

The potential unreliability of eyewitness criminology essay



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The potential unreliability of eyewitness testimony poses one of the most serious problems in the administration of criminal justice. Eyewitness testimony is very important for legal decisions. Eyewitnesses are central to most court cases (Kebbell & Milne, 1999) and eyewitnesses accounts are the most common and significant testimonies that can potentially serve as the primary forms of evidence against a defendant. Moreover research shows that jurors exaggeratedly believe the testimony of eyewitnesses and this, can lead to possible miscarriages of justice (Cutler et al. 1990). The aim of this essay is to investigate, based on the literature, the reasons that may influence the memory process of eyewitnesses and also what can be done in order to ensure that eyewitnesses testimony worth the value.

Eyewitness testimony is a legal term and it refers to an account given by a bystander in the courtroom, who describes what happened during a specific incident under investigation. This is the principal way in which the guilt of the accused is established through verbal witness evidence in court. It is considered to be a reliable accepted form that provides evidence and jurors tend to pay close attention to it. Recently forensics and psychologists declare that memories and individual perceptions are unreliable, can being easily manipulated and biased . As a result, inaccurate eyewitnesses' identifications can have serious consequences leading to wrong convictions of innocent people (Wells et al., 1998).

When scientific psychology was in its first steps, articles about mistaken eyewitness identifications started to appear in the field (Munsterberg, 1908). However, eyewitness evidence has made people to think if eyewitnesses' testimonies are reliable or not. It would be said though that all people have

the knowledge that they do not remember everything, and therefore they know that memory can be weak. On the other hand it is difficult to deny the importance of eyewitnesses' testimony. Research has shown that people probably feel better about convicting an alleged criminal when an eyewitness claims 'I saw him do it' than when there is no such claim. The hypothesis that inaccurate eyewitness identifications can lead to the conviction of innocent people is also accepted by Canadian legal professionals (Brooks, 1983). DNA testing in the United States has shown that mistaken eyewitness identifications are the reason for more false convictions than all other causes combined (Connors et al. 1996). Moreover, this statement about eyewitness misidentifications that is one of the most common causes of wrongful convictions (Rattner, & Sagarin, 1986). Borchard reported that eyewitness error occurred in 45% of 65 cases of wrongful convictions. Huff (1986) found eyewitness errors in nearly 60% of 500 wrongful convictions and Ruttner (1986) concluded that eyewitness error occurred in 52% of 205 wrongful convictions. All these wrongful convictions studies were conducted before the invention of DNA testing. In 1996 a study which analysed of the application of DNA technology to forensic issues in the United States, has revealed some significant facts (Connors, et al., 1996). More specifically 28 men who were found guilty for various criminal acts were exonerated through the analysis of DNA typing. Eyewitness identification was the single most common factor accounting for these erroneous convictions. Furthermore, Wells, et al., (1998) added some more cases to the list of DNA-related with false identifications. These cases revealed that one to up to five eyewitnesses made false identifications of innocent suspects. Nevertheless, the eyewitness evidence was presented by <https://assignbuster.com/the-potential-unreliability-of-eyewitness-criminology-essay/>

well-meaning and confident citizens it was highly persuasive but, at the same time it was at least partially responsible for the majority of wrongful convictions. More recently, The Innocence Project reported some significant facts. The Innocence Project is a national litigation and public policy organisation dedicated to exonerating wrongfully convicted individuals through DNA testing and reforming the criminal justice system to prevent future injustice. The findings of this project show that about 66% of 138 cases in which DNA could exonerate the accused, wrongfully eyewitness identification was involved (Wells, 2004).

As eyewitness concerns the memory process it is undeniable that some memory trace exists and this could have important consequences for the course of justice (Wells, 1993). Few people would doubt that human memory is fallible. According to Haber (2000), people tend to believe that memories are like video recorders that faithfully record the things that people do and replay them back perfectly later. The fact is that sensory and perceptual experiences of an incident are not recorded in memory in a similar way to a videotape recorder (Yarmey, 1980). ' Human memory is constructed and reconstructed from stored bits and pieces of acquired information of what actually happened and what a person intuits, discovers from others, or infers must have happened'(Graham, 2008). Following the reconstructive view, memory can be divided into three stages: (1) acquisition or encoding of information; (2) retention or storage of information over time; and (3) retrieval of stored information through recall and recognition. A lot of problems may occur in each of these three stages.

Loftus (1979, 1996) has focused a lot in these three stages of memory in order to understand the problems that may occur and lead to false convictions. Thus in the first stage which is encoding, the information first goes into the memories. More specifically, if not enough attention is paid to what is going on the encoding stage, then events may not be encoded properly. For example the length of time an eyewitness is able to see the perpetrator, will affect the accuracy of his/her memory. That is, the longer an eyewitness can see the perpetrator, the more will be able to encode and retrieve later on the identification task. Thus, exposure time is a very important variable that can affect the accuracy of eyewitness identification (Laugherty et al., 1971). Furthermore other problems that may influence the encoding stage are the event salience and the prior expectations of the eyewitness. Usually eyewitnesses pay more attention to some details than others and also recall expectation not necessarily the truth. As a result they give wrong identifications (Loftus, 1974). During the second stage which is storage, people keep the information in their memories to recall later. In this stage the factors that may influence the eyewitnesses' testimony are the length of time or the exposure to new information. For example witnesses might read a new report about the incident, which can affect their original memory, or if the information is stored for a long time the natural processes of forgetting could further degrade the memory. For this reason, some witnesses are more susceptible than others to false memories. However, people appear more susceptible to post-event information if it occurs later in the interval before formal retrieval (Loftus, 2005). Moreover research suggests that witnesses from each end of the age spectrum may be less reliable on average than those in between. For example, elderly witnesses

