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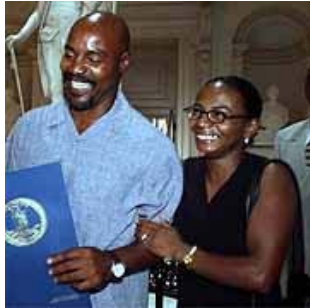
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Posted 11/26/2002 12:29 AM Updated 11/26/2002 12:29 AM

### Police lineups encourage wrong picks, experts say

By Richard Willing, USA TODAY

His client was the suspect in a robbery, so Staten Island, N.Y., attorney Gregory Clarke wasn't surprised last May when detectives asked to put the man in a lineup.



Marvin Anderson clutches his absolute pardon as he and his sister Garnetta Bishop walk out of the Capitol in Richmond, Va., on Aug. 21, 2002.

By Steve Helber, AP

Clarke had one request for police: Don't show the six lineup participants as a group, the traditional way familiar to Americans through TV dramas and movies. Instead, let the witness view each man in the lineup separately, and then try to identify the robber. A judge agreed, and ordered detectives to conduct New York City's first "sequential" police lineup.

"That 'bring in the usual suspects' routine just conditions (a witness) to pick somebody whether they truly remember them or not," says Clarke, whose client wound up being picked out of the lineup.

Clarke's case thrust New York City onto a growing list of states and localities that are trying new ways to deal with an age-old problem: innocent people convicted of crimes based on the honest but faulty memories of witnesses.

Law enforcement types long have insisted that "wrong man" identifications aren't that common and that they usually are corrected well before cases go to trial. But recent research has provided ammunition for defense attorneys, academicians and some police and prosecutors who are pushing to improve how suspects are identified.

Last year, a study by Cal State University-Sacramento researchers Bruce Behrman and Sherrie Davey found that witnesses who viewed conventional lineups and photo displays in 347 California cases picked the wrong person about half the time. Meanwhile, the Innocence Project, a New York City group that specializes in using DNA testing to undo wrongful convictions, found last year that mistaken IDs by witnesses played a role in 60 of the group's first 82 exoneration cases.



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Now, police across the nation are beginning to follow suggestions from crime analysts and psychologists for ways to make suspect identifications more accurate:

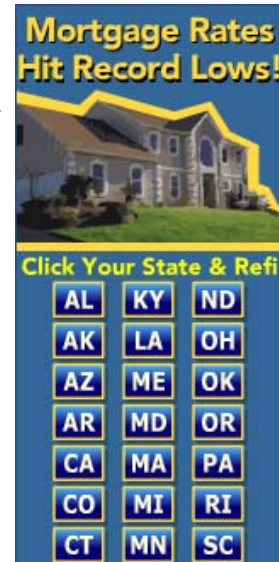
- In Santa Clara County, Calif., and several other communities, police have stopped giving witnesses "six packs" of photos of previous arrestees to peruse in search of suspects.

The police now use a variation of the sequential method for lineups, and show witnesses one photo at a time from a pool of potential suspects. Memory researchers say that method produces more reliable identifications.

- For the past year, every police department and prosecutor's office in New Jersey has been required to run sequential photo spreads and lineups.

Photos are screened to ensure that none carries markings or even distinctive borders to make it stand out. Witnesses are told that they are not obligated to identify a suspect. If a suspect is identified, police ask the witnesses how confident they are in their selection and record the answer in writing.

- In Clinton, Iowa, detectives working on a case are barred from the lineup room under a new policy designed to prevent cops from influencing witnesses to choose a certain person.
- In New Mexico, notices on the backs of police photos remind detectives to tell witnesses that the suspect may not be included in the photos they are shown.
- New York City, Seattle and Indianapolis have begun using a computer program to present witnesses with photos of potential suspects. The program searches databases of mug shots and other police photos for people who resemble a suspect's description. Researchers say that having computers rather than detectives set up photo displays should lead to more accurate identifications.



Some prosecutors have been reluctant to support such new methods, fearing they will lead to fewer correct identifications by witnesses and allow more criminals to go free.

But other prosecutors have embraced the new policies, a reflection of the importance of having solid witnesses at trials. For all the questions about witnesses' accuracy, there can be no more powerful weapon for prosecutors than a witness who appears in court and, under oath, points at a defendant and tells the jury "He did it."

"This is not a defense or a prosecution issue — it's justice issue," says Gary Wells, an Iowa State University psychologist who has researched identifications by witnesses since the mid-1970s and backs the new methods.

"We need to re-inject some confidence into the process. With what we now know about how memory works, we ought to be able to do it."

Identifications rely on memory, which researchers say is fickle even without the shock that witnesses to crimes often experience. Precise recollections of a crime can be particularly difficult for witnesses if, as is often the case, they see a criminal for only a few seconds in a surprising and suddenly stressful situation.

"We don't put everything we see, taste or hear into memory and we don't all retrieve it the same way," says Steven Penrod, a psychology professor at John Jay College of Criminal Justice in New York City who has researched identifications by witnesses. "It doesn't always get stored accurately or permanently."

### **The infamous 'white van'**

Last month, residents of the Washington, D.C., area got a crash course in the fallibility of crime-scene memory. Witnesses in the sniper attacks that killed 10 people in the D.C. area reported seeing a white truck or van fleeing several of the crime scenes. Law enforcement analysts now believe that reports of a white truck that was seen near

one of the first shootings tainted the memories of later witnesses, encouraging them to remember seeing white trucks. The sniper suspects, it turned out, drove a blue Chevrolet Caprice.

