

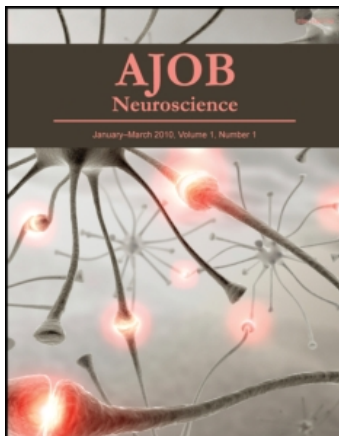
This article was downloaded by: [Australian National University Library]

On: 16 June 2010

Access details: Access Details: [subscription number 907447456]

Publisher Taylor & Francis

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



AJOB Neuroscience

Publication details, including instructions for authors and subscription information:

<http://www.informaworld.com/smpp/title~content=t914417494>

Enhancing Eyewitness Memory in a Rape Case

Peter Shiu-Hwa Tsu^a

^a Australian National University,

Online publication date: 11 June 2010

To cite this Article Tsu, Peter Shiu-Hwa(2010) 'Enhancing Eyewitness Memory in a Rape Case', AJOB Neuroscience, 1: 3, 41 – 42

To link to this Article: DOI: 10.1080/21507740.2010.485270

URL: <http://dx.doi.org/10.1080/21507740.2010.485270>

PLEASE SCROLL DOWN FOR ARTICLE

Full terms and conditions of use: <http://www.informaworld.com/terms-and-conditions-of-access.pdf>

This article may be used for research, teaching and private study purposes. Any substantial or systematic reproduction, re-distribution, re-selling, loan or sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The accuracy of any instructions, formulae and drug doses should be independently verified with primary sources. The publisher shall not be liable for any loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

prior knowledge or irrational beliefs, such an enhancement would operate as regulation of thought, arguably not rescued by its short duration because of the fundamental nature of the right.

As stated, it is commendable and arguably even obligatory to imagine ways to produce a fairer and more just society in view of the human predicament. Applying mandatory interventions to eliminate unjust results based on inaccurate eyewitness testimony rights some wrongs but also wrongs some rights. The utilitarian appeal loses ground, given the limitations in achieving the intended objective. If, in theory, we are not prepared to force witnesses to consume truth serum before testifying, justification on the basis of the common good can demand little more than the fortification of social norms and development of stiff sanctions for failures to exercise due care in supporting the necessarily collective effort toward just outcomes.

While Vedder and Klaming have identified a common good much in need of our collective and individual best ef-

forts, cognitive enhancement for law enforcement purposes carries a heavy cost. If it is used in one case, it must be used in all and so must be mandatory. Moreover, ultimately such an intervention compels innocent persons to relinquish among the most fundamental freedoms, thus undermining the foundations of a free society. ■

REFERENCES

- American Civil Liberties Union. 2003. *Race and the death penalty*. Available at: <http://www.aclu.org/capital-punishment/race-and-death-penalty>
- Bedau, H. A., and M. L. Radelet. 1987. Miscarriages of justice in potentially capital cases. *Stanford Law Review* 40(1): 21–179.
- Vedder, A., and L. Klaming. 2010. Human enhancement for the common good—Using neurotechnologies to improve eyewitness memory. *AJOB Neuroscience* 1(3): 22–33.

Enhancing Eyewitness Memory in a Rape Case

Peter Shiu-Hwa Tsu, Australian National University

In their article, Vedder and Klaming (2010) advocate cognitive enhancement for the common good. They claim that “Instead of asking whether cognitive enhancement is acceptable, we should ask under what conditions it is acceptable or desirable” (22). The answer they supply to the question they pose is that cognitive enhancement is acceptable or desirable on the condition that it is done for the purpose of common good. Let us call this view *the common good thesis*.

According to the authors, a good case to illustrate the common good thesis is the case of using neurotechnology to enhance an eyewitness’s memory of the criminal scene. For, according to the authors, the “primary objective” of the enhancement of eyewitness memory is “the delivery of accurate evidence” and “it therefore potentially benefits the society as a whole” (22). By contrasting the enhancement of eyewitness memory with general cognitive enhancement, the authors contend that although the latter is often done for a self-serving purpose such as enhancing one’s IQ, the former is done for the purpose of common good. To be more specific, according to the authors, the enhancement of eye-

witness memory can benefit “several agents including law enforcement officials, innocent suspects and eyewitnesses” (22). Such being the case, the authors favor the enhancement of eyewitness memory.

