

JUROR EVALUATION OF EYEWITNESS EVIDENCE

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ABSTRACT

Since 1989, there have been 935 exonerations due in part to mistaken identification of eyewitnesses. The vast majority (94%) of these cases came from jury trials. These statistics suggest jurors lack understanding of what affects eyewitness' memories and decisions. The current study assessed general knowledge of eyewitness procedures as well as mock jurors' evaluation of a hypothetical case that varied in the use of two lineup procedures to secure an identification. We examined mock jurors' verdict decisions using a 2 (lineup instructions: absent vs. present) x 2 (lineup administration: single-blind vs. double-blind) between-subjects factorial design. We hypothesized that mock jurors would be more likely to convict the defendant when lineup instructions were unbiased, and the lineup was double-blind compared to either biased lineup instructions or single-blind lineups. Results indicated knowledge was lacking for several, but not all interview and lineup procedures. Additionally, mock jurors were not sensitive to lineup practices. Neither lineup instructions nor administration influenced legal judgments. These results suggest jurors need additional education in the form of judicial instructions or expert testimony to aid their evaluations of eyewitness evidence.

Keywords: Eyewitness identification; juror decision-making; lineup procedures; lineup instructions; double-blind lineup administration

INTRODUCTION

The National Registry of Exonerations reports that since 1989, there have been 935 exonerations due to mistaken identification of eyewitnesses. Texas, specifically, accounts for almost 10% of these types of cases with exonerees spending an average of 12.9 years in prison. The striking number of exonerees underlies the need for the criminal justice system to closely examine where and why these mistakes are occurring.

Factors that impact the effectiveness of eyewitness identification are generally categorized as either estimator or system variables (Wells et al., 1978). Estimator variables are beyond the control of police and include factors such as the lighting at the scene of the crime, the distance between the perpetrator and the witness, and the duration of the witness' exposure to the perpetrator. System variables are factors that police have control over such as those related to interviews and lineup administration procedures. Both estimator and system variables can influence the quality and accuracy of witness accounts.

In nearly every documented case involving misidentification (94%), a jury believed the eyewitness evidence and convicted an innocent person (NRE, 2023). This finding suggests jurors may lack a proper understanding of eyewitness memories and decisions. The purpose of the current study was to assess knowledge regarding numerous police practices, including the administration of lineups, among a sample of potential jurors and to evaluate whether the use of two recommended lineup practices (double-blind administration and unbiased lineup instructions) affected the likelihood of conviction in a mock juror task. It was predicted that jurors would be most likely to convict when best practices were used.

Eyewitness Factors

Many system variables affect eyewitnesses by impacting response bias (i.e., the witnesses' inclination to choose). Two such system variables include lineup instructions and administrator influence (Wells et al., 2015). Unbiased instructions inform the witness that the culprit may or may not be in the lineup, which effectively reduces choosing (Clark, 2005). In contrast, biased lineup instructions fail to provide this information to witnesses or imply that the culprit is in the lineup. When biased instructions induce witnesses to choose, their confidence is artificially inflated (Charman et al., 2018).

Another system variable concerns whether the lineup administrator knows the suspect's identity. In single-blind lineup administration, the administrator knows the suspect's identity, while in double-blind lineup administration, they do not. The purpose of double-blind lineup administration is to prevent the administrator from influencing the witness. Knowledge of a suspect's identity can lead an administrator to have an expectation about how the witness should behave. This expectation can cause the administrator to behave toward the target in a manner consistent with that expectation, including providing cues that may signal which person is the suspect in the lineup, and likewise for the witness towards the administrator (i.e., creating a self-fulfilling prophecy; Harris & Rosenthal, 1985; Rosenthal, 2002; Snyder & Swann, 1978; Wells et al., 2020). Notably, this can occur with or without intention on the part of the administrator.

Single-blind administrators are more likely to tell witnesses to examine the lineup carefully, to inform the witness that they are aware of who the suspect is, and to tell the witness to look again if they did not make an identification (Greathouse & Kovera, 2009). Furthermore, single-blind administrators can give post-identification feedback that can inflate confidence and change the eyewitness's memory of events (Wells et al., 1998). There is a large body of study

that exemplifies how a single reassuring comment towards a witness (e.g., “You did well”) can immediately inflate a witness’s confidence (Wixted & Wells, 2017). Steblay et al. (2014) conducted a meta-analysis that showed a witnesses’ confidence was inflated by a full standard deviation when seemingly benign reassurance was given by the administrator.

