

THE IMPORTANT, YET  
MISUNDERSTOOD, ROLE OF  
EYEWITNESS CONFIDENCE IN THE  
LEGAL SYSTEM

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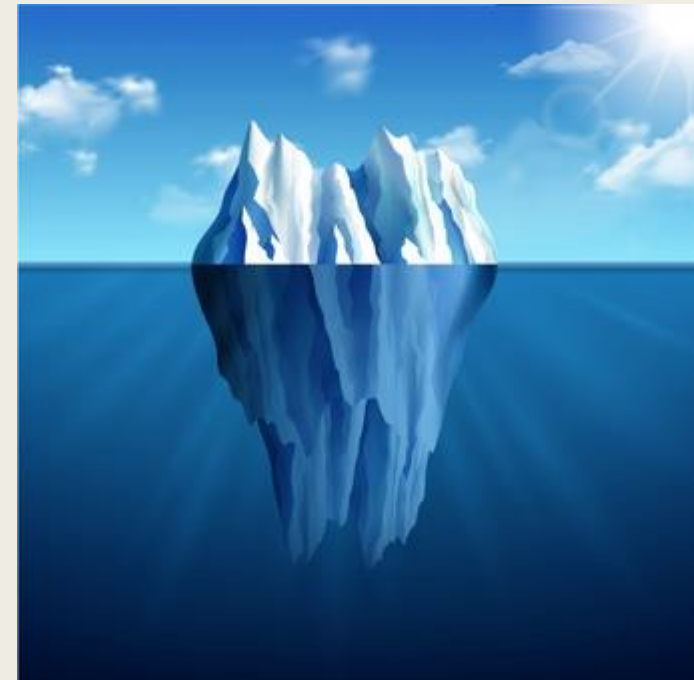


# OUTLINE

- EYEWITNESS CONFIDENCE: THE STATE OF THE SCIENCE
- A MOCK JURY STUDY
- IMPROVING SENSITIVITY
  - *TRADITIONAL APPROACHES*
  - *NEW IDEAS*

# EYEWITNESS MEMORY: THE PROBLEM

- EYEWITNESSES OFTEN MAKE ERRORS
  - ~35% TO ~75% OF EXONERATION CASES<sup>1</sup>
  - $N > 1700$



<sup>1</sup> (INNOCENCE PROJECT; NATIONAL REGISTRY OF EXONERATIONS)

# WE CAN PUSH MEMORY AROUND

## SYSTEM VARIABLES

MEMORY TEST TYPE

INSTRUCTIONS TO THE WITNESS

HOW FAIR THE MEMORY TEST IS

DOUBLE-BLIND ADMINISTRATION

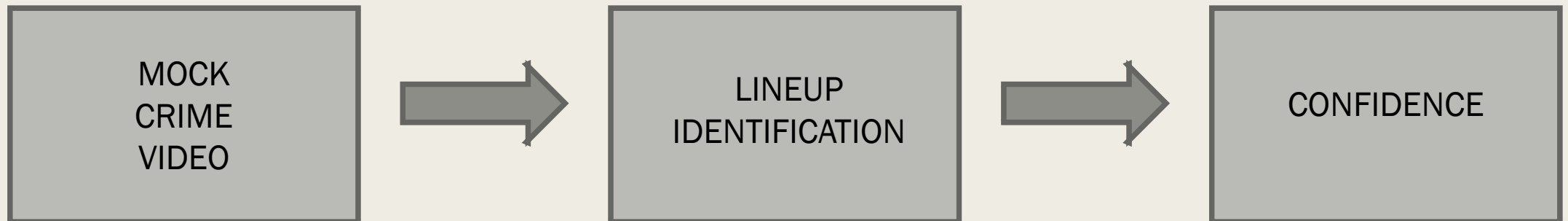
## ESTIMATOR VARIABLES

CROSS-RACE IDENTIFICATION

STUDY TIME

RETENTION INTERVAL

STRESS & WEAPON FOCUS



# EYEWITNESS CONFIDENCE

- USUALLY HIGHLY CONFIDENT AT TRIAL<sup>2</sup>
- PERSUASIVE TO JUDGES AND JURORS — WHO DON'T KNOW ACCURACY
- WE CAN PUSH CONFIDENCE AROUND
  - *POST-ID FEEDBACK*<sup>3</sup>
- USING CORRELATION COEFFICIENT ( $r = .10$  to  $r = .40$ )<sup>4</sup>

<sup>2</sup> GARRETT (2011). *CONVICTING THE INNOCENT*.

<sup>3</sup> (WELLS & BRADFIELD, 1998; STEBLAY ET AL., 2014)

<sup>4</sup> (SPORER ET AL., 1995)

