New Procedures Will Aid Accurate Eyewitness Identification

Lisa Bruiniers  
*Golden Gate University School of Law*

Craig Ching  
*Golden Gate University School of Law*

Mark Goossens  
*Golden Gate University School of Law*

Dan Taylor  
*Golden Gate University School of Law*

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New Procedures Will Aid Accurate Eyewitness Identification

By Lisa Brunier, Craig Ching, Mark Goossens and Dan Taylor

Eyewitness identification procedures—photo spreads and lineups—have become part of popular culture. We know the drill from TV: a witness picks through photographs in a mugging shot or is shown a live lineup. "It's No. 4!" Are you sure? "Positive!" The case proceeds. The suspect is charged, tried, and convicted—case closed.

The process seems simple and effective, and it further increases our trust in the validity and accuracy of eyewitness identification procedures. Studies have shown, however, that the No. 1 cause of wrongful convictions is mistaken eyewitness identification. In the United States, each year, 77,000 individuals become vicitims of wrongful convictions based on eyewitness identification.

In 2000, attorneys Barry Schech and Peter Neufeld of the Innocence Project at Cardozo Law School conducted a study of factors leading to wrongful convictions. They found that, in 82 percent of 74 documented wrongful convictions, mistaken identity was a factor. These 74 cases of wrongful conviction did not involve procedural or technical memory gaps in which the use of DNA evidence incontrovertibly proved that the convicted person was innocent. Schech and Neufeld's study is not alone; other studies have produced similar findings.

In 1985, Gary Wells and Eric Seelau, both of whom have done extensive research on eyewitness procedures, reviewed cases of wrongful conviction. They found that 52 percent of the 235 cases in which the use of DNA evidence would have shown that the convicted person was innocent, mistakes were made in eyewitness procedures. They further noted that in all cases in which the use of DNA evidence would have shown that the convicted person was innocent, mistakes were made in eyewitness procedures.

In 2000, Schech and Neufeld's study was published. They found that 52 percent of the 235 cases in which the use of DNA evidence would have shown that the convicted person was innocent, mistakes were made in eyewitness procedures. They further noted that in all cases in which the use of DNA evidence would have shown that the convicted person was innocent, mistakes were made in eyewitness procedures.

The problem with the current practice of showing photos or groups at all on the witness's making a mistake in eyewitness identification. A second proposed, small procedural change is to show the eyewitness a group of photos or suspects sequentially, one at a time, rather than all at once.

The problem with the current practice of showing photos or groups at all once is that this often leads to the witness's making a mistake in eyewitness identification. A second proposed, small procedural change is to show the eyewitness a group of photos or suspects sequentially, one at a time, rather than all at once. The result is a person confident in his or her recollection but confident of details not necessarily correct.

Since the legal system places so much credence on eyewitness identification, this confidence must not be unjustifiably inflated. A contaminated memory hurts everyone involved: the innocent person mistakenly identified, law enforcement, and society at large.

Once an eyewitness makes an identification, the investigation often comes to a halt and focuses solely on that person. If the witness was mistaken, valuable time passes, allowing for other evidence and the perpetrator to disappear. The use of sequential lineups preceding by clear instructions, stating that the suspect may or may not be included in the photo spread or lineup, has been shown to reduce greatly the danger of a witness's making a mistaken identification without sacrificing accurate identification.

Third, all eyewitness identification procedures should be video-taped in order to record the witness's taking of the lineup, the number of convictions and guilty pleas increased and allegations of police misconduct decreased.

Recording eyewitness identification procedures will support the eyewitness's credibility, making the identification more reliable and less subject to attack. Fourth, at the time witnesses initially view suspects, they should be asked to rate the level of certainty of any identification made. This should be done particularly as to the significant physical traits of the perpetrator that serve as the basis of the identification.

Such documentation of initial identification data is crucial to counter the inherent increase of confidence by the witness to go unnoted. The only time police and prosecutors should be trained about the risks of providing corroborating details of the suspect's life habits and employment to avoid inadvertent contamination of a witness's memory and thus his or her description of the perpetrator.

Wrongful cases and Remedies, in conjunction with the Northern California Innocence Project.

Lisa Brunier, Craig Ching, Mark Goossens and Dan Taylor, students at Golden Gate University Law School in San Francisco, participated in the seminar Wrongful Convictions: Causes and Remedies, in conjunction with the Northern California Innocence Project.
Those wrongfully convicted, mistaken identity was a factor.

These 74 cases of wrongful conviction did not involve procedural or technical errors. Rather, these were all cases in which the use of DNA evidence incontrovertibly proved that the person convicted was innocent. Scheff and Neufeld’s study is not alone; other studies have produced similar findings.

In 1988, Gary Wells and Eric Seelau, both of whom have done extensive research on eyewitness procedures, reviewed cases of wrongful conviction. They found that 52 percent of the 206 cases they studied also relied on mistaken eyewitnesses.

Exonerees who have been freed because of DNA evidence are extremely fortunate that such evidence was available to them and had been preserved. Unfortunately, with most crimes, perpetrators do not leave DNA evidence behind. This makes it impossible for the majority of those wrongfully accused to counter powerful eyewitness testimony with the use of DNA evidence.

Eyewitnesses in most wrongful-conviction cases are certain they picked the perpetrator. In fact, eyewitnesses often remain convinced of the guilt of the wrongfully convicted person even after other, exculpatory evidence has proved their identification wrong. How is this possible?

Theories vary as to how human memory works, but all agree on how memory does not work: It does not record events like a video system. Memory is affected by the way the individual perceives the world, with the mind transforming perceived details into its own mental representation.

Consider vertical lines in clothing designed to make the wearer seem taller, which may distort a person’s memory of the wearer’s height. Furthermore, unlike a video camera, not all that is perceived is recorded in the brain. An individual’s mind focuses on certain details at the cost of excluding and ignoring other details. Memory recall is a process that constructs remembered details into an incomplete picture, which is why human memory is more subjective, fragile and, at times, more unreliable than a camera’s objective recording.

Consider Jennifer Thompson, who, in 1984, was the victim of a brutal rape. The call for this change does not imply intentional or deliberate misconduct by examiners. Rather, the oral or facial expressions that an examiner makes during the process — consciously or unconsciously — can work as clues or suggestions that can contaminate the witnesses’