

# **National Academy of Sciences Issues Landmark Report on Memory and Eyewitness Identification**

## **Wisconsin Innocence Project Urges Adoption of Its Recommendations for Improving Identification Procedures in Criminal Cases**

### ***Should Hasten Trend Started by New Jersey and Oregon Supreme Courts in Overhauling the Way Courts Handle Identification Evidence***

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(Washington, D.C. – October 2, 2014) Today the National Academy of Sciences issued a landmark report evaluating the scientific research on memory and eyewitness identification that challenges the way many police departments and courts handle such evidence. Researchers conducted an in-depth review of three decades of basic and applied scientific research on eyewitness identification and provided recommendations for improving police identification procedures and the standards and procedures courts should use to handle eyewitness evidence. The Wisconsin Innocence Project, which has long advocated for many of the reforms recommended in the report, urges Wisconsin police and courts to adopt the recommendation in order to prevent wrongful convictions and ensure the public's continued faith in the criminal justice system.

“For nearly ten years, Wisconsin has been a leader in adopting scientifically based best-practices to improve the way police conduct eyewitness identification procedures. But the advances have not been adopted uniformly across the state in all police jurisdictions, and our courts have yet to fully incorporate the lessons from the science. This important report by the nation's pre-eminent scientific authority, the National Academy of Sciences, confirms that the pioneering police agencies in this state that adopted scientifically based best practices were on the right path, and that we need to ensure uniform compliance with these practices in all police jurisdictions in the state and in our courts. Protecting the innocent, and simultaneously ensuring that eyewitness evidence is used effectively and reliably to identify and convict the guilty, depend on it,” said Keith Findley, Co-Director of the Wisconsin Innocence Project at the University of Wisconsin Law School.

According to Innocence Project in New York, eyewitness misidentifications contributed to 72% (229) of the 317 wrongful convictions that were later overturned by DNA evidence. The real perpetrators were eventually identified in 90 (39%) of these cases. While the innocent were languishing behind bars in these cases, the real perpetrators committed an additional 98 additional violent crimes (63 rapes, 17 murders, and 18 other violent crimes).

Recognizing that police eyewitness identification procedures can have a big effect on the accuracy of identifications, the report endorsed the following best practices, which have long

been supported by the Wisconsin Innocence Project as a means to reduce the likelihood of wrongful convictions:

- Blind Administration -- Research shows that the risk of misidentification is sharply reduced if the police officer administering a photo or live lineup is not aware of who the suspect is. This prevents the witness from picking up intentional or unintentional clues from the officer conducting the lineup.
- Confidence Statements -- Immediately following a lineup, the eyewitness should be asked to describe in his or her own words how confident he or she is in the identification. As the report notes, the level of confidence a witness expresses at the time of trial is not a reliable predictor of accuracy. Having the witness describe their level of confidence at the time an identification is made will provide juries with a useful tool for judging the accuracy of the identification.
- Instructions -- The person viewing the lineup should be told that the perpetrator may not be in the lineup and that the investigation will continue regardless of whether the witness identifies a suspect.
- Videotape the procedure -- The report recommends that police electronically record the identification procedure to preserve a permanent record of the procedure.

In 2005, the Wisconsin legislature required every law enforcement agency in the state to adopt written policies and procedures governing eyewitness identification procedures that had to be designed to minimize the risks of eyewitness error. The legislation left it up to each law enforcement agency to determine what specific policies they would adopt. That same year, The Wisconsin Attorney General's Office issued its own recommended model policy that adopted the best practices recommendations that could be gleaned from the very best social science research on the matter. Research conducted by the University of Wisconsin Law School since then reveals that a majority, but not all, local law enforcement agencies in Wisconsin have adopted a version of the recommended policies that comply with the major elements of these best practices.

The report issued today also notes that the legal standard that most courts use regarding the admissibility of eyewitness testimony was established before most of the scientific research was conducted. However, landmark decisions by the New Jersey and Oregon Supreme Courts have already taken note of the robust research on memory and identification in overhauling the way courts in those states deal with identification evidence. Today's report should help to accelerate this trend by making the following recommendations for courts:

- Conduct pre-trial judicial inquiry -- Judges should inquire about the eyewitness evidence being offered. If there are indicators of unreliable identifications, judges could limit portion of the eyewitness' testimony or instruct the jury on how to properly evaluate the reliability of the identification based on the scientific research.

- Make juries aware of prior identifications -- Because in court identifications can unduly influence the jury, juries should hear detailed information about any earlier identification, including the confidence the witness expressed at the time of the identification.
- Permit expert testimony -- The report recognizes that expert witnesses who are capable of explaining the nuances of memory and identification are helpful in assisting juries in how to evaluate eyewitness testimony and should be permitted. The report also encourages local jurisdictions to provide funding to defendants to engage qualified experts.
- Better instruct juries -- Jury instructions can be used to educate jurors on how to properly evaluate the factors affecting eyewitness identifications and should be tailored to the relevant facts in a particular case.

Additional information about eyewitness misidentification is available at <http://www.innocenceproject.org/understand/Eyewitness-Misidentification.php>.

A copy of today's report is available at [http://www.nap.edu/catalog.php?record\\_id=18891&utm\\_expid=4418042-5.krRTDpXJQISoXLpdo-1Ynw.0&utm\\_referrer=http%3A%2F%2Fnap.edu%2F](http://www.nap.edu/catalog.php?record_id=18891&utm_expid=4418042-5.krRTDpXJQISoXLpdo-1Ynw.0&utm_referrer=http%3A%2F%2Fnap.edu%2F).

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