MAKING A CASE FOR REFORM: EVALUATION OF THE CURRENT EYEWITNESS IDENTIFICATION PROCEDURES IN THE STATE OF MISSOURI

by

Demena Ilu

An Abstract

of a thesis submitted in partial fulfillment

of the requirement for the degree of

Master of Science

in the Department of Criminal Justice

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April, 2011

ABSTRACT

by

Demena M. Ilu

Eyewitness misidentification is a problematic issue in the Criminal Justice and the cause of many wrongful convictions. The early writings of psychologists like Hugo Münsterberg have warned about dangers of eyewitnesses. Furthermore, research has demonstrated that certain procedures illicit misidentification. Recently, reform efforts on eyewitness identification procedures have gained momentum and in several states have implemented reforms. Unfortunately, Missouri is not one of the States instituting these reforms. This study examined seven case studies of wrongful conviction cases in Missouri that eyewitness misidentification was the leading or contributing factor in their convictions. The best practices according to the Department of Justice (DOJ) and American Psychological Law Society (APLS) were utilized to develop seven benchmarks that were used to evaluate the identification procedures. The study found that in all seven cases, none of the identification procedures utilized all seven benchmarks.

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CHAPTER 1
INTRODUCTION AND BACKGROUND

Introduction

"Injustice anywhere is a threat to justice everywhere" (Martin Luther King, Jr., 1963). A "1987 study estimated that in 77,000 criminal trials each year in the United States the primary or sole evidence against a defendant is eyewitness testimony" (Wise, Pawlenko, Safer, & Meyer, 2009, p. 1266). Eyewitness identification has an extensive history in the criminal justice system in which it is utilized to identify the perpetrator of a crime or used as evidence by the prosecutor to affirm the guilt of a suspect. Unfortunately, eyewitness identification has been identified as the leading or contributing factor in cases of wrongful convictions.

According to Acker & Brody (2004), "the existence of an eyewitness to a crime is often a key component of a criminal investigation and prosecution" (p. 335). Wise, Pawlenko, Safer, & Meyer (2009), stated, "one of the most frequent and important types of evidence that prosecutors and defense attorneys encounter in criminal cases is eyewitness evidence" (p. 1266). Wells & Olson (2004) postulate that "eyewitnesses are critical in solving crimes, and sometimes eyewitness testimony is the only evidence available for determining the identity of the culprit" (p. 277).

Studies have shown that juries give great significance to eyewitness testimonies (Acker & Brody, 2004, p. 335), especially if the eyewitness is confident about their recollection (Wells, Memon, & Penrod, 2006, p. 45). People tend to "have strong convictions about what they see with their own eyes, thus jurors tend to believe eyewitness testimony" (Osterburg & Ward, 2004, p. 194) "of a person who has personally seen an event than to any other type of evidence presented" (Acker & Brody,

2004, p. 371). Although the accuracy of eyewitness testimony has been called into question by scholars for centuries (Shelton, 2008, p. 953), the criminal justice system continues to rely heavily on eyewitnesses (Wells, Memon, & Penrod, 2006, p. 45). "Thus, it is imperative that the criminal justice system does all it can to ensure accuracy and reliability of eyewitness identification" (Acker & Brody, 2004, p. 371).

The problem with convicting solely on the basis of eyewitness evidence is that many times an innocent person will be misidentified by an eyewitness. Winzeler (2008) claims, "scholars and social scientists studying the problem of mistaken eyewitness identifications have attributed the problem to two main causes: imperfect human memory and potentially suggestive police procedures" (p. 1598).

Background Information

After an enormous amount of research, experts have pinpointed eyewitness identification as the leading cause of wrongful convictions. According to Terbeek (2007), "two recent studies showed that 75% of those exonerated via DNA testing had been convicted in large part due to mistaken eyewitness identification" (p. 21). Researchers estimate that about seventy seven thousand individuals undergo criminal proceedings and in 60% of those cases eyewitness testimony errors occur (Glaze, 2007, p. 199).

According to the Innocence Project (2010), "over 230 people, serving an average of 12 years in prison, have been exonerated through DNA testing in the United States" (innocenceproject.org). In 38% of the misidentification cases, multiple eyewitnesses misidentified the same innocent person (Innocence Project, 2010). The Innocence Project (2010) found that eyewitness testimony was the central evidence used against a

defendant (without other corroborating evidence like confessions, forensic science or informant testimony) in 50% of the misidentification cases (innnocenceproject.org).

Furthermore, it has been consistently found in the United States that the primary factors facilitating wrongful convictions in the criminal justice system include the following:

> eyewitness error, over-zealous law enforcement officers and prosecutors who engage in misconduct, including withholding evidence; false or coerced confessions and suggestive interrogations; perjury; misleading line-ups; the inappropriate use of informants or snitches; ineffective assistance of counsel; community pressure for a conviction; forensic science errors, incompetence, and fraud; and the ratification of error (the tendency to rubber stamp decisions made at lower levels as cases move up through the system). (Huff, 2004, p. 110)

Even with these warnings given by researchers, police officers, prosecutors, and judges largely ignored their research until the DNA tests revealed cases of wrongful convictions based on eyewitness misidentification (Wells, Memon, & Penrod, 2006, p. 45). Not until the middle to late 1990s did the criminal justice system finally begin to take eyewitness research seriously (Wells & Olson, 2003, p. 277-8). Furthermore, Huff contended that these problems are not caused by inevitable mistakes, which several authorities dispute, but rather attributed "either to professional dishonesty and deception or to professional incompetence" (Reid, 2006, p. 399).

The United States criminal justice system utilizes eyewitnesses as a prime source of evidence against more than an estimated 75,000 suspects each year (Wells, Luus, & Windschitl, 1994, p. 196). Nothing is more damaging in a criminal case against the

defendant than an eyewitness pointing his or her finger at a defendant and identifying him or her as the perpetrator. Changes need to be made but there are officials who are resistant or oppose the changes that need to be made, especially of the working group who are prosecutors, because it is believed that it would make it more complex to perform their duties (McKenzie, 2003, p. 251).

Sequential vs. Simultaneous Lineups

Eyewitness identification is a useful tool for law enforcement in the absence of concrete physical evidence in solving crimes and attempting to identify the perpetrator. As useful and helpful as eyewitness identification may appear to be to the public and the criminal justice system, they have numerous deficiencies and problems that need to be carefully monitored to ensure that an eyewitness does not mistakenly identify the perpetrator in a lineup selection. A leading deficiency in eyewitness identification is the simultaneous lineup.

There are two types of lineups that are administered by police agencies. One is a sequential lineup and the other is a simultaneous lineup. Researchers have examined both sequential and simultaneous lineups and have found that in some instances the sequential is better than the simultaneous, and/or one increases the chances of wrongfully indentifying a suspect. Estimator variables and system variables have been identified as the two main categories of aggravating factors affecting accuracy in lineup selection. To curtail inaccuracy of identifications, lineups need to be carefully constructed and conducted by police departments so those variables are eliminated or controlled. Researchers like Gary Wells and the Innocence Project have found that simultaneous lineups inherently breed inaccuracy in eyewitness identification, and misidentifications

constitute the leading cause of wrongful convictions. According to McKenzie (2003), "Wells report shying away from a strong recommendation on sequential presentation on the grounds that it is a counter-intuitive procedure for legal policy makers at this point" (p. 251). Rather, when proposing legislation or reform, Innocence Project recommends the adoption of the following policies: "blind administration, lineup composition, instructions, confidence statements, and recordings" (innocenceproject.org, 2010).

Own Race Bias

The media plays "a vital role in framing the public's perceptions of what criminals and victims look like and whom they should be afraid of in a very distinct way" (Kappeler & Potter, 2005, p. 20). Kappeler & Potter (2005), noted in a study by Mary Oliver, where it was found that "media images of race and crime systematically over-represent African Americans as criminal, portray black men as particularly dangerous, and present information about black suspects that assumes their guilt" (p. 21).

According to research by Innocence Project (2010), when race is known, fifty-three percent of the misidentification cases involved cross-racial misidentifications (innocenceproject.org). "Own race bias" is the inability of eyewitness of one race to accurately identify a perpetrator from other races (Cutler & Kovera, 2010, p.37). More mistakes are made across races when eyewitnesses attempt to identify other race perpetrators than same race perpetrators (Cutler & Kovera, 2010, p.37).

Reform Efforts of the U.S. Supreme Court

In United States v. Wade (1967), the Court concluded that the uncounseled post-indictment lineup, a critical stage of the proceedings, violated respondent's Sixth Amendment right to assistance of counsel since the respondent was entitled to have his

attorney present (388 U.S. 218). The Court observed that "the vagaries of eyewitness identification are well known: the annals of criminal law are rife with instances of mistaken identification" (United States v. Wade, 1967, 388 U.S. 218). Since this decision, the Supreme Court has taken steps to:

> regulate aspects of several procedures (primarily lineups) used by police and prosecutors to have witnesses identify suspects. While not requiring the police to use a specific set of identification procedures, the Court has taken steps to help ensure the reliability of eyewitness identification testimony at criminal trials. (Acker & Brody, 2004, p. 335)

However, in 1972 the United States District Court for the Middle District of Tennessee ruled on a case questioning the admissibility of suggestive procedures in a criminal case in Neil v. Biggers (409 U.S. 188). The Court held that the identification of the defendant in Neil v. Biggers (1972) was reliable although suggestive, thus it did not violate due process since the victim "had spent a considerable period of time with her assailant and that her description to the police was more than ordinarily thorough" (409 U.S. 188).

In Manson v. Brathwaite (1977) due process challenges were raised against the admissibility of eyewitness identification procedures and as a result a test which determined the admissibility of evidence offered by the prosecution concerning identification was created (432 U.S. 96). The totality of the circumstances test used five factors to determine the admissibility of eyewitness identification evidence. These are: "the opportunity of the witness to view respondent at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of

certainty demonstrated at the confrontation, and the time between the crime and the confrontation" (Manson v. Brathwaite, 1977, 432 U.S. 96). There have been reform efforts by lower courts. In an early case the United States Court of Appeals for the District of Columbia Circuit addressed the issue of juror instructions in United States v. Telfaire (1972, 469 F.2d 552). The defendant in the case argued that "the judge erred in sending the case to the jury on the uncorroborated testimony of a single witness; in failing to initiate a special instruction on identification even in the absence of request by defense counsel" (United States v. Telfaire, 1972, 469 F.2d 552). The court of appeals affirmed the conviction, ruling that it is the trial court's discretion in deciding whether there was any particular need for a special identification instruction to the jury, thereby agreeing with the court's exercise of discretion (United States v. Telfaire, 1972, 469 F.2d 552).

