

OpenLearn Podcast**Episode #4: Miscarriage of justice with Professor Graham Pike****Ben Wood and Graham Pike:****BEN WOOD**

Hello and welcome to the Open Learn podcast episode number four and today delighted to welcome Graham Pike who is a professor of forensic cognition at the Open University. We're going to be talking criminology, we're going to be talking miscarriages of justice and forensic psychology. So first of all welcome to the podcast Graham, thank you for joining us.

GRAHAM PIKE

Thank you, Ben. Nice to be here.

BEN WOOD

Now the first question I think I want to ask you is what is a professor of forensic cognition? Tell us a little about your role and what it is that you do.

GRAHAM PIKE

So I think the first thing for me to say, and we're going to come back to this, I think, a bit later, is I am not a forensic psychologist. And when we talk a bit more about forensic psychology, I'll explain why that's very important. So what I do is I study an area of psychology called applied cognition, which is basically how the mind works. If you think of the brain as a computer, the squishy biological bits, the hardware, and your thoughts and everything of the software. I study the software.

And particularly what I do is study how the mind works in real world situations, both to take knowledge about how the mind works to try to improve decision making and other things in real world situations, but also to learn more about how the mind works from those real world situations. So I work at the Open University. I work in the Forensic Psychology Research Group and the School of Psychology and Counselling, and I'm a psychologist.

BEN WOOD

So, tell us a bit what's your day-to-day work or what sort of projects are you working on? What is your role all about?

GRAHAM PIKE

Well, I do quite a bit of teaching. I'm involved in a lot of our curriculum strategy and I work in our MSc conversion, which is if you haven't got a degree in psychology and you want to be a psychologist, you can come and do that. And I work producing courses at the undergraduate level. My research mostly looks at eyewitness identification evidence, particularly with a focus to developing technology to try to make it better. I've got quite a diverse array of research ideas that I pursue and some are also to do with crime fiction, particularly the role of villains in crime fiction, but mostly what I do is technology and eyewitness evidence.

BEN WOOD

A lovely little link there to the previous podcast with one of your colleagues Zoe Walkington where we've spoken about fictional villains and psychology, so if you haven't yet watched that one do check out that episode as well. But you mentioned there about real life real world situations that you're interested in. Can you tell us a bit more about that? the world, criminology side of things, the cases of mistaken identity.

BEN WOOD

Can you just explain a little about your work into that, your research and why that's a particularly big issue? Why this happens? Why are there cases of mistaken identity? What does your research told you?

GRAHAM PIKE

Well, my research and that of a lot of psychologists and criminologists around the world has basically told us we cannot rely on eyewitness testimony. Particularly, we cannot rely on eyewitness identification. So somebody who's seen a crime, even if they saw the person up close for a long time, cannot be relied upon to later identify them from some form of identity identification procedure.

So many years ago in this country, that would have been a live parade. So the poor witness would have actually had to come along to a police station and see potentially the person that had attacked them or stolen from them, raped them, whatever it would be, standing in front of them with other people and pick them out. We found that to be incredibly stressful and also very unreliable and very expensive. So based on some research we did back in 2003, that system moved across to video identification parades, which is what you'll see most of the time if you're an eyewitness to a crime these days. So... you don't have to confront the person you saw commit the crime. It's done on a video, they're not even in the building. There are lots of reasons why eyewitness identification is so unreliable. And we've learned a lot about how people recognize faces based on cases of eyewitness misidentification. And actually when you think about it, you're asking somebody to do something that's almost impossible. So somebody who commits a crime so that you'd have to identify them later, it's gonna be unfamiliar to you.

If it's member of your family or a friend, you simply tell the police it was my mother, it was my father, it was Bob down the road. If you don't know who they are, they're unfamiliar. So you're having to recognise an unfamiliar face. And it turns out we are very bad at that. To make matters worse, we're often very confident in our decision, even when it's wrong. Another problem is we're very susceptible to the instructions and questions the police give us when we're giving evidence.

So for instance, very early on, psychologists, this would have been 30, 40 years ago, found that if you say to somebody, who is it, an identity parade, they're very likely to pick someone out. So in this country since 1984, the police have had to say to the witness, the person you saw commit the crime may or may not be present. If you think they are present, identify them. That simple change in the instruction given reduces misidentifications and therefore miscarriages the justice, the wrong person being sent to prison dramatically. So we're very susceptible to being led. So somebody in authority asks us a question that suggests a response such as, who is it? Suggests the person's actually there. What color coat was the person wearing? Suggests the person was wearing a coat. And you can actually create false memories. You will actually think, they were wearing a coat. And in your mind, you kind of put a coat on the person who committed a crime and make it red or whatever. So we're very bad at recognizing unfamiliar faces. And we're very susceptible to leading questions from the police. Now, of course, if the police are being unscrupulous, they can therefore lead you to provide certain forms of evidence if they're trying to convict someone. But even if they're not, and I would hope in the UK a lot of the time, if not most of time, they are quite scrupulous, the particular wording and actually quite natural question can lead the witness to provide evidence if not right.

