

CODES OF PRACTICE FOR IDENTIFICATION: A REVIEW OF :

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Eyewitness identification Procedures: Recommendations for lineups and Photospreads  
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DNA typing of human hair and tissue found at the scene of the crime has become a major weapon in the hands of the police in unequivocally establishing the identity of the offender. It has also become a powerful procedure in retrospectively proving the innocence of persons who maintain they have been victims of miscarriages of justice. In the paper under review, 40 such cases of proven wrongful conviction are described of which no less than 36 (or 90%) were based on identifications in which one or more witnesses falsely identified the accused as the perpetrator of the crime. This sobering statistic led Janet Reno, the US Attorney General, to establish a panel, made up of lawyers, police officers and psychologists to draw up a set of guidelines for establishing identification through line-ups (identification parades) or photo-spreads (identification from an array of mugshots). Photospreads are by far the most common method used in the United States for establishing identification, but are rarely, if ever, used in the United Kingdom. British witnesses may be shown mugshot albums in a search for a suspect, but a positive identification from an album is normally followed by a formal parade. The current paper represents an attempt by the American Psychology-Law Association to provide a consensus statement on the current state of knowledge on the psychological processes underlying eyewitness identification and to provide a series of recommendations designed to minimise the possibility of wrongful convictions based on faulty identification. The APLS working party led by Gary Wells, himself a member of the Attorney General's Panel, comprised many of the leading US researchers in the field: their opinions carry weight. It is instructive therefore to consider their recommendations in the light of the Police and Criminal Evidence Act (hereafter PACE) Code of Practice (Her Majesty's Stationary Office, 1995) in use in England and Wales. Have we lessons to learn from the American experience?

The review of the research literature, much of it published in the last 20 years, emphasises that identification from an array, whether of actual people or mugshots, is a relative rather than an absolute process: the authors cite a study by Wells where witnesses selected the target correctly from an array on 54% of occasions. However, if in another condition, the target was removed

from the array, 68% of witnesses still selected a person from the array; the majority selecting the person most like the target in appearance. The use of instructions emphasising that the person 'may or may not be present' serves to reduce but not to eliminate this effect. The authors go on to highlight that another effective way of reducing relative choosing is to use a sequential rather than a simultaneous line-up. Under experimental conditions, forcing witnesses to make a judgement on each member of the parade in turn has no significant impact on correct identifications, but drastically reduces the number of false positive responses.

The article reviews the vexed area of the relationship of eyewitness confidence and accuracy, noting in passing that American (and incidentally, English) judge's directions to juries recommend that the confidence of the witness in their identification should be a factor that should be taken into account. Sentiment among research psychologists has fluctuated over the years from the view that confidence was not a reliable guide to accuracy to the view that high levels of confidence at the time of choosing may be a significant indicator of actual accuracy. The reviewers note that the most exhaustive meta-analysis to date found a modest but significant positive correlation of .25. However, the reviewers go on to emphasise, correctly in our view, that confidence can be manipulated independently of actual accuracy. The most dramatic demonstration of this is the impact of giving feedback to the witness on their choice. Not only do witnesses who are told 'you got him' show greater retrospective confidence in their identification, but equally alarmingly, they subsequently claim to have had a better view of the witness and to have paid more attention to the suspect than do witnesses who had been told they had picked a stand-in (Wells & Bradfield, 1998). All who have studied courtroom testimony will be familiar with the inflation of confidence which seems to overtake witnesses from their initial statements to the police, through committal hearings, and thence to the Crown Court, which appears to be independent of the reliability of the original testimony. If confidence is to be used by the jury in reaching decisions, it needs to be the verbatim statement taken at the time of the original parade, rather than what the witness now says in the courtroom.

After such a well-informed and full discussion of the psychological issues on identification, the actual changes to the rules which are recommended come as something of an anti-climax. This may be because of a self-imposed prohibition that any recommendations should not involve significant additional costs. The first rule is that *the person conducting the parade should not be aware of which member of the lineup or photospread is the suspect*. Their concern is that an over-zealous officer who has a commitment to solving the case may deliberately or accidentally bias the witness toward a particular choice. In England and Wales, the PACE Codes of Practice specify that a parade will be conducted by an officer of Inspector rank or above who is not a member of the investigating team. However, this 'identification officer' does know who the suspect is and in which position he is standing. To ensure an entirely double-blind procedure would require parades to be conducted not by one but by two officers, one responsible for arranging the parade, the second for conducting the witness and noting down any choices and comments. Problems would still arise if there were multiple witnesses viewing the one parade. Under PACE, suspects have the right to change places between witnesses and to ensure anonymity, responsibility for this rearrangement would have to be handed back to the second officer. Even so, the identifying officer, would still know who had been selected by the first

witness. Locally, the only way of ensuring complete anonymity would be to allocate a different identification officer to each witness, an expensive and time-consuming expedient. Police in the UK would no doubt argue that the provision in PACE for the presence of an accused's solicitor or representative provides sufficient protection against the more obvious forms of malpractice.