Thus, there have been some procedural safeguards placed by the U.S. Supreme Court as well as lower courts to attempt to ensure that all identification procedures are not unnecessarily suggestive or untrustworthy (Acker & Brody, 2004, p. 371). Unfortunately, these protections placed by the courts have not remedied the problem of misidentifications. Miscarriages in justice have continued to occur in numerous cases in which eyewitness identification has been the leading or contributing factor in misidentifications throughout the country. The reason for this being that the courts have not addressed the root of the problem which is that outdated and suggestive identification procedures are used by many police departments which cause misidentification and wrongful convictions.

Due to the efforts of Innocence Project and researchers, like Gary Wells, Elizabeth Loftus, and Roy Malpass, eyewitness misidentification has received much attention and a few states are now taking strides at reforming their procedures to help remedy this great injustice. According to the Innocence Project (2010), the following states, which have had problems with eyewitness misidentification causing wrongful convictions, are now implementing statewide eyewitness identification reform through legislation: Wisconsin, Georgia, North Carolina, Ohio, New Jersey, Vermont, Maryland, Virginia, and West Virginia. Currently, Rhode Island is implementing the findings of a task force that the state commissioned, which consists of top prosecutors, police, defense lawyers and researchers from Rhode Island.

The duty of this task force entails identifying and recommending policies and procedures to improve the accuracy of eyewitness identifications. The task force recommended a blind administrator, immediate documentation of confidence statements upon any identification, and instructions to the witness prior to the procedure. The next chapter deals specifically with literature that addresses why states and police departments do not incorporate sequential lineups in their reforms and why researchers do not recommend sequential lineup presentation but only suggest its adoption.

However, in Missouri there has been a lack of progress in legislative reform of eyewitness identification procedures. The following house bills (HB) and the senate bills (SB) have been proposed to the Missouri legislature: SB 397 (2005) modifies various aspects of the criminal justice system; HB 557 (2005) would have established a Laboratory Oversight Committee and revises investigations procedures required in law enforcement; HB 1330 (2006) would have established the Missouri Laboratory

Oversight Committee and changes the laws regarding investigations procedures required in law enforcement.

HB 2488 (2008) would have mandated the adoption of written policies for any criminal justice entity that conducts eyewitness identification procedures. HB 2049 (2008) would have established a task force to develop guidelines for eyewitness evidence in criminal investigations. HB 589 (2009) requires the adoption of written policies for any criminal justice entity that conducts eyewitness identification procedures. All of the bills were introduced, read the first time, read the second, and then referred to a committee; however, only HB 557 had a public hearing, and died in committee. The remaining six bills were never heard or not even scheduled to be heard in a committee.

Purpose of the Study

This present study examines seven cases of wrongful convictions in Missouri, where eyewitness misidentification was the contributing or leading factor. These cases will evince the magnitude of the problem of eyewitness misidentification in Missouri in order to make a case for eyewitness identification reform. Moreover, these cases will examine whether the current procedures utilized by police departments in Missouri are outdated and inherently suggestive since the inability to identify the true culprit leads to misidentification and ultimately causes wrongful convictions of the innocent.

Significance of the Study

The importance of this study is to evince that eyewitness misidentification is an issue that needs to be addressed by legislators and law enforcement agencies in Missouri because factfinders in trials place much emphasis on eyewitness identification testimony at a trial than any other factor, especially in rape cases. Hopefully, this study will draw

people's attention to the problem of eyewitness identification and provide support for senators and representative to reform Missouri's identification procedures. The main objective of this study is to recommend the establishment of a task force that will identify and offer policies and procedures that will form the basis of state legislation to improve the accuracy of eyewitness identifications in the state.

Plan of Study

This chapter has introduced the topic of this study, wrongful convictions due to eyewitness misidentification, identified the nature of the problem, and discusses the background information about eyewitness identification. The following chapter first begins by giving concise definitions of the major topics in eyewitness identification, then the remainder of the chapter reviews literature on eyewitness identification pertinent to this study. Chapter three describes the methodology used in analyzing the problem of eyewitness identification in Missouri. Chapter four presents and examines the cases of: Johnny Briscoe, Lonnie Erby, Larry Johnson, Steven Toney, Armand Villasana, Anthony D. Woods, and Antonio Beaver. Chapter five discusses and analyzes information on eyewitness identification in Missouri, ties all the information together, and concludes with recommendations and policy implications.

CHAPTER 2
LITERATURE REVIEW

Introduction

The criminal justice system has been unable to resolve the problem of eyewitness misidentification. The scholarly literature on this matter suggests that the problem will remain with us for some time. This chapter reviews various literature on eyewitness identification to illustrate how serious the problem is with eyewitness misidentification and to examine possible solutions to alleviate the problems of misidentification.

This chapter first begins by giving concise definitions of terms pertinent to this study. Next, the first part of the literature review addresses issues concerning the cognitive process of the human brain relevant to the issue of eyewitness identification. This entails areas such as memory, confidence, and accuracy in order to better understand the neural underpinnings of eyewitness misidentifications and hopefully to shed light on what brain regions effect successful memory retrieval (Chua, Rand-Giovannetti, Schacter, Albert, & Sperling, 2004, p. 1139). The second part analyzes, compares, and contrasts the different types of lineups: sequential, simultaneous, and double-blind. The third part deals with issues concerning cross-racial identification. The fourth part concludes with the contribution to literature that the current study intends to accomplish and how it will add to the body of knowledge concerning eyewitness identification.

Definitions

For the purpose of this study, certain terms and concepts discussed in eyewitness identification literature that will be pertinent to the results and discussion later will need to be defined. This section will give concise definitions of the major topics of the study.

A lineup (photographic or live) is defined by Wells and Olson (2003) as "a procedure in which criminal suspect (or a picture of the suspect) is placed among other people (or pictures of other people) and shown to an eyewitness to see if the witness identifies the suspect as the perpetrator in question" (p. 278).

Fillers or foils are individuals that are in a lineup who are innocent and not suspects (Wells & Olson, 2003, p. 279). Foil bias is selecting fillers that "bear little resemblance to the description of the perpetrator, so that the suspect in the lineup stands out as most closely resembling the culprit (Judges, 2000, p. 258). Police departments utilize several types of lineups to identify a possible perpetrator. A simultaneous lineup is the traditional lineup used by police departments.

In a simultaneous lineup, the eyewitness views multiple suspects, live or photographic, all at once and makes his or her identification by comparing the lineup members and picking the one who resembles the suspect (Wells & Olson, 2003, p. 279). On the other hand, in a sequential lineup, the eyewitness views several suspects but the suspects are shown one at a time (Wells & Olson, 2003, p. 279); the eyewitness makes his or her identification based on the suspect that resembles the eyewitness's memory of the perpetrator. In a double-blind lineup, the administrator is unaware of which members are fillers and which lineup member is the suspect (Wells, Memon, & Penrod, 2006, p. 63). Blind administrator is the administrator of the lineup procedure who does not know the identity of the suspect and is unaware of which lineup member is being viewed by the eyewitness (innocenceproject.org, 2010).

Instructions, of which the administrator of the lineup should inform the eyewitness, are that the perpetrator may or may not be in the lineup and that the

eyewitness should avoid making eye contact with the administrator during the identification (innocenceproject.org, 2010). Instruction bias refers to the misguidance of the eyewitness by administrator by leading the eyewitness to "believe that the culprit is in the lineup and are not explicitly given the option of replying that the culprit is not present" (Judges, 2000, p. 257). Cross-race identification also known as own race bias is the inability for an individual from one race to identify a suspect from another race: "own race bias (ORB), where people are more accurate recognizing faces of people from their own race than other races" (Wright, Boyd, & Tredoux, 2003, p. 365). Memory is where what was observed and recorded is stored. Retrieval is the process of recovering information by searching through the memory and tie communication of this information to others (Osterburg & Ward, 2004, p. 194).

Cognitive Process

The process of observing and recalling is divided into three stages: sensory input, memory, and retrieval (Osterburg & Ward, 2004, p. 194). During sensory input, information is acquired through visual observation or other senses, then recorded into memory (Osterburg & Ward, 2004, p. 194).

The key to reducing wrongful convictions as a result of eyewitness misidentifications and enhancing more accurate eyewitness identifications is to understand the psychological process. Understanding precisely how memories are formed would allow investigators and identification administrators to accurately rule out events that may cloud or change an eyewitnesses' recollections of crimes and the perpetrators. The human mind can easily be affected by various factors that may alter or change the memory or perception of certain occurrences or events.

In the absence of material evidence, the existence of an eyewitness is pivotal to a case. The National Institute of Justice created a group that consisted of experts from across the United States and Canada, composed of distinguished law enforcement, legal, and research professionals. The group developed recommendations for the collection and preservation of eyewitness evidence by law enforcement. According to the former Attorney General Janet Reno:

> [E]yewitnesses frequently play a vital role in uncovering the truth about a crime. The evidence they provide can be critical in identifying, charging, and ultimately convicting suspected criminals. That is why it is absolutely essential that eyewitness evidence be accurate and reliable. One way of ensuring we, as investigators, obtain the most accurate and reliable evidence from eyewitnesses is to follow sound protocols in our investigations … . Even the most honest and objective people can make mistakes in recalling and interpreting a witnessed event: it is the nature of human memory (National Institute of Justice, 1999, p. 5).

There are instances in which people mistakenly recollect someone who is familiar from somewhere they have encountered that individual. In eyewitness identification, eyewitnesses sometimes mistakenly identify a person familiar as the perpetrator of a crime (Cutler & Kovera, 2010, p. 47). Unconscious transference occurs when an eyewitness inaccurately recalls the face of someone familiar to them and identifies that person as a perpetrator when in fact, that person is innocent. According to Davis, Loftus, Vanous, & Cucciare (2008), there are two kinds of unconscious transference seen in eyewitness literature: one, showing misidentification of persons who are familiar because they were previously viewed in mug shots but not at the scene of the crime; and the other,

showing misidentification of persons who were at the scene of the crime, but were not actually the perpetrator (p. 606).

Many factors impact the eyewitness' ability to correctly identify the perpetrator of a crime. Glaze (2007) postulates that "the actual process an eyewitness engages in to identify a perpetrator is difficult to understand. In fact, the rationale that the eyewitness engages in to select an individual from a lineup cannot be completely defined" (p. 199). Eyewitness identification decisions are likely to be shaped by the match between individual lineup members and eyewitnesses' image of the perpetrator rather than memory, according to Sauer, Brewer, & Weber (2008, p. 528). There are two types of judgments used by eyewitnesses when attempting to identify a suspect, absolute and relative.