Police have long relied on photo spreads and live lineups to help witnesses identify suspects. In photo spreads, witnesses are asked to look for the suspect in a group of six or more photos of people. In live lineups, witnesses see a group of at least six potential suspects through a peephole or a two-way mirror.

### **Problem procedures**

Social scientists say both procedures create problems. "The tendency is to pick the one who looks most like the person you saw," Wells says. It "becomes more about reasoning than memory."

Research published in 1998 by a Wells-led team suggests that. Research subjects were shown a grainy film of a staged crime, then handed six photos. They weren't told whether the "criminal" they had seen was in the group. He wasn't, but nearly all of the subjects chose a picture anyway.

The problems increase when the police officer or prosecutor overseeing a photo spread or lineup knows which participant is the real suspect. A witness "can be steered toward making the 'right' choice, even if the officer isn't consciously trying" to influence the witness, says Ronald Fisher, a psychologist at Florida International University in Key Biscayne who helped prepare a Justice Department study of suspect IDs in 1999. "Tone of voice, verbal cues, even raised eyebrows can let the witness know whether he got the answer that police think is right."

William Buckman, a criminal defense lawyer in Moorestown, N.J., got a judge to strike one identification by a witness a few years ago because the detective who had presented a photo lineup had tapped his thumb nervously beneath the suspect's picture.

Clarke recalls a lineup in which a cop cheered after a witness picked the person police suspected. "That increases the bonding between the witness and law enforcement," he says. "By the time the case goes to trial, it makes (witnesses) more certain of an ID they might have had some doubts about."

Veteran prosecutors say that misidentifications by crime-scene witnesses usually are exposed quickly. "That's what the rest of the investigation is for," says Joshua Marquis, prosecutor in Clatsop County, Ore., and an officer in the National District Attorneys Association.

"There's no epidemic (of mistaken identifications) going on here."

### **A history of mistaken IDs**

Still, the history of the U.S. justice system is sprinkled with convictions based on mistaken IDs.

In 1933, laborer Joseph Majczek, 24, was sentenced to life in prison in the slaying of a Chicago police officer based on testimony from one witness.

Majczek was pardoned by Illinois' governor in 1944, after a Chicago newspaper reported that the witness twice had failed to pick him out of a lineup before changing her mind.

In 1953, New York City musician Manny Balestrero was acquitted of a robbery charge that had been based on three mistaken IDs. The real robber, once police found him, strongly resembled Balestrero.

A 1948 movie, *Call Northside 777*, starring James Stewart, was based on Majczek's case. Henry Fonda played a character based on Balestrero in Alfred Hitchcock's 1956 film *The Wrong Man*.

Researchers say rape victims often provide the most accurate identifications of suspects because they saw their attackers up close. But rape cases in which the victim is the only witness also account for many wrongful convictions, says Barry Scheck, co-founder of the Innocence Project.

A 39-year-old Baltimore man who had served 20 years in prison on a rape conviction was released Nov. 7 after DNA tests cleared him. Bernard Webster had been convicted after the victim chose his picture from an array of photos and later repeated the identification in court.

A survey of 39 different studies that was published last year by researchers Christian Meissner of Florida International University and John Brigham of Florida State University indicates that accurate IDs can decline significantly in cases in which the witness and suspect are not of the same race. The researchers say that a lack of familiarity with other racial groups, rather than prejudice, appears to cause the phenomenon, which applies across all races.

In 1982, a white rape victim in Ashland, Va., identified a black neighbor as her attacker. She picked his picture from a group of photos, then chose him in a lineup and identified him in court. The man, Marvin Anderson, was paroled in 1997 after serving 15 years in prison. Last year, DNA tests cleared him. In January, prosecutors hope to use the DNA evidence to try another man for the rape.

### Police misconduct

Identifications also can be tampered with.

Last year, a federal court jury found that two Chicago police detectives had coached witnesses to pick murder suspect James Newsome in a 1979 lineup. One witness testified that a detective told him to "pick No. 3."

Newsome was convicted but later was exonerated after police matched fingerprints from the crime scene to another man. Newsome claimed police deliberately overlooked evidence that would have cleared him. The federal court awarded him \$15 million.

Detectives "wanted to see that a conviction was made, not that justice was done," says Newsome, now 47 and a graduate student in Chicago. The detectives have denied his allegations.

Nearly all of researchers' suggestions for improving suspect identifications are being used in New Jersey. It is the only state in which all prosecutors report to the governor, which made it easy for state officials to impose new guidelines for identifying suspects.

State officials say that so far, the results are positive. Officials do not release statistics on such matters, but they say the guidelines haven't reduced the number of suspect identifications made by witnesses. No convictions based on wrong IDs have been reported. And initially reluctant police and prosecutors seem to have adjusted.

"The biggest (objection) was that somehow this meant that we were deliberately doing it wrong" previously, says Robert Honecker, chief assistant prosecutor in Monmouth County.

"But law enforcement has grasped that this protects us, too, by making the IDs we get and the cases we make off them stronger."

James Doyle, a Boston defense lawyer who favors the new procedures, says they are less likely to be accepted across the nation if "this thing looks like just another debate between prosecutors and the defense bar.

"The thing to bear in mind is, things like sequential lineups aren't designed to protect my clients," Doyle says.

"They're there to protect people who never become my clients because they're not wrongly identified."

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