



Benjamin N. Cardozo School of Law, Yeshiva University

EYEWITNESS IDENTIFICATION REFORM

Mistaken Identifications Are the Leading Factor in Wrongful Convictions

Mistaken eyewitness identifications contributed to approximately 71% of the 341 wrongful convictions in the United States overturned by post-conviction DNA evidence.

- Inaccurate eyewitness identifications can confound investigations from the earliest stages. Critical time is lost while police are distracted from the real perpetrator, focusing instead on building the case against an innocent person.
- Despite solid and growing proof of the inaccuracy of traditional eyewitness ID procedures – and the availability of simple measures to reform them – traditional eyewitness identifications remain among the most commonly used and compelling evidence brought against criminal defendants.

Traditional Eyewitness Identification Practices – and Problems

- In a standard lineup, the lineup administrator typically knows who the suspect is. Research shows that administrators often provide unintentional cues to the eyewitness about which person to pick from the lineup.
- In a standard lineup, an eyewitness is shown individuals or photographs *simultaneously*. Research shows that this tends to lead eyewitnesses to choose a lineup member based upon a relative judgment (i.e., who *looks most like* the perpetrator?), rather than basing the identification on his or her own mental image of the perpetrator.
- In a standard lineup, without instructions from the administrator, the eyewitness often assumes that the perpetrator of the crime is one of those presented in the lineup. This often leads to the selection of a person despite doubts.

How to Improve the Accuracy of Eyewitness Identifications

The Innocence Project endorses a range of procedural reforms to improve the accuracy of eyewitness identification. These reforms have been recognized by police, prosecutorial and judicial experience, as well as national justice organizations, including the National Institute of Justice and the American Bar Association. The benefits of these reforms are corroborated by over 30 years of peer-reviewed comprehensive research.

1. The “Double-blind” Procedure/ Use of a Blind Administrator: A “double-blind” lineup is one in which neither the administrator nor the eyewitness knows who the suspect is. This prevents the administrator of the lineup from providing inadvertent or intentional verbal or nonverbal cues to influence the eyewitness to pick the suspect.



2. Instructions: “Instructions” are a series of statements issued by the lineup administrator to the eyewitness that deter the eyewitness from feeling compelled to make a selection. They also prevent the eyewitness from looking to the lineup administrator for feedback during the identification procedure. One of the recommended instructions includes the directive that *the suspect may or may not be present in the lineup*.

3. Composing the Lineup: Suspect photographs should be selected that do not bring unreasonable attention to him. Non-suspect photographs and/or live lineup members (fillers) should be selected based on their *resemblance to the description provided by the eyewitness* – as opposed to their resemblance to the police suspect. Note, however, that within this requirement, the suspect should not stand out from among the other fillers. (More detailed recommendations can be provided upon request by the Innocence Project.)

4. Confidence Statements: Immediately following the lineup procedure, the eyewitness should provide a statement, in his own words, that articulates the level of confidence he has in the identification made.

5. The Lineup Procedure Should Be Documented: Ideally, the lineup procedure should be electronically recorded. If this is impracticable, an audio or written record should be made.

Jurisdictions Utilizing the Innocence Project’s Reform Package:

The entire states of Colorado, Connecticut, Georgia, Hawaii, Maryland, New Jersey, North Carolina, Ohio, Oregon, Rhode Island, Texas, Vermont, West Virginia & Wisconsin have implemented the reform package promoted by the Innocence Project either through legislation, court action, or substantial voluntary compliance. An additional fifteen states (Arkansas, Delaware, Kansas, Kentucky, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, Oklahoma, Pennsylvania, Virginia & Washington) possess advisory policies endorsing the same.

Many jurisdictions across the country ranging in size from Las Vegas, NV to Spartanburg, SC to Northampton, MA have implemented the same reform package as standard procedure.