

The Reliability of Eyewitness Testimony

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Abstract

As perhaps the single most effective method of proving the elements of a crime, eyewitness testimony has been vital to the trial process for centuries. However, the reliability of eyewitness testimony has recently come into question with the work of organizations such as The Innocence Project, which works to exonerate the wrongfully convicted. This thesis examines previous experiments concerning eyewitness testimony as well as court cases in which eyewitnesses provided vital evidence in order to determine the reliability of eyewitness testimony as well as to determine mitigating or exacerbating factors contributing to a lack of reliability.

The Reliability of Eyewitness Testimony

Eyewitness testimony is perhaps the oldest form of evidence and is typically given the most credibility in the courtroom other than a confession. But exactly how reliable is eyewitness testimony? What are some factors that affect the reliability of eyewitnesses? When should eyewitness testimony be thrown out of court? This thesis will attempt to answer these questions and more through the examination of various experiments and the Federal Rules of Evidence and the discussion of court cases dependent upon eyewitness testimony in order to fully identify the nature of eyewitness testimony. Eyewitness testimony should be admissible in court, but it should be admitted with caution and with an understanding that there are certain factors such as weapon focus and compromised memories which can reduce the reliability of eyewitness testimony.

Overview

Eyewitness testimony plays an important role in proving the elements of a crime (Graham, 2003). It is also one of the most persuasive types of evidence that can be presented to juries (Vollen, 2005). However, eyewitness testimony is inherently unreliable due to its dependence on the human senses and on the brain's ability to process and remember these perceptions (Wonsowicz, 2012). One study estimated that the courts are right in convicting a suspect 99.5% of the time (Vollen, 2005). However, even if suspects are wrongfully convicted only 0.5% of the time, this still amounts to roughly 11,000 innocent people currently in prison in the United States alone (Vollen, 2005). This number is astronomical and because of this, it is important to strive to lower the

likelihood of an occurrence of a wrongful conviction of an innocent person.

Understanding the factors affecting eyewitness reliability is one of the ways in which wrongful conviction rates can be reduced. In addition, it is important to evaluate the ability of jurors to determine if and when an eyewitness identification is inaccurate and to determine the role of the judge in instructing the jury in regards to determining the accuracy of identifications.

Eyewitness Competency

The Federal Rules of Evidence (F.R.E.) describe the general requirements for eyewitness competency (Graham, 2003). Rule 603 requires that witnesses take an oath or affirmation stating that they will tell the truth in their testimony. Rule 602 states that witnesses must have personal knowledge of the matter. According to Graham (2003), these rules require that a) the witness had the physical and mental capacity to perceive and recollect the facts, b) the witness did in fact perceive, record, and can recollect the facts, c) the witness takes an oath or affirmation stating that he will tell the truth, and has the mental capacity to understand the difference between the truth and a lie and to understand the duty to tell the truth, and d) the witness has the physical and mental capacity to express himself and understand questions. Mental capacity has defied a legal standard, although it is typically easily recognizable, as those who lack mental capacity usually cannot fulfill F.R.E. 602-603. There are numerous factors which can reduce the competency of a witness, or more specifically the reliability of a witnesses' testimony.

Factors Affecting Reliability

Weapon Focus

Stress plays an important role in perception. The Yerkes-Dodson law, first noted in 1908, states that stress and other emotional arousals increase performance up to a point (Loftus, 1996). From this point on, performance decreases. The location of this point varies and is determined in part by the difficulty of the task (Loftus, 1996). Mild to moderate emotional arousals typically produce an increased performance due to an increase in both alertness and interest in the task (Loftus, 1996). When the emotional arousal becomes either significantly lower or higher than this point, performance decreases. The Yerkes-Dodson law shows itself specifically in the phenomenon known as “weapon focus.” Essentially, weapon focus occurs when the victim of a crime is faced with an individual who is carrying a weapon. The victim or witness tends to focus the majority of their attention on their weapon to the exclusion of most other observable stimuli.

Another theory, known as the Cue Utilization Theory, states that highly emotional events result in a narrowing of focus, which means that the emotionally aroused witness will pick up on fewer contextual cues than a witness in a normal situation (Easterbrook, 1959). The witness will also tend to focus more on the specific cues which caused the emotional arousal than on other cues. This theory translates directly into the concept of weapon focus because it means that the witness will focus on the weapon, which is typically one of the cues which has caused the emotional arousal, to the exclusion of other contextual cues.

