

1951

## Abstracts of Current Articles of Particular Interest to Prosecuting Attorneys and Defense Counsel

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transportation of liquor and found guilty. Defendant appealed on the grounds that his unsigned statement should not have been permitted in evidence against him, and on the general insufficiency of the evidence to support the verdict. Section 782.7, Code of Iowa 1946, provides: "The confession of the defendant, unless made in open court, will not warrant a conviction, unless accompanied with other proof that the offense was committed." The Iowa Supreme Court affirmed, holding that the words and acts of the defendant during the entire episode supported his later confession. The Court was particularly referring to the statements made by the defendant to the gas stations attendants that he had been "hijacked" as well as his oral admissions while at the scene of the hijacking that he had been transporting liquor from Omaha. These, said the Court, were part of the *res gestae* and hence were admissible as evidence. "All the circumstances and exclamations and statements fit together. Aside from the formal confession they would have been sufficient, in themselves, to support the conviction. We are satisfied also the evidence of the occurrences and defendant's exclamations at the filling station during the perhaps three or four minutes from the time he was first seen until he joined in the pursuit, without more, would have constituted ample 'other proof' of the *corpus delicti*, accompanying his confession, to warrant submission of the case to the jury."

There were two dissenting opinions. Justice Mantz contended that there was no evidence of the *corpus delicti* (the illegal transportation of intoxicating liquor) outside of the defendant's extrajudicial admissions, and that the unsigned statement did not amount to a confession in accordance with the requirements of the Iowa statute. "Take out of the case what appellant said, either at the time [when the hijacking took place] or later when he was being detained at the police station, and what is left of the record to show the *corpus delicti*? To bolster up his statements by appealing to the rule of *res gestae* is beside the point and proves nothing. No one, aside from appellant, knew the contents of the car, and to rest a conviction on the guess, hazard, and speculation of casual and indifferent onlookers is to run in the face of our decisions that the *corpus delicti* must be shown beyond reasonable doubt." Justice Mulrone, in his dissent, pointed out that the statute prohibited conviction unless there was other proof than the defendant's extrajudicial confession that the offense was committed. "I can not see how one can read this record and exclude all of the statements attributed to the defendant and find any testimony that the crime of illegally transporting intoxicating liquor was committed."

*(For abstracts of other recent criminal cases of particular interest to law enforcement officers, turn to page 545.)*

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### Abstracts of Current Articles of Particular Interest to Prosecuting Attorneys and Defense Counsel

*Studies on the Testimony of Time Intervals*, an article in the April 1950 issue of the OREGON LAW REVIEW by Elon H. Moore, Head of the Department of Sociology of the University of Oregon, deals specifically with one type of factual error; namely, that found in testimony of time intervals.

Does the nature of nonperjurious errors reveal any consistent pattern? Do the errors regarding short time intervals, those involving seconds or

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\* This paper gives no attention to the nature or results of perjured testimony. We are not here concerned with the question: "Will he tell the truth?" Our concern is in determining the extent to which honest witnesses can tell the truth.

minutes, differ in type from those involving months or years? Further, how accurately can the memory place the occurrence of an event within a particular season of the year?

Satisfactory answers to these questions must ultimately be drawn from experiments carried out under laboratory controls. Unfortunately such experiments are limited in number. In the 1930's, when the writer first became interested in these problems, he made a review of over sixty years of scientific literature bearing upon testimonial accuracy. In that period of over six decades, he could discover but nine studies dealing with accuracy in the recollection of time intervals. To these he added eight more, five of which are chosen for presentation here.

Of the five experiments reported in this paper, Number I tested the recall of intervals involving seconds of time, Numbers II and III tested the recall of intervals involving minutes, and Numbers IV and V involved time intervals stretching over months or years.

Only a portion of Dr. Moore's report of experiment Number III is reported as a sample of procedure and findings.

#### EXPERIMENT III. TIME-INTERVAL STUDY—12 MINUTES AND 2 MINUTES

*Subjects.* Sixty-nine upperclassmen and graduate students.

*Procedure.* When W, the office secretary, came into the classroom, M, the instructor, requested her to bring his copy of Young from the office. Twelve minutes later, she reappeared with Young's *Social Psychology*; whereupon M informed her that it was Young's *Source Book* which he desired. Two minutes later, W brought the book indicated.

On first entrance, W appeared wearing a smock and without glasses; on the second, with glasses but without smock; and, on the third, with both smock and glasses.

After continuing the lecture for several minutes beyond the time of W's third appearance, M tested his subjects, first by narrative report for changes in W's appearance, and then by interrogation for both length of time intervals and changes in appearance.

*Discussion.* For the first interval (12 minutes), 64 estimates ranged from 2 minutes to 15 minutes, and the median estimate was 6 minutes. For the second interval (2 minutes), the range was from 15 seconds to 9 minutes, and the median estimate was 2 minutes. Fewer than 20 per cent exceeded an error of one minute for the shorter interval, while two-thirds presented errors involving 4 to 10 minutes for the 12-minute period. Here again is observed the tendency toward equalization of unequal periods which has been observed in other experiments. Contrary to the results obtained in the tests involving shorter time intervals, correct differentiation was made by most subjects between the short and the long period. In fact, fewer than 10 per cent reported the 2-minute interval as greater than the 12-minute interval. However, the answers from this small percentage reveal how erroneous recall judgments may become.

All studies point to the fact that estimates of intervals of but a few seconds are little better than guesses (except when the subject consciously seeks to measure the time interval at the time of its occurrence).

The recall of longer time intervals, those of several minutes or several hours, is aided by the use of time posts in one's experience. Students or others whose activity is time regulated by schedules or routines may find many points

of time reference not available in less regularized activity. Thus the student in his estimate of the duration of an incident occurring between class periods will not exceed the length of the established interclass interval. The estimate of the duration of the same incident when it happens on a Saturday afternoon or Sunday may greatly exceed the length of the interclass interval.

Without time posts, estimates for even longer periods may be markedly erroneous. In attempts to estimate the dates of events or incidents occurring one to fifteen years earlier, there is revealed a marked tendency to underestimate the time interval. The underestimation tends to increase with the length of the time interval except in the case of songs or events definitely associated with well-defined time posts, such as a war period. In general the period of the year is more accurately recalled for distant events than the year itself. While some advantage is observed for participants over mere observers or auditors, successful estimation of these longer periods is low for either group.

The accuracy of testimony relative to time intervals is dependent first upon the factor of caution on the part of the witness. Here as in other phases the testimony of the basically accurate and cautious witnesses will give a closer approximation of the correct and true than that of less cautious witnesses. If we really desire to evaluate the offered testimony, it would aid if ratings of witnesses' capacity for attention and memory under controlled conditions were made available to judge and jury. With such information, the testimony of the witness who approximates accuracy in three-fourths of the items should carry more weight than the testimony of one who approximates accuracy in but one-fifth of the items.

Copies of the OREGON LAW REVIEW containing the complete article—Vol. XXIX, No. 3—may be obtained at a cost of 75 cents by writing to the Oregon Law Review, University of Oregon, Eugene, Oregon.