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## Juries and Eyewitnesses

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# Juries and Eyewitnesses

Cindy Laub and Brian H. Bornstein

The role of an eyewitness can be extremely important in the legal system, as eyewitness testimony and eyewitness identifications play a major role in the prosecution of a criminal defendant. Often the courts are left to rely solely on an eyewitness because there is no other physical evidence. This leaves the jury to rely on a witness's testimony. Jurors are asked to determine the credibility of an eyewitness at trial when rendering a verdict, and jurors have been found to place more emphasis on eyewitness testimony than on any other kind of evidence. However, there are numerous documented cases of mistaken identifications, and erroneous identifications have been regarded as a leading cause of wrongful convictions. One of the reasons for juries' wrongful convictions based on eyewitness misidentifications is that jurors are not sensitive to the factors that affect identification accuracy. Because jurors rely heavily on eyewitness testimony, it is important to determine what lay people understand about eyewitness performance.

## Laypeople's Intuitions About Eyewitness Memory

Psychological research has used various methods to evaluate potential jurors' intuitions concerning eyewitness memory. For example, some studies have used multiple-choice questions that ask potential jurors about the factors that have been found to influence the accuracy of an eyewitness's performance. Another method that has previously been used by researchers is to ask mock jurors whether they agree or disagree with statements concerning eyewitness performance—for example, "Do you agree or disagree that confidence is a poor predictor of an eyewitness's identification accuracy?" The final method researchers use to assess juror knowledge of the factors that influence eyewitness identification testimony is trial simulations. In these simulations, researchers have participants play the role of jurors in a trial, and the researchers manipulate various factors. The goal of these studies is to test either how sensitive the mock jurors are to the factors or how the factors influence perceptions of eyewitness identification accuracy. Certain factors have a significant impact on eyewitness accuracy, while others, such as an eyewitness's confidence rating, are weak predictors of accuracy.

Researchers who began studying mock juries in the late 1970s quickly discovered that participants were unable to distinguish between accurate and inaccurate witnesses. No matter which method was used, the studies indicate that potential jurors' intuitions are correct about some factors that affect eyewitness accuracy but are often incorrect concerning other factors. This unpredictability of jurors' knowledge means that prospective jurors vary widely in their responses when assessing an eyewitness's credibility and rendering a verdict in cases involving eyewitness testimony.

## Accuracy and Confidence

Studies have determined that potential jurors' intuitions are not correct concerning certain factors that affect eyewitness accuracy. One factor that jurors overestimate is the power of hypnosis. Mock jurors overestimate the capability of hypnosis in helping memory retrieval. Another factor they overestimate is the relationship between confidence and accuracy. Confidence has been found to have, overall, a somewhat weak relationship to eyewitness identification accuracy. However, mock jurors consistently believe that highly confident witnesses

are more likely to make an accurate identification than less confident witnesses. Consequently, potential jurors' verdicts are predicted by the confidence of the witness. Thus, mock jurors are more likely to believe confident eyewitnesses, but confident eyewitnesses are not more likely to be accurate than less confident witnesses. A common finding is that confidence of the eyewitness is the overriding determinant of the weight mock jurors give an eyewitness when rendering the verdict, regardless of whether or not the identification is accurate.

### **Lineup Procedures and Situational Characteristics**

In relying heavily on confidence, which is a weak predictor of accuracy, jurors simultaneously ignore other variables that have a stronger relationship to eyewitness reliability. Such factors include both lineup procedures and characteristics of the witnessing situation. Mock jurors predict far fewer false identifications in a target-absent lineup (i.e., one in which the perpetrator is missing) than in a target-present lineup (containing the perpetrator), which contradicts empirical evidence. Another lineup factor that laypeople do not consider important when predicting accuracy, but which does in fact influence the accuracy of a witness, is lineup instructions. Mock jurors are able to identify when lineup instructions, as well as foils (innocent persons in a lineup), are suggestive; however, they do not consider these factors important when rendering their verdicts.

Jurors also tend not to consider sufficiently aspects of the witnessing situation that can have a significant impact on eyewitness performance. For example, they underestimate the effect of the amount of time an eyewitness has to view the culprit. Research has determined that the longer the exposure to the culprit, the better the accuracy of the eyewitness. Thus, jurors underestimate the importance of lineup selection procedures and exposure time when evaluating the accuracy of an eyewitness.