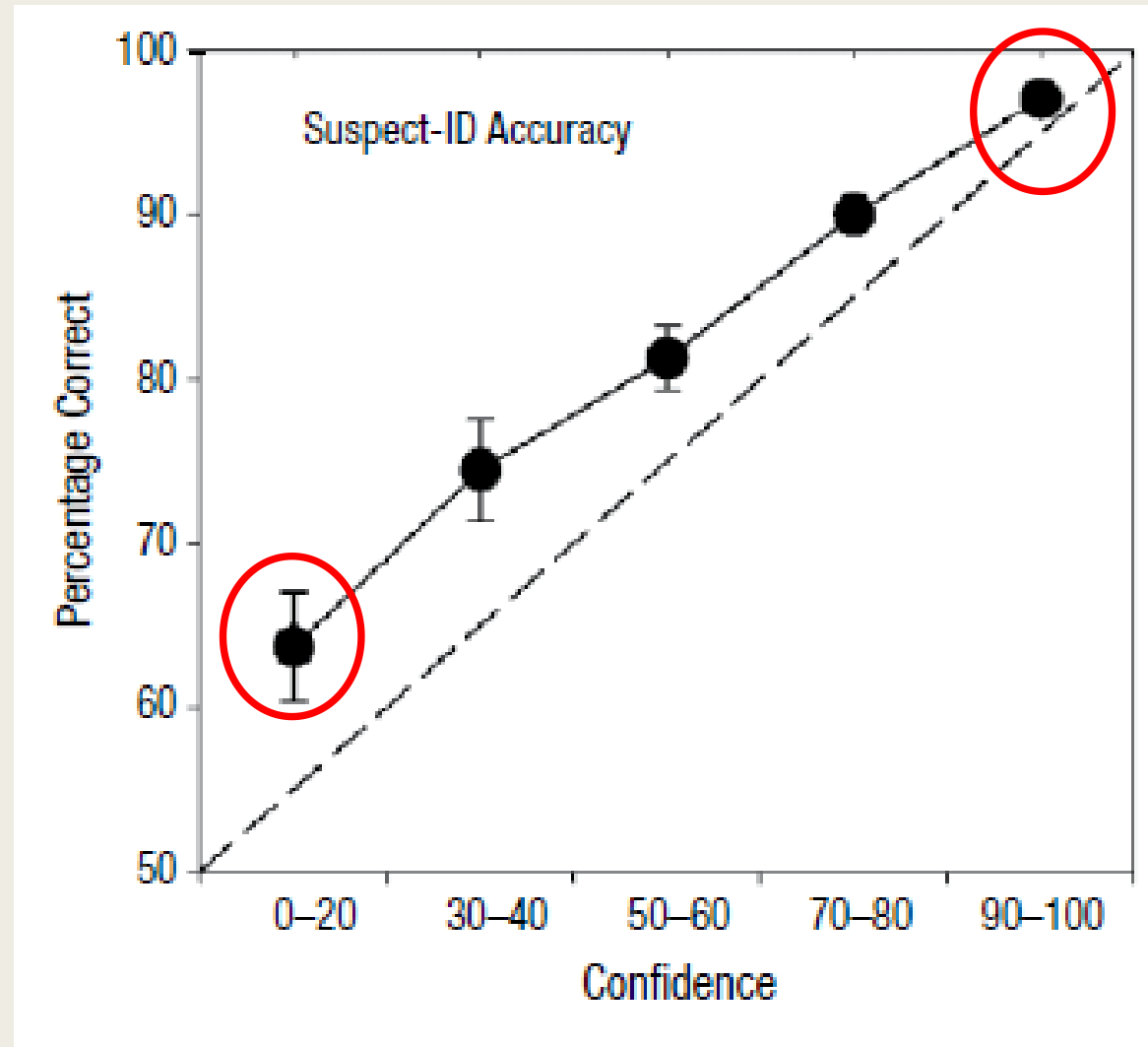
# THE CONCLUSIONS

- EYEWITNESS MEMORY IS UNRELIABLE
  - *EVEN IF CONFIDENCE IS HIGH*
- EYEWITNESSES SHOULD NOT BE TRUSTED
- WE NEED LEGAL SYSTEM REFORMS<sup>5</sup>
  - *BEST PRACTICE GUIDELINES FOR POLICE*
