

What psychological science can teach us about the (un)reliability of witness evidence

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Studying witness memory in the lab

Event



Post-event information

Generic true info, control item:
“What colour was the jacket that the robber was wearing with his blue jeans?”

Misleading info, misled item:
“What colour was the jacket that the robber was wearing with his black jeans?”

Memory test

What colour were the robber's jeans?



People exposed to misleading post-event information frequently incorporate that information into their memory reports — the *Misinformation Effect*

50 years of witness memory research

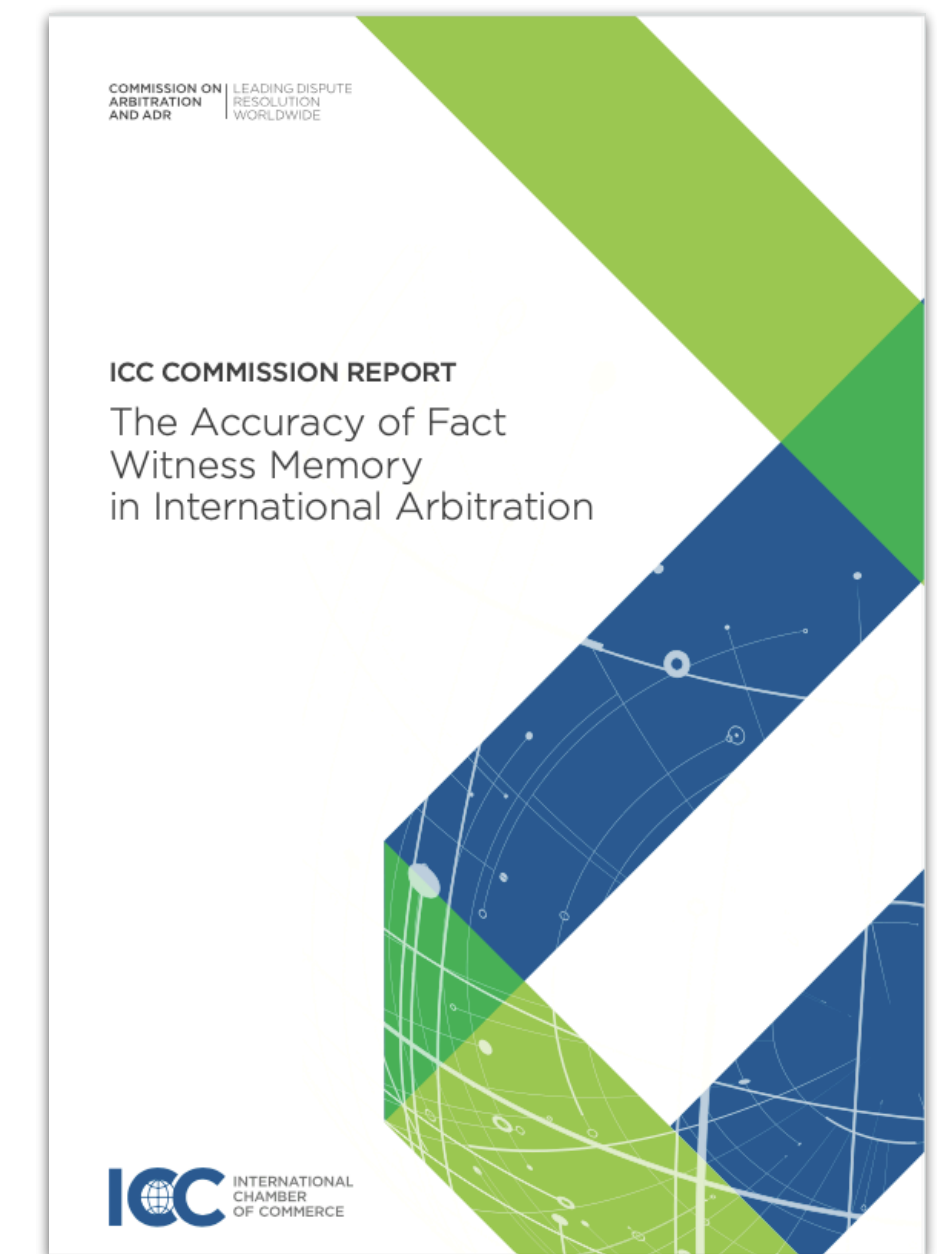
Many extraneous factors can taint a witness' memory report

Contextual factors

- Personal expectations, beliefs, motivations, stereotypes, schemas
- Stress and arousal
- Culture
- Alcohol