In one study, it was found that the presence of a weapon resulted in a focus on the weapon more often and for longer periods of time than if another object was held (Loftus, Loftus, & Messo, 1987). This same study also found that this resulted in a decreased likelihood that the witness could positively identify the defendant. Of the group who viewed a scene in which a weapon was shown, 11% of the witnesses were able to correctly identify the suspect. Of the control group who viewed a scene without the presence of a weapon, 39% of the witnesses correctly identified the suspect out of a lineup of 12 individuals (Loftus, Loftus, & Messo, 1987). The presence of a weapon therefore means that a witness is significantly less likely to be able to remember other details about the suspect or the environment (Loftus, 1996).

In another revealing study, subjects viewed videos of a robbery. In the robberies in which there was no weapon or the weapon was hidden, 46% of subjects correctly identified the suspect in a lineup. In the robberies in which a weapon was outwardly visible, that number dropped to 26% (Cutler, 1995). These numbers show a significant drop and clearly demonstrate the effect that the presence of a weapon has on the accuracy of eyewitness observations.

Cross-Race and Cross-Gender Identification

Interestingly, race plays a part in the accuracy of eyewitness identifications. One study found that same-race identifications were correct 63% of the time, while other-race identifications were correct 57% of the time (Cutler, 1995). This difference is not incredibly large, but it is significant enough to have meaning.

Similarly, cross-gender identifications are significantly less accurate than own-gender identifications: 76% v. 72% (Cutler, 1995). Cross-gender and cross-race identifications are shown to be less reliable in the fact that, while less than 10% of rapes are of white females by black males, 45% of the rape exonerations studied involved white females misidentifying black males (Vollen, 2005). Another study indicated that witnesses correctly identify same-gender suspects about 10% more often than cross-gender suspects (Shaw, 1994). It is unclear exactly what causes the unreliability of cross-gender and cross-race identifications, but it is clear that they are less reliable.

The Brain Abhors a Vacuum

There is a basic principle of psychology that individuals tend to see what they expect to see. This principle explains why there are numerous occasions every year in which hunters mistake humans for deer (Loftus, 1996). Obviously a human and a deer have no similarities whatsoever, but when a hunter is looking so hard for deer, his expectations are filled by whatever moving object he sees. Loftus describes one particular situation in which a hunter was shot by his friends several times when they thought he was a deer. After the first shot, he cried out, but they merely heard the sound of a deer being shot, because that was what they expected to hear. Loftus explains that this is because temporary expectations are capable of completely altering perception so that the individual sees what they expect to see.

A study was conducted in 1935 by E. M. Siipola in which he collected results from 160 participants (Loftus, 1996). This group was divided in half and each half viewed the same words on an optical device for a brief fraction of a second. The

individuals were then told to record the word on paper. The first group, group A, was told that the words would pertain to animals, while the second group, group T, was told that they would pertain to travel or transportation. When real words such as “horse” or “baggage” were shown on the screen, the individuals typically recorded the correct word. However, when a “quasi-word,” such as “sael” or “dack” was shown, they tended to record a word that was similar to their expectation. For example, when “dack” was shown, 80% of those in group A recorded “duck” and 89% in group T recorded either “deck” or “dock”, while less than 10% in either group correctly recorded “dack” (Loftus, 1996). This study shows how temporary expectations dramatically affect the way in which a situation is perceived.

Compromise Memories

According to Elizabeth Loftus (1996), when describing a suspect or event, witnesses often compromise between what they saw and what they were told. This compromise is interesting in that it seems as if the witness does not fully trust his own judgment. He only trusts himself as far as his observations match up with the observations of others. Once these observations differ, the witness will tend to either adopt the position of what they were told or they will make a compromise somewhere in between their own observation and what they were told.

Investigators can take some basic precautions to avoid allowing an eyewitness to compromise on their memories. The first precaution is to interview witnesses separately, as well as not allow them to discuss the crime before being fully interviewed (The Innocence Project). This technique prevents a witness from adopting observations of

another or from suppressing their memories that are not confirmed by other witnesses.

