

MEMORANDUM

TO: T. Jeremy Gunn
FROM: Christopher Burton
DATE: May 27, 1998
RE: Reliability of Eyewitness Testimony - Sources

Many of the books on the issue of eyewitness testimony include only a minimal account of the problem of reliability itself, focusing instead on the effect the problem has on the legal process. Among those books that do address the nature of perception and memory, and/or the possible causes for false eyewitness accounts, the following appear to be the most promising:

1. A. Daniel Yarmey, *The Psychology of Eyewitness Testimony* (1979).

Some of the science included in this work is outdated. However, as one of the first major works on the issue of the reliability of eyewitness testimony, it is probably a valuable resource, if only as an introduction to the subject matter.

2. Edward Arnolds et al., *Eyewitness Testimony: Strategies and Tactics* (1984).

This work is primarily designed to assist attorneys in dealing with eyewitness testimony during trial, but it does include an explanation of the science of both perception and memory, as well as an assessment of the reliability of each.

3. *Eyewitness Testimony: Psychological Perspectives* (Gary L. Wells & Elizabeth F. Loftus eds., 1984).

The various articles included in this book detail the progress of scientific research into the reliability of eyewitness testimony. It appears to be one of the first in a series of works that attempt to synthesize most or all of the existing research.

4. Adult Eyewitness Testimony: Current Trends and Developments (David Frank Ross et al. eds., 1994).

This work is apparently designed to be a sort of anthology on eyewitness testimony. It addresses the science of perception and recall, the effect of questioning procedures on the reliability of recall, and the problem of distinguishing accurate from inaccurate eyewitness accounts.

5. Elizabeth F. Loftus & James M. Doyle, *Eyewitness Testimony: Civil and Criminal* (3rd ed. 1997).

This is the most recent, and therefore probably most complete, major work on the issue of eyewitness testimony. Like many other works, the focus of this book is primarily on how practicing attorneys should approach eyewitness testimony, but it does include a very clear explanation of the stages of perception and recall, and the potential causes of error at each stage. This book does include a discussion of “flashbulb memories,” of which President Kennedy’s assassination is the most commonly cited example. There seems to be disagreement among psychologists concerning whether these seemingly vivid memories are in fact reliably accurate recollections.

Most of the law review articles on eyewitness testimony focus on procedural safeguards designed to protect against the influence of inaccurate eyewitness testimony. Therefore, few such articles deal specifically with the problem of reliability itself. The following are among the exceptions:

1. Steven D. Penrod et al., *Expert Psychological Testimony on Eyewitness Reliability Before and After Daubert: The State of the Law and the Science*, 13 *Behav. Sci. & L.* 229 (1995).

This is one of the few law review articles that addresses the science of eyewitness testimony at all, although its primary focus is on the admissibility of expert testimony.

2. John S. Shaw III & Kimberley A. McClure, *Repeated Postevent Questioning Can Lead to Elevated Levels of Eyewitness Confidence*, 20 *Law & Hum. Behav.* 629 (1996).

This article details the results of a study, which suggest that there are methods of increasing the confidence of an eyewitness in his or her account, without affecting the accuracy of the account itself.

So far, I have been unable to find any research on some issues of particular relevance to the issue of testimony concerning the medical treatment and examination of President Kennedy. For example, the relative reliability of the eyewitness accounts of professionals has not been addressed in any of the literature I have seen thus far. Little if any research addresses the effect of over thirty years on one's ability to recall events accurately. There is research to show the decaying effect on memory that results from the passage of a few months or a year. However, I have not yet come across any study of the particular effect of a period of many years on the reliability of an eyewitness account.