Absolute judgment is used by eyewitnesses when viewing a sequential lineup. Eyewitnesses compare each photograph or person only to their memory of what the offender looked like when viewing the lineup rather than comparing lineup members to another. On the other hand, relative judgment is used by eyewitnesses in simultaneous lineups when making their identification. In relative judgment, the eyewitness relies on his or her memory to decide which suspect in the lineup resembles the perpetrator by comparing them to one another rather than to the eyewitness's memory of the culprit (Gronlund, 2005, p. 26).

Relative judgment has been found to cause misidentifications as illustrated by Steblay, Dysart, Fulero, and Lindsay (2001). The reason for this is that when the perpetrator is not present in the lineup, the eyewitness moves to pick the suspect that best resembles the perpetrator, but not the real perpetrator. This increases the likelihood of

the eyewitness misidentifying the suspect from the lineup. According to Judges (2000) instruction bias, foil bias, and the manner of presentation of the lineup are all factors that contribute to the risk of error resulting from the relative judgment (p. 257).

According to Epstein (2007), “juries seem disposed more readily to credit the veracity and reliability of the victims of an outrage than any amount of contrary evidence by or on behalf of the accused” (p. 731). The research shows that eyewitness testimony is fallible because what we sometimes perceive as fact may be our mind playing tricks on us.

According to Chua, Rand-Giovannetti, Schacter, Albert, and Sperling (2004, p. 1131-2), confidence and accuracy are weakly related because a higher confidence is only somewhat predictive of accuracy across subjects, yet jurors are convinced by eyewitnesses who show high confidence in their identifications. The likelihood of the prosecutor bringing the case to trial and strengthening the perception of guilt among jurors is enhanced when there is a positive eyewitness identification of a criminal suspect, which also helps determine the direction of a police investigation (Leippe, Eisenstadt, Rauch, & Stambush, 2006, p. 201).

A 2006 review of twenty post-identification feedback effects found a robust impact across three categories of variables which reaffirmed the findings of a 1998 study on the post-identification feedback effect, “eyewitnesses whose decisions were confirmed became more certain of the accuracy of their identification at the time of the feedback, but also expressed that they were more certain at the time of the identification” (Steblay, 2009, p. 645). Feedback from administrators not only distorts the eyewitnesses' memories of what their earlier decisions had been, but alters the memory of the

circumstances surrounding the identification (Steblay, 2009, p. 645). The most striking effect is how eyewitnesses "report a better view of the culprit … and greater clarity of the culprit's image in mind" after confirming feedback (Steblay, 2009, p. 645). Steblay (2009) indicated that "post-identification feedback effect occurs even if the feedback is delayed for forty-eight hours after the identification and is found in real eyewitnesses to real crimes" (p.645-6).

Leippe, Eisenstadt, Rauch, & Stambush (2006) claims, "information about memory accuracy appears to have far-reaching effects on eyewitness reports" (p. 218). Leippe, Eisenstadt, Rauch, & Stambush (2006, p. 218) suggest that eyewitnesses should be guarded as much as possible from procedures that influence confidence, information that implies something or alters confidence about their likely accuracy, until they have given their memory reports and their confidence statements are on record. Chua, Rand-Giovannetti, Schacter, Albert, & Sperling (2004) point out "there are specific instances when confidence and accuracy diverge, and individuals report high subjective confidence despite inaccurate memory content" (p. 1131). When an investigator provides feedback to the witness after the identification of a member of the lineup, it can result in an increase in the degree of confidence that the witness expresses in the accuracy of his or her identification (Thompson & Johnson, 2008, p. 23). Unfortunately, eyewitnesses who express confidence in their selection from the lineup often have high rates of misidentification according to researchers (Wells & Olson, 2003, p. 277-8).

In a study, it was found that the majority of high-confidence responses were accurate, and a smaller number of these trials, which represented the particular cases of interest when confidence and accuracy diverge, were inaccurate (Chua, Rand-

Giovannetti, Schacter, Albert, & Sperling, 2004, p. 1136). Incorrect identification was viewed as a type of false memory in which subjects expressed high confidence for inaccurate responses (Chua, Rand-Giovannetti, Schacter, Albert, & Sperling, 2004, p. 1136). The left dorsolateral prefrontal cortex (DLPFC), which is responsible for working memory and regulating thinking and action, related to subsequent high confidence during encoding for both correct and incorrect responses (Chua, Rand-Giovannetti, Schacter, Albert, & Sperling, 2004, p. 1136).

It can be concluded from the literature examined in this section that confidence shown by eyewitnesses is attributed to increased contact between the eyewitness and the administrator not the eyewitness's memory. Furthermore, the confidence portrayed by the eyewitness does not directly correlate to a correct identification of the perpetrator. Jurors need to be informed of this during trials so they are not quick to decide the guilt of the defendant based solely on eyewitness testimony. In regards to the cognitive process, it can be concluded from the literature that a complete comprehension of how memory is formed and recollected is necessary in order to understand how memory can be contaminated.

Lineup Presentations

Wogalter, Malpass, and McQuiston (2004), conducted a study that addressed a number of issues such as sources of lineup foils, lineup formation, and witness instructions (p. 69). Five hundred US police jurisdictions received surveys that investigated which procedures police officers employ when constructing and administering eyewitness identification; however, only 220 were returned (Wogalter, Malpass, & McQuiston, 2004, p. 69). This study indicated that police departments

constructed lineups that were photographic as opposed to live lineups and the use of sequential lineups was mainly restricted to larger population jurisdictions (Wogalter, Malpass, & McQuiston, 2004, p. 77-8). More than "58% of the respondents said that they did not receive formal training in eyewitness identification techniques" and the findings indicated that many police jurisdictions across the country varied in the way they performed eyewitness identifications (Wogalter, Malpass, & McQuiston, 2004, p. 79).

The presentation of lineups in eyewitness identification procedures is done either sequentially or simultaneously. A recent call for reform is to incorporate a double-blind process. In a simultaneous lineup, the traditional procedure used by most departments, suspects are displayed all at once in sets of 4 or 6 photographic or live to be viewed by the eyewitness (Wells & Olson, 2003, p. 279). On the other hand, sequential lineup suspects are displayed (photographic) or viewed (live) one at a time by the eyewitness (Wells & Olson, 2003, p. 279). In a double-blind procedure, the administrator of the lineup procedure, photographic or live, was unaware of the identity of the suspect and the facts of the case to avoid any bias or suggestiveness (innocenceprject.org, 2010).

Although the superiority of the sequential procedure has been replicated many times, Mcallister, Michel, Tarcza, Fitzmorris, & Nguyen (2008) reported that a meta-analysis by Steblay found that higher rates of correct identification are seen in simultaneous lineups than sequential lineups (pp. 193-206). On the other hand, sequential lineups are found to significantly reduce misidentification when the culprit is present (Glaze, 2007, p. 2). According to Haw & Fisher (2004), studies have demonstrated that more correct identifications are made in sequential lineups than in simultaneous ones (p. 1106).

Under several criteria in twenty-three studies, a sequential lineup was found to be superior to a simultaneous lineup due to the fact that it yielded 56% more correct decisions than the 48% which simultaneous lineups did (Haw & Fisher, 2004, p. 1106). However, Haw and Fisher (2004), point out that researchers have been reluctant to recommend sequential lineup due to the influence that a lineup administrator may have in the procedure (p. 1106).

In their study, Haw and Fisher examined whether the influence of lineup administrators affect eyewitness identification decisions and they found that lineup administrators can influence eyewitness decisions (Haw & Fisher, 2004, p. 1110). Currently, police departments use a combination of a single-blind, simultaneous procedure with high administrator–witness contact. Here the administrator interacts and communicates a lot with the witness during the whole identification process. This causes a greater number of misidentifications according to the study by Haw & Fisher (2004, p. 1110).

Gronlund (2005) stated that the Lindsay and Wells explanation for the sequential lineup advantage is that witnesses adopted an absolute decision strategy in a sequential lineup, which allows the eyewitness to view each lineup member and to compare a member to his or her memory of the perpetrator (p. 23). In 1998, the American Psychology/Law Society recognized the superiority of sequential lineups over simultaneous lineups; however, it did not recommend sequential lineups over simultaneous lineups since sequential lineups deviated from current police practices (Koosed, 2009, p. 602).

Using cognitive processes and decision-making strategies of eyewitnesses to determine the accuracy of identifications from lineups Kneller, Memon, and Stevenage (2001) conducted a study that compared sequential lineups, with simultaneous lineups under culprit-present and culprit-absent conditions (p. 659). In this study, they found that when the target was present in the lineup, simultaneous lineups (61.1%) held a slight advantage over sequential lineups (50%) in correct identifications (Kneller, Memon, & Stevenage, 2001, p. 665). However, when the target was absent from the lineup, simultaneous lineups (61.1%) produced significantly higher incorrect identifications compared to sequential (22.2%), which was consistent with previous research (Kneller, Memon, & Stevenage, 2001, p. 665).

Similarly, the American Bar Association (ABA) noted that, although a majority of researchers support the use of sequential lineups:

> [T]here is a growing dissenting view among some well-respected social scientists that the research has not proceeded far enough to determine under what conditions, if any, a sequential lineup is to be preferred to a simultaneous lineup, and that field studies have not been administered to determine the practicability of sequential methods, though new technologies entering the marketplace now may substantially reduce the time and out-of-pocket costs involved. (Koosed, 2009, p. 605)

For those reasons previously stated, the American Psychology/Law Society report recommended double-blind procedures over sequential and simultaneous lineups (Koosed, 2009, p. 602).

In late 2004, Sheri H. Mecklenburg, on behalf of the Illinois State Police conducted a pilot study to determine the superiority of the sequential, double-blind method of identification to the simultaneous method by measuring which one resulted in a lower rate of known false identifications (Mecklenburg, 2006, p. 4). Four hundred and seventy six officers from the three jurisdictions of Illinois law enforcement, (Chicago, Joliet, and Evanston), participated in this program (Mecklenburg, 2006, 3-4). The study measured false errors with filler identification and accuracy on identifications by suspect identifications (Mecklenburg, 2006, 3-4). It should be noted that the Illinois pilot program experienced problems with live lineups on multiple perpetrator cases, which accounted for 40% of the program, for sequential lineups (Mecklenburg, 2006, p. 5). Problems with implementation caused a mid-program suspension of sequential lineups with multiple perpetrators (Mecklenburg, 2006, p. 5). The results of the Illinois study demonstrated that simultaneous lineups produced lower rates of known false identifications than sequential, double-blind lineups. This result was unprecedented according to previous research experiments (Mecklenburg, 2006, p. 4). Moreover, two of the three jurisdictions (Chicago and Evanston) illustrated a lower rate of false identifications and a higher rate of suspect picks for simultaneous lineups compared to sequential double-blind lineups, while the filler identification rates in Joliet for both lineups illustrated no statistical difference (Mecklenburg, 2006, p. 5).