Another precaution involves the use of suggestive procedures by law enforcement which encourages the witness to subconsciously change their statement or become more confident than they really are (The Innocence Project).

Suspect Confirmation or Suggestive Procedures

In 1985, a white woman by the name of Jennifer Thompson cooperated with police to produce a composite sketch of the black man who raped her (Vollen, 2005). A few days later, she identified the photo of Ronald Cotton in a six-photo lineup, but only after staring at two of the photos in the photo lineup for 4 to 5 minutes (The Innocence Project). The Innocent Project says “Research shows that memory is highly malleable and that an eyewitness who is uncertain can become much more certain over time.” Eleven days after the assault, she picked Cotton out of a physical lineup, likely because he was the only one present whose photo had been in the physical lineup. After identifying Cotton, she was told by the officer that he was indeed the individual whose photo she had identified (The Innocence Project). He was sentenced to life, but retried after a year. At the retrial, Thompson was presented with the actual rapist, Bobby Poole, whom she failed to recognize. Cotton returned to prison, serving a total of eleven years before DNA evidence confirmed that Poole was indeed the rapist (Vollen, 2005).

In this case, several major mistakes were made. First, the investigators only repeated one individual between the two lineups. This single repetition greatly increases the likelihood of a false identification, because the victim is picking the individual she recognizes rather than the individual who necessarily committed the crime. Second, the

officer provided feedback on Thompson's selections, increasing her confidence. She was essentially told that she had picked the right suspect, so going into trial she was completely confident in her identification. Her confidence was the only real factor that sent Cotton to prison because this case was based primarily on her eyewitness identification of him.

In his book *Convicting the Innocent*, Brandon Garrett (2011) made the claim that police tend to encourage the witness to identify the person that the police already suspect of committing the crime. This encouragement can be done either intentionally or unintentionally. Done intentionally, this practice can be damaging to the situation because a hesitant witness, once his identification is confirmed and supported by investigators, tends to become increasingly more confident as the trial approaches. Even if this encouragement is unintentional, it can still increase the witness's confidence. When a trial is based primarily on eyewitness identification, the investigators should be very careful to not confirm the witness identification. There are numerous situations in which officers or investigators have, intentionally or unintentionally, confirmed a false identification, thus increasing the confidence of a witness. This situation is clearly the case in the trial of Ronald Cotton, in which the investigator consciously confirmed the witness's identification of her rapist (Vollen, 2005).

One of the easiest ways to avoid tainting the identification process with suggestive procedures is to make use of a double-blind lineup administration, in which the photo lineup or physical lineup is conducted by an officer who does not know who

the suspect is (The Innocence Project). This way, he is unable to provide conscious or subconscious confirmation of the eyewitness identification.

The next most important change to eyewitness identification in lineups is that the process should be recorded. Police rarely record a photo or physical lineup (Garrett, 2011). Often the witness expresses serious doubts when identifying a potential suspect. He may say something like “this picture looks the most like the suspect” or “it might be this guy.” These doubts are important for the jury to know at trial. In a case placing great importance on eyewitness identification, the true confidence of the witness must be shown to the court. This true confidence is different from the false confidence that is exhibited by a witness when an officer confirms the identification, or the false confidence that comes over time as a witness becomes more confident. Audio recording or better yet, video and audio, plays a key role in finding the truth. At trial, the jury is able to see the degree of confidence that the witness displayed in the initial identification process, rather than the degree of confidence displayed months later at trial.

Should Eyewitness Testimony Ever be Thrown out of Court?

One question that must be asked after coming to the conclusion that eyewitness testimony has the potential to be unreliable is the question of when, if ever, to suppress the testimony from the trial. While it is true that eyewitness testimony can be unreliable, so can many other forms of evidence. It becomes a question of whether there is enough confidence that the jury will know how to handle eyewitness testimony by understanding its inherent unreliability or if it is up to the judge to determine its reliability and whether to allow it as evidence.

