

Preventing False Convictions in Los Angeles County by Assessing the Reliability of Eyewitness

Identification

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Abstract

Throughout the process of identifying a suspect as the perpetrator of a crime, police questioning, ability of sight, and various circumstances attribute to the accuracy of the identification. According to a Michigan State University study, around 2-10% of all court cases convict an innocent individual in regards to the crime (Grisham, 2018, p. 2). As a result, 46,000 to 230,000 innocent prisoners would be present throughout the United States jail systems at the moment, leading to years of lost time and experiences from lives. Moreover, jails may potentially prove to be detrimental to an individual's physical and mental health, especially for an individual who may be serving time for a crime they were not apart of. In many eyewitness identification cases, which appear in one third of all court cases, the conviction of a witness, who saw the crime occur, often proves to be the deciding factor in a case without known reliable evidence. This study consists of a thorough review of 50 cases in which an eyewitness identification was made, and an eyewitness expert was called to testify either on behalf of the plaintiff, the prosecution team, or the defendant, the side of the prosecuted. Additionally, an eyewitness expert, who has over 30 years of experience was interviewed to give perspective on the matter, and the uses of experts in the courtroom. Based on these findings, the research was shifted to focus on Los Angeles County, California, where the crime rate is nine times higher than the national median, and propose viable solutions to this issue.. Ultimately, this paper strives to produce valuable data from these methods in order to construct a feasible conclusion based on the effectiveness of eyewitness experts when called to testify in the courtroom.

Introduction

Out of 362 DNA-exonerated prisoners recorded by the *Innocence Project*, 70% involved an instance of eyewitness misidentification, resulting in more than 5,000 years of total prison time served by innocent individuals (2019). Overall, the process of eyewitness identification appears in questioning and evidence in around one third of all court cases, making it a vital factor in several prosecutions. In many of these cases, juries consider the testimony of a witness as the main evidence used to convict a suspect despite many uncertainties an eyewitness identification carries into court. Often times, a criminal suspect can either be exonerated or highlighted further through the testimony of an eyewitness expert, who can assess the factors of the identification such as eyesight limitations, time of day, stress, and memory limitations. Multiple studies have discussed the unreliability and varying factors of the human memory, which should be taken into account when juries decide whether or not to convict an individual. In other words, juries are often heavily influenced by an identification made by another human, leading to a lenient decision in many cases that may be detrimental to an innocent suspect. Moreover, improving the practices of eyewitness testimony in criminal court cases, including taking into account the validity of an identification with an eyewitness expert, would most-likely help decrease the amount of false convictions caused by eyewitness misidentification. While current wrongly convicted prisoners may only be exonerated through deoxyribose nucleic acid (DNA) evidence as time passes, encouraging improvements in the court system may help falsely convicted individuals of eyewitness misidentification in the future from losing valuable time from their lives in prison, as well as keeping those who cannot be saved by DNA traces out. DNA tests are accurate in around 99% of tests, and can be used if traces of blood, saliva, semen, hair, or other

identifying parts of an individual are found at a crime scene to testify against a matching suspect. In Los Angeles County, California, the main focuses of this analysis include examining the limitations of eyesight, judge perception, and court practices including lineups and police questioning in relation to an eyewitness expert testimony. Historically, most of the crimes in which an eyewitness identification affects a conviction in court are violent, including murder, rape, or kidnapping. Consequently, the sentences on these cases are longer on average, showing the urgency of court reforms in Los Angeles County to prevent innocent individuals from serving that time. At the same time, cases that do not involve violence are more likely to contain less evidence from the scene, leaving eyewitnesses and testimonies as the only possible evidence in many of these instances. Encouraging the utilization of an eyewitness expert in various fields such as police officer training for investigation and providing information for a case would help drastically increase the amount of exonerations in the country as well as decrease the amount of false convictions in courts. All in all, discussing the factors of eyewitness identification failure and assessing how it should be considered in criminal cases would reduce the amount of false convictions, leading to a more efficient court system in which individuals would not serve time for a crime they did not commit.

