' evidence (section 135 *Evidence Act 1995 (Cth, NSW), 2001 (Tas)*). This can place considerable restrictions on the admissibility of eyewitness expert evidence and, to date, eyewitness expert evidence has been admitted in only two cases in NSW: *R v Sarago* (2006) and *R v Skaf* (2006), thereby in most cases leaving the onus on Australian legal professionals to address eyewitnessing issues, and assist jurors to evaluate the eyewitness evidence.

The knowledge of Australian trainee lawyers and legal professionals relating to eyewitness issues has been surveyed on two separate occasions, first by McConkey and Roche (1989) and then 10 years later by Potter and Brewer (1999). Using the Knowledge of Eyewitness Behaviour Questionnaire (KEBQ; Deffenbacher & Loftus, 1982), McConkey and Roche (1989) compared 60 advanced law students to 47 advanced and 124 introductory psychology students. It was concluded that although all three groups had limited knowledge of eyewitness memory, psychology students who had been lectured on human memory displayed significantly more knowledge than introductory psychology students and legal students familiar with eyewitness evidence law. These findings were consistent with those observed by researchers measuring attitudes and knowledge of students in the United States and

the United Kingdom (Deffenbacher & Loftus, 1982; Noon & Hollin, 1987).

Potter and Brewer (1999) asked 67 detectives, 41 legal practitioners (prosecution and defence) and 119 undergraduate psychology students to estimate how well 12 different witness behaviours (such as displaying excessive confidence, providing testimony inconsistent with other witnesses or with earlier statements and fidgeting), predict the accuracy of a witness's testimony. Across all groups, a number of witness behaviours were commonly interpreted as indicators of likely testimonial inaccuracy (e.g., too much confidence and recalling items not previously recalled), even though there is no empirical evidence to support the existence of such relationships.

More recently, Benton et al. (2006) replicated the approach adopted by Kassin and Barndollar (1992) by comparing the knowledge and opinions of jurors, judges and law enforcement personnel with those of eyewitness experts surveyed by Kassin, Tubbs, Hosch, and Memon (2001) and found that judges and law enforcement personnel displayed similar overall accuracy rates and were significantly more likely to concur with expert opinion (40%) than were potential jurors (13%).

Encouragingly, this pattern of results suggests an increase in the psychological knowledge of legal professionals over time. The present study surveys an opportunity sample of Australian legal practitioners, using a modified version of the questionnaire used by Kassin et al. (2001) in order to ascertain if this trend continues. The responses obtained are compared to those of eyewitness experts surveyed by Kassin et al. (2001), and observed differences and similarities between these samples are discussed.

Method

Participants

A questionnaire designed to measure knowledge and opinions regarding eyewitness testimony was issued to an opportunity sample of 130 legal professional attending an Annual Public Defenders Conference in New South Wales. The questionnaire was completed and returned by 35 conference delegates who had an average of 16 years experience in the law. Most respondents identified themselves as "public defenders" (49%), "criminal

lawyers" (26%), or "barristers" (6%). Three respondents (9%) did not specify their professional status.

Materials

Eyewitness Testimony Questionnaire. A questionnaire was developed for the conference delegates based on the surveys of eyewitness experts conducted by Kassin, Ellsworth, and Smith (1989) and Kassin et al. (2001). The Eyewitness Testimony Questionnaire (ETQ) devised here differed from the revised Kassin et al. (2001) survey in three ways. First, the scale on which conference delegates were asked to rate statements about eyewitness testimony was changed from a 7-point Likert scale to a 5-point Likert scale (1 = *definitely true*, 2 = *probably true*, 3 = *probably false*, 4 = *definitely false*, and 5 = *I hadn't considered this an issue*). Second, some of the items from the Kassin et al. (2001) survey (2, 8, 11, 13, 14, 23 and 25) were reversed in order to reduce the likelihood of an affirmative response bias. Finally, in line with recommendations from Kassin and Barndollar (1992), three items were reworded in an attempt to clarify the propositions for a population of respondents unlikely to be familiar with the terminology associated with psychological research in eyewitness testimony (Appendix A). All statements from the original 30-item questionnaire appear in the ETQ either in their original, or an amended form (Table 1).