Many critics of the Illinois study contended that the study was methodologically flawed because “the sequential lineups [in the Illinois study] were always conducted using double-blind procedures and the simultaneous lineups were always conducted using non-blind procedures” (Winzeler, 2008, p. 1607). The study should have compared

"apples to apples", meaning the study should have compared sequential and simultaneous lineups when both are blindly administered for the data to be meaningful (Winzeler, 2008, p. 1607). Also, critics viewed the Illinois study as biased since the same department that "had so vehemently opposed any legislatively mandated change in its procedures" had conducted the pilot project, not the Illinois State Police (Winzeler, 2008, p. 1608).

Prior to the commission of the study, officers involved in the study were trained on the nature and purpose of the study, and for that reason, critics contend that this training "cannot be squared with valid scientific methodology because it creates the possibility that the subjects will change their behavior to influence the outcome" (Winzeler, 2008, p. 1608). Moreover, a preference for simultaneous lineups by police officers involved in the Illinois study was due to the lack of complexity in presenting sequential double blind lineups over simultaneous lineups. Although officers' characterized sequential lineups as easy, they viewed the double blind procedure as difficult due to a difficulty in finding a blind administrator (Mecklenburg, 2006, p. 48).

Prior to the commission of the Illinois study, the first field study on blind sequential lineups was conducted by several police departments of the Hennepin County Minnesota (Schacter, Dawes, Kahneman, Lempert, Roediger, & Rosenthal, 2007). The aim of the Hennepin County Minnesota study was "to secure better quality identifications based on what eyewitnesses actually remember" (Klobuchar, Steblay, & Caligiuri, 2006, p. 413). The study produced suspect identification rates comparable to laboratory and field tests and police departments found the procedures relatively easy to implement, more so than anticipated (Klobuchar, Steblay, & Caligiuri, 2006, p. 409,11).

It was noted that although there was an initial skepticism of the study by officers in Hennepin County, this skepticism began to fade once the officers became familiar utilizing the protocol (Klobuchar, Steblay, & Caligiuri, 2006, p. 409,11). William McManus, Chief of the Minneapolis Police Department stated, "by the end of the project … the burden on investigators was far less than my department had anticipated" (Klobuchar, Steblay, & Caligiuri, 2006, p. 409,11). In the pilot study, it was noted that in the Minnetonka Police department, an investigator found the procedure “simple to pick up” and of no cost implications according to the Chief Joy Rikala (Klobuchar, Steblay, & Caligiuri, 2006, p. 409).

The contrary findings from the Illinois study should be discounted by this earlier research. Here it was concluded from the study that “double-blind sequential protocol is workable for police in both large and small departments without undercutting the ability to solve cases” (Klobuchar, Steblay, & Caligiuri, 2006, p. 413). The resistance of change would be the biggest hurdle to overcome in implementing new procedures (Klobuchar, Steblay, & Caligiuri, 2006, p. 409).

Cross-racial Identification

The cross-race effect is the phenomenon whereby people are better able to recognize persons of their own race as compared with those of other races (Maclin, Maclin, & Malpass, 2001, p. 135). Maclin, Maclin, & Malpass (2001), noted that “in 69% of the misidentification cases, the victim was White, whereas in 57% of those cases the exonerated defendant was Black, which indicates that a proportionally greater number of misidentifications occurred across racial lines” (p. 134). Research has shown that people have well-defined stereotypes or mental representations for members of

racial/ethnic groups, males/females, and for youth/elderly based on trait ascription, personality, and social category information (Maclin & Herrera, 2006, p. 197).

In fact, previous research has evinced that stereotypes impact information processing to the extent that individuals are prone to interpret others' actions to be consistent with the predetermined labels. Stereotyping occurs for the out-group, which is viewed negatively by the positively viewed in-group, which is seen as more heterogeneous (Maclin & Herrera, 2006, p. 197).

Maclin and Herrera (2006) postulate, “stereotypes impact information processing, and previous research has supported the notion that when stereotypes are elicited, individuals are likely to interpret others' actions in ways that are consistent with the predetermined labels” (p. 197). In the study by Maclin and Herrera (2006), they examined the content of the criminal stereotype from a Hispanic population through two studies. In one study, they asked participants to provide broad “information about the concepts associated with criminals” (Maclin & Herrera, 2006, p. 197). In a second study, they used the information supplied from the first study to develop questionnaires to examine specific perceptions of criminals, criminal behavior, and criminal activities of criminal stereotypes for Hispanic, White, Black, and Asian (Maclin & Herrera, 2006, p. 197). This research found that “the stereotypical criminal is tall, with long or shaggy dark hair, wears baggy, dirty and/or dark clothing, may be aggressive (and/or smart and articulate), have some form of facial hair, and beady eyes” (Maclin & Herrera, 2006, p. 204). According to Maclin & Herrera (2006):

> The criminal stereotypes for these racial/ethnic groups have some qualities similar to the dominant stereotypes for that group (e.g., dark skin and tall, as being an

> element of the dominant African American stereotype, Niemann et al, 1994). In fact, Niemann and colleagues found that the term 'criminal' itself was part of the dominant stereotype for African Americans and Hispanics (but not Asians). However, the criminal stereotypes reported here also include additional elements that go beyond the general stereotype for these ethnic/racial groups. (p. 204)

Although racial prejudice affects the criminal justice system and a number of studies suggest this, it has yet to be observed in the eyewitness identification domain (Edlund & Skowronski, 2008, p. 25). Studies indicated that racial prejudice is unrelated to perpetrator identification accuracy when eyewitnesses are asked to identify perpetrators presented in simultaneous photo lineups (Edlund & Skowronski, 2008, p. 15). Edlund & Skowronski (2008) conducted two studies in which they examined both sequential and simultaneous lineups to reexamine the findings of previous studies that racial prejudice is unrelated to perpetrator identification accuracy (p. 15).

In the first study with sequential lineups, results indicated that when African-Americans were the perpetrators, there was a relation between prejudice and the accuracy of identification decisions made (Edlund & Skowronski, 2008, p. 25). Eyewitnesses who "were high in explicit prejudice made more accurate identification decisions about African-American perpetrators than those who were low in prejudice" (Edlund & Skowronski, 2008, p. 25). Highly prejudiced eyewitnesses were more likely to correctly identify the perpetrator when present in the lineup and also less likely to falsely identify a foil when the perpetrator was absent from the lineup (Edlund & Skowronski, 2008, p. 25).

In the second study using a simultaneous identification procedure, the results did not indicate a relation between racial prejudice and accuracy (Edlund & Skowronski, 2008, p. 15), as indicated by prior studies. Thus, this study maintains the findings of previous eyewitness literature that "racial prejudice does not have an impact on eyewitness identification accuracy" (Edlund & Skowronski, 2008, p. 26).

Wells, Memon, & Penrod, (2006) cite Meissner's and Brigham's (2001) study of cross-race identification impairment, they "analyzed data from 39 research articles, with 91 independent samples involving nearly 5,000 participant witnesses" (p. 52). The study "examined measures of correct identification and false-alarm rates, as well as aggregate measures of discrimination accuracy and response criterion" (Wells, Memon, & Penrod, 2006, p. 52). The results of their study indicated "that the chance of a mistaken identification is 1.56 times greater in other-race than in same-race conditions and that the witnesses were 1.4 times more likely to correctly identify a previously viewed own-race face as they were to identify an other-race face" (Wells, Memon, & Penrod, 2006, p. 52).

In addition, the study indicated that limiting the viewing time of the eyewitness of the perpetrator significantly influenced own-race bias when "false alarms to other-race faces increased when study time was limited" (Wells, Memon, & Penrod, 2006, p. 52). In a study cited by Wells, Memon, & Penrod (2006) that examined cross-race impairment in kindergarten children, third graders, and young adults who viewed black and white target faces" and tested with a six-person lineup a day later (p. 52). The observation by the researchers on cross-race effect did not change, nor did it "differ across age groups: [i]n each age group, cross-race identification was less accurate than own-race identification" (Wells, Memon, & Penrod, 2006, p. 52).

In two studies conducted by Maclin, Maclin, & Malpass, they examined the "recognition of Hispanic and Black target faces by Hispanic participants under nonoptimal viewing conditions" in order to reduce misidentifications and to better understand how recognition of other-race persons differs from that of same-race persons (2001, p. 134). In one study, "the effect of the amount of delay that the eyewitness experiences before being given the opportunity to identify the face—either no delay (immediately) or, say, 30 min—on his or her ability to correctly identify the suspect" was examined (Maclin, Maclin, & Malpass, 2001, p. 138). Results of the study showed that there was a cross-race effect thus confirming that Hispanics are susceptible to the other race effect (Maclin, Maclin, & Malpass, 2001, p. 147).

It is also concluded that factors, other than decreased duration of exposure during study time and increased delays between study and testing phases, and attention and arousal, have been shown not only to reduce recognition performance but also have a differential effect on same- and other-race faces (Maclin, Maclin, & Malpass, 2001, p.147). Literature from this section postulates that in cases that involve the identification of one race by another race, it is very likely that the eyewitness will misidentify the suspect.

For the next chapter, eight benchmarks, derived from two of the best sets of practices for identification procedures, will be compared to case facts in the seven Missouri cases. These two sets of practices were developed by the U.S. Department of Justice under U.S. Attorney General Reno and by the American Psychology-Law Society. The literature discussed in this chapter supports each of these benchmarks.

Attorney General Janet Reno convened with attorneys, police officers, and psychologists to produce a listing of the best practices by the Department of Justice which addresses the collection and preservation of eyewitness evidence (Cutler & Kovera, 2010, p. 99). There are seven best practices according to Department of Justice for photo arrays and lineups (Cutler & Kovera, 2010, p. 100). One, instructions warning the eyewitness that the perpetrator might not be in the array should be given (Cutler & Kovera, 2010, p. 100). Two, a minimum of five fillers should be used (Cutler & Kovera, 2010, p. 100). Three, the fillers should be selected on the basis of match to description of the suspect (Cutler & Kovera, 2010, p. 100). Four, there should be only one suspect in the array (Cutler & Kovera, 2010, p. 100). Five, a consistent appearance of photos should be maintained in the array (Cutler & Kovera, 2010, p. 100). Six, the confidence of the eyewitness should be assessed prior to providing any feedback to the eyewitness (Cutler & Kovera, 2010, p. 100). Last, the documentation of the identification procedure and outcome should be thoroughly completed (Cutler & Kovera, 2010, p. 100).

