How Can We Help Witnesses to Remember More?

by Timothy J. Perfect, Ph.D.

Eyewitnesses play a crucial role in the forensic process. At the outset, the details that they recollect, and the descriptions they provide help to shape the police inquiry, and at the end of the process, the testimony they provide in court can have a significant impact upon the outcome of the trial (Leippe, 1995). Psychologists have been researching the ability of eyewitnesses to provide an accurate account of what they have seen for over a century, with the vast majority of that research conducted since the 1970s. We have learned an enormous amount about the ways in which witnesses can be mistaken, or led into error, but rather less about how to help them to remember well. The current paper bucks this trend, and discusses research into helping witnesses to remember more details, more accurately.

What Is the Problem?

The forensic process requires that witnesses remember the truth, the whole truth and nothing but the truth. It requires both the maximum amount of correct information to be recalled (the whole truth), and the minimum amount of error (nothing but the truth). That human memory is fallible, reconstructive, susceptible to influence and goal-oriented is well established (see Schacter, 1999 for a review). It is not my intention to cover that ground here. Instead, I will take for granted the fallibility of memory, but ask nonetheless, how can an interviewer help a compliant witness to optimize their recall? There are two interrelated problems to overcome.

1) The interview is a conversational process.

An interview with a compliant witness is a conversation between two individuals governed by the social norms that apply in everyday conversation (e.g. don't speak when the other person is speaking, maintain an appropriate level of eye-contact, don't wander off the point etc). However, the conversation is not a natural one, and has aims that are not normally met in casual conversation. The interviewer's aim to maximize the amount of information provided by their conversational partner is often undermined by the subtle rules of conversation that govern polite behavior, both on the part of the witness, and the interviewer.

From the perspective of the witness, the level of detail that is required in a forensic interview goes way beyond the kind of detail normally provided in conversation. The question, "What did you do this morning?" from a friend would elicit a very different response than if it had been asked by a police officer or a lawyer. Providing a very detailed account of one's activities throughout the morning requires going beyond the normal expectations of

conversation. It requires giving details that would normally be seen as trivial, boring or irrelevant, and it requires dominating the conversation in a manner that would normally be seen as rude.

The interviewer also has a role in this process. In order to encourage the witness to provide the information in the detail required, the interviewer must carefully enable the witness to speak in a manner that contravenes social norms. This is difficult because subtle non-verbal cues typically signal turn-taking, interest, approval and so forth. Thus, the behavior of the interviewer, whether in non-verbal cues such as length and direction of eye-gaze, or verbal-cues such as interruptions or encouragements can impact upon the behavior of the witness. The interviewer also represents a source of distraction from the task of remembering. The most obvious form is interruption: research has shown that the average delay between a police officer asking for a free narrative from a witness, and following up with a question is 7.5 seconds (George, 1991). Thus, just as a witness has re-created a mental event, and has begun describing it, the interviewer interrupts this process. This provides both a direct interruption to recall, but also an indirect cue to the witness about the form the conversation will take, since speakers only interrupt one another if they are unhappy with what the other is saying. However, the interviewer serves as another form of distraction, in that they are a source of visual and auditory input to the witness that can serve to distract the witness from the process of remembering. We return to this point later in this article.

2) Memory control processes distort information reporting.

An interrelated problem is the process by which witnesses choose to report what they remember. It inevitably involves an editing process. Leaving aside the obvious biases in reporting that serve to enhance the status of the witness (downplaying their responsibility for bad outcomes, playing up their responsibility for positive ones), even witnesses with no personal agenda will edit their accounts as they discuss them with their interviewer in order to present information that is sufficiently accurate.

Witnesses can control the accuracy of their memory reports in two ways. One is to vary the "grain size" of the report (Goldsmith, Koriat & Weinberg-Eliezer, 2002). This means that when they are uncertain of a detail a witness may choose to describe it in a less precise manner. The present author could be described as a 40-45 year old white male with graying brown hair and green eyes, or simply as a middle-aged man. Both are essentially accurate descriptions, but they vary in precision. This editing strategy doesn't present too many difficulties for an experienced interviewer because further details can be elicited with follow up questions. However, choosing to omit details altogether, either by failing to mention something in a free narrative, or failing to provide an answer to a direct question, presents more problems to an interviewer. If the witness doesn't mention something, it is hard for the interviewer to know what follow-up questions to ask.