BEN WOOD

Is there something in the situation that people find themselves in as well? Maybe sitting calmly at home under no pressure you might be able to put together the face of the person that served you in a shop a couple of hours earlier. But in the heightened situation of a crime being committed perhaps the adrenaline is pumping. Is that a contributing factor as well? That calmly we may be in a better memory, a better picture of someone but actually the strain and the stress of the situation makes it even worse, makes it even harder to do.

GRAHAM PIKE

So yes and no. So the strain and the stress of the situation can make things worse and make things better. If I ask you, describe the person that served you at the supermarket earlier, you probably won't be able to do it because you weren't attending to them. If you saw somebody commit a crime, you're probably focusing on them. You're attending to them. You're looking at their face. Though we found that if somebody's got a weapon, you tend to focus your attention on the weapon. It's called weapon focus rather than look at them. And you tend not to remember what's going on because you're rigidly looking at the weapon.

The other thing to say is that in research, we hope that our participants are not stressed, but they are sitting comfortably at home. So the research I do uses a paradigm known as mock investigation. So what I'll do is I'll show you a stage crime and you'll know it's a stage crime. We can't, it's unethical to suggest that, you know, people are actually watching crime as it happens. So you know that you're watching a stage crime, then a week later, a day later, a week later, a month later, we'll show you a line up and see if that you can identify the person. Critically, we will show two types of line up known as target present and target absent. The target present, the person you saw commit the crime is there in the line up. That mimics the situation where the police have arrested the perpetrator. Their suspect is guilty. But we also show target absent line ups. So that's to mimic the situation where the police have arrested the wrong person. Their suspect is innocent.

So we do both of those. You don't see them both, you see one or the other. But even when we're doing that and someone's sitting comfortably at home, they know they're taking part in research, they know they're to be asked about their memory, they still perform pretty badly and they'll make a lot of misidentifications.

BEN WOOD

How does time impact that? You said you're guessing that you witness a crime and you may be interviewed relatively quickly after that. If it's not, mean is there a sort of an optimum period? there anything that says over the course of a couple of hours, days, beyond a week that the chances of small remembering correctly gets worse? mean logically you would think the longer it goes on the less you'll remember but is that proven? Is that shown in the research as well?

GRAHAM PIKE

Yes, yeah, I mean, basically you want to do the ID parade as quickly as possible. And this was one of the reasons that technology has benefited being able to put on line up procedures, because the live version, had to find, you had to get the suspect and their attorney along to the police station, you had to find eight people that looked sufficiently like them. And then you had to get the witness or witnesses along. So it was a nightmare putting it together. And it could often take, I think on average, back at the turn of the century, it was taking between four and six weeks to put on an identity parade. These days, with computer technology, the internet, and a large database of video identification clips, so it's people turning their face like this, there's a central repository of these things. The police have many thousands of genders, ethnicities, hair colors, everything. So you can put an identity parade together very quickly. And of course you can film the suspect as soon as you... arrest them, as soon as you take them onto the police station and the witness can come whenever they're so you can put it on much more quickly. So that reduces the time therefore should improve accuracy. However, even if you showed an identity parade an hour after the person saw the crime take place, it's no guarantee they would pick out the right person at all. And it's certainly the case that people are able to remember faces a year later. But yes, on average, it would be much harder for them to do so. The other thing to say is that the more you think about the crime. The more you bring it to mind, the more you talk about it, the more you distort your memory. Each time you remember something you're creating, it's almost like a new memory and it gets distorted. So therefore, the longer you have to contaminate your memory, the less likely you are to be accurate.

BEN WOOD

That's really interesting. That sort of goes against what you would think. more perhaps you talk about it, the more you remember, the more it will jog your memory. But that's really interesting to think that it could actually distort it then.

GRAHAM PIKE

It's, it's, it's sorry, it's it's that's a very good point. So if you ask a psychologist, how do you remember something, they'll tell you the best way to remember something is to rehearse it. So when you're learning information and for a school exam or university exam, you read the chapter again and again, you make notes, you go over and over and over it. You rehearse it, you rehearse it, you rehearse it, you chat away with people. The reverse tends to be true in crime situations.

