

### Witness's Qualifications

For more than 30 years I have held faculty and academic administrative positions at Florida International University, the University of North Carolina at Charlotte, the University of Ontario Institute of Technology, and, currently, Fielding Graduate University. In my roles as a university professor, I have taught a variety of psychology and criminology courses at the undergraduate and graduate levels and have supervised undergraduate, master's and doctoral students in research. I have also taught continuing legal education workshops. Since 1983, I have conducted research on various forensic and social psychology topics and have active research programs on eyewitness memory, interrogations, and police psychology, from social and cognitive psychological perspectives. I have held research grants from the National Science Foundation of the United States and Social Science & Humanities Research Council of Canada. I have authored or edited nine books, including: *The APA Handbook of Forensic Psychology*, the *Encyclopedia of Psychology and Law*, *Reform of Eyewitness Identification Procedures*, and *Conviction of the Innocent: Lessons from Psychological Research*. I have also authored more than 30 book chapters and 75 peer-reviewed articles in psychology, law, and interdisciplinary journals, 30 articles in professional newsletters and given more than 100 professional presentations at conferences and universities. I have been active in professional associations as well. I served as President of the American Psychology-Law Society (Division 41 of the American Psychological Association), Editor-in-Chief of the peer-reviewed journal *Law and Human Behavior*, as Division 41 Council Representative for the American Psychological Association and as an advisor to APA's Amicus Brief program. I am a Distinguished Member of the American Psychology-Law Society and Fellow of the Association for Psychological Science.

### This Assignment

I have been asked by the Federal Public Defender's Office to review the materials in Appendix A regarding the events of January 6, 2020 with particular reference to the experience of Officer Daniel Hodges, who was wounded while defending the U.S. Capitol, Congress, and staff from rioters. I was asked to render opinions concerning the psychological factors that could have affected the accuracy of Officer Hodges' recollections and testimony about who assaulted him and the actions taken by the perpetrator(s).

### Overview of Opinions

My review of the materials in Appendix A led me to conclude that several psychological principles and research findings are or may be relevant to this case. Officer Hodges' statements about the specific behaviors of Mr. Cappuccio during the January 6, 2020 events are based on recollections after the events occurred; consequently, the principles of human memory are relevant to the evaluation of Mr. Cappuccio's statements. Based on the materials I reviewed, it appeared to me that the events leading to the assault of Mr. Cappuccio were highly chaotic and stressful. Psychological research on the impact of distractions and extreme stress on eyewitness memory may therefore be relevant. To the extent that Officer Hodges testifies about his level of confidence in his memory, the psychological research on the relation between memory

confidence and accuracy and the factors affecting memory confidence are relevant. Officer Hodges stated that he reviewed his body worn camera footage. The psychological research relevant to the effects of viewing body worn camera footage may therefore be relevant. My specific opinions are as follows.

### *General Information about Memory*

Psychological research on eyewitness memory is regularly published in scientific journals such as *Law and Human Behavior*, *Applied Cognitive Psychology*, *Journal of Experimental Psychology: Applied*, *Legal and Criminological Psychology*, and *Psychology, Crime & Law*. Eyewitness research is also presented at annual conferences, most notably the meeting of the American Psychology-Law Society (Division 41, American Psychological Association). Eyewitness research is often discussed in textbooks used in Psychology courses (e.g., *Introduction to Psychology*, *Cognitive Psychology*, *Social Psychology*, *Forensic Psychology*) and is the subject of master's theses and doctoral dissertations. Researchers also author and edit scholarly books devoted entirely to eyewitness memory (e.g., Cutler, 2013; Lampinen, Neuschatz, & Cling, 2012; Lindsay, Ross, Read & Toglia, 2007; Toglia, Read, Ross & Lindsay, 2007).

Eyewitness memory research draws on cognitive psychological research on human memory and social psychological research on social influence. For example, cognitive psychology teaches us that memories of our experiences are called episodic memories -- memories of the episodes in our lives. In order to create an episodic memory, we must perceive the event, encode the details of the event into our short-term memories, and transfer the details into our long-term memories. At some point later, we may retrieve the memory on our own initiative or in response to a test of recall or recognition.

