Research on jury instructions
An experimental test of the novel NJ instruction

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Outline

• Background
• Experiment
  – Design
  – Results
• Moving forward
  – Research
  – Policy

NJ jury instructions
an experimental test
Background

1. IDs notoriously error-prone . . .
2. . . . yet remain highly persuasive to jurors.
Background

1. Admissibility rules
2. Instruct jurors

“We now have enough empirical evidence . . . to insist that jurors should be informed about the proneness to error of whatever [identification] procedure is used.”

For Immediate release: July 19, 2012
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**Supreme Court Releases Eyewitness Identification Criteria for Criminal Cases**

The New Jersey Supreme Court today released expanded jury instructions, a new court rule, and a revised court rule relating to eyewitness identifications in criminal cases.

On Aug. 24, 2011, the Supreme Court issued a unanimous decision in *State v. Larry R. Henderson*. The opinion, authored by Chief Justice Stuart Rabner, revised the legal framework for evaluating and admitting eyewitness identification evidence and directed that revised jury charges be prepared to help jurors evaluate such evidence. Henderson drew on an extensive review of reliable scientific evidence on human memory and the various factors that can affect the reliability of eyewitness identifications.

"Today’s new jury charges and court rule mark a critical step in the court system’s treatment of eyewitness identification evidence,” said Chief Justice Rabner."
NJ Instruction

• “relie[s] on, and receives strong support from, decades of research from cognitive psychology” – Loftus & Schacter
NJ Instruction

• “[e]yewitness identification evidence must be scrutinized carefully”
• “research has shown that there are risks of making mistaken identifications.”
  – “not like a video recording”
  – “affected by a variety of factors”
  – [factors . . . ]
NJ Instruction

1. Opportunity to view / Attention
   a. Stress
   b. Duration
   c. Weapon focus
   d. Distance
   e. Lighting
   f. Disguises/changed appearance

2. Prior description

3. Confidence

4. Time elapsed
Time Elapsed: Memories fade with time. As a result, delays between the commission of a crime and the time an identification is made can affect the reliability of the identification. In other words, the more time that passes, the greater the possibility that a witness’s memory of a perpetrator will weaken.
NJ Instruction

1. Line-up composition
2. Fillers
3. Multiple viewings
4. Double-blind
5. Instructions
6. Feedback
Fillers: Lineups should include a number of possible choices for the witness, commonly referred to as “fillers.” The greater the number of choices, the more likely the procedure will serve as a reliable test of the witness’s memory. A minimum of six persons or photos should be included in the lineup.
Instructions: You should consider what was or what was not said to the witness prior to viewing a photo array. Identification procedures should begin with instructions to the witness that the perpetrator may or may not be in the array and that the witness should not feel compelled to make an identification. The failure to give this instruction can increase the risk of misidentification. If you find that the police [did/did not] give this instruction to the witness, you may take this factor into account when evaluating the identification evidence.
**Feedback:** Feedback occurs when police officers, or witnesses to an event who are not law enforcement officials, signal to eyewitnesses that they correctly identified the suspect. That confirmation may reduce doubt and engender or produce a false sense of confidence in a witness. Feedback may also falsely enhance a witness’s recollection of the quality of his or her view of an event. It is for you to determine whether or not a witness’s recollection in this case was affected by feedback or whether the recollection instead reflects the witness’s accurate perception of the event.
It is up to you to decide what evidence is reliable. Some things you should consider are: Did the witness seem to have an opportunity to see and know the things about which the witness testified? Did the witness seem to have an accurate memory? Was the witness honest and straightforward in answering the attorneys’ questions? Did the witness have some interest in how the case should be decided? A juror may believe or disbelieve all of or any part of the evidence or testimony of any witness.
NJ Instruction

• “designed to minimize the risk of wrongful convictions” – NJ Chief Justice Rabner
• “should greatly reduce the likelihood of wrongful convictions” – Innocence Project
NJ Instruction

• “designed to minimize the risk of wrongful convictions” – NJ Chief Justice Rabner
NJ Instruction does it work?

Conviction rates

standard  NJ
NJ Instruction

does it work?

Conviction rates

- rightful
- wrongful

standard  |  NJ
Methodology
Design

2 × 2 between-subjects

Instruction

standard  NJ

ID Quality

weak

strong
Case

robbery/murder trial
Stimuli

30-40 min. trial video
Stimuli

30-40 min. trial video
| Was eyewitness instructed to avoid discussing crime and avoid media? | no | yes |
| Did the interviewing officer avoid leading questions? | no | yes |
| Were standardized identification procedure instructions used? | no | yes |
| Were 6 or more photos used in the lineup? | no | yes |
| Did lineup include only persons potentially fitting description? | no | yes |
| Was a blind used? | no | yes |
| Instructed perpetrator may or may not be present? | no | yes |
| Was confirmatory feedback avoided? | no | yes |
Sample

• Predominantly white (80%), tended to be female (57%), and was about 35 years old (SD = 12). Most (83%) had at least some college credit.

