

**CCDLA**  
**“Ready in the Defense of Liberty”**  
**Founded 1988**

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March 10, 2010

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

**Re: Raised Bill No. 5273, An Act Concerning Eyewitness Identification**

Dear Chairmen and Committee Members:

My name is Conrad Ost Seifert. I am an attorney in Old Lyme and mostly handle appeals and criminal defense. I am the President of the Connecticut Criminal Defense Lawyers Association.

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 Raised Bill No. 5273, *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 251 DNA exonerations, a full 75% of

which are attributable to false eyewitness identifications. See [www.innocenceproject.org/content/165.php](http://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).

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

A “double-blind” lineup is one in which the police officer running the lineup does not know who the suspect is. This 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).

### **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’ memory of the perpetrator. See Roderick C.L. Lindsay and 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 not present, there is a substantial risk that the eyewitnesses 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).

The impact that an eyewitness' good faith but mistaken identification can have on a person's life is vividly told in the book, Picking Cotton, co-written by Jennifer Thompson-Cannino and Ronald Cotton. Mrs. Thompson-Cannino was 100% sure that the man she picked out of a police lineup had raped her. Her trial testimony convicted Ron Cotton who received a life sentence. Eleven years later, DNA evidence exonerated Ron Cotton, and, quite remarkably, he and Jennifer became friends. They now give lectures together about the flaws inherent in traditional police identification procedures.

### 3. 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; Raised Bill #5273 provides such reform. On behalf of CCDLA, I urge you to pass Raised Bill #5273. Thank you for your consideration.

Respectfully Submitted,



Conrad Ost Seifert, Esquire  
President, Connecticut Criminal Defense Lawyers Association

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