The choice of withholding information, or offering it as evidence, provides the witness with a form of quality control, in the form of a trade-off between amount (quantity) or accuracy (quality). Witnesses can withhold details, thereby increasing the quality (accuracy) of the remaining information. Similarly, interviewers can encourage more liberal responding, thus increasing the amount of information elicited, but at a potential cost to overall accuracy. Several corollaries follow this point. First, the best positioning of response bias may vary depending upon the costs associated with the outcome, and so may vary through the forensic process. Early in an investigation, it is perhaps more helpful for witnesses to be more liberal, since any information they provide will be subject to further corroboration. However, during the trial, there is an onus on accuracy ("nothing but the truth") and so the witness might be better adopting a more conservative response bias.

Finally, this perspective also makes clear that in evaluating attempts to improve the memory performance of witnesses, one must distinguish between genuine increases in recall from a change in response bias. If an

intervention is successful in improving memory, then witnesses should be able to provide more correct information without a concomitant increase in incorrect details. In contrast, shifting witnesses from a more cautious to a more liberal response bias will result in more correct details, but also more incorrect details. Thus, showing that a manipulation increases the amount of details reported, or even that it increases the amount of correct details reported, is not enough to establish that it is a useful technique to improve memory. That requires consideration of the rates of correct and incorrect information being reported. It is this distinction that has led to the rejection of hypnosis as a memory-enhancing technique.

Improving Memory – The Cognitive Interview

Research on the improvement of performance by eyewitnesses has centered on a collection of techniques called the cognitive interview (Fisher, Geiselman, & Amador 1989), subsequently revamped as the revised cognitive interview (Fisher & Geiselman, 1992). The cognitive interview technique is a formal interviewing method with two major components. There are social techniques designed to reduce witness stress and enhance conversation management, such as giving the witness a sense of control, preventing interruption by the interviewer, using open rather than closed questions and so forth. There are also cognitive techniques designed to help witnesses maximize their recall of the event. These include context reinstatement, multiple retrieval cues, change of perspective and repeated retrieval attempts.

The cognitive interview undoubtedly works. Studies in the laboratory, and in the field, have shown that compared to a standard police interview, a cognitive interview leads to more information. A meta-analysis of 42 published studies, involving over 2,500 participants showed that the cognitive interview substantially increases the number of correct details recalled by a witness, while increasing the number of incorrect details produced much less (Kohnken, Milne, Memon & Bull, 1999).

While the cognitive interview technique has been enthusiastically adopted by police forces around the world, and by other professionals with an interest in interviewing techniques (e.g. Murtagh, Addington-Hall and Higginson, 2007), it is not without problems. One issue with the cognitive interview is implementation. Because the revised cognitive interview is a collection of techniques it requires significant training to implement successfully. It is also quite time-consuming to conduct in practice. Consequently, it is not routinely utilized, and is often improperly implemented (Kebbell, Milne & Wagstaff, 1999)

A second problem is that because it is actually a collection of techniques – both social and cognitive – it is not entirely clear why it works. Attempts to break down the cognitive interview into its constituent parts have not been effective in identifying the components which produce the most benefits (Milne & Bull, 2002). Here, we present our research on one simple technique, largely unexplored, which has proven to be highly successful in improving eyewitness recall: eye-closure at retrieval.

The Eye-Closure Effect

Hypnosis involves both a relaxation stage, an eye-closure instruction, as well as the hypnotic instructions. Researcher have found that any memory benefit of hypnosis might just as easily be attributed to relaxation or eye-closure than to the hypnotic instructions (Wagstaff, Brunas-Wagstaff, Cole et al., 2004). It is worth noting how Wagstaff et al. (2004) tested the effects of eye-closure on memory recall. Participants were put into one of two conditions: an eyes-open condition, or an eyes-closed condition, and asked to answer 17 questions about the televised funeral of Lady Diana, Princess of Wales, which had been witnessed five years before the study. Those with eyes open managed to recall an average of six correct details, while those with their eyes closed got an average of eight details correct: an increase of 33%.

