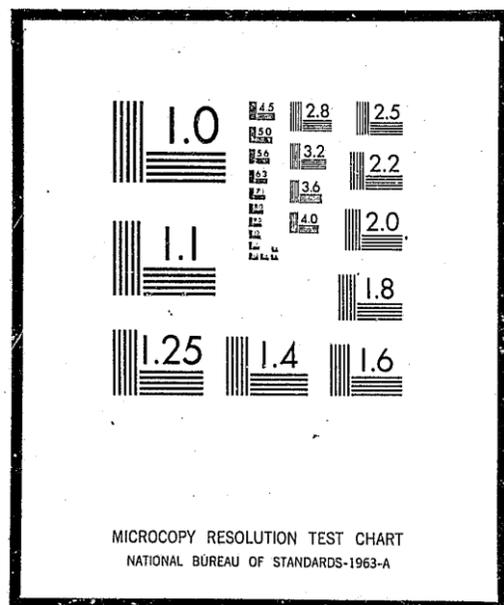


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EYEWITNESS IDENTIFICATION OF OFFENDERS

State-of-the-Art Survey
and Research Recommendations

Wanda B. Johnson
Research Operations Division
National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration

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INTRODUCTION

Eyewitness identification is one of the most controversial and complicated tools used by the criminal justice system to investigate stranger-to-stranger crimes, and apprehend and adjudicate offenders. This paper is the result of a one-month survey of the psychological and procedural problems that have caused authorities to question the use of eyewitness testimony in the administration of criminal justice.

The purpose of this paper is to give a brief overview of eyewitness identification based on a limited number of representative sources. This research included a literature survey of National Institute of Law Enforcement and Criminal Justice resources as well as interviews with police personnel and U.S. District Attorneys in the District of Columbia. While this paper is not a comprehensive study on eyewitness identification it does describe well-known opinions and procedures that help make eyewitness identification a troublesome and unreliable component of the criminal justice system.

Eyewitness identifications involve both psychological and procedural factors. The psychological aspect of eyewitness identification challenges human perception and questions the human ability to distinguish one person from another. The procedural aspect is the questioning of: police procedures in obtaining eyewitness identification, and the court procedures in presenting and interpreting eyewitness testimony.

Psychological Aspect of Eyewitness Identification

The main questions concerning the psychological aspect of eyewitness identification are: 1) the ability of a person to record characteristics of another; 2) the ability to retain these perceptions and; 3) the ability to communicate accurately and specifically these perceptions.

In a study of identification conducted by James Paley and Albert Zavala, 900 students were tested with photographs of human facial features (nose, eye, mouth, etc.) to see the differences in individuals' identifications and interpretations of the human face. The study showed that various people, observing the same photograph, had different interpretations of what they saw in the photograph.¹

In one test, the subjects were asked to look at a photograph of human eyebrows. The pair of eyebrows (the person's entire face was not shown) were labeled by Paley and Zavala as "thick and bushy" (the "correct" description). However, the students were asked to write down their own descriptions or phrases to explain what type of eyebrows this human face possessed. Interpretations included:

"...Real full, an Edgar Allan Poe - character's eyebrows, highest intensity of eyebrows, shaggy, disrupted, no nice shape, close together at nose, seem narrowish, etc."²

Out of 89 responses, only nine subjects were specific in identifying the eyebrows as being "thick or bushy." Eighty subjects used other terms, some related and some not, in place of "thick and bushy."³

While Zavala and Paley's test required one response from each subject and an actual interrogation may not accept a witness's first description of an offender as a final statement, this test is critical because, if these students had been important eyewitnesses to a crime and were asked to identify the suspect, these different interpretations

¹James J. Paley and Albert Zavala, Personal Appearance Identification, (Springfield, Ill.: Charles C. Thomas, 1972), p.3

²Ibid, p.77.

³Ibid, p.77.

of eyebrows could have been totally confusing to the police or court. A police officer who sketches suspects' faces from the memory of witnesses could never have completed a drawing of an offender with descriptions such as "no nice shape." In a criminal case where eyewitness identification is an important factor in deciding the outcome of the trial, the "eyebrow" descriptions, as given by these subjects, could result in misjudgments with respect to conviction or release.