Literature Review

Many studies have been conducted on the faulty evidence eyewitness identifications may provide in certain situations, but very few have taken into account the use of an eyewitness expert. In several court cases, eyewitness experts have been excluded due to regulations in counties, as was the case in Chicago, in Cook County, Illinois, in 2012, when Eduardo Lerma was convicted of first-degree murder against his neighbor. However, in 2016, the state of Illinois

allowed a retrial for Lerma, with the inclusion of an eyewitness expert, and eventually overturned the original conviction because of the expert testimony being able to properly evaluate the identification circumstances under which Lerma was misperceived.. Throughout the United States, it is becoming more common for courts to allow an eyewitness expert to testify on behalf of a defendant or the plaintiff. The defendant refers to the side of the case for the side of the individual who is being prosecuted, whereas the plaintiff makes up the side of the prosecutors of the criminal. As for Los Angeles County, California, eyewitness expert testimonies are permissible in court, but not always accessible because there are not clear regulations on the experts within the state. There have been examples of cases in which an eyewitness expert helped exonerate an individual in Los Angeles County without DNA evidence being apart of the case, but not freely accessible, due to privacy issues. Overall, the majority of the literature used in this research project focus on these faulty factors of eyewitness identification such as foggy memory, misinterpretations in the courtroom, and cross-racial identifications to provide a basis for how an eyewitness expert can be utilized in a court case.

Cross-Racial Identifications

In an article written in 1984, Cornell University Law Professor Sheri Johnson details the aspects of cross-racial identifications used in criminal cases. This study explains the reliability of identifications made by witnesses of a different race than the suspect, how juries interpret them, and provides potential solutions to dealing with the phenomenon known as the “own-race” effect. Statistics derived from various studies display the noticeable difference of identifying individuals of a witness’s own race compared to a different race, which could lead to a false identification and conviction in court. In fact, the least accurate identification scenario,

according to Johnson, is a white witness identifying a black subject, one example of a common situation in court. In a different study, Professor Laura Connelly of the University of Michigan Law School provides an in-depth analysis of the cross-racial identification process including how courts deal with it, own-race bias, and potential reforms for federal agencies and police practices. While courts have yet to reform their policies on limiting the validation of cross-racial identifications, the effects of misidentifying a suspect in a criminal case may cause inaccurate convictions in future cases. Considering eyewitness experts in another light, an effective method of improving the reliability of eyewitness identification is to use the professionals to train police officers to properly conduct a suitable investigation with credible lineups, questioning, and more. In 2001, Christian Meissner of Iowa State University studied thirty years of cross-racial identifications, proving that it has a major effect on the jury's decision-making and the accuracy of the identification. Overwhelmingly, the amount of incorrect identifications display a despairing gap between identifications of a suspect of the same race and of a different race. Basically, eyewitness experts may utilize this data in order to suggest that cross-racial identifications are less accurate overall. Throughout the study, it is shown that it is psychologically more difficult for individuals to differentiate facial features of another race. Altogether, the cross-racial identifications impact minorities (non-white individuals) the most because it is more likely for witnesses to be white if the suspected criminal is non-white, statistically and historically speaking. In many instances, this can contribute to a wrongful conviction and sentence of an innocent individual, but eyewitness experts have the ability to warn courts about the history of cross-racial identifications if there is a case involving two or more different racial ethnicities.

The Innocence Project

The Innocence Project is a non-profit organization, which runs a website (www.innocenceproject.org) and works on attempting to exonerate innocent prisoners due to faulty evidence, misidentifications, and improper practices. This page displays statistics and causes of witnesses identifying an innocent individual in a criminal case, which often sways courts to convict the wrong suspects. Additionally, there are over 360 examples of cases in which an innocent individual had served jail time for a crime they did not commit, and how they were released. As of May 2019, more than 70% of overturned criminal cases were originally determined with the evidence of a false identification, leading to inaccurate convictions. However, one difficulty in exonerations overall is that when DNA evidence is unattainable or illegible, it is difficult to prove innocence without the use of an eyewitness expert. Experts can essentially free a suspect based on the probability of an accurate identification given the circumstances, which has been the case in multiple scenarios throughout the United States. Furthermore, the cases have exploited gaps in the processes of several courts including police investigation misconducts, inadequate defenses, and other factors resulting in innocent individuals being convicted of crimes.