N = 335 mturkers
Results
Results

26% 23% 12% 9%

standard NJ

verdict
N = 335 mturkers
## Results

\*\( p < .10 \), \*\( p < .05 \), \**\( p < .01 \), \***\( p < .001 \)

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>-2.04 (.29)</td>
<td>-1.99 (.33)</td>
<td>-2.59 (.55)</td>
</tr>
<tr>
<td>Instruction Standard</td>
<td>1.02 (.31) **</td>
<td>0.95 (.42) *</td>
<td>0.94 (.32) **</td>
</tr>
<tr>
<td>ID Quality Weak</td>
<td>-0.24 (.31)</td>
<td>-0.69 (.49)</td>
<td>-0.22 (.29)</td>
</tr>
<tr>
<td>Instruction Standard \times ID Quality Weak</td>
<td>-</td>
<td>0.17 (.63)</td>
<td>-</td>
</tr>
<tr>
<td>Male</td>
<td>-</td>
<td>-</td>
<td>-0.13 (.31)</td>
</tr>
<tr>
<td>Minority</td>
<td>-</td>
<td>-</td>
<td>0.65 (.35) *</td>
</tr>
<tr>
<td>College</td>
<td>-</td>
<td>-</td>
<td>0.72 (.32) *</td>
</tr>
<tr>
<td>Age_10</td>
<td>-</td>
<td>-</td>
<td>0.02 (.12)</td>
</tr>
</tbody>
</table>

Null deviance (df)  
311.86 (334)  
311.86 (334)  
311.86 (334)

Residual deviance (df)  
299.54 (332)  
299.47 (311)  
290.19 (328)  

**verdict**  
\( N = 335 \text{ mturkers} \)  
OR = 2.55  
CI = 1.37-4.89  
\( p < .001 \)
Moving forward

• Should we trust this result?
• $N = 368$ jury-eligible community members, compensated $30$.
• 90 min video trial.
• $3 \text{ (None | pre-NJ | post-NJ after)} \times 2 \text{ (System Quality)} \times 2 \text{ (Estimator Quality)}$.
• Skepticism effect again found.
Moving forward

• Why the indiscriminate discounting?
  – Difficulty understanding criteria?
  – Difficulty applying criteria?

→ Read beforehand?
→ More extensive training?
Intense Aids

I-I-Eye PowerPoint

N = 293 intro psych undergrads

Figure 1. Percentage of guilty verdicts by case type among the three teaching aid groups and the combined control groups.
## Results

**other DVs**  
\(N = 335\) mturkers  

(note: self-reports)

<table>
<thead>
<tr>
<th>ID Quality</th>
<th>Instruction</th>
<th>(n)</th>
<th>Comprehension of Instruction</th>
<th>Confidence in Verdict</th>
<th>Influence of Testimony</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strong</td>
<td>Enhanced</td>
<td>83</td>
<td>5.51 (0.85)</td>
<td>4.61 (1.17)</td>
<td>4.12 (1.38)</td>
</tr>
<tr>
<td></td>
<td>Standard</td>
<td>88</td>
<td>5.61 (0.56)</td>
<td>4.77 (1.13)</td>
<td>4.43 (1.31)</td>
</tr>
<tr>
<td>Weak</td>
<td>Enhanced</td>
<td>80</td>
<td>5.56 (0.61)</td>
<td>4.66 (1.08)</td>
<td>4.15 (1.34)</td>
</tr>
<tr>
<td></td>
<td>Standard</td>
<td>84</td>
<td>5.61 (0.62)</td>
<td>4.65 (1.19)</td>
<td>4.40 (1.14)</td>
</tr>
</tbody>
</table>
But... my jurors recognized bad lineup

N = 335 mturkers

perceived fairness

standard NJ

4.5 3.7

4.3 3.3

strong weak
Moving forward

• Why the indiscriminate discounting?
  – Difficulty understanding criteria?
  – Difficulty *applying* criteria?
  – Inference about judge’s preference?
Moving forward

• Wary of increasing false negatives
  – “better that ten guilty persons escape than that one innocent suffer” – Blackstone

• More active judicial role (selective reading)?
  – Can they do this accurately? (empirical)
  – Invade province of jury? (legal)
Moving forward

- More active judicial role (selective reading)?
  - Can they do this accurately? (empirical)
  - Invade province of jury? (legal)
Thank you! Discussion?

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