A witness might see and remember a suspect's face, but his identification is of little value if the witness uses such ambiguous terms as "disrupted eyebrows" or "nice-looking ears" in his description of the suspect. Paley and Zavala's test also points out another important factor. The students used in the test were relaxed and prepared for the identification tests. Yet, they still recorded countless ambiguous descriptions of people's facial features. The victims, with knives to their throats, or the witnesses, who see the suspect as he is running from the crime scene, are not relaxed or prepared to note descriptions of the subject. They not only have to record mentally characteristics of the offender, but they must also be able, as eyewitnesses to the crime, to give accurate and detailed accounts of what happened and the identity of the offender.

Paley and Zavala's test show the dangers of perception and interpretation in identification. As discussed in Law and Psychology in Conflict, there are three major causes why the witness or victim might distort that which really was:⁴

a. Perception: the way events are interpreted by a person's idiosyncratic needs, moods, and emotions;

b. Recollections: time lapse between the incident and its recounting, during which other influences on the observer permit the image of the incident to be altered, and;

c. Articulation: the same words are used with different meanings by different persons.

All of the other studies agree with Marshall's explanations of the causes of erroneous identification. Wall also states that people, generally, cannot recognize likenesses or differences nor distinguish variations in form, size and position of other persons.⁵

⁴James Marshall, Law and Psychology in Conflict, (Garden City, New York: Anchor Books - Doubleday & Co., Inc., 1969), pp. 10-11.

⁵Patrick Wall, Eyewitness Identification in Criminal Cases, (Springfield, Ill.: Charles C. Thomas, 1972) pp. 8-9.

"...Features that stand out in people's minds may be common to many individuals (large nose, blue eyes, curly hair, etc.). In addition, a person may possess ABCD characteristics and another may possess CDXY characteristics. These similar characteristics, (CD), may mislead anyone to mistakenly identify that person....The normal person sees but a few of someone else's distinguishing characteristics, retains even fewer in his mind, and is able to revive fewer still when asked to describe the person observed or to identify one to be the same..."⁶

Even though these psychologists feel that humans have great difficulty in distinguishing one person from another and in separating in their minds what was actually seen from what they "think" they saw, the criminal justice system has accepted testimony as important and critical evidence. Therefore, the eyewitness identification problems in police and court procedures must be realized, examined and corrected so that criminal identification can be as accurate and precise as possible.

Procedural Aspects of Eyewitness Identification

A. Police Procedures

All police departments either use corporeal or non-corporeal methods in obtaining witness identification of suspects.

The corporeal method of identifying suspects is a physical confrontation between witnesses and suspect(s). The two most used corporeal procedures are the show-up and the line-up.

The show-up is the presentation of the suspect alone to the victim or eyewitnesses.⁷ A show-up is always somewhat suggestive, for the victim is given only one choice.⁸ There is always the chance that a suspect will be apprehended at the scene of the crime shortly after the crime is committed. This "on-the-scene" show-up, necessitated by the apprehension of the suspect, is more reasonable than a case where a single handcuffed suspect is presented to a witness inside the police station ("suggestive show-up") for identification.⁹ A line-up is the presentation to the victim or witness(es) of several alternative choices.¹⁰

⁶Ibid, pp. 9-10.

⁷Nathan R. Sobel, Eyewitness Identification: Legal and Practical Problems; (New York: Clark Boardman Co., Ltd., 1972), p.6.

⁸Ibid, p.6.

⁹Ibid, p.6

¹⁰Ibid, p.6.

The non-corporeal method includes identification of suspects where there is no physical contact between the suspect and the victim or witness. Photo identification is the primary non-corporeal procedure used where a victim is shown one or more "mugshots" of possible suspects. Photo identification may be in "show-up" form, that is, the witness or victim is shown only one suspect's photo.

There are arguments for and against both the corporeal and non-corporeal identification methods. Authorities agree that the presentation of a single photo or a single person to a victim or witness is much more suggestive than displaying a group of photos or persons.

In comparing the two methods, authorities are divided as to which method is more objective and reliable in obtaining positive eyewitness identification. It is argued that the line-up, if properly conducted, presents a much more objective type of identification procedure. Photos may be old but a line-up presents the suspect in three dimensions as he looks now.¹¹

It is also argued, however, that photo identification, since it is usually made before line-up, is a more reliable indication of a positive identification:

"...Following the arrest of the person whose photo is identified, there will be a corporeal line-up. Since one can never be certain whether the victim is identifying the perpetrator of the crime or the person viewed more recently in the photo, the efficacy of the most correct line-up procedure is questionable. Even the most honest witness will have difficulty in determining whether he has retained in his memory the image of the photograph or the image of the perpetrator of the crime."¹²

There is also further doubt concerning line-up as a substantial method to obtain valid identification of the suspect:

"...When a witness goes to a police station in order to view a line-up, he usually expects the criminal to be present (i.e., the one chosen in the photo identification), and there is thus the natural tendency on his part to pick out the person who most closely resembles the criminal (photo)."¹³

¹¹Ibid, p.7.