The American Psychology-Law Society (APLS) prescribed four rules for identification tests. The best practices by the American Psychology-Law Society were developed by its executive committee, where psychologists recommend a set of four rules for lineups and photo arrays (Cutler & Kovera, 2010, p. 100). First, the person who conducts the lineup or photospread should not be aware of which member of the lineup or photospread is the suspect. Second, "eyewitnesses should be told explicitly that the person in question might not be in the lineup or photospread and therefore should not feel that they must make an identification. They should also be told that the person administering the lineup does not know which person is the suspect in the case" (Cutler

& Kovera, 2010, p. 101). Third, "the suspect should not stand out in the lineup of photospread as being different from the distracters based on the eyewitness's previous description of the culprit or based on other factors that would draw attention to the suspect" (Cutler & Kovera, 2010, p. 101). Lastly, "a clear statement should be taken from the eyewitness at the time of the identification and prior to any feedback as to his confidence that the identified person is the actual culprit" (Cutler & Kovera, 2010, p. 101).

In order to have one set of criteria for assessing the seven Missouri cases, it is necessary to create new benchmarks that consolidate and integrate certain practices prescribed by the Department of Justice (DOJ) and American Psychology-Law Society (APLS) in their lists of best practices for identification procedures. In doing so, an instrument, supported by the prescriptions of both the leading practitioner and professional organizations, is provided to examine the identification procedures in the Missouri cases. These derived benchmarks are identified as follows:

- Benchmark one states that the identification procedure should use blind administration. This benchmark is derived from the first practice prescribed by APLS.
- Benchmark two states that the eyewitness should be instructed that the suspect might not be present and should not feel that they must make an identification. This benchmark is a consolidation of the first practice by the DOJ and the second practice by the APLS.
- Benchmark three states that the identification procedure should not be suggestive regarding the appearance of suspect in both line-ups and

photospreads. It consolidates the third practice by the APLS and the fifth practice prescribed by the DOJ.

- The fourth benchmark suggests that a minimum of five fillers should be used in both line-ups and photospreads. This is derived from the DOJ's second practice.
- Benchmark five states that the fillers used in the identification should completely match the eyewitnesses' description of the suspect. This fifth benchmark is derived from both of the third practices prescribed by the APLS and the DOJ.
- The sixth benchmark states that if there is another suspect in the investigation at the time of the identification, there should be only one suspect in array. This is integrated from practice six prescribed by the DOJ.
- Benchmark seven states that a written statement be taken from the eyewitness as to their confidence of their identification. This is derived from last practice prescribed the APLS and the sixth practice by the DOJ.
- Finally, benchmark eight requires that the identification procedure documentation be thorough. This is integrated from the DOJ's seventh practice.

Contribution to Literature

There is an enormous amount of literature and research in the discipline of psychology on eyewitness procedures but it appears that there is a significant amount of resistance to this literature and research in the criminal justice profession. This study will provide case illustrations of the complexities and conditions indicated in the literature

identified that lead to eyewitness misidentification. Suggestions will be made on how the observations in these illustrations could lead to reforms of pre-trial identification procedures. This author hopes that the results of this study will support efforts of state lawmakers in Missouri to examine and reform eyewitness identification procedures across the state and to recommend policies that prevent wrongful convictions of the innocent.

CHAPTER 3
METHODOLOGY

Introduction

It is understood that eyewitnesses help identify perpetrators of crimes in many cases but in a large number of cases eyewitnesses misidentify individuals because of pretrial procedures used in the identification. This study examines seven cases of wrongful convictions in which eyewitness identification was the leading or contributing factor in the individual conviction but there was later an exoneration by DNA evidence. This chapter explains the methodology that the study entails. It informs the reader of the type of study conducted and the assessment used to critique the identification procedure.

Research Design and Process

This study approach utilizes a case study. Rather than conducting an experiment, a survey, or an interview, this study proposes to examine actual cases in which identification procedures were conducted and scrutinize the results of the identification in a real world setting. A case study is "defined as an in-depth, multifaceted investigation, using qualitative research methods, of a single social phenomenon" (Feagin, Orum, & Sjoberg, 1991, p. 2).

Furthermore, a case study allows the researcher to monitor the progression of eyewitness identification procedures over time and observe if the procedures have evolved or changed according to relevant research findings. Additionally, a case study according to Feagin, Orum, & Sjoberg (1991)

> permits the grounding of observations and concepts about and social structures in natural settings studied at close hand; provides information from a number of sources and over a period of time, thus permitting a more holistic study of

> complex social networks and of complexes of social action and social meaning; it can furnish the dimensions of time and history to the study of social life, thereby enabling the investigator to examine continuity and change in lifeworld patterns; it encourages and facilities, in practice, theoretical innovation and generalization (p. 6-7).

Data Collection

The objective of this study is to generate a strategy for reform in eyewitness identification procedures by demonstrating that the practices utilized by police departments in Missouri do not conform to present research and thus elicited misidentifications. The type of study conducted will be a case study of seven cases of wrongful convictions where eyewitness misidentification was the leading or contributing factor. The Innocence Project is a non-profit legal clinic created by Barry C. Scheck and Peter J. Neufeld in 1992, which is part of the Innocence Network that brings together all the innocence organizations in the US and around the world. The objective of Innocence Project is to provide legal assistance to those who were wrongfully convicted through DNA testing and to reform the criminal justice system to prevent future injustice. Most of the clients for the organization are indigent and have exhausted all legal avenues of relief. The case work at the Innocence Project is handled by law students who are supervised by a team of attorneys. The seven cases utilized in the study were retrieved from Innocence Project database of DNA exonerations in Missouri and it is for that reason that these cases were selected. Although the actual number of wrongful convictions is uncertain in Missouri, the seven are the only cases noted by Innocence Project. The enumerations of three cases will be supplemented with the following

reported appellate court decisions in: State v. Woods (1985); State v. Briscoe (1984); and State v. Erby (1987). The appellate court decisions for the other cases did not provide additional information to what can be found on the Innocence Project website.

The eyewitness identification procedures utilized in each of the seven cases will be critiqued and compared to two of the best practices from the U.S. Department of Justice and the American Psychology-Law Society's White Paper on identification according to Cutler & Kovera will be utilized (2010). The rationale for using these practices to gauge the procedures performed by the police in each of the seven cases is because each practice is recommended by the literature for collecting eyewitness identification evidence (Cutler & Kovera, 2010, p. 99).

As indicated in the previous chapter, it is necessary that one set of criteria be created in order to analyze and evaluate the identification procedures in each of the seven cases. This set of criteria entails seven benchmarks: one states that the identification procedure should use blind administration; two states that the eyewitness should be instructed that the suspect might not be present and should not feel that they must make an identification; three states that the identification procedure should not be suggestive regarding the appearance of suspect in both line-ups and photospreads; four states that a minimum of five fillers should be used in both line-ups and photospreads; five states that the fillers used in the identification should completely match the eyewitnesses' description of the suspect's; six states that a written statement be taken from the eyewitness as to their confidence of their identification; and lastly, seven states that the identification procedure documentation be thorough.

These benchmarks will be used to determine whether the identification procedures in these cases lacked these indicia of reliability. The result should indicate if new practices need to be instituted to ensure these standards for identification procedures are adhered to in the future. Similarly, the recommendations for reforms will be based on findings of this analysis.

CHAPTER 4
RESEARCH FINDINGS

Introduction

The purpose of this chapter is to convey the results of this study. This chapter begins with the individual display of profiles of each of the seven Missouri cases of DNA-determined wrongful conviction. Next, a summary of the benchmarks of the best practices in identification from the Department of Justice and the American Psychology-Law Society with which each case profile will be critiqued. It will then be followed by the results of the analysis.

Case Profiles

Case 1 Antonio Beaver

On August 15, 1996, a 26-year-old white woman in a St. Louis parking lot was approached by a black male, whom she thought was a parking attendant. The man was described by the eyewitness as a 5'10'' tall clean-shaven African-American man wearing a baseball cap, with a David-Letterman-like gap between his teeth. The man instructed the woman to move her car or be towed so the woman returned to her car to relocate her vehicle, but man informed the woman that she no longer needed to move. As the woman proceeded to exit her vehicle the man attacked her with a screwdriver and told her to give him the keys and her purse. A struggle ensued between the two, but the woman fled abandoning her purse on the car seat. The next day the car was found in East St. Louis and evidence, fingerprints, and blood were collected from the vehicle (Innocence Project, 2010).

The victim helped the police create a composite sketch of the attacker and six days later a detective arrested Antonio Beaver believing that he resembled the composite

sketch in this case even though at the time “Beaver had a full mustache, was 6’2’ tall and had chipped teeth.” The same detective who made the arrest conducted a lineup, which included Beaver and three other men, two were police officers. Only Beaver and the other non-officer wore baseball caps, and Beaver was the only one with noticeable defects to his teeth. The victim identified Beaver. Beaver was later convicted and served ten years in prison until he was finally exonerated by DNA test of the blood found on the crime scene in 2007 (Innocence Project, 2010).

Case 2 Johnny Briscoe

On October 21, 1982, a man broke into a woman’s apartment in the early hours of the morning in a suburb of St. Louis. The perpetrator threatened the woman with a knife, stole jewelry, and raped her. After the commission of the crimes, the perpetrator identified himself as John Briscoe while he remained with the victim in a well-lighted room smoking cigarettes for an hour (Innocence Project, 2010). After the departure of the perpetrator, the victim notified the authorities of the events that had transpired (Innocence Project, 2010).

While the authorities were still present in the victim’s residence, the perpetrator contacted the victim several times identifying himself again as John Briscoe. Authorities later traced the phone calls to a payphone near Briscoe’s apartment. In both a photographic display and a lineup, the victim positively identified Briscoe as the perpetrator (State v. Briscoe, 1984). It was noted in the case facts that Briscoe was the only lineup member in an orange jumpsuit during the lineup. Briscoe was finally exonerated by DNA tests of the cigarettes found at the crime scene in 2006 after already

serving twenty-three years of a forty-five years sentence for crime he did not commit (Innocence Project, 2010).

