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CAN WE OUTLAW WRONGFUL CONVICTIONS?

Are sequential, double-blind lineups really the answer?

By Julius (Jay) Wachtel. "I think because of the outrageous number of wrongful convictions in Texas, it's time to begin the dialog." That's how [State Senator Rodney Ellis](#) explained the purpose of a package of bills that would establish a [Texas "Innocence Commission"](#) and require that police follow strict procedures when investigating felony crimes to avoid making tragic mistakes.

What rules does he propose? For confessions to be admissible, custodial interrogations would have to be [recorded](#) in their entirety. [Photographic and in-person lineups](#) could only be done in certain ways. Photos would have to be displayed to eyewitnesses sequentially rather than in a group, and only by someone unaware of the real suspect's identity. Although there's no specific mention of this in his bills, Senator Ellis also proposed to [ban showups](#) -- one-on-one identifications done soon after a crime occurs.

No one can deny that the Senator has a righteous cause. According to the [Justice Project](#) Texas leads the nation in the number of wrongful convictions. Surprisingly, one of the leaders in correcting the problem is a Texas official, Dallas County District Attorney [Craig Watkins](#), whose office has helped exonerate nineteen wrongfully convicted Texas men since 2001. Most fell prey through [misidentification](#).

Traditionally, photo lineups have been administered "simultaneously." A photo of the suspect and (normally) five "fillers," look-alikes not suspected of the crime, are randomly arranged on a cardboard backer and shown to the witness all at once. Police call these "sixpacks" or "photospreads." When advances in DNA analysis brought to light the sobering fact that wrongful convictions were not rare, and that most were due to misidentification, reformers started pressing for changes. Police were urged to display photos sequentially, meaning one at a time, as viewing them together allowed witnesses to compare images and choose the one that looked "most" like the suspect. Critics also demanded that the process be "double-blind," meaning that those administering lineups not know who the suspect is or even which photo they are setting out, thus keeping them from subtly suggesting whom to pick and whom to avoid. Police generally resisted modifying their procedures, leading frustrated advocates to lobby legislators. Thus far a few States (e.g., [North Carolina](#)) have incorporated the sequential, double-blind procedure into law.

In 2006 a monkey wrench got lobbed into the mix. In the first major study of photo lineup procedures used by real officers in real cases, conducted in Illinois, [researchers concluded](#) that the *simultaneous* technique was superior, proving *more* likely to identify perpetrators and *less* likely to produce mistaken ID's (the dreaded "false positives") than the sequential, double-blind approach.

Whether photographic or in-person, lineups can go astray in two ways. In a "Type 1" error witnesses simply fail to identify anyone, including the culprit, thus letting a bad guy go free. That's not nearly as nasty as a "Type 2" error, in which an innocent person is mistakenly identified. When the above report came out reformers denounced its conclusions because officers who administered photos *simultaneously*, in the old-fashioned way, weren't kept ignorant of who the real suspects were. Maybe they got better results because they subtly steered witnesses away from fillers!

That debate still rages (for the Illinois research team's response to the nay-sayers, click [here](#).) Meanwhile a noted authority on witness identification has reported [little difference](#) between lineup techniques even when giving great weight to preventing Type 2 errors. More interestingly, he also concluded that as the probability that the real evildoer is in the lineup increases the simultaneous technique actually takes the lead in accuracy.

But wait a minute: why wouldn't the bad guy (or gal) *be* in the lineup in the first place? Consider these possibilities:

- Detectives have substantial information pointing them to a specific suspect, above and beyond a witness description. They build a photo lineup around this person.
- Detectives don't have a specific someone in mind. Assembling a physical and behavioral profile of the perpetrator from witness descriptions, they troll through the "usual suspects" looking for a fit. Finding a likely candidate, they assemble a photo lineup around that person.

Which scenario yields greater confidence that the identification is correct? That's a no-brainer. When a witness picks out someone who's a suspect for reasons other than their physical description the probability of error seems remote. Difficulties mostly arise in "whodunits," where cops have nothing concrete to go on other than a description. Consider this all-too typical example:

On December 11, 1980 a holdup man killed the manager of a fast-food restaurant in Orange, California. Suspecting it was a gang member, police got numerous photos from LAPD of gang members with previous armed robbery

arrests. One, of [DeWayne McKinney](#), was placed in a photo lineup and shown to restaurant workers. Although McKinney was considerably shorter than the witness description, he was identified by four employees. McKinney was convicted and got life (the prosecutor asked for a death sentence.) He was freed nearly nineteen years later when two inmates admitted they committed the robbery and identified another prisoner as the shooter. Two of the four witnesses who sent McKinney up the river then looked at this man's photograph and said that, indeed, he was the killer – not McKinney. McKinney's lawsuit against police was settled for \$1.7 million. He married and became a wealthy entrepreneur in Hawaii. (He died in October 2008 in a scooter accident.)

What's the moral to the story? Precisely how a lineup is administered isn't the most crucial thing to consider. Sure, police shouldn't be suggestive. But if the goal is to catch criminals while minimizing the possibility of snaring the innocent, cops shouldn't even think of staging a live lineup or showing photos unless there is substantial information linking someone to the crime. What's sufficiently "substantial" is a matter of judgment that comes with education, training and experience. It's not something that can be easily articulated in a legislative bill.

So what about show-ups? Recording interrogations? Stay tuned!