And the reason is, is there's no ground truth is what we call it. In the book, if you aren't right about something, you can go back and go, the king in 1776 was whoever it was. I'm afraid I don't know. So you can check. There's no version of that in the eyewitness situation. So when you're talking to somebody, if you had different perspective views, know, one was, your friend was standing over there and you were standing there, you saw things differently, you interpreted things differently, you talk about it and both of your memories will change. And of course, what they're doing is changing forever further away from what actually happened.

BEN WOOD

Is it better to have one witness to a crime that you're talking to get information from or several? I confess I have been doing the Forensic Psychology course on Open Learn, of which of Graham Pike is one of the authors. So, yeah, ahead of this I was having a look through there and there's talking there about the examples of there being more than one witness and actually perhaps when two people start discussing their recollection of the events, one can perhaps get swayed by another. What's better? What would the police rather have? A single one-person accounts that is going to be true to one person's memory or is it better to get several people's accounts that could perhaps be influenced by each other? Is that the case? Is that right?

GRAHAM PIKE

My initial reaction to that was a bit cynical about the police and there are probably some police potentially listening to this, so I'll turn it down. I think the police would prefer as many witnesses as possible because then there's more chance that one of them will identify their suspect. And that's what they're looking for, is the witness to provide a positive identification of the person they think did it. So if you've got 10 witnesses, you've got 10 bites at the apple as it were.

Psychologically and statistically, that's a bad idea. If you've got 10 people, one of them's far more likely to make a misidentification than one is. If you can stop them talking to each other, then you probably do want multiple witnesses, because they'll provide different pieces of information. Everyone will attend to different things, notice different things, remember things differently. If you do the course, one of the things you'll see is the police weeding through.

the evidence provided by lots of multiple witnesses and trying to compare notes. Three of them mentioned this, one didn't and said, you know, they could begin to work out what might be right. So I think the police would prefer to have multiple witnesses than just one. If you're the suspect, of course, you don't want any, you certainly don't want more than one. And also if you're an innocent person who's been investigated for a crime, you only want one too.

BEN WOOD

Most people who are listening to this I would hope have not been witness to a crime, have not been called upon to pick someone out of an identity parade to put together a photo fit. Probably what we're envisaging is something we've probably seen on TV. It's probably something from film, from television. I'm hoping you can maybe sort of myth-bust a couple of things for us here and I want to know is what people are imagining, is that the real world, is what we see on TV? A pretty fair reflection of how this works in real life do you think?

GRAHAM PIKE

It depends what TV show you're watching. So a couple of things. It's incredibly rare for a forensic psychologist or a psychologist of any ilk to take part in an active police investigation. So I've been researching since 1993 and I've probably done five and that's very peripheral. That's a police officer phoning me up or going into a station and talking to them. I certainly have never interviewed a witness or a suspect.

That doesn't happen. They're interviewed by trained police officers. Psychologists don't walk in. I know you see that on TV. That does not happen. You might have somebody giving some advice, particularly if the person's suffering from a particular mental illness, has a particular condition. Maybe sometimes you get advice, but it's very rare. If you watch some American TV shows, and I would say I don't tend to watch either real crime or fictional crime on TV. It's not really my thing. So apologies if I'm slurring any of these programs.

Psychologists don't carry guns and they don't take part in car chases. I think I've seen that on American CSI things. The input into an investigation is very segmented. So there are CSI people, as they're called in America. I what we call them here, SOCO, isn't it? I can't remember what that stands for. But they will be people usually with expertise in chemistry, or if it's ballistics and guns, physics. So they're kind of hard scientists, who can do that type of physical evaluation. So they're involved and they're employed by the police or by a company that's hired by the police to do that. And that's all they'll do. They don't run around with guns or do car chases either. That's not what psychologists do.

BEN WOOD

Now think you mentioned something to us in chatting before this, you mentioned the CSI effect. Is that what you're talking about there? Explain what that is actually. Let's put words in your mouth. You tell us what is the CSI effect?

GRAHAM PIKE

The CSI effect was coined by Lord Justice Leveson, who's a senior judge in the UK. I'm apologies to Lord Justice Leveson. I don't know if he's retired or not. It's been quite a few years since I've seen him. He noticed, and this would have been 15, 20 years ago, possibly more, that the prevalence of crime shows on TV seemed to be affecting how juries deliberated and their thought process.

And this was really much his opinion. this point, wasn't science behind it, as it were. And what he thought he noticed was that people saw CSI programs, and the second there's any forensic evidence, the right person was found guilty. The police got the right suspect, and that person was found guilty. The forensics absolutely meant that you got the right person, and they went to jail. If there was no forensic evidence, it meant that person wasn't guilty, because you always leave forensic evidence. Now, this is simply not the case.