The second proposed rule is that *eyewitnesses should be told explicitly that the person in question might not be in the lineup or photospread and therefore should not feel that they must make an identification. They should also be told that the person administering the lineup does not know which person is the suspect in the case.* The PACE instructions anticipate this recommendation: "Immediately before the witness inspects the parade, the identifying officer shall tell him that the person he saw may or may not be on the parade and if he cannot make a positive identification he should say so, but that he should not make a decision before looking at each member of the parade at least twice". (p.95, PACE Codes of Practice). There is certainly evidence that witnesses do take advantage of this provision when it is offered. Wright and McDaid (1996) reporting on a sample of 1561 parades held in London in 1992, found that 39% of witnesses picked the suspect, 20% picked a foil and no less than 41% did not make a selection. The problems of ensuring that the identification officer does not know who is the suspect are dealt with above.

Rule 3 deals with the relative appearance of suspect and foils: *the suspect should not stand out in the lineup or photospread as being different from the distracters based on eyewitness' previous description of the culprit or based on other factors which would draw attention to the suspect.* This emphasis upon building a parade around persons who resemble the verbal description of the culprit contrasts with the English tradition, reflected in PACE, for the foils to resemble the suspect's physical appearance "in age, height, general appearance and position in life" (p. 100, PACE Codes of Practice). The same code, however, does demand that the witness's initial description of the suspect be provided in writing to the suspect or their legal representative. Given that a legal representative is present, it would always be possible for him or her to object to any stand-ins who departed significantly from the verbal description in much the same way as currently the legal representative can object to any person who is markedly different in physical appearance to the accused. The new emphasis placed on resemblance to verbal descriptions does have practical drawbacks compared to the traditional method. First, verbal descriptions can vary from the extremely precise through to the most vague and general: a reliance purely on description in these contrasting circumstances could produce parades with wide differences in degree of similarity between individual foils and between foils and the suspect. Second, where multiple witnesses were involved, separate individual parades would have to be constructed corresponding to the description of each witness, rather than the same parade being used for all witnesses, as at present. Here, again, this recommendation may reflect the North American practice of favouring photospreads over live lineups for identification purposes.

The final rule that *"a clear statement should be taken from the eyewitness at the time of the identification and prior to any feedback as to his or her confidence that the identified person is the culprit"* reflects recent research on the value of contemporary, as opposed to retrospective judgements of confidence. This is an area of ambiguity in the current PACE codes which

deserves to follow the recommended North American Practice. The current parade documentation to be completed by every identification officer includes provision for taking down the verbatim remarks of the witness and these can include expressions of confidence. It is also common practice where witnesses make a positive identification at a parade, for them to make a further statement to the police if they showed any hesitation in expressing their confidence in their judgement. Given that such statements are made after feedback on choice, their evidential value is problematic and a formalisation along the lines proposed by the APLS Working Party would be a useful addition to PACE.

The final section of the paper is devoted to two procedural improvements which were rejected as "too many rules would produce resistance from police and legal policy makers" (p. 639). The first is for the introduction of sequential parades. After detailing their many advantages over conventional parades where all members are simultaneously present, the authors decide not to make a recommendation in part because sequential parades rely "on more complex understanding of the problem based on the relative-judgement conceptualisation that we do not think is a part of the intuitions of legal policy makers at this point" (p. 640). We believe this may underestimate not only on the conceptual capacities of US law enforcement personnel, but also the communicative abilities of psychologists interested in applying psychology in a legal context. Procedures in England and Wales currently do not favour sequential parades. However, many forces are switching from live to video parades, at which witnesses view video clips of volunteer stand-ins, together with a similar clip of the accused. Currently, witnesses view all the clips twice before making a decision. Given that the clips are presented sequentially, it would be a relatively straightforward change to ask the witness for a response after each clip.

A final rejected recommendation concerns the videotaping of parades, which as the authors note, would provide a permanent record not only of the structure of the parade, but also of what was said and by whom. This proposal too, is rejected on the basis of cost and practicality. This rejection elicits the only departure from unanimity with Kassin arguing strongly for its inclusion in a minority report (Kassin, 1998). In support of this proposition, Kassin states incorrectly that PACE requires all interviews with suspects to be videotaped (this should of course refer to audiotaping). He could, however, have pointed to the many examples of customised identification suites in London and elsewhere in the United Kingdom where parades are routinely videotaped. This represents a marked improvement on the minimum requirements of PACE which specifies that an identification parade should always be photographed in colour.

In conclusion, with the exception of the recommendation on adopting a double-blind procedure and formally recording confidence, existing regulations on identification in England and Wales either anticipate these proposed rules or provide safeguards which go beyond their very modest proposals. In particular, North American practice has something to learn from UK practice of permitting legal representation at parades and video identifications and in the increasing practice of videotaping parades. The latter has probably spread so rapidly as it is perceived as having advantages for both prosecution and defence: the defence have a record of what went on, while the police can use it to show that the parade was fair and procedures followed to the letter. However, the apparent superior position under PACE guidelines should not encourage

complacency. Mistaken identification continues to be a significant source of miscarriages of justice (Davies, 1996). However, such errors are now more likely to reflect a failure to follow the existing Code of Practice, rather than to gaps or ambiguities in the Code itself.

#### REFERENCES

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