Communicating the Science of Psychology: Expert Testimony

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Overview

- How courts use social science evidence
- Laws governing the admissibility of expert evidence
- Advocacy vs. science translation
- Dangers of advocacy: adversarial allegiance
- Nuts and bolts
How Courts Use Social Science Evidence (Monahan & Walker, 1988, 1991)

- **Social Authority**
  - Social science used to create or change law rather than resolve a dispute between parties (e.g., *Brown v. Board of Education*)

- **Social Fact**
  - Social science created to address a particular fact at issue in the case (e.g., change of venue, trademark confusion)

- **Social Framework**
  - Research presented to provide context for the jury when they are deciding the facts
  - *Price Waterhouse v. Hopkins*, gender discrimination
Fuzzy categories in practice

- Factors influencing eyewitness accuracy
  - Typically social framework evidence
  - Can include social fact testimony
    - Mock witness studies of lineup fairness

- Community surveys to support change of venue motions
  - Primarily social fact evidence
  - Pretrial publicity effects on jury decisions = social framework
Admissibility Standards for Scientific Evidence in the U.S.

- Frye standard (1923)
  - An early version of the polygraph
  - General acceptance

- Advantages
  - Judges don’t need to understand science

- Issues
  - Unclear how to define the relevant scientific community: narrow or broad?
  - Prevents novel techniques from rapid introduction into court
Federal Rules of Evidence

- **Rule 401**
  - Evidence is relevant if it changes the probability of a fact

- **Rule 402**
  - Evidence is admissible if it is relevant.

- **Rule 403**
  - Evidence must be more probative than prejudicial.
  - Cannot confuse the issues or mislead the jury.
Rule 702

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if

- the testimony is based upon sufficient facts or data,
- the testimony is the product of reliable principles and methods, and
- the witness has applied the principles and methods reliably to the facts of the case.
Daubert v. Merrell Dow Pharmaceuticals (1993)

- Relevant
- Reliable
  - Hypothesis testing using the scientific method
  - Falsifiable theory
  - Known or potential error rate
  - Peer-reviewed publication
  - General acceptance
Warning!

- Know the rules governing admissibility in the jurisdiction in which you will be testifying
  - If a Frye state, you will want to know any evidence regarding the general acceptance of your evidence
    - Surveys of experts that can establish acceptance?
    - California, New York, New Jersey, Illinois
  - If a Daubert jurisdiction, you need to be prepared for detailed questions on methodology
    - Federal and more than 30 state courts (including FL as of tomorrow)
Advocacy vs. Science Translation

Advocate’s duty:
- To present the most persuasive evidence and arguments for the client
  - May be biased but not fraudulent

Scientist’s duty:
- To accurately represent the science

Conflict
- Direct exam may not allow for complete disclosure
- Attorneys will push you to your limit
Adversarial Allegiance

- Hiring party influences the evaluation of the evidence on which the expert opinion is based.

- Mounting evidence that adversarial allegiance affect clinical forensic evaluations of offenders
  - Sex offender risk in civil commitment cases (Murrie et al., 2008, 2009)
Expert Partisanship

- **Social psychologists**
  - specializing in gender, stereotyping, or organizational behavior

- **Internal Validity Manipulation**
  - Good
  - Missing Control Group
  - Confound
  - Experimenter Bias

- **Employer Manipulation**
  - Plaintiff
  - Defense
Psychologists’ ratings of study validity
Austin, Russano, and Kovera (in preparation)

<table>
<thead>
<tr>
<th>Valid</th>
<th>No Control</th>
<th>Confound</th>
<th>Not Blind</th>
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<tr>
<td>Valid</td>
<td>4.98</td>
<td>2.69</td>
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Bar chart showing ratings: Valid, No Control, Confound, Not Blind.
Nuts and Bolts of Expert Witness Work

- Initial consultation
  - Assessment of expertise
  - Availability
  - Pay rate

- Guiding discovery

- Evaluation of the discovery
  - Compare case facts to research literature
  - Compare case facts to best practices
  - Writing may be discoverable
Nuts and Bolts of Expert Witness Work

- Decision about whether to testify
  - Make clear to the hiring attorney what you are willing to say
  - Also make clear what might come out on cross-exam

- Admissibility hearing

- Direct examination
  - Qualifications
  - Suggest questions
  - Pretrial conference
Nuts and Bolts of Expert Witness Work

- Cross-examination
  - Know opposing attorney and/or witness
  - Personal questions and other attacks on credibility
    - Internet material, previous testimony
    - “refreshing your recollection”
  - Keep your cool

- Post-trial
  - Ask attorney for feedback
  - Obtain any available transcripts, decisions
What does expert work have to do with policy?

- Social authority evidence is intended to change or create law
- Social framework and fact evidence contribute to just outcomes
- Social framework testimony may indirectly influence policy
  - Testimony that situations lead to bad outcomes could lead to policies that change those situations