There's lots of reasons why people wouldn't leave forensic evidence if they're guilty. And it's certainly the case that there can be forensic evidence and the person can be innocent. It's getting better. But for many, many years, August Forensic Science was a leading contributor to miscarriages of justice. So for instance, the FBI operated, it was called a hair comparison technique. So this was a forensic technique that compared a hair from a suspect to a hair found from the screen. And you will have the crime scene. And you definitely have seen this technique endlessly on CSI type programs. There's no science behind it whatsoever. It doesn't happen anymore. It was basically people making up, oh, this has got 10 markers, therefore it's that person. So there were a number of examples of this where forensic science was done kind of legitimately under all species of

the FBI and law enforcement agencies, but had no science behind it and was used to send a lot of innocent people to prison. But the CSI effect has been studied. So this is where jurors overestimate the importance of forensic evidence. It's been studied and people find that although jurors do tend to do that, it's not a powerful enough effect to actually alter the decision they'll make. So it's one of those things, in a sense, and I haven't kept up with very recent developments, I haven't looked at it in quite a while, but it was almost like the jurors process was working. So it was having an effect, but at the end of the day, not a powerful enough effect to actually affect the decision being made.

BEN WOOD

So from what you're telling us here it sounds like there are a number of reasons why people might have false memories of an accountant that they've seen. It seems there are a number of reasons that could contribute to a wrongful conviction, a miscarriage of justice. So wow, how common is it? We do hear of cases, obviously they do get media attention perhaps when something gets overturned. But typically, is there any data on it? Is there any statistics on how often is the wrong person convicted of a crime?.

GRAHAM PIKE

The simple answer to that is no. It's almost impossible to do. So if you think what's involved in a police investigation and a court trial, which can often go on for days, if not weeks, if not months, where you've got experts, expert judges, expert attorneys, you've got 12 people in the

jury panel, you've got all the police officers, they come to that decision. Working out if they're wrong is incredibly difficult, because yeah, you can kind of retry it, but then it's just another 12 people's opinions.

So one of the reasons we know that miscarriages of justice are prevalent is the introduction of DNA analysis. And you'll read about this on the course. There's a pro bono group of lawyers in the US called the Innocence Project. And you might well have seen the Making a Murderer documentary on Netflix. And there's a number of other things. So what they do primarily is to look at cases where they think the person who was convicted might be innocent, where are physical samples of that crime, that are still being kept by law enforcement, but where DNA analysis wasn't done or was done wrongfully or poorly or whatever. So you can then go back and look at the samples taken from the crime scene and compare them to the DNA of the person. And you can go, hang on, with this blood sample or this other sample doesn't match that person, it can't be them. So they've, I think to date, exonerated well over 300 people, many of whom were on death row. And I can't remember the number of... top of my head, it's in the course, but the average sentence served was well over 10 years, I think it was over 13. So that's in the US and we know they happen in the UK as well. The reason we know is there are a few high profile cases where enough emphasis, enough retrying and enough evidence is present and enough pressure and help is put that somebody's actually freed as it were and we work out this was miscarriages of justice. But that level of review doesn't happen very often. So estimating the frequency is difficult. However, in my own area, eyewitness misidentification, we reckon that something like between a quarter and a third of all the identifications made by a witness are a misidentification. And what's more, I did some research recently where we asked the police the same question, and on average they said the same that about somewhere between a quarter and a third of the people, suspects they put in a lineup are innocent. So that shows that this is not an unimportant problem.

BEN WOOD

Wow, that's, well firstly my first thought was, that's the perfect little clip that's going to go in the trailer for this. So thank you for saying that so succinctly. With that being the case then, what's being done about it? I mean, is there anything that can be done? Is there any developments that we've made to try and improve this? Is it purely, I don't know, is it down to techniques? Is it down to reacting quicker, interviewing people quicker? What is being done to improve the recognition, to getting things right?

GRAHAM PIKE

So a lot has been done. So myself and colleagues around the world have been researching this for decades and we've been trying our best to get law enforcement and the courts to take note of our results and change the practices the police in particular use. There's also work being done on the warnings that are given to the jury. So in this country, the judge will warn the jury about the unreliability of eyewitness testimony. And that's... I can't remember the date again, but again, that's decades that's been on. There's some reviews going on at the moment that hopefully will change that. Like I say, we introduced video identification. We've changed the instructions that are given to the witness. In the US, a very important development has happened whereby the officer who conducts the parade doesn't know the identity of the suspect. So in the US, it's often photographs put in front of the witness. So the person who does that doesn't know which one the suspect is.

