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Eyewitness Misidentification in Nevada: A Voluntary Implementation Reform Approach

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The Innocence Project is a national litigation and public policy organization dedicated to exonerating the innocent through DNA testing and reforming the criminal justice system to prevent future injustice.

There are 65 Network projects litigating claims of innocence, 56 of which are in the United States.

DNA EXONERATIONS TO DATE

317 DNA Exonerations to Date

* 0 - 100 between 1989 and 2001 (12 years)
* 100 - 200 between 2001 and 2007 (6 years)
* 200 - 250 between 2007 and 2010 (3 years)

Average Prison Term = 13.5 Years

* 18 on Death Row
* 64% are rapes
* 27% are rape/murders
* 7% are pure murders
* 2% are robberies

Wrongful Convictions Harm Public Safety

- In 154 of the nation's 317 DNA exoneration cases, the real perpetrator was subsequently identified. (Some cases involved multiple exonerees, so a total of 134 real perpetrators have been identified.)

- While the innocent were behind bars, these real perps committed (and were subsequently convicted of):
  - 76 rapes
  - 33 murders
  - 30 additional violent crimes

Contributing Causes of Wrongful Conviction

- The Innocence Project dissects each DNA exoneration to learn the contributing causes of wrongful convictions.

- This group of cases is but a snapshot of all cases
  - DNA only probative in < than 10% of cases
  - Post-conviction evidence often can't be found
  - Post-conviction testing is not always allowed

Contributing Causes of Wrongful Convictions

DNA Exonerations Nationally – Lessons Learned

- Eyewitness misidentification was a contributing factor in more than 72% of these 317 DNA exonerations (N = 228)
- Archival studies indicate that in real cases, 35% of eyewitnesses make identifications that are wrong.

Brandon Garrett: "Convicting the Innocent: Where Criminal Prosecutions Go Wrong"

Number of witnesses misidentifying the same innocent defendant

(based on 175 eyewitness misidentification cases in the first 239 DNA exonerations)

Eyewitness Identification Reform: Growing Support Across Nation

- The following jurisdictions are among those that have implemented a package of eyewitness identification reform procedures, including "double-blind" administration as standard procedure:

  * Large cities such as **Denver, CO**; **Hennepin County, MN (Minneapolis); Ramsey County, MN (St. Paul); Santa Clara County, CA; Suffolk County, MA (Boston) &** small towns such as **Norfolk, MA**.

  * The entire states of **Connecticut, Maryland, New Jersey, North Carolina, Ohio, Oregon, Rhode Island, Texas & Wisconsin, & Vermont.**

Recent Developments- HIGH COURT ACTION

- New Jersey – (2011) State v. Henderson
- Oregon – (2012) Oregon v. Lawson
- Massachusetts – (2013) Supreme Judicial Court Study Group on Eyewitness Evidence

LAW ENFORCEMENT LEADERSHIP

- CALEA DIRECTIVES: **(2009)** CALEA issues Law Enforcement Accreditation Standards **42.2.11** and **42.2.12**, which require that agencies have written directives for administering eyewitness identification procedures
- IACP MODEL POLICY: **(2010)** IACP revises its model policy on eyewitness identification to take the latest research into account
- WRONGFUL CONVICTION SUMMIT: **(2012)** IACP & OJP hold a National Summit on Wrongful Convictions, which gathered 75 subject matter experts from all key disciplines to address and examine the causes of and solutions to wrongful convictions across the entire spectrum of the justice system.
- PERF SURVEY: **(2013)** PERF publishes the findings of its national survey on eyewitness identification police practices; concludes that most surveyed agencies lack written policies
- IACP WRONGFUL CONVICTION SUMMIT REPORT: **(2013)** IACP & DOJ's Office of Justice Programs (OJP) release of the report of the National Summit on Wrongful Convictions: Building a Systemic Approach to Prevent Wrongful Convictions. The report includes 30 recommendations , including **best practices for eyewitness identification,** for making rightful arrests, correcting wrongful arrests, leveraging technology, and re-examining closed cases.

Eyewitness Reform Aids Law Enforcement

Benefits to the innocent are undeniable, but many overlook advantages to law enforcement, which include:

- Fewer filler picks aids criminal investigations
- Fewer witnesses "burned" for future use
- When the wrong person is being pursued, the real perp is at large in a position to commit additional crimes
- Identifications using evidence-based best practices will not be subjected to defense challenges in court

Best Practices Protect Law Enforcement In Court

"We have used the … double blind method over 40 times since our policy revision…To date, … the double blind process has not been challenged in court. Further, the adoption of this process has not been a taxing burden to department resources…"

– Roanoke (VA) Police Department

Nevada: Status of Eyewitness Reform

- 2011: Nevada Law passes requiring each law enforcement agency to adopt a written policy for eyewitness identification (N.R.S. 171.1237)

- 2014: Collaboration with LVMPD – massive training

- GOAL: Uniform Adoption of Evidence-based Practices in Clark & Washoe Counties

Eyewitness Identification

- Seeking (Statewide) Uniform Implementation
- Reform can be non-legislative, but should include:
  - Requirement that all agencies have a written policy that minimally comports with best practices
  - Statewide model policy (perhaps keyed to updated LVMPD policy?)
  - Training in best practices
  - Effort to assure law enforcement appreciation for reform
  - Roadmap for implementation through Advisory Commission
  - A plan to assure goals are met

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For more information, please visit:

www.innocenceproject.org

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