¹²Ibid, p.7.

¹³Op. Cit., p. 107.

In other words, if a photo identification is made by the victim or witness before line-up and a line-up is later required, is the victim or witness identifying the offender of the crime or the face in the photo?

Regardless of opinions on which method is better, there are problems when police use either method. The main flaw in the police procedures has been in the use of the show-up. Sometimes the police will be too eager in locating and charging an offender. To try to get an identification from a witness, the police will "suggest" that a suspect is the guilty one. To a nervous or unsure witness, this suggestion can result in an erroneous identification.

Even if the witness is not sure about the identification, he may identify that person as the suspect because the police brought him (the suspect) to the witness. The witness's rationale might be:

"...You certainly would not have brought him here if he were not the right man..."¹⁴

According to Wall, the effect of show-up identification on a case is treated quite nonchalantly in the United States:

"...Moreover, it often does not appear to matter to the police whether the case in which they employ the show-up is one involving capital punishment or known to be of great importance..."¹⁵

Other actions by the police may prejudice the show-up even more:¹⁶

1. Police who point out the suspect to the witness even before the show-up, indicating his status as suspect;
2. Police have brought the suspect in handcuffs to the witness:

"...procedure was inflicted upon Caryl Chessman, who was placed in handcuffs on a sidewalk in front of the house of one of the victims of his alleged sexual attacks. The young girl, her eyes swollen almost shut, saw Chessman at a distance of about fifty feet and identified him as her assailant..."¹⁷

¹⁴Ibid., p.28.

¹⁵Ibid., p.29.

¹⁶Ibid., pp. 29-31.

¹⁷Ibid., p. 30.

3. Police may draw the obvious inference of guilt by telling the witness directly that a suspect is the perpetrator of a crime:

"...a man suspected of rape was taken to the hospital bed of the victim...the police asked, 'Is this the man?'...You don't need to be afraid of him now...If this is the man, just come right out and say so..."¹⁸

Police suggestion is a very important factor to be considered in any eyewitness identification that is made. Prodding or pushing the witness into identifying a person as a suspect may only result in a case of mistaken identity.

1. D.C. Metropolitan Police Department

To try to make eyewitness identification as objective as possible, the D.C. Metropolitan Police Department has established policies that regulate the identification of a suspect by a witness or victim. Unless a suspect is apprehended at the scene of a crime, show-ups are never used. A suspect is never brought into the police department, alone, to be identified by the witness.

The line-up is the formal procedure used by the District of Columbia courts and police department to obtain identification of a suspect. District of Columbia line-ups are recommended by the District Attorney, approved by the Court and are conducted by the police department. The main purpose of this intricate procedure is to safeguard the rights of the defendant and the victim or witness.

When witnesses have stated that they can identify the suspect(s) and such evidence may be critical in the adjudication of an offense, there must be at least an attempt to conduct a line-up or some sort of face-to-face confrontation between the witnesses and suspect(s), otherwise the suspect can not be convicted.¹⁹ In a case where eyewitness identification is important evidence, unless a suspect has been singled out among other choices by the victim or witnesses, he has a good chance of being acquitted.²⁰

The District of Columbia system of conducting line-ups has been applauded by attorneys and courts all over the country. According to Assistant United States Attorney John Rudy:

¹⁸Ibid., p.31.

¹⁹Interview with Assistant U.S. Attorney John Rudy, U.S. District Superior Court Bldg., April 17, 1973.

²⁰Ibid.