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and young children were found to be poorer at identifying strangers accurately than other age groups (Ceci & Bruck, 1993). Moreover, according to Loftus (1974) another reason that may lead to false memories is the stress that might experiment different eyewitnesses. High levels of stress have been suggested to have a negative effect on a witness's ability to encode and retrieve information (Kassin et al., 2001). Finally the retrieval stage which is when the information is released in people's memories, perhaps as a response to questioning, it can create further changes. For example the way questions are asked can distort the original memory or the stressful circumstance may prevent accurate recall. Psychologists distinguish two types of retrieval, recall and recognition. Recognition is where, for example, a eyewitness may take part in a line-up and asked if they have seen it before. The recall equivalent of these tasks would be to ask the eyewitness to describe the suspect's appearance or what they were wearing. Recall is usually considered to be more difficult because it involves more stages of processing, not only verification but also retrieval (Kebbell & Wagstaff, 1999).

Other factors that can lead to wrongful evidence are the confidence that eyewitnesses may have the different type of questioning and problems with line-ups. First of all confidence should always be taken into account when assessing the risk of misidentification. Research has shown that lawyers in general accept that confident witnesses are accurate (Leippe, Manion & Romanczyk, 1992; Wells et al., 2000). It is suggested that people tend to be more confident when they are forced to choose answers which can cause difficulties in the criminal proceeding (Bornstein & Zickafoose, 1999).

Moreover badly worded questions, complex sentences and difficult vocabulary are all potentially problematic for witnesses (Kebell & Johnson, 2000). Finally according to Busey and Loftus (2007) there are some problems with line-ups. These problems might be inadequate matched fillers, which means that the foils do not match the descriptions of the offender provided by eyewitnesses, bias and unconscious transference which happens when the witness has seen the suspect before but not realise this.

Eyewitness testimony is a topic that has a lot of limitations and need for further research is essential. The majority of studies designed to assess the validity of eyewitness have been conducted in laboratory and have used videotapes or live simulations of crime events. Only a minority of these researches have been field studies involving genuine victims and eyewitnesses of real crimes (Brigham et al., 1982; Krafka & Penrod, 1985; Pigott, Brigham, & Bothwell, 1990; Penrod & Cutler, 1997). Of course, eyewitness identifications are made under all sorts of the adequate conditions, but these studies were based on conditions that made witnesses feel more comfortable. For example in several studies there was no psychological pressure for identifying the perpetrator, because in a laboratory study there is not any real risk of the defendant to be sentenced to forensic settings. Furthermore another factor that makes these studies inaccurate consists of the fact that witnesses were asked to identify photos rather than real people and there was no arousal for a lot of studies at the time of the encoding. Finally another element to take into consideration is the confidence of the witnesses. In some cases it has been shown to have a significant effect while other studies have shown that it does not.

A factor that may increase the credibility of the eyewitness testimony is the expert testimony about eyewitness identification. Such expert testimony has already been allowed in numerous countries around the world (Fishman & Loftus, 1978). Expert testimony is designed to provide scientific information. According to Loftus (1978), an expert psychologist can describe to the jurors the studies that have been conducted and the results from the experiments on people's ability. Furthermore expert testimony about eyewitness behaviour takes part when a professional psychologist is admitted by the judge as an expert authority on 'eyewitness testimony' who is presented in the court and informs the jurors about scientific studies related in memory and the variables that are known to influence memory and memory report (Vidmar & Schuller, 1989). Research has shown that expert testimony is the only legal safeguard about the factors that affect the reliability of eyewitnesses' accounts to perceive and recall complex events (Cutler & Penrod, 1995). Thus the jurors can have enough information on which to evaluate the identification evidence correctly. However expert testimony is not always useful (Cutler & Penrod, 1995), expensive time-consuming and there are limited number of experts (Wells, 1993).

To summarise, eyewitness testimony is very important in the determination of various legal decisions and also eyewitness accounts are essential because they serve strong evidence against a defendant. However researches have shown that inaccurate eyewitness identifications can have serious consequences leading to wrong convictions of innocent people. The reasons which provoke these erroneous convictions may be problems in the three stages of memory or some types of physical features such as the age

and the race of the witness, the behaviour of other witnesses, the presence or absence of expert testimony and the confidence of eyewitnesses. Moreover researches have revealed numerous limitations. The fact that research is mostly based on laboratories studies can be problematic when it comes to apply to real-life situations with precision. In addition a not well organised structure of the line-ups and the inappropriate questioning techniques can contribute to witnesses making mistakes. Nevertheless, eyewitness testimony continues and will continue to have value because it is considered to be one of the most important factors of evidence in the court which provides vivid and virtual evidence of an incident. On the other hand witnesses are not automatically unreliable. There is much that can be done to promote good evidence both by the police and the courts. It is the forensic psychologist's role to investigate further issues which lead to accurate as well as inaccurate accounts and to assist the criminal justice system in interpreting research findings for the benefit of all parties. New studies may help increase the value of the eyewitness testimony by enhancing judge's and juror's knowledge of this type of testimony and this can reduce wrongful convictions. Judges and jurors will be more aware of the dangers of erroneous eyewitness testimony and more willing to permit legal safeguards, including expert testimony which informs them about the limitations that they have to be aware of and not to discount a testimony entirely in these limitations. Moreover increasing judge's and juror's knowledge of eyewitness testimony is also essential because expert testimony is not a panacea for erroneous identifications. Finally, a dialogue between judges and researchers who specialise in eyewitness studies would be useful in increasing the value of the testimony. Reducing wrongful convictions is vital because the

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continual discovery of false convictions undermines the reliability of the legal system.