Ideally, lineup procedures would produce fewer mistaken identifications and more accurate identifications. Yet, research has demonstrated that several recommended lineup procedures reduce both mistaken and accurate identifications, resulting in a trade-off. For example, Clark (2012) observed that, in laboratory studies, biased instructions resulted in 59% correct identifications and 15% false identifications, while unbiased instructions resulted in 50% correct identifications and 9% false identifications. Thus, biased instructions increased the rate of choosing, no matter if the suspect was present in the lineup or not (Malpass & Devine, 1981; Steblay, 1997). Similar reductions in both mistaken and accurate identifications have also occurred with double-blind lineup administration. For example, Clark (2012) observed that single-blind administration resulted in 58% correct identifications and 21% false identifications, while double-blind administration resulted in 45% correct identifications and 11% false identifications.

More recent research suggests that the value of a particular lineup procedure depends, in part, on the amount of investigative work done by police prior to a lineup procedure (Yang et al., 2019). Using an expected cost model (where the smallest cost is ideal for helping police achieve their goal of identifying culprits), Yang and colleagues (2019) found that unbiased instructions have a lower expected cost when the prior probability of suspect guilt is less than 87% and double-blind administration has a lower expected cost when the prior probability of guilt is less than 88%. These findings suggest that police can lower expected costs by collecting more

incriminating evidence prior to a lineup. Indeed, this aligns with another recommendation by researchers: suspects should only be placed in a line-up once evidence-based suspicion has been established (Wells et al., 2020). When collecting incriminating evidence is not possible or limited, using proper lineup procedures (e.g., unbiased lineup instructions) to obtain an identification becomes even more important to a successful and accurate investigation (Yang et al., 2019).

Best Practices and Implementation

The extensive research on system variables led to a series of recommendations for how police should interact with eyewitnesses to maximize the integrity of identifications (Wells et al. 1998, 2020). Regarding lineup instructions, Wells et al. (2020) recommends all the following should be disclosed to a witness prior to viewing a lineup:

The eyewitness should be instructed that (a) the lineup administrator does not know which person is the suspect and which persons are fillers; (b) the culprit might not be in the lineup at all, so the correct answer might be “not present” or “none of these”; (c) if they feel unable to make a decision they have the option of responding “don’t know”; (d) after making a decision they will be asked to state how confident they are in that decision; and (e) the investigation will continue even if no identification is made. (p. 20).

Regarding administrator influence and lineup administration, Wells et al. (2020) recommend the following:

Lineups should be conducted using a double-blind procedure (i.e., neither the administrator nor the witness should know who the suspect is in the lineup) or An equally effective method of preventing the lineup administrator from inadvertently influencing the witness. (p. 14).

After a series of high-profile wrongful convictions, Texas passed reforms focused on identification procedures (Texas Code Criminal Procedure Art. 38.20). This law tasked the Law Enforcement Management Institute of Texas (LEMIT) with developing training materials for police who conduct lineups and a written model policy conforming to best practices. Regarding lineup administration, the *Model Policy on Eyewitness Identification* (2017, p. 7) explicitly states:

The administrator of the photo array presentation should be an independent administrator who does not know the identity of the suspect and the witness should be informed of this.

In a blind procedure, no one should be present who knows the suspect's identity.

If the blind procedure described above is not followed, then the photo array administrator should document the reason why and the administrator should be blinded. That is, he or she should conduct the photo array in a manner such that he or she does not know which person in the array the witness is looking at.

There is a separate sample standard operating procedure for blinded photo array administration in this model policy immediately following this sample standard operating procedure.

Further, the policy lays out the specific instructions that witnesses should be given prior to viewing a lineup (that is, blind and sequential; p. 7):

In a moment, I am going to show you a series of photos. The person who committed the crime may or may not be included. I do not know whether the person being investigated is included.

Even if you identify someone during this procedure, I will continue to show you all photos in the series.

The investigation will continue whether or not you make an identification.

Keep in mind that things like hair styles, beards, and mustaches can be easily changed and that complexion colors may look slightly different in photographs.

You should not feel you have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator.

The photos will be shown to you one at a time. Take as much time as you need to look at each one. After each photo, I will ask you "Is this the person you saw [insert description of act here]?" Take your time answering the question. If you answer "Yes," I will then ask you, "In your own words, can you describe how certain you are?"

Because you are involved in an ongoing investigation, in order to prevent damaging the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the photo array procedure will be conducted and the other instructions I have given you? (p.7).

The most recent survey evaluating the implementation of lineup procedures was conducted in 2013. The Police Executive Research Forum (PERF) surveyed 619 law enforcement agencies about policies regarding their lineup procedures. Most agencies reported having policies regarding some sort of photo lineup instruction, though not as comprehensive as recommended by Wells et al. (2020). Specifically, 83.9% of agencies reported procedures for instructing the witness that the perpetrator may or may not be present in a photo lineup (Table 12). This percentage is lower for other types of photo lineup instructions such as informing a witness that the investigation will continue regardless of whether they make an identification (59.8%), that the witness need not make an identification (56.3%), and that the appearance of the

perpetrator may have changed since the incident (59.8%). More alarmingly, only 31% of agencies reported that they have a policy of double-blind lineup administration (Table 18).