  - *JURY INSTRUCTIONS & EXPERT TESTIMONY*

<sup>5</sup> (WELLS, 1993; TECHNICAL WORKING GROUP FOR EYEWITNESS EVIDENCE, 1999)

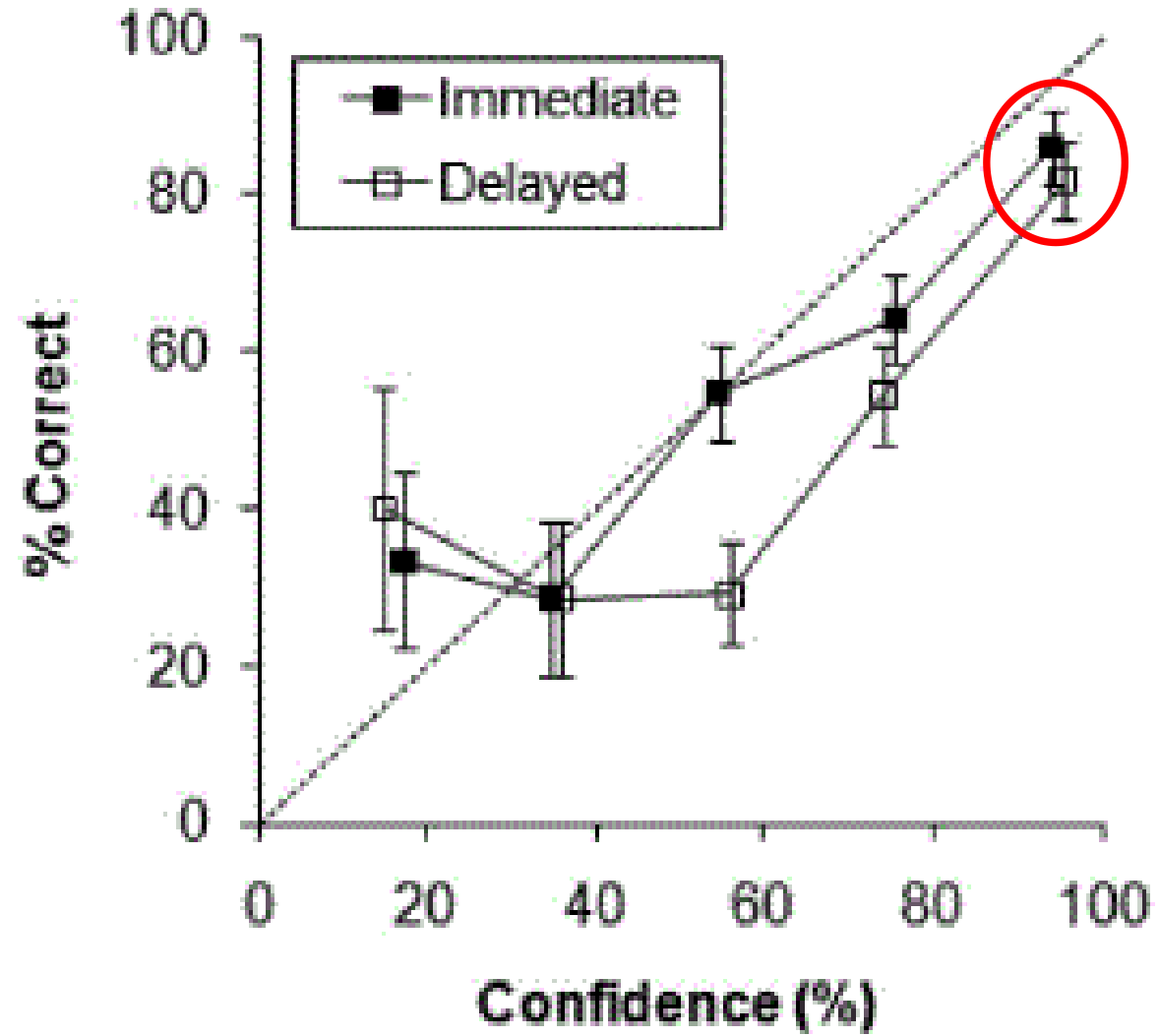
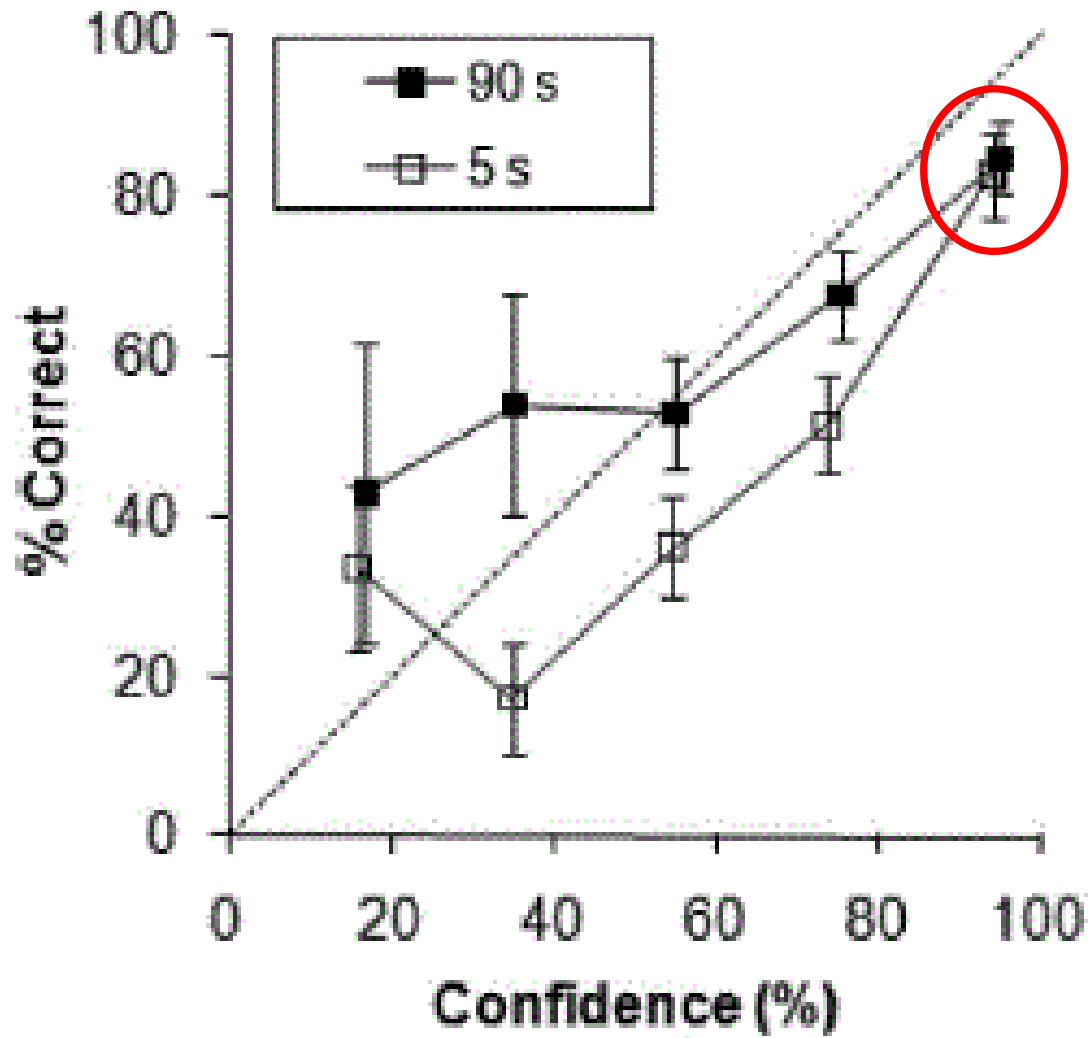
# NOT SO FAST!

