Eyewitness Evidence:
A Guide for Law Enforcement

Developed and Approved by the
Technical Working Group for Eyewitness Evidence

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Message From the Attorney General

Eyewitnesses frequently play a vital role in uncovering the truth about a crime. The evidence they provide can be critical in identifying, charging, and ultimately convicting suspected criminals. That is why it is absolutely essential that eyewitness evidence be accurate and reliable. One way of ensuring we, as investigators, obtain the most accurate and reliable evidence from eyewitnesses is to follow sound protocols in our investigations.

Recent cases in which DNA evidence has been used to exonerate individuals convicted primarily on the basis of eyewitness testimony have shown us that eyewitness evidence is not infallible. Even the most honest and objective people can make mistakes in recalling and interpreting a witnessed event; it is the nature of human memory. This issue has been at the heart of a growing body of research in the field of eyewitness identification over the past decade. The National Institute of Justice convened a technical working group of law enforcement and legal practitioners, together with these researchers, to explore the development of improved procedures for the collection and preservation of eyewitness evidence within the criminal justice system.

This *Guide* was produced with the dedicated and enthusiastic participation of the seasoned professionals who served on the Technical Working Group for Eyewitness Evidence. These 34 individuals brought together knowledge and practical experience from jurisdictions large and small across the United States and Canada. I applaud their effort to work together over the course of a year in developing this consensus of recommended practices for law enforcement.

In developing its eyewitness evidence procedures, every jurisdiction should give careful consideration to the recommendations in this *Guide* and to its own unique local conditions and logistical circumstances. Although factors that vary among investigations, including the nature and quality of other evidence and whether a witness is also a victim of the

crime, may call for different approaches or even preclude the use of certain procedures described in the *Guide*, consideration of the *Guide*'s recommendations may be invaluable to a jurisdiction shaping its own protocols. As such, *Eyewitness Evidence: A Guide for Law Enforcemer* is an important tool for refining investigative practices dealing with thi: evidence as we continue our search for truth.

Janet Reno

Technical Working Group for Eyewitness Evidence

The Technical Working Group for Eyewitness Evidence (TWGEYEE) is a multidisciplinary group of content-area experts from across the United States and Canada, from both urban and rural jurisdictions, each representing his or her respective agency or practice. Each of these individuals is experienced in the use of eyewitness evidence in the criminal justice system from the standpoints of law enforcement, prosecution, defense, or social science.

At the outset of the TWGEYEE effort, the National Institute of Justice (NIJ) created a Planning Panel—composed of distinguished law enforcement, legal, and research professionals—to define needs, develop initial strategies, and steer the larger group. Additional members of the Technical Working Group then were selected from recommendations solicited from the Planning Panel, NIJ's regional National Law Enforcement and Corrections Technology Centers, and national organizations, including the National Sheriffs' Association, the International Association of Chiefs of Police, the National District Attorneys Association, the National Association of Criminal Defense Lawyers, and the National Legal Aid & Defender Association.

Collectively, over a 1-year period, the 34 members of TWGEYEE listed below worked together to develop this handbook, *Eyewitness Evidence: A Guide for Law Enforcement.*

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Acknowledgments

The National Institute of Justice (NIJ) acknowledges with great thanks the members of the Technical Working Group for Eyewitness Evidence (TWGEYEE) for their extensive efforts on this project and their dedication to improving the use of eyewitness evidence in the criminal justice system. All of the 34 members of this network of experts gave their time and expertise to draft and review the *Guide*, providing feedback and perspectives from a variety of disciplines and from all areas of the United States as well as Canada. The true strength of this *Guide* is derived from their commitment to develop procedures that could be implemented across the Nation, from small, rural townships to large, metropolitan areas. In addition, thanks are extended to the agencies and organizations represented by the Technical Working Group members for their flexibility and support, which enabled the participants to see this project through to completion.

NIJ is grateful to all the individuals from various national organizations across the Nation who responded to the request for nominations of experts in the field of eyewitness evidence to serve on TWGEYEE. It was from their recommendations that the members were selected. In particular, thanks are extended to James D. Polley IV of the National District Attorneys Association, Daniel Rosenblatt of the International Association of Chiefs of Police, Stuart Statler of the National Association of Criminal Defense Lawyers, Clinton Lyons of the National Legal Aid & Defender Association, and Aldine N. "Bubby" Moser, Jr., of the National Sheriffs' Association.

NIJ would also like to thank the many individuals and organizations who reviewed the draft of the *Guide* and provided valuable comments. Although these comments were given careful consideration by the Technical Working Group in developing the final document, the review by these organizations and individuals is not intended to imply their endorsement of the *Guide*.

Aspen Systems Corporation, particularly Gayle Garmise and Erica Pope, provided tireless work on editing and re-editing the various drafts of the *Guide*. CSR, Incorporated, provided support in arranging the group's many meetings.

Staff from NIJ and the Office of Justice Programs provided valuable input, particularly Janice Munsterman, Karl Bickel, Luke Galant, and Anjali Swienton. Special thanks are extended to Lisa Forman and Kathleen Higgins for their contributions to the TWG program and to Lisa Kaas for her patience, dedication, endurance, and editing skills that made the work of TWGEYEE easier.

Finally, NIJ would like to acknowledge Attorney General Janet Reno, whose support and commitment to the improvement of the criminal justice system made this work possible.

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Introduction

The legal system always has relied on the testimony of eyewitnesses, nowhere more than in criminal cases. Although the evidence eyewitnesses provide can be tremendously helpful in developing leads, identifying criminals, and exonerating the innocent, this evidence is not infallible. Even honest and well-meaning witnesses can make errors, such as identifying the wrong person or failing to identify the perpetrator of a crime.

To their credit, the legal system and law enforcement agencies have not overlooked this problem. Numerous courts and rulemaking bodies have, at various times, designed and instituted special procedures to guard against eyewitness mistakes. Most State and local law enforcement agencies have established their own policies, practices, and training protocols with regard to the collection and handling of eyewitness evidence, many of which are quite good.

In the past, these procedures have not integrated the growing body of psychological knowledge regarding eyewitness evidence with the practical demands of day-to-day law enforcement. In an effort to bring together the perspectives of law enforcement, lawyers, and researchers, the National Institute of Justice (NIJ) convened the Technical Working Group for Eyewitness Evidence (TWGEYEE). The purpose of the group was to recommend uniform practices for the collection and preservation of eyewitness evidence.

This *Guide* differs from earlier efforts in several fundamental ways:

This *Guide* is supported by social science research. During the past 20 years, research psychologists have produced a substantial body of findings regarding eyewitness evidence. These findings offer the legal system a valuable body of empirical knowledge in the area of eyewitness evidence. This *Guide* makes use of psychological findings, either by including them in the procedures themselves or by using them to point

the way to the design and development of further improvements in procedures and practices for possible inclusion in future amendments or revisions to this document.

This *Guide* combines research and practical perspectives. The growtl of social science research into the eyewitness process coincided with parallel efforts of law enforcement agencies to improve their own procedures. This *Guide* benefits from the inclusion of the diverse perspectives of TWGEYEE members; the group included not only researchers but also prosecutors, defense lawyers, and working police investigators from departments of all sizes and from all regions. This *Guide* represents a combination of the best current, workable police practices and psychological research.

This *Guide* does not flow from the fear of misconduct. This *Guide* assumes good faith by law enforcement. It identifies procedures and practices that will produce more reliable and accurate eyewitness evidence in a greater number of cases while reducing or eliminating practices that can undermine eyewitness reliability and accuracy.

This *Guide* promotes accuracy in eyewitness evidence. This *Guide* describes practices and procedures that, if consistently applied, will tend to increase the accuracy and reliability of eyewitness evidence, even though they cannot guarantee the accuracy (or inaccuracy) of a particular witness' testimony in a particular case. Adherence to these procedures can decrease the number of wrongful identifications and should help to ensure that reliable eyewitness evidence is given the weight it deserves in legal proceedings.

This *Guide* is not a legal mandate; it promotes sound professional practices. The *Guide* is not intended to state legal criteria for the admissibility of evidence. Rather, it sets out rigorous criteria for handling eyewitness evidence that are as demanding as those governing the handling of physical trace evidence. This *Guide* encourages the highest levels of professionalism.

Finally, it should be noted that, while this *Guide* outlines basic procedures that can be used to obtain the most reliable and accurate informa-

tion from eyewitnesses, it is not meant as a substitute for a thorough investigation by law enforcement personnel. Eyewitness evidence is often viewed as a critical piece of the investigative puzzle, the utility of which can be further enhanced by the pursuit of other corroborative evidence. Sometimes, even after a thorough investigation, an eyewitness identification is the sole piece of evidence. It is in those cases in particular where careful use of this *Guide* may be most important.

Purpose and Scope of the Project

After reviewing the National Institute of Justice Research Report, *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial*, Attorney General Janet Reno directed NIJ to address the pitfalls in those investigations that may have contributed to wrongful convictions. The most compelling evidence in the majority of those 28 cases was the eyewitness testimony presented at trial.

NIJ initiated this study in May 1998 with the primary purpose of recommending best practices and procedures for the criminal justice community to employ in investigations involving eyewitnesses. Using its "Template for Technical Working Groups," NIJ established the Technical Working Group for Eyewitness Evidence to identify, define, and assemble a set of investigative tasks that should be performed in every investigation involving eyewitness evidence to best ensure the accuracy and reliability of this evidence. The initial members of this group were the Planning Panel, a multidisciplinary group of nine professionals brought together to identify the needs of the criminal justice system in the area of eyewitness evidence, define goals and objectives for TWGEYEE, and develop the initial strategy for achieving TWGEYEE's mission.

The Planning Panel agreed that eyewitness evidence, in general, can be improved and made more reliable through the application of currently accepted scientific principles and practices. It was acknowledged that research has shown that a witness' memory of an event can be fragile

and that the amount and accuracy of information obtained from a witnes depends in part on the method of questioning. Based on these precepts, the following goals and objectives for the study were identified:

- Increase the amount of information elicited from witnesses through improved interview techniques.
- Heighten the validity/accuracy of eyewitness evidence as police, prosecutors, and other criminal justice professionals work with witnesses to identify suspects.
- Improve the criminal justice system's ability to evaluate the strength and accuracy of eyewitness evidence.

Although the development of a guide for eyewitness evidence can be instructive in addressing issues surrounding this evidence, the Planning Panel recognized that local logistical and legal conditions may dictate the use of alternative procedures. Further, eyewitness identification procedures that do not employ the practices recommended in this *Guide* will not necessarily invalidate or detract from the evidence in a particular case.

