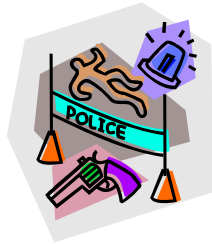


Eyewitness Testimony



Updated 9-18-07

Forms of Evidence in Court

- Real
- Documentary
- Judicial notice
- Testimonial
 - expert witnesses
 - participant (victim, defendant, etc.)
 - eyewitness
 - character



Daubert Standards

Daubert v. Merrill Dow Pharmaceuticals (1993)

- Whether the scientific technique can and has been tested
- Whether it has been subjected to peer review and publication
- The known or potential error rate
- The existence and maintenance of standards controlling the technique's operation
- Degree of acceptance for the technique in the scientific community

Persuasiveness of Eyewitnesses

- Most persuasive form of evidence
 - Eyewitnesses believed 80% of the time
- Juries cannot tell the difference between an accurate and an inaccurate witness
 - Accurate witness believed 68% of time
 - Inaccurate witness believed 70% of time

Eyewitnesses are the Most Persuasive Form of Evidence

Loftus (1983)

Type of Evidence	% guilty votes
• Eyewitness testimony	78
• Fingerprints	70
• Polygraph	53
• Handwriting	34



Lerch & Aamodt (2002)

	Eyewitness Testimony			
	Familiar		Unfamiliar	
DNA	No	Yes	No	Yes
No	.01	.32	.19	.22
Yes	.69	.92	.58	.69

Even Poor Eyewitnesses are Persuasive

- Lindsay, Wells, & Rumpel (1981)
- Witnesses viewed a staged theft under 3 viewing conditions

Condition	Recall	% Believing
	Accuracy	Witness
Good	74%	69%
Moderate	50%	57%
Poor	33%	58%

Discredited Eyewitnesses

- Initially thought to be as persuasive as a credible eyewitness
 - Loftus (1974)
- | | |
|--|------------------------|
| | <u>% voting guilty</u> |
| Circumstantial Evidence | 18 |
| Eyewitness | 72 |
| Eyewitness with 20/400 vision who wasn't wearing glasses | 68 |
- Further research concludes
 - Not as persuasive as a credible eyewitness
 - More persuasive than no eyewitness

Research Summary

% of subjects voting guilty

Study	Type of Eyewitness		
	None	Credible	Discredited
Cavoukian (1980)	0	35	30
Weinberg & Baron (1982)	32	57	23
Study 2		53	29
Saunders et al. (1983)	36	45	35
Study 2	36	48	24
McCloskey et al. (1981)	13	42	17
Kennedy & Haygood (1992)	27	42	19
Study 2	30	52	23
Study 3	28	72	44

Eyewitnesses are Most Persuasive When

- They provide detail (trivial persuasion)
- They are confident
- They are adults
 - Children can be persuasive under certain circumstances
 - Elderly are perceived similar to children



Eyewitness Accuracy

Research on Wrongfully Convicted Defendants

- Wells et al. (1998)
 - Studied 40 people who were convicted but later cleared by DNA
 - In 90% (36) of the cases, there was false eyewitness identification
- Rattner (1988)
 - Studied 205 wrongfully convicted defendants
 - 52% were due to inaccurate eyewitness testimony
- Brandon and Davies (1973)
 - Book described 70 cases of people wrongfully convicted due to inaccurate eyewitness testimony



Eyewitness Accuracy

Academic Research

- Buckhout (1975)
 - Simulated crime on a TV newscast
 - 2,145 callers
 - 14.7% were accurate
- Buckhout (1974)
 - Staged assault on professor in front of 141 students
 - 7 weeks later, students shown line-up of six photographs
 - 40% identified attacker
 - 36% identified bystander
 - 23% identified person not there
- Correct Identifications
 - 20% Buckhout (1980)
 - 31% Leippe et al. (1978)



Eyewitness Accuracy

- Cutler & Penrod (1995)
 - unusual behavior by customer
 - 2 hours later
 - 42% made correct ID
 - 36% made false ID
 - 22% could not ID
- Cromag (1996)
 - Boeing 747 crashed into an 11-story building in Amsterdam
 - TV footage showed rescue attempts after the crash
 - 66% of students “remembered” seeing the plane actually hit the building

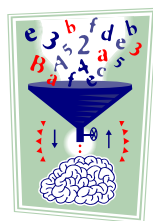
What do Witnesses Report?