- WHAT ABOUT INITIAL EYEWITNESS CONFIDENCE?
- GARRETT'S (2011) FINDINGS
  - *INITIAL CONFIDENCE RECORDED IN 52% OF WRONGFUL CONVICTION CASES*
  - *ALL WITNESSES WERE UNCERTAIN*
  - *BY TRIAL, CONFIDENCE INFLATION OCCURRED*
- USE CALIBRATION CURVES<sup>6</sup>

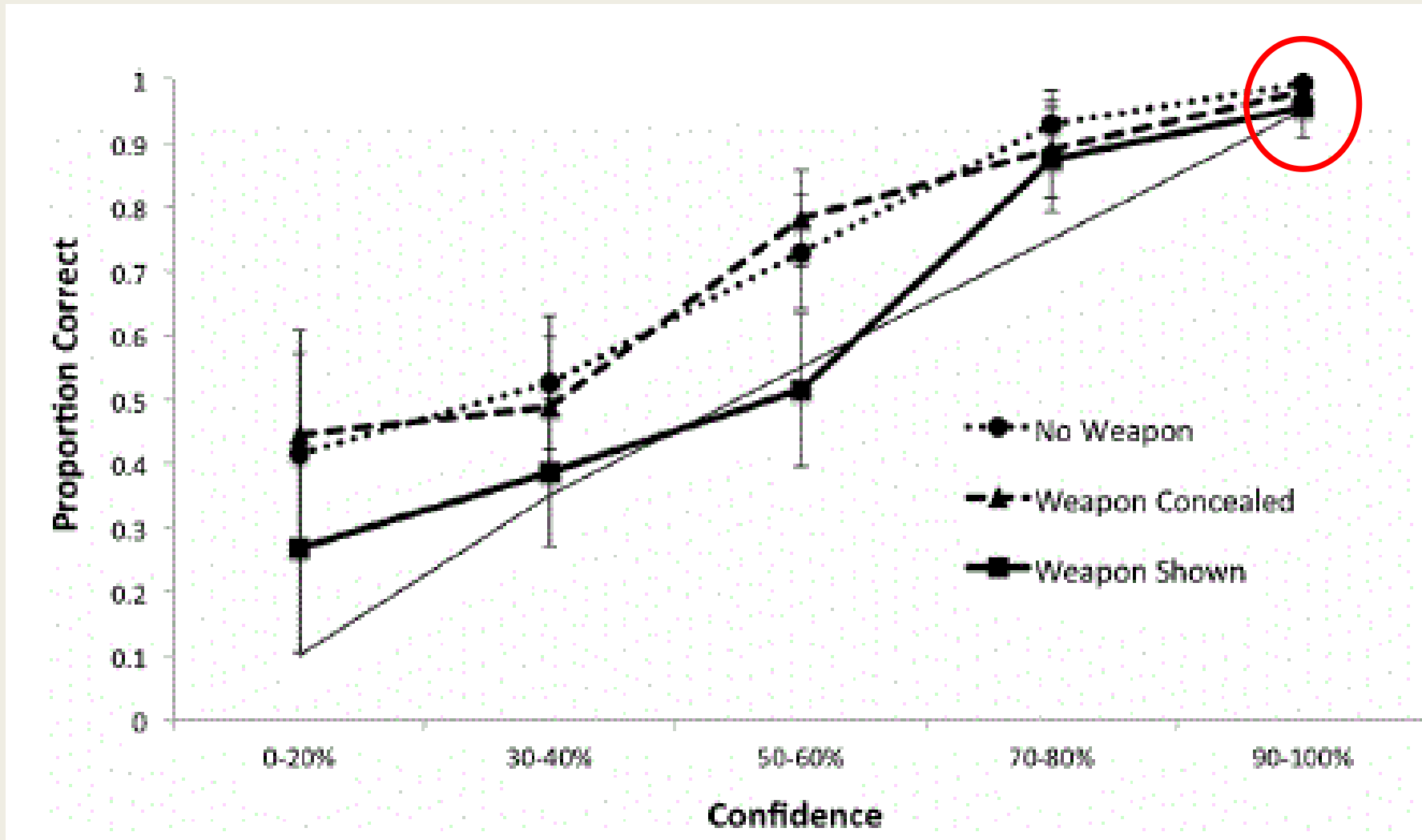


WIXTED & WELLS (2017). THE RELATIONSHIP BETWEEN EYEWITNESS CONFIDENCE AND IDENTIFICATION ACCURACY: A NEW SYNTHESIS. *PSYCHOLOGICAL SCIENCE IN THE PUBLIC INTEREST*





PALMER, BREWER, WEBER & NAGESH (2013)



CARLSON, DIAS, WEATHERFORD & CARLSON (2016)

# THE NUANCES

- PROPER MEASUREMENT<sup>7</sup>
  - *FIRST, FAIR TEST OF MEMORY*
  - *INITIAL CONFIDENCE ONLY*
  - *CHOOSERS ONLY*

<sup>7</sup> (WIXTED ET AL., 2015; WIXTED & WELLS, 2017)

# THE NEW SYNTHESIS

- IF MEASURED PROPERLY
- EYEWITNESS MEMORY IS RELIABLE<sup>8</sup>
  - *EVEN IF SYSTEM & ESTIMATOR VARIABLES HARM ACCURACY*
  - *HIGH CONFIDENCE SIGNALS GUILT*
  - *LOW CONFIDENCE SIGNALS INNOCENCE*
  
- DO JURORS UNDERSTAND THIS? IF NO, HOW CAN WE HELP THEM?

<sup>8</sup> (GRONLUND & BENJAMIN, IN PRESS). THE NEW SCIENCE OF EYEWITNESS MEMORY.

# DO JURORS UNDERSTAND?

- THE CA RELATIONSHIP IS STRONG
  - YES!
  - *SURVEYS SHOW INTUITIVE UNDERSTANDING*<sup>9</sup>

<sup>9</sup> (BENTON ET AL., 2006; DESMARAIS & READ, 2011)

# DO JURORS UNDERSTAND?

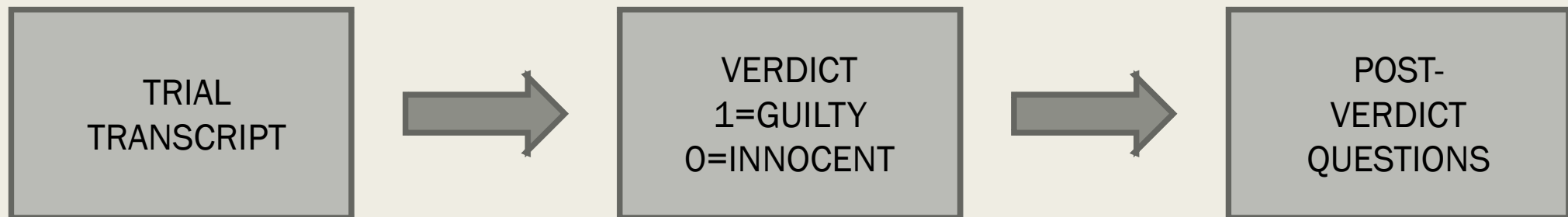
- THE MEASUREMENT NUANCES

- *NO!*
- *IGNORE TESTIMONIAL INCONSISTENCIES LIKE CONFIDENCE INFLATION<sup>10</sup>*
- *PERSUADED BY COURTROOM CONFIDENCE*

<sup>10</sup> (BRADFIELD & MCQUISTON, 2004)

# METHOD

- MOCK JURORS READ TRIAL TRANSCRIPTS
- EVALUATE WITNESS MEMORY—THE ONLY EVIDENCE
- VERDICT DECISION
  
- $N = 382$  MOCK JURORS
  - (DEMOGRAPHICALLY SIMILAR TO REAL JURORS)



# TRIAL TRANSCRIPT

**Prosecutor:** Ms. Cameron, how confident are you (**today**) that Roger Sanchez is the man who robbed you?

**Witness:** I'm (**100%**) confident

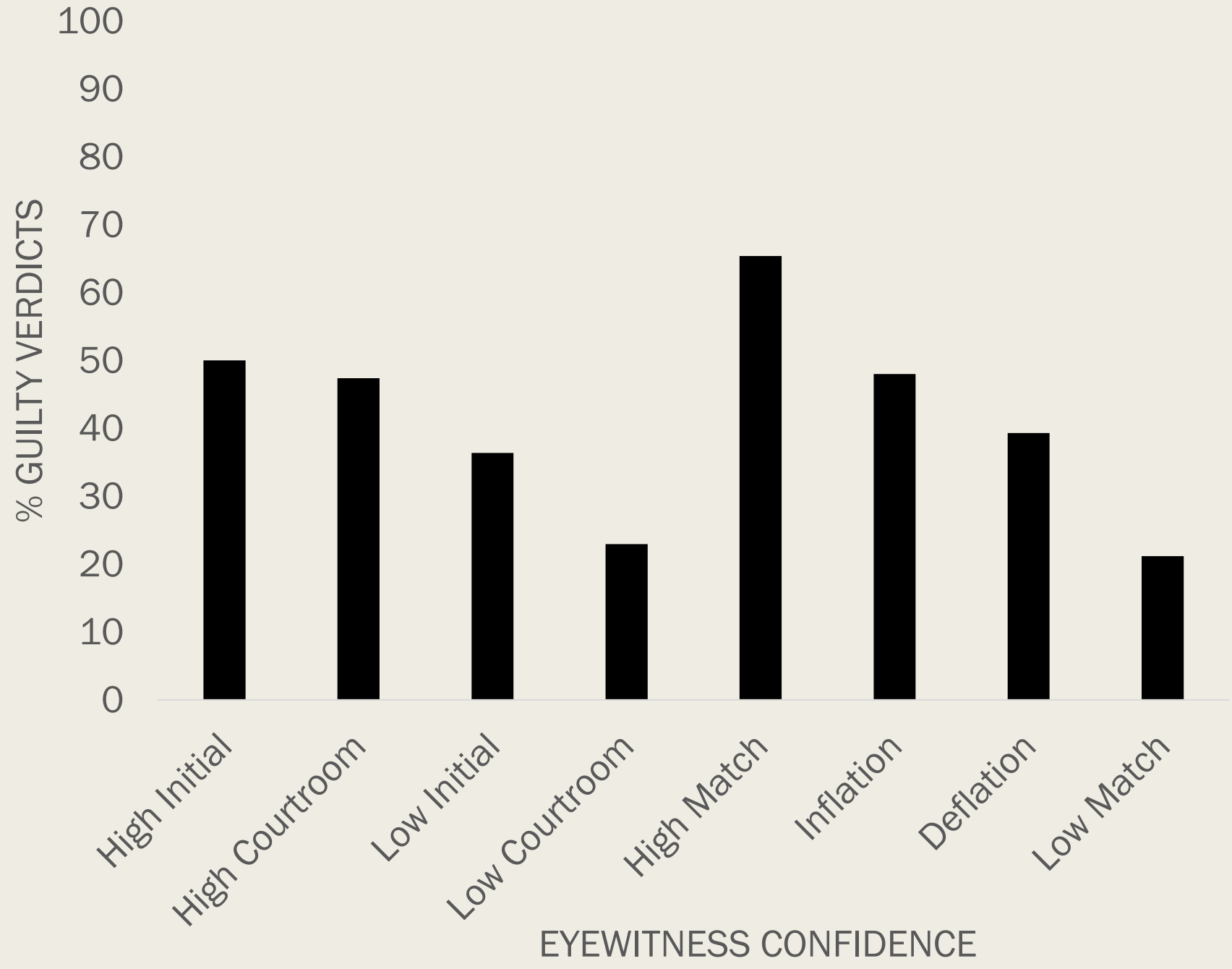
**Defense:** Am I correct when I say that you identified my client from a police lineup some time after the crime?