Project Design

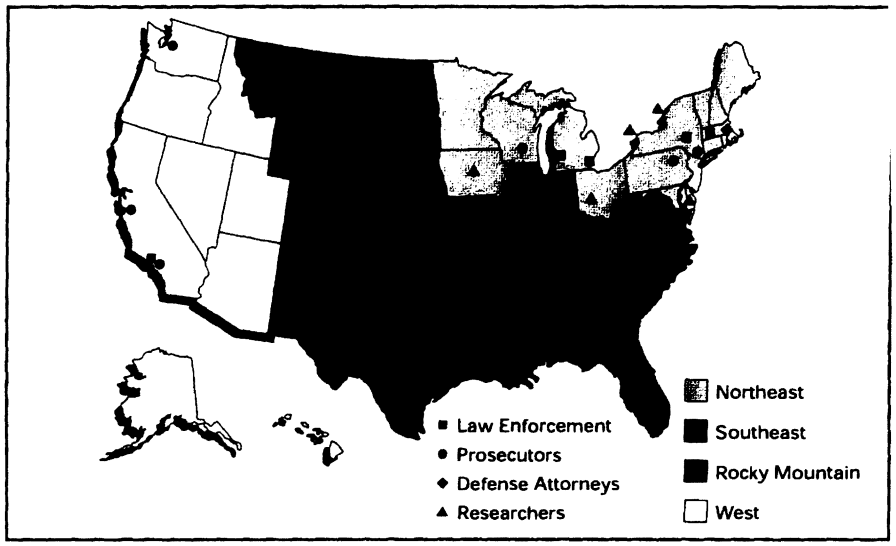
Technical Working Group process. The National Institute of Justice has developed a template for technical working groups that has been successfully used in previous studies of this nature. The process begins with a request from the criminal justice community, generally through the Attorney General; NIJ researches the issue of concern and assembles a planning panel of content-area experts. This panel, together with NIJ, determines whether a Technical Working Group is needed to explore the issue further.

Once the decision is made to form a Technical Working Group, the planning panel determines the group's size and composition and drafts an agenda. NIJ supports the planning panel by requesting member nominations from its multidisciplinary membership resource pool throughout the

national criminal justice community based on regional distribution and individual expertise and availability.

Once members are identified, meetings are conducted by designated planning panel members. NIJ maintains a purely facilitative function.

The Planning Panel for Eyewitness Evidence met for the first time in May 1998 in Washington, D.C. After two planning meetings (the second in Oak Brook, Illinois), the Technical Working Group for Eyewitness Evidence was formed and convened for the first time in October 1998 in Chicago. The 34 TWGEYEE members (including the 9 Planning Panel members) represent the law enforcement, prosecution, defense, and research communities from across the United States and Canada.



The regional distribution of the Technical Working Group members is:

Region	Number of Participants	Percentage of Total
Northeast	14	41
Southeast	9	26
Rocky Mountain	5	15
West	4	12
Canada	2	6

The disciplinary distribution of the Technical Working Group members is:

Discipline	Number of Participants (Full TWG/ Planning Panel)	Percentage of Total (Full TWG/ Planning Panel
Law Enforcement	17/3	50/33.3
Prosecutors	6/2	18/22.2
Defense Lawyers	4/1	12/11.1
Researchers	7/3	20/33.3

Development of the *Guide*. During the course of three full meetings—the second in Washington, D.C., in January 1999 and the third in San Francisco in May 1999—and four Planning Panel meetings during a 1-year period, the Technical Working Group for Eyewitness Evidence members identified specific investigative tasks they felt represented the best practices currently available to investigators. These tasks were organized based on the categories of investigation defined by the Planning Panel, and these categories were modified during the process where necessary. Once specific tasks were identified, they were incorporated into the following format:

- A statement of *principle* citing what is accomplished by performing the procedure.
- A statement of *policy* to the investigator regarding performance of the procedure.
- The *procedure* for performing the list of tasks.
- A *summary* statement explaining the justification for and importance of performing the procedure.

National reviewer network. After the Technical Working Group completed the initial draft of the *Guide* in March 1999, it was distributed to a broad audience throughout the criminal justice community for review. Comments from these organizations and individuals then were considered by TWGEYEE at its May 1999 meeting to finalize and approve the *Guide* for publication.

The 95 organizations and individuals whose comments were solicited during the national review of the *Guide* represented all levels of law enforcement from local officers to State superintendents to Federal agencies, regional and national organizations, individual attorneys and judges, and social science researchers from around the United States and Canada. The disciplinary distribution of these reviewers was as follows: 43 law enforcement and corrections agencies and organizations; 20 prosecutors, defense lawyers, and judges (individuals and organizations); 19 national law enforcement and legislative policy organizations; and

13 individual social science and legal researchers (a complete list of reviewers can be found in appendix B).

Training Criteria

NIJ is planning a second phase of this study to produce training criteria for each of the procedures included in this document. This research is expected to be completed and disseminated by the summer of 2000. TWGEYEE members and other training practitioners from around the Nation will define and verify minimum levels of performance for each procedure. The training criteria will be published and widely distributed to provide organizations and individuals with the materials needed to establish and maintain the knowledge and skills for performance of the procedures.

Validation of the Guide

Although the investigative tasks identified in this *Guide* represent the consensus of the TWGEYEE members on procedures for collection and preservation of eyewitness evidence, no attempt was made to conduct validation studies to state the significance or degree of improvement in eyewitness evidence these practices should be expected to yield. NIJ plans to develop a national validation strategy for the field testing and validation of each procedure. It should be noted that the existing *Guide* is subject to future modification or revision based on the outcome of these validation procedures.

Future Considerations

Advances in social science and technology will, over time, affect procedures used to gather and preserve eyewitness evidence. The following examples illustrate areas of potential change.

Scientific research indicates that identification procedures such as lineups and photo arrays produce more reliable evidence when the individual lineup members or photographs are shown to the witness sequentially—one at a time—rather than simultaneously. Although some police agencies currently use sequential methods of presentation, there is not a consensus on any particular method or methods of sequential presentation that can be recommended as a *preferred* procedure; although sequential procedures are included in the *Guide*, it does not indicate a preference for sequential procedures.

Similarly, investigators' unintentional cues (e.g., body language, tone of voice) may negatively impact the reliability of eyewitness evidence. Psychology researchers have noted that such influences could be avoided if "blind" identification procedures were employed (i.e., procedures conducted by investigators who do not know the identity of the actual suspect). However, blind procedures, which are used in science to prevent inadvertent contamination of research results, may be impractical for some jurisdictions to implement. Blind procedures are not included in the *Guide* but are identified as a direction for future exploration and field testing. In the interim, an enhanced awareness on the part of investigators of the subtle impact they may have on witnesses will result in more professional identification procedures.

Technological advances such as computer-based imaging systems and the Internet will enable law enforcement to share images among departments and can facilitate the use of improved procedures. This *Guide* is not meant to inhibit the development and field testing of new technologies and procedures. On the contrary, it anticipates those developments and can provide a framework for innovation.

Eyewitness Evidence: A Guide for Law Enforcement

This handbook is intended as a guide to recommended practices for the collection and preservation of eyewitness evidence. Jurisdictional, logistical, or legal conditions may preclude the use of particular procedures contained herein.

Section I. Initial Report of the Crime/First Responder (Preliminary Investigator)

A. Answering the 9–1–1/Emergency Call (Call-Taker/Dispatcher)

Principle: As the initial point of contact for the witness, the 9–1–1/emergency call-taker or dispatcher must obtain and disseminate, in a nonsuggestive manner, complete and accurate information from the caller. This information can include the description/identity of the perpetrator of a crime. The actions of the call-taker/dispatcher can affect the safety of those involved as well as the entire investigation.

Policy: The call-taker/dispatcher shall answer each call in a manner conducive to obtaining and disseminating accurate information regarding the crime and the description/identity of the perpetrator.

Procedure: During a 9–1–1/emergency call—after obtaining preliminary information and dispatching police—the call-taker/dispatcher should:

1. Assure the caller the police are on the way.
2. Ask open-ended questions (e.g., "What can you tell me about the car?"); augment with closed-ended questions (e.g., "What color was the car?").
3. Avoid asking suggestive or leading questions (e.g., "Was the car red?").
4. Ask if anything else should be known about the incident.
5. Transmit information to responding officer(s).
6. Update officer(s) as more information comes in.

A. Answering the 9–1–1/Emergency Call (Call-Taker/Dispatcher)

Summary: The information obtained from the witness is critical to the safety of those involved and may be important to the investigation. The manner in which facts are elicited from a caller can influence the accuracy of the information obtained.

B. Investigating the Scene (Preliminary Investigating Officer)

Principle: Preservation and documentation of the scene, including information from witnesses and physical evidence, are necessary for a thorough preliminary investigation. The methods used by the preliminary investigating officer have a direct impact on the amount and accuracy of the information obtained throughout the investigation.

Policy: The preliminary investigating officer shall obtain, preserve, and use the maximum amount of accurate information from the scene.

Procedure: After securing the scene and attending to any victims and injured persons, the preliminary investigating officer should:

1. Identify the perpetrator(s).
   a. Determine the location of the perpetrator(s).
   b. Detain or arrest the perpetrator(s) if still present at the scene.
2. Determine/classify what crime or incident has occurred.
3. Broadcast an updated description of the incident, perpetrator(s), and/or vehicle(s).
4. Verify the identity of the witness(es).

5. Separate witnesses and instruct them to avoid discussing details of the incident with other witnesses.
6. Canvass the area for other witnesses.

Summary: The preliminary investigation at the scene forms a sound basis for the accurate collection of information and evidence during the followup investigation.

C. Obtaining Information From the Witness(es)

Principle: The manner in which the preliminary investigating officer obtains information from a witness has a direct impact on the amount and accuracy of that information.

Policy: The preliminary investigating officer shall obtain and accurately document and preserve information from the witness(es).

Procedure: When interviewing a witness, the preliminary investigating officer should:

1. Establish rapport with the witness.
2. Inquire about the witness' condition.
3. Use open-ended questions (e.g., "What can you tell me about the car?"); augment with closed-ended questions (e.g., "What color was the car?"). Avoid leading questions (e.g., "Was the car red?").
4. Clarify the information received with the witness.
5. Document information obtained from the witness, including the witness' identity, in a written report.
6. Encourage the witness to contact investigators with any further information.

C. Obtaining Information From the Witness(es)

7. Encourage the witness to avoid contact with the media or exposur to media accounts concerning the incident.
8. Instruct the witness to avoid discussing details of the incident with other potential witnesses.

Summary: Information obtained from the witness can corroborate other evidence (e.g., physical evidence, accounts provided by other witnesses) in the investigation. Therefore, it is important that this information be accurately documented in writing.

Section II. Mug Books and Composites

A. Preparing Mug Books

Note: *"Mug books" (i.e., collections of photos of previously arrested persons) may be used in cases in which a suspect has not yet been determined and other reliable sources have been exhausted. This technique may provide investigative leads, but results should be evaluated with caution.*

II

Principle: Nonsuggestive composition of a mug book may enable the witness to provide a lead in a case in which no suspect has been determined and other reliable sources have been exhausted.

Policy: The investigator/mug book preparer shall compose the mug book in such a manner that individual photos are not suggestive.

Procedure: In selecting photos to be preserved in a mug book, the preparer should:

1. Group photos by format (e.g., color or black and white; Polaroid, 35mm, or digital; video) to ensure that no photo unduly stands out.
2. Select photos of individuals that are uniform with regard to general physical characteristics (e.g., race, age, sex).
3. Consider grouping photos by specific crime (e.g., sexual assault, gang activity).
4. Ensure that positive identifying information exists for all individuals portrayed.
5. Ensure that photos are reasonably contemporary.
6. Ensure that only one photo of each individual is in the mug book.

A. Preparing Mug Books

Summary: Mug books must be objectively compiled to yield investigative leads that will be admissible in court.

B. Developing and Using Composite Images

Note: *Composite images can be beneficial investigative tools; however, they should not be used as stand-alone evidence and may not rise to the level of probable cause*

Principle: Composites provide a depiction that may be used to develop investigative leads.

Policy: The person preparing the composite shall select and employ the composite technique in such a manner that the witness' description is reasonably depicted.

