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Honors Capstone Project

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Abstract

Improper police lineups often lead to the misidentification of a suspect in particular cases. These mistakes could potentially have detrimental effects on someone's freedom because eyewitness identifications hold so much weight in court proceedings. If a witness or victim is certain they can identify the suspect, jurors are likely to believe them whether the witness is right or wrong. Eyewitness misidentification is one of the leading causes of wrongful convictions (The Innocence Project, 2017). The current research employs qualitative in depth interviews with police officers from local and state departments. The interviews asked about police procedures for conducting simultaneous and sequential line-ups including presentations through both photo and live line ups. The purpose of my project is to compare the procedures that are currently being used in local and state police departments with the most up to date research evidence in an effort to improve the reliability and accuracy in properly identifying the correct suspect in criminal cases. Analysis of the interviews suggest that both local and state police departments have clear policies and procedures around identification procedures. All officers discussed the importance of unbiased lineups, however, the majority of the officers said their department uses simultaneous not sequential lineups which is inconsistent with the literature. For example, the research suggests that sequential line up results in more accurate identifications whereas simultaneous and show-up lineups lead to higher error rates. Based on the interviews, I make recommendations in order to improve police department policies surrounding lineups and eyewitness identification of suspects in criminal cases.

Introduction

Society today looks at the criminal justice system through a fine tooth comb. There are so many aspects to the system and at each stage there are numerous ways in which there can be issues and debate. One aspect to the system is the police use of lineups and eyewitness identification. Like anything, there are always multiple ways to go about completing a task, and not every way will yield the same result. There are multiple types of police lineups and this paper will try and determine the best and most effective strategy to obtain accurate eyewitness identifications that yield the least amount of error.

This paper will look at past literature and also conduct qualitative in depth interviews of current police officers in the Northeastern part of Massachusetts in hopes of finding the best method to eyewitness identification. There are many different lineup strategies including simultaneous, sequential, field show ups, and voice identification. Different police departments use different lineups depending on the particular situation or depending on what their department has outlined to them.

Eyewitness testimony holds a great deal of weight in court rulings, which makes these lineups extremely important in correctly identifying the criminal responsible. This type of testimony is also one of the leading causes of wrongful convictions (The Innocence Project, 2017). Since these identifications can be the difference between putting an innocent person behind bars as opposed to guilty one, this is a very important topic to study. By looking at past literature and analyzing the information given by active police officers, we can help future researchers gain more insight to the most effective eyewitness identification strategies.

Literature Review

Wells, Lindsay, and Ferguson (1979) discuss the accuracy, confidence, and juror perceptions of eyewitness identification. Three hundred and twenty eight students were the subjects in this experiment; one hundred and twenty seven served as witnesses, while two hundred and one served as jurors. For the experiment, the witnesses were taken to a cubicle and told to fill out a questionnaire. While in there, the thief would walk in posing as a fellow participant and stay in there for 75 seconds before saying they wanted to take a calculator someone left on the table, took the calculator, then left. The experimenters then came in and gave the witnesses a photo lineup of six suspects then told to rate on a 9 point scale as to how confident they were on their identification. The jurors were then informed on the experiment and told to decide whether or not they believed the witness correctly identified the suspect based on their cross-examination. Wells and colleagues (1979) found that there was a 58% accuracy rating from the witnesses, 20% inaccurate, and 21% did not identify any suspect.

According to Wells, Small, Penrod, Malpass, Fulero, and Brimacombe (1998),the earliest record of a suggestion to eyewitness lineups dates back to 1967 and includes a checklist of 15 items that should be followed in order to conduct a proper lineup including not making one suspect seem more guilty than the other or showing the witness pictures beforehand. Other aspects of eyewitness lineups are discussed and criticized such as not informing the witness that the suspect might not be in the lineup. In one study, 78% of the witnesses attempted to identify a suspect when the actual culprit was not in the lineup when they were not informed they might not be there. That number dropped down to 33% when they were informed. The article goes on to compare sequential lineups with simultaneous lineups, and many studies are in favor of the sequential lineup procedure. The authors of this article propose four rules that can help improve

the overall process: 1. The person conducting the lineup should not know who the suspect is; 2. The eyewitness needs to be explicitly told that the suspect may not be in the lineup and they do not need to identify someone if they are not there. Also they should be told that the person conducting the lineup does not know who the suspect is; 3. The suspect should not stand out in the lineup, they should look the same as everyone else; 4. A clear statement must be taken from the witness at the time of the identification.