Because the funeral of Lady Diana was a high profile event which was discussed widely, and shown repeatedly on the TV and in other media, we wanted to explore whether the benefits of eye-closure were observable for more mundane events, seen only once – events of the sort a witness may have to describe. We also wanted to know whether the increase in correct details reported by Wagstaff et al. (2004) was due to an improvement in memory, or just a change in willingness to report. In our first experiment, participants viewed a brief video-tape of an event and were asked a series of questions that targeted particular details of the event. There were two experimental conditions: one group of participants were asked to close their eyes throughout the interview (the eyes-closed condition), while the other group were given no such instruction (the eyes-open condition). If participants in the eyes-closed condition did open their eyes at any point, the experimenter reminded them to close them again before continuing. Those in the eyes-open group were not told to keep their eyes open, and we didn't intervene if they did close their eyes as they tried to remember (as some people spontaneously do). Our aim was to compare instructed eye-closure with what happens in a standard interview in which people may or may not close their eyes. In all other respects the procedure was identical for both groups. Each participant was asked a series of 15 specific questions about the video they had seen, and either gave their answer or indicated that they could not remember.

Compared to the eyes-open group, those in the eyes- closed condition produced 44% more correct details, and 32% fewer incorrect details (see Table 1). This result is exactly the pattern that an interviewer desires: an absolute increase in the amount of correct information recalled, without increasing the incorrect details. In fact, incorrect recall actually decreased.

Next, a series of four additional experiments examined various recall of video-taped events as well as live events. The overall take-home message is that the series of additional studies replicated the pattern observed in the first experiment. Averaged across all five studies, participants with their eyes closed recall about 34% more correct details, and 20% fewer incorrect details than participants not instructed to close their eyes. It is interesting to note that the average size of benefit observed in our studies matches that of Wagstaff et al.'s (2004) study of memory for Lady Diana's funeral. The one study not to show this effect was Experiment 2. Closer examination of the data in

this study showed a benefit of eye-closure for the visual details only, with poorer recall of auditory details. However, this pattern was not replicated in the subsequent studies, which each showed equal benefit for auditory and visual details.

Table 1: The number of correct and incorrect details recalled by participants with their eyes closed, or eyes open during recall (and the % difference), in 5 experiments reported by Perfect et al. (2008).

	Correct details recalled			**Incorrect details recalled**		
	Open	**Closed**	**% Difference**	**Open**	**Closed**	**% Difference**
Experiment 1						
	6.1	8.8	44%	5.3	3.6	-32%
Experiment 2						
	10.0	10.2	2%	1.9	2.1	11%
Experiment 3						
	10.9	19.0	74%	2.0	2.0	0%
Experiment 4						
	7.8	10.3	32%	3.6	1.6	-56%
Experiment 5						
	9.6	11.5	20%	0.43	0.33	-23%
Average						
			34%			**-20%**

The pattern seems to be that eye-closure aids recall of both visual and auditory details, while suppressing recall of incorrect details. Thus, in terms of the distinction between memory and memory report discussed above, it seems clear that eye-closure has a direct effect on how well witnesses are able to access their memory.

There are a number of pleasing aspects to the studies above. First, together with the study by Wagstaff et al. (2004), they show the generality of the effect. Each study used different materials, with different questions, asked by different experimenters. The beneficial effects of eye-closure were apparent both for video-taped films and staged-live events where the participant did not know they were going to be tested. The benefit was also apparent when people gave their own account of what they had seen, and when they answered direct questions. More impressive is the fact that the average magnitude of the beneficial effect was the same as that reported previously for the cognitive interview (Kohnken et al., 1999), yet the eye-closure effect requires no special training and does not complicate the process of interviewing.

Clearly, an interviewer wishing to help witnesses to remember more details from a past event should instruct their interviewee to close their eyes for the duration of the interview.

Our experience is that witnesses don't always feel comfortable with this instruction, presumably because it contravenes social norms about looking at the person you are talking to, or because they feel vulnerable with their eyes closed. Nevertheless, the manipulation is beneficial, regardless of how they feel about it. However, because we are researchers our research questions have not stopped, and we have been attempting to discover why eye-closure is such an effective aid to eyewitnesses.

Why Does Eye-Closure Help Eyewitness Memory?

We are yet to answer this question, but there are several candidate explanations. Some we have ruled out, at least to our own satisfaction, but other ideas remain to be tested. We briefly describe possible explanations, and the relevant evidence we have collected that might be consistent or inconsistent with each.

The plausible explanation: Eye-closure reduces distraction.