Procedure: The person preparing the composite should:

1. Assess the ability of the witness to provide a description of the perpetrator.
2. Select the procedure to be used from those available (e.g., identikit-type, artist, or computer-generated images).
3. Unless part of the procedure, avoid showing the witness any photos immediately prior to development of the composite.
4. Select an environment for conducting the procedure that minimizes distractions.
5. Conduct the procedure with each witness separately.
6. Determine with the witness whether the composite is a reasonable representation of the perpetrator.

Summary: The use of composite images can yield investigative leads in cases in which no suspect has been determined. Use of these procedures can facilitate obtaining from the witness a description that will enable the development of a reasonable likeness of the perpetrator.

C. Instructing the Witness

Principle: Instructions to the witness prior to conducting the procedure can facilitate the witness' recollection of the perpetrator.

Policy: The investigator/person conducting the procedure shall provide instructions to the witness prior to conducting the procedure.

Procedure:

Mug Book: The investigator/person conducting the procedure should:

1. Instruct each witness without other persons present.
2. Describe the mug book to the witness only as a "collection of photographs."
3. Instruct the witness that the person who committed the crime may or may not be present in the mug book.
4. Consider suggesting to the witness to think back to the event and his/her frame of mind at the time.
5. Instruct the witness to select a photograph if he/she can and to state how he/she knows the person if he/she can.
6. Assure the witness that regardless of whether he/she makes an identification, the police will continue to investigate the case.
7. Instruct the witness that the procedure requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification.

C. Instructing the Witness

Composite: The investigator/person conducting the procedure shoulc

1. Instruct each witness without other persons present.
2. Explain the type of composite technique to be used.
3. Explain to the witness how the composite will be used in the investigation.
4. Instruct the witness to think back to the event and his/her frame of mind at the time.

Summary: Providing instructions to the witness can improve his/her comfort level and can result in information that may assis the investigation.

D. Documenting the Procedure

Principle: Documentation of the procedure provides an accurate record of the results obtained from the witness.

Policy: The person conducting the procedure shall preserve the outcome of the procedure by accurately documenting the type of procedure(s) employed and the results.

Procedure: The person conducting the procedure should:

1. Document the procedure employed (e.g., identikit-type, mug book, artist, or computer-generated image) in writing.
2. Document the results of the procedure in writing, including the witness' own words regarding how certain he/she is of any identification.
3. Document items used and preserve composites generated.

Summary: Documentation of the procedure and its outcome improves the strength and credibility of the results obtained from the witness and can be an important factor in the investigation and any subsequent court proceedings.

Section III. Procedures for Interviewing the Witness by the Followup Investigator

A. Preinterview Preparations and Decisions

Principle: Preparing for an interview maximizes the effectiveness of witness participation and interviewer efficiency.

Policy: The investigator shall review all available witness and case information and arrange an efficient and effective interview.

Procedure: Prior to conducting the interview, the investigator should:

1. Review available information.
2. Plan to conduct the interview as soon as the witness is physically and emotionally capable.
3. Select an environment that minimizes distractions while maintaining the comfort level of the witness.
4. Ensure resources are available (e.g., notepad, tape recorder, camcorder, interview room).
5. Separate the witnesses.
6. Determine the nature of the witness' prior law enforcement contact.

Summary: Performing the above preinterview preparations will enable the investigator to elicit a greater amount of accurate information during the interview, which may be critical to the investigation.

B. Initial (Preinterview) Contact With the Witness

Principle: A comfortable witness provides more information.

Policy: Investigators shall conduct themselves in a manner conducive to eliciting the most information from the witness.

Procedure: On meeting with the witness but prior to beginning the interview, the investigator should:

1. Develop rapport with the witness.
2. Inquire about the nature of the witness' prior law enforcement contact related to the incident.
3. Volunteer no specific information about the suspect or case.

Summary: Establishing a cooperative relationship with the witness likely will result in an interview that yields a greater amount of accurate information.

C. Conducting the Interview

Principle: Interview techniques can facilitate witness memory and encourage communication both during and following the interview.

Policy: The investigator shall conduct a complete, efficient, and effective interview of the witness and encourage postinterview communication.

Procedure: During the interview, the investigator should:

1. Encourage the witness to volunteer information without prompting.
2. Encourage the witness to report all details, even if they seem trivial.

3. Ask open-ended questions (e.g., "What can you tell me about the car?"); augment with closed-ended, specific questions (e.g., "What color was the car?").
4. Avoid leading questions (e.g., "Was the car red?").
5. Caution the witness not to guess.
6. Ask the witness to mentally recreate the circumstances of the event (e.g., "Think about your feelings at the time").
7. Encourage nonverbal communication (e.g., drawings, gestures, objects).
8. Avoid interrupting the witness.
9. Encourage the witness to contact investigators when additional information is recalled.
10. Instruct the witness to avoid discussing details of the incident with other potential witnesses.
11. Encourage the witness to avoid contact with the media or exposure to media accounts concerning the incident.
12. Thank the witness for his/her cooperation.

Summary: Information elicited from the witness during the interview may provide investigative leads and other essential facts. The above interview procedures will enable the witness to provide the most accurate, complete description of the event and encourage the witness to report later recollections. Witnesses commonly recall additional information after the interview that may be critical to the investigation.

D. Recording Witness Recollections

Principle: The record of the witness' statements accurately and completely reflects all information obtained and preserves the integrity of this evidence.

D. Recording Witness Recollections

Policy: The investigator shall provide complete and accurate documentation of all information obtained from the witness.

Procedure: During or as soon as reasonably possible after the interview, the investigator should:

1. Document the witness' statements (e.g., audio or video recording, stenographer's documentation, witness' written statement, written summary using witness' own words).
2. Review written documentation; ask the witness if there is anything he/she wishes to change, add, or emphasize.

Summary: Complete and accurate documentation of the witness' statement is essential to the integrity and success of the investigation and any subsequent court proceedings.

E. Assessing the Accuracy of Individual Elements of a Witness' Statement

Principle: Point-by-point consideration of a statement may enable judgment on which components of the statement are most accurate. This is necessary because each piece of information recalled by the witness may be remembered independently of other elements.

Policy: The investigator shall review the individual elements of the witness' statement to determine the accuracy of each point.

Procedure: After conducting the interview, the investigator should:

1. Consider each individual component of the witness' statement separately.

2. Review each element of the witness' statement in the context of the entire statement. Look for inconsistencies within the statement.

3. Review each element of the statement in the context of evidence known to the investigator from other sources (e.g., other witnesses' statements, physical evidence).

Summary: Point-by-point consideration of the accuracy of each element of a witness' statement can assist in focusing the investigation. This technique avoids the common misconception that the accuracy of an individual element of a witness' description predicts the accuracy of another element.

F. Maintaining Contact With the Witness

Principle: The witness may remember and provide additional information after the interview has concluded.

Policy: The investigator shall maintain open communication to allow the witness to provide additional information.

Procedure: During postinterview, followup contact with the witness, the investigator should:

1. Reestablish rapport with the witness.
2. Ask the witness if he/she has recalled any additional information.
3. Follow interviewing and documentation procedures in subsections C, "Conducting the Interview," and D, "Recording Witness Recollections."
4. Provide no information from other sources.

Summary: Reestablishing contact and rapport with the witness often leads to recovery of additional information. Maintaining open communication channels with the witness throughout the investigation is critical.

Section IV. Field Identification Procedure (Showup)

A. Conducting Showups

Principle: When circumstances require the prompt display of a single suspect to a witness, the inherent suggestiveness of the encounter can be minimized through the use of procedural safeguards.

Policy: The investigator shall employ procedures that avoid prejudicing the witness.

Procedure: When conducting a showup, the investigator should:

1. Determine and document, prior to the showup, a description of the perpetrator.
2. Consider transporting the witness to the location of the detained suspect to limit the legal impact of the suspect's detention.
3. When multiple witnesses are involved:
   a. Separate witnesses and instruct them to avoid discussing details of the incident with other witnesses.
   b. If a positive identification is obtained from one witness, consider using other identification procedures (e.g., lineup, photo array) for remaining witnesses.
4. Caution the witness that the person he/she is looking at may or may not be the perpetrator.
5. Obtain and document a statement of certainty for both identifications and nonidentifications.

Summary: The use of a showup can provide investigative information at an early stage, but the inherent suggestiveness of a showup requires careful use of procedural safeguards.

B. Recording Showup Results

Principle: The record of the outcome of the field identification procedure accurately and completely reflects the identification results obtained from the witness.

Policy: When conducting a showup, the investigator shall preserve the outcome of the procedure by documenting any identification or nonidentification results obtained from the witness.

Procedure: When conducting a showup, the investigator should:

1. Document the time and location of the procedure.
2. Record both identification and nonidentification results in writing, including the witness' own words regarding how certain he/she is.

Summary: Preparing a complete and accurate record of the outcome of the showup improves the strength and credibility of the identification or nonidentification results obtained from the witness and can be a critical document in the investigation and any subsequent court proceedings.

Section V. Procedures for Eyewitness Identification of Suspects

A. Composing Lineups

Principle: Fair composition of a lineup enables the witness to provide a more accurate identification or nonidentification.

Policy: The investigator shall compose the lineup in such a manner that the suspect does not unduly stand out.

Procedure:

Photo Lineup: In composing a photo lineup, the investigator should:

1. Include only one suspect in each identification procedure.
2. Select fillers who generally fit the witness' description of the perpetrator. When there is a limited/inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
3. If multiple photos of the suspect are reasonably available to the investigator, select a photo that resembles the suspect description or appearance at the time of the incident.
4. Include a *minimum* of five fillers (nonsuspects) per identification procedure.
5. Consider that complete uniformity of features is not required. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
6. Create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature (e.g., scars, tattoos)

used to describe the perpetrator by artificially adding or concea ing that feature.

7. Consider placing suspects in different positions in each lineup, both across cases and with multiple witnesses in the same case. Position the suspect randomly in the lineup.
8. When showing a new suspect, avoid reusing fillers in lineups shown to the same witness.
9. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness.
10. View the spread, once completed, to ensure that the suspect does not unduly stand out.
11. Preserve the presentation order of the photo lineup. In addition, the photos themselves should be preserved in their original condition.

Live Lineup: In composing a live lineup, the investigator should:

1. Include only one suspect in each identification procedure.
2. Select fillers who generally fit the witness' description of the perpetrator. When there is a limited/inadequate description of the perpetrator provided by the witness, or when the description of th perpetrator differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
3. Consider placing suspects in different positions in each lineup, both across cases and with multiple witnesses in the same case. Position the suspect randomly unless, where local practice allows the suspect or the suspect's attorney requests a particular position.
4. Include a *minimum* of four fillers (nonsuspects) per identification procedure.
5. When showing a new suspect, avoid reusing fillers in lineups shown to the same witness.

6. Consider that complete uniformity of features is not required. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.

7. Create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature (e.g., scars, tattoos) used to describe the perpetrator by artificially adding or concealing that feature.

Summary: The above procedures will result in a photo or live lineup in which the suspect does not unduly stand out. An identification obtained through a lineup composed in this manner may have stronger evidentiary value than one obtained without these procedures.

B. Instructing the Witness Prior to Viewing a Lineup

Principle: Instructions given to the witness prior to viewing a lineup can facilitate an identification or nonidentification based on his/her own memory.

Policy: Prior to presenting a lineup, the investigator shall provide instructions to the witness to ensure the witness understands that the purpose of the identification procedure is to exculpate the innocent as well as to identify the actual perpetrator.

