

Chicago Tribune

Police lineups' flaws spur new approach Standing suspects in a row has come under fire; Illinois is testing an identification method that may help avoid falsely imprisoning people

February 7, 2005

TWO RIVERS, Wis. -- For 18 years, the photographs that lined Steve Avery's prison cells linked him to the outside world. They helped him see his children grow up. They made him feel as if he hadn't completely missed those birthdays and Thanksgivings.

But the dozens of yellowed snapshots--now stored in a cardboard box in his blue trailer here--also are bitter reminders of the moments and memories stolen from him while he served time for a rape he didn't commit.

Although 16 witnesses placed him elsewhere on July 29, 1985, when Penny Beerntsen was brutally attacked on a Wisconsin beach, she identified Avery in a lineup and swore it was him during the trial. But almost two decades later, DNA evidence proved she was wrong.

Avery's case--he was released from a Wisconsin prison in September 2003--dramatically highlights flawed police lineup procedures, where well-meaning witnesses, even crime victims themselves, confidently pick the wrong person, experts say.

"That day I heard the news was worse than the day I was assaulted," said Beerntsen, who now lives in Naperville and vividly recalls identifying Avery. "I just wanted the earth to open and swallow me. I felt so horrendous and so guilty about being a part of this miscarriage of justice."

In a pilot study under way since last fall, a different way of conducting lineups that some say could sharply reduce the number of false identifications is being tested in Chicago, Evanston and Joliet.

Suspects in traditional lineups are arranged shoulder to shoulder in the same room, and witnesses use a process of elimination to select someone who looks most like the perpetrator, said Gary Wells, a psychology professor at Iowa State University who has researched mistaken identifications for more than 25 years.

Wells and other researchers advocate another approach, the "sequential" lineup, where suspects are brought in one at a time so witnesses can examine each individually.

Already used in New Jersey and with half a dozen police departments across the country, the sequential lineup is being tested in the three Illinois communities, a project that will conclude later this year.

"Psychologically, it's a very different experience," Wells said. "With the [traditional lineup] it's a relative judgment process that leads to the identification rather than what we're after, which is true recognition."

Mistaken identification--which was a factor in more than 75 percent of the 155 DNA exonerations across the country since 1989, according to the Innocence Project--can be cut in half or more with sequential lineups, Wells said.

Although Chicago Tribune policy is not to name rape victims, Beerntsen has become an advocate for criminal justice reform and regularly shares her story with convicted criminals, politicians and the public.

Beerntsen recalls leaving her husband and daughter on a bright July afternoon and taking a jog on a Manitowoc County beach about 30 miles north of Sheboygan. It wasn't far from her family's candy and ice cream store, which she helped manage.

After going about 3 miles, she was running back when a man darted from beneath a fallen tree, put her in a chokehold and dragged her to a wooded area beyond some dunes.

The 5-foot-2 Beerntsen, then 36, kept talking about her two children, hoping to evoke a sliver of compassion. But he beat her unconscious and raped her.

Beerntsen remembers making a mental note of the man's face during the attack.

"When he grabbed me, two thoughts went through my head," she said. "I need to stay calm, and the second was, I need to get a good look at this guy."

She also made a point of scratching him and thought to crawl on her wrists after the assault to preserve whatever evidence was under her nails. Those scrapings were tested in 1996 but were inconclusive.

Man had run-in with deputies

While she was being examined at a hospital, Beerntsen recounted the attack to a sheriff's deputy, who thought the rapist's physical description sounded like Avery. The department already was familiar with him because he was accused of running a sheriff deputy's wife off a road six months earlier.

Just hours after the attack, Beerntsen looked at nine photographs laid out on her hospital bed. She picked Avery.

A few days later, she picked him again, this time from a lineup of eight people.

Beerntsen was so sure Avery was her attacker that when she saw him in court, the hair on the back of her neck stood on end and she shook, she said.

After the Wisconsin Innocence Project took on Avery's case, a pubic hair saved from the rape kit was tested and matched Gregory Allen, whose information was on file because he was serving a 60-year sentence for a 1995 sexual assault.

When Beerntsen learned the truth, she was devastated.

"You can forgive a wrong that's done to yourself more than you can forgive yourself, albeit unintentional, for something that was done to someone else," she said.

For his part, Avery never believed a jury would find him guilty. Even after Manitowoc County sheriff's deputies barged into his home in Maribel, Wis., in the middle of the night, Avery thought the truth would protect him.

But when the verdict was read and he found himself sentenced to 32 years in prison, Avery realized his life was forever altered.

He went to prison at age 23 and got out when he was 41.

A high school dropout who had been laid off as a sheet-metal worker, Avery tried to keep up with the lives of his family: a wife, stepson and four children, the youngest twin boys born six days before his arrest.

But his wife divorced him, and only one of his daughters returned his letters. Avery still can't distinguish his twin sons.

For 18 years, an intense anger consumed him--anger at the sheriff's investigation that made him the prime suspect and at a judicial system that found him guilty even though so many people swore he wasn't at the beach the day of the attack.

But when Avery left the Stanley Correctional Institution in northwestern Wisconsin and ate barbecued ribs for the first time in almost two decades, that anger melted away, he said.

"They stole it all from me, but the hate, it isn't there anymore, not like it used to be," he said.

Illinois studies reforms

Similar cases prompted Gov. George Ryan's Commission on Capital Punishment to recommend changing Illinois' lineup procedures in 2002.

The following year, state Rep. Julie Hamos (D-Evanston) introduced a bill in the General Assembly requiring sequential lineups across the state. She agreed to a pilot study last year to test the two procedures.

"We're going to learn which one is better," she said.

During the study, Evanston is using a case numbers to determine who gets what kind of lineup. Suspects assigned even numbers get the traditional lineup while others are lined up sequentially, Deputy Chief Joe Bellino said.

The only glitch so far for the relatively small department is finding a person with no knowledge of the case to fulfill the "blind administrator" requirement, Bellino said.

With the sequential approach, someone without any knowledge of the suspect is to conduct the lineup as a way of avoiding body language or commentary, no matter how slight, that might influence the witness.

In Joliet, lineups in the eastern half of the city are being conducted sequentially. And in Chicago, all lineups in the Harrison Police District on the West Side are being done that way.

Sheri Mecklenburg, coordinator for the pilot program and chief counsel to Chicago Police Supt. Philip Cline, hopes to submit a report to the General Assembly on the findings from all three jurisdictions at the end of the year. Then lawmakers will decide whether to adopt the practice statewide.

'We have ways to improve'

But Locke Bowman, legal director of the MacArthur Justice Center at the University of Chicago Law School, thinks the study is unnecessary.

Bowman represented John Willis, who was exonerated in 1999 of a string of Chicago robberies and sexual assaults. While there's no way of knowing if sequential lineups would have prevented the dozen or so women who identified him as the attacker, using the approach is a no-brainer, Bowman said.

"The Willis case just makes crystal clear that when we have ways to improve this, we need to employ them," he said. "I can't conceive why anything needs to be studied."

Avery admits he doesn't know whether the lineup procedure is solely to blame for his conviction. But he does believe he's owed for the 18 years of his life he missed and is suing Manitowoc County, the former sheriff and the former district attorney for \$36 million.

Since his exoneration, Avery has been helping out at his family's auto-salvage company, plans to remarry in July and hopes for more children.

"I'd like to hear 'Daddy' and 'Mama,'" he said. "That's one thing I miss. So I figure I'll have a couple more so I can hear that."