Fashsing, Ask, & Granhag (2004)

Attribute	% Reporting	% Accurate
Gender	99.6	100
Height	91.2	44
Clothing (upper body)	90.8	58
Clothing (head)	89.6	56
Build	84.4	57
Weapon	76.4	71
Clothing (pants)	73.6	53
Age	62.4	38
Type of speech	46.8	84

Why is Eyewitness Testimony Inaccurate?

- We receive millions of sensory impressions every second
 - Vision
 - Hearing
 - Touch
 - Smell
 - Taste
 - Internal thinking
- Memory Process
 - Sensory store
 - Short-term memory
 - Long-term memory



Memory Exercise

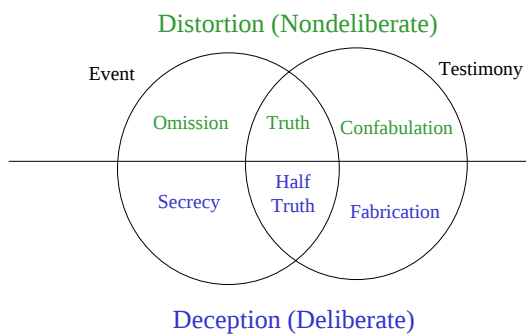


Cognitive Processing of Information

- Leveling
- Sharpening
- Assimilating



Annon Model



Common Errors

- Overestimate the height of criminals
- Overestimate the duration of a brief event
- Notice more about the action than the person
- Pay more attention to the weapon



Situational Factors Affecting Eyewitness Accuracy

- Time Delay before Identification
 - Ellison and Buckhout (1981)
 - 75% accuracy after 2-day delay
 - 56% after 35-day delay
 - Kasin et al. (2001)
 - 75% of experts think this is true
 - 40% think it is reliable enough to testify
- Suspect Race
 - Evidence is somewhat mixed
 - People most accurate in identifying own race
 - Kasin et al. (2001)
 - 97% of experts think this is true
 - 90% think it is reliable enough to testify



- Type of Crime (victim)
 - Giving a complete description
 - Robbery 61%
 - Assault 33%
 - Rape 45%
 - Kasin et al. (2001)
 - 79% of experts think that crimes of violence decrease accuracy
 - 37% think it is reliable enough to testify
- Seriousness of Crime (witness)
 - Leippe (1978) staged theft
 - High seriousness (calculator) 56%
 - Low seriousness (cigarettes) 19%
 - Davis (1996) staged in classroom
 - High seriousness (write on board)
 - Low seriousness (pick-up keys)



- **Time of Day**
 - Day 64% gave complete description
 - Twilight 21% gave complete description
 - Night 61% gave complete description
- **Amount of Time Spent Viewing Event**
 - Longer duration = better accuracy
 - Kasin et al. (2001)
 - 93% of experts think this is true
 - 81% think it is reliable enough to testify
- **Number of Perpetrators**
 - Fashing et al. (2004)
 - Accuracy decreases when there is more than one perp

- **Confidence of the eyewitness**
 - (Meta-analysis by Sporer et al, 1995)
 - Confidence and accuracy ($r = .28$)
 - Witness selects from a line-up ($r = .37$)
 - Witness does not select ($r = .12$)
- **Arousal Level**
 - High levels = reduced accuracy
 - Kasin et al. (2001)
 - 98% of experts think this is true
 - 60% think it is reliable enough to testify
- **Presence of a Weapon**
 - Presence of a weapon reduces accuracy
 - Kasin et al. (2001)
 - 97% of experts think this is true
 - 87% think it is reliable enough to testify