Procedure:

Photo Lineup: Prior to presenting a photo lineup, the investigator should:

1. Instruct the witness that he/she will be asked to view a set of photographs.

B. Instructing the Witness Prior to Viewing a Lineup

2. Instruct the witness that it is just as important to clear innocent persons from suspicion as to identify guilty parties.
3. Instruct the witness that individuals depicted in lineup photos may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.
4. Instruct the witness that the person who committed the crime may or may not be in the set of photographs being presented.
5. Assure the witness that regardless of whether an identification is made, the police will continue to investigate the incident.
6. Instruct the witness that the procedure requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification.

Live Lineup: Prior to presenting a live lineup, the investigator should:

1. Instruct the witness that he/she will be asked to view a group of individuals.
2. Instruct the witness that it is just as important to clear innocent persons from suspicion as to identify guilty parties.
3. Instruct the witness that individuals present in the lineup may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.
4. Instruct the witness that the person who committed the crime may or may not be present in the group of individuals.
5. Assure the witness that regardless of whether an identification is made, the police will continue to investigate the incident.
6. Instruct the witness that the procedure requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification.

Summary: Instructions provided to the witness prior to presentation of a lineup will likely improve the accuracy and reliability of any identification obtained from the witness and can facilitate the elimination of innocent parties from the investigation.

C. Conducting the Identification Procedure

Principle: The identification procedure should be conducted in a manner that promotes the reliability, fairness, and objectivity of the witness' identification.

Policy: The investigator shall conduct the lineup in a manner conducive to obtaining accurate identification or nonidentification decisions.

Procedure:

Simultaneous Photo Lineup: When presenting a simultaneous photo lineup, the investigator should:

1. Provide viewing instructions to the witness as outlined in subsection B, "Instructing the Witness Prior to Viewing a Lineup."
2. Confirm that the witness understands the nature of the lineup procedure.
3. Avoid saying anything to the witness that may influence the witness' selection.
4. If an identification is made, avoid reporting to the witness any information regarding the individual he/she has selected prior to obtaining the witness' statement of certainty.
5. Record any identification results and witness' statement of certainty as outlined in subsection D, "Recording Identification Results."

C. Conducting the Identification Procedure

6. Document in writing the photo lineup procedures, including:
   a. Identification information and sources of all photos used.
   b. Names of all persons present at the photo lineup.
   c. Date and time of the identification procedure.
7. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

Sequential Photo Lineup: When presenting a sequential photo lineup, the investigator should:

1. Provide viewing instructions to the witness as outlined in subsection B, "Instructing the Witness Prior to Viewing a Lineup."
2. Provide the following *additional* viewing instructions to the witness:
   a. Individual photographs will be viewed *one at a time*.
   b. The photos are in random order.
   c. Take as much time as needed in making a decision about each photo before moving to the next one.
   d. All photos will be shown, even if an identification is made; ***or*** the procedure will be stopped at the point of an identification (consistent with jurisdictional/departmental procedures).
3. Confirm that the witness understands the nature of the sequential procedure.
4. Present each photo to the witness separately, in a previously determined order, removing those previously shown.
5. Avoid saying anything to the witness that may influence the witness' selection.

6. If an identification is made, avoid reporting to the witness any information regarding the individual he/she has selected prior to obtaining the witness' statement of certainty.
7. Record any identification results and witness' statement of certainty as outlined in subsection D, "Recording Identification Results."
8. Document in writing the photo lineup procedures, including:
   a. Identification information and sources of all photos used.
   b. Names of all persons present at the photo lineup.
   c. Date and time of the identification procedure.
9. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

Simultaneous Live Lineup: When presenting a simultaneous live lineup, the investigator/lineup administrator should:

1. Provide viewing instructions to the witness as outlined in subsection B, "Instructing the Witness Prior to Viewing a Lineup."
2. Instruct all those present at the lineup not to suggest in any way the position or identity of the suspect in the lineup.
3. Ensure that any identification actions (e.g., speaking, moving) are performed by all members of the lineup.
4. Avoid saying anything to the witness that may influence the witness' selection.
5. If an identification is made, avoid reporting to the witness any information regarding the individual he/she has selected prior to obtaining the witness' statement of certainty.

C. Conducting the Identification Procedure

6. Record any identification results and witness' statement of certainty as outlined in subsection D, "Recording Identification Results."
7. Document the lineup in writing, including:
   a. Identification information of lineup participants.
   b. Names of all persons present at the lineup.
   c. Date and time the identification procedure was conducted.
8. Document the lineup by photo or video. This documentation should be of a quality that represents the lineup clearly and fairly.
9. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourag contact with the media.

Sequential Live Lineup: When presenting a sequential live lineup, the lineup administrator/investigator should:

1. Provide viewing instructions to the witness as outlined in subsection B, "Instructing the Witness Prior to Viewing a Lineup."
2. Provide the following *additional* viewing instructions to the witness:
   a. Individuals will be viewed *one at a time.*
   b. The individuals will be presented in random order.
   c. Take as much time as needed in making a decision about each individual before moving to the next one.
   d. If the person who committed the crime is present, identify him/her.

e. All individuals will be presented, even if an identification is made; ***or*** the procedure will be stopped at the point of an identification (consistent with jurisdictional/departmental procedures).

3. Begin with all lineup participants out of the view of the witness.
4. Instruct all those present at the lineup not to suggest in any way the position or identity of the suspect in the lineup.
5. Present each individual to the witness separately, in a previously determined order, removing those previously shown.
6. Ensure that any identification actions (e.g., speaking, moving) are performed by all members of the lineup.
7. Avoid saying anything to the witness that may influence the witness' selection.
8. If an identification is made, avoid reporting to the witness any information regarding the individual he/she has selected prior to obtaining the witness' statement of certainty.
9. Record any identification results and witness' statement of certainty as outlined in subsection D, "Recording Identification Results."
10. Document the lineup procedures and content in writing, including:
    a. Identification information of lineup participants.
    b. Names of all persons present at the lineup.
    c. Date and time the identification procedure was conducted.
11. Document the lineup by photo or video. This documentation should be of a quality that represents the lineup clearly and fairly. Photo documentation can be of either the group or each individual.
12. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

C. Conducting the Identification Procedure

Summary: The manner in which an identification procedure is conducted can affect the reliability, fairness, and objectivity of the identification. Use of the above procedures can minimize the effect of external influences on a witness' memory.

D. Recording Identification Results

Principle: The record of the outcome of the identification procedure accurately and completely reflects the identificatio results obtained from the witness.

Policy: When conducting an identification procedure, the investigator shall preserve the outcome of the procedure by documenting any identification or nonidentification results obtained from the witness.

Procedure: When conducting an identification procedure, the investigator should:

1. Record both identification and nonidentification results in writing, including the witness' own words regarding how sure he/she is.
2. Ensure results are signed and dated by the witness.
3. Ensure that no materials indicating previous identification results are visible to the witness.
4. Ensure that the witness does not write on or mark any materials that will be used in other identification procedures.

Summary: Preparing a complete and accurate record of the outcome of the identification procedure improves the strength and credibility of the identification or nonidentification results obtained from the witness. This record can be a critical document in the investigation and any subsequent court proceedings.

Appendixes

Appendix A. Further Reading

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Appendix B. Reviewer List

During the review process, drafts of this document were sent to the following agencies and organizations for comment. Although the Technical Working Group considered all comments and issues raised by these organizations, this *Guide* reflects only the positions of its authors. Mention of the reviewers is not intended to imply their endorsement.

The Academy Group, Inc.

American Bar Association

American Correctional Association

American Jail Association

American Society of Law Enforcement Trainers

American Prosecutors Research Institute

Association of Federal Defense Attorneys

Bureau of Alcohol, Tobacco and Firearms

Campaign for Effective Crime Policy

Commission on Accreditation for Law Enforcement Agencies, Inc.

Conference of State Court Administrators

Cleveland State College Basic Police Academy

Council of State Governments

Criminal Justice Institute

Drug Enforcement Administration

Executive Office for United States Attorneys

Fairfax County (Virginia) Police Association

Federal Bureau of Investigation

Federal Law Enforcement Training Center, Department of the Treasury

Home Office, Policing and Reducing Crime Unit (UK)

International Association of Chiefs of Police

International Association for Identification

International City/County Managers Association

International Homicide Investigators Association

Law Enforcement Training Institute, University of Missouri - Columbia

Madison County (New York) Sheriff's Department

Metro Nashville Police Academy

National Association of Attorneys General

National Association of Black Women Attorneys

National Association of Counties

National Association of Criminal Defense Lawyers

National Association of Drug Court Professionals

National Association of Police Organizations

National Association of Sentencing Commissions

National Association of State Alcohol and Drug Abuse Directors

National Association of Women Judges

National Black Police Association

National Center for State Courts

National Conference of State Legislators

National Council on Crime and Delinquency

National Crime Prevention Council

National Criminal Justice Association

National District Attorneys Association

National Governors Association

National Institute of Standards and Technology, Office of Law Enforcement Standards

National Law Enforcement and Corrections Technology Centers

National Law Enforcement Council

National League of Cities

National Legal Aid & Defender Association

National Organization of Black Law Enforcement Executives

National Organization for Victim Assistance

National Sheriffs' Association

National Victim Center

New York State Police

Oneida County (New York) Sheriff's Office

Oneida Indian Nation Police

Peace Officers Standards & Training

Police Executive Research Forum

Police Foundation

Royal Canadian Mounted Police

Tennessee Law Enforcement Training Academy

United States Conference of Mayors

United States Secret Service

Utah State Crime Scene Academy

For more information on the National Institute of Justic
please contact:

National Criminal Justice Reference Service
Box 6000
Rockville, MD 20849–6000
800–851–3420
e-mail: askncjrs@ncjrs.org

To access the World Wide Web site, go to
http://www.ncjrs.org

If you have any questions, call or e-mail NCJRS

About the National Institute of Justice

The National Institute of Justice (NIJ), a component of the Office of Justice Programs, is the research agency of the U.S. Department of Justice. Created by the Omnibus Crime Control and Safe Streets Act of 1968, as amended, NIJ is authorized to support research, evaluation, and demonstration programs, development of technology, and both national and international information dissemination. Specific mandates of the Act direct NIJ to:

- Sponsor special projects, and research and development programs, that will improve and strengthen the criminal justice system and reduce or prevent crime.
- Conduct national demonstration projects that employ innovative or promising approaches for improving criminal justice.
- Develop new technologies to fight crime and improve criminal justice.
- Evaluate the effectiveness of criminal justice programs and identify programs that promise to be successful if continued or repeated.
- Recommend actions that can be taken by Federal, State, and local governments as well as by private organizations to improve criminal justice.
- Carry out research on criminal behavior.
- Develop new methods of crime prevention and reduction of crime and delinquency.

In recent years, NIJ has greatly expanded its initiatives, the result of the Violent Crime Control and Law Enforcement Act of 1994 (the Crime Act), partnerships with other Federal agencies and private foundations, advances in technology, and a new international focus. Some examples of these new initiatives:

- New research and evaluation is exploring key issues in community policing, violence against women, sentencing reforms, and specialized courts such as drug courts.
- Dual-use technologies are being developed to support national defense and local law enforcement needs.
- Four regional National Law Enforcement and Corrections Technology Centers and a Border Research and Technology Center have joined the National Center in Rockville, Maryland.
- The causes, treatment, and prevention of violence against women and violence within the family are being investigated in cooperation with several agencies of the U.S. Department of Health and Human Services.
- NIJ's links with the international community are being strengthened through membership in the United Nations network of criminological institutes; participation in developing the U.N. Criminal Justice Information Network; initiation of UNOJUST (U.N. Online Justice Clearinghouse), which electronically links the institutes to the U.N. network; and establishment of an NIJ International Center.
- The NIJ-administered criminal justice information clearinghouse, the world's largest, has improved its online capability.
- The Institute's Drug Use Forecasting (DUF) program has been expanded and enhanced. Renamed ADAM (Arrestee Drug Abuse Monitoring), the program will increase the number of drug-testing sites, and its role as a "platform" for studying drug-related crime will grow.
- NIJ's new Crime Mapping Research Center will provide training in computer mapping technology, collect and archive geocoded crime data, and develop analytic software.
- The Institute's program of intramural research has been expanded and enhanced.