The Texas model policy specific to lineup instructions and administrator influence aligns with the research-based recommendations by Wells et al. (2020). Yet, the extent to which jury-eligible persons in Texas are knowledgeable of this policy and best lineup practices in general is unknown, though broader surveys shed some light on jurors' knowledge of both estimator and system variables.

Jurors' Knowledge of Police Practices

Cormia et al. (2022) conducted a survey on juror knowledge of estimator variables, finding the majority of jury-eligible persons were knowledgeable regarding the effects of several estimator variables on memory (e.g., distance, alcohol). A few notable exceptions were observed; nearly half of participants incorrectly believed the presence of a weapon increased memory accuracy and over half of participants incorrectly believed cross-race has no effect on memory accuracy. Regarding system variable knowledge, a sizable percentage of laypersons do not appear to understand the effects of biased lineup instructions (30% incorrect responses found in a meta-analysis by Desmarais & Read, 2011) or single-blind lineup administration (66% incorrect; Wise & Safe, 2010).

Nearly half of undergraduates surveyed by Wise and Safer (2010) believed that jurors could distinguish between accurate and inaccurate eyewitnesses (47%). Further, the majority of their sample assumed attorneys (84%), judges (85%), and police (74%) know how eyewitness factors affect accuracy. Yet, these legal actors were involved in all (or nearly all regarding jurors) of the documented wrongful convictions to date. These results indicate that, unlike many estimator variables that appear more intuitive, laypersons demonstrate a limited depth of

understanding of many system variables. The current study expands upon these studies by surveying jury-eligible people in Texas regarding interview and lineup procedures outlined in the LEMIT model policy.

Juror Sensitivity to Lineup Practices

Knowledge about eyewitness factors alone does not ensure accurate decision-making. Jurors must also be able to incorporate that knowledge into their decision-making (Penrod & Cutler, 1989). Researchers have studied juror sensitivity to different witnessing and identification conditions. Sensitivity occurs when jurors adjust their verdict and related legal decisions according to the quality of the eyewitness evidence; in this case, convictions should be more likely when police use recommended lineup practices and less likely when police use improper lineup practices.

Assessments of mock jury verdicts suggest some sensitivity to system variables. For example, Bergold et al. (2021) manipulated the quality of identification procedures used to secure an identification, which included the type of procedure (showup or lineup), lineup instructions (biased or unbiased), and confirmatory feedback. Jury convictions were more likely when police used recommended lineup procedures than when they did not. Sensitivity to these same system variables was also observed at the individual juror level (Jones et al., 2017). Neither study could establish precisely which system variables impacted their verdicts.

In contrast, the examination of individual system variables indicates that jurors are largely insensitive to their impact on the identification process (Jones et al., 2020). Convictions did not differ as a function of police lineup procedures. Instead, jurors found a detective's testimony *more* incriminating when they administered the lineup in a single-blind fashion (versus double-blind; Jones et al., 2020). Others found that eyewitnesses were no more or less likely to

be believed under single or double-blind administration (Beaudry et al., 2013). However, observers were more likely to believe identifications when the police confirmed the eyewitness' decision compared to double-blind administration or even single-blind without feedback. These findings are concerning because they suggest that jurors can be biased against the defendant when police use poor lineup practices. Overall, there is a lack of agreement regarding jurors' ability to effectively evaluate eyewitness evidence necessitating the need for additional research.

THE CURRENT STUDY

The eyewitness model policy in Texas aligns with recommended and evidence-based practices by researchers (Wells et al., 2020). However, there are no penalties associated with failure to follow this policy, which has led some judges to admit identifications obtained using improper police procedures (e.g., *Fisher v. State*, 2017). This places the onus on jurors to both understand how police procedures affect identification reliability and to adjust their legal decisions accordingly.

The current study contains two parts: a knowledge survey and hypothetical case evaluation. We first surveyed mock jurors on their knowledge of proper interview and identification procedures. Regarding the hypothetical scenario, we expect mock jurors will be more likely to think the defendant is guilty (measured by both the dichotomous and continuous verdict measures) when lineup instructions are unbiased and the lineup is double-blind compared to either biased lineup instructions or single-blind lineups.

METHODOLOGY

Participants

We recruited 339 undergraduates from criminal justice and psychology courses at a large public university in the American southwest. Anyone taking longer than 24 hours was removed

from the sample ($n = 5$), resulting in a final sample of 334. The variables within the participant groups included age, gender, and ethnicity (Age range: 18-41; $M = 18.83$, $SD = 2.27$ years; 41.7% Hispanic, 72.8% White, 14.8% African American, and 12.3% Other; 83.1% female). Students were recruited using SONA, a human subjects recruitment platform, and compensated with one course credit.

