

Improving Eyewitness IDs with Confidence: Roundtable Report

December 2016

Bedford House, Royal Holloway, University of London

Introduction

In December 2016 Royal Holloway, University of London hosted a roundtable on the subject of improving eyewitness lineups with the participation of senior police practitioners, academics and policy officials.

The organisations represented at the roundtable included:

- Home Office
- Wales Police
- CoPaCC
- Police Foundation
- London Mayor's Office for Policing & Crime (MOPAC)
- Office of the Northamptonshire Police & Crime Commissioner
- Office of the West Yorkshire Police & Crime Commissioner
- Witness Confident
- Justice Studio

The main presenters were:

- Dr Laura Mickes of Royal Holloway, University of London (laura.mickes@rhul.ac.uk)
- Prof John Wixted of the University of California, San Diego
- Travis Seale-Carlisle of Royal Holloway, University of London

The Chair, Dr Rick Muir, Director of the Police Foundation, in his opening remarks, noted that the roundtable was a successful effort to bring together the two, often very separate, worlds of academia and operational policing. He commented that the topic of memory and the malleability of memory is pressing as controversy around the issue of eyewitness memory writ large in the criminal justice system.

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Dr Rick Muir, Director of the Police Foundation

Dr Muir challenged the assembled experts to consider, in some depth, the following questions:

- What are the implications to everyday practice of police officers who are investigating crimes and in the criminal justice system in trying to achieve justice?

- How can the research findings improve current police practice in the UK?
- How can Police and Crime Commissioners drive these changes?
- How can other parts of the system (e.g. courts) benefit from improved practice?
- What savings can be made through the proposed improved practice?

Policy background and new research developments

Every year in the US and UK, thousands of police suspects are identified by eyewitnesses. Unfortunately, due to the way line-ups are currently administered, many of those suspects are innocent, which becomes evident when they are exonerated by DNA testing. It is therefore imperative to use identification procedures that best enable eyewitnesses to identify guilty suspects from the innocent.

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Dr Laura Mickes at the Psychology Department of Royal Holloway, University of London, has been leading a ground-breaking programme of research on eyewitness identification. Dr Mickes's research focuses on increasing accuracy of eyewitness identifications. Reliable identifications made by eyewitnesses during the police investigation in turn means reliable evidence in court.

In the UK, the main normative document regulating eyewitness identification procedure is Code D of the Police and Criminal Evidence Act 1984, 2011 (PACE). PACE Code D does not currently specify that initial confidence (i.e. how confident an eyewitness is that they have correctly identified the suspect) should be captured and recorded by the police for lineups. However, the code does stipulate that confidence be collected for confrontation IDs.

In January 2017, the US Department of Justice released new eyewitness identification guidelines. These emphasize the importance of taking an initial confidence statement because it is a more reliable indicator of accuracy than later confidence. Dr Mickes's and Prof Wixted's work featured in the memorandum. Roundtable participants noted that current practice in the UK significantly falls behind the US.

"If the witness makes an identification, the administrator should ask the witness to state in his or her own words how confident he or she is in the identification (known as a "statement of confidence")."

*Memorandum for heads of department law enforcement components, all department prosecutors. U.S. Department of Justice
Office of the Deputy Attorney General
January 6, 2017*

The research highlights the fact that failing to ask for, and record, how confident an eyewitness is in their identification of a suspect at the identity parade stage, leads to missing an important piece of diagnostic information that could increase the chances of investigating (and later prosecuting) guilty suspects but not innocent suspects. In other words, the outcomes could be significantly improved if we simply record the level of eyewitness confidence at their initial identification of a suspect.

Summary of the key research findings

Each year, in the US and the UK, thousands of police suspects are identified by eyewitnesses. Unfortunately, due to the way identity line-ups are currently administered, some of those suspects are innocent, which becomes evident when they are exonerated by DNA testing.

The research presented by Dr Mickes and Prof Wixted at the roundtable is based on scientific rigor and data analysis of the outcomes of thousands of cases, including real eyewitnesses. The work has been extensively peer reviewed and published in the strongest scientific outputs. The key findings are:

- When a witness expresses high confidence in an identification at the first opportunity at the line-up stage, it is likely to be correct. That is, it is highly likely that the identified person is the offender.
- Making an identification in court is unreliable, and is by all account contaminated forensic evidence.
- The practice in the US produces more reliable outcomes than current UK practice.
- Accuracy and the reliability with which suspects are identified can be significantly improved in the UK, which will result in safer convictions and better outcomes for victims and witnesses of crime.
- Higher eyewitness confidence and reliable identifications can result in significant savings.

“If a witness’s **initial identification of a suspect is made with high confidence** it is likely to be **correct**, and if it’s made with low confidence is much less likely to be correct. A witness’s *courtroom* identification of a defendant is unreliable because it is contaminated forensic evidence”.