The Institute Director, who is appointed by the President and confirmed by the Senate, establishes the Institute's objectives, guided by the priorities of the Office of Justice Programs, the Department of Justice, and the needs of the criminal justice field. The Institute actively solicits the views of criminal justice professionals and researchers in the continuing search for answers that inform public policymaking in crime and justice.

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To access this site, go to http://www.ncjrs.org

If you have questions, call or e-mail NCJRS.

Eyewitness Identification

Wrongfully convicted at age 25, Calvin Johnson received a life sentence for the rape of a [illegible]a woman after [illegible]ifferent women [illegible]ed him. [illegible]ated in 1999, [illegible]ed out of prison [illegible] man.

The true rapist [illegible] never been found.

INTRODUCTION

A measure of fairness and accuracy in the criminal justice system

Eyewitness identification is critical to the apprehension and prosecution of criminals. Eyewitness evidence can also be an important tool for exonerating innocent suspects. Groundbreaking research on eyewitness memory over the past three decades, as well as increasing attention to the problems in the cases of wrongfully convicted individuals, has brought the fallibility of eyewitness memory to the fore.

Eyewitness misidentification is widely recognized as the leading cause of wrongful conviction in the United States, accounting for more wrongful convictions than all other causes combined.[1] Since 1989, DNA evidence has been used to exonerate nearly 200 individuals who were wrongfully convicted. Of those, approximately 75 percent were convicted on evidence that included inaccurate and faulty eyewitness identifications.[2] In some cases, these innocent individuals were misidentified by more than one eyewitness.

In the vast majority of criminal cases, however, DNA or other biological evidence is not available to establish guilt or innocence. Given the persuasive nature of eyewitness evidence, as well as the inherent danger of misidentifications—both in convicting the innocent and allowing the true perpetrator to go free—it becomes imperative that we take stock of the procedures within the control of the criminal justice system that contribute to these problems in order to ensure that the most reliable evidence possible makes it into a courtroom and before a jury.

A number of challenges emerge in pursuit of a more accurate protocol, none more prevalent than an historical lack of communication between scientists and law enforcement.[3] Decades of empirical research have proven that a number of small changes to identification procedures can help improve the accuracy and reliability of eyewitness identifications, and help ensure that the highest quality of eyewitness evidence is collected.

What's more, when put to the test in numerous jurisdictions throughout the country, these reforms have met with real-life success. Thus, it may seem surprising that these reforms have not been implemented in police districts across the board.

While much of the research has been extensively documented and peer-reviewed within the scientific community, and the recommendations for reform are widely accepted by experts in the field, these reforms were initially discussed and developed outside the realm of law enforcement.

Starting in the late nineties, however, leading researchers joined with law enforcement and legal practitioners to bridge the gap and comprehensively address eyewitness identification issues at the intersection of the two fields. As a result, guidelines and best practices for law enforcement were developed with the science in mind.

In October 1999, the Department of Justice released a comprehensive guide for law enforcement on procedures for obtaining more accurate eyewitness evidence.[4] However, there is no current national program or federal agency responsible for educating local departments about these reforms—or in assisting with their practical implementation.[5]

Moreover, as reforms are implemented on a jurisdiction-by-jurisdiction basis in some states, there continues to be little opportunity for sharing information and perhaps even less incentive, given the already overloaded criminal caseloads of police, prosecutors and defenders, and the lack of leadership from the courts or legislature on the issue.

This policy review has been designed to facilitate communication among local law enforcement agencies, policymakers, and others regarding the best practices and methods for enhancing the evidentiary value of correct identifications and at the same time reducing the risk of erroneous identifications. By presenting many of the successful methods employed in local jurisdictions, as well as the science behind them, we hope to create a dialogue around recommendations that will enhance the quality of evidence relied upon in criminal trials, as well as confidence in our system of justice.

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RECOMMENDATIONS & SOLUTIONS

Getting it right the first time

A handful of specific improvements have emerged as pragmatic strategies for minimizing eyewitness error. While modernizing identification procedures to incorporate advances in eyewitness memory science requires retooling long-standing lineup methods engrained in police culture, the substantial benefits of implementing the protocol are leading more jurisdictions to update their procedures to catch up with the science.

Because eyewitness evidence, much like trace evidence, is susceptible to contamination, some eyewitness identification procedures actually increase the risk of false identification. By improving these procedures in subtle ways, the actual quality of eyewitness evidence can be improved.

The following recommendations reflect the consensus in the scientific community — confirmed by successful implementation in numerous jurisdictions — as to the procedural changes that will enable law enforcement to extract the most reliable evidence from eyewitnesses for use in a criminal investigation.

These practical changes to the identification process help increase the likelihood of identifying the true culprit while enhancing protections for innocent people accused of crimes.

These reforms are equally effective for photographic lineups and live lineups.

CAUTIONARY INSTRUCTIONS

Prior to presenting the lineup members, the eyewitness should be instructed that the perpetrator may or may not be included in the lineup, and that she should not feel compelled to make an identification.

Cautionary instructions respond, in part, to the tendency of witnesses to make a relative judgment by removing some of the pressure on the eyewitness to choose a suspect when the culprit may not be in the lineup.

EFFECTIVE USE OF FILLERS

Only one suspect should appear in each lineup. In addition, at least five fillers should be included in a photo lineup, and at least four fillers in a live lineup. The fillers should resemble the witness's description of the perpetrator, and the suspect should not unduly stand out.

Fillers, if chosen correctly, allow authorities to judge the reliability of an eyewitness. The effective use of fillers is critical to ensuring that an innocent individual is not identified simply because of the composition of the lineup.

DOCUMENTATION

The identification procedure should be carefully documented. Documentation includes preservation of photos in a photo array or photographs taken of a live lineup, recording all individuals present at the lineup, documentation of the witness's statements regarding the lineup members during the procedure, and, if an identification is made, documentation of the witness's degree of confidence in the identification, in the witness's own words, prior to any feedback from authorities.

Careful documentation of the lineup procedures, including a witness's level of certainty that she has correctly identified the perpetrator, when taken immediately following the identification, helps the jury to assess the eyewitness evidence appropriately and minimizes the effects of reinforcing feedback that can distort the confidence level of an eyewitness between the time of the identification and the trial.

DOUBLE-BLIND ADMINISTRATION

The person who administers the lineup should not know the identity of the suspect. This procedure prevents well-intentioned officials from giving inadvertent clues to the witness as to which person in the lineup is the police suspect.

SEQUENTIAL PRESENTATION

The lineup members should be presented to the witness "sequentially" (one at a time) rather than simultaneously (all at once). Sequential presentation should only occur, however, if the identification procedures comply fully with the double-blind administration recommendation.

Presenting the lineup members one at a time to the witness reduces the tendency for witnesses to engage in "comparison shopping." Rather, an eyewitness must judge whether each lineup member matches her memory of the perpetrator, as opposed to making a relative judgment.

PSYCHOLOGICAL FACTORS

Preventing unreliable evidence in the courtroom

Reliable eyewitness evidence is critical to criminal investigation and prosecution, and it plays a powerful role within the criminal justice system. The repeated discovery of misidentifications contributing to wrongful convictions, however, has prompted inquiries into the nature of eyewitness evidence used to convict criminal suspects, and the problems that arise in utilizing human memory in criminal investigations.

The scientific community has brought the knowledge built through decades of research and experiments to bear on eyewitness identification procedures. Important lessons learned in the laboratory, and in the decades of research devoted to eyewitness memory science, are of enormous value in the legal and law enforcement communities. This substantial body of research has revealed that several natural psychological phenomena can undermine the accuracy of eyewitness identification, and that these psychological factors, left unchecked, can lead to unreliable evidence being presented in the courtroom.

LINEUPS AS EXPERIMENTS

Just as trace physical evidence (such as DNA or fingerprints) can be contaminated if it is not collected precisely and carefully, so too eyewitness evidence can be spoiled if it is gathered in ways that do not properly control for known sources of error.[6]

As some researchers have described, a lineup is essentially an experiment designed to test a hypothesis: whether the suspect matches the witness's memory of the perpetrator.[7] Like scientific experiments, careful controls must be put in place to ensure accuracy and prevent the witness's memory from being contaminated or skewed.

Essentially, the lineups as experiments analogy suggests that the logic used to conduct experiments — i.e., isolating variables and implementing careful control conditions — can and should be applied to the legal system when conducting lineups. Using some of the tried and true scientific methods for conducting experiments when conducting a lineup greatly reduces, or in some cases eliminates, the risk of contamination of the data (i.e., eyewitness identification evidence).

RELATIVE JUDGMENT

Relative judgment refers to the natural tendency of a witness to consider lineup participants in comparison with one another, as opposed to a more direct comparison of each lineup member with the witness's memory of the culprit. A witness viewing a lineup will thus tend to identify the person who looks most like the perpetrator in comparison to the other members in the lineup.[8] While, at face value, this process seems unproblematic, it can actually lead to inaccurate and unreliable identifications under certain conditions — namely, when the police suspect is innocent.

The purpose of a lineup is to differentiate innocent suspects from those who actually committed crimes using an eyewitness's memory of an event. Thus, when conducting a lineup, law enforcement officers do not know if a suspect included in a lineup is, in fact, the true perpetrator or simply an innocent person suspected of a crime. If the lineup is full of innocent people (an innocent suspect and a group of innocent fillers), however, relative judgment would mean that an innocent person may be identified, because it is likely that there will always be someone in the lineup who looks more like the person who committed the crime than the other members of the lineup.

Sometimes this person will be a filler, and a witness identification will be dismissed. But sometimes an innocent suspect will be the victim of this tendency toward "comparison shopping," because the witness is always making a relative judgment — the witness is always picking the person who looks closest to the culprit relative to the other lineup members, even if the lineup is full of innocent people.

Take for example a six-person lineup that contains the actual culprit. It has been proven that wit-

nesses who saw the same event will often pick someone out of a lineup when the culprit is removed. In other words, regardless of whether a culprit is in a lineup, witnesses tend to pick the person who looks closest to the culprit, even when the culprit is not present. As leading researchers have noted, "The problem with the relative judgment process, therefore, is that it includes no mechanism for deciding that the culprit is none of the people in the lineup."[9]

MALLEABILITY OF WITNESS CERTAINTY

Traditionally, a witness's self-reported degree of certainty in an identification was considered a good indicator of accuracy. Unfortunately, a great deal of research in recent decades has proven this intuitive assumption false. The level of certainty a witness expresses in her eyewitness testimony does not necessarily correlate with the level of accuracy of the identification. An eyewitness's confidence that she has identified the culprit can fluctuate as a result of factors that occur after the identification and have little to do with memory. This is what is referred to as confidence malleability.[10]

For example, experiments have been conducted in which witnesses were shown a staged crime and asked to identify the culprit from a lineup. The lineup they were shown, however, did not contain the culprit. After the witnesses unknowingly made false identifications, they were then asked their level of confidence. Before doing so, however, some of the witnesses were given various types of reinforcing feedback. Those witnesses who received some confirmation of their false identification, whether the information that a co-witness identified the same individual or some other confirming feedback, were far more confident in their identifications than other witnesses who were given no feedback — despite having given false identifications. These witnesses also distorted and exaggerated certain details, such as how good their view was, how much of an opportunity they had to view the culprit, etc.[11] Our new and better understanding of the influence feedback plays on a witness's self-described level of confidence strongly suggests that measures that control for this influence be adopted in our identification procedures.

