

Highlights to the 2025 Edition of Eyewitness Testimony: Strategies and Tactics

The 2025 Edition highlights the following areas of practice:

- The latest and most significant cases holding that photo arrays, showups and lineups are unduly suggestive and taint eyewitness identification testimony at trial.
- While most suggestive eyewitness identification procedures are prescribed by judicial opinions, the Colorado legislature has gone forward and required local police departments to adopt policies and practices consistent with peer-reviewed scientific research to ensure the accuracy of eyewitness identification procedures that promote public safety and protect the innocent. The legislature also requires local law enforcement to maintain data on the effectiveness of these procedures and to train police officers on the methodology and technical aspects of identification policies and practices.
- The Federal Court of Appeals for the 5th Circuit and the Wisconsin Supreme Court both wrestle with when criminal proceedings begin so that counsel has a right to be present for an identification procedure.
- Relying on an earlier New York opinion, the Supreme Court of New Jersey holds that the pretrial preparation can taint the testimony of eyewitnesses at trial and discourages the showing of photos to eyewitnesses during trial preparation. It requires safeguards when it is necessary to use photos or other refreshing devices during pre-trial preparation.
- Courts in New York, New Jersey, and Michigan recognize that having a witness identify a suspect for the first time at trial presents the same factors of suggestiveness outlined in *Neil*, *Manson*, and many state cases. They order special procedures when a witness makes a first-time in-court identification. The Supreme Court of Virginia rejects such arguments on the grounds that the identification is not secured through state action.