Case 3 Lonnie Erby

In the Lonnie Erby case, there was a series of rapes in which Erby was identified in a photographic display and a lineup as the perpetrator by four of the five victims. The first incident, July 26, 1985, a teenage girl walking on St. Louis Avenue in St. Louis, Missouri, was accosted by a man who grasped her by the throat and threatened to kill her with a knife if she attempted to escape. The victim was led down to a nearby alleyway to an unoccupied garage where she was raped, sodomized, and raped again (State v. Erby, 1987). After the ordeal, the victim dressed and ran home to notify the police. The victim was taken to the hospital and a rape kit was collected along with the victim's shirt, jeans, and underwear (Innocence Project, 2010).

The second incident, August 22, 1985, a fourteen year old girl was attacked by an unknown man as she took out the trash. The girl was chased and then tackled by the man who then began removing the victim's cloths forcibly, and then raped and sodomized the girl while yelling expletives at her. The perpetrator fled and the victim returned home, showered, and contacted her mother and the police (Innocence Project, 2010).

The third incident on September 30, 1985, two teenagers were walking in St. Louis when approached by a man with a handgun. The man forced the two girls to a vacant lot where he demanded all their money and attempted to rape them but the two girls escaped (Innocence Project, 2010). The fourth incident on October 1, 1985, a teenage girl walking to her cousins in the early morning was approached by a man who threatens the girl with a knife. The man put "his arm around victim and told her to just

pretend we're girlfriend and boyfriend so that passing drivers or anyone else would not be suspicious" (State v. Erby, 1987, p. 3). The man forced the girl into a vacant house where she was raped, sodomized, and raped again (State v. Erby, 1987). The perpetrator fled with the victim's money and cigarette lighter. The victim then got dressed and sought help from a neighboring school. A rape kit was collected from the victim after arriving at the hospital (Innocence Project, 2010).

Three days later, the police responded to a complaint about a man looking into a young girl's room (innocenproject.org, 2010). In their search of the area police spotted Lonnie Erby walking in the vicinity and arrested him (Innocence Project, 2010). In the following week, four of the five victims identified Erby as perpetrator in a photospread and a lineup (Innocence Project, 2010). At the trial "prosecutors bolstered their argument with the victims' pre-trial identifications of Erby and the consistent descriptions given by the victims to the police after each assault" (Innocence Project, 2010). Erby served seventeen years in prison before finally being exonerated by post-conviction DNA testing in 2003 (Innocence Project, 2010).

Case 4 Larry Johnson

In the Larry Johnson case, a white woman was raped and sodomized for two hours in the early morning hours of January 1984 (Innocence Project, 2010). The victim while in her vehicle was attacked by a man masked with a scarf and sweatshirt. The victim was forced to drive to an alley where she was raped and sodomized for two hours. After the ordeal the victim drove home and contacted the police. The victim assisted the police in creating a composite sketch of the perpetrator in which the victim described her attacker as a "clean shaven black man" (Innocence Project, 2010). In a photographic

lineup the victim identified Larry Johnson even though he had a mustache. After the arrest of Larry Johnson, he was identified again by the victim in a lineup. Larry Johnson served eighteen years before finally getting exonerated in 2002 (Innocence Project, 2010).

Case 5 Steven Toney

In the Steven Toney case he was identified in a photo lineup as the perpetrator of a rape and sodomy at 3:00 AM on September 30, 1982 (Missouri v. Toney, 1984). The victim was grabbed from behind by the perpetrator and threatened with a knife as she attempted to open her door to her apartment in the early morning. The man then dragged her to a nearby wooded area where he raped and sodomized the victim (Missouri v. Toney, 1984). The perpetrator fled and the victim returned home where she showered and then contacted the police.

The victim was shown over sixty photographs of black men at various points, and picked Toney out of a group of black and white photographs or mug shots of four possible suspects (Missouri v. Toney, 1984). After the eyewitness made the identification in the photospread of the perpetrator, it is alleged that the eyewitness was instructed that "that the man she had identified would be in the lineup and the suspect was the only person who was in the live lineup and whose picture appeared in the photospread (Missouri v. Toney, 1984). The victim requested to hear Toney speak, and thus picked him out of this line-up, too (innocenceproject.org, 2010). Also, a gas station attendant was shown a set of four color photographs of the four suspects which the attendant identified Toney as a man he saw in the vicinity around 3:30 a.m. (Missouri v. Toney, 1984). "The court found no error in the admission of photographs in evidence,

including mugshots, and determined that the out-of-court identification procedure had been fair" (Missouri v. Toney, 1984, p. 1). Steven Toney was later exonerated in 1996 by DNA evidence from the crime (innocenceproject.org, 2010).

Case 6 Armand Villasana

In the Armand Villasana case, he was convicted of a kidnapping and rape from 1998 (Innocence Project, 2010). The victim, who is white, described the perpetrator as Hispanic. Later, the victim identified a Latino, Armand Villasana "from a photo lineup that contained pictures of five white men and one Latino" (innocenceproject.org, 2010). Although Villasana was never sentenced, he spent close to two years in prison while his case was processing until he was exonerated in 2000 by DNA evidence (innocenceproject.org, 2010).

Case 7 Anthony D. Woods

In the Anthony D. Woods case, a fifteen year old girl on the morning of October 10, 1983, at about 6:00am while still dark outside was assaulted by a man on her way to her friend's home to meet and walk to school (Innocence Project, 2010). When the victim entered the backyard of her friend's house a man who had been seen by the victim on the corner standing across the street "ran up to her, and grabbed her from behind" (State v. Woods, 1985). The man put a knife against the victim's neck, threatened her, and then ordered her to walk to the back of the house where he sodomized and raped her.

Prior to the commission of the sodomy and rape, the victim was forced to lay on the ground after removing her panties. Next, with his face revealed, the man standing over her removed his pants, wrapped the victim's leather jacket over her head, and proceeded to sodomize and rape her (State v. Woods, 1985). The perpetrator informed

"the victim that he had been watching her and that he would, get her again if she told the police" (State v. Woods, 1985). At 6:30am the police were contacted and at that time the victim gave the police a description of the perpetrator.

At the hospital, police showed the victim numerous photospreads, but "she was not able to identify the defendant from his photograph due to the different hair style and lighter skin tone in the photograph" (State v. Woods, 1985). That afternoon, Woods who lived less than two blocks from the victim's home, walked past the victim while she sat on the porch with her grandmother and a cousin. When he stared at her, she recognized him as her assailant and informed her cousin that Woods was the man that had raped her. Woods was then apprehended and held until the police arrived. "The victim made another identification of Woods while he was in jail" (Innocence Project, 2010). Woods served eighteen years before he was eventually exonerated in 2005.

Best Practices in Identification

This section reiterates the new set of benchmarks that will be the means for analyzing the seven cases. These are the seven benchmarks identified in the prior chapters. A summary title will be assigned for each benchmark in each chart: One, blind administration; two, instructions to eyewitness; three, control on suggestive identification procedure; four, a minimum of five fillers are used; five, the filler matches suspect description; six, confidence statement taken; and seven, documentation of identification procedure.

Results and Discussion

A criterion is met when case facts indicate that the benchmarks were adhered to completely. A criterion is not met when case facts posit that the benchmark in question

was not utilized at all or only partially. A criterion is inconclusive when there is insufficient information present in the facts to arrive at a conclusion of either the criterion is met or not met. A criterion can be assigned two classifications in any variation (met, not met, or inconclusive) if it meets the requirements since in an identification both a photospread and a lineup might be utilized.

Table One: *Blind Administration*

Case 1		X	
Case 2		X	
Case 3		X	
Case 4		X	
Case 5	X	X	
Case 6		X	
Case 7	X	X	
	Met	Not Met	Inconclusive

Table Two: *Instructions to Eyewitness*

Case 1		X	
Case 2		X	
Case 3		X	
Case 4		X	
Case 5		X	
Case 6		X	
Case 7		X	
	Met	Not Met	Inconclusive

Table Three: *Control on Suggestive Identification Procedure*

Case 1		X	
Case 2		X	
Case 3			X
Case 4		X	
Case 5	X	X	
Case 6		X	

Case 7	X	X	
	Met	Not Met	Inconclusive

Table Four: *Minimum of Five Fillers are Used*

Case 1		X	
Case 2			X
Case 3			X
Case 4			X
Case 5		X	
Case 6	X		
Case 7	X		X
	Met	Not Met	Inconclusive

Table Five: *Fillers Match Suspect Description*

Case 1		X	
Case 2		X	
Case 3			X
Case 4		X	
Case 5	X		
Case 6		X	
Case 7			X
	Met	Not Met	Inconclusive

Table Six: *Confidence Statement Taken*

Case 1			X
Case 2			X
Case 3			X
Case 4		X	
Case 5			X
Case 6			X
Case 7		X	
	Met	Not Met	Inconclusive

Table Seven: *Documentation of Identification Procedure*

Case 1		X	
Case 2		X	
Case 3		X	
Case 4		X	
Case 5		X	
Case 6		X	
Case 7		X	
	Met	Not Met	Inconclusive

In the Antonio Beaver case (case 1), benchmark one was not met because the case facts noted that the officer that made the arrest of Beaver was the same officer who administered the lineup procedure. Therefore, the researcher concludes that the benchmark is not met. Next, benchmark two was not met since the facts about the case postulate that the administrator did not inform the eyewitness that the suspect may not be present in the lineup and the officer that arrested Beaver believed that Beaver looked like the suspect in the composite sketch made by the eyewitness.

Table Three indicates the benchmark three was not met because according to the researcher the suspect stood out as being different from the distracters based on the eyewitness's previous description of the culprit. The case facts noted that the suspect was a 5'10'' tall clean-shaven African-American man wearing a baseball cap, with a David-Letterman-like gap between his teeth (innocenceproject.org, 2010). However, in the lineup only two members wore baseball hats, Beaver and the other non-officer. Also, Beaver a 6'2' man had a full mustache and was the only lineup member with noticeable defects to his teeth. So for those reasons, the benchmark was not met.

Table Four indicates benchmark four was not met because the lineup procedure only had a total of four members Beaver, two officers, and a non-officer. A minimum of 5 fillers is suggested. Table Five indicates that benchmark five is not met since only two members in the lineup wore hats and two did not, and one lineup member, Beaver had noticeable teeth defect while the others did not.

Table Six indicates that benchmark six is inconclusive since the case facts do not indicate whether a confidence statement was taken from the eyewitness at the time of the identification and prior to any feedback as to his confidence that the identified person is the actual culprit. The researcher assumes that the police inquired about the eyewitnesses' certainty of the identification, however, the facts do not illustrate when the statement was taken or if it is before providing any feedback. Lastly, Table Seven indicates that benchmark seven is not met since the information given did not provide sufficient detail of the lineup procedure conducted or if the identification procedure is even documented at all.