Now, some comments are in place here. I think that the authors fail to consider an apparently fatal objection to their advocacy of enhancing eyewitness memory even in the name of common good. Imagine the following case. Suppose that woman X is raped by Y. At the criminal scene, she is the only witness. Yet she is so traumatized by her experience that she suppresses her memory of the rape into oblivion and completely forgets what Y looks like. Suppose further that, according to her doctor, recalling or enhancing her memories of the event might cause an emotional breakdown and make it difficult for X to carry on with her life. Are the authors prepared to endorse eyewitness memory enhancement in a rape case like this? Unfortunately, the authors do not tell us in their article. However, this is an important question. To answer it might require us to balance the risks involved to the eyewitness, X in our current case,

I thank Yen-Chang Chen for the conversation I had with him about the earlier draft of this article. I also thank the editor, John Banja, for his insightful comments and suggestions for revisions.

Address correspondence to Shiu-Hwa Tsu, Rm 230, Graduate House, Garran Road, Australian National University, Australian Capital Territory 0200, Australia. E-mail: u4079238@gmail.com

against the common good the enhancement of eyewitness memory might produce.

Admittedly, in some cases, the enhancement of eyewitness memory might produce common good in the way the authors describe in their article—that is, it might help to clear the names of convicted innocents or help the police get the real criminal, etc. However, in other cases, it might not. It is not difficult to imagine that the real criminal has facial surgery such that enhanced memory of the criminal's face is not much help to the police or that the convicted innocent has great physical resemblance to the real criminal such that it is hard to distinguish them even with enhanced eyewitness memory. Then, given the uncertainty of the common good and given the high risks to woman X that the enhancement of eyewitness memory involves, it is not clear to me that enhancing eyewitness memory is the right thing to do in the rape case I described, not even in the name of common good.

True, at one place of their article, the authors mention that securing informed consent from the eyewitness is a factor that needs to be considered. It may well be necessary to secure the informed consent of the eyewitness before we can proceed with eyewitness memory enhancement. However, in the rape case I presented, it is not clear that the eyewitness, being the victim herself, is capable of giving informed consent. In the rape case we are currently considering, the rape victim may well be so traumatized such that her decision to consent can hardly count as being well-informed. Kolber (2006, 1587) rightly points out that “Almost by definition traumatized [victims] will have some level of psychological disturbance that may cloud their decision to consent.” Due to the rape victim's psychological disturbance, she might not be able to understand clearly and fully what sort of

consequences recalling the memory of the rape might involve. Or she might well underestimate the probability of collapsing into a severe state of emotional depression. Such being the case, we have reason to suspect that even if she consents to eyewitness memory enhancement, her consent is not well-informed. It is not difficult to imagine that were she in a clear mindset, or had she not had the psychological disturbance caused by her traumatizing experience of being raped, we would have a much clearer case of informed consent. However, the case we are currently considering is not so clear. This should cause some alarm in us, because in real-world practices, “many important medical decisions are made when patients are severely emotionally shaken, yet the patients are considered competent to make them” (Tenenbaum and Reese 2007, 41; Kolber 2006, 1588). Such being the case, we have reason to doubt whether securing the “informed consent” of the rape victim can really justify enhancing eyewitness memory in the rape case. I do not think that the appeal to considerations of informed consent can obviate my concern that undue harm might be inflicted on the rape victim in the name of common good. ■

REFERENCES

- Kolber, A. J. 2006. Therapeutic forgetting: The legal and ethical implications of memory dampening. *Vanderbilt Law Review* 59(5): 1561–1626.
- Tenenbaum, E. M., and B. Reese. 2007. Memory-altering drugs: Shifting the paradigm of informed consent. *American Journal of Bioethics* 7(9): 40–42.
- Vedder, A., and L. Klaming. 2010. Human enhancement for the common good—Using neurotechnologies to improve eyewitness memory. *AJOB Neuroscience* 1(3): 22–33.

The Common Good: A Neutral Yardstick?

Laurens Landeweerd, Faculty of Health, Medicine, and Life Sciences, Maastricht University

Standard defenses of enhancement technologies often follow a generalist strategy. They refer to individual benefits in abstract terms and only indirectly link these to benefits for society. In “Human Enhancement for the Common Good,” Anton Vedder and Laura Klaming argue that the moral assessment of enhancement technologies is best not conducted in such general terms. They argue that instead

the moral assessment should be focused on specific applications of medical technologies and the specific purpose in question. The authors focus on eyewitness memory enhancement as such a specific application. They introduce the concept of “the common good” as a neutral yardstick to assess the acceptability of such specific enhancement applications.

I thank Guy Widdershoven and Jenny Slatman for their useful comments.

Address correspondence to Dr. Laurens Landeweerd, Maastricht University, Faculty of Health, Medicine and Life Sciences, Department of Health Ethics and Society, PO Box 616, 6200 MD, Maastricht, the Netherlands. E-mail: l.landeweerd@HES.unimaas.nl