Respondents were also asked a series of questions regarding their experience with eyewitness expert evidence, its admissibility, and their perceptions of the effectiveness and clarity of the judicial instruction that judges in New South Wales courts are required to provide.

Procedure

The questionnaire was issued to each conference delegate as part of the conference pack. Two announcements were made on the first day of the conference drawing delegates' attention to the questionnaire and asking them to complete it. All questionnaires were collected immediately before a keynote address, "The psychology of identification evidence" given by the second author on the morning of the second day of the conference. This served to ensure that the content of the address did not influence the answers given by respondents.

Results

Respondents

The legal respondents in this sample had an average of 16 years experience with the law in various capacities (public defenders, $\bar{x} = 15$ years; criminal lawyer, $\bar{x} = 16.9$ years, other, $\bar{x} = 21$ years). Ninety-four per cent of the respondents indicated that they had been involved in cases that included disputed eyewitness identification evidence, but only three had commissioned an eyewitness expert report. Sixty per cent of respondents indicated that cases involving a disputed identification represented 5–10% of their cases, with estimates ranging from zero to 50% ($\bar{x} = 14.91$, $\bar{\sigma} = 12.5$).

Judgements of eyewitness phenomena

For each of the 30 ETQ statements we sought to investigate how the respondents, as a group, understood the phenomenon described, and to compare this understanding with that expressed by eyewitness experts in the Kassin et al. (2001) survey. In order to aid this comparison, scores on those statements in which the direction of the proposition was changed (i.e., statements 2, 8, 11, 13, 14, 23 and 25 on the ETQ) were reverse coded to maintain continuity with other comparable data sets.

Table 2 presents the distribution of responses to each of the 30 items. All delegates responded either definitely true or probably true to the items regarding post-event information, attitudes and expectations, confidence malleability and alcoholic intoxication (items 9, 15, 17 and 20). A clear majority of those surveyed responded definitely or probably true to items relating to mug shot-induced bias (97%), line-up instructions (94%), stress (91%), child suggestibility (91%), unconscious transference (89%), child accuracy (86%), cross-race bias (86%), showups (77%), exposure time (74%), weapon focus (74%), presentation format (74%), colour perception (71%), trained observers (69%) and description-matched line-ups (69%) (in order, items; 21, 5, 1, 26, 12, 25, 18, 3, 6, 2, 28, 10, 13, 27). Most delegates responded definitely or probably false to the statements relating to discriminability (80%), long-term repression (79%) and the forgetting curve (77%) (items 24, 7 and 22 respectively), while little, if any, consensus was evident with regard to the following statements: line-up fairness (57%),