Retrieval factors

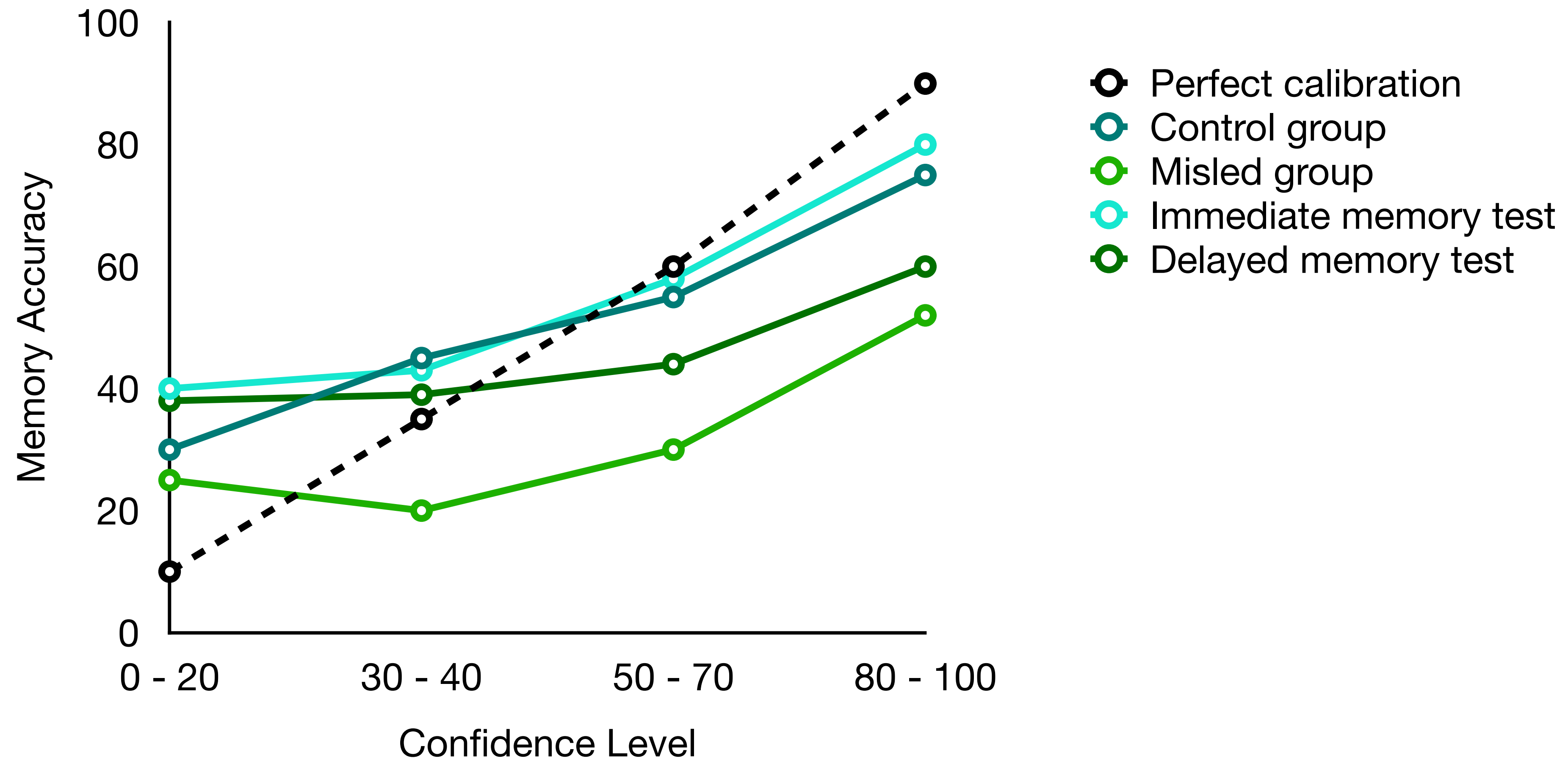
- Co-witness discussion (contamination)
- (Biased) perspective and retelling
- Interviewing procedures (question phrasing, interviewer feedback)



<https://iccwbo.org/publication/icc-arbitration-and-adr-commission-report-on-the-accuracy-of-fact-witness-memory-in-international-arbitration/>

“I am 100% sure ... I wouldn't forget this”

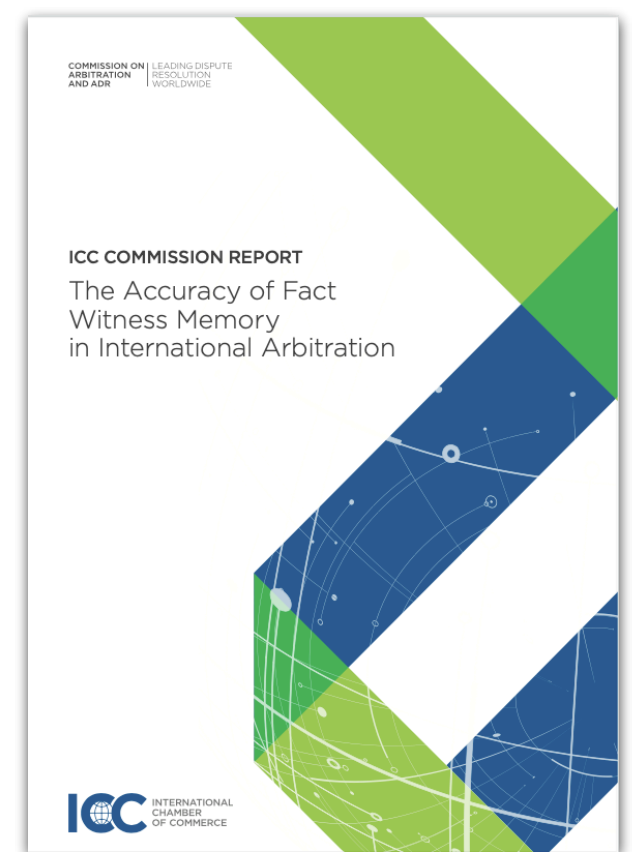
Confidence is not always a reliable indicator of memory accuracy



Recommendations

Measures can be taken to reduce the likelihood of memory errors

- Section V of the ICC Report outlines measures that can be taken by in-house counsel, outside counsel and arbitrators
 - * Interview early
 - * Establish rapport
 - * Warn witnesses to consider the source of their memories
 - * Use free (uninterrupted) recall
 - * Question witnesses individually
 - * Keep accurate records
- Even the most meticulous and honest witness is not immune to error.





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Thank you

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