Eyewitness Identification Procedures and Factors

Eyewitnesses are often influenced by multiple factors such as using suspect fillers in a lineup, which are used to prevent the witness from selecting the wrong individual. Ryan Fitzgerald, from the University of Portsmouth in England, explores how lineups may negatively or positively alter a decision made by a witness who tries to remember what he or she saw during a crime. Experts called to testify before courts may utilize this information when providing

information on how reliable an identification is. Elizabeth Loftus, a distinguished University of California, Irvine professor, explains the aspects of human memory that may impact a decision made by an eyewitness. Multiple examples of eyewitnesses forgetting a crucial instance of a case or remembering an event that never happened have led to false convictions in court.

Szpitalak and Polczyk explore the health factors which could lead witnesses to misidentifying a criminal in lineups or questioning (2014). Awareness, fatigue, and mental readiness all contribute to the accuracy of an eyewitness and their identification. When these levels are not favorable, a false identification, and eventually, a false conviction is more likely to occur. Gary Wells, a distinguished Ohio State University psychology professor, along with Florida Southern College psychology professor Deah Quinlivan, provides background on United States Supreme Court procedures used to describe how eyewitness testimony is used and perceived by juries. One of the most important cases they base the article off of is *Manson v. Brathwaite* from 1977 which regulates eyewitness procedures still used in modern courts. In addition, the greatest memory loss comes just hours after witnessing an event, indicating that many identifications are not as accurate as they could be when taking place too long after the crime occurred.

Eyewitness Expert Testimony

Throughout the history of criminal cases, there has been controversy in several cases of potential eyewitness misidentification, as some individuals who were convicted under faulty evidence have died in prison without experiencing life as it was before the trial. For example, Darrell Edwards, whose identification was ruled unreliable after he was sentenced to life in prison in Newark, New Jersey, passed away before he could receive a second trial for his murder case (Loftus, G. 2010). In another controversial case, the alleged Lockerbie, Scotland bomber

who exploded a plane, was convicted under dubious speculations from a store shop owner (Loftus, E., 2013). Due to determined police questioning focused on a specific suspect, Abdel Baset Al-Megrahi, the sole witness changed his description of the suspect to fit the police suspect's attributes. Although the shop owner believed the suspect was six feet tall at first, he later selected the five foot, eight inch man, Al-Megrahi, who was then sentenced to death as a result. Among the other factors an eyewitness expert may be able to provide information for the jury, hypnosis is a commonly practiced forensic technique that has been proven to cause witnesses to inherit false memories, and make an inaccurate identification on deceiving memories. Experts may be specialized individuals, most commonly psychologists and optometrists with extensive knowledge on eyewitness identifications.

Question and New Direction

After thoroughly researching the topic of eyewitness identification and its factors, the area of the topic that needs the most attention is the use of eyewitness expert testimonies. While there are plenty of cases where DNA evidence can be collected and compared to correctly convict a criminal, when DNA is not able to be gathered, an eyewitness expert is crucial for cases in which a crime was witnessed. An eyewitness expert informs the court of any potential difficulties in comprehending an identification and plays an important role in numerous cases, namely exoneration cases. Other directions that were taken into consideration included exploring deeper into cross-racial identifications and improving the accuracy and reliability of them, but there is minimal data and solid correlation to work with, as the phenomenon cannot be fully explained with numbers. Additionally, confidence levels in eyewitness identifiers could have been further researched, but it is proven that the confidence rarely correlates to the accuracy

of an identification, and sometimes persuades the jury to favor the identification more (Berkowitz & Loftus, p. 15, 2018). All in all, the main question of this study is: How can juries in Los Angeles County consider an eyewitness expert testimony when making decisions on cases involving them?

This research paper will provide emphasis on the need for eyewitness experts in giving testimonies and even training police officers when questioning individuals who witnessed a crime. Given the outside variables that impact the accuracy of an identification including memory loss, police influence, and cross-racial identifications, the direction of the study will help to prevent more false convictions in Los Angeles County through various suggestions in reforms. Currently, eyewitness experts are permitted to be used by either side in a criminal case, but can be utilized to the advantage of the justice system more often to insure the most efficient court environments that represent justice and the United States Constitution correctly. In the end, the goal is to influence reforms in the court in order to implement eyewitness experts to provide useful information to help juries correctly decide on a case.

