

CCDLA
“Ready in the Defense of Liberty”
Founded 1988

**Connecticut Criminal Defense Lawyers
Association**
P.O. Box 1766
Waterbury, CT 07621-1776
(860)283-5070 Phone & Fax
www.ccdla.com

March 24, 2009

Hon. Andrew J. McDonald, Senator
Hon. Michael P. Lawlor, House Representative
Chairmen, Judiciary Committee
Room 2500, Legislative Office Building
Hartford, CT 06106

Re: Senate Bill No. 357
An Act Concerning Eyewitness Identification

Dear Chairmen and Committee Members:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of 350 lawyers dedicated to defending people accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally, and that those rights are not diminished.

CCDLA strongly supports and recommends the passage of Senate Bill No. 357, *An Act Concerning Eyewitness Identification*. Requiring law enforcement to conduct photo lineups and live lineups in a “blind” and sequential manner decreases the likelihood that an identification procedure is conducted in an unnecessarily suggestive manner, and enhances the reliability of the identification. Ultimately, this procedure reduces the number of wrongful arrests and convictions.

1. Mistaken identifications are the leading factor in wrongful convictions.

In 1967, the United States Supreme Court recognized that mistaken identification “probably accounts for more miscarriages of justice than any other single factor.” United States v. Wade, 388 U.S. 218, 229 (1967). Statistics bear out this observation. False eyewitness identifications are a well-known problem in the American criminal justice system as demonstrated by nearly 220 DNA exonerations, a full 75% of which are attributable to false eyewitness identifications. See www.innocenceproject.org/content/165.php. Other studies place the percentage at a higher figure. U.S. DEPT OF JUSTICE, *CONVICTED BY JURIES, EXONERATED BY SCIENCE: CASE STUDIES IN THE USE OF DNA EVIDENCE TO*

ESTABLISH INNOCENCE AFTER TRIAL 15-17 (1996) (finding that mistaken eyewitness identification was a factor in 85% of the twenty-eight cases studied); BARRY SCHECK, PETER NEUFELD & JIM DWYER, *ACTUAL INNOCENCE* (2000) (reporting that mistaken eyewitness identification was present in 86% of the first sixty DNA exonerations in the United States).

Not only do inaccurate eyewitness identifications lead to wrongful convictions, but they hamper investigations from the earliest stages. Critical time is lost while police are distracted from pursuing the real perpetrator, focusing instead on building a case against an innocent person.

2. Traditional eyewitness identification, practices and problems.

In a standard lineup the lineup administrator typically knows who the suspect is. Research shows that this leads administrators to often provide unintentional, or at times deliberate, cues to the eyewitness about which person to pick from the lineup. In a standard lineup, an eyewitness is shown individuals or photographs *simultaneously*. Research shows that this tends to lead eyewitnesses to choose a lineup member based upon a relative judgment (i.e. who *looks most like* the perpetrator), rather than based on his or her own mental image of the perpetrator. See Gary L. Wells & Elizabeth A. Olson, *Eyewitness Testimony*, 54 Ann. Rev. Psychol. 277, 288 (2003); see also Nancy Steblay et al., *Eyewitness Accuracy Rates in Sequential and Simultaneous Lineup Presentations: A Meta-Analytic Comparison*, 25 Law & Hum. Behav. 459 (2001).

3. How to improve the accuracy of eyewitness identifications.

“*Sequential double-blind*” is shorthand for a package of reforms recognized by police, prosecutorial and judicial experience, as well as national justice organizations, including the National Institute of Justice and the American Bar Association. The benefits of these reforms are corroborated by over 25 years of peer-reviewed comprehensive research.

a. The “Double-blind” procedure/ Use of a “Blind” Administrator.

A “double-blind” lineup is one in which neither the administrator nor the eyewitness knows who the suspect is. This protects against witnesses looking towards the administrator of the photo array or lineup for cues as to which person to choose, or for confirmation of their selection. It also prevents the administrator of the lineup from providing inadvertent or intentional verbal or nonverbal cues to influence the eyewitness to pick the suspect. See John Turtle, Roderick C. L. Lindsay & Gary L. Wells, *Best Practices Recommendations for Eyewitness Evidence Procedures*, 1 CAN. J. POLICE & SECURITY SERVICES 5, 12-13 (2003) (stating the “double-blind” procedure models that occurs in scientific experiments or clinical drug trials where “placebos” or “control groups” are used. In such cases, the patient taking the pills and the doctor assessing the patient’s health do not know whether the patient is taking the actual drug or a placebo. This is done out of recognition that such knowledge can have an unintentional influence on the results).

b. Sequential presentation

In a “sequential” presentation, the eyewitness is shown lineup members one at a time and asked to make a decision about each before viewing the next. This allows the eyewitness to examine the image of each suspect separately and reduces the demonstrated likelihood of the witness making a “relative judgment,” i.e. picking the person who may not be, but most *resembles* the witness’s memory of the perpetrator. See Roderick C. L. Lindsay & Gary L. Wells, *Improving Eyewitness Identification from Lineups: Simultaneous Versus Sequential Lineup Presentations*, 70 J. APPLIED PSYCHOL. 556 (1985). Witnesses who view a simultaneous photo array or lineup tend to select the individual who most resembles their memory of the perpetrator, relative to the other members of the photo array or lineup. If the perpetrator is actually in the photo array or lineup, there is less danger that the eyewitness will select the wrong individual during the identification procedure.

However, if the perpetrator is not present, there is a substantial risk that the eyewitness will select the individual who most resembles the perpetrator through the process of elimination. In a sequential identification procedure, the eyewitness views one photo or lineup member at a time and makes a decision on each subject before viewing the next subject. Thus, the opportunity for exercising relative judgment during the selection is eliminated. See Nancy M. Steblay et al., *Eyewitness Accuracy Rates in Sequential and Simultaneous Lineup Presentations: A Meta-analytic Comparison*, 25 LAW & HUM. BEHAV. 459, 459 (2001) (showing through a meta-study analysis of 23 papers comparing sequential and simultaneous identification procedures that a sequential procedure diminishes mistaken identifications in comparison to simultaneous identifications).

4. Conclusion

Empirical data demonstrates that widespread reform of identification procedure is required in order to protect innocent people from being wrongfully convicted and to prevent the guilty from going free; Senate Bill #537 provides such reform. On behalf of CCDLA, I urge you to pass Senate Bill #357. Thank you for your consideration.

Respectfully Submitted

By _____
Maira L. Buckley, Treasurer
CCDLA