Our initial belief was that the eye-closure effect was likely due to a reduction in interference, because visual processing is carried out by the same brain regions as involved in memory imagery. We thought that cutting out visual processing might help visual memory. However, the fact that auditory memory is improved just as much by eye-closure is inconsistent with this idea. Another potential explanation for the effect is that eye-closure reduces harmful social feedback from the interviewer. However, the fact that the eye-closure benefit occurs equally for both direct questioning by an interviewer and free report with little interaction with an interviewer rules out this explanation.

The more likely possibility is that eye-closure reduces distraction from the environment, and so enables greater concentration on the process of memory creation. Memory retrieval, particularly for complex events seen only once, is an effortful process which unfolds over an extended period of time. If this process is disrupted, participants may not be able to satisfactorily re-create the memory for the event, and so be unable to provide details of what happened.

Here we use the term distraction to mean something rather different from interference, as discussed above. Interference is the reduction in resources devoted to a task because they are being shared with a competing task. As

we discussed above, the hallmark of interference effects are that they are related to the similarity of the two tasks engaged in. Distraction is something else. This is the disruption of complex activity, so that it has to be re-started, or recreated. Here, the distracting stimulus may not take resources, but may cause the person to lose their train of thought, or forget what they were going to say. Because the environment contains many potential distractions that might serve this function, it is possible that eye-closure serves to reduce such distraction.

We have run two studies which are consistent with this view. One involved participants watching a video-taped event, before answering questions about it, as in Experiment 1 above. However, participants were required to answer the questions while watching a computer screen, on which were displayed images of moving shapes. The images differed in two ways: the number of shapes displayed, and the randomness of their movement. Although the witnesses were not required to do anything with the images, their ability to recall details of the event they had seen was impaired by both the number of shapes, and the randomness of their movement. The implication from this is that environments that contain more complex, unpredictable events can impair recall. An interviewer fits this bill pretty well, because a human being is both a complex visual object to process, with many variations in pose, expression etc, and is random, since their movements cannot be predicted. Consequently closing one's eyes to the distracting interviewer might be beneficial.

In a second study, we used auditory distraction. Participants tried to answer questions about a previously seen staged event, with their eyes open or closed. Half the participants in each condition also had to cope with random bursts of white noise, played over headphones. What we found was that the white noise impaired people's ability to answer the questions, much as the random shapes had impaired recall in the other study. However, we also found that eye-closure reduced this effect. That is, instructing people to close their eyes helped them overcome the distracting effect of the white noise. This finding is particularly compelling because it contradicts an interference account. Here, auditory distraction is overcome by reducing visual input. Hence it seems that eye-closure is helping in the sense of overcoming general distraction rather than modality-specific interference.

Explanation caveat: Eye-closure influences contextual retrieval

An obvious question that follows our work on eyewitness recall is whether eye-closure *always* improves memory. Recently, we have run a series of laboratory experiments on memory, which have provided the emphatic answer, "No". We ran several studies where participants learned lists of pictures or words, and later recalled them with their eyes open or closed. These studies showed absolutely no benefit of eye-closure at all. Thus, remembering simple lists is not helped by eye-closure, but memory for complex events is helped. This is the theoretical puzzle on which we are currently working. One possibility, in line with that mentioned above, is that memory for simple lists is relatively resistant to distraction. We will be looking at this possibility in our next round of studies. Another possibility that we will also be looking at is that complex event memory requires greater reliance on context. In an event, the details to be remembered are both inter-related, and commonly related to the narrative thread that they share. In contrast a list of items is just that: a list. The ability to recall the fifth item on the list is no help whatsoever in recalling the twelfth item, since they are unrelated. In contrast, recalling that a perpetrator wore a blue shirt may assist in recalling what else he wore, and by extension what he was doing when he was wearing it. Thus eye-closure may help witnesses utilize this contextual binding, but this is of no help when remembering unrelated lists.

Summary

The extent to which an interviewee can provide details about a past event is driven both by the quality of their memory, and their willingness to respond. Interventions designed to increase the amount remembered need to demonstrate that their effectiveness is more than a change in response bias, but actually constitutes improved

memory. The simple instruction to a witness to close their eyes during retrieval does just this. In a series of studies, across a range of situations, witnesses instructed to close their eyes were able to produce more correct information, while producing less incorrect information, than witnesses interviewed in a standard condition. Current research is exploring why this effect occurs, with the most likely explanation being that eye-closure allows the witness to overcome distraction from the environment, and so concentrate on the process of memory retrieval.

