Jason Hassay

From: Harold Cook <hc@haroldcook.com>
To: Amber Hausenfluck; Steve Scheibal; Ray Martinez; Debra Gonzales; David Edmonson; Wil Krueger; Jason Hassay; Dan Buda; Graham Keever; Micah Rodriguez; Graham Keever, SC; Sara Gonzalez; Lara Wendler; Gonzalo Serrano; Oscar Garza; Sushma Smith
Subject: follow-up on Zaffirini’s identity issue

Senator Zaffirini did an excellent job pointing out how people’s drivers license photo often does not resemble the actual people. Here’s related documentation.

Begin forwarded message:

From: Yannis Banks <yannis_banks@yahoo.com>
Date: January 25, 2011 2:27:02 PM CST
To: hc@haroldcook.com
Subject: Fw: Blank 33

----- Forwarded Message -----
From: Gary Blodsoe <garyblodsoe@sbcglobal.net>
To: "Asaka, Anson" <aasaka@naacpnet.org>
Cc: Robert S. Notzon <robert@notzonlaw.com>; Yannis Banks <yannis_banks@yahoo.com>; Harold Howell <harold17@swbell.net>; "hiefferson@protectorsinsurance.com" <hiefferson@protectorsinsurance.com>; brian rowland <browland3@hotmail.com>; "Goode, Victor" <vgoode@naacpnet.org>; victor goode <vlg0208@aol.com>; Mrs. Linda Lydie <ilydie@sbcglobal.net>; Phyllis L. Jones <twolynch@gmail.com>; "Wetkins, Carmen" <cwatkins@naacpnet.org>; Carolyn Scantlebury <cscantle01katrina@yahoo.com>; John Tanner <john.k.tanner@gmail.com>
Sent: Tue, January 25, 2011 2:23:47 PM
Subject: Re: Blank 33

Race, Racism and the Law
Speaking Truth to Power!!

Why are Cross-Racial Eyewitness IDs Especially Unreliable?

<table>
<thead>
<tr>
<th>Checkouts: Reclamationgallery.com</th>
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<tr>
<td>John P. Rutledge</td>
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P. Rutledge, They All Look Alike: the Inaccuracy of Cross-racial Identifications, 28 American Journal of Criminal Law 207-228, 211-214 (Spring 2001) (173 Footnotes Omitted)

In general, there is a much greater possibility of error where the races are different than where they are the same . . . .

A cross-racial ID occurs when an eyewitness of one race is asked to identify a particular individual of another race. The last half-century's empirical study of cross-racial IDs has shown that eyewitnesses have difficulty identifying members of another race, though the degree to which this difficulty affects the accuracy of an eyewitness ID is
not certain. Likewise, it is unclear whether all races are affected.

Known as the "own-race" effect or "own-race" bias, eyewitnesses experience the "cross-racial impairment" when attempting to identify individuals of another race. The "own-race effect" is "strongest when white witnesses attempt to recognize black subjects," and apparently less influential to black witnesses. In fact, four separate studies found that black eyewitnesses do not experience any cross-racial impairment. And another found that blacks make better witnesses in general. But five other studies
found that white eyewitnesses
simply experience
the impairment
more often than
blacks. Regardless
of the degree to
which each race
suffers from the
impairment, a
leading scholar on
the subject has
concluded that "it
has been observed
so many times"
that "it seems to
be a fact."

Concern about the
frequent
inaccuracy of
cross-racial IDs is
extensively
documented in
case law and
social science
data. And some
judges believe the
cross-racial
nature of an
identification may
affect accuracy in
the same way as
proximity to the
perpetrator and
poor lighting
conditions. As one
federal judge
expressed more than a decade ago:

We are painfully aware of miscarriages of justice caused by wrongful identification. Those experienced in criminal trial work or familiar with the administration of justice understand that one of the great problems of proof is posed by eyewitness identification, especially in cross-racial identification . . . .

Likewise, a prominent state supreme court judge discussed the complexity of the phenomena as follows:

[I]t is well documented that cross-racial identification is less reliable than
identification of one person by another of the same race.
Considerable evidence indicates that people are poorer at identifying members of another race than of their own.

Adding the commonly held belief that blacks are treated disparately in the criminal justice system, it is easy to see that the problem is complex and not easily allocated for or rectified.