Table 1

ETQ Statements

STATEMENT TOPIC	STATEMENT
1. Stress	Very high levels of stress impair the accuracy of eyewitness testimony.
2. Weapon focus	The presence of a weapon does not impair an eyewitness's ability to accurately identify the perpetrator's face.
3. Showups	The use of a one-person showup instead of a full line-up increases the risk of misidentification.
4. Line-up fairness	The more that the members of a line-up resemble the suspect, the higher the likelihood that the identification of the suspect is accurate.
5. Line-up instructions	Police instructions can influence whether or not an eyewitness makes a selection from a line-up.
6. Exposure time	The less time an eyewitness has to observe an event, the less well he or she will remember it.
7. Forgetting curve	Memory for an event declines most rapidly immediately after its occurrence and more slowly thereafter.
8. Accuracy-confidence	An eyewitness's confidence is a good predictor of his or her identification accuracy.
9. Post-event information	An eyewitness's testimony about an event often reflects not only what they actually saw but information they obtained later on.
10. Colour perception	Judgments of colour made under monochromatic light (e.g., an orange streetlight) are highly reliable.
11. Wording of questions	An eyewitness's testimony about an event remains invariant no matter what the wording of the questions asked.
12. Unconscious transference	Eyewitnesses sometimes identify as a culprit someone they have seen in another situation or context.
13. Trained observers	Police officers and other trained observers are more accurate as eyewitnesses than the average person.
14. Hypnotic suggestibility	Hypnosis decreases suggestibility to leading and misleading questions.
15. Attitudes and expectations	An eyewitness's perception and memory for an event may be affected by his or her attitudes and expectations.
16. Event violence	Eyewitnesses have more difficulty remembering violent than non-violent events.
17. Confidence malleability	An eyewitness's confidence can be influenced by factors that are unrelated to identification accuracy.
18. Cross-race bias	Eyewitnesses are more accurate when identifying members of their own race than members of other races.
19. Hypnotic accuracy	Hypnosis increases the accuracy of an eyewitness's reported memory.
20. Alcoholic intoxication	Alcoholic intoxication impairs an eyewitness's later ability to recall persons and events.
21. Mug shot-induced bias	Exposure to mug shots of a suspect increases the likelihood that the witness will later choose that suspect in a line-up.
22. Long term repression	Traumatic experiences can be repressed for many years and then recovered.
23. False childhood memories	Memories people recover from their childhood are usually highly accurate.
24. Discriminability	It is possible to reliably differentiate between true and false memories.
25. Child accuracy	Young children are more accurate as witnesses than are adults.
26. Child suggestibility	Young children are more vulnerable than adults to interviewer suggestion, peer pressures, and other social influences.
27. Description-matched line-up	The more that members of a line-up resemble a witness's description of the culprit, the more accurate an identification of the suspect is likely to be.
28. Presentation format	In a line-up, the way in which photographs are presented to witnesses (e.g., simultaneously or sequentially) affects the accuracy of identifications.
29. Elderly witnesses	Elderly eyewitnesses are less accurate than younger adults.
30. Identification speed	The more quickly a witness makes an identification upon seeing the line-up, the more accurate he or she is likely to be.

Note: ETQ = Eyewitness Testimony Questionnaire

wording of questions (49%), event violence (35%) and elderly witnesses (34%) (items; 4, 11, (49%), false childhood memories (47%), 16, 23, 8, 30 and 29). Hypnotic suggestibility and accuracy-confidence (40%), identification speed and hypnotic accuracy were not considered to be

Table 2

Distribution of judgments for the 30 statements

TOPIC	1	2	3	4	5
1. Stress	15	17	3	0	0
2. Weapon focus [†]	15	11	8	1	0
3. Showups	17	9	4	3	1
4. Line-up fairness	3	17	9	6	0
5. Line-up instructions	24	9	1	0	1
6. Exposure time	12	14	7	1	1
7. Forgetting curve	0	7	7	20	1
8. Accuracy-confidence [†]	6	8	13	5	3
9. Post-event information	15	20	0	0	0
10. Colour perception	8	17	2	2	6
11. Wording of questions [†]	0	17	14	4	0
12. Unconscious transference	8	23	1	0	3
13. Trained observers [†]	8	16	8	2	1
14. Hypnotic suggestibility [†]	6	11	2	1	15
15. Attitudes and expectations	12	23	0	0	0
16. Event violence	4	13	13	1	4
17. Confidence malleability	13	22	0	0	0
18. Cross-race bias	16	14	0	2	3
19. Hypnotic accuracy	0	5	9	8	13
20. Alcoholic intoxication	22	13	0	0	0
21. Mug shot-induced bias	22	12	1	0	0
22. Long-term repression	0	6	20	6	1
23. False childhood memories [†]	0	16	14	2	2
24. Discriminability	1	2	16	12	3
25. Child accuracy [†]	16	14	3	0	1
26. Child suggestibility	17	15	3	0	0
27. Description-matched line-up	6	18	7	4	0
28. Presentation format	10	16	3	0	6
29. Elderly witnesses	1	11	18	2	3
30. Identification speed	2	10	14	7	1

Notes. Judgements by respondents were coded as follows: 1 = definitely true, 2 = probably true, 3 = probably false, 4 = definitely false, 5 = I hadn't considered this an issue

[†]Reverse coding: 1 (original value) = 4 (reported value), 2 = 3, 3 = 2, 4 = 1, 5 = 5)

relevant issues by approximately 43% and 37% of delegates, respectively, and probably or definitely false by the majority of the remaining respondents in both instances.