"The D.C. Line-up system is the most impartial procedure of witness identification of suspects because the courts have primary control, thus the defendant, witness and victim's rights are more assuredly preserved."²¹

There are over 12,000 robberies and rapes committed in D.C. each year. The majority of line-ups performed involve suspects for these two crimes. Three police officers within the Line-Up Unit conduct approximately 4,000 line-ups a year.²² Eyewitness identification is the only evidence in roughly five percent of all these line-ups; the other cases use the line-up as major supportive evidence.²³

Once a line-up is approved, the U.S. Attorney will send demographic data (which includes suspect's name, race, age, coloring of eyes, hair, etc.) to the Line-Up Unit. This "fact sheet", which also includes the defense attorney's name, the crime committed, where the crime took place and whether the suspect is incarcerated or on bond, is accompanied by a recent photo of the suspect(s). This information is all the Line-Up Unit has on the defendant to select 8-10 fillers for the line-up.

Fillers are police officers and police civilian personnel who volunteer to participate in the line-up. A police officer receives two hours compensatory time for every hour spent in line-up duty while the civilian who volunteers participates as part of his regular work time.

The police officers within the unit know nothing about the case except what information on the suspect is sent to them from the U.S. Attorney. "Witnesses and defendants are just faces."²⁴

2. D.C. Line-Up Procedures

A line-up is never conducted without the presence of the defense counsel(s) who represents the suspect(s) in the line-up. There is never any contact between witnesses or suspect(s) before the line-up. If there is contact, the line-up is cancelled. The witness cannot be seen or heard by the line-up participants and cannot ask the line-up group any questions.

²¹Ibid.

²²Interview with Detective Sgt. George Dunphy, Line-Up Unit, Metropolitan Police Department, April 13, 1973.

²³Interview with Mr. Allen Jones, Assistant to U.S. Attorneys Office, Superior Court, April 18, 1973.

²⁴Interview with Det. Roy Gavin, Line-Up Unit, Metropolitan Police Department, April 13, 1973.

Once appropriate fillers are found and the suspect and witnesses have reported to the Unit, the line-up begins. The line-up group is kept in a room until the line-up commences. They are brought out in single-file onto a stage surrounded by soundproof glass. Each member of the line-up wears a different number; all participants stand in the same position (facing the audience). While the witnesses are in a waiting room, adjustments are made, at the request of the defense counsel(s), to the line-up. (These adjustments may include a defense attorney having his client placed in another spot, having him change his number, etc.).

After the defense attorneys are allowed to express their objections of the line-up, the witnesses are then brought into the line-up room, one-by-one, to inspect the line-up group. They are asked by the unit commander if they can identify anyone in the line-up as the offender.

The witness may make one of three responses: "Someone is familiar, but I'm not sure"; I can make positive identification, number _____"; or "I don't recognize anyone." The witness is instructed before the line-up as to what the three responses are. The line-up is completed after every witness has been brought in to make their identification.

The Line-Up Unit submits a comprehensive report to the Grand Jury. This report includes a copy of a (color) photograph of the line-up as presented to witnesses, audio tape of line-up procedures, a standard form filled out by the conducting unit officer, and in some cases a member of the unit will be asked to testify that a certain person (the suspect) was identified by the witness in the line-up. It is up to the Court to decide the value, weight and fairness of the line-up in a particular case.

Once the identification has been made and the line-up report is submitted, the Court has the choice of either accepting the eyewitness identification as valid evidence or dismissing the line-up identification as evidence in the case.

B. Court Procedures

1. Court Rulings

Although the District of Columbia eyewitness identification system seems well-structured and systematic because of court and police input, the introduction of such regulated procedures were largely in response to pressures and decisions made by Appellate Courts.

One of the most significant court rulings concerning the identification of a suspect was in 1967 in the United States v. Wade case.²⁵ This court decision ruled that a pretrial line-up is a critical stage of a criminal proceeding at which the suspect is entitled to have the aid of counsel, as at the trial.²⁶

In addition, the Court ruled that the only time a suspect's lawyer need not be present at pretrial line-up is when the defendant chooses not to be represented. The Wade decision concluded that the presence of counsel was necessary in order: 1) to minimize the likelihood of suggestive confrontation; and 2) to enable an informed challenge to be made at the suppression hearing to the admissibility of the identification evidence, and at the trial to its credibility.²⁷

On the same day that the Court ruled on Wade, there was also a decision made in the case of Gilbert v. California.²⁸ This case is very relevant to the Court decision on Wade.

Gilbert v. California states that evidence from line-up is inadmissible in court if counsel were not present and if the defendant did not waive this right.²⁹ In Stovall v. Denno, the Court declared that the rules announced in Wade and Gilbert would not be applied retroactively.³⁰

Whether these rulings are important or not has been debated since 1967. Supporters of these rulings contend that with the defense counsel present at pretrial line-ups the suspect's rights may be better protected against biased and erroneous identification and the possibility of police suggestion.

