

National Legal Group Files Lawsuit Challenging Illinois Police Defense of Traditional Lineups

Chicago, IL (Feb 8, 2007) Citing wrongful convictions due to mistaken eyewitness identification and the urgent need to reform traditional police eyewitness identification procedures, the National Association of Criminal Defense Lawyers (NACDL), in conjunction with the MacArthur Justice Center of the Bluhm Legal Clinic at Northwestern University School of Law, filed a civil lawsuit today against the Illinois police departments who participated in a controversial study of eyewitnesses and police lineups. The police refused to provide the underlying data and protocols supporting the reports controversial conclusion that eyewitnesses are less likely to falsely identify an innocent suspect in traditional simultaneous, non-blind lineups where suspects all stand in one room than in lineups in which the witnesses view the suspects one at a time and the administrator does not know which person might be the real suspect.

It does not serve the public interest to conceal data that was gathered at the taxpayers expense, NACDL President Martin S. Pinales said, recognizing the gravity of the litigation. It only creates doubt and suspicion. If the data support the reports conclusions, then the police and authors of the report should have nothing to hide. But considering that this report contradicts all of the previous social science research on eyewitness identification, we have reason to believe that the information we are seeking will show that the research was deeply flawed and may have resulted in mistaken identifications.

Because the problem of mistaken eyewitness identification is so endemic in the nations criminal justice system, NACDL had no choice but to file suit in this matter. The purpose of the lawsuit is to force the defendants to do what they should have done on their own provide their underlying data in order to have it reviewed by experts in research design and psychology. If flaws are identified and research to date suggests that the study was probably deeply flawed in some respect a new study could benefit from any mistakes that were made in the research.

As the largest professional bar association in the world dedicated to representation of persons suspected, accused or convicted of criminal conduct, with over 13,000 members and 90 state and local affiliates, NACDL takes national forensic science issues very seriously. NACDLs 1997 FOIA suit against the U.S. Department of Justice ultimately yielded over 40,000 pages of investigative material documenting serious flaws and misconduct in the FBI Laboratory and helped instigate systemic reforms in the Lab Division.

Northwestern Law Schools MacArthur Justice Center, a Chicago-based public interest law firm, filed the suit on behalf of NACDL. Wrongful convictions happen too frequently to ignore, and many of them are the direct result of erroneous eyewitness identification, said Locke Bowman, legal director of the MacArthur Justice Center and attorney for NACDL. The fact that the Chicago and Illinois Police Departments are not curious as to why their research goes against so many other legal experts scientific research and professional opinions is deeply concerning. Our client, NACDL, has a right to see the data behind a taxpayer-funded study, and were asking the court to direct these police departments to turn the information over immediately.

In conjunction with the filing of the lawsuit, the Center on Wrongful Convictions, also based at Northwestern Law School and dedicated to researching and overturning wrongful convictions in Illinois, released an analysis of wrongful convictions and found that in Illinois alone, 54 known innocent people had spent a total of 601 years behind bars as a result of erroneous eyewitness identification.

Our analysis shows that there is something wrong with Illinois current eyewitness identification system, said Rob Warden, executive director, Center on Wrongful Convictions. The Center has represented a number of people who have been wrongfully convicted. The Chicago research flies in the face of multitudes of research on this topic and we want to know why. These procedures have the potential to impact hundreds of lives, and we should be exploring all avenues to ensure that people who are actually guilty of crimes are the ones who go to prison.

Among the reform measures provided by the Illinois General Assembly in the aftermath of the Illinois death penalty moratorium was a requirement that the Illinois State Police conduct a year-long pilot program to test the effectiveness of the traditional lineup procedure with a newer method, in which persons or pictures are presented to the eyewitness sequentially instead of all at once. The newer method called sequential double-blind also recommends that the lineup administrator be unaware who the actual suspect is, to avoid unintentionally cueing the witness.

The report to the legislature, released last March, was controversial. Although academic research has consistently found that sequential, double-blind identification procedures substantially reduce false identifications, the report claimed that in real life lineups, the traditional method was more reliable. Participating in the study with the state police were the Chicago, Evanston and Joliet police departments.

Psychologists, social scientists and defense lawyers have sharply questioned the study's conclusions and asked to see the supporting protocols to determine the validity and accuracy of the report. Informal requests were rebuffed, and the NACDL and MacArthur filed a formal request for the data under Illinois Freedom of Information Act. The defendants formally denied public release of the protocols and other information sought, and NACDL had no choice but to file the lawsuit.

Clearly traditional lineups are creating mistaken eyewitness identifications and wrongful convictions, and it's a national problem, Pinales said. Whatever is wrong needs fixing, but this Illinois report is now being used as an excuse to stop the implementation of lineup procedures based on scientific research.

The plaintiffs point to a study done by The Innocence Project of its first 130 DNA exonerations showed that more than three-quarters 101 cases involved mistaken eyewitness identification. <http://www.innocenceproject.org/understand/>.

But what many people forget, or do not realize, is that DNA evidence is recovered in only a very small fraction of criminal cases. In typical street crimes investigations burglary, robbery, theft or narcotics, for example there will be little or no forensic evidence to prove guilt or innocence making accurate eyewitness identification crucial. Any mistaken identifications and wrongful convictions can rarely be rectified after the verdict. Therefore it is crucial that mistaken IDs be prevented with sounder lineup procedures, because they cannot be rectified later in the vast majority of cases.

Misidentification is usually irremediable -- so accuracy in the identification process is the only safeguard, Pinales added.

Blind lineups in which the officer conducting the lineup or presenting a photo array of potential suspects does not know which person or persons are the focus of the investigation help prevent the problem of directing a witness's attention toward the suspect. When the administrator knows which person is under suspicion, he might unconsciously signal that knowledge to the witness, or in a more blatant scenario, overtly suggest the desired identification to the witness. I think you should look at Number Two again. Blind lineups solve this problem, whether or not the suggestion might be intentional or inadvertent.

The problem of blatantly suggestive photo arrays was illustrated by the photo lineup of all the white Duke University lacrosse players, with no strangers in the array to test the complaining witness's perception and memory. The complainant, who claimed she was sexually assaulted and raped by three white players at a party, was in effect presented with a lineup that had no possible wrong guesses, only right ones.

Cases are often made or broken on the basis of eyewitness testimony, which research has shown to be often the most unreliable evidence presented in court, and yet studies have also shown that it is eyewitness and victim testimony that resonate the strongest with jurors, Pinales said. With lives and liberty on the line, everybody in the criminal justice system needs to work together to help weed out mistaken identifications. It is shameful that we have to force the police to act in the public interest with a lawsuit.