Using the same methodology as Kassin and Barndollar (1992), and Benton et al. (2006), Table 3 compares the proportion of participants agreeing with a statement to the proportion of experts from the Kassin et al. (2001) survey who endorsed the same statement. Chi-square and significance for each comparison are reported.

The responses of the legal professionals did not significantly differ from those of the experts for 21 of the 30 items. For the nine items on which there was a difference in responses between the two groups, the legal professionals were significantly

less likely than the experts to agree with propositions relating to the effects of question wording on eyewitness testimony, the impact of hypnosis on eyewitness suggestibility, the relationship between eyewitness confidence and identification accuracy, patterns of memory decay, the likelihood that recovered memories from childhood are false, and the accuracy of hypnotically induced statements. Legal professionals were significantly more likely to believe that there was a relationship between high stress and impaired recall, the equivalence of trained and untrained observers and the discriminability of true and false memories. For four of these nine statements the experts and lawyers showed a very marked difference in level of agreement (i.e., >40%). These items were: that the rate of memory loss is greatest right after the event then plateaus (83% expert agreement vs. 20% legal agreement), that eyewitness testimony can be influenced by question wording (98% vs. 49%), that eyewitness confidence is a poor predictor of eyewitness accuracy (87% vs. 40%), and that hypnosis increases suggestibility to certain types of questions (91% vs. 49%).

An "accuracy" score was computed by describing a response as "correct" when it was in agreement with the "consensus" (>75% concurrence) of expert opinion (the same criterion used by Benton, Ross, Bradshaw, Thomas, & Bradshaw, 2006; Kassin & Barndollar, 1992). Using this criterion it was found that of the 17 items on which experts reached a consensus (items 1–16 and 30), legal professionals on average gave the correct response for all but four items (i.e., 75% accuracy).

Efficacy of Judicial Instruction. The majority of legal professionals expressed the belief that jurors definitely (9%), or probably (52%) did not understand the judicial instructions regarding the limitations of eyewitness evidence, while only approximately 39% indicated that jurors probably did understand the instruction.

When asked about their perceptions of the influence of the judicial instruction on jury decision-making, approximately 45% of respondents indicated that the instruction would have an unbiased effect, 36% of respondents believed it would have an influence that would favour the prosecution, almost 13% believed it would introduce a pro-defence bias, and around 10% suggested that the instruction would have no effect at all.

Table 3

Comparison of Agreement Rates for Experts and Legal Professionals

TOPIC	% EXPERT AGREEMENT (N= 64)	% LAWYER AGREEMENT (N= 35)	$\chi^2(df= 1)$ AND (SIGNIFICANCE)
Line-up instructions	98	94	1.33 (ns)
Wording of questions	98	49	36.28 (0.000)
Mug shot-induced bias	95	97	0.2 (ns)
Confidence malleability	95	100	1.69 (ns)
Post-event information	94	100	2.28 (ns)
Child suggestibility	94	91	0.19 (ns)
Attitudes and expectations	92	100	2.88 (ns)
Hypnotic suggestibility	91	49	21.79 (0.000)
Alcoholic intoxication	90	100	3.49 (ns)
Cross-race bias	90	86	0.55 (ns)
Accuracy-confidence	87	40	24.65 (0.000)
Weapon focus	87	74	2.78 (ns)
Forgetting curve	83	20	37.39 (0.000)
Presentation format	81	74	0.66 (ns)
Exposure time	81	74	0.66 (ns)
Unconscious transference	81	89	0.9 (ns)
Showups	74	77	0.34 (ns)
Description-matched line-up	71	69	0.03 (ns)
Line-up fairness	70	57	1.74 (ns)
Child accuracy	70	86	2.92 (ns)
False childhood memories	68	47	3.98 (0.046)
Colour perception	63	71	0.8 (ns)
Stress	60	91	11.22 (0.001)
Elderly witnesses	50	34	2.26 (ns)
Hypnotic accuracy	45	14	9.66 (0.002)
Identification speed	40	35	0.27 (ns)
Trained observers	39	69	7.88 (0.005)
Event violence	37	49	1.14 (ns)
Discriminability	32	9	7.03 (0.008)
Long-term repression	22	19	0.18 (ns)