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We asked three experienced ASTC-member consultants to comment on the practical relevance of Dr. Perfect's work in witness preparation. On the following pages, Leslie Ellis, Connie Miller, and Kacy Miller provide their thoughts on use of the eye-closure technique to aid in witness fact recollection.

Leslie Ellis, Ph.D. comments on:

"How can we help witnesses to remember more?" [by Tim Perfect]

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While there has been a substantial amount of research on eyewitness accuracy, the vast majority of the research on improving witness accuracy and recall has focused on criminal proceedings. Aside from the apparent effects distractions can have on witnesses and implications that finding might have for the notoriously inaccurate eyewitness identifications, the technique featured here has implications beyond the obvious. Many of the methods that have been investigated, including the cognitive interview, either cannot or have not translated well into the civil litigation world because of the norms and civil procedure rules governing civil ligation depositions. This research focuses on a method that can easily be applied to civil litigation and is likely put into practice informally every day, as deponents try to recall events that occurred years ago, but could be put to use more formally with better results.

I am always surprised when, sometime after depositions but before trial, counsel sits down with the witnesses and walks them through their stories for the first time. For whatever reason (usually some combination of time constraints and strategy), counsel often does not ask the "who, what, when, where, and why" questions until after the deposition is over, which can be years after the litigation began. Unlike a criminal investigation, which begins as soon as a potential crime has been identified, civil litigation slogs on, sometimes through years of motions practice, before the key players get thoroughly interviewed by a friendly party. The opportunities for lost information are immense. Further, a witness's complete story might not work well with the bigger picture of the case that has been established on the record, and counsel is then left to figure out what to do about it.

Rather than waiting until trial prep, counsel should consider having a thorough initial conversation with witnesses (much like the thorough, open-ended cognitive interviews) before depositions, strategy permitting. Such a conversation could not only help develop a discovery or deposition strategy, but also recover information before the witness's recall either degrades further or is contaminated by the deposition process. Based on Dr. Perfect's research, it appears that such a discussion should incorporate the eye-closure techniques studied to date.

Witnesses who are particularly anxious or stressed are perceived as less credible than calm witnesses. It's safe to assume that a witness who testifies with her eyes closed would lack credibility with jurors, so the closed-eye interview with counsel would have to be followed by open-eye testimony in deposition and trial. Hopefully, the

authors or others are considering conducting further research into what happens when you follow up the instructed closed-eye interview with a standard open-eye interview. If the effects are long-term and the benefits are realized in subsequent open-eye testimony, closed-eye initial interviews could be a powerful aid to criminal and civil witnesses alike.

Connie Miller comments on:

"How can we help witnesses to remember more?" [by Tim Perfect]

Connie Miller (connie@constancemiller.com) is a 30-year litigation communication consultant and presentation skills coach, working in the Seattle area and internationally. Her background as a professional actress, visual artist and mediator informs her consulting and coaching.

What a well-balanced and clear paper! A joy to read! Coming to trial consulting from the theatre over 30 years ago, I have a healthy respect for the scientific approach with its numbers and distinctions. For instance, I feel as though I am living in my right brain nearly 90% of the time. However I have never tested this. But when Tim says that there is a 33% increase in the recollection of six details, that is just what he means. He has tested it. Very good!

I expect that most other communication-focused trial consultants run up against memory issues in nearly every case. I find myself helping the attorneys learn to ask questions about memory in such a way that it does not prejudice the response. Certainly many witnesses feel, consciously or not, that they need to please or help the ("smart", "successful", "busy") attorney and they look carefully for the attorney's facial expressions and body language to affirm their responses. The attorney's naturally and highly trained critical mind is constantly listening for legal issues and can be highly judgmental if the witness either does not give them sufficient or the "right" sort of information: "No, don't say that!" (Frown, grimace, etc.); "Yes! Say that! (Excitedly, giving weight to what might actually be a minor piece of the recall).

Dr. Perfect's thesis is compelling. However, closing the eyes, to me, will require the witness to feel safety in the environment and I can imagine that some attorneys lack the sensibility to create that safety prior to asking the witness to close their eyes. I am wondering if Dr. Perfect's subjects were asked to close their eyes by attorneys or graduate students? I think it would make a difference in the outcome.

