# Reliability of evidence

## Abstract

There are many challenges facing today’s Criminal Justice professional. A good number of the standard investigative tools such as confessions, DNA tests, and lineups have at some point been found to be inherently unreliable. To further worsen the matters, many prosecutors resist post-conviction appeals even in the contexts where DNA establishes ‘actual innocence,' law enforcement professionals tend to oppose retroactive reviews of convictions. Usually, for any evidence to be admissible, it needs to be relevant, with some indicia of reliability and without being unfairly prejudicial. The paper examines the contexts in which this rule has been violated in the past.

## Introduction

The US Supreme Court first tackled the reliability requirement for legal professionals in the landmark case entitled Daubert v. Merrell Dow Pharmaceuticals in 1993. The Court explained four non-exclusive factors which trial courts may consider while evaluating scientific expert reliability. The factors included: (a) whether scientific evidence and the methodology of obtaining it has been tested; (b) whether the proffered evidence has been subjected to peer publication or review ; (c) whether any potential rate of error is established; and (d) whether the proffered evidence is often accepted in the scientific fraternity. Despite these clear-cut regulations in the field of Criminal Prosecution, there are many flaws been experienced that have subverted justice for the victims (Vallas, 2011). The following section examines some of the flaws established in the Criminal Justice administration:

## EyeWitness Misidentification

Eyewitness misidentification is number one contributing factor to wrongful convictions which have proven through DNA testing accounting for above 70% of convictions that have been overturned via DNA testing across the country. In most cases, DNA has shown that eyewitness identification is normally inaccurate. In the event of wrongful convictions in which eyewitness misidentification was involved, the circumstances differed a lot.

The Innocence Project which is a legal organization formed in 1992 is dedicated to exonerating wrongly convicted individuals by use of DNA testing and also reforming the criminal justice administration to subvert future injustices. In some of the cases, witnesses made identification during a “show- up” procedure in which they were shown only the suspect at the crime scene or in any incriminating scenario. Witnesses have been reported to have substantially varied their description of a perpetrator entailing significant information like height, weight and presence/absence of facial hair after learning more about a specified suspect.

Furthermore, witnesses have been making identification after several photo arrays or lineups and thereafter made hesitant identifications accompanied by uncertain statements. However, during the trial, the jury is told that the witnesses never wavered while identifying the suspect.

## Bite Mark Evidence

According to Giannelli (2007) “Most trial courts have accepted bite mark comparison evidence in rape, child abuse, and homicide cases. A typical scenario involves the identification of a defendant through matching his dentition with a mark on the victim purported to be as a result of a bite. The victim’s teeth are then compared with marks left on the accused’s body. There is no reported case which has rejected evidence proffered by bite marks. “

Bite mark comparisons were first conceptualized in 1976. Keiser-Nielsen (1969) cited “bite marks can never be taken to reproduce precisely the dental characteristics of the originator".9 this is partial as a result of bite marks normally including only a limited number of teeth. In addition, the material which can be human skin or foodstuff in which the mark was left is normally found to contain shrinkage and distortion features that are unknown. Moreover, the marks indicate only the remaining and fixed picture of an act while the causal mechanism may vary from one context to another.

## The admissibility of eyewitness’s testimony

Spencer (1981) explained, “The admissibility of eyewitness testimony during a criminal trial can be challenged on the basis of procedures employed by law enforcement officials in sourcing the eyewitness identification. The United States Supreme Court, during a 1977 court ruling in Manson v. Brathwaite case, outlined the modern test stipulated in the Due Process Clause of the U.S. Constitution which regulates the reliability and fairness of eyewitness identification evidence.”

In the University of Cincinnati Law Review (2006), “in as much as the constitutional standards for examining eyewitness testimony have remained the same for years since the Manson v. Brathwaite decision, research has shed light on the degree to which each of the reliability factors facilitates reliable eyewitness identification? The study has cast doubt on the perception at the apparent certainty depicted in the courtroom by an eyewitness is a reflector of an accurate identification.”

To verify whether the identification is reliable, judges should closely examine the following five factors that were drawn from previous rulings:

(1) The chances of the witness to view the criminal at the moment of the crime;

(2) The witness’ level of attention;

(3) The accuracy of the witness’ initial description of the perpetrator;

(4) The degree of certainty demonstrated during confrontation; and

 (5) The period between the crime and the identification methodology.

Throughout the examination of about 300 exonerations, the Innocence Project established the numerous ways forensic science may be misapplied. These problems include:

1. Invalid or unreliable forensic discipline. Studies demonstrate that forensic methodology used in criminal investigations consistently does not give accurate results.
2. Insufficient validation of methodology.

Some forensic disciplines in use have the capability of producing accurate results; however sufficient research to establish validity has been carried out. The accuracy of the methodology used ought to be established using well-designed studies. Without these studies, analysis results will not be interpreted.

In some cases, forensic testimony exaggerates or overstates the significance of similarities existing between evidence from the accused and evidence from the. Instances include testimony which suggests a collection of a factor is peculiar or overstates how rare it would be to witness these aspects, thus implying that it is quite possible that the particular "person of interest “is the source of the evidence, whereas such evidence doesn’t elucidate all the possible conclusions. It some contexts, forensic testimonies may omit, downplay or understate the essence of analysis which establishes that a person should be excluded as a potential suspect. Sometimes forensic experts make mistakes; fabricate results, withdrawn exculpatory evidence and reported results even when testing had not been carried out.

There have been some extreme cases in which prosecutors have been reported to reject post-trial appeals. Reforms in the legal profession are underway towards shaping prosecutors’ ethical responsibilities in the determination of innocence.

## Reforms and Solutions

Easy adoption procedures significantly decrease misidentifications cases. Prevention of additional wrongful convictions caused by misidentification calls for collaboration with law enforcement and policymakers. The following policies should be adopted.

1. Blinded administration

In this case, the officer in charge is unaware of who the suspect is. This prevents suggestive statements that can influence the witness, thus reducing the risk of a misidentification.

1. Line-up composition

 Non-suspects included in a line-up ought to resemble the eyewitness’ description of the accused. Eyewitnesses should not view more than one identification process with the very one suspect.

1. Instructions:

The individual viewing the line-up should be informed that the accused may or may not be there in the line-up. This should however not stop the investigation regardless of the line-up. The witness should as well be told not to seek guidance from the administrator.

1. Confidence Statements

Law enforcement ought to elicit and document a statement from the witness articulating his level of boldness in the identification.

1. Recording:

Identification process should be taped whenever possible.

## Conclusion

For evidence to be sufficiently admissible to be admitted, the person proffering the evidence should be able to prove that source. Whenever the evidence is a witness testimony, the person introducing the evidence should lay the groundwork for the witness's knowledge and credibility if he or she attests to. Hearsay is often barred for lacking reliability. Whenever the evidence is a documentary, the individual proffering the evidence should be able to prove that it is authentic, and furthermore, he/she should be able to validate the chain of custody from the author to the current holder. The judge must always perform a "gatekeeping” duty in order to exclude the unreliable testimony.

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