General Impeachment Principles

Impeachment means “to call into question the veracity of a witness” (Wonsowicz, 2012 p. 177). There are two basic ways of impeaching a witness: focusing on the specific testimony and focusing on general trustworthiness (Wonsowicz, 2012). The first is done by claiming that the witness lied or was mistaken about some specific aspect of the testimony, while the second is done by claiming that the witness is generally a liar or that the witness is unable to tell the truth (Wonsowicz, 2012).

General Trustworthiness

Suppressing testimony because of a lack of general trustworthiness can manifest itself in several forms. The first is suppressing testimony due to a bias on the part of the witness. This bias can include anything from a personal vendetta against the defendant to financial motivation (Wonsowicz, 2012). One common type of biased witness is what is typically known as a snitch. Lola Vollen defines snitches as “informants who testify for the prosecution in exchange for compensation ranging from money to leniency in their own sentencing” (2005 p. 218). A snitch clearly has a bias when acting as a witness (Vollen, 2005). Whether it is for money or for leniency, they have a much higher motivation for lying during trial than the average witness due to their desire to please the prosecution with whom they have made a deal. Although informant testimony can be unreliable and therefore should be used with more caution than the average witness’s testimony, it can typically still be used. Certain things can increase the reliability of an informant’s testimony. One of these things is reliability over time. When an informant

can be shown to have been truthful in multiple situations, for example, he can probably be considered much more reliable.

The second way of suppressing testimony due to general trustworthiness is by showing that the witness has a physical or mental defect that would cause the testimony to be false. The simplest example would be if a witness claims to have seen an event transpire, and the defense proves that the witness is legally blind.

The last way is to argue that the witness is a liar by nature (Wonsowicz, 2012). This can be done in various ways. One obvious way is to show that the individual has lied in the past, especially to an authority figure. While this alone may not be enough to impeach the witness, since most people have lied in the past, it is a start. This is one of the reasons why honesty is crucial for law enforcement officers. Every time an officer testifies in court, the defense will try to discredit him. If an officer lied previously in court or on an official document, it brings into question whether he is lying about the matter at hand as well. One way of showing the witness is a liar by nature is to bring forth evidence of the witness's prior convictions. F.R.E. 609 places significant restrictions on what types of convictions can be presented for purposes of impeachment (Graham, 2003). First of all, the evidence must have some value in being able to prove something (probative value) rather than simply being prejudicial. In addition to this, the conviction must be within the last ten years and the crime must either be a felony or a crime involving dishonesty or false statement (Worrall, 2012).

Trustworthiness of Specific Testimony

Specific testimony may be suppressed in two ways: first by showing inconsistencies between multiple statements of a witness and second by providing proof that the testimony is contradicted by other evidence. The first is done quite simply by showing that the witness has changed details of his statement since a previous statement (Wonsowicz, 2012). This almost immediately discredits him, because lying in one area of a statement brings into question what else the witness may be lying about. The exception would be for a victim of a violent crime such as a sexual assault or a rape. In a situation like this which involves significant trauma, it can be expected that

The second is done by showing that there is at least some part of the eyewitness testimony that is contradicted by evidence, even if that part is not necessarily relevant to the case. For example, if a witness describes the scene of the crime as crowded and full of people, the testimony of the witness could be suppressed if other sources showed that the scene was actually deserted (Wonsowicz, 2012). Even if this information has nothing to do with the case, it shows that the specific testimony of that witness is not reliable. Just like inconsistencies between statements, contradiction by evidence shows that the witness is lying about some aspect of the case, which makes the entirety of their testimony unreliable.

Can the Jury Determine Reliability?

A question concerning the impeachment of unreliable eyewitness testimony arises when jury deliberation is considered. Three separate factors are at play. The first question to ask is how easily jurors can distinguish between accurate and inaccurate

eyewitness testimony. The second question relates to how credible versus discredited eyewitness testimony influences the decisions of the jury. The third question looks at how cognizant jurors are of the factors that influence the accuracy of eyewitness testimony (Cutler & Penrod, 1995).