And there is another aspect of this question of eye-closing. As a litigation communication consultant and coach, I have been told by attorneys that they don't like to be asked to close their own eyes during a communication exercise – "too touchy-feely!" So I am wondering if they are uncomfortable themselves with this sort of right-brain process, what sort of administers of the process will they be able to be?

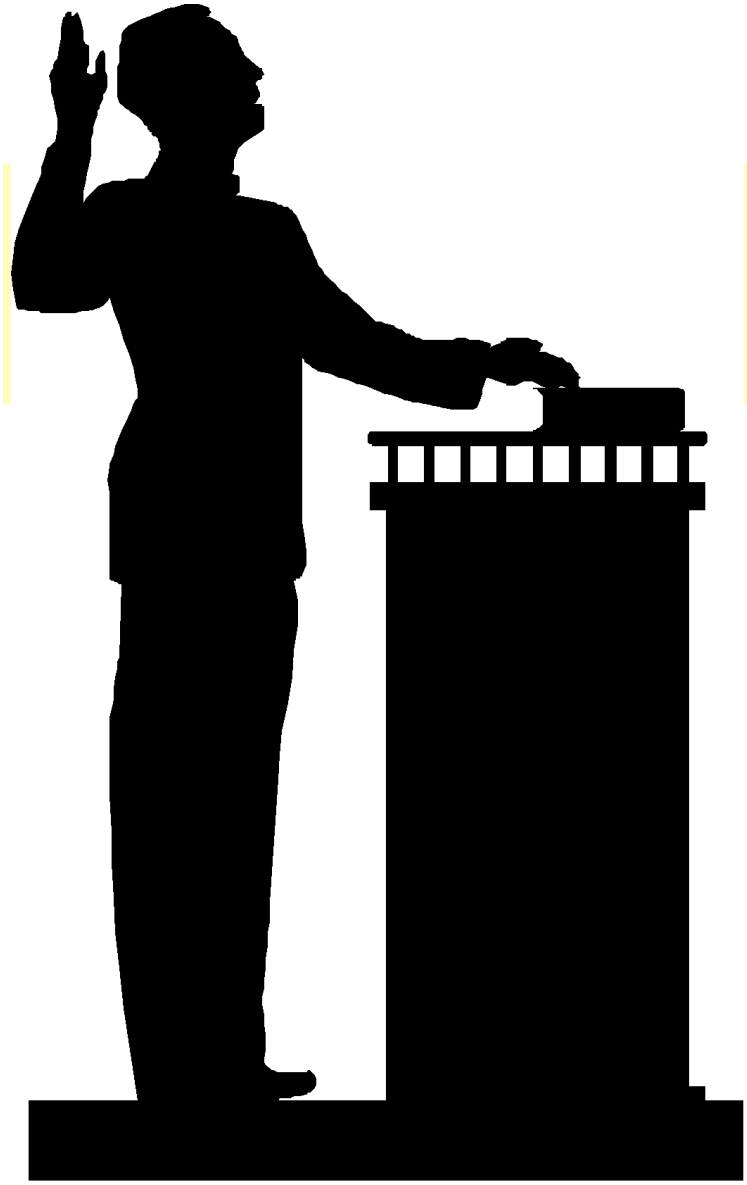
However, I am looking forward to seeing how this all plays out and will be very happy if closing the eyes turns out to be a great tool, embraced by attorneys to the sufficient degree that we all do enjoy more and more accurate recall by our witnesses.

In my own attempts to be of service to my attorney clients and their witnesses I have employed the use of flip charts and colored pens to help with recall. I have found that asking the witness to augment their verbal answers to the attorney with simple sketches of buildings, floor plans, maps, and organizational charts showing the roles of the people involved and their relationships to each other, etc., enhances their recall. The details of their recall are increased and even more detailed, and the process provides great relief to them to be able to tell their story more

effectively. It also takes their focus off the listening and possibly critical attorney and puts it on their own developing picture of what they recall, lessening the potential skewing effect that the questioning attorney might induce. The attorney can then ask them more specific questions about the witness-generated visuals, generating more and possibly more detailed recollections.