Personal and situational factors may systematically influence the accuracy of our memories. At the earlier stages of forming episodic memories, our attention constrains our abilities to perceive details in events, and divided attention further challenges our perceptual abilities. We tend to focus on important details of events at the expense of peripheral details, especially in situations in which we are highly stressed or aroused (Easterbrooke, 1959). Our attention tends to be goal-directed. Distracting noise and the distractions of our own thoughts and activities limit our abilities to attend to events in our environment. There is data loss in the transfer of details from short-term to long-term memories, such as in the case of forgetting the name of someone with whom we are conversing within a minute of having been introduced (Brown, 1958).

Once episodic memory details are stored in our long-term memories, our long-term memories are not held static but rather are subject to erosion due to the passage of time (Ebbinghaus, 1964, 1885). Furthermore, our memories may be updated by information we have since learned or inferred. We often fill gaps in our memories with information that makes sense or that we learned from other sources (Neuschatz, Payne, Lampinen, Preston, & Toglia, 2001). For example, an eyewitness might remember that the perpetrator wore a tee shirt and might infer that the perpetrator was also wearing jeans. We then sometimes have difficulty discerning the information we actually encoded from information we have inferred or learned since the episode.

The manner in which we retrieve memories may also affect the completeness and accuracy of our memories. When attempting to recall information, the completeness of our memories may be influenced by the degree of effort we devote to recall, the number of times we attempt recall, and the conduciveness of the environment to concentration (Fisher & Geiselman, 1992).

### *Impact of Distractions*

In order to encode details into memory for later recall, the eyewitness must devote attention to the details at the time of encoding. Certain conditions can cause eyewitnesses to divide attention among various details, leaving less attention to deploy toward any one detail. One such condition is the presence of multiple perpetrators. The presence of multiple perpetrators can cause eyewitnesses to divide their attention among the perpetrators, leaving less attention to deploy toward any one perpetrator. Psychological research has demonstrated that eyewitness identifications of a single perpetrator are more likely to be erroneous when there are two perpetrators than when the perpetrator is alone (e.g., Megreya & Bindemann, 2011). The presence of weapons also serves as a distraction and lead to what researchers have termed the “weapon focus” effect. The visual presence of weapons causes eyewitnesses to focus their visual attention on the weapons, leaving less attention to deploy to a perpetrator’s facial characteristics. Consequently, eyewitness descriptions of perpetrators and eyewitness identifications are less accurate when a weapon is visually present as compared to when a weapon is absent or hidden (e.g., Fawcett et al., 2013). Thus, if the factfinder concludes that Officer Hodges experienced distraction during his assault, the level of distraction may have impacted his ability to encode details into memory.

### *Impact of Extreme Stress*

Extreme stress is known to impair cognitive functioning and lead to errors in memory (Deffenbacher et al., 2004; Morgan et al., 2004). Various explanations exist for why high stress impairs memory. Morgan et al. (2004) noted that stress-induced elevations of cortisol impaired memory in previous research. Deffenbacher et al. (2004) posited that stress induces both physiological activation (which tends to improve memory) and cognitive anxiety (which tends to impair memory). Under extremely stressful conditions, the impairment of cognitive anxiety outshines the effect of beneficial effect of physiological activation. Southwick et al. (1997), who studied 59 veterans of Operation Desert Storm, found that their memories combat-related traumatic events were not fixed, indelible, or stable over time. Veterans with higher levels of Post-Traumatic Stress Syndrome were more inconsistent in their recollections of the traumatic events. Southwick et al. could not examine accuracy of memory because ground truth for the events could not be established. Thus, if the factfinder concludes that Officer Hodges experienced extreme stress during his assault, that level of stress may have impaired his memory for the details of the event.