Eyewitness Factors

- **Gender**
 - Males more likely to give complete description
 - No differences in accuracy
- **Personality**
 - Extroversion
 - Test of Eyewitness Accuracy (clueless)
 - Awareness of external stimuli
 - Notice detail
 - Distinguish among people
 - Remember events
 - Verbalize events

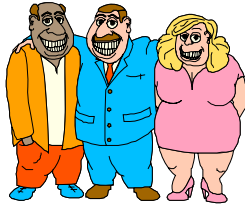


Eyewitness Factors

- Age
 - Possulo and Lindsay (1998) meta-analysis
 - Children over 4 are as accurate as adults when the target is in the line-up
 - Children less accurate than adults when target is not in the line-up
 - Older children recall more than do younger children (Lamb et al., 2000)
 - Younger children forget more rapidly
 - Children more suggestible than adults
 - Experts cannot tell the difference between accurate and inaccurate statements made by children
 - Kasin et al (2001)
 - 77% of experts think elderly are not as accurate as younger adults
 - 50% think the finding is reliable enough to testify

Method Used to Identify Suspect

- Format (meta-analysis shows no difference in accuracy)
 - Live
 - Photo
 - Videotape
- Method
 - Lineup (Simultaneous)
 - Show-up
 - Sequential viewing



Sequential v. Simultaneous

- Steblay, Dysart, Fulero, & Lindsay (2001) meta-analysis
 - 30 studies
 - 4,145 participants
- Overall accuracy
 - Sequential: 56%
 - Simultaneous: 48%
- Target Present
 - Yes (50% accuracy for simultaneous, 35% accuracy for sequential)
 - No (49% accurate for simultaneous, 72% accuracy for sequential)
- Making a choice
 - Sequential: 54% select someone
 - Simultaneous: 74% select someone

Foils

- Should look like the description rather than the actual suspect
- Put most similar foils next to suspect
- Use non witnesses to determine fairness of lineup
- Pictures of foils and suspect must be similar (e.g., color, background, quality)

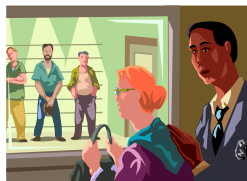


Good Identification Practices

- Include “blank” lineups
- Instruct witness that suspect might not be there
- Use sequential viewing
- Person conducting lineup does not know who suspect is
- Ask eyewitness how confident they are prior to feedback
- Pay attention to witness identification strategy
- Be careful about providing feedback about correctness of choice

Witness Identification Strategy

- Research
 - Dunning and Stern (1994)
 - Lindsey & Bellinger (1999)
- Two types of strategies
 - Automatic recognition
 - Process of elimination



Response Latency

- Smith, Lindsay, and Pryke (2000)
 - IDs made more quickly are more accurate than those that take longer to make
- Dunning and Perretta (2002)
 - IDs taking longer than 10 seconds are most accurate
 - Less than 12 seconds: 90% accurate
 - Greater than 12 seconds: 50% accurate



Feedback to Witnesses

- Wells and Bradford (1998)
 - 352 students viewed a grainy video of the murder of a security guard
 - Students then viewed a lineup that did not contain the suspect

Feedback condition	% very confident in their choice
Confirming feedback	58%
Disconfirming feedback	5%
No feedback	14%

Reconstructive Memory Questions Change Memory

- Loftus & Zanni
 - broken headlight 75%
 - not asked 18%
- Loftus
 - stop/stop 75%
 - stop/yield 41%
- Loftus
 - barn mentioned 17%
 - not mentioned 0%



Loftus Experiment:

*How fast were the cars going when they
_____ each other?*

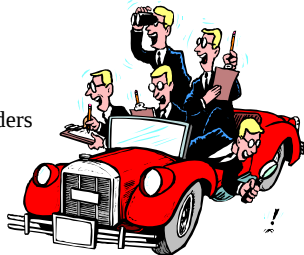
- Contacted
- Hit
- Bumped
- Collided into
- Smashed into

Speed estimates for the verbs used in the
witness question



Interviewing Witnesses

- Victims
- Witnesses
 - neutral
 - biased
- Non-witness bystanders
- Suspects



Good Interview Practices

- Get statement as close to the event as possible
- Place the witness in the event environment
- Before asking questions, ask the witness to recreate the incident in his/her mind
- Start with unprompted recollection
 - use open-ended questions
- Tell the witness
 - that they should do most of the talking
 - not to edit their thoughts; they should say whatever comes to mind

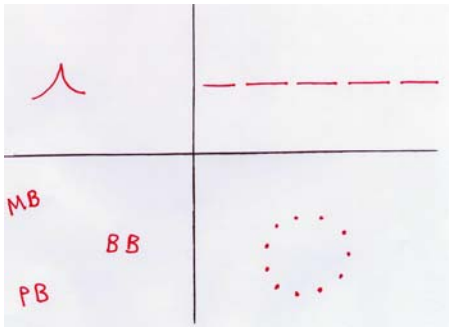
Good Interview Practices

- Record both the questions asked as well as the answers
- Have the witness tell the story from beginning to end; from the end to the beginning;
- Have the witness tell the story from different perspectives (victim, other witnesses, perp)
- Follow-up with specific questions
- Elicit partial information

Avoid

- Leading questions (reconstructive memory)
- Asking questions in a rapid-fire manner
 - go slow
 - give the witness time to think
- Asking the same questions more than once
- Multiple-choice questions
- Interrupting the witness
- Nonverbal cues or paralanguage indicating your opinion

Listening Exercise



Reaching Agreement

- Two Options
 - Statistically combine ratings
 - Reach consensus
- Who to Hire
 - Top score?
 - Top few scores or pass/fail?
 - Combine with other information
 - Be sure to be consistent

Factors to Consider When Evaluating Accuracy

- Time delay
- Time spent viewing the event
- Stress level
- Altered states
- Confidence (?)
- Consistency with other witnesses/laws of nature
- Motivation to fabricate/omit



Victims' Needs

- Need to feel safe
- Need to regain control
- Need to express emotions
- Need to understand the process



Need to Feel Safe

- **The event causes:**
 - loss of invulnerability
 - loss of a just and orderly world
- **Suggestions**
 - Introduce yourself and your role
 - Reassure victims of their safety
 - Ask victims if they have any physical injuries
 - Ensure as much privacy as possible
 - Ask about any potential concerns
 - Provide a “safety net”
 - Provide your name and number in writing

Need to Regain Control

- **The event causes:**
 - loss of control
 - loss of a positive self-image
- **Suggestions**
 - Provide assurance that it was not their fault and that there was nothing they could have done to prevent it
 - Ask questions that allow the victim to regain control
 - Do you want me to call you Amy or Ms. Smith?
 - Are you ready to talk now or should I give you a few minutes?
 - Can I get you something to drink?
 - Should I call someone for you?

Need to Express Emotions

- Common expressions
 - fear
 - anger
 - sadness
 - panic
 - shame
 - denial
 - shock (no affect)
- Suggestions
 - Let the person express their feelings
 - Assure them that their reaction is common
 - Remember that there is no “typical” or “right” reaction to an event
 - Use their reaction to guide your empathic response

Need to Understand the Process

- Show your concern
 - Use active-listening skills
 - Avoid interrupting
 - Take your time
 - Show empathy
 - Tell them you want to help and want to hear what they have to say
- Explain the process
 - Explain why you are asking a question
 - Acknowledge that the question is difficult
 - Explain what comes next
 - Explain where the person can go for help
 - Explain their options