Lindsay, Pozzulo, Craig, Lee, and Corber (1997) looked at eyewitness identification between adults and children with simultaneous lineups, sequential lineups, and showups. The subjects were 307 children aged 3-15 and 384 adults (undergraduate students). The first experiment consisted of a person going into a classroom with either the elementary school children (10-15) or the undergraduate students, giving a speech, writing his name on the board, then leaving. The students were then separated into groups and given either a sequential lineup of witnesses, a showup, or a simultaneous lineup of witnesses. The results were that correct identifications rates only differed slightly among the three types, however, correct rejections were more likely to occur in the showups than either the sequential or simultaneous. The second experiment consisted of a woman interacting with either a child or an adult, but in this experiment the subject was able to make eye contact and interact with the woman. The subjects were then given either a target present show up, a target present six person simultaneous lineup, or a a target present six person sequential lineup. Lindsay and colleagues (1997) found that there was a very high rate of identification with showups (.85 for adults and .90 for children), high rates for simultaneous lineups, but lower rates for sequential lineups.

Wells (1993) looks at what we know about eyewitness identification, create a better understanding of its procedure, and try to find new ways to help improve the process. The author discusses the problems involved in eyewitness identification and touches upon the three main issues: 1. Experimental studies using a staged crime usually find a high rate of false identifications; 2. During these experiments, the witnesses who falsely identify are shown as being very certain they had the right individual; 3. Eyewitness misidentifications are being used as the primary cause of false convictions. Wells (1993) describes the different kinds of lineups and shows where errors can occur in each. The single-suspect model is where there is only one suspect and the others are distractors, while in an all-suspect model every person in the lineup is a suspect and the witness is narrowing down the search for the perpetrator. False certainty and error rates are other large aspect to false identifications.

Stenzel (2017) breaks down eyewitness identification and its reliability into five different sections. Firstly, the article discussed three different examples of wrongful rape convictions where eyewitness identification was involved. In one case, the woman was so sure she had the right person who raped her that even when DNA evidence cleared him, she still thought he was the perpetrator. The next part of this article discussed how witnesses memories function. When someone witnesses something, their brain stores it in their memory subconsciously, and there are different factors that can come into play when recalling those memories such as psychological elements, physical elements, and suggestive identification procedures. Because eyewitness misidentification is the leading cause of wrongful convictions, this article talks about the different safeguards courts put in place to try and limit wrongful convictions. The court is aware that things like weapon focus and cross racial identification are prevalent, so one way they try

and eliminate eyewitness identification is having expert testimony about the reliability of eyewitness identification. Stenzel (2017) concludes by suggesting ways in reforming eyewitness identification, such as the jury addressing the reliability of the witness and factors of the case, including distance to the perpetrator, length of time they spent with the perpetrator, and how old the witness is.

Beaudry, Lindsay, Leach, Mansour, Bertrand, and Kalmet (2015) conducted a study to see how people perceive the accuracy of eyewitness identification and their testimony in court. There were 48 different scenarios that were possible, and 432 participants. Identification techniques used were simultaneous vs. sequential, and either double-blind, single-blind, or post-identification feedback. The participants watched videos that were made for the particular scenario they were chosen for, and they had to rate on a scale of 0-100% on how confident they were in that witness' testimony. The results showed that no matter what the scenario was, these participants were more likely to believe the witness who received the post-identification feedback. Also, when the participant was able to view the identification decision this resulted in a greater belief of accurate than inaccurate identifications only when witness' chose from simultaneous line-ups and not sequential. The conclusion that Beaudry and colleagues (2015) made was that presenting participants with a video recording of an eyewitness identification procedure neither convinced them persuasive strategies could be used nor reduce their ability to pick out accurate identifications from inaccurate ones.