### *Confidence and Accuracy*

Eyewitnesses often express levels of confidence in the accuracy of their testimony, and high levels of confidence are believed to be highly influential (Wells et al. 2020). Confidence is an expression of “meta-memory,” a subjective feeling about the quality of one’s memory. While the subjective experience of confidence is predictive of the quality of memory and has value, its relationship with memory accuracy is far from perfect. Many eyewitnesses are highly confident and incorrect. Disparities between eyewitness memory and confidence are due to a variety of factors. For example, conditions that challenge an eyewitness’s ability to encode details into memory also reduce the reliability of confidence judgments (Deffenbacher, 1980). Thus, under impoverished viewing conditions, eyewitness are less accurate, and their confidence levels are less predictive of accuracy than under good viewing conditions (Deffenbacher, 1980). Certain factors can influence eyewitness confidence independently of eyewitness accuracy. For example, eyewitnesses who learn information that validates their expressed memories tend to inflate their levels of confidence, and eyewitnesses who learn information that contradicts their expressed memories tend to deflate their levels of confidence (Stebly et al., 2014; Wells et al., 2020). When confidence changes independently from accuracy, the relation between confidence and accuracy diminishes. Thus, if the factfinder concludes that Officer Hodges experienced conditions that challenges his ability to encode information at the time of the assault, these conditions might also impair the reliability of his subjective judgments of memory confidence. If the fact finder concludes that Officer Hodges learned information that validated or contradicted his stated memories, confidence level shifts may have occurred, thus diminishing the relation between confidence and accuracy.

### *Impact of Viewing Body Worn Camera Footage*

Officer Hodges reported that, in the course of the investigation of the January 6 events, he had reviewed his body worn camera footage around the time of his assault. As body worn cameras are a relatively new technology, the amount of research on the impact of body worn is relatively small. Blaskovitz and Bennell (2020) reviewed what research does exist as well as relevant research in other human memory contexts. Blaskovitz and Bennell concluded that use of body worn cameras has beneficial effects, such as decreasing the number of use-of-force incidents and reducing the number of complaints about police by members of the public, according to published research. Although there is not much research on the impact of viewing body worn cameras on memory per se, there is relevant psychological research that sheds light on possible effects. Some research, for example, shows that visual imagery can facilitate recall by cuing forgotten memories. This research suggests that viewing body worn camera footage could enhance memory for events. Research on other memory phenomena, such as the effect of misinformation on memory, retrieval-induced forgetting, and cognitive offloading, would predict that viewing body worn camera footage could impair memory for events. With respect to misinformation, body worn camera footage could inform an officer of details that the officer did not actually see because officer vision and body worn camera angle are not always in sync. These unseen details can lead to distortions in memory (Loftus, 2005). Retrieval-induced forgetting refers to the established finding that act of remembering some aspects of an event can cause memory for other aspects of an event to be forgotten (Grady et al., 2016). Cognitive offloading refers to the phenomenon of relegating cognitive effort to physical devices as a means

to conserving limited mental resources for other important tasks. For example, we might set an alarm to remind us to perform an activity rather than trying to remember it and risk forgetting it because of other distractions (Risko & Gilbert, 2016). Or, we record important meetings so that we do not have to remember the contents discussed. When officers use body worn cameras, they may feel less responsible for encoding events into memory and may devote less attention to their memories and more attention to other important matters, such as protecting their own safety and the safety of those around them. Thus, if the fact finder concludes that Officer Hodges reviewed his body worn camera footage prior to testifying, the viewing of such footage could have enhanced or impair memory for the event details.

Below I list the references cited in my opinions as summarized above. I would rely on these references as well as my 40 years of studying the psychology of eyewitness memory when rendering opinions.

Blaskovitz, B., & Bennell, C. (2020). Exploring the potential impact of body worn cameras on memory in officer-involved critical incidents: A literature review. *Journal of Police & Criminal Psychology, 35*, 251-262.

Brown, J. (1958). Some tests of the decay theory of immediate memory. *Quarterly Journal of Experimental Psychology, 10*, 12-21.

Cutler, B. L. (2013). *Reform of eyewitness identification procedures*. Washington DC: American Psychological Association Press.

Deffenbacher, K. A. (1980). Eyewitness accuracy and confidence: Can we infer anything about their relationship? *Law and Human Behavior, 4*, 243-260.

Deffenbacher, K. A., Bornstein, B. H., Penrod, S. D., & McGorty, K. (2004). A meta-analytic review of the effects of high stress on eyewitness memory. *Law and Human Behavior, 28*, 687-706.

Easterbrooke, J. A. (1959). The effect of emotion on cue utilization and the organization of behavior. *Psychological Review, 66*, 183-201.

Ebbinghaus, H. (1885). *Über das Gedächtnis*. Leipzig: Duncker and Humboldt.

Ebbinghaus, H. (1964). *Memory: A contribution to experimental psychology*. New York, NY: Dover Publications.