There are arguments, however, that the rulings have little or no effect on the outcome of the line-up:

²⁵388 U.S. 218 (1967).

²⁶Op Cit., p. 24.

²⁷Ibid., p. 25.

²⁸388 U.S. 263 (1967).

²⁹"No Panacea: Constitutional Supervision of Eyewitness Identification", The Journal of Criminal Law, Criminology and Police Science, Vol. 62, No. 3 (Northwestern University School of Law, 1971), p. 363.

³⁰Ibid., p. 363.

"...the refusal of defense counsel may stem from counsel's belief that by attending the line-up he will increase the credibility of the identification evidence at trial and thereby work against the interests of his client....it was his experience that several private attorneys have avoided attending line-ups in which their clients participated....They apparently contend that there is little or nothing they are permitted to do to stop prejudicial conduct, and by the time the police summon an attorney there has already been police suggestion....the defense should not have to aid the prosecution in securing more credible and compelling identification evidence----that the phenomenon of increased credibility when counsel attends the line-up, as it effects juries, may have caused the conviction ratio to increase...."³¹

The question over the counsel's presence at line-up is one of the many controversies that have developed since the Wade, Gilbert and Stovall decisions. The roles of the defense attorney, prosecutor or judge are not defined in these three court rulings. Every jurisdiction has adopted its own interpretation of the rulings which has caused many confusing applications of the decisions in pretrial suspect identification. Questions surrounding the decisions include: do the rules in Wade and Gilbert apply only in line-ups that occur before indictment and do the rulings exclude counsel at stationhouse show-ups (which have never been ruled unconstitutional)?

The District of Columbia Circuit's interpretation of Wade and Gilbert seems soundest.³² Any identification is critical in so far as it initiates prosecution of the suspect, so counsel is required to be present at any informal pre-arrest and pretrial confrontation.

2. The Use of Eyewitness Identification in Court Trial

As a result of his study, Wall concluded that evidence of identification, however untrustworthy, is taken by the average jurymen as absolute proof.³³ In cases where there is other evidence, it is hard to determine whether the jury actually relied on the eyewitness identification as the basis for its verdict.

³¹Ibid., p.372.

³²Ibid., p. 368.

³³Op. Cit., p. 19.

"There are other cases, however, in which it seems clear that the jury based its verdict of guilt either upon incredible identification evidence or upon identification evidence which was far outweighed by evidence of innocence."³⁴

"...Juries have believed eight witnesses who identified a defendant rather than 31 who swore he was not the guilty party...believed nine identifying witnesses, many of whom admitted they could be mistaken rather than more than forty alibi witnesses..., etc.; they have believed a victim of assault who testified that he was able to recognize his assailant, on a dark night, by the light caused by the flash of the gun which the assailant had used..."³⁵

There are other cases too where the defendant has been sentenced to death because of the jury accepting eyewitness identification. The defendant's difficult position, in such cases, is due to the fact that the jury has decided to believe beyond a reasonable doubt that the unreasonable evidence is true.³⁶

Perhaps the "easiest" evidence that the jury can comprehend and interpret is eyewitness identification. Here, jury depends upon a decision made by an eyewitness concerning the guilt of a particular defendant. The "dissection" of testimony may confuse the jury to the point that members will accept the identification without question:

"...The trial procedure itself can shatter the juror's capacity to recall what has been said by witnesses, lawyers and judge. Testimony is constantly dissected and contradicted and reshaped toward partisan ends. That is the essence of the trial; it is not a scientific or philosophical quest for some absolute truth, but a bitter proceeding in which evidence is cut into small pieces, distorted, analyzed, challenged by the opposition, and reconstructed imperfectly in summation.... Then the jury must recreate from all of these fragments, interspersed with lawyers' objections, judge's rulings and other trial procedures, the likeliest version of what happened...."³⁷

³⁴Ibid., p. 21

³⁵Ibid., pp. 21-22.

³⁶Ibid., p. 22.

³⁷Op. Cit., p. 109.

Of course there are catalysts that influence a jury's decision in a trial. Besides eyewitness identification, the jury is influenced by newspapers, radio and television concerning the proper verdict. However, one Assistant U.S. Attorney, Allan Jones, summed up what a jury actually uses to decide a case:

"...it is just what the jury believes in a case, and being people, they can be misled. They (the juries) are especially misled by eyewitness identification. They use their own perceptions. They have to: they are not familiar with the law or with its formal procedures...All they have is their own judgment in making a verdict..."³⁸

There are steps that can be taken to remedy the jury misconceptions of eyewitness testimony.