Gants and Doughty (2015) examines the reliability and accuracy of eyewitness identification in a courtroom. Two cases are discussed where witnesses identified a suspect in a courtroom and how this could be considered a show up. This article also talks about there are

many factors that come into play with witness memory: 1. Memory does not work like a tape recording, 2. A witness's level of confidence may not indicate accuracy, 3. High levels of stress can affect an identification, 4. Information from other witnesses or outside sources can inflate confidence, and 5. Viewing the same person in multiple identification procedures may increase the risk of misidentification. Because eyewitness identification is used frequently but not reliable, the Massachusetts Supreme Judicial Court created a "Study Group" to try and help reform the procedures and create protocol for Police to use. A few suggestions are that every law enforcement agency have a written policy on eyewitness identification, police should audio and video record their procedures, avoid leading questions, and get a very detailed description of the alleged offender. This "study group" also suggests that showups not occur more than 2 hours after a crime has occurred, and must gain a level of confidence from the witness. All of these suggestions can be used to help reduce wrongful identifications and in turn, wrongful convictions.

Mu, Chung, and Reed (2017) suggest that strategies for police photo arrays can be improved by introducing a new method. This new method is the PAIR approach and it involves showing witnesses pairs of pictures in a side by side comparison rather than one by one sequentially. Mu and colleagues (2017) conduct an experiment to see if the PAIR with both lead to less false identifications and higher positive identifications than both sequential and simultaneous lineup procedures. They tested 102 college students, and each one was assigned to one of the three identification procedures. The correct suspect was in all of the lineups, and the measures looked at were identification response (correct or incorrect) and a self reported level of confidence. This experiment was done over the course of 2 days and the true nature of the test

was not mentioned. The PAIR approach yielded a larger number of correct identifications, btu nothing of statistical significance, so the second experiment was conducted with a much larger sample size of 571. This experiment was virtually identical to the first and revealed that using PAIR methods leads to a statistically significant decrease in false positives.

Lindsay, Martin, and Webber (1994) examine two types of police lineup filler strategies: match-to-description and similarity-to-suspect. The first is where the filler subjects for the line up are meant to match the description the witness gives, while the other is aimed at matching fillers to the appearance of the suspect. There are problems with both methods, however. Match-to-description can falter when the description given to the police is vague and the filler suspects end up looking noticeably different than the suspect. On the other hand, similarity-to-suspect strategies can go awry for multiple reasons; the witness might not be able to identify the suspect because the fillers are too similar, or the testimony might not hold up in court because the fillers were not similar enough which caused the witness to single the suspect out. There are three studies within this article that look at witness descriptions, the foil strategy on correct identification rates, and, the foil strategy on false identification rates. What the research showed was that witnesses often give very vague descriptions, with 99% of the subjects likely to describe the clothing. Results of this research showed that the match-to-description strategy may increase the probability of false identifications, and suggests that to minimize errors with picking fillers, sequential lineups should be used Lindsay et al., (1994).

Surrett-McQuiston, Malpass, and Tredoux (2006) seek to determine which type of lineup is best: sequential or simultaneous. It discusses the strengths and weaknesses of each such as how sequential lineups allow the witness to make absolute comparisons with their memory and a

single picture and simultaneous lineups tend to have witnesses make relative judgements. They discuss how in the research world, sequential lineups are thought to be the most reliable at lowering false identifications. The main purpose of this article was to compare different studies conducted to see which lineup procedure is best. Surrett-McQuiston and colleagues (2006) looked at 37 studies done with 45 experiments looking at simultaneous vs. sequential lineups. In most of the studies conducted, relative vs absolute judgement is looked heavily into. Absolute judgement is used in sequential lineups is any judgement about a single stimuli, as opposed to relative judgement used in simultaneous lineups is a judgement about multiple stimuli. This article concludes by suggesting that more research is needed in the field of psychology intertwining with police lineups and more studies should be conducted with different methodologies.

