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Ψ FORENSIC PSYCHOLOGY *An Applied Approach*

Third Edition

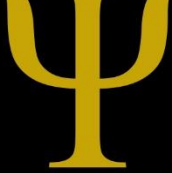
Chapter 11 ***Eyewitness Memory*** ***and Recovered*** ***Memory***



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Direct Evidence of Guilt

- Unlike most circumstantial evidence in criminal trials, eyewitness testimony is *direct* evidence of guilt and can be the most damning for a defendant.
- Information provided to the police by an eyewitness greatly increases likelihood that
 - a crime will be solved and
 - that a defendant will be convicted



Direct Evidence of Guilt

- As Loftus (1979) concluded years ago, “All the evidence points rather strikingly to the conclusion that there is almost nothing more convincing than a live human being who takes the stand, points a finger at the defendant, and says ‘that’s the one!’” (P. 19).



High Degree of Inaccuracy in Eyewitness Memory

- Due to a number of factors
 - perceptual factors such as sensory deficiencies
 - social and cognitive factors
- Mistaken eyewitness testimony is typically the primary evidence for the conviction of innocent individuals.
- Some researchers have concluded that “mistaken eyewitnesses account for more convictions of innocent persons than all other causes combined.”



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Eyewitness Testimony

- The victim or witness to this crime may be asked to pick these men out of a lineup months after the crime has taken place.





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Memory Test

- View the next slide for 30 seconds, then write down all the words that you can recall



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Memory Test

Sour

nice

candy

honey

sugar

soda

bitter

chocolate

good

heart

taste

cake

tooth

tart

pie



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Memory Test





Memory Test

- How many people had sour? Show of hands.
- How many people had sugar? Show of hands.
- How many people had sweet? Show of hands.
- Next slide is a second test.. Try again



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Memory Test II

mad

wrath

fear

happy

hate

fight

rage

hatred

temper

mean

fury

calm

ire

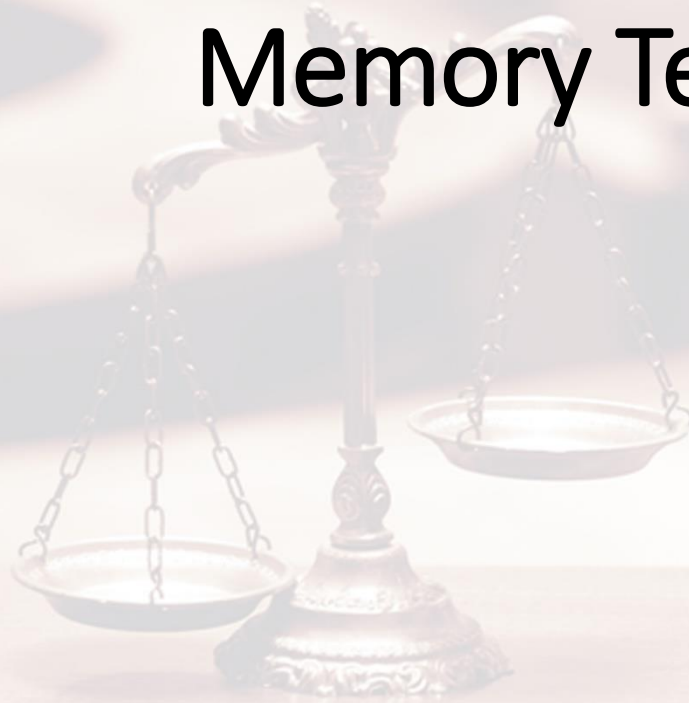
emotion

enrage



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Memory Test II





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Memory Test II

- How many people had mad? Show of hands.
- How many people had hate? Show of hands.
- How many people had angry? Show of hands.



Eyewitness memory

- Context can affect our memory due to schemas
- Research on students waiting in a graduate student's office (Loftus)
- Asked to name items in the office .. Many named books, though no books were in the office



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Social framework testimony

- The psychologist as expert witness can educate the jury about the inaccuracy of eyewitness memory and testimony.
- Testimony regarding the results of social science research to the jury to assist the trier of fact in coming to a decision.



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Daubert v. Merrell Dow Pharmaceuticals (1993)

- Trial judges may, *but are not required to*, consider the following factors in deciding whether to admit expert testimony with a purported scientific basis
 - Whether the principles and methodology underlying the testimony have been or can be tested.
 - Whether they have been subjected to peer review and publication.
 - Whether the known or potential error rate is acceptable.
 - Whether the underlying principles have gain general acceptance in the scientific community.