### **Cross-Race Identifications**

Jurors also may fail to consider individual characteristics that affect eyewitness behavior. One common area of misidentifications is the "cross-race effect," which refers to a person's tendency to be better at identifying a member of his or her own race than members of a different race. Although the cross-race effect influences an eyewitness's accuracy, many potential jurors are unaware of the effect. In one survey, only half the participants agreed that a White eyewitness would be worse than a Black eyewitness at identifying a Black culprit.

Although jurors are not knowledgeable about some factors, there are other factors that laypeople are intuitively knowledgeable about. For instance, they correctly believe that an eyewitness tends to overestimate the duration of an event, that the presence of a weapon negatively affects memory, and that the wording of a question influences an eyewitness's report. Potential jurors also understand that the attention paid to the criminal during the crime, the opportunity to view the criminal, and the amount of time between the crime and the identification of the suspect are important factors concerning the reliability of eyewitness identifications.

In summary, laypeople's intuitions when determining the credibility of an eyewitness vary depending on the factors present in a specific case, but they are often inaccurate. This failure to appreciate many of the factors that affect identification accuracy has significant implications for jurors' verdicts in eyewitness cases. If jurors do not appreciate that a factor, such as crossracial identification, can influence eyewitness accuracy, then they will not use the information correctly when deciding a defendant's guilt.

### **Jurors' Intuitions and Their Verdicts**

Another question to consider is whether laypeople use their intuitions correctly when rendering a verdict. For example, laypeople have knowledge—some correct, some incorrect—about the various factors that influence the accuracy of an eyewitness. Do they use these intuitions when weighing an eyewitness's credibility and rendering a verdict? To what extent do jurors follow their intuition in reaching a verdict?

Several trial simulations have assessed whether jurors are sensitive to the impact of various witnessing and identification conditions that do and do not influence eyewitness identification accuracy. Specifically, these studies examined the influence on mock jurors' judgments of the perpetrator's wearing a disguise, the presence of a weapon, the use of violence during the crime, the length of the retention interval, the presence or absence of instruction bias, foil bias, and the level of witness confidence. Results indicated that none of these factors influenced the verdict except the level of witness confidence. Therefore, even though mock jurors indicate that they have knowledge concerning the impact of these factors (e.g., weapon focus), they do not use the information correctly when rendering the verdict.

In many cases, mock jurors report knowledge of some relevant factor, such as the cross-race effect, and that factor influences their evaluation of the eyewitness's credibility but does not affect their verdict. It is also the case that mock jurors who are relatively knowledgeable

about eyewitness memory – both in general and with respect to specific factors – are not more likely to use this information when rendering their verdict than those who are less knowledgeable. This raises the possibility that expert testimony on eyewitness memory would improve jurors' fact-finding ability.

### Expert Testimony

Would providing expert testimony aid the jury in using the factors found to increase or decrease identification accuracy? Several surveys have collected opinions from eyewitness experts. When the experts were asked what the role of an eyewitness expert was, 77% of them said that their primary purpose was to educate the jury. There was also a high rate of agreement among the experts concerning many (though not all) eyewitness phenomena as being reliable enough for presentation in court. The majority of the experts polled believed that eyewitness experts generally have a positive impact on juries.

Apart from the opinions of the experts, a line of research has looked at the impact expert testimony has in a trial scenario involving eyewitness testimony. For example, participants might watch a videotape of a trial in which the primary evidence was an identification of the defendant (a robber) by an eyewitness. Half the participants would be exposed to a *poor* witnessing condition, in which the perpetrator was disguised, the robber was carrying a weapon, the identification took place 14 days after the robbery, and the lineup instructions were suggestive. The remaining participants would be exposed to a *good* witnessing condition, where the robber was not disguised, the weapon was hidden, the identification took place 2 days after the robbery, and the lineup instructions were not suggestive. In half the trials, an expert provided testimony concerning the effect of the factors on eyewitness accuracy. The results showed that the expert testimony increased the sensitivity of the participants to the eyewitness evidence. However, the jurors who were not presented with expert testimony did not rely on the witnessing conditions when evaluating the accuracy of the eyewitness. These results provide justification for the use of expert testimony in trials that rely heavily on eyewitness testimony.

In summary, despite the fact that mock jurors are aware of many of the limitations of eyewitness identification, they seem to be unable to apply this knowledge in a trial situation, or they use it in assessing witness credibility without applying it further to their verdicts. Jurors consider eyewitness testimony to be highly credible, but their understanding of the topic is fragmentary and often erroneous. Previous findings suggest that ex-

pert testimony could be beneficial in improving jurors' understanding of eyewitness memory and aid them in using the evidence properly to arrive at a more informed decision.

### Further Readings

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