And yet, this wealth of social science data and abundance of case law has yet to inspire legal scholars to address the issue directly. In fact, I was unable to locate a single law review article that
deals exclusively with the topic of cross-racial IDs. Hence, this article: my contribution to the dialogue. It should be noted that the article is not meant to be exhaustive. Rather, it is written as an overview written with the express intent to inspire contributions from the scholastic legal community. The problem is not going to disappear. It must be dealt with, as the very integrity of our criminal justice system depends upon its resolution.

I first became interested in the subject matter while working as a student clinician in law school. The issue seemed to arise in many of the clinic's cases. Granted, my
universe of experience was a bit atypical. I was one of a handful of white students in my entering class at Howard University School of Law. And most of our clinic’s clients were black. The high concentration of white victim/black perpetrator cases caused me to consider many issues, some societal and some interpersonal. One of these issues was the apparent inaccurate identification of several of our clients.

As a white graduate of a historically black law school, I bring a unique perspective to the discussion of cross-racial IDs. I believe my experiences add a valuable insight to
the central question at hand: Why do white people have so much trouble correctly identifying a black person?

Several months of research and reflection on little else but this topic has led me to a few conclusions. These conclusions are my own and are not based upon, or necessarily supported by, empirical data.

By nature, people are generally homogenous. We tend to prefer those we are familiar with, those with whom we identify. White people tend to prefer other whites, as rich people tend to prefer the company of others with money. These
groups are not
alone in that
respect: black
people generally
feel most
comfortable
around other
blacks and poor
people around
other poor people.
There's a pre-
established
comfort level—a
set of customs
and mores already
in place. The
comfort level
allows one to
relax and live less
deliberately.

Those of different
races may have
different customs
and mores,
different ideas of
permissible
speech, behavior,
diet, and dress.
The hair texture
and styles of the
various races is
often different, as
is facial and body
structure. In light
of these
considerations, I
believe the major
cause of the cross-racial impairment is the lack of familiarity with those of other races. We often work together, and at times eat together, but seldom do we live in the same neighborhoods or attend the same churches. These latter activities reflect, in my mind, our lack of comfort among those of other races. Sadly, it is a self-fulfilling cycle: comfort keeps us apart, and yet, living amongst each other would establish a comfort level. With this paradox as our communal mindset, familiarity is a difficult thing to achieve. How can one be expected to accurately identify a member
of a group with whom they are so utterly unfamiliar?

One of my colleagues has attacked my viewpoint as simplistic. He refuses to believe that familiarity with those of other races might alleviate the inaccuracy of cross-racial IDs. As support for his contention, he cites various authorities that conclude, "counterintuitively, the ability to perceive the physical characteristics of a person from another racial group apparently does not improve significantly upon increased contact with other members of that race . . . ."

Ironically, I believe these findings
strengthen my rationale as expressed in the analysis above. Time spent in the same general location is not the same as time spent together. Just as talking to someone is not necessarily communicating with that person, I believe the entire basis of these findings is flawed. Those orchestrating the studies confuse commonality with comfort. Like two New Yorkers passing on the street, many of us have never been intimate with someone of another race. And without intimacy, we have no reason to feel comfortable. Nor do we have the right to expect an accurate eyewitness ID.
In my three years at Howard, I learned so many things that I didn’t know I didn’t know. I learned about locks and cornrows, braids and fades. I learned the difference between high yella and red-boned and brown-skinned and dark-skinned. My life experience does not allow me to accept the finding that these discoveries do not make me more likely to correctly identify a black assailant than a white person without a similar experience.

In that respect, I believe cross-racial IDs will become less of a problem as America matures and we get closer to Martin Luther King Jr.’s dream.
At this time, however, the unreliability of cross-racial IDs is particularly troublesome. One in three black males between the ages of twenty and twenty-nine is under judicial supervision in this country. And while only five percent of the U.S. population, black males make up more than half of America's prisoners. We must explore the various measures available to help ameliorate the harm caused by inaccurate cross-racial IDs. Innocent people have been, and continue to be, stripped of their liberty simply because "they all look alike."

. Associate,
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& Wood, L.L.P.;
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University School
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laude); B.A.,
Philosophy, Loyola
Marymount
University. This
article is
dedicated to all
those falsely
imprisoned due to
an inaccurate
eyewitness
identification. Our
collective soul is
marred by your
Injustice. And no
subsequent
remedy can repay
you for the pain
you've suffered or
the life you've
lost. However, let
us begin with an
apology and an
oath to never
again permit such
injustice.