

# Relevance and reliability of eyewitness testimony in court



When individuals either witness or are a victim of crime they may be required to give evidence in court. This can involve recounting events that took place or identifying a suspect from an identity parade. Evidence presented in a trial contributes to a judge or jury deciding whether an individual is innocent or guilty and if the information provided by the eyewitness is incorrect then innocent people may be found guilty or guilty people may go free (Loftus, 1986). With DNA testing, many individuals initially identified by eyewitnesses as being the perpetrator have subsequently been found to be innocent (Wells and Olson, 2003). Therefore, it is important that eyewitness testimony presented in court is accurate. The following essay will present research that has investigated why eyewitness testimony can be inaccurate and may consequently not be relevant in a court case. The essay will also consider whether children are accurate and reliable eye witnesses.

## **Reconstructive Memory and Schemas**

When individuals observe an unusual event, such as a crime, their memory is often affected by their mental schemata, which involves prior knowledge and factors such as cultural background and values, and not solely information from the event. If there are gaps in people's understanding of an incident they can reconstruct their memories so that they can make sense of them. The notion of reconstructive memory was proposed by Bartlett (1932, cited in Toglia, 2007, pp. 240-241). Witnesses' memories may be influenced by events that occur after the crime, for example, information from news reports in the media or other witnesses talking immediately after the event about what they saw or heard. This is relevant in particular to witnesses who

observe one part of an event who then incorporate such information to elaborate and reconstruct their own memories. Toglia (2007) states that this is known as the misinformation effect and also source misattribution, which occurs when witnesses are unable to remember where the information originated from and they are then seen as being unreliable and not relevant to the court procedure.

In their 1974 study, Loftus and Palmer found that the wording of questions affected the recall of witness. Participants watched a film of a car accident and were then asked to write a brief summary of what they had seen. They were then asked questions about the accident using different verbs to describe the accident such as, 'how fast were the cars going when they smashed/hit/bumped each other?' (Loftus and Palmer, 1974, p. 586). The different words implied that the car was travelling at different speeds with some words implying a faster speed than other words. It was found that there was a 9 mile per hour difference between the slowest and fastest estimated speeds of the cars made by the participants. One week later, the participants returned and were asked further questions including 'did you see any broken glass' and, depending on the verb used in the original question, the faster the car was perceived to be travelling, the more participants reported seeing broken glass, even though there was no glass in the film (Loftus and Palmer, 1974, p. 587). The study supports Bartlett and the way in which witnesses can reconstruct their memories with their previous knowledge. In a similar study, Loftus and Zanni (1975) reported that more participants said they had seen the broken headlight, rather than participants who were asked if they had seen a broken headlight, even there

was no broken headlight in the film. However, both studies were undertaken in a laboratory environment and involved participants watching films, therefore it may not be possible to generalise the findings to the way witnesses respond when witnessing real-life accidents. The studies show the importance of the way in which language can alter perceptions or memories of an event. This has been addressed by introducing a cognitive interview technique which Fisher, Geiselman and Raymond (1987) suggest avoids influencing the answers given by witnesses.

If a car was travelling fast and was involved in an accident, it would be expected that there would be glass or a broken headlight, even though the witnesses (participants) did not see any in the film scenario. Individuals use their schemas to explain what happens in certain situations for example, how a burglar behaves or what type of objects would be present in a specific context, for example, the layout inside a bank or restaurant. Therefore, if something unusual is seen Loftus, Loftus and Messo (1987) argue that a witness will pay more attention to the unusual object. This has been found to be the case for crimes where weapons are involved. Participants in the Loftus et al. study were shown a series of slides of a crime in a fast-food restaurant where a customer either pointed a gun or a cheque at the cashier. It was found that there were more eye fixations on the gun than the cheque. In a second study, it was found that participant's memory for events was poorer in the weapon scenario than in the cheque condition which according to Loftus et al. (1987) emphasises the focus on weapons.

## **The Effect of Stress on Witnesses.**

Observing a weapon in a crime may cause a witness considerable stress and this may have an effect on their ability to accurately remember details. This has been demonstrated by Clifford and Scott (1978) in a study that involved participants watching a film of a violent attack and a control group that watched a less violent version of the film. It was found that participants who watched the violent film remember fewer details than the control group. As the study was conducted in a laboratory, it is possible that the stress experienced by witnesses to violent events is greater in real-life crime and therefore, suggests that accurate recall may be impaired. A review of the literature undertaken by Deffenbacher, Bornstein, Penrod and McGorty (2004) undertook a review of studies that investigated the effects of stress on eye witnesses and found support for the negative effects of stress on accurate recall. Stress was notably higher, for example, if suspect was present in a line-up in comparison to the suspect being absent. A number of studies have attempted to induce stress-related scenarios to study the effects on participants as witnesses, although it could be suggested that this is unethical as it may cause the participants psychological harm. However, in a study with real-life witnesses who had been present during a robbery at gun shop where the perpetrator was shot dead, Yuille and Cutshall (1986) argue that stress may not have an adverse effect on memory and eyewitness testimony. The witness in the gun shop event had very accurate and clear memories of the event, which endured over a period of 5 months.

