How Can Courts Trust Eyewitnesses?

How can courts use eyewitness testimony and lineup IDs without overemphasizing their reliability?

Memory Fails Us

August 31, 2011

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Memory does not operate like a video camera. It captures only a selective part of the events we encounter. People cannot prevent new information and suggestions from altering their memory, and time erodes memory, making retrieval difficult.

Memory also fails us when we need it most. Identifications are critical in solving violent crimes committed by strangers, like rape, murder and robbery. Violent criminals usually brandish weapons, wear disguises and assault their victims. Crimes occur quickly and usually at night, so viewing conditions are poor. Identifications under these circumstances are significantly less reliable.

Add to this the element of race. Wrongful convictions because of erroneous identifications have mostly involved innocent African-American men. This is partly because of the group’s disproportionately higher rates of committing violent crimes. But that does not begin to explain the disparity. Racism can infect the investigative process — from how much care is taken to arrest someone fitting the description given by the victim, to the degree of police suggestion used with eyewitnesses, to the care or fear shown by eyewitnesses in making their selections.

Identifications are critical in solving violent crimes committed by strangers, but victims’ memories are not like video cameras.

Racism may also affect whether police officers, prosecutors, jurors, judges and even defense attorneys believe defendants’ pleas of innocence or believe the testimony of their alibis. Combine this with the fact that victims of a different race than criminals provide less reliable identifications, regardless of their views of, or their degree of interaction with, people of that race. Poverty plays a role, too. Poor defendants tend to have lawyers who are ill equipped to challenge faulty identification evidence through cross-examination or with expert witnesses.

New Jersey has wisely adopted rules to improve its identification procedures. The state now also requires identifications to be recorded, uses jury instructions creatively and requires trial courts to screen identification procedures pretrial to prevent undue police suggestion. If only all states would follow suit.