Design

The survey included 19 questions (see Table 1) assessing knowledge of various eyewitness procedures. Each question had five possible answers regarding the quality of the practice ($1 =$ does not follow best practices at all, $5 =$ completely follows best practices). Nine questions were recoded so that higher values were indicative of better police practices knowledge.

The experiment consisted of a 2 (lineup instructions: absent vs. present) x 2 (lineup administration: single-blind vs. double-blind) between-subjects factorial design. The participants were randomly assigned to one of four different scenarios in which police officers followed specific identification procedures.

Two manipulation checks were performed to confirm that the manipulations were successful. First, participants assigned to the unbiased lineup instruction condition were more likely to correctly report that the eyewitness received proper unbiased lineup instructions (84.8% vs. 24% for those assigned to the biased lineup instruction condition), while those assigned to the biased lineup instruction condition were more likely to correctly report that the eyewitness did not receive instructions (47.4% vs. 7% assigned to the unbiased lineup instruction condition), $\chi^2(2, N = 333) = 124.43$, $p < .001$, $\phi = .61$. Notably, 28.6% of those assigned to the biased lineup

instruction condition reported not remembering whether the witness received instructions compared to only 8.2% of those assigned to the unbiased lineup instruction condition.

Second, participants assigned to double-blind lineup administration were more likely to correctly report that a neutral officer conducted the line-up (68.5% vs. 6% for those assigned to single-blind), while those assigned to the single-blind lineup administration were more likely to correctly report that the detective in charge of the case conducted the lineup (78% vs. 23% assigned to double-blind), $\chi^2(2, N = 333) = 141.54, p < .001, \phi = .65$. Notably, 16.1% of those assigned to single-blind reported not remembering who conducted the lineup compared to 8.5% in double-blind administration. No participants were excluded for failing either manipulation check (Aronow et al., 2019; Montgomery et al., 2018).

Dependent Variables

Participants reported dichotomous (guilty, not guilty) and continuous (0-100% probability of guilt) verdict decisions. If the participant found the defendant guilty, they were prompted with sentencing options: (1) 1 year of supervision (2) 5 years of supervision (3) jail for 1 year (4) jail for 2 years (5) prison for 2 years (6) prison for 20 years. All of these sentences are possible under the Texas penalties for robbery.

Data Analysis Plan

Descriptive analyses were conducted for the survey knowledge items. Main and interactive effects for the experiment were examined using an analysis of variance (ANOVA).

Procedure

Participants were first asked to complete a consent form and questions to establish jury eligibility. Participants were then randomly assigned to read one of four different scenarios about a store robbery involving one eyewitness, who identified the defendant. This was the only

evidence against the defendant. The crime scenario is presented in Appendix A. After the scenario, participants read judicial instructions and answered dependent measures and manipulation checks. They were then presented with 19 questions to evaluate their knowledge of proper interview and lineup practices; the questions are presented in Appendix B. Participation concluded with demographic related questions.

RESULTS

Regarding survey items, items were recoded as needed so that higher means were indicative of better police practices knowledge. The lowest point was confidence statement timing ($M = 2.27$, $SD = 1.12$). Knowledge regarding lineup instructions was better, with all items above the midpoint. These questions included ‘Police instruct the eyewitness to guess if they are unsure’ (guess if unsure; $M = 4.44$, $SD = 0.96$); ‘The lineup administrator informs the eyewitness that “I don’t know” or “I don’t remember” is an acceptable response’ (I don’t know; $M = 3.77$, $SD = 1.28$); ‘The lineup administrator informs the eyewitness that the investigation will continue regardless of whether they identify someone’ (continue; $M = 3.69$, $SD = 1.21$); and ‘The lineup administrator informs the eyewitness that the perpetrator may or may not be present’ (may or may not; $M = 3.51$, $SD = 1.4$). Lineup administration knowledge was generally lower. These questions included ‘The eyewitness is told that the lineup administrator does **not** know whether the person being investigated is included in the lineup’ (Double; $M = 3.18$, $SD = 1.32$) and ‘The lineup administrator knows whether the person being investigated is included in the lineup’ (Single; $M = 3.16$, $SD = 1.33$).

For the experiment, regardless of condition, 56.5% of the sample convicted with an average of 60.46% ($SD = 20.19$) probability of guilt for the defendant. For the subsample that

convicted ($n = 188$), the average sentence was 4.13 ($SD = 1.37$), which translates to approximately two years in jail.