## **Intergroup Bias**

Another factor that may influence the accurate memory of a crime in intergroup bias. Lindholm and Christianson (1998) found that the eyewitness testimony of Swedish students taking part in a mock crime scenario involving an armed robbery was influenced by whether the perpetrator was Swedish (in-group perpetrator) or an immigrant (out-group perpetrator). The participants in the study were both immigrant and Swedish students and when both groups were shown the film and asked to identify the perpetrator in a line-up afterwards the majority incorrectly identified an innocent immigrant. Both groups of participants typically identified an innocent perpetrator who was ethnically dissimilar more often than an innocent Swede. The study appears to show that witnesses can be influenced by biases and expectations regarding the type of person who is more likely to commit a certain type of crime. However, because the study involves a mock crime scenario it lacks the emotional aspects of a real crime and witnesses may not have the same biases they demonstrate in a laboratory task.

Loftus (1986) reports that in cross-racial identification by eyewitness, individuals are less accurate at identifying a member of a different ethnic group or culture than identifying features of a person's own race. Such findings would appear to be particularly relevant in contemporary, multi-racial society in the UK, and other countries. Alderson (2010) reports that the majority of men held for violent and sexual crimes in inner city London between 2009 and 2010 were black, however, black men have also been found to constitute the greatest number of victims of crime (e. g. 29% male victims of gun crimes, 24% of knife crimes). This can lead to the stereotyping

of certain groups such as black men being responsible for violent actions in comparison to white men as found by Duncan (1976).

## **Children as Eye-Witnesses**

There have been some concerns expressed regarding the relevance and reliability of children as witnesses. There may also be concerns about older people as West and Stone (2013) for example, report that young adults are more accurate in their recall as witnesses than older adults. Children who appear as witnesses in a court case may have been exposed to very stressful events such as sexual or physical abuse, which would be unethical to replicate in laboratory conditions. According to Bidrose and Goodman (2000), childhood sexual abuse is additionally accompanied by feelings of shame as well as a lack of emotional support because of the secrecy that surrounds such events. In a study undertaken by Bidrose and Goodman, they investigated the testimony given by four female children aged between 8 and 15 years, in a sexual abuse case in New Zealand and also assessed the level of support regarding the allegations. The findings showed that there was a high degree of support for the children's allegations which was matched to audiotapes and photos of the abuse (Bidrose and Goodman, 2000). The real-life study indicates that children's testimony can be highly accurate although the children in the study were older and younger children may not be able to articulate what happened to them in cases of abuse.

Krähenbühl, Blades and Eiser (2009) conducted a study with 156 children aged between 4 and 9 years to investigate the effects of repeating questions several times in an interview situation as a witness. The children watched a staged event and were asked eight open-ended questions, each of which

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was repeated 4 times. Some questions could be answered from watching the scenario although others could not, and it was expected that the children would say that they did not know the answer. The children returned again after one week. It was found that for over 25% of children there was a decline in accuracy which was greatest after the first repetition of questions. There was little change with the questions that could be answered but considerable decline in accuracy with those questions with no accurate answers. Krähenbühl et al. (2009) concluded that if there is considerable repetition of questions with child witnesses, the accuracy of responses changes significantly and that if children cannot answer a question, they are more likely to fabricate answers with repeated questioning.

## **Conclusion**

The evidence presented indicates that there are a number of problems around the issue of eyewitness testimony although it would appear that research has attempted to address some of the problems. This means that eyewitness testimony should be considered a valuable and relevant part of court procedure. Avoiding leading questions (Loftus and Palmer, 1974) and the introduction of the cognitive interview technique (Fisher et al. 1987) have helped to contribute to the more accurate recall of witnesses. Some problems are less easy to address, such as the stress experienced at a crime scene which may negatively affect recall although, Yuille and Cutshall (1986) have argued that in real-life witnesses are able to recall stressful events accurately. Similarly, intergroup biases are difficult issues to address in particular the perceptions of black people and their relationship with crime. Children as witnesses has a more positive outcome as their recall has been



shown to be accurate (Bidrose and Goodman, 2000). A further problem is that of the methodology used when researching eyewitness testimony which is predominately undertaken in a laboratory and may not be generalisable to real-life situations.

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