Methods

In order to reach a conclusion on the effectiveness of experts in courts, the first step was to research examples of cases, 50 total from 1975 to present day in the United States, in which an eyewitness expert was called to testify for the individual facing charges for a crime. Similarly to the method of studying cases used by Wells, Memon, and Penrod (2006), the varying impacts of eyewitness experts were found. In their study, the factors of defendants being either guilty or innocent in a case were measured, whereas in this study, the factors are based off of eyewitness expert impacts which were categorized by two variables: whether the expert was able to limit

human bias or not, and whether the expert was able to authenticate an identification. Limiting human bias refers to giving the testimony and being able to give an outlook on how the evidence submitted for the case was viewed. By effectively containing the power of a witness, courts would more easily be able to rely on other evidence and more accurately decide on a verdict or conviction. Authentication of an identification means completely validating or rejecting evidence, so that the identification made can be further used or discarded when deciding on a verdict. As each piece of evidence in a case is vital to reaching a conclusion for the case, eyewitness experts can completely change the course of the criminal case in either direction. Authentication can be classified as confirming that an identification is valid or testifying that the identification is invalid and should not be used as evidence. Overall, the cases studied were taken from *The Innocence Project*, websites of eyewitness experts, and various sources in which court case records were available. Furthermore, based on these studies, tendencies and common misconceptions or malpractices in courts were discovered to further the research, such as improper investigations, circumstantial evidence, and more. In several expert instances, the evaluation of identification circumstances has allowed a suspect to completely prevent a false conviction or help the prosecution convict a criminal. After collecting data, the topic was narrowed down to focus on a specific county, Los Angeles, California, due to the high crime rates, which are nine times the national average, per square mile. The last step is to propose solutions for courts to use in determining whether evidence provided via eyewitness identification is eligible for making crucial decisions on convictions in relationship to the utilization of eyewitness experts in criminal cases.

The interviewee of the study was Dr. Paul Michel, an optometrist from Colorado, who is also an eyewitness expert. Over the course of his expert career, he has worked in 52 cases throughout the United States by validating eyewitness identifications in court cases by assessing the visual limitations and factors of the time a witness saw an event. With the addition of gaining the perspective of an expert, this project expanded its sources and also retrieved several examples of court cases with an eyewitness expert used, an important resource for the study.

Results and Discussion

After reviewing the data gathered through scholarly articles, professional input, and interviews, the best solutions to the issue of eyewitness identification include gathering the most information as possible to assess how accurate a witness is, utilizing an eyewitness expert to do so, and open the doors for retrials to exonerate innocent individuals. Out of the 50 cases studied since 1975, 46 of them (92%), proved that an eyewitness expert was able to limit human bias in the court. For example, in the case of *Moreno v. Texas* in 1997, the expert testifying for the defendant proved that the eyewitness identification submitted was not as reliable as it was perceived. As a result, Ricardo Moreno was able to overturn his original conviction of intoxicated driving through the retrial with an eyewitness expert. On the other hand, one of the four cases in which an expert did not effectively limit human bias was the case of Selwyn Days, where he still falsely confessed to committing murder in the state of New York despite the help of an eyewitness expert. Moreover, in 13 out of the 50 cases (26%), an eyewitness expert was able to determine the validity of the identification. For instance, psychology professor Geoffrey Loftus was able to confirm that the identification of Darrell Edwards in 1995 was invalid and helped him prevent jail time for murder in New Jersey. Furthermore, Paul Michel was able to

confirm the description of a witness based on the light and distance the witness viewed the suspect at in 1999. As a result, Kerry Max Cook was freed from prison after serving 20 years for a murder in Texas that he was put on death row for. The first witness believed the suspect had grey hair, while Cook had jet black hair, and Dr. Michel was able to testify that the first witness' description was accurate due to the fact that she had viewed the murderer from 10 feet in sufficient lighting. Based on the cases studied from 1975 to 2016, the data shows that eyewitness experts are extremely helpful in the majority of criminal cases, and are necessary for the freedom and justice of individuals facing false convictions.

In many cases, the jury was informed of an identification that was biased on behalf of police questioning, evidence gatherers, or even the witness themselves, and did not take this into proper consideration. With careful regulations, the court system should be well supervised to prevent impartial identifications from occurring because of one person, whose motives may be to convict an innocent individual. Although there will not be a way for research to completely halt corruption in courts, the implementation of various strict regulations on police questioners, jailhouse informants, and more would help courts to have a better understanding of eyewitness identifications and help innocent citizens stay out of a dreadful prison.

