

Special Litigation Surveys Potential Jurors To Determine What They Really Understand About Eyewitness Testimony

As in most jurisdictions, the District of Columbia criminal justice system repeatedly is called upon to assess the accuracy of witness claims that they “remember” having seen the accused committing a criminal offense, or that they “remember” other significant details about the crime. Recent data have shown that these sorts of eyewitness memories may be substantially less reliable than jurors believe them to be. The proof of these failures lies in the rising number of verifiably wrongful convictions, and the fact that, upon examination, it has become clear that the leading cause of these mistakes is faulty eyewitness testimony. This data suggests that eyewitnesses around the country are making mistakes on a regular basis, and that juries are relying on this unreliable evidence to send the wrong person to prison while the real culprit remains out on the street.

Despite this stark evidence, Superior Court judges often refuse to allow the defense to provide jurors with information that could help them to fully understand the limitations of eyewitness identification evidence and to place that evidence into a more informed context. Often, courts explain their decisions by making unsubstantiated assertions that jurors understand, as a matter of common sense, how memory works and what its limitations are in the eyewitness identification context.

In the winter of 2004, PDS’ Special Litigation Division decided to investigate whether jurors did, in fact, understand as a matter of common sense what makes some eyewitness identifications more or less reliable than others. The motivation behind this project was simple: If jurors already understand what makes some eyewitness identifications more reliable than others, it would not make sense for PDS to continue to devote resources toward educating already-informed jurors on this topic. On the other hand, if jurors actually fail to understand memory and its limitations, it would remain imperative to continue to seek to provide jurors with the expert education necessary to ensure that they could intelligently evaluate the evidence presented to them by the government.

PDS accordingly commissioned a national polling firm (Peter D. Hart Research Associates) to survey approximately 1000 potential D.C. jurors about how jurors assess the reliability of eyewitness identifications and what factors, if any, contribute to making the testimony suspect in the eyes of

potential jurors. The results are now in, and those results demonstrate that judicial assertions concerning jurors' ability to appraise eyewitness identifications are verifiably wrong: Contrary to speculation, jurors actually suffer from a basic misunderstanding of how memory generally works, and similarly do not understand how particular factors, such as the effects of stress or the use of a weapon, affect the accuracy of eyewitness testimony.

In particular, the PDS survey shows as an empirical matter that significant numbers of jurors (often substantial majorities) misunderstand human memory and eyewitness reliability in the following ways:

- Jurors overestimate the ability of people to remember strangers' faces, incorrectly analogizing the process of remembering and recounting events to the act of replaying a video recording;
- Jurors do not understand that the involvement of a weapon tends to make an eyewitness' memory for details about an event less reliable;
- Jurors do not understand how severe stress reduces the ability of a witness to remember details about an incident and identify faces;
- Jurors do not understand that eyewitnesses have a strong tendency to overestimate the duration of a stressful event;
- Jurors do not understand the lack of any meaningful correlation between witness confidence at trial and witness accuracy;
- Jurors place unwarranted stock in the identification abilities of police officers;
- Jurors fail to recognize that eyewitnesses are superior at identifying members of their own race and have difficulty-identifying members of other races;

- Jurors exhibit substantial confusion about how proper police procedures can affect the accuracy of identifications.

In short, the PDS survey shows that jurors are currently assessing eyewitness reliability on the basis of demonstrably mistaken assumptions. It is no wonder, then, that jurors often believe mistaken eyewitnesses. Wrongful convictions will inevitably continue to result until judges begin to allow jurors to hear empirical information about how to distinguish a reliable identification from an unreliable one. We are hopeful that the PDS survey (which has already been filed in a few Superior Court cases) will provide a critical first step in eliminating wrongful convictions by convincing courts to reassess their assumptions about what jurors understand about eyewitness reliability and, more importantly, what they do not. If you haven't seen the survey yet, contact SLD at lmoorer@pdsdc.org and ask for a copy.