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Admissibility of Expert Testimony

- Four criteria:
 - 1 the scientific nature of the work
 - 2 the agreement among experts in the field regarding the reliability of the results
 - 3 relevance of the testimony to the case at hand
 - 4 the extent to which the expert may unduly influence the jury.
- Some judges have refused to allow expert testimony regarding accuracy of eyewitness testimony.



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Data regarding the accuracy of Eyewitness Testimony

- Distinguish between *memory* and *memory testimony*
- Memory testimony: the witness's statement of what he or she recalls about a prior event; can be influenced by a wide variety of events and processes.



Factors that can influence Memory

- Divided into two categories depending on:
 1. when they influence memory - **chronological category** (pre, during or post event)
 2. or whether they are something that the criminal justice system can control.

Estimator and System Variables



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System and Estimator Variables

- ***System variables*** are variables introduced by police procedure and are preventable.
 - nature of the lineup, presence of videotaping the procedure, instructions given during a lineup, interviewing technique to include poorly worded and/or leading questions, etc.



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System and Estimator Variables

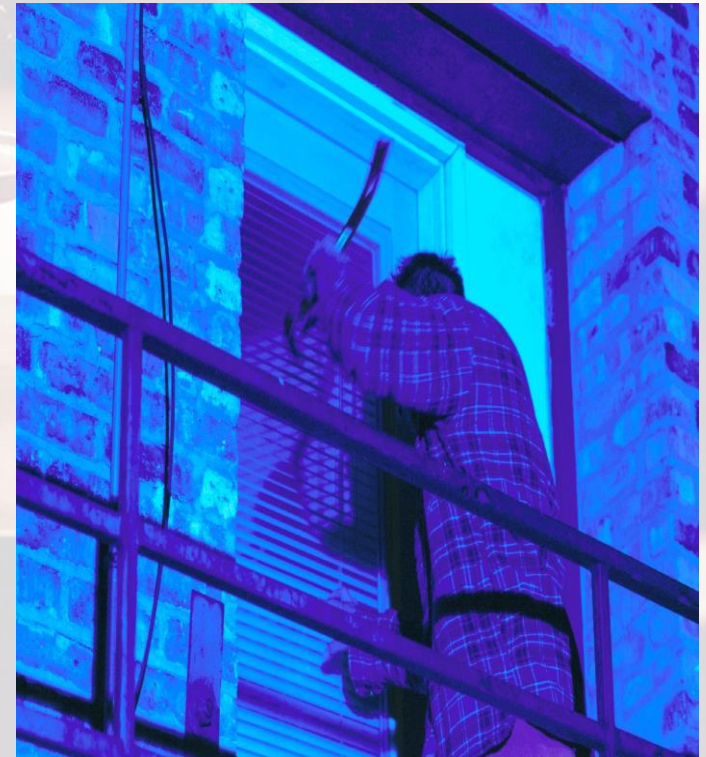
- ***Estimator variables*** refer to factors out of the police control and typically occur before the police arrive on the scene.
 - view the witness had of the offender, lightning at the scene, visual acuity of the witness, etc.



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Estimator Variables

- Someone witnessing this crime would be affected by estimator variables such as lighting and whether they had a clear view.





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Chronological Category

- ***Witness characteristic:*** sex, intelligence, age, drug use, personality (estimator variable)
- ***Event characteristic:*** exposure duration, weapon focus, view, disguise, same versus other-race identification, stress (estimator variable)
- ***Postevent factors:*** suggestions from others, exposure to sketches, retention interval



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Chronological Category

- ***Identification task variables:*** lineup, showup, prelineup instructions, foils, suggestive behaviors during lineup, simultaneous versus sequential procedure
- ***Postidentification variables:*** feedback regarding identification



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Ways to improve Eyewitness Identification Procedures

- Ways to improve the procedure obviously must occur with the system variables; the variables the police can control.
- Psychologists can research how to improve procedures and then educate the police on improving these techniques.



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Photo Array and Lineup Procedures

- Research suggests no difference in effect on eyewitness accuracy between the two procedures.
- Photo array is certainly easier.
- Suspect also has right to counsel with lineup but not with a photo array.



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Photo Array (All versus Sequential)





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Photo Array and Lineup Procedures

- Use of Foils, Detractors or Know Innocents:
Need known innocents to look similar to suspect. Relative judgment process- witness selects individual who most resembles witness's recollection of the perpetrator.
- Instructions to the witness: should indicate that the suspect may *not* be present: up to 1/3 of witnesses select an innocent person in a lineup even when told perpetrator may not be present.