According to Wall, there are identification danger signals which are very evident. These dangers are what lead to mistaken identity, but if trial courts would warn juries of these dangers then there would be a better chance to accept and control eyewitness testimony so that there can be little or no doubt of an eyewitness's ability to identify a suspect.

Wall summarizes these danger signals as:³⁹

A. The witness originally stated that he would be unable to identify anyone - such a prior statement by a witness does not preclude reliable identification, although it surely constitutes an indication that the identification may be erroneous and should be accepted with caution; in addition, when a number of witnesses have made such statements, then it may be reasonably inferred that their identifications have been improperly obtained and are of little probative value.

B. Identifying witness knew the defendant prior to the crime, but he made no accusation against him when questioned by the police - when a crime is committed, the victim or witness must give the name or designate the offender immediately if he is able to do so.

C. A serious discrepancy exists between the identifying witness's original description of the suspect and the actual description of the defendant - this has no necessary relationship to a witness's ability to

³⁸Interview with Allan Jones, Assistant to U.S. District Attorney, on April 18, 1973.

³⁹Op. Cit. pp. 90-130.

observe accurately and his ability to verbalize accurately that which he has observed. Here, the problem is that the witness gives a description which does not fit the person whom he later identifies. Also, if the witness is not able to give a description and the person he later identifies has an obvious major distinguishing characteristic, then there exists a related danger signal which needs serious consideration.

D. Before identifying the defendant at the trial, the witness erroneously identified some other person - the question here is, if the witness is mistaken once can he be mistaken 2 or 3 times?

E. Prior to the trial, witness sees the defendant but fails to identify him - this danger signal is caused mostly by "police - suggestions."

F. Before the crime was committed, the witness had a very limited opportunity to see the defendant - also included in this signal is the frequent mistake on the part of the witness associating a familiar face with the crime. (In one case, Wall explained that a bank teller had confused the face of a customer with the robber. The customer had come in minutes before the bank was robbed. The witness confused the face of the customer with the robber -- she had seen both faces at about the same time, thus she confused one with the other).

G. The witness is unaware that a crime situation was involved - also included in this danger signal is the witness who did not see the crime but had seen the defendant around the crime area. Here, the witness is offering corroborating evidence (or evidence used to confirm other evidence). This type of eyewitness identification, alone, should not be strong enough evidence to convict a suspect.

H. Time lapse between witnesses' view of the criminal and his identification of the suspect. This is self-explanatory as memory and impressions fade with the passing of time. However, a jury may consider the identification unreliable if there is a long lapse between the crime and the line-up, and a longer lapse between the line-up and the trial.

I. The crime was committed by a number of persons - it is hard enough for a witness to remember one face, but many times, when a crime is committed by more than one, the witness must try to recall four, five or even more persons. If he can identify one or two suspects, that identification is more reliable than the accuracy of identifying, for example, six or seven suspects.

J. The witness fails to make a positive trial identification - when the witness has doubts, then the court must reflect and act accordingly to those doubts expressed by a sole identifying witness, unless there is some other evidence of guilt in the case.

There are other danger signals too. The racial problem where the suspect and the victim or witness are of different races (thus bringing into question the witness ability to make precise identifications), and the occurrence where only one witness is able to identify the suspect but other witnesses fail to identify the defendant are but two more danger signals that should alert the jury as to the possibility of mistaken identity.

These eyewitness identification problems can easily be detected and controlled in court. Other problems that occur in eyewitness identification cannot be detected or handled as easily. The jurors, being people, are fallible. Juries are easily misled and confused by: lawyers who try to use eyewitness identification for their benefit, police who have used "suggestion" to get a witness to identify a certain person as the suspect, and witnesses who may not really recall the suspect but to keep from being embarrassed continue to insist on an identification. Unfortunately, these are circumstances that juries are not aware of when the verdict is made. More often than not, these are the problems that cause mistrials, the wrong verdict and reversals on appeal.

Conclusions

From observing the D.C. Metropolitan Police Department's eyewitness identification procedure, line-up is a better method of obtaining the identification of suspects than show-up. The line-up (or any presentation of more than one choice to the witness) presents a much more objective, and probably more reliable method in obtaining fair and honest eyewitness identification.