In the case of Johnny Briscoe (case 2) benchmarks one, two, three, seven, and eight were not met. By contrast benchmark six was met, and benchmark seven was inconclusive. Regarding benchmark one, blind administration, this was not met due to the fact that the police believed that the perpetrator of the crime was Johnny Briscoe since the perpetrator identified himself as John Briscoe several times and the phone calls were traced to the phone around the vicinity of Johnny Briscoe's apartment. Therefore not satisfying the requirement of the administrator of the lineup not being aware of which lineup member is the suspect. Furthermore, Johnny Briscoe was the only lineup member

in an orange jumpsuit, which would have had to suggest to the administrator which person was suspected.

As stated above, the suspect was in an orange jumpsuit so for this same reason presumably the police did not inform the eyewitness that the suspect may or may not be present in the lineup. Benchmark three is not met because according to the researcher it is apparent in the case facts that the suspect is the only person in the lineup that had an orange jumpsuit making the identification suggestive. The researcher is unable to arrive at a conclusion about benchmark four since it is not indicated a in the case facts the number of fillers used in the case and it can not be assumed if the police used a minimum of five since there are no written guidelines for conducting eyewitness identification procedures.

Benchmark five was not met since the suspect had no description but rather a name John Briscoe. So, presumably the fillers were not selected on the basis of a match to the suspect description since there was no description. Benchmark six is inconclusive because it is not indicated in the case facts whether a statement was taken at all or if it was at the time of the identification or prior to any feedback to the eyewitness. The only thing noted in the case facts is that the eyewitness positively identified the suspect. Last, benchmark seven was not met due to the lack of information about the identification procedure.

In the Lonnie Erby case (case 3) benchmarks one, two, seven, and eight were not met. But, benchmark six was met, and benchmarks four, and five were inconclusive. Benchmark one was not met because the same police officer that spotted and arrested Erby in the vicinity of the complaint is the same individual that administered the

identification procedure. The knowledge of Erby as the suspect makes the administrator not blind to the identity of the suspect in the identification procedure. Benchmark two is not met because from the case facts the researcher deduces that the administrator did not inform the eyewitnesses that the perpetrator may not be in the lineup since in the case facts it is indicated that "the victims' pre-trial identifications of Erby and the consistent descriptions given by the victims to the police after each assault" (innocenceproject.org, 2010).

Benchmark three is inconclusive since there is insufficient information to determine if Erby stood out as "being different from the distracters based on the eyewitness's previous description of the culprit or based on other factors that would draw attention to the suspect" (Cutler & Kovera, 2010, p. 101). Also, benchmarks four and five were inconclusive because the case facts do not indicate the number of fillers used in the identification procedure or if the fillers were selected based on the description of the suspect since no description is given in the facts.

Similarly, benchmark six is inconclusive since it is not indicated in the case facts whether a statement was taken at all or if it was at the time of the identification or prior to any feedback to the eyewitness. Lastly, the researcher concludes that benchmark seven is not met since there is insufficient information in the case facts as to how the identification procedure was conducted.

In the Larry Johnson case (case 4), benchmarks one, and three were met. Benchmarks two, five, six, and seven were not met, but benchmark four is inconclusive. Benchmark one is met because at the time the eyewitness identified Larry Johnson as the perpetrator the administrator was unaware of which member in the lineup was the

suspect. Benchmark two is not met because the attack lasted two hours and for that reason police officers assumed that the victim could easily recollect and recognize the face of the perpetrator. For that reason the researcher deduces that the police failed to notify the eyewitness that the suspect may not be in the lineup.

Benchmark three was not met since the suspect, Johnson had a mustache, which made him stand out from the rest of the fillers when the eyewitness described the perpetrator as clean shaved. It was concluded that benchmark four was inconclusive since it could not be determined if a minimum of five fillers were used in the identification procedure. However, benchmark five was not met since the police included an individual that was not clean shaved but had a mustache which did not match the description of the suspect given by the eyewitness.

Benchmark six was not met since the crime occurred recently it is assumed that the police assumed that the eyewitness could easily recollect and recognize the perpetrator thus failing to take a confidence statement from the eyewitness. Benchmark seven was not met since the enumeration of the identification procedure is insufficient.

In Steven Toney's case (case 5), benchmark five was met, because in the case facts it is indicated that the perpetrator was a black male and the police selected their fillers based on the race. As a result, the eyewitness selected Steven Toney as the perpetrator.

The researcher concludes that benchmark one is both met and not met because during the photographic lineup the administrator was not aware of which member of the photospread was the suspect. However, once, the eyewitness identified Toney as the perpetrator in the photospread presumably the same officer who arrested Toney and

brought him in for the lineup is the same person that conducted the identification procedure thus making the officer aware of which lineup member is the suspect. Benchmark two was not met because once the eyewitness identified Toney as the perpetrator in the photospread, the police are not going to instruct the eyewitness that the suspect might not be in the lineup. Instead, the police allow the eyewitness to view the suspect in a lineup and hear him speak then she affirms that Toney was the perpetrator.

According to the facts of the case it is determined that benchmark three is met since Toney was selected out of a group of four suspects which were displayed in black and white to the eyewitness and in color to the gas station attendant (State v. Toney, 1984, p. 11). However, since Toney was presumably the only one from the photospread used in the lineup it is determined that the lineup benchmark is also not met. Benchmark four it was not met since Toney was selected out of a group of four photos, which clearly indicated that a minimum of five fillers was not used. Also, it is not likely that the police would modify the number of fillers utilized in the lineup, if their practices permitted a photo-spread of four individuals.

According to the case facts, there is an insufficient amount of information to conclude that benchmark six is met or not so it is inconclusive. Also, benchmark seven is not met due to the lack of detail about the identification in the case facts.

In the case of Armand Villasana (case 6), benchmark one was not met because it is indicated in the case facts that Villasana was the only Hispanic in the lineup while the fillers were all white, thus, the administration of the photospread was not blind. Furthermore, benchmark three is not met since Villasana is the only Hispanic in an all white lineup. Similarly, benchmark two was not met since the suspect is the only

Hispanic in the lineup which clearly implicates the suspect being that the perpetrator is described as Hispanic by the eyewitness. If the administrator included all Hispanics in the lineup then it could have been concluded that the administrator warned the eyewitness that the suspect might be present, however, that was not the case.

Next, benchmark four was met since it is indicated in the facts that the photospread included five whites and one Latino. On the contrary, benchmark five was not met because the fillers whom were white did not match the description of the suspect made by the eyewitness, which is Hispanic. It is inconclusive if benchmark six is met or not since it is not indicated if a statement was taken from the eyewitness. Lastly, due to the number of inferences made about the identification, benchmark seven is not met.

In this last case of Anthony D. Woods (case 7), benchmark one was marked both met and not met because of the multiple identification procedures used. While at the hospital the administrator did not know who the suspect was in the photospread, but in the lineup or show-up, the administrator knew the identity of the suspect. Benchmark two was not met because at the hospital the administrator of the photospread displayed many photos implying that the administrator did not inform the eyewitness that the perpetrator might not be present and also indicating that the administrator wanted the eyewitness to make an identification. Benchmark three was both met in regards to the lineup and not met in regards to the photospread. The photospread procedure is not suggestive since many pictures were shown to the eyewitness without making any one particular picture stand out. However, in the lineup or show up it is suggestive because the suspect was identified while in he was in jail making it suggestive of guilt to the eyewitness.

In regards to benchmark four it was both met and inconclusive in part. The photospread meets the requirement of at least five minimum fillers since the administrator displayed numerous pictures to the eyewitness, but at the lineup or show-up the case facts do not present enough information for the researcher to arrive at a conclusion of met or not met. Similarly, benchmark five is both met and inconclusive for the same reasons. Benchmark six is not met because it is never indicated in the facts that a statement was taken from the eyewitness. Lastly, benchmark seven is not met because of the insufficient information about the identification procedure.

According to the study, it is observed that benchmark one that states that the identification procedure should use blind administration, was met twice (case 5 and 7) in part but then not met in all seven cases. Benchmark two, was not met in any of the seven cases. Results indicate that benchmark three, it is inconclusive in two cases (case 3 and 5), but for the remaining five case they were found to use suggestive procedures, with one instance of both met and not met (case 7). Also, benchmark four was only met in (case 6), but partially met and not met in case 7.

Benchmark five is only met in case 5, inconclusive in case 3 and 7, and not met in cases 1, 2, 4, and 6. The results reveal that benchmark six is never met in any of the cases, but is not met in two case (4 and 7) and inconclusive in remaining five cases (1, 2, 3, 5, and 6). Lastly, benchmark seven was never utilized in any of the seven cases.

It was observed that benchmarks one (blind administration), two (instructions to eyewitness), three (control on suggestive identification procedure), five (the filler matches suspect description) and six (confidence statement taken) were frequently not met in all seven cases. Moreover, benchmark seven (documentation of identification

procedure) was never adhered to in all seven cases. Benchmark six was the only benchmark that was determined to be inconclusive on a consistent basis (5 out of the 7 cases). Lastly, the outlier of all benchmarks, benchmark four (a minimum of five fillers are used) was met in two cases, not met in another two cases, and four that are inconclusive.

Although no one benchmark is weighed more heavily or more important than another, the failure to adhere to benchmarks one (blind administration), two (instructions to eyewitness), three (control on suggestive identification procedure), five (the filler matches suspect description), six (confidence statement taken), and seven (documentation of identification procedure) in all seven cases indicates that the police do not utilize fair procedures when identifying a suspect in a photospread or a lineup. Also, this frequency at which this benchmarks are not met also indicate that the police are not concerned about misidentification or the wrongful conviction of innocent individuals, but emphasize the use of suggestive procedures to obtain false confidence and the positive identification by the eyewitness which ultimately convicts the individual at trial.

CHAPTER 5
CONCLUSION AND DISCUSSION

Introduction

In this chapter all the information presented in this study will be reviewed, interpreted, and critiqued. Also, the researcher will critically analayze the results of the study and compare the results to extant literature. The researcher will address how the research was carried out, identify any unforeseen problems, weaknesses of the research design, data collection issues, and threats to validity. The chapter will conclude with specific conclusions drawn from the results, and offer policy implications and recommendations.