THE SCIENCE

Demanding changes in eyewitness identification procedures

Scientific treatments of eyewitness evidence began over 100 years ago, most notably with Harvard Professor Hugo Munsterberg's 1908 book, *On the Witness Stand.*[12] While Munsterberg established that eyewitness evidence was much more fallible than previously thought, his research did not show a way forward. Based on the science of the day, the legal system had no capacity for dealing with these mistakes, and the system could not sort the mistakes from the true identifications.[13] The science, at first, only documented the problem, but it could provide no solutions.

In the late 1970's, however, eyewitness memory scientists began to zero-in on the particular sources of eyewitness error and test revised identification procedures that reduced the risk of mistakes. The guiding principle of this new research was that we must do all we can to ensure good quality evidence on the front end of the process, rather than trying to second guess identifications after the fact. For the research on eyewitness fallibility to be useful, it had to be applied to the criminal justice system in a way that allowed the system to prevent or reduce future mistakes. Scientists thus focused on the ways that the system of collecting eyewitness evidence could *itself* cause mistakes, in hopes that these mistakes could be prevented before they occurred.[14]

The past three decades of eyewitness research and discussion have coalesced around this purpose — preventing false identifications with research-based improvements to the system. Largely, these improvements focus on controlling the suggestiveness of the lineup procedures themselves. A discussion of the science behind these improvements follows.

CAUTIONARY INSTRUCTIONS

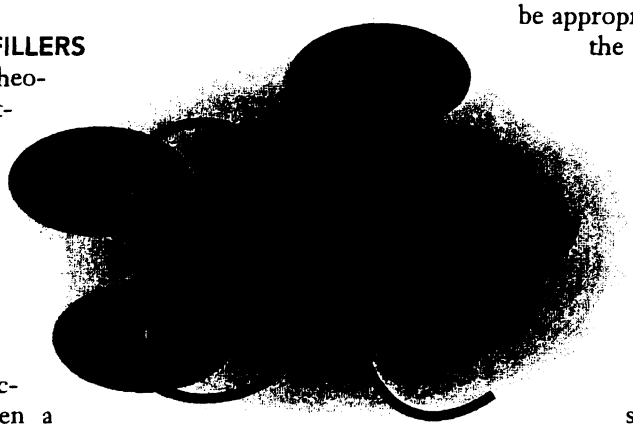
Regardless of whether the true perpetrator is in a lineup, an eyewitness may feel pressure to make an identification. Witnesses know that, at the very

least, a lineup contains a police suspect. When the culprit is not, in fact, present in the lineup, this perception, combined with the natural tendency to compare lineup participants and make a relative judgment, may influence an eyewitness to identify an innocent person.

Cautioning an eyewitness that the offender may or may not be in the lineup reminds witnesses that the answer may be "none of the above."[15]

Research has shown that this extra step, while on its face pointing out a fact that should be obvious, significantly lowers the rate of inaccurate identifications without reducing the number of true identifications.[16]

EFFECTIVE USE OF FILLERS



Relative judgment theory means that an eyewitness viewing a simultaneous lineup tends to make a judgment about which individual in the lineup looks most like the perpetrator relative to the other members of the lineup. This is particularly problematic when a lineup only contains innocent people (i.e., a number of fillers and an innocent suspect).

Research has shown, however, that the effective use of fillers when composing a lineup can help combat the tendency for the relative judgment process to lead to the identification of an innocent suspect.[17]

First, ensuring that the suspect in the lineup does not stand out, or that the fillers resemble the witness's prior description of the culprit at least as much as the suspect does, guards against the eyewitness choosing an innocent suspect simply because the suspect is the only lineup member that resembles the perpetrator.

For example, if the eyewitness describes the perpetrator as an Asian man with a mustache, and there is only one man in the lineup who is Asian and has a mustache, then the lineup is obviously suggestive, and the evidentiary value of any identification is nil. In contrast, if all of the lineup members resemble the prior description of the culprit (or all of the lineup members are Asian men with mustaches), then the eyewitness will have to rely more on comparisons to her own memory of the culprit. In short, no lineup participant can unduly stand out for a lineup to be effective. This holds true in general, but especially with regard to features of the witness's description of the culprit. For example, if a witness describes the perpetrator as having a particular feature such as a mustache, the lineup must be composed with all members sharing that feature.

There are certainly cases where selecting fillers is not as clear-cut. For example, if the suspect does not fit the witness's prior description of the suspect but other evidence creates suspicion of guilt, then it may be appropriate to place that suspect in the lineup, as witness descriptions can sometimes be off the mark. If so, however, the fillers must be chosen to be similar to the appearance of the suspect.[18] There are methods for dealing with contingencies, but the true test of this rule is whether the suspect stands out relative to the other fillers.[19] In other words, if a person who is not involved in the case is given a description of the perpetrator, would she be able to pick the suspect out of the lineup? Including only one suspect in a lineup is also a fundamental safeguard against misidentification. Lineups not only allow police to judge whether a suspect is innocent, they also allow investigators to judge the reliability of an eyewitness. If a lineup contains more than one suspect, however, its ability to test reliability is diminished. This is because it increases the likelihood that a witness would select a suspect based on a guess rather than recognition. The more choices in the lineup test that could be considered "correct" (i.e., suspect identification), the less the lineup can control for witnesses with weak memories or those who guess. The same considerations underpin the need to include an adequate number of fillers. Doing so also reduces the likelihood of an eyewitness identifying an innocent suspect based on a guess. For example, if there is only one suspect and one filler,

the likelihood that an innocent suspect will resemble the culprit more than the other lineup members is 50 percent. If three fillers and one suspect, the likelihood is 25 percent; and so on.[20] While there is no magic number of fillers that should be used, the science has shown that the greater the number of fillers, the greater the reliability of the procedure.

DOCUMENTATION

Lineup identifications are a critical component of the investigation of criminal cases. Given the overwhelming importance of eyewitness testimony and the weight afforded to it by juries, it is essential to provide sufficient contextual information about an identification in order for fact-finders to evaluate its evidentiary weight correctly. Careful documentation of lineup procedures, where possible, means that a complete and accurate record of the methods used to obtain an identification is preserved for review. Recording the identification and the non-identification results, the dialogue between witnesses and police, and the photos themselves (or photographs of a live lineup), serves as much to protect the police from false claims of influencing a witness as it does to preserve the integrity of the evidence. Thorough documentation has the power to put an identification beyond reproach.

Scientists have shown that a number of procedures within the system actually contribute to misidentifications. Complete documentation allows any suggestiveness in the procedure to be considered by judges and juries in deciding how to weigh the evidence and, when reliable procedures are used, it strengthens the evidentiary value of an identification.

A critical component of appropriate documentation is recording an eyewitness's statement of confidence (or self-assessment of certainty) immediately after an identification. This guards against the confidence malleability problem — when an eyewitness's confidence that she has identified the culprit fluctuates as a result of factors that occur after the identification. To document a witness's confidence, the witness is asked her level of certainty that the person being identified is the true perpetrator *prior to receiving any feedback from authorities or other witnesses.* The witness's confidence level should be recorded in her own words in order to allow judges and juries to evaluate eyewitness testimony in an informed manner.

Studies have shown that information provided to an eyewitness after an identification can influence the witness's level of confidence, and thus skew a juror's assessment of the accuracy of the identification. For example, if an eyewitness makes an identification of a suspect, and that same witness later learns that the person identified also has a criminal record, the witness's confidence level may become artificially inflated.

Confirmatory feedback oftentimes occurs without the knowledge or intent of investigators in the case or even the eyewitness, and if a confidence statement is not taken directly after the identification, the window of opportunity for protecting the integrity of the identification evidence as an indicator of accuracy is lost.

DOUBLE-BLIND ADMINISTRATION

The "double-blind" rule applies the scientific method to lineups, and is rooted in a general strategy for ensuring the objectivity of data collection and interpretation. The purpose of keeping the administrator "blind" as to which person in the lineup is the suspect is to prevent the administrator from unintentionally influencing the results through inadvertent cueing of the witness toward the suspect. A double-blind protocol also eliminates the problem of interpreting ambiguous witness comments and other behaviors through the lens of the theory that the suspect in a lineup is guilty.

Double-blind protocols are familiar to many in the context of pharmaceutical studies to test a new drug. Not only is the patient unaware of whether she received the drug or the placebo, but the doctor who examines the patient during the study is also "blind" to this fact. If the tester knew that the patient had taken the placebo, the tester might unknowingly skew the examination as a result.[21] Double-blind

protocols are standard practice in such contexts not because we distrust the integrity of the medical and scientific professionals involved, but because we understand the risk of natural human psychological factors that can undermine objectivity. We control for such factors because there is much at stake.

Similarly, if a lineup administrator knows which member of the lineup is the suspect, she might unintentionally influence the identification through verbal or non-verbal cues. A cue can be a statement to the witness or even an administrator's posture or facial expression. Verbal and non-verbal cues are examples of suggestive procedures that can suggest to the witness where a suspect is in the lineup.

Verbal and non-verbal cues can also influence or inflate the certainty of the witness. Given that eyewitness confidence is weighed heavily in the legal system, and given that it has been shown to be highly malleable and particularly susceptible to feedback, it is important to design lineup procedures that eliminate the risk of over-inflating confidence through unintentional suggestion.

The "double-blind" rule applies the scientific method to lineups, and is rooted in a general strategy for ensuring the objectivity of data collection and interpretation.

SEQUENTIAL PRESENTATION

Relative judgment theory also serves as the basis for the sequential presentation recommendation. Traditionally, eyewitnesses are shown a lineup or photo array in which the lineup members are presented as a group. This type of presentation actually encourages an eyewitness to "comparison shop" or to judge the lineup members against each other through a process of elimination.

On the other hand, sequential presentation, first articulated by researchers in the 1980s, is a process where the witness is shown the lineup members one by one and asked to decide if the lineup member presented is the perpetrator. By forcing witnesses to consider the lineup members individually, sequential presentation favors a direct and independent assessment of whether each lineup member matches a witness's actual memory of the perpetrator.

Researchers have shown that the sequential presentation, if implemented in tandem with the double-blind procedure, results in fewer false identifications.[22] It is important to note that if the administrator is not "blind," however, the sequential procedure can actually produce higher rates of false identifications, as witnesses may be more susceptible to unintentional feedback from the administrator when considering one lineup member at a time.

While eyewitnesses have been shown to make fewer choices when viewing a sequential lineup, the research suggests that this is due, in part, to fewer guesses on the part of eyewitnesses with a weak memory of the culprit.[23] A comparison of the accurate and mistaken identifications also suggests that a sequential presentation yields a higher probability that a suspect, if identified using this procedure, is in fact the culprit.[24] In short, the sequential lineup creates a higher threshold for identification by reducing the influence of the tendency to make relative judgments. As a result, the evidentiary value of identifications gained through sequential lineups is much higher, at the cost of some identifications based on weaker witness memory or witness guesses.

