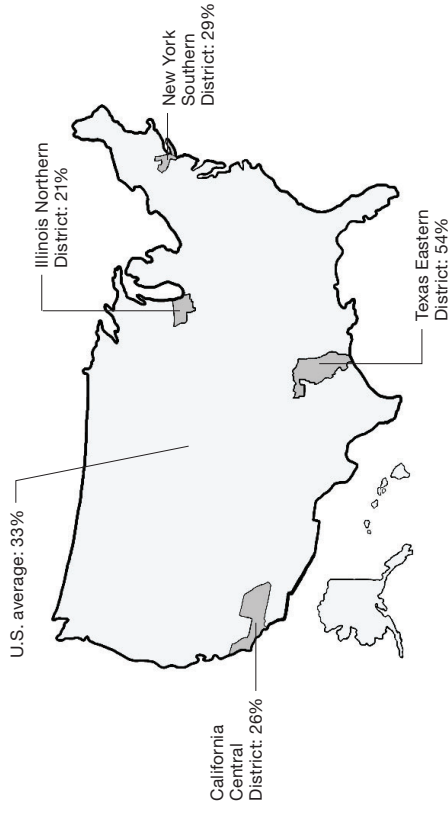


## Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938)

Harry Tompkins was walking at night on an Erie Railroad right-of-way in Pennsylvania. A protrusion from a passing train knocked him down, and a train wheel crushed his arm. Pennsylvania law required that Tompkins, a trespasser, show that Erie had acted with “wanton negligence” in order to hold it liable. But Tompkins sued in federal court in New York, where Erie was incorporated, and where he had to show that Erie had acted with mere “ordinary negligence.” Tompkins successfully argued for applying the federal standard.

Erie’s appeals eventually reached the U.S. Supreme Court, which ruled that courts must apply the law of the state in which an incident occurs. The decision greatly limited **forum shopping**, the practice of suing in the court most likely to favor one’s claims. Litigants in some types of cases, however, such as patent infringements, continued to have access to multiple federal courts. But in 2017, the Supreme Court ruled that patent suits must be filed in the jurisdiction in which an accused infringer is incorporated, or in which it committed the alleged infringement and has a regular place of business. Americans continue to forum shop when possible—for example by filing defamation suits in the United Kingdom, where laws tend to favor plaintiffs.



Patentee victory rates in federal patent infringement claims, 1997–2016  
[Source: 2017 Patent Litigation Study, PWC]

Did you have lunch with Natalie that day?

Yes.



Leading questions

Can you tell the court what you did that day?

Well, I was going to go to lunch with my friend Natalie and after that we were going to get our nails done but there was this really cute dress in the window that I just had to try on so I go inside and while I'm in there I realize I had forgotten all about Natalie so I said to the clerk I said why don't you hold this for me until after lunch that way I don't forget and she's like no way to hold this for you if she wants it and I said well cause I love the dress so she really goes with my



Non-leading questions

## A hostile witness can be helpful.

**Friendly witnesses** are those called to give testimony in support of one's own case. **Hostile witnesses** are called by the opposing party. An examining attorney may ask **leading questions**—those calling for yes/no responses—only of the opposing party's witnesses. However, if a friendly witness is evasive or uncooperative, the examining attorney may request permission from the judge to treat the witness as hostile. If granted, the attorney may ask leading questions, allowing the attorney much tighter control of the examination.

Caucasians are pink.  
Spam is pink.  
Bubblegum is pink.  
My dog's tongue is pink.  
There must be other pink things.



**Proper induction**  
premises suggest  
likely conclusion

Caucasians are pink.  
I am Caucasian.  
I am pink.



**Proper deduction**  
premises guarantee  
truth of conclusion

I am pink.  
Spam is pink.  
I'm pink; therefore I'm Spam.