Methodology

The goal of this research is to do a qualitative data collection of the methods of eyewitness identification and police lineups in the northeastern part of Massachusetts. Five in depth interviews of both state and local police officers are conducted and lineup procedures from each interview are compared and contrasted with the past literature on best practices. To accomplish this, emails were sent to two state and three local police officers. The officers were asked if they would be interested in being interviewed for the current study. Once they agreed, interview dates were set and a short face-to-face interview was conducted. The interviews were conducted either in the officer's office or on campus depending on the officer's availability.

Questions consisted of inquiring about the officer's rank, policies on eyewitness identification, their opinions on the different methods, and their recommendations for other departments (See Appendix A). The interviews ranged from twenty to forty minutes in length. Before conducting the interviews, officers signed consent forms informing them of the benefits and risks of participation, as well as limits to confidentiality. All of the officers agreed to be voice recorded during the interview, interviews were then transcribed, and the results of the interviews were then compared with the best practices found in previous literature.

Results

The rank of the officers interviewed included two Sergeant, two Captains, and one Chief of Police. The number of years as a police officer ranged from 25 to 33 years. That is a combined 144 years of experience. All but one officer indicated that training on lineup procedures were offered in the academy at the beginning of the officer's career. These officers agreed that the training help them prepare for real life lineups and were provided clear guidelines for properly administering a lineup. All officers reported using photo arrays. However, only 40% of officers have used field show ups, 20% have used voice identification, and another 20% have used live lineups in their careers. Officers experience with lineups ranged from as low as 12 (ever) in the smaller departments to as high as 1,000 per year in larger departments. All except one officer (80%) indicated that the department uses a double blind presentation of photo arrays, only one officer (20%) indicated that the lineup is video recorded. Although the literature suggests that sequential lineups result in greater accuracy of eyewitness identification, 40% of the officers interviewed reported using simultaneous lineups.

When the officers were asked about the existence of "weapon focus," 80% of the officers agreed that weapon focus exists and that it often distracts witnesses from being able to identify a suspect. One captain of a large department stated "Oh absolutely...they'll (the witness) be able to tell you it was a black gun but I'm always fascinated because...people will say it was a .45 and ok what did he (the suspect) look like? Uhhh…" He goes on to explain "...someone who's not from the streets, someone who hasn't seen weapons in the past, someone who hasn't been around with street smarts, I guess in terms of being around that sort of thing, yeah it's a culture shock. For sure we see that." When the officers were asked about cross-race bias in eyewitness identification, none of the officers indicated that it was concern. However, one state police officer stated that "I've never seen it in the law...what we do is driven by case law, so if tomorrow there was a case decision that said department X somehow biased the (photo) array based on a cross cultural thing, cross race thing, the law would change and we would be instructed by the Supreme Judicial Court that any future cases, if you do these things, you will lose this piece of evidence."

All of officers expressed the importance of unbiased photo lineups. When choosing suspect photos, the officers argued that the background of the photos needed to be the same and any unique identifying characteristics, such as face tattoos, needed to be removed from the photo before showing the witness. A state police officer stated that "we make sure they are all of the same race, and then that there isn't some, different anomalies that you would be easily able to eliminate people. I know recently I just talked to a detective...who was doing the sequential array and the issue was the background on one of them was different, the color background, so...I instructed her to contact the fusion center who was able to alter the background so they didn't

look different." One local captain also indicated that "If you're focusing on a white male as your

suspect, you can't have a black male or Hispanic male in there...you have to be very similar,

that's the biggest thing, that's the way we were taught, you can't be biased in any way." He goes

on to argue that "If we pull up a RMV photo or a license photo, we try to get 4 or 5 other pictures

from the same source, were not going to use a license photo and then Facebook photos. You

have to be very careful to make sure everything is the same as much as you reasonably can. So

much that we had a recent case where the suspect had a small cross tattoo on his forehead, now

think about how difficult that is to try and find 5 other guys with a cross tattoo, so what we ended

up doing in the end was whiting that out in the photo, and use his photo and 4 or 5 other people

in the lineup, but no one had a cross tattoo on their forehead. It was difficult in this particular

case because the victim was very concentrated on looking for the person with the cross tattoo

because that for her really stood out."