Taking this research into the field has shown a generally positive effect. In a pilot project on the sequential procedures in Hennepin County, Minnesota, (Minneapolis) for example, eyewitnesses picked few fillers. Such a low rate of known errors confirmed the value of sequential procedures for officials in that jurisdiction.[25] In addition, New Jersey implemented sequential procedures statewide in 2000. A pilot project conducted by the Chicago Police Department in 2006, however, raised concerns that sequential double-blind lineups were less accurate than conventional methods.[26] Nonetheless, the Chicago study was criticized as having design problems that undermined the study's ability to yield reliable comparisons.[27] Researchers are currently pairing with other jurisdictions to add to the credible literature on the topic. While some questions have been raised about the value of sequential presentation, on balance, most experts believe that it has proven to be superior in both experimental research and in the field.

BENEFITS & COSTS

Investing in a fair and accurate criminal justice system

The benefits of improved eyewitness identification procedures are perhaps best conceived of in terms of the avoided costs. When an eyewitness mistakenly identifies the wrong individual, the costs to public safety are great. Scarce resources in the criminal justice system are misdirected toward investigating and perhaps even trying an innocent person, and not toward convicting and jailing criminals.

"The cost to society of inaccurate eyewitness identifications is twofold," notes psychologist Rod Lindsay of Queens University in Kingston, Ontario. "It's a double error. Not only are you convicting the innocent — or at least putting them through the process of having to get out of the situation — but the guilty are still out there doing the crimes."[28]

A pointed reminder of the costs of misidentification is the case of Clarence Harrison. Wrongfully convicted of a brutal rape in Decatur, Georgia, Clarence Harrison spent nearly 18 years in prison before DNA testing proved his innocence — and showed the eyewitness evidence in his case to be false. After the exoneration, the District Attorney relayed that while the victim was upset by the DNA results, "she is more upset that this means the person who raped her is yet to be identified."

When there are stronger identifications, the benefits to law enforcement and prosecutors, as well as to public safety, are increased, and we can be more confident that the right person is being prosecuted for the crime. In fact, with improved identification procedures, those in law enforcement can ensure that the quality of evidence they are collecting from eyewitnesses is higher than before. Prosecutors are also able to convey to jurors the steps taken to ensure accuracy, placing their evidence on a firm, scientific foundation. And when identifications are better, prosecutions are stronger, and convictions are more solid. By avoiding wrongful convictions, we also avoid the costs of needlessly and unjustly imprisoning an innocent person, as well as the costs of restitution and, in some cases, expensive civil judgments against local governments.

BENEFITS TO INNOCENT SUSPECTS

There can be no question that the conviction of the innocent is a profound injustice. By better protecting the innocent from wrongful conviction, we spare people the devastating ordeal of unjust incarceration that tears apart the families of innocent people and deprives them of their most fundamental liberties. To do justice to our respect for liberty, it is incumbent upon us to do all we can to enhance the accuracy of the criminal justice system.

"LEGAL SAFEGUARDS"

The U.S. Supreme Court has identified five criteria for evaluating the accuracy of eyewitness evidence — "opportunity of witness to view criminal at time of crime, witness' degree of attention, accuracy of witness' prior description of the criminal, level of certainty demonstrated by witness at the confrontation, and length of time between the crime and the confrontation" *(Neil v. Biggers, 1972)*. Unfortunately, although a witness's level of certainty or confidence in her identification is one of the most powerful factors judges and juries consider when assessing eyewitness accuracy, a witness's high level of confidence in an identification does not necessarily mean that the identification is more accurate. In fact, oftentimes the opposite is true.

A number of other procedural protections in place in the legal system to assist in protecting against inaccurate eyewitness evidence have also proven to be starkly inadequate. At last count, more than 75 percent of the nearly 200 wrongfully convicted individuals later exonerated by DNA evidence were convicted on the basis of one or more eyewitness identifications, all with the benefits of legal safeguards to protect against inaccurate identification testimony, such as motions to suppress, cross examination of eyewitnesses and the (limited) admissibility of expert testimony on eyewitness error. Thus, without improvement to the actual quality of the identification procedures themselves, the ability of the legal system to screen out unreliable eyewitness testimony is in grave doubt.

COSTS OF IMPROVED LINEUP PROCEDURES

Reforming eyewitness identification procedures would incur relatively nominal monetary costs or expenditure of departmental time and resources. For example, instructing an eyewitness prior to the lineup, which has been shown to dramatically increase protections for innocent suspects, requires very little training and can be read from a script — it is simply a matter of a change in process. While more careful documentation of identification procedures may seem burdensome, the use of audio or video recording devices can make preservation of the record much easier at nominal cost.

> "The costs of changing procedures are minimal when compared with the benefits. The costs are really a matter of some extra training for our officers. The benefits are stronger, more accurate eyewitness IDs that ultimately make it easier for police and prosecutors to do our jobs."
>
> **John Laux**
> Chief of Police, Bloomington, Minnesota

While some costs may be incurred from implementing a "double-blind" procedure in terms of personnel, alternatives to using an additional officer to administer the lineup can be implemented by using alternative presentation methods that achieve the same result. For example, computer programs that can generate a photo array, and present it to a witness in random order, are increasingly available. Other "low-tech" options include a "folder method," in which the lineup administrator places photos in folders that are shuffled and presented to a witness such that the administrator cannot see the photos while the witness is studying them.[29]

When weighed against the tremendous costs to the taxpayer in terms of lawsuits and compensation to the wrongfully convicted, as well as the very real costs in terms of human lives, the minimal procedural costs associated with these procedures are negligible. Ultimately, the benefits of implementation far outweigh the costs.

PROFILES OF INJUSTICE

Evidence of a broken criminal justice system

Calvin Johnson's Story

Wrongfully convicted at age 25, Calvin Johnson received a life sentence for the rape of a Georgia woman. Four different women identified him. Exonerated in 1999, he walked out of prison a 41-year old man. The true rapist has never been found.

On March 9, 1983, an African-American man entered the apartment of a 30-year old white woman through an unlocked door while she was sleeping in College Park, Georgia. The assailant tightened a belt around her neck until she passed out and then raped her. The victim told police that the attacker turned on the light and that she was able to get a good look at him. Two days earlier, a second woman in College Park had been raped in a remarkably similar manner. College Park straddles the county line between suburban Clayton County and Atlanta's Fulton County. The March 9 attack occurred in Clayton County, and the March 7 rape occurred in Fulton.

THE INVESTIGATION AND EYEWITNESSES

Authorities soon focused on 25-year-old Calvin C. Johnson, Jr., a college graduate recently released from prison for a 1981 burglary. He had readily confessed and pled guilty to the burglary of a College Park man's apartment, and served 20 months. While in jail on that charge, however, police came to suspect Johnson of a sexual assault that occurred the same night of the burglary.

While Johnson was in jail, one of the detectives who worked the burglary went to his cell with a

young white woman. He said they wanted to talk to him about other crimes in the neighborhood, but Johnson refused, telling him he didn't know about any other crimes.

Shortly thereafter, Johnson was charged with the 1981 rape—based on the young woman's identification of *his voice* during the brief jailhouse exchange with the detective. All the rape-related charges were dismissed, however, due to what the prosecutor later characterized as problems with the investigation.

Johnson's lawyer later learned that the victim, who had been forced to have oral sex during the attack, stated several times that her assailant was uncircumcised, a fact that clearly ruled out Johnson. When the College Park rapes occurred two years later, however, suspicions lingered, and Johnson quickly became the target of the investigation.

An all-white jury took 45 minutes to find Johnson guilty. On the day of his conviction, he told the judge, "As God is my witness, you've got the wrong man."

The same detective from the 1981 cases presented photo arrays, which included Johnson's picture, to both rape victims. The Clayton County victim picked Johnson, but the Fulton County victim picked out another man.

The investigators also showed the photo line-up to two other women who experienced incidents that may have been related to the rapes, as the incidents occurred in the same vicinity and around the same time period. One witness picked Johnson's photo as the man she discovered in her living room when she came out of the shower. The other witness identified his photo as the man who tried to enter her apartment.

The photo of Johnson used in the line-up was from his 1981 arrest, showing him clean-shaven. The perpetrator had been described as clean-shaven, or perhaps having some stubble. At the time of the attacks, however, Johnson had a full beard and moustache — a fact his boss and other witnesses corroborated.

Based on the photo line-ups, police arrested Johnson for rape on March 14, 1983. A search of his home turned up no physical evidence linking him to the crime, but prosecutors later claimed that a jacket of his was similar to one described by one of the victims.

Two days after the arrest, detectives arranged a live line-up that included Johnson. This time, with Johnson's lawyer present, the Clayton rape victim did not pick Johnson, but identified a "filler" instead. The two other women who had picked out his photo also failed to pick him out of the live line-up (one identified a filler and the other picked no one). The Fulton rape victim, however, did identify Johnson at the live line-up, though she had failed to identify him from the photo array.

One of the few pieces of physical evidence in the case was a pubic hair found on the Clayton rape victim's sheets. After comparing it with numerous hairs plucked from all over Johnson's body, the state's own forensic experts determined that the hair did not match Johnson. Prosecutors ordered another set of hairs collected from Johnson, but the results were the same—no match.

THE TRIALS

Johnson went to trial for the Clayton County rape on November 2, 1983. Both rape victims identified him in court as their assailant, despite their inconsistent line-up performance.

The two other women who identified Johnson's photo but failed to pick him out of the live line-up also identified him in court as the man from their encounters. As the Fulton rape victim left the witness stand, she lunged at Johnson and cursed him in front of the jury.

Johnson's lawyer presented the testimony of four witnesses who supported his alibi. In addition to the inconsistencies in the photo and live line-up identifications, the defense highlighted the discrepancy between descriptions of a clean-shaven assailant and evidence that proved Johnson had a full beard at the time of the crimes.

The defense also called a state crime lab expert, who testified that the pubic hair found on the victim's bed could not have been Johnson's. The prosecutor argued that the hair must have gotten on the sheet at a public laundry.

After a three-day trial, an all-white jury took 45 minutes to find Johnson guilty. On the day of his

conviction, he told the judge, "As God is my witness, you've got the wrong man." Johnson received a sentence of life plus 15 years.

The following year, Johnson was brought to trial for the rape of the woman in Fulton County. This time, after hearing the same evidence from the same witnesses (plus his conviction for the Clayton County rape), a racially mixed jury unanimously acquitted him. Authorities had virtually no doubt that the same assailant committed both rapes, but the Fulton County acquittal had no effect on Johnson's life sentence.

During those 16 years, Johnson had several opportunities for parole, but the board rejected parole each time because he refused to formally admit guilt and participate in a sex offender program.

THE EXONERATION

With the help of James Bonner, an attorney at the Prisoner Legal Counseling Project at the University of Georgia Law School, Johnson located the evidence from his trial, including a semen sample, though no state law at the time required that the biological evidence be preserved.

According to the prosecutor, when the trial judge retired, a court clerk threw out many old evidence boxes, but someone had pulled Johnson's evidence out of the trash bin and placed it back in storage. In 1994, Johnson wrote to the Innocence Project, and they agreed to take his case.

The Innocence Project arranged to have the remaining evidence sent to Dr. Edward Blake, the nation's foremost forensic DNA expert. Dr. Blake reported that the DNA testing positively excluded Johnson as the source of the semen collected in the rape kit.

