

Bazelon Suggests Warning Jurors on Identification Peril

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U.S. Court of Appeals Chief Judge David L. Bazelon recommended yesterday that District of Columbia juries be warned of the difficulties that persons of one race have in identifying persons of another race.

Bazelon suggested that before the end of criminal trials here in which an identification by a witness is an issue, a judge should instruct the jury that "in the experience of many, it is more difficult to identify members of a different race than members of one's own. If this is also your own experience, you may consider it in evaluating the witness's testimony."

Bazelon's suggestion came in the form of a concurring opinion in an appellate case dealing with the more general problems of identification in criminal cases. It does not have the force of law, since neither of the two other judges in the case joined with Bazelon.

Interracial identification in criminal trials has become an increasingly important issue in the District of Columbia, where most of the criminal defendants and most of the jurors are black.

Defense attorneys here sometimes attempt to argue that an identification of a black person by a white witness is inherently suspect, because whites have greater difficulty identifying blacks than members of their own race.

But such arguments have not generally been admitted in criminal trials here. Opponents say that the argument injects an issue of racial prejudice into a trial, improperly biasing a jury.

had sufficient contacts with members of the defendant's race that he would not have greater difficulty in making a reliable identification."

In a separate opinion, U.S. Court of Appeals Judge Harold Leventhal disagreed with Bazelon and said he found merit in the argument that such instructions would be divisive. Leventhal said that Bazelon's proposed instructions might cause a situation in which many witnesses would be questioned about their contacts with and attitudes toward members of the other race.

Last December, for example, U.S. District Court Judge John H. Pratt reprimanded a public defender service attorney, Caroline Nickerson, for making such an argument while representing two black men accused of snatching a purse from a white woman. Pratt called the argument improper.

Bazelon had said he was troubled by the problem of interracial identifications in another opinion earlier this year, but this was the first time he recommended any action in the area.

In the four-page opinion, he rejected the contentions that challenges to interracial identifications are divisive and prejudice a jury. "The quest is for truth, not reassurance," he wrote.

Bazelon's proposed instructions would allow a jury to conclude "that the witness has