Fawcett, J. M., Russell, E. J., Peace, K. A., & Christie, J. (2013). Of guns and geese: A meta-analytic review of the 'weapon focus' literature, *Psychology, Crime, & Law, 19*, 33-66.

Fisher, R.P., & Geiselman, R.E. (1992). *Memory enhancing techniques for investigative interviewing: The Cognitive Interview*. Springfield III: Charles C. Thomas.

Grady, R. H., Butler, B. J., & Loftus, E. F. (2016) What should happen after an officer-involved shooting? Memory concerns in police reporting procedures. *Journal of Applied Research in Memory and Cognition*, 5, 246–251.

Lampinen, J.M., Neuschatz, J.S., Cling, A. (2012). *The Psychology of Eyewitness Identification*. New York: Psychology Press.

Lindsay, R. C. L., Ross, D. F., Read, J. D., & Toglia, M. P. (Eds.), (2007) *Handbook of eyewitness psychology: Volume II: Memory for people*. Mahwah, NJ: Erlbaum Associates.

Loftus, E. F. (2005). Planting misinformation in the human mind: A 30-year investigation of the malleability of memory. *Learning & Memory*, 12, 361-366.

Megreya, A. M., & Bindemann, M. (2011). Identification accuracy for single- and double-perpetrator crimes: Does accomplice gender matter? *British Journal of Psychology*, 137, 83-89.

Morgan, C. A., III, Hazlett, G., Doran, A., Garrett, S., Hoyt, G., Thomas, P., et al. (2004). Accuracy of eyewitness memory for persons encountered during exposure to highly intense stress. *International Journal of the Law and Psychiatry*, 27, 265-279.

Neuschatz, J. S., Payne, D.G., Lampinen, J. M., & Toglia, M. P. (2001). Assessing the effectiveness of warnings and the phenomenological characteristics of false memories. *Memory*, 9, 53-71.

Risko E. F., & Gilbert S. J. (2016) Cognitive offloading. *Trends in Cognitive Science*, 20, 676–688.

Southwick, S. M., Morgan, C. A., Nicolaou, A. L., & Charney, D. S. (1997). Consistency of memory for combat-related events in veterans of Operation Desert Storm. *The American Journal of Psychiatry*, 154, 173-177.

Stebly, N. K., Wells, G. L., & Douglass, A. B. (2014). The eyewitness post identification feedback effect 15 years later: Theoretical and policy implications. *Psychology, Public Policy & Law*, 10, 1-18.

Toglia, M. P., Read, J. D., Ross, D. F., & Lindsay, R. C. L. (Eds.), (2007) *Handbook of eyewitness psychology: Volume I: Memory for events*. Mahwah, NJ: Erlbaum Associates.

Wells, G. L., Kovera, M. B., Douglass, A. B., Brewer, N., Meissner, C. A., & Wixted, J. T. (2020). Policy and procedure recommendations for the collection and preservation of eyewitness identification evidence. *Law and Human Behavior*, 44, 3-36.

Appendix A

Materials Reviewed

Metropolitan Police Department Injury or Illness Report about Officer Hodges dated 1/7/21  
Officer Hodges Public Statements  
All body camera photos of Officer Daniel Hodges  
Officer Hodges Email dated 1/16/21  
Officer Hodges interview by the FBI date 2/24/21  
Officer Hodges interview by FBI dated 9/22/21  
Officer Hodges text message  
Congressional testimony provided by Daniel Hodges on July 27, 2021  
Metropolitan Police Department Incident Rep[ort dated 1/9/21  
Email from Daniel Hodges to the FBI dated 9/10/21  
Videos Reviewed:  
Officer Hodges 1350 PM Full (body cam footage) dated 01/06/2021  
Officer Hodges 1228PM First Amendment Activity dated 01/06/2021  
Officer Hodges 1500 Full Rioting dated 01/06/2021  
Government's exhibit 67, 69, 70, 70A, 71, 72, 73,  
All discovery given to Counsel in February 11, 2022 in Production 24 under subfolder  
Cappuccio  
Officer Foulds 1610  
Officer Foulds 1329  
Officer Foulds 1433  
Officer Foulds 1551  
Officer Foulds 1513  
Full camera Footage of the Lower West Terrace