

EYEWITNESS EVIDENCE

IN BRIEF

TEACHER RESOURCE

Learning Objectives

- To provide students with an overview of eyewitness evidence, including the variables that affect eyewitness testimony, eyewitness identification procedures and how eyewitness evidence is introduced in a criminal trial.
- To increase students' understanding of eyewitness misidentification and introduce them to case studies involving wrongful convictions.
- To develop knowledge of reform measures introduced to combat eyewitness misidentification.

Materials

- Copies of *Introduction to Eyewitness Identification* (one per person)
- Copies of *Variables Affecting Eyewitness Testimony* (one per person)
- Copies of *Case Study: Thomas Sophonow* (one per person)
- Copies of the newspaper article, *On Memory: Eyewitness Errors Costly* (one per person)

Teaching and Learning Strategies

Activity 1 – Eyewitness Simulation

1. Create an eyewitness simulation by having an unexpected confrontation occur in the classroom. You could:
 - Have a person that students do not know and have never seen before come into the classroom and yell at the teacher;
 - Have a person steal something from the classroom and run out; or
 - Record a scene from a television show where a crime is being committed (e.g. a robbery) and play this scene for the class.

The simulation should be quick and intense and ideally, the person should have a number of distinct and identifiable characteristics. (e.g. wearing a hat, wearing glasses, has a moustache, has a tattoo, walks with a limp, talks with an accent, etc.)

2. Immediately after the simulation, have students write down everything they witnessed, including what happened and what the person involved in the incident looked like. This should be done individually and students should not discuss what they saw with each other as this can influence their own descriptions. Ask students to make a note of characteristics such as gender, ethnicity, height, weight, eye colour, age, hair colour and length, clothing and any other identifiable characteristics.
3. Have students set aside their written descriptions while they complete Activities 2-3. At that point, ask students to revisit their eyewitness descriptions of the simulation from Activity 1, and give them an opportunity to revise what they wrote if they so choose. Have students compare their descriptions with other students and discuss any conflicting characteristics. Ask a few volunteers to read their descriptions aloud and list the key characteristics of the event and the person on the board. Have students compare their own descriptions with the one on the board. Discuss the following:
 - How does your description compare to the ones on the board?
 - What was it like witnessing the confrontation? Was it difficult describing what happened and what the person looked like?
 - Did you change your original description when given the opportunity to do so? What changes did you make? Why?

- If you had to pick the person out of a photo line-up, do you think you could?
 - How confident are you in your description? Would you be confident enough to testify under oath in court as a witness to the crime?
4. Give students the correct description of the person involved in the initial incident. Have a discussion about the accuracy of their eyewitness descriptions and what variables affected their eyewitness descriptions of the simulation.

Activity 2 – Eyewitness Evidence

1. Have students review the handout, *Introduction to Eyewitness Identification*. Clarify concepts and check for understanding after each section.
2. Once students are familiar with the variables affecting eyewitness testimony, ask them to complete one or more of the scenarios from the handout, *Variables Affecting Eyewitness Testimony*. Students can work in pairs or small groups and compare answers once finished. Debrief as a class.

🔑 Teacher’s Key - Variables Affecting Eyewitness Testimony

Scenario 1

Variable and Explanation	Event	Witness
PERCEPTUAL SELECTIVITY: Neha had a number of other stimuli in her environment, including her hosting duties, the number of people at her house, the noises from the party, the midnight toast, etc., that may have prevented her from fully registering the events taking place outside.	X	
SHORTNESS OF THE PERIOD OF OBSERVATION: Neha ran outside with only enough time to see someone running toward a parked car and speeding off in a vehicle. She did not see the actual incident causing the injury.	X	
POOR OBSERVATION CONDITIONS: The incident took place at night and from a distance, which may have limited Neha’s visibility. She could have also been distracted by the noises coming from inside the house.	X	
PHYSICAL CONDITION OF THE OBSERVER: Neha was under the influence of alcohol which would cause her senses to function less efficiently than normal.		X
PERSONAL NEEDS & BIASES: Neha may have associated long hair and ponytails with women and therefore assumed that the person she saw running away was a woman rather than a man with a ponytail.		X
PRIOR EXPERIENCE: Neha may have had prior experiences with people running with long hair who were female, or seen a TV show or movie with a female lead character and made the same inference this time.	X	



