IDENTIFICATION

ISSUES

To provide an understanding of how some of the issues of visual identification can effect the reliability of eyewitness evidence.

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RESEARCH

Witnesses

- **20%** of all witnesses select a volunteer

Wright & McDaid 1996

- **90%** expect the offender to be present, despite the fact that **95%** remember the cautionary instruction that he/she may **not** be present

Memon & Gabbert 2002

Turnbull Guidelines (*R v Turnbull* 1976)

In the Turnbull case, the Court of Appeal laid down important guidelines for judges in trials where identification evidence was disputed.

Warning that has to be given to juries in identification cases:

A **A**mount of time the suspect was under observation by the witness
D **D**istance between suspect and witness
V **V**isibility at the time the witness saw the suspect
O **O**bstructions between suspect and witness
K **K**nows suspect or has seen him/her before
A **A**ny particular reason for the witness to remember he suspect
T **T**ime lapse since witness saw suspect
E **E**rror or material discrepancy in the description given by witness

The Turnbull guidelines should always be followed by judges where the possible mistaken identification of an accused is an issue.

Even where an accused has admitted being present at the scene of an offence, there will still be occasions where a judge should give such a direction, as required by the guidelines (*R v Thornton* 1995).

Where voice identification is an issue, the Turnbull guidelines should be used to direct the jury to the 'quality' of the evidence (*R v Hersey* 1998).

Time offender was under observation

- Longer exposure significantly boosts accuracy rates where the offender is present on the parade
- Longer exposure significantly increases rejection rates in a offender-absent parade
- Longer exposure also inflates the confidence of the witness
- Inaccurate witnesses display an inflated confidence in their incorrect identifications

Memon & Gabbert 2002

Description given by a witness

Research has found that, generally, witnesses are more accurate with their description of certain features.

Accurate:
- Sex
- Hair colour
- Distinguishing features

Inaccurate:
- Age
- Height
- Specific race

This research also found that the ability of a witness to estimate correctly these characteristics will partly be determined by the physical characteristics of the witnesses themselves. The more similar to one another the descriptions of the witness and the offender, the more accurate the offender description is likely to be, e.g. a teenager is more likely to accurately describe the age of another teenager than that of an elderly person.

Kebble & Wagstaff 1999

PRACTICAL PROBLEMS

Problems prior to ID Procedure - suspect not known

- Record of **1st** description of offender
- Showing of a video film to potential witnesses
- Media releases to trace and/or identify the offender
- Showing of photographs to witnesses

1st Description of Offender

A copy of the 1st description of an offender, given by any witness, must be provided to the suspect (or solicitor) prior to any identification procedures.

Often, the description given by the Police is from a witness statement (for convenience) and is **not** the actual 1st description, which may for example have been given in a '999' call or verbally to an officer at the scene.

Showing of a Video Film to a Potential Witness

This can be quite a common practice where CCTV is in operation. The danger is that the witness will base his/her subsequent evidence based upon what appears on the video, rather than what he/she actually saw at the time of the event.

Media Releases to trace/identify offender

This is a common practice, e.g. press releases, photo-fits, 'Crime Watch' TV programmes etc.

If a member of the public thinks that they recognise an offender from such a media release, then the Police may arrest that person on suspicion of committing the offence. If that person is then put on an identification parade, then it is highly likely that the witnesses will pick the suspect out, as he/she obviously **does** look like the offender. This does **not** of course mean that he/she is the actual offender.

Showing of Photographs

The showing of photographs must comply with Annex D of the PACE Codes of Practice.

- The showing must be supervised by a Sergeant
- The **1st** description must be recorded before the showing of photos
- Only one witness at a time may view the photographs
- There must be not less than **12** photographs shown to the witness
- Must stop showing photos if a positive ID is made by a witness
- A record to be kept of the showing of any photographs to a witness

Research – Showing of Photos

Witnesses, who made a selection from an offender-absent album, were more likely to make a false choice of that repeated familiar person, than those witnesses who made no selection from the offender-absent album

Behrman & Davey 2001

Problems prior to ID Procedure - suspect known

- Identification Officer – may not have conducted an identification procedure before and may not follow correct procedures.

- Solicitor – may not have conducted such procedures before and may allow his/her client to participate in an unfair identification procedure.

- Appropriate Adult, Interpreter etc – may not be used.

- Notice to suspect – procedures regarding the service of this notice are often not correctly carried out, resulting in an uninformed decision by the suspect to agree to participating in an inappropriate ID procedure.

- Photograph of suspect – the integrity of any photograph of the suspect is of vital importance, as a witness must not have sight of such a photograph prior to any identification procedure. This is particularly important where the witnesses are Police Officers, who may have access to computerised records that contain photos of the suspect.

Problems in arranging the Identification Procedures

- **Contamination** - Suspect
  - Witnesses
  - Volunteers

  It is vital that a witness does not have sight of a suspect or any of the volunteers prior to the identification procedure. It has happened hat both the witness and the suspect have been told to attend at the same Police Station, albeit at different times, but they both arrived at the same time.

- **Solicitor / Friend**

  A solicitor (or friend) should be present during identification procedures to ensure that the procedures are conducted correctly. Unfortunately, some solicitors have a poor understanding of the issues involved and do not adequately represent their clients.