Unfortunately, in this country, we don't have that requirement. So very often the person showing you a will know who the suspect is. The reason this is important is no matter how good you think you are at playing poker and not revealing your emotions, humans are very, very good indeed at picking up on nonverbal communication. And even if you don't give anything away as a police officer, of course, the witness might be looking to you and might read things that are not there. So if you know who the suspect is,

the witness glances at you and your expression or something about you is different, they will pick up on that. And of course the other thing is that if the police are doing something they shouldn't and trying to influence the witness, if they don't know who the suspect is, it's difficult for them to do that. So we call this the double blind procedure. It's called double blind. It's very similar to the medical testing that takes place where the person injecting you with a drug doesn't

know whether it's the drug or the placebo. Because researchers found that if they know, they're injecting you with a placebo, somehow you pick up on it. If they know you're injecting you with a drug, somehow you pick up on it. We know that people can get better simply because they think they were given the drug. So if that's the case and that's a physical symptom, imagine what it's like in an eyewitness identification procedure where somebody's showing you pictures and one of them's the suspect. You definitely can begin to pick up on things. So, I've been giving evidence as part of a review that's going on at the moment and this is the primary thing we've been recommending, that the law be changed so that the police officer conducting the identity parade does not know who the suspect is.

BEN WOOD

We've got a couple of minutes left and I'm hoping in that couple of minutes you can maybe squeeze in a bit of detail or maybe a case in particular. I'm sure there must be numerous examples that you've looked at, the cases of wrongful conviction, miscarriages with justice. If there was one that you could maybe highlight for us, give us a real quick overview on and maybe some of the basic details of what happened and the outcome of that, that would be fantastic. Something for us to maybe go away and read more around. So is there an example that you could give us?

GRAHAM PIKE

I'm gonna speak quickly and give you two. So the one you'll read about on the course is from the US and it's the case of Ronald Cotton, who was accused of sexually assaulting Jennifer Camino Thompson. I think this was back in about 1984. You'll hear from both Jennifer and the police officer who conducted the investigation on the course. One of the reasons this has stood out is that Ron Cotton served over 10 years for a crime he didn't commit, despite someone else having admitted to a cellmate that they did it. Despite there being no DNA evidence. But Jennifer, when she was being sexually assaulted, made sure she studied the person's face. And when she made her identification, she was 100 % confident, and she was wrong. And she talks quite openly about how devastating that was. And it's not just in the US. There was a recent case of Andrew Malkinson in the UK who served 17 years for a rape he did not commit, where the only evidence was eyewitness testimony.

The police went ahead with that, even though there were some conflicting details. So the victim described scratching the person very deeply. Mr. Malkinson did not have a scratch. Two other eyewitnesses who were presented as being very reliable and upstanding members of community, it turns out later, had long criminal records. And there was a suggestion that maybe there was a deal done there with them. I'm not saying anything, I have no idea. But he served 17 years for a crime he did not commit. And he was released quite recently in 2023. And one of the reasons that, and this is a big case in the UK, but whilst he was in prison, Andrew Malkinson became an Open University student and has also talked about how important being an Open University student is and how we should be doing more to support people in prison to study courses with the open university and learn, not just, you know, other, and not do that in prison.

BEN WOOD

Thank you for that Graham, that's given everyone some reading to go away, some cases to go and have a look at there. And I think probably the last thing to say is if you've been listening to this and thinking, that wouldn't be me, I can definitely remember this. I think we would urge everyone here to go and have a look on OpenLearn. There is an interactive on there called PhotoFit Me, I believe. And that gives you the chance to actually put to test your skills. You can put together a photo fit, you'll be asked to identify a suspect. Watch some video, see if you can remember the face that committed the crime and actually put it together just moments after in photo fit form. I would say at this point go away, give that a go. We would love to see your results. You can take a screen grab and pop your results in the chat here. We'd love to see what you come up with and let us know how hard you actually found it. So there you go, something else you can go away and enjoy. As Graham has mentioned, there's the Forensic Psychology course on OpenLearn which I'm sure we would all love you to go and take

look at as well and dive even further into this fascinating subject. And finally I will just say thank you very much for joining us today Graham Pike, that's been absolutely fascinating so thank you for your insight.

GRAHAM PIKE

Thank for having me, Ben. Really enjoyed it.

BEN WOOD

Absolute pleasure and like I say to wrap this up, the fourth episode of the OpenLearn podcast series, so watch this space for the next one in a couple of weeks time thank you for joining us and please do pop those photo fits in the comments below thank you very much and we'll see you again soon goodbye