**Witness:** Yes, it was a week later.

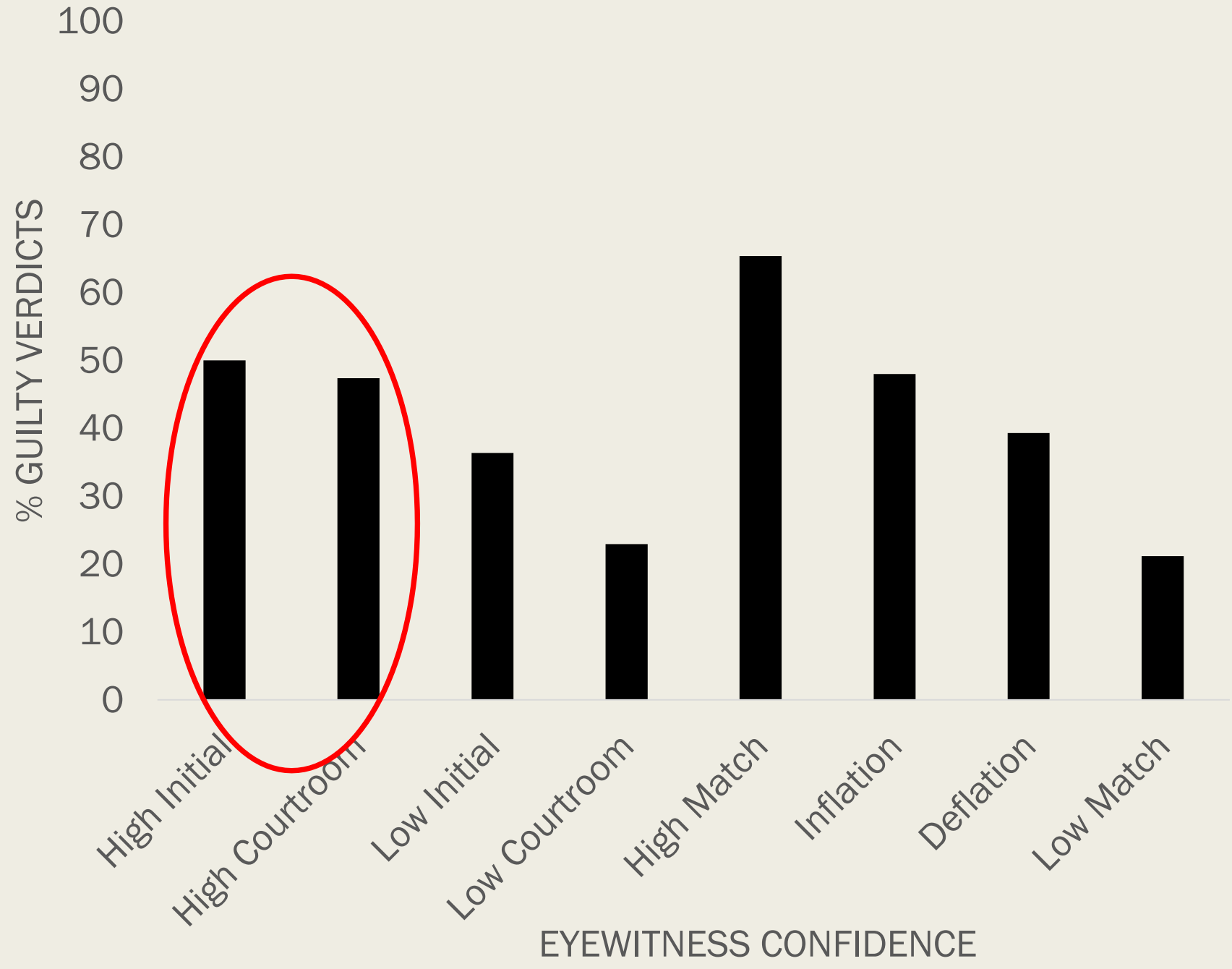
**Defense:** Did you indicate how confident you were at the time you (**initially**) made your identification?