In addition to picture-making, I like to ask witnesses to imagine that the environment in which the case circumstances happened is in the interview room. I suggest that they are the director of a documentary film that is focused on those circumstances. I ask them to describe and demonstrate physically what happened, who was standing where or what was placed where, etc., to show us, as in a little film. As they go through this process, they access much more of their memory stored in their body – muscles, nerves and tissues – increasing their recall and producing more details.

I expect that other trial consultants have used these methods as well. We are such a visual and kinesthetic culture, rather than an auditory one. Making pictures and using our bodies to access and express memories works very well in my experience. These processes also give the attorney a rich resource of unique sensory information to use later to tell the case story to the mediator, judge or jury. However, I have no numbers, no statistics on the efficacy of these processes. I hope that Dr. Perfect will do a study on these tools as well!



Kacy Miller comments on:

"How can we help witnesses to remember more?" [by Tim Perfect]

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As I read Timothy Perfect's article summarizing his recent research on the eye-closure effect, I kept asking myself: "Can I utilize this technique in my trial consulting practice and if so, how?"

The cognitive interview technique is a multi-faceted method primarily used in the law enforcement industry. While I wholeheartedly acknowledge the potential benefit of implementing the cognitive interview and/or the eye-closure technique when interviewing potential eyewitnesses, perpetrators or otherwise delving into the details of a criminal investigation, I will admit that I had a difficult time wrapping my arms around how to maximize the benefits of such a strategy in the world of civil litigation.

In a society where speed is revered and often admired, we are rarely faced with situations that not only allow

—but also encourage—us to slow down, eliminate distractions and give ourselves the permission we need to slowly work through the process of recalling vivid, detailed memories. It's no surprise that anxiety, visual distractions, background noise, physical discomfort and emotional stressors all interfere and impede memory recall.

One key element of the eye-closure technique is that the witness is instructed to close his eyes for the duration of the interview. Despite best efforts to soothe and assuage the anxieties of a nervous witness, I would fully expect a witness to express resistance to the method. However, even though the eye-closure technique undoubtedly increases witness vulnerability, Dr. Perfect's research had one surprising finding: the technique can aid accurate memory recall *despite* the witness's level of discomfort. Even though fraught with discomfort and awkwardness, the witness might actually be able to trigger a memory by applying this technique… and consequently, increase his comfort level with the facts and gain confidence as a witness.

I believe the method is probably best used in the context of a criminal investigation. However, I do think it has limited applications to civil litigation—primarily when facts surround the sentinel event that ultimately gave rise to a lawsuit. For example, in medical malpractice, products liability and personal injury disputes, memory and recall of medical treatments, pharmacology, time and sequence, symptoms and the events leading up to and immediately following the sentinel event can be crucial facts when developing trial strategy.

The key question is *when* to utilize the technique. It is my opinion that the eye-closure technique is best implemented during the *early* stages of fact development and information-gathering—namely, during the initial client meetings, answering early interrogatories and RFPs, and during general discussions aimed at unveiling the details of what happened. The eye-closure technique is, at its core, an investigative tool. In rare instances, an attorney may want to try a modified version of the technique while taking a deposition if the presenting witness is having a difficult time recalling details. Encouraging such a witness to close his eyes may aid in retrieving the data, but at the end of the day, the witness is always in control of what he chooses to share. While the memory may be retrieved, there is no guarantee that it will be articulated. Also, if electing to implement this technique during a deposition, I would encourage careful consideration as to how badly the data is wanted (or needed). Sometimes, the less we know the better.

That being said, I would not, under any circumstance, recommend utilizing the eye-closure technique during actual trial testimony, as the very nature of the technique has the potential to cause jurors to question the believability and truthfulness of the testifying witness. When did you last observe an amazingly credible testifying witness who closed his eyes, took ample time and slowly recalled details on the witness stand? The witness may very well be testifying truthfully and accurately, but if his tone, demeanor and body language fail to communicate that message as well, jurors tend to question the authenticity of the message. The eye-closure technique is one to implement behind closed doors, not in front of a jury.

While the eye-closure technique certainly has interesting implications, it does have practical limitations. However, the mere existence of limitations does not in and of itself suggest an outright dismissal of the method. It is a viable and research-proven tool that I will add to my ever-growing bag of tricks. Do I envision myself using this technique with every case and every witness? Certainly not. But make no mistake… the next time I am working with a witness who is having a difficult time with specific recall, I will absolutely consider implementing the strategy.