In the interview with optometrist and eyewitness expert Dr. Paul Michel, he explained that real information, that is used by experts such as himself, can be used in courts to nullify or confirm a conviction. One aspect discussed was the limitations of eyesight, which come along with numerous factors such as vision ability, daylight, use of sunglasses or prescription glasses and/or contacts, distance, stress, alcohol consumption, and more. Overall, the most important statistic mentioned by Dr. Michel was that witnesses who observe a crime can identify the face

of the criminal if the witness had 20/20 vision and saw the event at 40 feet away without shadows potentially interfering with an identification, and with the witness experiencing low stress, little to no alcohol consumption, and steady memory. All of these factors would make for a reasonable and valid identification in court, while many jurors do not take into account the numerous factors that could hinder an identification. In many cases, some identifications that have been made from over 100 feet have been submitted as valid evidence for court, leading to an incorrect conviction. As an eyewitness expert, Dr. Michel worked on a case that took place in Los Angeles County for defendant Frank O'Connell, who was convicted of shooting and killing a man in South Pasadena, California. With his knowledge of the limitations on eyesight, Dr. Michel was able to testify to courts that this identification was invalid because the witness was not wearing his eyeglasses at the time of the event, and it would have been impossible for him to recognize the face of O'Connell. As a result, O'Connell was released after spending 27 years in prison for a crime he did not commit along with earning \$15 million in court settlements with Los Angeles County. Since 1989, there have been 63 exonerations of individuals in Los Angeles County alone, proving that even with recent reforms, there is still concern over improper court practices throughout the United States.

Regarding lineups and cross-racial factors, it has been proven that court practices have impacted the wrongful convictions of several individuals. Police questioning involving an eyewitness most often includes a photo lineup in which multiple photos of individuals, including the suspect, who the police believe committed the crime, are shown to be chosen from. In most cases of a misidentification of a criminal, the pressure from police officers while guiding the investigation has drastically impacted an identification. For example, a police officer may

intentionally or unintentionally persuade the witness to choose the suspect that is under suspicion of the crime. As a result, the courts may accept this identification as evidence and go on to wrongfully convict an innocent individual due to misconduct. On the other hand, witnesses may be subject to inaccurate identifications as a result of cross-racial identification, the concept of attempting to recognize a face of a different race. For instance, in a study that depicted the variables involved in cross-racial identification, white individuals misidentified black subjects 54.8% of the time compared to just 23.2% of white subjects (Johnson, p. 940, 1984).

Additionally, many Asian-Americans, African-Americans, and Hispanics have difficulties identifying faces of races outside of their own. Subsequently, in a criminal court case, identifications may be less reliable and additional evidence would be needed to confidently convict an individual of a crime. According to the American Community Survey, as of 2016 in Los Angeles County, Hispanics composed 48.5% of the total population, Whites 23.6%, Asians 14.4%, and Blacks 7.8%. Despite the fact that many citizens interact with several individuals of a different race on a daily basis, the cross-racial effect is naturally evident and can significantly sway the outcome of a court decision. Another example of corruption comes in the form of bribery, where an individual may pay the judge to convict a certain individual, or perjury, where an untruth is told in front of the court and may be used as corroborating evidence. In Los Angeles County court cases, evidence is submitted to a single judge, who can easily be persuaded through money or lies and disrupt the justice system. Because of these findings, this study has led to the conclusion that having more than one individual in control of evidence would be a preventative measure for corruption in courts and may subsequently allow for more efficient convictions and an increase in effectiveness of eyewitness experts. At the same time,

multiple eyewitness experts should be utilized if possible when giving testimony and information in order to provide confirmation and prevent corruption of evidence in the process.