A number of improvements in line-up procedures can still be made, however.

Line-up fillers should not be police personnel or jail inmates. The line-up that the author observed included fillers who were policemen, civilian personnel, and an inmate who was a suspect in the case. The police fillers wore their police uniform trousers and the same light blue shirts (also part of their regular uniform). The inmate wore a prison uniform (he was also wearing handcuffs that were hidden behind his back) and the civilian personnel had on suit pants and dress shirts. The dress is very important and unless clothing for line-up fillers can be made available, the mingled use of inmates and police personnel is very suggestive.

The problem of finding fillers for line-ups can probably be eliminated by video-tape recording. The use of video-tape may eliminate the risks of abuse and unintentional suggestion and would make line-ups appear to be a more important serious and critical stage in the criminal process.

"The actual pretrial confrontation will consist of having the eye-witness view a series of video taped bits consisting of a sequence of actions, profiles, and spoken words by a line-up participant. A library of available bits could be established by routinely video taping persons at booking when fingerprints and other information are ordinarily taken. The library of bits would then be catalogued according to the type of features and characteristics of each-participant."⁴⁰

Video taping would save time as line-ups could be arranged and presented to the witnesses as soon as the suspect could be taped, and would eliminate all problems of recreating line-ups for trials.

"The Miami, Florida police department has installed a video taping unit, through LEAA, which is considered to be a very sophisticated unit for \$12,500. A less sophisticated unit would not cost as much as the price of one squad car."⁴¹

Another problem that the author observed at the D.C. Police Department was a lack of concern on the part of the police in conducting line-ups. The line-up procedure is very systematic and the roles of the court and police are vigorously defined, yet, casual attitude of the police toward the case caused problems. The police officers, while they are doing the work they are assigned, are very nonchalant and relaxed about organizing the line-up. The gathering of fillers, for the line-up that was observed, was a very haphazard procedure. Police officers and civilians, who complained that they did not want to be bothered, were finally "rounded-up."

To further explain, the fillers for this particular line-up had to be "big black men" because the defendant was six feet tall and weighed 300 pounds. However the dress, height, age and the coloring of the hair and skin of the line-up group were very different. Yet, the unit commander only remarked "not bad, I think we did a good job." However, when the line-up group was brought to the stage, it was obvious that the suspect was not similar to the others.

⁴⁰"No Panacea: Constitutional Supervision of Eyewitness Identification", p. 374.

⁴¹Ibid., pp. 373-374.

Perhaps the line-up is "too routine" or systematic for the police unit. The staff did not seem to be concerned with the importance of the line-up, especially its importance to the suspect, and the staff was not aware of the nervousness or impact the line-up may have had on the defendant and witnesses. Perhaps, this nonchalant attitude on the part of the police is due to the fact that the defendant and witnesses are just "faces" to them.

Recommendations for Future Institute Study on Eyewitness Identification

The problems in using eyewitness identification in the criminal justice process are very complex.

The psychological aspect of eyewitness identification is probably too complicated and too sensitive of an area to conduct research, especially by the Institute. It is difficult to conceive how any research project could develop recommendations for improving human perception, interpretation and accuracy when one person is asked to identify another.

However, research conducted by the Institute could look into the flaws in the procedures found in court and police use and abuse of obtaining and interpreting eyewitness identification. A study could look at different methods used by various police departments in obtaining eyewitness identification, identifying the amount or lack of police suggestion, objectivity, etc., in securing eyewitness identification.

New technology (i.e., audio and visual tapings of fillers and line-ups) could be evaluated to see if these faster methods of securing fillers and producing line-up films for court use are worthwhile endeavors; if they present new problems and dangers in securing accurate eyewitness identification, and if these technical appliances can/should be made available for any police department in the country.

The role of the court in eyewitness identification could be examined. Is line-up a police task that should have little or no input from the courts?

Can the courts understand and sympathize with police work insofar as questioning witnesses and defendants to get an identification? What weight does eyewitness identification have in the jury's decision or verdict in criminal cases?

These are just a few of the many questions that could be studied and answered in an Institute research project. While a research project

on eyewitness identification will not be done now, future research should be considered so that methods and procedures used by police and courts in obtaining and interpreting eyewitness identification can be made for the investigation of criminal cases, and the apprehension and adjudication of suspects.

END