The final question asked delegates if they thought that the relevant judicial instruction could replace the testimony of an eyewitness expert. Of the 26 participants who answered this question, significantly more than half (73%) indicated that they did not think a judicial instruction was equivalent to the evidence given by an eyewitness expert, $\chi^2_{(1)} = 5.54, p < .05$.

Discussion

Knowledge of Eyewitnessing Issues

In the present study legal professionals were seen to exhibit a substantial degree of consensus (i.e., >80% agreement) on 12 of the 30 tested

statements (40%). That is, surveyed legal professionals agreed among themselves about the effects of post-event information on eyewitness testimony, the role of attitudes and expectations in eyewitness memory, the malleability of eyewitness confidence estimates, the effect of alcoholic intoxication, the role of mug shot selection on identification rates, the impact of line-up instructions on identification rates, the impact of stress on recall, the suggestibility of child witnesses, unconscious transference of memories across contexts, the accuracy of child witnesses, the role of cross-race witnessing on identification accuracy and the extent to which accurate and inaccurate memories can be discriminated. Penrod and Cutler (1999) reported a high level of agreement

(>75%) among attorneys on only one question from the Brigham and Wolfskeil (1983) and Rahaim and Brodsky (1982) surveys combined. The level of agreement reported here, therefore, suggests that a consensus has emerged among legal professionals on eyewitness issues that did not previously exist.

Furthermore, the opinions of this sample of legal professionals corresponded with those expressed by eyewitness experts (Kassin et al., 2001) on 21 out of the 30 items (70%). Chi-square analyses indicated significant differences in the opinions of these two groups only on items relating to the impact of question wording on eyewitness testimony, the role of hypnosis in increasing suggestibility, the relationship between eyewitness confidence and accuracy, the pattern in which memory for an event decays, the likelihood that recovered memories from childhood are false, the impact of stress on recall, the impact of hypnosis on recall accuracy, the relative skills of trained and untrained observers, and discriminability of true and false memories. In two of these cases legal professionals felt that the issue was not relevant (hypnotic suggestibility and hypnotic accuracy were not considered an issue by 43% and 37% of respondents, respectively), while one instance represents a significant difference on an issue for which neither legal professionals or experts could be considered to have reached consensus (69% vs. 39%, respective agreement on the issue of trained observers). The remaining six items for which there were differences between experts and legal professionals (wording of questions, accuracy-confidence, the forgetting curve, false childhood memories, stress, and discriminability), appear to be the only areas that reflect significant discrepancies between the evidence-based opinions of experts and the opinions of legal professionals.

When the responses of this sample of legal professionals were compared to those of the judges surveyed by Benton et al. (2006), both similarities and differences were noted. First, the degree of correspondence between legal professionals and experts observed here (70%) appears to be substantially greater than that for the judges (40%), suggesting that the respondents from the present study are more knowledgeable regarding eyewitness identification issues. But an examination of the propositions on which legal professionals disagree with experts indicates consistencies across surveyed samples. Of the nine

items identified here as indicating discrepancies between legal professionals and eyewitness experts (including those issues that legal professionals had not previously considered, i.e., hypnotic accuracy and hypnotic suggestibility), five also produced differences between the responses of judges and experts in Benton et al. (2006): wording of questions, hypnotic suggestibility, accuracy-confidence, forgetting curve, and the accuracy of recovered childhood memories. This correspondence between samples suggests not only that there may be some similarity in the knowledge and opinions of these two samples of legal professionals, but also that there may be some consistent gaps in the knowledge of legal professionals with regard to eyewitness evidence. These gaps could be targets for the future education and training of legal professionals involved with eyewitness evidence.