The Ability of Jurors to Determine the Accuracy of Eyewitness Identification

The first question is answered by looking at a study that was done of a staged crime and a subsequent mock jury in 1979. This study then took roughly 20 witnesses who made correct identifications of the suspect following the crime as well as roughly 20 who made incorrect identifications. When these two groups then gave their testimonies in front of a mock jury, they were cross-examined with leading questions as is typical in court. The jurors were polled after the testimonies to determine whether the jurors believed the testimony of the eyewitnesses. The results were that accurate eyewitnesses who made correct identifications were believed 84% of the time, while inaccurate eyewitnesses who made incorrect identifications were believed only slightly less, about 74% of the time. The first number, 84%, seems to be acceptable, since it means that accurate witnesses are usually believed. The number that is concerning, however, is that 74% of inaccurate eyewitnesses are believed by jurors. This means that about three out of four false identifications would be believed by a jury. This study thus clearly shows that jurors are not capable of determining the accuracy of eyewitness testimony to the extent that would ensure that justice is served (Cutler & Penrod, 1995).

The Influence of Discredited Eyewitness Testimony on the Jury

Another study was conducted by Elizabeth Loftus in 1974 which relates to the second question: namely, does a discredited witness still influence the jury any measurable amount? In this study, 150 students were provided a description of a robbery and murder that occurred at a grocery store. Three different summaries of the case were provided and the students were asked to play the role of a juror and determine a verdict against the defendant. The first summary provided only incriminating physical evidence, which resulted in a conviction rate of 18%. The second summary provided incriminating evidence as well as eyewitness testimony which positively identified the defendant as the one who committed the crime. This resulted in a conviction rate of 72%. The third summary was identical to the second, except that the defense attorney proved that the eyewitness could not have seen the suspect from where he stood due to very poor vision and the fact that he was not wearing his glasses at the time. This resulted in a conviction rate of 68% (Cutler & Penrod, 1995). The fact that these second two numbers are so close reveals that the presence of an eyewitness, whether credible or not, greatly increases the chances of a guilty verdict. Thus it would be advisable to determine the credibility of an eyewitness prior to a jury trial so that the decisions of the jury are not tainted by a discredited eyewitness, since a discredited eyewitness still unjustly increases the chance of a guilty verdict.

Jury Awareness of Influential Factors

The third question, which concerns how aware a jury is of the factors that influence the reliability of eyewitness testimony and identification, was addressed in a study by

Cutler & Penrod in 1988. A mock trial was shown to 450 mock jurors concerning a defendant accused of armed robbery. The main source of evidence for the prosecution was the positive identification of the defendant by the victim of the robbery. Various factors which are known to affect the reliability of testimony were introduced into the situation to determine if they affected the rate at which mock jurors returned a verdict of guilty. The first factor was the presence of a disguise in the form of a knit cap fully covering the hairline. The presence or absence of a disguise, which is widely believed to reduce reliability of eyewitness identification, made no difference in the percentage of convictions (both 63%). The second factor was the visibility of a handgun. This was used to simulate the effect of weapon focus, and it is widely believed to reduce reliability, yet it made no difference in conviction percentage (64% for highly visible weapon, 63% for no visible weapon). A third factor was instruction bias, in which the investigator instructs the witness to choose the perpetrator from the photo lineup or live lineup versus telling the witness that the perpetrator may or may not be included in the lineup. The level of instructor bias provided no significant difference in conviction percentage (62% for high bias, 64% for low bias). One more factor which was introduced was foil bias, which concerns how different the suspect appeared from the other members of the photo lineup or live lineup. High foil bias generally correlates with lower identification reliability. For example, if a witness describes the suspect as a white male teenager, the witness should not be provided with a lineup consisting of one white male teenager, three black males and two women. This would clearly show high foil bias and the identification would be very unreliable. However, in this study, the level of bias did not

affect the percentage of convictions (63% for high bias, 64% for low bias). All of these findings show that jurors are generally unaware of the factors which affect the reliability of eyewitness identification, and their conviction rate does not seem to be affected by the presence or absence of factors which are generally believed to reduce the accuracy of eyewitness identification (Cutler & Penrod, 1995).