An ANOVA was subsequently conducted to examine main and interactive effects on verdict, probability of guilt, and sentencing. Means for the main effects are presented in Table 1 and interactive effects in Table 2. First, there were no main effects of lineup instructions, $F(1, 329) = .23, p = .63, \eta_p^2 = .001$, or lineup administration, $F(1, 329) = .17, p = .68, \eta_p^2 = .001$ on verdict decisions nor was there an interactive effect between lineup instructions and administration, $F(1, 329) = 2.78, p = .10, \eta_p^2 = .01$. Second, there were no main effects on lineup instructions, $F(1, 328) = 2.25, p = .14, \eta_p^2 = .01$, or lineup administration, $F(1, 328) = .94, p = .33, \eta_p^2 = .003$ on probability of guilt nor was there an interactive effect between lineup instructions and administration, $F(1, 328) = .41, p = .52, \eta_p^2 = .001$. Finally, there were no main effects on lineup instructions, $F(1, 184) = .66, p = .42, \eta_p^2 = .004$, or lineup administration, $F(1, 184) = .17, p = .69, \eta_p^2 = .001$ on sentencing nor was there an interactive effect between lineup instructions and administration, $F(1, 184) = .10, p = .75, \eta_p^2 = .001$.

DISCUSSION

The current study was designed to assess jurors' understanding of eyewitness factors and how two such factors affect judgments in a mock juror decision making task. First, participants' knowledge of 19 interview and identification procedures were evaluated. The results suggest the timing of confidence statements is not well understood. Participants largely indicated that they believed police should let witnesses take as much time as they need before giving a confidence statement. This is concerning because delays can result in extraneous information contaminating a witness' confidence, making it a less reliable indicator of accuracy (Wells et al., 2020). Knowledge regarding other lineup procedures has room for improvement, supporting past

research regarding system variable knowledge (Desmarasis & Read, 2011; Wise & Safe, 2010). For example, the best practice of instructing the witness not to guess if unsure was well understood by participants. However, averages for other items assessing lineup instruction knowledge were lower as were the single- and double-blind administration questions.

Second, participants completed a mock juror decision making task. Two procedures were manipulated: lineup instructions and administration practices. Sensitivity was expected such that jurors would adjust their verdicts and related legal decisions according to the quality of the eyewitness evidence. According to the hypothesis, convictions should have been more likely to occur when police used recommended lineup practices and less likely when they used improper practices. The null results indicate that jurors were not sensitive to these procedures, which can put innocent defendants at risk of wrongful conviction. The null results align with some past research (Beaudry et al., 2013; Jones et al., 2020), but conflicts with others (Bergold et al., 2021; Jones et al., 2017). Participants' insensitivity could be due to a lack of knowledge regarding proper administration and instruction procedures. The lack of clarify regarding juror sensitivity to proper lineup procedures necessitates further research.

Limitations

The current study was not without limitations. First, the study was conducted online and only with individuals who did not deliberate. These conditions could affect the decision-making process. For example, group recall may be better in groups than individuals (Maki et al., 2008; cf., Basden et al., 1997; Thorley & Dewhurst, 2009; Weldon et al., 2000; see Salerno & Diamond, 2010 for review). Second, the study materials and descriptions were more limited than what would occur in a real trial. Unlike live trial settings, mock jurors did not experience opening or closing statements nor testimony from witnesses.

Another limitation exists regarding the sample. Student samples may not generalize to the jury eligible population (Wiener et al., 2011). However, a recent meta-analysis comparing student and nonstudent samples observed few differences in decision making (Bornstein et al., 2017). Additionally, this sample was diverse in race and ethnicity.

Future Directions and Conclusions

Null findings within the current study indicate that additional education may be needed for jurors when it comes to evaluating eyewitness evidence. For example, a variation of *Henderson* eyewitness instructions could assist jurors in better evaluating witness and identification factors (Jones et al., 2020; Jones & Penrod, 2018). These studies found that jurors who received modified *Henderson* instructions were more likely to convict when eyewitness evidence was strong and less likely to when the evidence was weak compared to those who received no instructions (Jones et al., 2020) or the original version of *Henderson* (Jones & Penrod, 2018). Additional research is needed to determine how well such procedural safeguards can address the deficit of juror knowledge regarding lineup instructions and administration.

Table 1***Means for main effects of lineup instructions and administration.***

Variables	Guilty Verdict	Continuous Guilt <i>M (SD)</i>	Sentencing <i>M (SD)</i>
Lineup Instructions			
Biased (n = 101-175)	58%	62.07 (20.15)	4.05 (1.33)
Unbiased (n = 87-158)	55%	58.66 (20.14)	4.22 (1.43)
Lineup Administration			
Single-blind (n = 97-168)	58%	59.37 (19.88)	4.08 (1.35)
Double-blind (n = 91-165)	55%	61.56 (20.50)	4.18 (1.35)
Overall (n = 333)	56.5%	60.46 (20.19)	4.13 (1.37)

Note. Continuous guilt: 0-100% probability of guilt. Sentencing options were: (1) 1 year of supervision (2) 5 years of supervision (3) jail for 1 year (4) jail for 2 years (5) prison for 2 years (6) prison for 20 years. No significant effects emerged.