Following review of the ASTC consultants reactions to his paper, Tim Perfect responds to their comments and questions on how to use his research findings.

Tim Perfect responds to ASTC-member consultant comments on:

"How can we help witnesses to remember more?"

I'd like to start my response with an admission, followed by an expression of gratitude. The admission is that I know relatively little of the processes or procedures by which individuals work through the civil and criminal legal processes in the US, or even in the UK where I live. My expertise is in experimental psychology, in particular human memory. By preference I have always been interested in the interplay between theory and applied aspects of human memory, and so naturally my research includes studies of the memory of eyewitnesses. However, my focus in this work has always been on memory, rather than application. What a pleasure then, to have such thoughtful and positive commentaries by three experts who are very much focused on the practicalities of interviewing in a legal setting.

My overwhelming response in reading these comments was one of relief that the practitioners see value in the work we have been doing. There are, however, a number of comments they make that I would like to respond to:

When should the technique be used?

Kacy Miller and Leslie Ellis both express concern about the potential for using the eye-closure technique at trial. I couldn't agree more with their comments: the work we have done is very much about getting the witness to report as much information as they can. I agree wholeheartedly with Kacy Miller that it is probably "best implemented during the early stages of fact development and information-gathering". However, this doesn't necessarily mean soon after the event. My colleague Graham Wagstaff originally demonstrated that eye-closure can aid recall of an event that happened several years ago.

Are the benefits long-lasting?

One question (asked by Leslie Ellis) that follows the use of the technique in the early stages of the legal process is whether the benefits will then be seen at trial, weeks, months or years later. Practical constraints mean that we have not yet done this research. However, other memory research suggests that the effects will be long lasting. It is well established that the act of memory retrieval has a powerful memory strengthening impact. Recalling a fact at one time enhances the likelihood of recalling that fact later, much more than merely re-studying the fact. (In educational settings this is known as the testing effect). Thus, anything that helps a witness recall something early in the legal process is likely help them recall it later.

The stress of eye-closure / Does it matter who does the interviewing?

Connie Miller asked the perceptive question of whether the interviews were done by attorneys or graduate students. I am assuming that what lay behind her question is a concern about the stressfulness of the interview situation when conducted by attorneys. Kacy Miller alluded to this same point in her comments. The straightforward response to Connie's question is that we used student interviewers in all the studies we reported. However, in a small-scale follow-up study, trained police officers carried out interviews to a (mock) crime in either an eyes-closed or control condition, and the same beneficial effect was observed, even though the police officers reported that their interviewee's reported feeling uncomfortable. So, I am optimistic that the eye-closure benefit

occurs despite the discomfort created, and so should occur when legal professionals conduct the interviews. However, further research is clearly needed here to explore a wider range of situations, although the boundaries of what we can do in the lab, compared to what happens in real life, are always constrained by practical and ethical concerns.

Other techniques

Connie Miller outlines a number of interesting memory techniques that she uses to cue memories in her practice. These sound both interesting, and eminently sensible, given what we know about the benefits of varying retrieval cues to aid memory. I hope that she continues to use these techniques, but also considers the potential benefit of eye-closure as another tool to add to her interviewing tool-box.

The Jury Expert wants to thank Dr. Perfect for not only sharing his work but for responding to consultant reactions to its practical utility. This sort of dialogue is precisely the goal of our transition to a digital journal.

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Thanks for looking at the July 2008 issue of TJE. This month we are pleased to bring you not only diverse but international perspectives. This issue of The Jury Expert has authors from England, Canada, and all across the United States.

This time we're all about witness preparation, the eye witness research literature, a new 'secret weapon' for ensuring your witnesses remember facts as accurately as possible, religion in the jury box, case themes, a new form of forensic animation, and understanding RSS without any real work on your part. Plus our July 2008 "favorite thing" is hidden away inside.

We appreciate the feedback you've given us and are eager for more! Tell us what you think or what you'd like to see in The Jury Expert by simply sending an email to the Editor.

Upcoming issues are filling up and promise to be intriguing and relevant to your practice. If you like us, tell your colleagues and friends about us and encourage them to subscribe. You can forward this pdf document to them or send them to our URL (http://www.astcweb.org/public/publication/). And thanks again for reading TJE!

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