The officers graciously provided a variety of interesting success stories based on their

experience with investigation and eyewitness identification. One sergeant told the story of what

initially began as an identification of a suspect involved in thirteen fires in an hour and a half

time frame. The sergeant describes his experience stating, "we had one particular case where we

identified a suspect through video. We didn't have him at the scene. He started about 13 fires in

an hour and a half period... one thing that became obvious to us was that the first of the fires was

a targeted one. Everything else appeared to be random...the first fire that he lit he went into

someone's back yard...so when we were speaking to the witness we said 'who could you possibly

have beef with? Someone is targeting you.' We actually pulled out the photo, we didn't say

anyone was the suspect. We went 'well, have you ever seen this person before?' and the woman goes 'oh yeah, that's my brother.' It became a great identification."

The officers did not always have a success story to share. In some instance, their experience included identifications that were unsuccessful. For example, one captain shared a story about identifying the wrong suspects based on misleading information. He stated "I had a so called witness on a huge fire portray that he saw everything that happened and fingered these two people. We created photo arrays, he (the witness) picked them out but he already knew who they were. It turned out to be that he made it up. I had the two wrong guys in jail for like 8 months until we got some other information. It was a completely different group of people. I think he did it for notoriety." A chief of police in a small department remembers a 15 year old case, "there was a sexual assault case of a 12 year old and we had some suspects...the policy was not as comprehensive as it is today. We attempted to use a photo array to identify who we believed may have been involved. We did have a suspect and the particular witnesses could not identify that individual...unfortunately for us then, there is video of that location now, so if we had that we would have been able to probably successfully solve that crime." This chief's story illustrates the difficulties of identifying perpetrators in sexual assault cases without additional evidence.

Discussion

This paper sought out to determine what methods of eyewitness identification was the most effective based on both previous literature, and first hand accounts from law enforcement officials. One theme discussed in both was human error. As discussed in Gants and Doughty (2015), human error is a large factor when considering the accuracy of an eyewitness testimony.

Memory doesn't function like a tape recording; as time goes on memory fades. This goes in line with the interview results, all five of the Police Officers discussed the effects human error can play. During the interviews, one officer discussed that no matter how accurate of a lineup the officer makes, human error can dictate whether the true perpetrator is caught.

Another theme that rose to the surface in both the literature and the interviews was the importance of conducting non bias lineups. One hundred percent of the officers interviewed stressed the importance of non bias lineup procedures. Not only was it important to gain an accurate eyewitness statement, it is also crucial to having this testimony be immiscible in court. Officers discussed how lawyers on the defense side can argue how the procedure was conducted and if at any point they can prove a bias occurred, they can make the whole eyewitness statement void. Wells, Small, Penrod, Malpass, Fulero, and Brimacombe (1998) discussed a study where people were asked to identify a suspect when the actual culprit was not in the lineup. When they were not informed, 78% picked a suspect compared to 33% when they were told the culprit may not be in the room. Bias can be anywhere from an officer guiding the eyewitness to choose the suspect, to not making the photo array pictures look similar.

One interesting conclusion that came from the literature and the interviews was the differencing in opinion on which method was the best. Photo arrays are the most common practice used when conducting an eyewitness identification according to the officers, and there are two main types of photo arrays: simultaneous and sequential. Although the literature reviewed suggested sequential lineups are more effective, only 40% of the officers admitted to using this type of array. Furthermore, some officers opinions on their perception of the more effective strategy contradicts the policy set in place for their department.