Table 2*Tests of a sensitivity effect: Dependent variables as a function of lineup instructions and admini*

	Verdict		Continuous Guilt <i>M (SD)</i>		Sentencing <i>M (SD)</i>	
	Single	Double	Single	Double	Single	Double
Biased	64%	52%	61.69 (19.89)	62.43 (20.50)	3.98 (1.28)	4.13 (1.39)
Unbiased	52%	59%	56.95 (19.70)	60.52 (20.59)	4.21 (1.44)	4.23 (1.43)

Note. Single/Double= single- and double-blind lineup administration manipulation. No significant effects emerged.

References

- Basden, B. H., Basden, D. R., Bryner, S., & Thomas, R. L. (1997). A comparison of group and individual remembering: Does collaboration disrupt retrieval strategies? *Journal of Experimental Psychology: Learning, Memory, & Cognition*, 23, 1176-1189.
<https://doi.org/10.1037/0278-7393.23.5.1176>
- Beaudry, J. L., Lindsay, R. C. L., Leach, A. M., Mansour, J. K., Bertrand, M. I., & Kalmet, N. (2015). The effect of evidence type, identification accuracy, lineup presentation, and lineup administration on observers' perceptions of eyewitnesses. *Legal and Criminological Psychology*, 20(2), 343-364. <https://doi.org/10.1111/lcrp.12030>
- Bergold, A. N., Jones, A. M., Dillon, M. K., et al. (2021). Eyewitnesses in the courtroom: a jury-level experimental examination of the impact of the Henderson instructions. *Journal of Experimental Criminology*, 17, 433-455. <https://doi.org/10.1007/s11292-020-09412-3>
- Bill Blackwood Law Enforcement Management Institute of Texas. (2017a). Model policy on eyewitness identification.
http://www.lemitonline.org/resources/documents/ewid_final.pdf
- Bill Blackwood Law Enforcement Management Institute of Texas. (2017b). Model policy on eyewitness identification: frequently asked questions.
<http://www.lemitonline.org/resources/documents/FAQ%20Jan%202017.pdf>
- Charman, S. D., & Carol, R. N., & Schwartz, S. L. (2018). The effect of biased lineup instructions on eyewitness identification confidence. *Applied Cognitive Psychology*, 32(3), 287-297. <https://doi.org/10.1002/acp.3401>

- Charman, S. D., & Quiroz, V. (2016). Blind sequential lineup administration reduces both false identifications and confidence in those false identifications. *Law and Human Behavior*, 40, 477–487. <https://doi.org/10.1037/lhb0000197>
- Clark, S. E. (2005). A Re-examination of the Effects of Biased Lineup Instructions in Eyewitness Identification. *Law and Human Behavior*, 29, 575–604. <https://doi.org/10.1007/s10979-005-7121-1>
- Clark, S. E. (2012). Costs and benefits of eyewitness identification reform: Psychological science and public policy. *Perspectives on Psychological Science*, 7, 238-259. <https://doi.org/10.1177/1745691612439584>
- Cormia, A., Shapland, T., Rasheed, A., & Pezdek, K. (2022). Laypeople’s beliefs about the effects of common estimator variables on memory. *Memory*, 30(6), 733-743. <https://doi.org/10.1080/09658211.2020.1868527>
- Desmarais, S., & Read, J. (2011). After 30 Years, What Do We Know about What Jurors Know? A Meta-Analytic Review of Lay Knowledge Regarding Eyewitness Factors. *Law and Human Behavior*, 35, 200-210. <https://doi.org/10.1007/s10979-010-9232-6>
- Greathouse, S. M., & Kovera, M. B. (2009). Instruction bias and lineup presentation moderate the effects of administrator knowledge on eyewitness identification. *Law and Human Behavior*, 33, 70–82. <https://doi.org/10.1007/s10979-008-9136-x>
- Harris, M. J., & Rosenthal, R. (1985). Mediation of interpersonal expectancy effects: 31 meta-analyses. *Psychological Bulletin*, 97, 363–386. <https://doi.org/10.1037/0033-2909.97.3.363>