Discussion

In the current study seven cases of wrongful convictions in Missouri, where eyewitness misidentification was the contributing or leading factor were examined to determine the current state of the identification procedures in Missouri. The present study is able to illustrate the current procedures by comparing the identification procedures utilized in the seven cases to eight benchmarks, which were derived from a list of best practices prescribed by the Department of Justice (DOJ) and the American Psychological Law Society (APLS). The benchmarks will be reiterated again for reference in this discussion. Benchmark: one, blind administration; two, instructions to eyewitness; three, control on suggestive identification procedure; four, a minimum of five fillers are used; five, the filler matches suspect description; six, confidence statement taken; and seven, documentation of identification procedure.

Early in the study the researcher examined the St. Louis County and Greene County websites to observe if they had any procedures concerning the identification

procedures and came to the conclusion that the two counties did not have written procedures for conducting eyewitness identification procedures. Also, Missouri statutes were examined to determine whether there were any written procedures for conducting eyewitness identification procedures and apparently Missouri has no statute that requires law enforcement to have written policies governing eyewitness identification procedures or a guide for the administration of eyewitness identification. As a result, the researcher had to make inferences based on the facts surrounding the seven cases to determine whether certain benchmarks were met, not met, or inconclusive. This also accounted as a shortcoming for the study since the inferences utilized by the researcher were subjective rather than objective. An unforeseen problem experienced while conducting the study that was not anticipated was the lack detail and information in the case facts concerning the eyewitness identification procedures.

Also, it was not anticipated that the case facts would not contain or elaborate on the suspect description given by the eyewitness. For instance, in case 3 (Lonnie Erby), the Innocence Project information did not discuss "the consistent descriptions given by the victims to the police after each assault;" the description was never elaborated upon. Knowledge of what the description entailed would have assisted in the determination of whether benchmarks 3 and 5 were met or not met in these cases.

The academic universe database Lexis Nexis was utilized to obtain the appellate opinions resulting from the appeals in the litigation of the cases discussed in the study to supplement findings from the Innocence Project in hopes of attaining more information about the identification procedure in each case or at least an elaboration of certain aspects of the identification procedure to properly address certain benchmarks. However, the

information discovered was also sparse in detail concerning the identification procedure and the suspect description. In addition, two, case 4, Larry Johnson and 6, Armand Villasana, of the seven cases were not available on Lexis Nexis. Of those five cases discovered only four entailed information concerning the facts of the case, State v. Erby, State v. Briscoe, State v. Toney, and State v. Woods. The remaining case, State v. Beaver, only entailed information concerning the lower courts procedural ruling on appeals challenged by the defendants. In this case it is indicated that the Court of Appeals of Missouri denied Beaver's appeal of the "judgment denying his Rule 29.15 motion for post-conviction relief after a hearing" (Beaver v. State, 2000, 34 S.W.3d 852).

In the study, results indicate that in all seven cases, none of the cases utilized any of the benchmarks. The researcher concludes that failure to utilize all benchmarks led to the misidentifications of all seven individuals. Five out of the seven cases involved cross-racial identification and research evinces that there is a high likelihood of misidentification in cases with cross-racial identification. Suggestive identification procedures also facilitate own race bias. In cases 1, 2, 4, 6, and 7 did not conform to benchmark 3, the suspect stood out in the lineup of photospread as being different from the distracters based on the eyewitness's previous description of the culprit or based on other factors that would drew attention to the suspect which cause the misidentification. For instance, in case 1 the eyewitness noted that the suspect had a David-Letterman-like gap between his teeth and in the lineup Antonio Beaver was the only lineup member with noticeable defects thus the eyewitness identified Beaver as the perpetrator. Also, the police also failed to utilize benchmark five which states that fillers used should completely match the eyewitnesses' description of the suspect's.

In another cross racial identification case, 6, Armand Villasana, a Hispanic was the only Hispanic in a lineup with five white males when the eyewitness who is white described the perpetrator as Hispanic. Not only was the identification procedure suggestive by not adhering to benchmark three but it also failed to use fillers that completely match the eyewitnesses' description of the suspect (benchmark five). Moreover, in case 4 the eyewitness described the perpetrator as a clean shaved black man, but the eyewitness at the identification selected the black man with a mustache. Not only was cross racial identification a factor in the misidentification but so is the knowledge of the lineup member that is the suspect. According to research by Haw and Fisher (2004) which examined whether influence of lineup administrators affect eyewitness identification decisions, they found that lineup administrators can greatly influence eyewitness decisions. This case illustrates that point. The police in this case not only did not adhere to benchmark one (the person who conducts the lineup or photospread should not be aware of which member of the lineup or photospread is the suspect) but also benchmarks five (the fillers used should completely match the eyewitnesses' description of the suspect) and eight (identification procedure documentation should be thorough).

It is demonstrated by the outcome of these cases that by not complying with even one of the benchmarks, misidentification of the individual in each case was the result. In case 2, it is inferred that the administrator knew which lineup member was the suspect, thereby not satisfying benchmark one since it was indicated by the suspect that the name of the perpetrator is John Briscoe. At the same time, there is no way the eyewitness would know which member was the suspect unless the administrator gave the eyewitness

clues as to the who the suspect is by making Briscoe the only man in the lineup to wear an orange jumpsuit. Thus the criteria for benchmark three is not met and results in the misidentification of Briscoe.

In case 7, Anthony Woods, several things are observed about the case. The first, that there was unconscious transference and second, that the identification was suggestive. It is noted in the case facts that Woods lived less than two blocks from the victim so very probable those two have encountered one another at some point. The victim being in shock from the attack recollected that the perpetrator informed the eyewitness that he had been watching her and would get her again (State v. Woods, 1985). So, when Woods, an unfamiliar man to the eyewitness, walked by and glanced at her, she assumed he was the perpetrator. To make matters worse Woods was identified while in a jail, which suggests guilt in the mind of the eyewitness. However, it is inconclusive whether there were other prisoners or fillers in the jail cell with Woods or if he was in the jail cell by himself. Nevertheless, the researcher concludes that benchmarks two, three, six and seven are not met. Failure to adhere to those benchmarks as well as the unconscious transference causes the misidentification of Woods. Moreover, the literature postulates that there are two kinds of unconscious transference seen in eyewitness literature: one, showing misidentification of persons who are familiar because they were previously viewed in mug shots but not at the scene of the crime; and two, showing misidentification of persons who were at the scene of the crime, but were not actually the perpetrator (Davis, Loftus, Vanous, & Cucciare, 2008, p. 606). Furthermore, it is reasonable to infer that Woods' photograph would have stood out in the

photospread shown to the eyewitness for the eyewitness to recollect his face thereby causing the misidentification of Woods.

In case 5 (Steven Toney), it is noted in the case facts that the eyewitness identified Toney from a set of black and white photographs of four possible suspects (Missouri v. Toney, 1984). This clearly indicates that benchmarks four and six are not met. Next, the eyewitness was then informed that Toney, the suspect whom she had identified would be in the live lineup. Out of the four suspects from the first identification, Toney was the only person to be present in the live lineup (Missouri v. Toney, 1984). These facts indicate that benchmarks one, two, and three are not met. Hence, it is reasonable to conclude that the misidentification of Toney was caused by the failure to adhere to benchmarks one, two, three, four, and six which directly effects the identification procedure. It was noted in the case facts that the eyewitness expressed a high degree of certainty in her identification. This counters the research finding that confidence and accuracy in identifications are weakly related (Chua, Rand-Giovannetti, Schacter, Albert, & Sperling, 2004, p. 1131-2). Furthermore, eyewitnesses such as in this case who show high confidence and a positive identification strengthens the perception of guilt among jurors (Leippe, Eisenstadt, Rauch, & Stambush, 2006, p. 201).

According to a study by Kneller, Memon, & Stevenage (2001), when the target was absent from the lineup, simultaneous lineups (61.1%) produced significantly higher incorrect identifications compared to sequential lineups (22.2%), which is consistent with previous research (p. 665). It is important to note that the simultaneous lineups were utilized in case 3. In this case, the actual perpetrator was not present but the police postulated that Erby was the suspect since he was spotted walking in the vicinity of the

complaint of a man looking into a young girl's room. As a result the police believed Erby to be the perpetrator of the rapes of adolescent girls that has transpired lately. So, for this reason, it is inferred that the police failed to meet benchmarks one, two, and eight. Thus, during the identifications, both photographic and live, the police failed to inform the eyewitnesses that the perpetrator may not be present (benchmark two). This failure and the administrator's knowledge of which member of the lineup is the suspect (benchmark one) ultimately causes the misidentification of Erby.

Conclusion

Eyewitness misidentification is problematic in Missouri and the state must address this issue. Otherwise the state will continue to wrongfully prosecute and convict innocent individuals which will cause great harm to families and a loss of liberty to those wrongfully convicted. In addition, it clogs and backs up the legal system, threatens the credibility of the criminal justice system, and wastes valuable state resources that can be allocated to benefit the state. It is postulated that all seven of these misidentifications could have been prevented and the wrongful convictions averted, had more reliable lineup procedures been utilized. Thus the researcher makes the following recommendations: first, a statewide mandate requiring that law enforcement agencies adhere to the best practices identified in this research, which were derived from the DOJ and APLS. Second, there should be an adoption of double blind sequential procedure since in all seven cases of misidentification, simultaneous lineups were utilized and research has found that simultaneous lineups coupled with high administrator contact with witness cause a greater number of misidentification. Lastly, it is recommended that Missouri reexamines all rape conviction cases from 1982 to 2010 for which DNA

evidence is still obtainable in order to ensure that all those convicted are rightfully guilty and not factually innocent, since a common characteristic about all seven cases of misidentification in this study was that they were rape cases. Thus, it is plausible that other mistakes could have been carried out in the previous cases of rape particularly with the handling of DNA evidence and eyewitness identification procedures. The year 1982 is decided as the beginning to evaluate previous cases because the first instance of a misidentification in this study was 1982 in case 5 (Steven Toney).

According to the results it can be generalized that police tend to focus their investigation on one suspect and as a result they focus all their efforts in convicting that suspect even though that suspect may be innocent. Instead of postulating the possibility of another suspect by critically analyzing all facts and the evidence at the crime scene and bringing them all together to find the real perpetrator of a crime, the police utilize any means available to obtain a conviction on the first plausible suspect. In this study the police utilized suggestive identification procedures because the police know that by obtaining a positive identification and creating a high degree of certainty in the eyewitnesses minds about their identifications (Thompson & Johnson, 2008, p. 731; Chua, Rand-Giovannetti, Schacter, Albert, & Sperling, 2004, p. 1131-2; Steblay, 2009, p. 645) they would be able to convict the possibly innocent suspect since the police and prosecutor know that a jury will readily convict in a rape case based on eyewitness identification and testimony alone (Epstein, 2007, p. 731).

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