Based on both the previous literature and the first hand accounts, there are further recommendations that can be made to strengthen the overall process of eyewitness identifications. One recommendation is that the handbooks being made to help teach officers the steps for proper police lineups and identifications should be developed using case law and best practice. A few of the officers mentioned how important case law is during their interviews and how much these cases can change the way police officers do their jobs. If handbooks and procedure is based off of what is shown to be effective when handling eyewitness identifications, more accurate results could be achieved while also lowering the amount of false identifications and wrongful convictions. According to a few of the officers interviewed, certain procedures were recommended by their departments, however, they were often not used. This paper suggests is that police officers should closely follow the policies that are in place by their departments. These policies are put in place for a reason, and if officers stray from the correct procedure, biases will increase and the chance of an inaccuracy of an identification will rise. An additional problem that may arise from not following the set in place procedures is the admissibility of the evidence in court. If proper procedure is not followed, a defense attorney can argue the identification was bias in some way.

Conclusion

The purpose of this research was to conduct both a literature analysis as well as qualitative in depth interviews with current Police Officers to determine the best, most effective methods for conducting eyewitness identifications. Looking at both resources you can gather the importance of bias and the very real downfall of human error. Both of these variables can greatly affect not only the eyewitnesses identification, but also the entire case. Officers must take every

precaution necessary to ensure there is no unintended bias. After looking through all of the data collected, we can conclude that one proper lineup policy should be compiled and given to every department for officers to follow. This policy should include steps for assuring proper photos for the arrays are gathered, all similar in appearance, that another officer should conduct the array to remove any biases, and assure the witness' confidence in their selection. Although this research was successful in looking at both past literature and interviewing current Police Officers, limitations included the participant size of the interviews and the location. Further research can be conducted with more officers and expanded to regions outside of the Northeastern part of Massachusetts. More research needs to be done in order to determine the best, most effective lineup procedure for Police across America.

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Appendix A: Interview Questions

The interview is broken up into three subsections: (1) Officer Rank, Tenure, & Training (2)

Police Lineup Procedures & Experience (3) Officer Perceptions of What Works, What Doesn't,

and What Needs Improvement in the Field Relating to Suspect Identification

    A. <u>Officer Rank, Tenure, & Training</u> (4 questions total)

    1. How long have you been a police officer?

    2. What is your rank designation in the department? How long have you been at that rank?

    3. Did you receive specialized training regarding suspect identification procedures? Would

       you please describe what you remember most about this training?

    4. Do you think the specialized training helped prepare you for real life lineup scenarios? In

       what way?

B. <u>Police Lineup Procedures & Experience</u> (10 questions total)

    1. Do you videotape the suspect identification process?

    2. Does your department use field show ups? Live lineups? Photo arrays? Voice

       identifications?

    3. Which identification procedure is used most often?

    4. Approximately, how many times have you had a witness look at either people or pictures

       to try and help identify a suspect in a crime?

    5. What standards are currently being used in your department for suspect identification?

       Please try to explain in as much detail as possible.

6. When choosing filler suspects to use for lineups, are there any criteria you follow? Do you try and pick people who have similarities to the true suspect or do you use people who look noticeably different?

7. Does your department use double blind lineups? Does both the officer and the victim not know who the true suspect is as to eliminate bias?

8. Do you employ additional safeguards when a witness of one race is asked to identify a potential suspect of a different race? If so, what safeguards are used to be sure "cross-race bias" is reduced?

9. Would you please describe a case you were involved in where a suspect identification procedure was successful? Why do you believe it was as successful as it was?

10. Would you please describe a case you were involved in where a suspect identification procedure was unsuccessful? What went wrong? Why do you believe it was unsuccessful in identifying the suspect?

C. Officer Perceptions of What Works, What Doesn't, and What Needs Improvement in the Field Relating to Suspect Identification (5 questions total)

1. In your professional opinion, which do you believe are more reliable lineup techniques: photo lineups, live lineups, or voice identification? Why?

2. In your professional opinion, which do you believe are a more reliable photo array procedures: sequential or simultaneous?

3. Do you think there should be one standard method used by all police departments across the United States and across agency type? Why or why not?

4. In your professional opinion, do witnesses experience "weapon focus"? Have you come across a situation where the witness/victim was more focused on the weapon than the perpetrator? Please explain.

5. Based on your professional experience, do you have any recommendations you would give to other police departments regarding their lineup procedures? What are those recommendations?