- Jones, A. M., Bergold, A. N., & Penrod, S. (2020). Improving juror sensitivity to specific eyewitness factors: judicial instructions fail the test. *Psychiatry, Psychology and Law*, 27(3), 366-385. <https://doi.org/10.1080/13218719.2020.1719379>
- Jones, A. M., Bergold, A. N., Dillon, M. K., et al. (2017). Comparing the effectiveness of Henderson instructions and expert testimony: Which safeguard improves jurors' evaluations of eyewitness evidence? *Journal of Experimental Criminology*, 13, 29–52. <https://doi.org/10.1007/s11292-016-9279-6>
- Maki, R. H., Weigold, A., & Arellano, A. (2008). False memory for associated word lists in individuals and collaborating groups. *Memory & Cognition*, 36, 598-603. <https://doi.org/10.3758/MC.36.3.598>
- Malpass, R. S., & Devine, P. G. (1981). Eyewitness identification: Lineup instructions and the absence of the offender. *Journal of Applied Psychology*, 66, 482–489. <https://doi.org/10.1037/0021-9010.66.4.482>
- National Registry of Exonerations. (2023). Retrieved October 11, 2023, from <http://www.law.umich.edu/special/exoneration/Pages/learnmore.aspx>
- Penrod, S. D., & Cutler, B. L. (1989). Eyewitness expert testimony and jury decision making. *Law & Contemporary Problems*, 52, 43–83. <https://doi-org.libproxy.txstate.edu/10.2307/1191907>
- Police Executive Research Forum. (2013). A national survey of eyewitness identification procedures in law enforcement agencies. Retrieved September 18, 2023, from http://www.policeforum.org/assets/docs/Free_Online_Documents/Eyewitness_Identification/a%20national%20survey%20of%20eyewitness%20identification%20procedures%20in%20law%20enforcement%20agencies%202013.pdf

- Rosenthal, R. (2002). Covert communication in classrooms, clinics, courtrooms, and cubicles. *American Psychologist*, 57, 839–849. <https://doi.org/10.1037/0003-066X.57.11.839>
- Salerno, J.M., Diamond, S.S. The promise of a cognitive perspective on jury deliberation. *Psychonomic Bulletin & Review* 17, 174–179 (2010).
<https://doi.org/10.3758/PBR.17.2.174>
- Snyder, M., & Swann, W. B. (1978). Hypothesis-testing processes in social interaction. *Journal of Personality and Social Psychology*, 36, 1202–1212. <https://doi.org/10.1037/0022-3514.36.11.1202>
- Stebay, N. M. (1997). Social influence in eyewitness recall: A meta-analytic review of lineup instruction effects. *Law and Human Behavior*, 21, 283–297.
<https://doi.org/10.1023/A:1024890732059>
- Stebay, N. M., Wells, G. L., & Douglass, A. L. (2014). The eyewitness post identification feedback effect 15 years later: Theoretical and policy implications. *Psychology, Public Policy, and Law*, 20, 1–18. <https://doi.org/10.1023/A:1025750605807>
- Thorley, C., & Dewhurst, S. A. (2009). False and veridical collaborative recognition. *Memory*, 17, 17-25. <https://doi.org/10.1080/09658210802484817>
- Weldon, M. S., Blair, C., & Huebsch, P. D. (2000). Group remembering: Does social loafing underlie collaborative inhibition? *Journal of Experimental Psychology: Learning, Memory, & Cognition*, 26, 1568-1577. <https://doi.org/10.1037/0278-7393.26.6.1568>
- Wiener, R.L., Krauss, D.A. and Lieberman, J.D. (2011), Mock Jury Research: Where Do We Go from Here?. *Behav. Sci. Law*, 29: 467-479. <https://doi.org/10.1002/bsl.989>

- Wells, G. L. (1978). Applied eyewitness-testimony research: System variables and estimator variables. *Journal of Personality and Social Psychology*, 36(12), 1546-1557.
<https://doi.org/10.1037/0022-3514.36.12.1546>
- Wells, G. L. (2020). Psychological science on eyewitness identification and its impact on police practices and policies. *American Psychologist*, 75(9), 1316–1329.
<https://doi.org/10.1037/amp0000749>
- Wells, G. L., Small, M., Penrod, S., Malpass, R. S., Fulero, S. M., & Brimacombe, C. A. E. (1998). Eyewitness identification procedures: Recommendations for lineups and photospreads. *Law and Human Behavior*, 22(6), 603–647.
<https://doi.org/10.1023/A:1025750605807>
- Wells, G. L., Yang, Y., & Smalarz, L. (2015). Eyewitness identification: Bayesian information gain, base-rate effect equivalency curves, and reasonable suspicion. *Law and Human Behavior*, 39(2), 99–122. <https://doi.org/10.1037/lhb0000125>
- Wise, R. A., & Safer, M. A. (2010). A comparison of what U.S. judges and students know and believe about eyewitness testimony. *Journal of Applied Social Psychology*, 40(6), 1400–1422. <https://doi.org/10.1111/j.1559-1816.2010.00623.x>
- Wixted, J. T., & Wells, G. L. (2017). The Relationship Between Eyewitness Confidence and Identification Accuracy: A New Synthesis. *Psychological Science in the Public Interest*, 18(1), 10-65. <https://doi.org/10.1177/1529100616686966>
- Yang, Y., Smalarz, L., Moody, S. A., Cabell, J. J., & Copp, C. J. (2019). An expected cost model of eyewitness identification. *Law and Human Behavior*, 43(3), 205-219.
<https://doi.org/10.1037/lhb0000331>

Zimmerman, D. M., Chorn, J. A., Rhead, L. M., Evelo, A. J., & Kovera, M. B. (2017). Memory strength and lineup presentation moderate effects of administrator influence on mistaken identifications. *Journal of Experimental Psychology: Applied*, 23, 460–473.