The Role of the Judge in Determining Eyewitness Reliability

In order to improve the ability of the jury to determine the reliability of eyewitness identification, some courts have begun using judicial instructions to the jury about the nature of eyewitness testimony. One well-accepted set of judicial instructions established by the District of Columbia Court of Appeals in 1972, known as the Telfaire instructions, seeks to draw the attention of the jury to certain factors which might influence the accuracy of an identification (Cutler & Penrod, 1995). The Telfaire instruction directs jurors to consider the following when evaluating the accuracy of an eyewitness identification:

- a) Are you convinced that the witness had the capacity and an adequate opportunity to observe the offender?
- b) Are you satisfied that the identification made by the witness subsequent to the offense was the product of his own recollection? You may take into account both the strength of the identification and the circumstances under which the identification was made.
- c) Finally, you must consider the credibility of each identification witness in the same way as any other witness, consider whether the witness is truthful, and

consider whether the witness had the capacity and opportunity to make a reliable observation of the matter covered in his testimony. (Cutler & Penrod, 1995, p. 255)

This judicial instruction is beneficial in enabling the jury to better determine eyewitness reliability, but it is far from perfect. For example, it fails to address certain specific factors which the jury may be unaware of but which nonetheless play a crucial role in eyewitness reliability. For example, weapon focus, cross-race identifications, and other factors are unlikely to be considered by the jury unless the defense attorney draws attention to them. Therefore, the judicial instructions should be reworded and lengthened to allow for the identification of many factors which greatly affect reliability but which are not necessarily known by the jury (Cutler & Penrod, 1995). While judicial instruction related to determining eyewitness reliability is a good idea, the current format, specifically the Telfaire instructions, fails to properly address significant issues.

Examples of Wrongful Convictions from Unreliable Eyewitness Testimony

The book *Surviving Justice* by Vollen & Eggers (2005) documents real-life occurrences of wrongful convictions: punishing the innocent for a crime they did not commit. These wrongful convictions are often the result of unreliable eyewitness testimony, as is shown in the following accounts of John Stoll and James Newsome, both of whom were convicted of crimes that they did not commit.

John Stoll

John Stoll, 41, lived a normal life in Bakersfield, California with his young son until 1984, when he was suddenly arrested and charged with child molestation. According to

the police, his son had claimed that he had molested him. Soon he was charged with molesting multiple other children in the community, a total of 21. The entire case was based on faulty eyewitness testimony by young children who were susceptible to false ideas being planted in their minds by prosecutors or law enforcement. Children of a young age have a natural desire to please others, so when a prosecutor asked the son if his father had touched him in certain places, it was the natural childlike inclination of the son to answer in the affirmative rather than by contradicting the prosecutor. This seemed to be the case in all of the 17 “confirmed” counts of child molestation (Vollen, 2005). Prosecutors probably had such a strong desire to obtain convictions that they simply looked for young naïve witnesses who would be malleable enough for prosecutors to get the desired testimony from.

The defense had attempted to put in a motion asking that the children be taken to a doctor to be evaluated physically and psychologically to determine if any molestation had actually occurred. The court refused, claiming that it was too traumatic for the children (Vollen, 2005). The FBI refused to look into the matter because it was out of their jurisdiction.

The jury found Stoll guilty on 17 of the 21 counts of child molestation in November of 1984, sentencing him to 40 years in prison. He had served 18 years in California’s San Quentin State Prison before the North California Innocence Project contacted him with the belief that he was innocent and the desire to prove it. They spent many long months tracking down the original witnesses and preparing for a new trial. During these hearings which stretched over five months, the majority of the witnesses recanted their testimony,

claiming that they were forced to lie to the court and say that John Stoll had molested them. His case was overturned in 2004 and he was soon released from prison, having spent 19 years behind bars for a crime which he did not commit and which never even happened (Vollen, 2005).

James Newsome

In 1979, in Chicago, Illinois, three customers in a convenience store witnessed the murder and robbery of white grocer named Mickey Cohen. The killer shot the man, then went through his pockets and stole money from the cash register. Witnesses described the man as African American and dressed in black. They also said that the suspect had touched some objects with his bare hands (Vollen, 2005).

James Newsome, 24, became a suspect when his brother's car license plate was supposedly written down at the scene of the crime. James, who was using the car, also lived near where the crime occurred. At the police station, two witnesses were shown a photo lineup and they both picked pictures of someone other than Newsome. Later, witnesses were shown a live lineup and they picked Newsome as the murderer. However, one of the witnesses later testified on Newsome's behalf in the 2001 civil trial that he was told by police to pick number three, which was Newsome (Vollen, 2005).

