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Evalution of Courtroom Testimony

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THE EVALUATION OF COURTROOM TESTIMONY.

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Readers of this JOURNAL no doubt fully appreciate the efficacy of experimental or laboratory methods of investigating or interpreting criminality. The psychology of the abnormal and delinquent individual is perhaps that branch of modern psychology which is giving the largest practical returns for efforts expended. Hence a brief discussion of another use for those methods may not be amiss in view of our newly aroused interest in the problem of applying scientific methods to legal practices.

A few years ago I was engaged in searching out in a practical way the influence of suggestion upon the testimony introduced in the courtroom. Experiments carried on along the lines of pure psychology gave many fruitful results and constitute material for a later article. But more to the point were the experiments carried on in the practice court of a large law school. It is my intention to describe briefly the methods then worked out in the belief that some other investigator may be ready to give them a more thorough application.

The practice court mentioned is quite similar to those commonly found in progressive law schools. Students in their last year of attendance, in order to get at least a glimpse at actual workday court life, try to forecast coming events by "manufacturing" crimes and then trying the criminal under the statutes of the state in which they expect to engage in practice. The work is done in a serious manner under the direction of a full-time professor, whose sole work is to stand in the background to offer suggestions and criticisms. One could easily imagine himself attending the session of a real court, so well reproduced are the familiar settings of a courtroom; only the uniform youthfulness of judge, jury, culprit and lawyers betrays the element of pretense in the procedure.

Ordinarily we rely for evidence as to the events accompanying the commission of a legal offense upon the chance observations of passers-by or fortuitous lookers-on. Such was the case in the carrying through of the various legal disputes in this practice court. From the point of view of the law student, interested only in the im-

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mediately legal aspects of the matter, no more than this could have been expected. But much good material for scientific investigation was here going to waste. Why not station some one so as to see *all* of the events which led up to and accompanied the commission of the crime, some one person who could notice exactly and commit to writing and drawings everything that was said and done, the time of day, the place, the collocation of all relevant objects, etc.?

This seemed so profitable an undertaking that I was present at the manufacturing of two crimes with note-book in hand, and eye and ear alert to catch every detail, no matter how unimportant it appeared to be at the time. I was careful to render myself as inconspicuous as possible to avoid inducing the student "actors" to play to me. No one knew why I was there; my presence as an unknown outsider, if noticed at all, aroused no comment.

The first crime I observed was a fairly simple one in which a careless delivery man allowed a heavy parcel to fall over a railing and down two stories upon the head of an unsuspecting resident of apartments below. Here the bulk of the evidence was as to the cause of the fall, the extent of the injury, and the need of delivering a bundle up the front rather than the rear stairway. The other witnesses took in the situation, but none too willingly, no doubt sensing that the less they noticed the less they would have to say when hailed into court a month or so later. I noticed everything and filled up my note-book with my observations. My wide range of carefully noted details and my use of notes made my evidence far more valuable than that of the average witness. The case was subsequently turned over to other students for defensive and offensive purposes. They worked out their findings preparatory to using them at the trial some weeks later.

A second crime concerned the alleged defrauding of a wholesaler by a retailer who had continued to buy supplies after having become defunct, although still posing as solvent. Here the evidence rested more upon what was said than upon outward physical events. The case hinged, however, upon the interpretation of the length of time elapsing between two events. My own carefully timed observation on this point was unbelievably understated and overstated by the witnesses in the trial six weeks later.

Had the method been carried to its logical conclusion I suppose I should have been allowed to have introduced my authentic evidence at the trials. This I did not do for fear of spoiling the case for the lawyers, whose warping of facts to suit their changing needs I was

best able to notice. However, permission to have done this could have been obtained from the professor.

My conclusions did not, on this account, lack value; in fact, there were positive advantages in this passive participation in the carrying out of the trials. I was unknown; the star witness was present, but no one was conscious of the fact. Then, again, I could observe things *as they are in actual court life* only by letting matters run their normal course, all the time comparing the alleged with the real. Just the minute I stepped out in view of the court with my pile of notes the case would have become *my* case. This latter method has been sufficiently exploited by investigators creating situations in laboratories and noting the expected results of their own pre-arranged cases. This pitfall I overstepped.

That this whole method of using practice courts could be used to a much greater extent than to my knowledge it is used at the present moment, is my earnest belief. At best it cannot give us any finely worked-out, scientific conclusions; at best it can only reveal the weaknesses of ordinary testimony. Thus the errors of interpretation, fallacies of observation, the overestimation and the underestimation of time and space, the tendency to exaggerate and to want to tell a good story, can by it be brought forcibly to our attention. But apparently a more enthusiastic adoption of any of the findings of criminal psychology is impossible until lawyers and judges are convinced of the faults of prevailing methods. No more direct method of bringing home to both of these classes of natural conservatives the need of further improvement at present suggests itself than the livid setting forth of the abusive results of inadequate methods. It is my earnest hope that some person whose interests bend him in this direction may take upon himself the task of giving the method roughly outlined above a more rigorous use and that by dint of imagination and power of description he may be able to carry conviction of the need for reform in court-room methods of admitting and evaluating evidence.