Teacher's Key - Variables Affecting Eyewitness Testimony

Scenario 2

Variable and Explanation	Event	Witness
SHORTNESS OF THE PERIOD OF OBSERVATION: Fred was unable to get a second look wearing his glasses before the boat drove away. Therefore, the short period of observation time may have reduced the number of features that Fred perceived and remembered.	X	
POOR OBSERVATION CONDITIONS: Fred observed the incident at a distance from across the lake which could have limited his ability to accurately identify the people in the boat.	X	
PHYSICAL CONDITION OF THE OBSERVER: Fred observe the people in the boat from a distance without his wearing his glasses.		X
PRIOR EXPERIENCE: Fred drew on his knowledge that there was only one Chinese family on the lake to assume that the Wongs must be involved. Since he believed that Jack Wong would not likely be involved in illegal fishing, he concluded that it must be his son, Paul, and his friends.		X
PERSONAL NEEDS & BIASES: Fred believed that Paul Wong was involved and because of that may have been more likely to think that the person in the boat looked like him.		X
CROSS-RACIAL IDENTIFICATIONS: It would be more difficult for Fred to identify the three Chinese people in the boat because they are of a different race than him. Studies show that people have greater difficulty identifying members of another race than of their own.		X
PERCEPTUAL SELECTIVITY: Fred could have focused on the features of the boat to see if he could recognize it as Wong's boat.	X	

Scenario 3

Variable and Explanation	Event	Witness
PERCEPTUAL SELECTIVITY: Jacqueline and Renée were devoting their attention to the chemistry problem when Joshua's laptop was stolen. Their ability to perceive and remember a number of simultaneous stimuli may have been limited because they were heavily focused on their school work.	X	
INSIGNIFICANCE OF THE EVENTS OBSERVED: Jacqueline and Renée likely did not expect for a crime to take place in the library. Therefore, they may not have paid attention to the other people in the library because they were not attaching importance to the event.	X	
STRESS: Jacqueline and Renée were under stress after spending 10 hours in the library, getting stuck on a chemistry problem and having a disagreement about how to solve it. The stress and anxiety may have reduced their ability to perceive and remember the events going on around them because their attention was focused inward.		X
PHYSICAL CONDITION OF THE OBSERVER: Jacqueline and Renée were likely tired after spending 10 hours studying, causing their senses to function less efficiently.		X
PERSONAL NEEDS & BIASES: Renée may have seen the janitor in the library and then made the assumption that he had stolen the laptop. Her perception may have been distorted because this seemed to be the most plausible explanation to her.		X

Activity 3 – Eyewitness Misidentification

1. Have students review the case study on Thomas Sophonow and the newspaper article, *On Memory: Eyewitness errors costly*, and discuss the following:
 - What are some of the concerns related to eyewitness evidence that led to the wrongful conviction of Thomas Sophonow?
 - What are some of the methods used by law enforcement agencies to assist witnesses in identifying perpetrators of crime?
 - What are some of the problems with these methods? Explain.
2. Have students reflect on the benefits and risks of presenting eyewitness testimony in court by writing a 1-2 page response to the following question: *Should eyewitness evidence be admitted in trials and if so, under what circumstances?*

Extension

1. Have students research *R v Miaponoose* (available on www.canlii.org), the judicial decision where the Court of Appeal for Ontario outlined the inherent frailties of eyewitness identification evidence. Students can also research reform measures that have been recommended to combat eyewitness misidentification, including the following:
 - Department of Justice, FPT Heads of Prosecutions Committee Report of the Working Group on the Prevention of Miscarriages of Justice, Chapter 5 – Eyewitness Identification and Testimony
 - The Innocence Project – Fix the System: Priority Issues: Eyewitness Identification (US)
2. Have students complete the OJEN resource, *In Brief: Expert Evidence*, available here: <http://ojen.ca/resource/7910>