Dr Laura Mickes, Royal Holloway, University of London

The key points of Dr Mickes’s presentation focused on the perception of the reliability of eyewitness identification and debunking the notion that they were unreliable if they were made at the police stage of the investigation with high confidence in the first instance.

There are two now debunked reasons for believing eyewitnesses are unreliable:

- Misidentifications played a role in over 70% of cases where a suspect was subsequently exonerated on the basis of DNA evidence.
- There is a widespread belief that a witness’s confidence is not informative about the accuracy of an identification.

The two major problems with those reasons are:

- The weight was put on contaminated evidence i.e. the courtroom identifications, which were made with high confidence, and not on the initial identification. Many of those suspects were initially identified with low confidence at the police stage of the investigation, signaling that those identifications were error-prone, but this fact was largely ignored.
- Secondly, in the past, researchers attempted to measure the probative value of confidence by boiling it down to a single number, but it is now well-known that it is not the best way to assess probative value of confidence because it can mask the real value.

“If we take someone’s fingerprints in a crime that occurred 20 years ago, you still use that evidence when the case comes to court 20 years later”.

Roundtable participant

Prof Wixted's presentation focused on the very strong evidence that confident identifications are extremely useful and can add significant value to the process of justice:

- Confidence is extremely informative, but there is a major caveat: confidence is only informative when collected on the first memory test (i.e. at the first opportunity at the police investigation stage).
- Lab studies and field studies show that initial IDs made with high confidence are high in accuracy (i.e. likely the offender), and initial IDs made with low confidence are much more likely to be incorrect (i.e. likely an innocent suspect).

“Eyewitness confidence in the identification of a suspect is **extremely informative**, but there is a major caveat: confidence is only informative when collected on the **first memory test**.”

Prof John Wixted, University of California, San Diego

The **costs** associated with incorrect identifications and subsequent miscarriages of justice can be significant. The roundtable heard from Travis Seale-Carlisle who identified the following costs associated with not collecting eyewitness confidence at the police investigation stage as being:

- Trial costs
- Prison costs
- Mental health costs
- Relationship costs
- Restitution costs
- Reputational costs

“While the innocent are in prison, the real perpetrators continue to commit more crimes.”

Travis Seale-Carlisle, Royal Holloway, University of London

Whilst detailed work is needed to attach exact figures to these costs, it is clear that the trial and imprisonment costs which are incurred are alone *millions of pounds*. In addition there are the costs to society of the real perpetrators going free to commit more crimes because an innocent person has been incorrectly identified or convicted on the basis of contaminated evidence. In contrast, the cost of recording the confidence of an eyewitness when they make an initial identification at the police line up stage is *negligible*.

Improving current practice in the England & Wales

The roundtable attendees noted that Police and Crime Commissioners are in a unique position to drive change in the way police services administer identity line-ups, and to improve outcomes for justice as well as for victims and witnesses of crime.

Specifically since there is no specific stipulation preventing the recording of eyewitness confidence at the initial identification stage in the PACE Code, there is nothing preventing a **pioneering police service** from **trailing this simple and highly effective practice** at no cost.

Trialling this practice:

- Is in the interests of improved public safety
- Will result in improved outcomes for victims of crime

- Is risk free due to ample academic research indicating the effectiveness of this practice
- Has negligible costs or is cost free

“How do we get the police service to simply record confidence, what we all agree would be a good idea to record?”

Roundtable participant

As well as victims of crime and the public, there are also clear benefits to other agencies, specifically the Crown Prosecution Service and HM Courts & Tribunals Service in providing them with another tool to ensure the administration of effective justice. Civil society groups also support this approach.

A technical question for any field trial to consider is to decide exactly how to ask for confidence, for example whether to use the instructions stipulated by the PACE Code D for the way it is currently captured for confrontations, or whether to a 3-point scale (e.g. I think that's the offender; that's probably the offender; that's definitely the offender).

In order to achieve this important change, researchers from Royal Holloway, University of London and the University of California, San Diego made the offer to roundtable participants and others to:

- Partner with Police & Crime Commissioners and police services to conduct a field study similar to the Houston Police Department field study.
- Partner with an organization to conduct a study to measure the UK cases in which initial IDs were made with low confidence but courtroom IDs made with high confidence.

To serve the cause of justice, collect and record confidence at the time of the initial ID.

Contact details and further information

This report has been produced in collaboration between the Psychology Department at Royal Holloway, University of London (RHUL) and Justice Studio.

If you would like to receive the full detailed slide deck outlining the research and summarising the evidence, or to arrange for a face to face or Skype presentation of this research from the RHUL team to your organisation, please get in touch with Dr Laura Mickes (laura.mickes@rhul.ac.uk) or Anton Shelupanov (anton@justicestudio.org).

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