It is also important to consider the validity of the opinions expressed by legal professionals, independent of their correspondence with those of the experts. Specifically, since the Kassin et al. (2001) survey it has been noted that research in some topic areas has continued to develop and, as a result of recently published research, it is likely that the consensus view of researchers will undergo some change (McCullough, 2002; Shaw, Garcia, & McClure, 1999). That is, some of the views expressed by the majority of experts in the Kassin et al. (2001) survey may not now be "correct". The relationship between eyewitness confidence and identification accuracy is one such area of research that has "proven to be fluid over time" (Shaw et al., 1999). In fact, the consensus reached on this issue by experts in 1989 (Kassin et al., 1989) and maintained in 2001 (Kassin et al., 2001) may be in need of revision in light of the mounting evidence suggesting that under certain conditions, witness confidence *may* be a useful predictor of accuracy (Juslin, Olsson, & Winman, 1996; Lindsay, Nilsen, & Read, 2000; Olsson, Juslin, & Winman, 1998; Read, Lindsay, & Nicholls, 1998; Sporer, Penrod, Read, & Cutler, 1995; Weber & Brewer, 2003, 2004). Thus, the discrepancy noted here between the responses of legal professionals and eyewitness experts does not *necessarily* reflect a lack of knowledge on the part of legal professionals, rather it may suggest that, as in this area at least, the responses of legal professionals may be closer to the current perception of the truth than are eyewitness expert opinions as expressed in 2001.

Overall, it appears that the knowledge of eyewitness issues demonstrated by legal professionals in this sample, although still somewhat limited in comparison with eyewitness experts, reflects an improvement compared to a sample of judges assessed with a similar questionnaire. Thus, although it is not possible to suggest that accurate knowledge necessarily equates with an empirically sound approach to the handling of eyewitness evidence in courts, it does appear that descriptions of attorneys' "poor effectiveness" (Penrod & Cutler, 1999) may warrant revision. Encouragingly, Wise, Meyer, Pawlenko, and Safer (2007) report almost identical accuracy rates (71%) among their significantly larger sample of 1184 US defence attorneys, and also note significant differences between the opinions of attorneys and experts on the issues of the forgetting curve and the effects of stress on identification accuracy. This cross-validation of our results provides some evidence that attempts to educate legal professionals have been effective, although some consistent gaps in knowledge remain.

Perceptions of Legal Safeguards

Although the majority of legal professionals (60%) also expressed the belief that jurors probably or definitely would not understand the direction given by a judge, almost 94% indicated that they believed the direction would influence jury decision-making (45% without bias, 36% with a prosecution bias and 13% with a defence bias). In addition, the majority (73%) of those who responded indicated that the effect of the judicial direction was not equivalent to evidence of an eyewitness expert. These views are largely consistent with the available empirical evidence relating to the effects of judicial direction on juror decision-making. Greene (1988) investigated the effect of a standardized eyewitness cautionary instruction (*US v Telfaire*, 1972), and compared its effect on jury verdicts with that of a revised set of directions. Results showed that jurors, as anticipated by legal professionals, had poor comprehension of the instruction, and overall it was concluded that it had no effect on jury decisions. Cutler, Dexter, and Penrod (1990) investigated the effects of the same *Telfaire* instruction and characterized it as ineffective at improving juror sensitivity to eyewitness identification issues. Although revised versions of the *Telfaire* instruction have found more support

among research psychologists (Greene, 1988; Ramirez, Zemba, & Geiselman, 1996), there is no empirical evidence available regarding the efficacy of the pattern instructions adopted in other jurisdictions, in this case the specific pattern instruction recommended by the Judicial Commission of New South Wales (2002; s 3-020) for use in New South Wales Courts. Thus, in the absence of specific empirical knowledge on the subject, the opinions of legal professionals appear consistent with the body of information available regarding juror comprehension of pattern eyewitness instructions, if not their influence.