Most court cases involve a testimony on behalf of a witness for the plaintiff, confirming their identification, but the more publicized cases involve an expert testifying on behalf of the defendant. Often times, eyewitnesses receive immunity from the case and favorable conditions in exchange for their testimony. In 1977, an eyewitness testimony against Randall Adams was submitted as evidence in a murder case, but the actual murderer was the witness, who was consequently granted immunity for their identification.. With the implementation of eyewitness experts into courts, the human bias of cases may be limited via the actual identification, the testimonies involved, and using hard, indisputable evidence. Throughout the past decade, the use of DNA tests in criminal cases have provided the most accurate evidence in finding a suspected criminal, but eyewitness identification becomes most important when there is no obtainable DNA strands from blood, fingerprints, hair, semen, saliva, and more. Furthermore, the cost and difficulty of receiving accurate DNA strands from an individual has decreased significantly over the past few decades, which has played a large part in the exonerations of innocent individuals from prisons. The use of eyewitness experts is crucial in such cases in order for evaluations of eyewitness identifications to be valued to the highest capacity. In almost every case of a mistaken conviction that has been overturned, DNA testing was able to free the innocent individual, so when cases do not have valid DNA evidence to bring forth, assessing validity of an identification in court may be the only chance innocent individuals have of avoiding a lengthy prison sentence. Furthermore, a study by professors that are experts in eyewitness procedures found that confidence in an identification has minimal implications and

correlation to the actual accuracy of the identification (Wells & Olson, p. 285, 2003). While many judges may use the confidence of a witness to corroborate certain evidence, this strategy has led to multiple innocent individuals being convicted of a serious crime. However, there is a correlation between the time a witness chooses who they believe committed a crime from a lineup, as an identification made at 12 seconds or less is 90% accurate, whereas longer than that is less than 50% accurate. Consequently, the courts could implement the requirement of timing identifications to assess their validity and replace confidence in their evidence files.

Ultimately, the best solutions for assessing the reliability of eyewitness identification in Los Angeles County, California involving an eyewitness expert include regulation of lineups, limitation of human bias in identifications and testimonies, and supervision of courts including police and judges involved. Although it is difficult to make all these changes immediately, each one of the noted proposals would drastically improve the efficiency of courts and improve the state of the court systems in Los Angeles County, which would also influence justice systems around the United States. In the end, the technological advances from recent studies have significantly influenced the efficiency of various techniques used in courts, but relying on multiple eyewitness experts for certain cases would enable courts to have more options and information when deciding on a crucial case of a crime, whether it is a violent crime or not.

Limitations

Despite the potential reforms that would be helpful to the court systems of Los Angeles County, there were a few limitations to this study. Although there was a specific time range for the case studies, the majority of the cases researched occurred before 1987, when DNA testing was first implemented into the United States court system. With the advancement of technology

in recent years, there has been more evidence that is more reliable than eyewitness identifications in courts including DNA profiling, which would change the perspective of the current landscape of courts. Moreover, the amount of cases studied, 50, was just a small sample size of the overall situation of the nation in which one third of all court cases involve eyewitness identifications. Because each case is unique in various factors, expanding the sample size of the study would have helped gain a firmer perspective of the state of eyewitness experts relating to Los Angeles County. Additionally, it was difficult to contact an individual who had been falsely convicted and ended up serving time in prison for a crime he or she did not commit because these cases gain much local and national publicity, and most of these individuals do not reveal themselves to the public. Interviewing a victim of the flawed court systems would have expanded the point of views and helped to develop a more well-rounded research and conclusions.

As far as implementing eyewitness experts into criminal cases in Los Angeles County and beyond, there is uncertainty around regulating these specialized professionals. In California, professionals are required to have a license to testify, but in 27 of the 50 states, a license is not required. Throughout the United States, it is important that each suspect is able to fairly complete a trial with efficient options, especially regarding eyewitness experts. Essentially, there are limited regulations on the utilization of eyewitness experts because they are less commonly used in court cases, and only may apply to less than one third of all court cases.

Conclusion

Ultimately, the expansion of eyewitness expert testimony would help decrease the amount of false convictions in Los Angeles County and the rest of the country. With the increased involvement of professionals in court cases, there will be less human bias in

identifying suspects for a crime, and a higher volume of valuable evidence that is reliable to be used in court. Although many individuals who are prosecuted for a crime they did not commit seek outside help, many do not know of the importance an eyewitness expert may have if the case involves identifications. Based on the research, there can be several experts including psychologists, optometrists, and other specialized professionals to bring the most efficient justice to Los Angeles County criminal cases. In the end, eyewitness experts are a viable tool in helping innocent individuals avoid serving sentences they do not deserve and preserving justice throughout the country.

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