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## ACTUAL INNOCENCE RESEARCH

# The Importance of Witness Recall in Avoiding Wrongful Convictions

As the number of Innocence Project cases has increased, much justified attention has been paid to the role of mistaken eyewitness identifications in wrongful convictions. Erroneous eyewitness identification is currently shown to be present in approximately 75 percent Innocence Project cases (Innocence Project, n.d.). The importance of this research is discussed.

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By Dana Hirn Mueller ([https://www.apa.org/search?query=&fq=ContributorFilt:%22Mueller, Dana Hirn%22&sort=ContentDateSort desc](https://www.apa.org/search?query=&fq=ContributorFilt:%22Mueller,DanaHirn%22&sort=ContentDateSortdesc))

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In 1932, Edwin Borchard identified eyewitness errors as an important factor that contributed to the erroneous conviction of innocent people. Now, more than 80 years later, his findings are repeatedly echoed in examinations of wrongful convictions; the National Registry of Exonerations reports that 37 percent of exonerations in their database involved a mistaken witness. Despite this, and despite the fact that psychological research has aptly demonstrated for decades that witnesses can be rather unreliable, there is still much to learn. Our author this month discusses the case of Calvin Willis, who was convicted, in part, based on the testimony of two child witnesses. While not eyewitnesses, as has been the case in many wrongful convictions, our author touches on an important issue related to all witnesses: the importance of using proper investigative interview techniques for witnesses, particularly children, and their impact on witness recall.

Our guest author this month is Dana Hirn Mueller. Dana received her Bachelor of Arts degree in Psychology and Bachelor of Science degree in Criminal Justice from the University of Wisconsin – Milwaukee. Dana is currently a doctoral candidate at Florida International University in the legal psychology program. Her main research interests are exploring the potential applications of social and cognitive theories to bolster investigative interviewing procedures. Specifically, she is interested in the development of novel interview methods to elicit information from cooperative adult witnesses as well as the impacts of post-recall feedback on subsequent witness recall opportunities.

### The Importance of Witness Recall in Avoiding Wrongful Convictions

As the number of Innocence Project cases has increased, much justified attention has been paid to the role of mistaken eyewitness identifications in wrongful convictions. Erroneous eyewitness identification is currently shown to be present in approximately 75 percent Innocence Project cases (Innocence Project, n.d.). Researchers have extensively catalogued the impact of a number of factors which may influence identification diagnosticity (Greathouse & Kovera, 2009; Luus & Wells, 1991; Steblay, 1997; Steblay, Dysart, Fulero, & Lindsay, 2001) as well as factors which impact post identification reports of confidence and view (Bradfield, Wells, & Olson, 2002; Smalarz, Wells, & Norris, 2014; Steblay, Wells, & Douglass, 2014; Wells & Bradfield, 1998). Given the many issues that arise from fallacious information given by witnesses, it will be advantageous to continue exploring ways to elicit accurate information and reduce witness offerings of misinformation not only in lineup identifications, but during interviews. Continuing to expand upon investigative interviewing research can help bolster the understanding of variables which impact eyewitness recall.

The wrongful conviction of Calvin Willis demonstrates several areas of investigative interviewing research which warrant further study. Mr. Willis was falsely convicted on the basis of multiple interviews from individual witnesses as well as serology analysis. After briefly describing the Willis case, this column reviews several issues involved in this case including (1) conducting investigative interviews with children and (2) the need for best practice investigative interviewing methods with both children and adults. It also discusses directions for future research.