Although there has also been some support for the suggestion that eyewitness expert evidence has differential (i.e., improved) effects on jury decision-making when compared with the pattern judicial instruction (Leippe, 1995; Penrod & Cutler, 1999), there has only been one study that has directly compared the influence of these two sources of information: Cutler, Dexter, and Penrod (1990) showed that the expert reduced juror belief in eyewitness evidence while the judicial instruction had no systematic effect on juror decisions. Thus, it seems that legal professionals and eyewitness experts agree that the impact of judicial instruction and expert evidence are not equivalent. This view is largely consistent with the available evidence.

Limitations

Participants were recruited as part of an opportunity sample on the basis of their attendance at an Annual Public Defenders conference. It is possible that this may have had an effect upon the generalizability of the observed results in two ways. First, all surveyed individuals were attending a conference aimed at developing professional skills and providing information relevant to the role of a public defender, therefore it is possible that these individuals may represent a more knowledgeable or engaged group of legal professionals than a random sample would have revealed.

Second, by virtue of being sampled at a meeting of public defenders it is likely that the respondents in the present study are not representative of legal professionals in general. Although Wise and Safer (2004) found that a judge's background (either prosecution or defence) was unrelated to their knowledge of eyewitness testimony, Brigham and Wolfskeil (1983) found that, when compared with prosecutors, defence

attorneys were significantly more favourably disposed toward expert psychological testimony on eyewitness identification. Accordingly, it is possible that the high frequency with which legal representatives reached agreement in this sample is simply reflecting the homogeneity of their professional roles, rather than an increasing consensus among legal professionals in general. But this is not to say it is inappropriate to investigate the knowledge and opinions of defence attorneys. Kassin et al. (2001) reported for example that 89% of requests for expert assistance came from criminal defendants. This illustrates the obvious reality: that it is most likely to fall to the defence attorney to challenge eyewitness evidence and, in particular, ensure that unreliable identifications are not instrumental in implicating their client. Thus, by gauging defence counsel's knowledge of eyewitness identification we can assess their suitability for this task.

Conclusions

This survey provides insight into the knowledge and opinions held by legal professionals, predominantly public defenders, in Australia. This survey suggests not only that their opinions demonstrate higher levels of internal consistency than those among other surveyed groups of legal professionals, but also that they exhibit a moderate to high degree of correspondence with the opinions and knowledge of eyewitness experts. This survey also found that both the legal professionals and the experts have doubts regarding the efficacy of the judicial eyewitness direction relative to eyewitness expert testimony. These findings highlight the need to further investigate the impact of expert evidence in the field of eyewitness identification, and its relative effect when compared with judicial instruction. Although, as shown by the present survey, lawyers share psychologists' opinion that judicial instruction and expert testimony do not have equivalent effects on jury decisions, at present there is little empirical evidence available to test this hypothesis.

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Appendix A

Original and Reworded Statements from the ETQ

ORIGINAL STATEMENT FROM KASSIN ET AL (2001)	REWORDED STATEMENT
Police instructions can affect an eyewitness's willingness to make an identification.	Police instruction can influence whether or not an eyewitness makes a selection from a line-up.
The rate of memory loss for an event is greatest right after the event and then levels off over time.	Memory for an event declines most rapidly immediately after its occurrence and more slowly thereafter.
Witnesses are more likely to misidentify someone by making a relative judgment when present with a simultaneous (as opposed to sequential) line-up.	In a line-up, the way in which photographs are presented to witnesses (e.g., simultaneously or sequentially) affects the accuracy of identifications.

Note. ETQ = Eyewitness Testimony Questionnaire