  The use of a friend should be avoided, as there knowledge of procedures will be non-existent. Also, a witness may recognise the 'friend' and identify the suspect based upon this knowledge rather than on their recollection of the identity of the offender.

- **Appropriate Adult, Interpreter etc for Suspect & Witness(es)**

  It is vital that, where necessary, not only the suspect but also any witness is provided with the services of an appropriate adult, interpreter etc.

  In an identification parade carried out in Merseyside, it was apparent that the witnesses could **not** speak or understand English, as they had been provided (quite correctly) with the services of an interpreter for the Identification Parade procedures. However, the solicitor, who was 'on the ball' realised that the witnesses' statements had been taken by the Police **without** the services of an interpreter and were therefore effectively worthless.

Problems during the actual Identification Parade

- **Volunteers – areas they reside / frequent**
  If the witness is from the same area as the volunteers, he/she may be able to select the suspect by a process of elimination if he/she knows one or more of the volunteer.

- **Quality of line-up**
  The quality is often very poor. However, a photograph or video must be taken of any identification procedure and this may indicate the fairness, or otherwise, of those procedures.

- **Changes made to volunteers**
  Changes are often made to volunteers in an attempt to make them similar to the suspect. There is no problem if this is done correctly but the attempts by South Yorkshire Police to make white volunteers appear black backfired when the colouring started to run during the procedures.

- **Parade held seated or standing**
  The holding of seated parades is quite common in some forces, as it does away with the problem of finding volunteers of the same height (a requirement of PACE). If the witness has stated that the offender was 5'8" and the suspect is 6'2", then the witness would obviously **not** select the suspect from a standing parade and may even go as far as to say the offender is **not** present. However, if the parade is held seated, the witness is denied the opportunity of seeing the person's height and may incorrectly identify the suspect although he/she could not possibly be the offender because of the height difference.
  Obviously, if the witness had only ever seen the suspect seated, e.g. sitting in a car, then a seated parade would be appropriate.

  The introduction of Video Identification has removed the benefits of a witness seeing a parade standing.

- **Hats worn, if so, why**?
  Hats are often worn on a parade where the Police have been unable to obtain volunteers with similar hair colour, length or style as the suspect. This may not be a problem for a witness. However, if the witness had said the offender had dark hair but the suspect has blonde hair, then the wearing of hats would hide the very feature that might eliminate the suspect in the eyes of the witness.
  Obviously, if the offender was wearing a hat at the time of the offence, then the wearing of hats would be appropriate.

- **Any speech requested**
  This is an important aspect of any parade where a witness has said that the offender spoke with a particular accent or impediment. By allowing members of a parade to speak, it can assist a witness in either confirming or rejecting identification.

  The introduction of Video Identification has removed the benefits of a witness hearing people speak.

- **Number of suspects / parades**
  If there are a large number of suspects, who are of similar appearance, then it could happen (but it should not) that one or more volunteers are used on a number of parades viewed by the same witnesses. If this occurs, then the witness may be able to select the suspect by a process of elimination.

- **Unauthorised persons**
  No unauthorised persons should be present during identification procedures and this would include any officer involved in the investigation. What procedures were in place to ensure that no unauthorised persons were present?

Problems after the witness has viewed the ID Parade

- **Post-parade identification**
  This occurs when a witness fails to identify the suspect on the parade but later 'claims' to have identified the suspect but, for whatever reason, failed to say so at the time. This is fraught with danger, as the possibility of the witness's identification having been influenced by others is very real. Had they spoken to other witnesses, had they spoken to any Police Officer involved?

- **Media releases**
  PACE requires that after any identification procedure, each witness shall be asked if they have seen any broadcast or published films or photographs, or any description of suspects relating to the offence and their reply shall be recorded.

  Unfortunately, this does **not** always occur and thus the value of their identification is not put into true perspective.

DOCUMENTS

First Description

Make sure it is the first description, **not** just the one that was provided by the Police, which is usually taken from the witness's formal statement.

Check telephone logs, officers statements etc for any earlier (and often more accurate) description. When was the first description actually recorded, it should be done prior to any identification procedure including the showing of photographs.

Media Releases

Check these for any discrepancies between the description of the offender and the subsequent suspect. Were copies of these releases provided by the Police prior to the identification procedure?

Notice to Suspect

This is the documentation that must be completed before a person agrees/declines to take part in an identification procedure. Failure to carry out this procedure correctly means that a suspect may not be making an informed decision.

Record of the Identification Procedure

This document records everything (or should do) that happens during the procedure. It is vital that his document is examined in minute detail to ensure that the procedures were carried out correctly.

Remember, if there were media releases, then after the procedure, each witness must be asked if they have seen any such release and their reply must be recorded.

Photograph/Video of Procedure

A video recording or colour photograph must be taken of an Identification Parade. A copy of the video recording or photograph shall be supplied, upon request, to the suspect or solicitor within a reasonable time.

PACE Codes of Practice

It is vital that you consult the edition of the PACE Codes that is relevant to your particular case, as the Codes have undergone major updates in 1995, 2003 & 2004.