**Witness:** I wrote "I picked out photograph #3. I am (**50%**) confident that this is the guy who robbed me"











# SUMMARY

- EYEWITNESSES ARE RELIABLE, IF MEASURED PROPERLY
- JURORS KNOW THIS INTUITIVELY, BUT...
- WE NEED TO HELP THEM UNDERSTAND THE NUANCES

# TRADITIONAL INTERVENTIONS

- PATTERN JURY INSTRUCTIONS
- EXPERT TESTIMONY
  
- SENSITIVITY = ABILITY TO WEIGH EVIDENCE (I.E., STRONG VS WEAK)
- SKEPTICISM = RESPONSE BIAS

# MY IDEAS

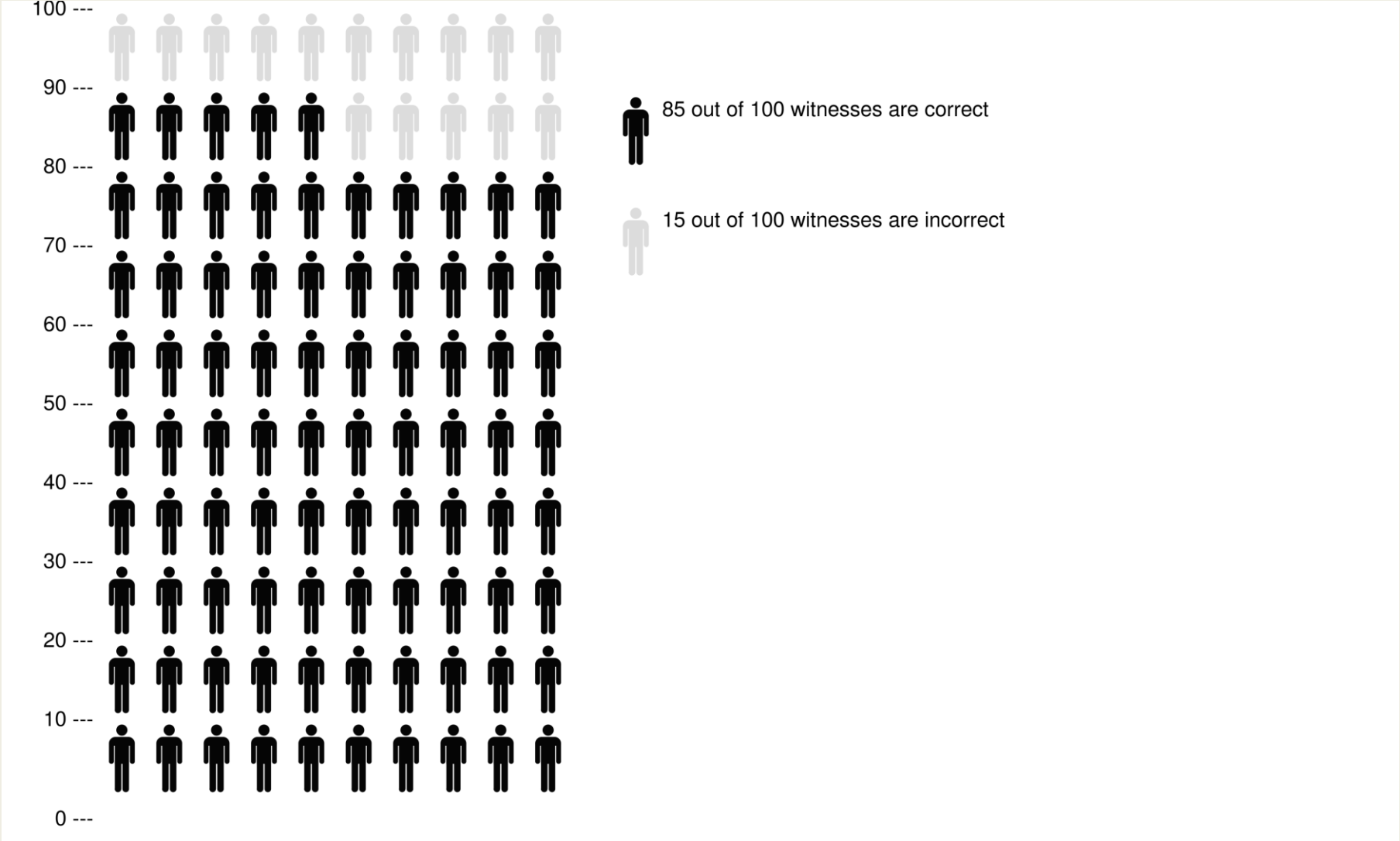
- SIMPLIFY THE MESSAGE & USE TRANSPARENT DECISION AIDS<sup>14</sup>
- FOCUS ON CONFIDENCE, PROPERLY MEASURED
- DISREGARD OTHER VARIABLES
- THE AIM:
  - *INCREASE COMPREHENSION*
  - *INCREASE SENSITIVITY, NOT SKEPTICISM*