### Case Overview

In June of 1981, a nine-year-old girl was attacked in Shreveport, Louisiana. She reported being awakened by a naked man who proceeded to repeatedly hit her head against a wall and sexually assault her. There were two witnesses in the home at the time, a seven-year-old and a ten-year-old, who heard noises from another room but saw nothing. After the assault, police were alerted and collected statements from the victim, the two child witnesses, the victim's mother, and a neighbor. Statements from the victim, the victim's mother, and the neighbor differed throughout the course of multiple interviews. Specifically, the victim first told police that she was awakened by a man wearing cowboy boots, but did not identify the perpetrator by name. In a subsequent interview, the victim claimed that Willis had come to the house and was accompanied by another man who was wearing cowboy boots. After a final interview, an investigator claimed that the victim named Willis as her attacker. The victim's mother also gave evolving reports over the course of multiple interviews. Initially, she claimed her daughter gave no information about the clothing of the perpetrator. Next, she told investigators that her daughter reported the perpetrator had worn cowboy boots and ultimately, she claimed her daughter said Willis had been in the house at the time of the attack. When the victim's neighbor testified, she said she looked outside at approximately 1:30am and saw a vehicle parked near the victim's house. However, in a previous interview, the neighbor stated she had experienced no disturbances that evening. The victim's mother also reported knowing that Willis was a suspect because neighbors told her he may have been the perpetrator. Willis was brought to trial on the basis of serology tests and the statements collected by law enforcement. Despite the contradictory recall of the victim and witnesses, Willis was convicted and sentenced to life in prison without the possibility of parole. In 1998, Willis sought the help of the Innocence Project and after serving over 21 years, he was exonerated on the basis of DNA evidence.

### Children as Witnesses

Due to the increased involvement of children in the legal system, there has been a substantial surge in the amount of research examining characteristics of child memory (Ceci & Bruck, 1993) as well as the factors which impact memory and recall (Bruck & Ceci, 1999). This wide body of research has settled on the finding that age is the most prominent factor for determining a child's memory, with the trend being that memory improves as age increases (La Rooy, Malloy, & Lamb, 2011). Compared to older children, younger children tend to encode information less effectively and forget at a faster rate (Brainerd, Reyna, Howe, & Kingma, 1990). Due to potentially weak or nonexistent memory, children may be more prone to suggestibility. Recall may be affected by suggestive, outside cues such as questions asked by the interviewer (Bruck & Ceci, 1999). In other words, children may tend to look toward cues from the interviewer and, if those cues come in the form of suggestive and/or leading questions, memory and recall could be affected. Given the increased vulnerability to suggestion, it is particularly important that interviewers question children using methods that will not only avoid introducing misinformation, but will help to elicit a high quantity of accurate information. Fortunately, similar to the research conducted to improve investigative interviewing with adults, there are a variety of methods interviewers can use to help maximize the amount of accurate information offered by child interviewees.

### Best Practice Investigative Interviewing

The Cognitive Interview (CI) (Fisher & Geiselman, 1992) has focused largely on best practice interviewing techniques to be used with adults, whereas the NICHD Investigative Interview Protocol (Orbach, Hershkowitz, Lamb, Sternberg, Esplin, & Horowitz, 2000) has been developed with the primary focus being the collection of information from child interviewees. Both interviewing protocols have been examined extensively in laboratory and field studies and employ the use of empirically-driven techniques shown to increase the elicitation of accurate information (see Lamb, Orbach, Hershkowitz, Esplin, & Horowitz, 2007 and Memon, Meissner, & Fraser, 2010 for reviews).

The CI and the NICHD Protocol share many of the same theoretical underpinnings and thus share many of the same techniques. One of the primary similarities between these two protocols is the value placed on open-ended questions. Research has shown that when participants are given the opportunity for an open-ended narrative versus being forced to answer a closed question, their responses will be more accurate as they are allowed to monitor their own knowledge and decide what to report and what to withhold (Evans & Fisher, 2011; Koriat & Goldsmith, 1996). A second major similarity between these two interview methods is the use of rapport building. There is research supporting the use of rapport building which has shown that witnesses who are exposed to rapport building tend to recall more accurate information compared to those who do not go through this phase (Collins, Lincoln, & Frank, 2002), and that exposure to rapport decreases inaccuracy (Vallano & Schreiber Compo, 2011) and increases the recall of accurate information on subsequent recall opportunities when misinformation is presented (Kieckhafer, Vallano, & Schreiber Compo, in press). Another similarity these techniques share is the use of "ground rules" that are explained before the interview. Both child and adult interviewees are told not to guess and that an "I don't know" response is acceptable when unsure of an answer. It is also important to note the various techniques these protocols discourage. Specifically, both techniques warn against using leading and suggestive questions. As already discussed, this is of particular concern for child witnesses. Avoiding the use of leading and suggestive questions is also crucial if witnesses are being interviewed repeatedly, as was the case with Calvin Willis. If incorrect information is recalled during an earlier retrieval attempt, this increases the likelihood that the same incorrect information will be recalled on a subsequent retrieval opportunity (Roediger, Jacoby, & McDermott, 1996). The initial and subsequent recall of incorrect information can be partially curtailed by not introducing misinformation through the use of problematic questions.