<https://doi.org/10.1037/xap0000147>

Appendix A

Crime Scenario

For the first part of this study, we would like you to evaluate a criminal case involving an eyewitness. You have been empaneled to read about a case in which a man is accused of robbing a convenience store. You should act as if you are a juror deciding the defendant's guilt or innocence.

For the following scenario, you should assume that a very thorough investigation of the case has uncovered no more information besides what is presented in the scenario, and there was no video operating in the store. Also, the defendant is not a minor. He denies involvement but has no solid alibi.

A neighborhood convenience store in Austin, Texas was robbed on 3 February 2022.

The robber approached the clerk from behind and although no weapon was present, he forced the clerk to empty the cash drawer into his gym bag. As the robber ran from the store, the clerk saw him across the counter, face-to-face, for a couple of seconds; this was his only opportunity to see the robber.

The clerk was a 22-year-old white male who, at the scene of the crime, told the police that the robber may have visited the store a few times in the past. He described the robber as a **white man with short brown hair, blue eyes, in his early to mid-30s dressed in dark clothing**.

Approximately an hour after the robbery, police located a suspicious man about five blocks from the store who matched the description. Neither the gym bag nor cash were recovered.

The detective assigned to the case put together a photo lineup that included a mug shot of the suspect and five other lineup members known to be innocent. The detective asked the clerk to come to the precinct to view a photo lineup.

[Lineup Administration Manipulation]: The detective informed the clerk that he was overseeing the case and would be administering the lineup (single blind). OR

The detective had another officer unfamiliar with the case administer the lineup. The clerk was informed that this officer did not know the identity of the suspect (double-blind).

[Lineup Instructions Manipulation]: The clerk was then instructed to say whether he recognized the robber. No other instructions were given to the clerk prior to viewing the lineup (biased). OR

The clerk was then informed that the suspect may or may not be in the lineup and that the clerk can reject the lineup or state “not present” or “I don’t know”. The clerk was also told that the investigation will continue regardless of his lineup decision (unbiased).

The clerk took his time before identifying the suspect in **position #5** and indicated that he was very confident in his identification. One count of robbery has been filed against the defendant. As a reminder, the clerk described the robber as a white man with short brown hair, blue eyes, in his early to mid 30s dressed in dark clothing.

Appendix B

Survey Questions

Statement

- (1) Police conduct an interview with the eyewitness as soon as possible after the crime.
- (2) Police provide video documentation of the interview.
- (3) Police instruct the eyewitness to guess if they are unsure. (RC)
- (4) Police instruct the eyewitness to discuss the event with other witnesses. (RC)
- (5) The investigator chooses fillers that match the eyewitness' description of the suspect.
- (6) The investigator chooses fillers that make the suspect stand out. (RC)
- (7) The investigator places a suspect in a lineup before any inculpatory evidence (that is, evidence implying guilt) has been collected. (RC)
- (8) Police provide video documentation of the lineup procedure.
- (9) The lineup administrator presents the suspect alone to the eyewitness. (RC)
- (10) The lineup administrator informs the eyewitness that “I don’t know” or “I don’t remember” is an acceptable response.
- (11) The lineup administrator informs the eyewitness that the investigation will continue regardless of whether they identify someone.
- (12) The lineup administrator knows whether the person being investigated is included in the lineup. (RC)
- (13) The eyewitness is told that the lineup administrator does **not** know whether the person being investigated is included in the lineup.
- (14) If the eyewitness does **not** make an identification, the lineup administrator prompts the eyewitness to take a second look. (RC)
- (15) The lineup administrator informs the eyewitness that the perpetrator may or may not be present.
- (16) If the eyewitness makes an identification, the lineup administrator gives feedback about their selection. (RC)
- (17) If the eyewitness makes an identification, the lineup administrator allows the eyewitness as much time as they need before requesting a statement of confidence. (RC)
- (18) The lineup administrator does **not** show the same lineup with the same suspect to the eyewitness more than once.
- (19) In a case with multiple suspects, the lineup administrator places each suspect into separate lineups.

Note. Responses to the questions were listed 1-5. (1) Does not follow best practices, (2) Follows best practices a little, (3) Moderately follows best practices, (4) Follows best practices a lot, (5) completely follows best practices; RC= reverse coded