**THANK YOU!**

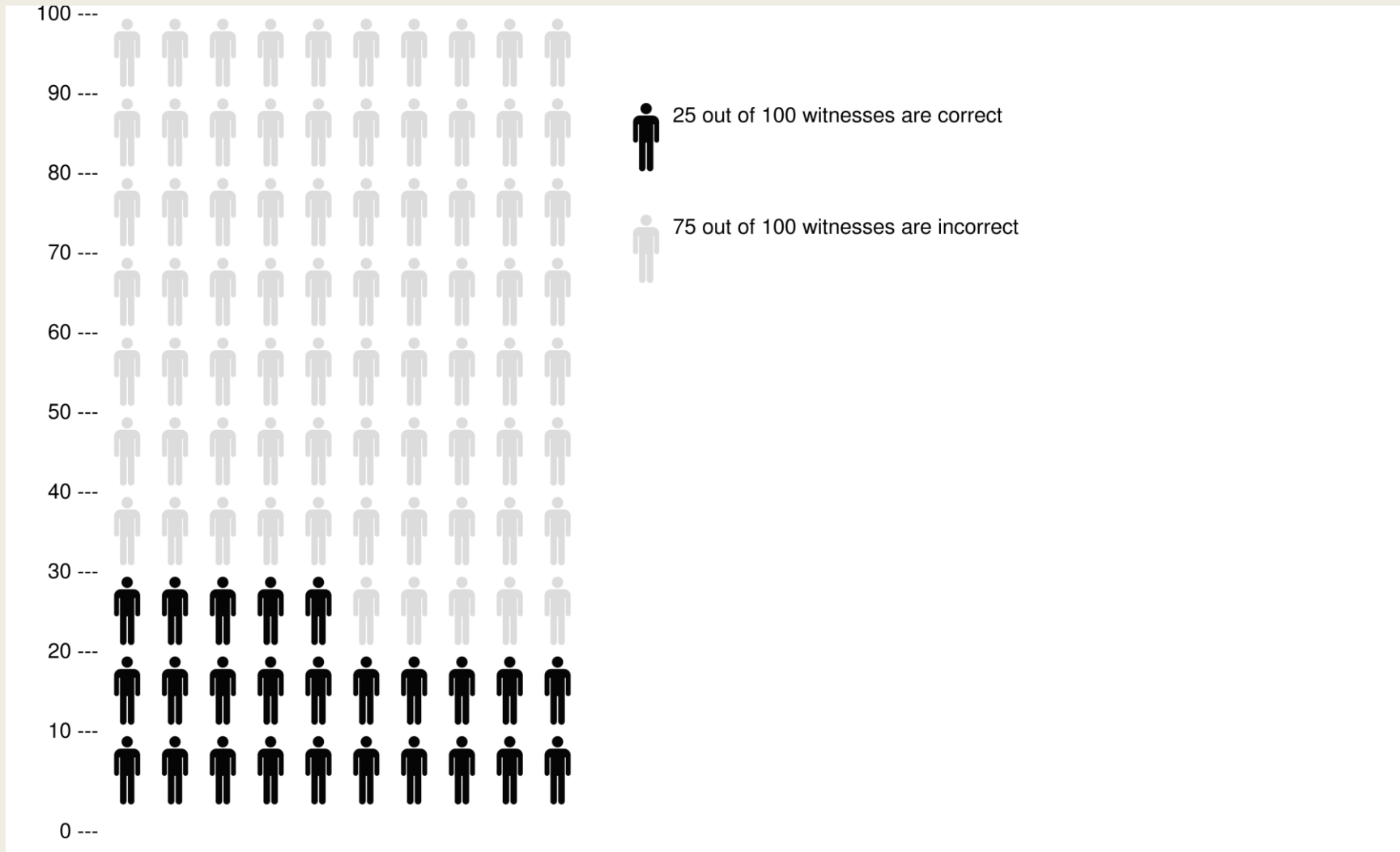


# EXAMPLE INTERVENTIONS

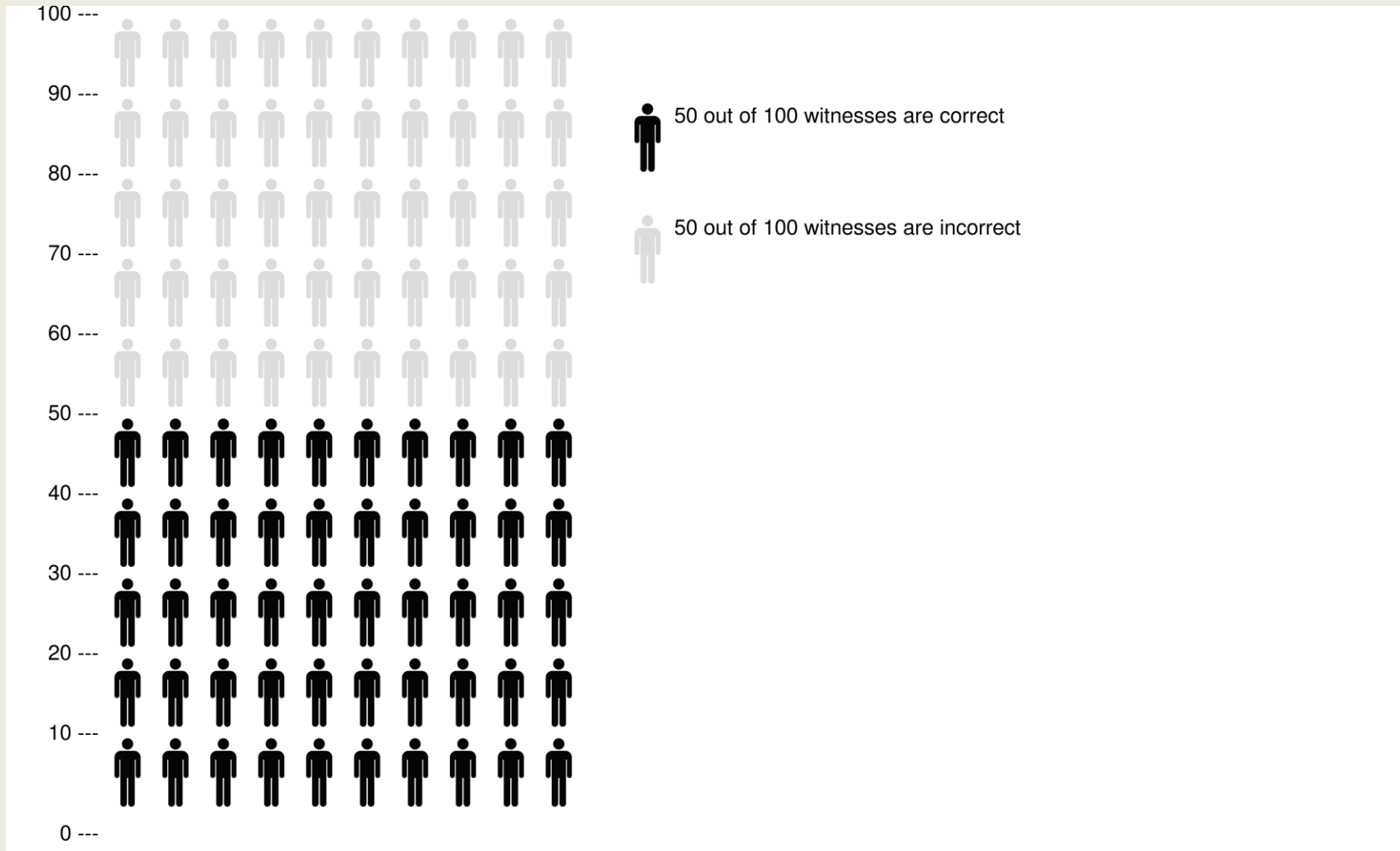
# If initial confidence = 90-100%



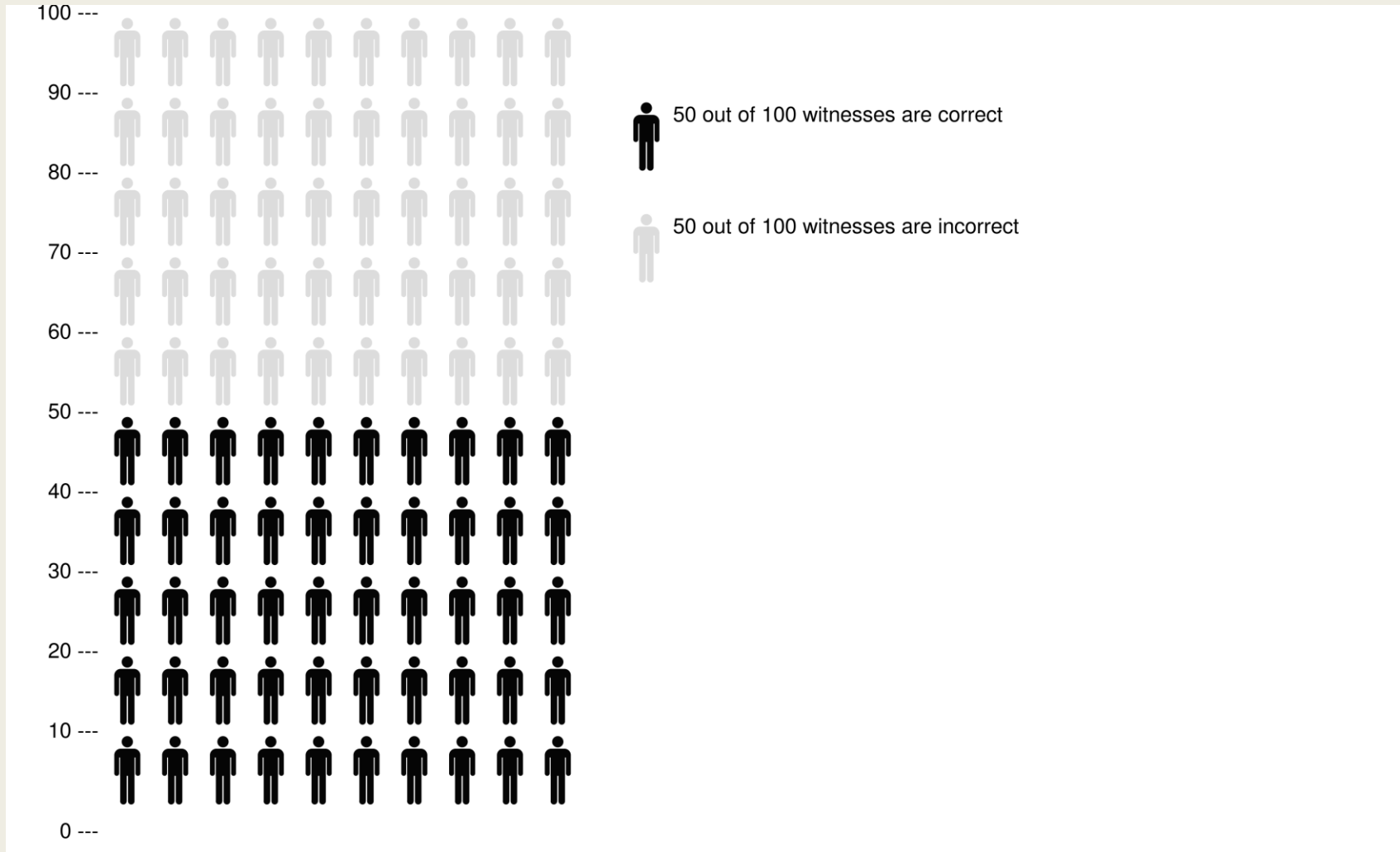
# If initial confidence = 0-20%



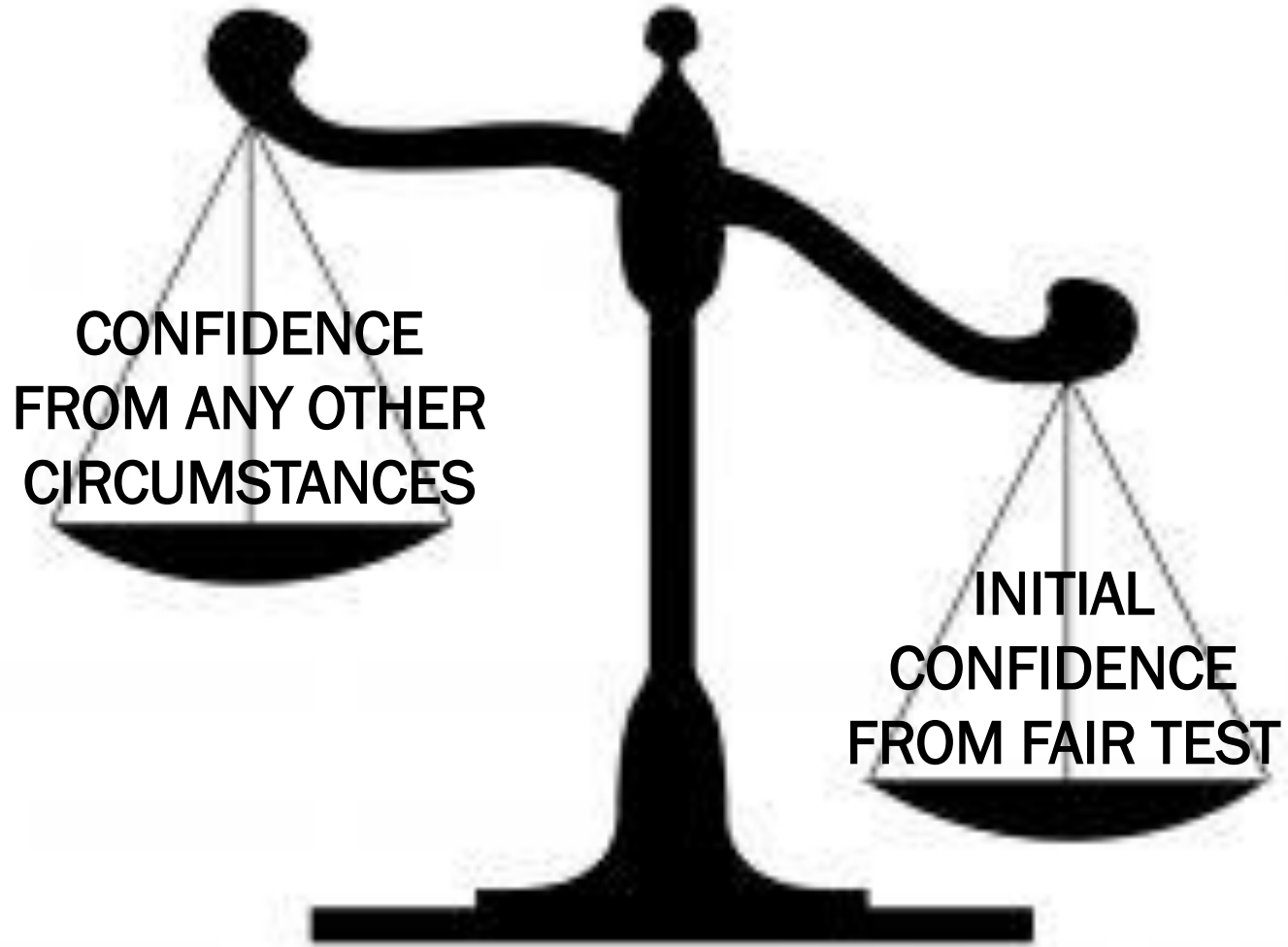
# Any level of courtroom confidence



# Confidence not from first/fair test



# EYEWITNESS RELIABILITY



# Simplified instructions

New research shows that eyewitness confidence, if recorded immediately after the first, fair test of memory (like a lineup), is strongly related to accuracy. If an eyewitness is highly confident initially, they are very likely to be accurate.

However, this is only true for the first identification procedure (lineup), and only if the suspect does not stand out unfairly.

Later expressions of confidence, like in the courtroom, are not related to accuracy and should be ignored.