### Research Ideas

A considerable body of research has examined the impact of post-identification feedback on witness confidence (Bradfield et al., 2002; Smalarz et al., 2014; Steblay et al., 2014; Wells & Bradfield, 1998). Witness statements often play a powerful role in criminal trials, especially when a witness is confident (Bradfield & Wells, 2000; Brewer & Burke, 2002). The strong influence of eyewitness confidence may be especially problematic for two reasons (Neuschatz et al., 2007). First, jurors are particularly influenced by witnesses who appear confident (Wells, Ferguson, & Lindsay, 1981).

Second, it is possible for law enforcement investigators to influence the confidence of a witness (Luus & Wells, 1994; Wells & Bradfield, 1998), regardless of whether information given from that witness is accurate. Perhaps the most common way lineup administrators may inflate eyewitness confidence is through the use of feedback. Given the high impact of post-identification feedback on eyewitness memory coupled with the fact that virtually any witness making an identification is likely to have also been interviewed, it is surprising that similar research attention has not been paid to examining the possible dynamics behind post-recall feedback on eyewitness memory. Post-recall feedback has been assessed in the investigative interviewing arena in a limited capacity. McMurtrie, Baxter, Obonsawin, and Hunter (2012) found that participants were more likely to change their original responses on an immediate subsequent recall opportunity and give lower confidence ratings when given disconfirming feedback compared to participants who were given neutral feedback. However, this research area may be improved upon in several ways. First, this study did not examine the effects of no feedback versus neutral feedback, which may be important as witnesses could consider neutral feedback to be more

encouraging than no feedback. Further, this research did not examine confirming feedback, which may significantly impact confidence. Third, this research area has yet to examine the impact of question type on recall. Future research can examine main effects and/or interactions between post-recall feedback (confirming, neutral, no, and disconfirming) and question type (open-ended, cued, leading, suggestive) on the following outcome variables: (1) accuracy of information given (pre- and postfeedback), (2) quantity of information given (pre- and post-feedback), (3) rate of contradictions and accuracy of those contradictions between a pre-feedback recall opportunity and a postfeedback recall opportunity, (4) reported length of time the perpetrator was viewed (pre- and post-feedback), (5) reported quality of view of the crime (pre- and post-feedback), (6) confidence (pre- and post-feedback), and (7) reported level of attention paid to the crime (pre- and postfeedback). Further, given research that suggests post-identification feedback can impact the ways in which witness identifications are evaluated by others (Smalarz & Wells, in press), it would benefit investigative interviewing researchers to examine the perceptions of witness accuracy and confidence after feedback has been given. In sum, examining the impact of post-recall feedback and question type may substantially influence the practices of investigators who repeatedly interview both children and adults as the effects of post-recall feedback may become most apparent during subsequent interviews. Lastly, considering the potentially increased suggestibility of children, investigating the influence of postrecall feedback on subsequent recall, confidence, and the perception of child witnesses may be especially critical.

### Conclusion

Given the number of wrongful conviction cases which involve misinformation collected from witnesses, it will be important for researchers to focus on the variety of ways in which the collection of a high quantity of accurate information from witnesses can be maximized. This can be partially accomplished by not only continuing to explore and refine the understanding of techniques that have already been established (e.g., best practice interviewing techniques) with both child and adult witnesses, but to investigate novel system variables which may impact the quantity and/or accuracy of information offered from witnesses.

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