In September, 1980, he was convicted of murder and robbery by an all-white jury and sentenced to life in prison. This conviction was based solely on the testimony of the three witnesses, all of whom had previously identified someone other than James Newsome. This eyewitness testimony was unreliable not only because the witnesses were not even remotely confident in their identification, but also because investigators

used suggestive procedures to inappropriately and unethically increase the confidence of eyewitnesses and force them into identifying the person whom police most suspected (Vollen, 2005). The jury seemed to ignore the fact that the fingerprints which were obtained at the crime scene did not match the fingerprints of James Newsome.

In 1986, Chicago began using the Automated Fingerprint Identification System, or AFIS. Soon after this technology became available, Newsome began campaigning to have the unidentified fingerprints run through the AFIS databases. This was done in 1989 and the fingerprints matched a man who was already in prison serving a life sentence for murder. However, this information was not revealed until 1994, when a court order forced the police to run the prints through the database again. Because these prints matched someone else, James Newsome was released from custody in 1995, having served over 15 years in prison for a crime he did not commit. He was officially pardoned by the governor a few months later. In 1997, he received \$140,350 for wrongful imprisonment from a compensation claim with the state of Illinois. In 2001, he sued two homicide detectives who had framed him by coaching the eyewitnesses. He was awarded \$1 million for each year he had been wrongfully imprisoned. This is the largest award which has ever been granted based on wrongful conviction (Vollen, 2005).

The convictions of John Stoll and James Newsome represent some of the most egregious failures of the modern criminal justice system. Fortunately, both of these failures were discovered before the full sentences had been served, but neither man was able to regain the time that had been taken from them.

Christian Worldview

The Bible recognizes the inherent unreliability of eyewitness testimony as demonstrated in Deuteronomy 17:6, which says, “On the evidence of two witnesses or of three witnesses the one who is to die shall be put to death; a person shall not be put to death on the evidence of one witness” (English Standard Version). The Bible clearly recognizes that it is important to be confident when convicting someone of a crime. Again, in Numbers 35:30 it says, “But no person shall be put to death on the testimony of one witness.” God recognized the possibility of eyewitness failures, both in the form of an eyewitness who is mistaken and in the form of an eyewitness who deliberately misrepresents the truth. Because of this, he gave warnings against convicting on the basis of a single eyewitness testimony.

The Ten Commandments in Exodus speak strongly against lying. Exodus 20:16 says, “You shall not bear false witness against your neighbor.” This means that it is wrong for a witness to lie about what he saw, whether it is for personal gain or for any other reason. While it is more likely that a witness will simply be mistaken, there certainly have been witnesses who have lied in court, and that is certainly wrong morally, ethically, and biblically.

On the subject of truth in general, John 8:32 says, “And you will know the truth, and the truth will set you free.” Truth must always be the goal in any criminal proceedings. The goal of a trial is not to convict the individual. Rather, the goal is and must always be to discover the truth. Just as it is unjust when a criminal goes unpunished, so it is unjust when an innocent person is wrongfully convicted and

punished. Whenever someone's freedoms are taken, it must be absolutely certain that it is justified.

While human nature naturally precludes the possibility of obtaining justice in every instance due to the fact that God is the only truly perfect judge, it is important that justice is always sought. As Micah 6:8 says, "He has told you, O man, what is good; and what does the LORD require of you but to do justice, and to love kindness, and to walk humbly with your God?" Justice is to be searched for and pursued, regardless of the necessary cost.

Conclusion

Eyewitness testimony clearly can be greatly unreliable, as shown by the numerous instances mentioned in which an individual was falsely convicted. There are, however, numerous effective ways of increasing eyewitness reliability. From proper administration of photo lineups and live lineups to video recording of the identification process, an investigator can take several simple and realistic precautions to ensure that justice is served and the truth is pursued. The judge can also help to decrease the rate at which innocent people are convicted by giving the jury proper instruction regarding the factors that affect the reliability of an eyewitness identification and how the testimony of a discredited witness should be viewed. After all, the court system exists to seek truth, not to obtain a conviction. With all these factors in mind, it is vitally important that the criminal justice system attempts to determine the truth and to seek justice with integrity. Ethics must never be compromised to obtain a conviction.

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