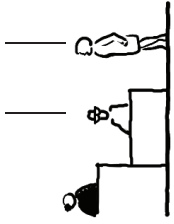


**Improper deduction**  
premises do not  
suggest conclusion

## A hostile witness can be helpful.

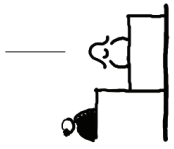
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I saw the defendant stab her.  
Mr. Lard?

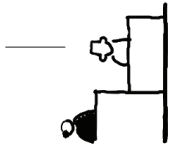


Direct evidence

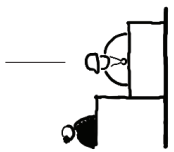
I sold the defendant a knife.



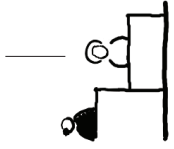
I saw the defendant enter the premises.



The defendant had blood on his shirt.



The defendant had seemed upset with her.

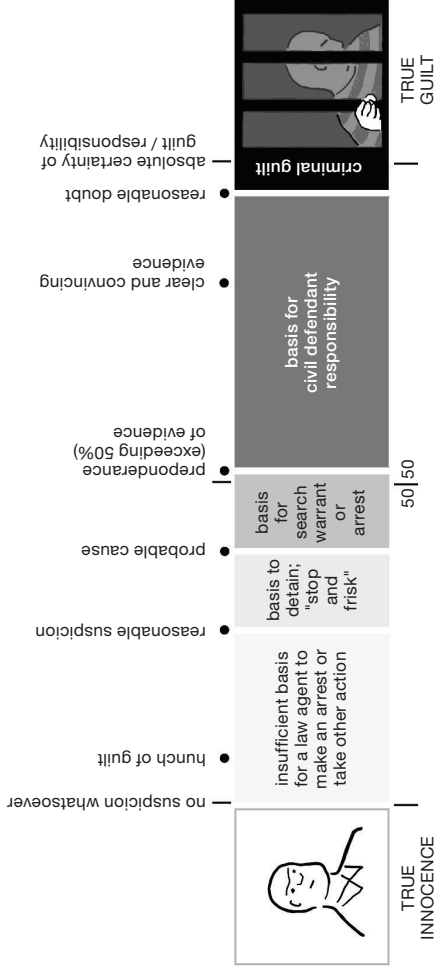


Circumstantial evidence

## Circumstantial evidence may be more damning than direct evidence.

**Direct evidence** supports an assertion without need for other evidence or inferences. Eyewitness testimony is a common form of direct evidence, as it directly supports the prosecution's case against a defendant.

**Circumstantial evidence** has more than one possible interpretation, and must be connected to other evidence or inferences to indicate a defendant's direct connection to a crime. If multiple sources provide such testimony, such that each checks and reinforces the others, a convincing argument may be made. By contrast, a single instance of direct eyewitness testimony may be faulty or driven by ulterior motives.



## A jury that believes a criminal defendant is “probably guilty” must acquit.

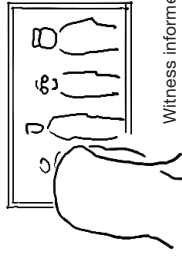
In issuing a verdict of guilty, a jury asserts its belief, beyond a reasonable doubt, that a criminal defendant is responsible for a crime. Such doubt must be derived rationally from the evidence, or from a lack of evidence, presented by the prosecution. It cannot be based on sympathy for the accused or on fanciful conjecture, such as whether a time traveler was the true perpetrator of the crime.



Photos of possible perpetrators shown one at a time instead of in groups, to discourage selection through elimination



Photo ID's conducted by computer or by police officers unfamiliar with the case to minimize suggestion



Witness informed that none of individuals viewed may be the perpetrator, to discourage selection of "most likely"

## Memory is a crime scene.

According to the Innocence Project, more than three-fourths of convicts exonerated by DNA testing had been found guilty on the basis of eyewitness testimony. Once thought highly accurate, eyewitness memory of an event is now known to be distorted by subsequent events, including the manner in which police conduct questioning, photo identifications, and lineups. Like an unprotected crime scene, one's memory of a crime is a record that can be irrevocably altered by later events taking place in the same space.