Photo Array and Lineup Procedures

- Unconscious transference: person seen in one situation is confused with or recalled as a person seen in another situation
- *Showup*: lineup composed on one person; some think it is more prejudicial than a lineup whereas others suggest it is less prejudicial.



Six Common Errors in Lineup Procedures

- Implying that the criminal is definitely in the lineup.
- Pressuring witness to make a choice.
- Confirmation bias (asking questions about suspect but not about known innocents).
- Giving obvious cues to the eyewitness as to the police officer's suspicion.
- Confirming the eyewitness's selection, thus increasing their level of confidence in their 'memory.'
- Accepting a loose recognition threshold.



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Four Rules for Increasing the Accuracy and Fairness of a Lineup

- 1. “The person who conducts the lineup or photospread should not be aware of which member of the lineup or photospread is the suspect.”
- Double-blind procedure



Four Rules for Increasing the Accuracy and Fairness of a Lineup

- 2 “Eyewitnesses should be told explicitly that the perpetrator might not be in the lineup or photospread and therefore eyewitnesses should not feel that they must make an identification. They should also be told that the person administering the lineup does not know which person is the suspect in the case.”



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Four Rules for Increasing the Accuracy and Fairness of a Lineup

- 3. “The suspect should not stand out in the lineup or photoarray as being different from the distracters based on the eyewitness’s previous description of the culprit or based on other factors that would draw extra attention to the suspect.”



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Four Rules for Increasing the Accuracy and Fairness of a Lineup

- 4. “A clear statement should be taken from the witness at the time of the identification and prior to any feedback as to his or her **confidence** that the identified person is the actual culprit.”



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Supreme Court Decision: Neil v. Biggers, (1972)

- Court established criteria to consider the likelihood of an accurate identification:
- Witness viewed the culprit at the time of the crime
- Interval between the event and the recollection



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Supreme Court Decision: Neil v. Biggers, (1972)

- Witness's level of attention during the crime
- Accuracy of witness's description of the culprit
- Level of confidence that the witness expresses regarding the identification



Conflict between Psychological Data and Court's Decision

- Court ruled that a showup, which is deemed “suggestive”, was not “unnecessarily” suggestive to deem it inadmissible (Stovall v. Denno, 1967).
- Court suggests that the witness's level of confidence in the accuracy of their identification reflects a more accurate identification. However, research indicates a very low correlation between accuracy and confidence level.



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Conflict between Psychological Data and Court's Decision

- Level of confidence can be inflated by feedback from the police, termed postidentification-feedback effect. This can also distort how confident they believed they were at the initial time along with how they believed they witnessed the conditions.



Repressed Memory or False Memory

- Repressed memory refers to the unconscious psychological process of keeping the memory of an event out of awareness for an extended period of time.
- Some clinicians believe that childhood trauma, particularly childhood sexual abuse, can be repressed only to be recovered through the process of psychotherapy.



Repressed Memory or False Memory

- Other researchers argued that memory is reconstructive in nature and can be readily influenced by a wide array of factors and that these recovered memories are actually false memories. This has led to the term *false memory syndrome*.
- This area is a heated scholarly debate that has at times lead to mudslinging and name calling in the professional literature



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APA Working Group on Investigation of Memories of Childhood Abuse

- Controversies regarding adult recollections should not be allowed to obscure the fact that child sexual abuse is a complex and pervasive problem in America that has historically gone unacknowledged.
- Most people who were sexually abused as children remember all or part of what happened to them.
- It is possible for memories of abuse that have been forgotten to be remembered. The mechanism, or mechanisms, by which such delayed recall occurs is not currently well understood.



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APA Working Group on Investigation of Memories of Childhood Abuse

- It is also possible to construct convincing false memories for events that never occurred. The mechanism, or mechanisms, by which these false memories occurs is not currently well understood.
- There are gaps in our knowledge about the processes that lead to accurate and inaccurate recollections of childhood abuse.



Web Sites

- Eyewitness memory researcher Gary Well's homepage
 - <http://www.psychology.iastate.edu/~glwells/>
- False Memory Syndrome Foundation
 - <http://www.psychology.iastate.edu/~glwells/>
- Jim Hopper, Ph.D. website on repressed memory
 - <http://www.jimhopper.com/memory/#el>



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Notes