Testing of the pubic hair recovered from the victim's sheet also excluded Johnson as the source of the hair, showing a match with the DNA from the rape kit.

On June 15, 1999, the state vacated Johnson's conviction, and Clayton County District Attorney Robert Keller, who had prosecuted the case 16 years earlier, agreed to drop all charges. The true perpetrator has never been found.

In 2000, the Georgia legislature awarded Johnson $500,000 compensation for his wrongful imprisonment.

John Willis' Story

Misidentified by 11 different eyewitnesses for a pattern of crimes involving robbery and rape, John Willis spent over eight years in prison before missing forensic evidence was uncovered that conclusively exonerated him.

Between December 1989 and September 1990, a man the media dubbed the "beauty shop rapist" terrorized the Chatham neighborhood on Chicago's south side.

In the first of a string of remarkably similar and unusual crimes, a man entered a beauty salon brandishing a pistol. He ordered the women in the shop to a back room, forced the women to undress, and robbed them of money and jewelry.

Four crimes of this pattern occurred in beauty shops, and in two of these incidents, on May 2 and September 7, 1990, the man sexually assaulted a female victim. A fifth crime following the pattern of the beauty shop incidents occurred in a store.

THE INVESTIGATION AND EYEWITNESSES

With the help of multiple victim eyewitnesses, police produced and widely distributed a composite sketch.

On September 14, 1990, police arrested John Willis based on an anonymous tip. Though Willis, then 42, had a job cleaning up at a tavern, he had a criminal record of theft and was a self-described "career tire thief and gambler." Willis had no record of violent crime, however, and consistently and emphatically maintained his innocence.

Both of the victims of the sexual assaults identified Willis in photographic lineups as their attacker, as did most of the other witnesses from the salons. A total of 11 eyewitnesses identified Willis as the perpetrator.

THE TRIALS

In 1992, Willis was tried separately for the two crimes that included rapes. In the first case, while no fingerprints or other physical evidence tied Willis to the crime, physical evidence had been col-

lected from the crime scene, including the perpetrator's semen.

The state's forensic analyst from the Chicago Crime Lab, Pamela Fish, testified that her analysis of semen from the crime scene was "inconclusive" — the tests could neither exclude Willis, nor identify him as the source of the semen. In the absence of conclusive forensic testimony, the jury relied entirely on multiple eyewitnesses who had picked Willis out of a lineup, including the rape victim. On February 13, 1992, a jury found Willis guilty, and he was sentenced to 45 years in prison.

While Willis was being held without bond awaiting trial, the string of rapes and robberies continued in Chatham, all following the same unusual pattern.

In April 1992, Chicago Police arrested Dennis McGruder for a string of five rapes and robberies that occurred between November 11, 1991 and March 21, 1992. McGruder pleaded guilty to five crimes that followed the identical pattern of the crimes for which Willis was arrested, including the rape for which he was convicted. One occurred in a beauty salon and four others in taverns.

Both of the victims of the sexual assaults identified Willis in photographic lineups as their attacker, as did most of the other witnesses from the salons. A total of 11 eyewitnesses identified Willis as the perpetrator.

In November 1993, Willis went to trial for the second rape, after McGruder was jailed for the latter five crimes. A jury again convicted Willis on the basis of identification testimony of the rape victim and other eyewitnesses, along with evidence of the previous rape conviction. Though McGruder had been charged with a string of remarkably similar crimes in the same neighborhood since Willis' arrest, Willis' jury never heard about McGruder.

In an effort to bolster the defense of mistaken identity, Willis' lawyers tried to introduce McGruder's photo into evidence (Willis and McGruder bear a substantial resemblance in their facial features, though Willis is several inches taller than McGruder and noticeably heavier). The prosecution successfully argued to the judge that the McGruder crimes were irrelevant to the case at hand.

At one point during this second trial, Willis became so upset that he tried to blurt out to the jury that the police had someone else in custody for these crimes, waiving a newspaper clipping about the McGruder case in the air. The judge quickly silenced him.

At his sentencing hearing, eyewitnesses from the remaining three crimes with which Willis was charged testified against him. After he was sentenced to an additional 100 years, prosecutors dropped the remaining cases.

In 1997, Cook County Public Defender Greg O'Reilly, the office's leading forensic expert, was brought onto the case to help pursue DNA testing under a new post-conviction DNA statute. When Willis petitioned the court for testing, Assistant State's Attorney Earl Grinbarg, who prosecuted the Willis cases, declared, "John Willis absolutely, positively is the rapist." Nonetheless, Judge Thomas Fitzgerald ordered DNA testing. When O'Reilly sought access to the evidence, he was told that it was all unaccounted for.

An investigation established that Grinbarg had checked the evidence out of the Chicago police evidence room and had not returned the evidence that was not presented as an exhibit at trial, including the biological evidence. The missing evidence—some twenty pieces from three different locations—included swabs taken from the rape victims and a semen-stained toilet paper wrapper, any of which could have been tested for DNA.

Frustrated by the disappearance of the key physical evidence that would allow DNA testing, O'Reilly sought Fish's lab notes. He had been skeptical of her court testimony about inconclusive results and wondered why further testing had not been conducted.

Fish's notes contained evidence of Willis' innocence: they indicated that the blood type of the semen donor of the crime scene evidence was type A, different from Willis' type B. Willis could not have been the source of the crime scene semen.

THE EXONERATION

In September 1998, Willis' lawyers were preparing to appeal based on suppression of the

blood-type exclusion and official misconduct. For 6 months, no biological evidence could be located. Nonetheless, a microscopic slide was eventually discovered in the prosecutor's manila folder among the Willis case files. The slide contained a tiny amount of semen from the first rape for which Willis was convicted.

DNA testing excluded John Willis—and identified Dennis McGruder as the true perpetrator. McGruder was by that time serving a 40 year sentence for the five armed robberies and sexual assaults that occurred after Willis' arrest.

Willis was released on February 24, 1999. He had lost eight and a half years in prison.

At a March 15, 1999 hearing, prosecutors formally dropped all charges against Willis. Thomas Fitzgerald, presiding judge of the criminal division of the Cook County Circuit Court, told Willis, "I wish to God it hadn't happened to you. I hope you can get back on track. And I hope you can live a life that gives you some personal satisfaction and happiness."

The City of Chicago and Cook County settled Willis' civil suit out of court for $2.5 million. He also received $100,000 from the State of Illinois.

Larry Fuller's Story

Larry Fuller spent over 18 years in prison, after being wrongfully convicted of aggravated rape as the result of an erroneous identification — despite the fact that he had a full beard at the time of the identification, which stood in stark contrast to the witness's memory of the perpetrator. Fuller was excluded as the rapist through advanced DNA testing methods, and Governor Rick Perry granted him a full pardon in January 2007.

On the morning of April 26, 1981, a 37-year-old woman was attacked in her apartment in Dallas, Texas by a black man wielding a knife. He cut her several times, raped her, and then ran away. The victim was taken to the hospital, and a rape kit was collected. The attack occurred 45 minutes before sunrise, and the victim testified that it was dark in the room, although she was able to ascertain that the attacker was a black male "somewhere in his twenties" and that she had never seen him before. She also reported that she did not remember any facial hair on the attacker.

THE INVESTIGATION AND EYEWITNESS

At the time of the April rape, Fuller was a decorated Vietnam War veteran raising two young children with his girlfriend while pursuing an education. While he had served three years for robbery after his return from Vietnam, Fuller had no record of sex crimes.

Nonetheless, investigators had obtained Fuller's photograph while investigating an incident that occurred three months earlier. In this previous incident, on the morning of January 19, 1981, another woman had been similarly raped, just a few buildings down from the victim of the April rape.

Fuller was stopped by police after the earlier attack because he matched the victim's description, but when his photograph was placed in a photo array, the victim positively stated that the photo array did not contain her attacker. Another man, Larry James Johnson, later confessed to the January crime and was arrested and prosecuted.

Two days after the April attack, police included Larry Fuller's picture in a photo array presented to the victim of the April attack. The victim failed to conclusively identify Fuller as her attacker, however, telling investigators Fuller "looks a lot like the guy" but she could not identify him. The investigating officer then issued a report recommending that the investigation be suspended because the victim "was unsure of the suspect at this time."

Five days after the first photo lineup, on May 3, 1981, police showed the victim a second photo array, this time with a more recent picture of Fuller, taken the same day. *Fuller's was the only photograph included in both photo arrays.*

This time, the victim positively identified Fuller, though she was confused by the fact that Fuller had a heavy and distinct beard. She had stated previously that she did not remember any facial hair on the attacker.

The victim later stated, "I looked at it, and I knew that was the face; but I couldn't figure out why there was facial hair because I didn't remember the facial hair . . . I looked at the picture again and I put my finger over the part, the hair, and then I could identify him."

THE TRIAL

At trial, the prosecution relied on the eyewitness identification, stating that the victim "never wavered" in her identification, and the victim testified that she was certain Fuller was her attacker.

In addition, the prosecution introduced complex expert testimony on serological testing of semen from the rape kit collected from the victim. Though technology at the time did not allow for advanced DNA testing, the Southwestern Institute of Forensic Sciences did perform more basic tests on the semen evidence. A forensic serologist testified that Fuller could have been the source of the semen based on this testing, but it was inconclusive. The prosecution incorrectly argued that the semen evidence was consistent with Fuller's to the exclusion of 80 percent of the population — a major exaggeration of the evidentiary value of the testing.

The defense called Fuller's girlfriend, who testified Fuller was at their house at the time of the attack. Despite his alibi, on August 25, 1981, Fuller was convicted of aggravated rape after only 35 minutes of jury deliberation. He received a sentence of 50 years in prison on September 10, 1981.

THE EXONERATION

Fuller wrote the Innocence Project in the mid 1990s, and they agreed to help him pursue more advanced DNA testing of the physical evidence. Meanwhile, in 1999, after having served 18 years of his sentence, Fuller was released on parole, but was sent back to prison in 2005 for a parole violation.

In November 2000, the Innocence Project located the biological evidence at Southwestern Institute of Forensic Sciences and requested that the Dallas County District Attorney's Office consent to post-conviction DNA testing. In March 2001, the Office refused, noting that the Texas legislature was considering a new DNA statute, and they wanted to wait for the statutory criteria.

In August 2001, the Innocence Project again requested testing under Texas' new post-conviction DNA statute, but the state opposed testing. However, after a hearing in judicial court, the judge ordered that DNA testing be conducted by the Department of Public Safety (DPS).

Unfortunately, DPS was unable to obtain the profile of the male DNA on the vaginal slide, and in November 2004, the Innocence Project renewed its request to the District Attorney's Office for more-developed DNA testing using another method. On April 14, 2006, the District Attorney's Office agreed, and the Court ordered Y-STR testing at Orchid Cellmark, a private laboratory.

Having waited a quarter of a century, Fuller received unassailable proof of his innocence — Y-STR testing conclusively excluded him as the source of the semen.

At a hearing on October 31, 2006 in the 203rd Judicial District Court in Dallas, Judge Lana McDaniel released Fuller. Although not involved in the original case, the judge said she felt sick to her stomach over the time he spent in prison for a crime he did not commit.

On January 25, 2007, Fuller received a full pardon from Texas Governor Rick Perry. He was the tenth person from Dallas County to be exonerated by DNA evidence in the last five years.

SNAPSHOTS OF SUCCESS

If it works in these states and jurisdictions, why not the rest of the country?

NEW JERSEY

The first state in the nation to officially adopt the National Institute of Justice recommendations issued in 1999 *(Eyewitness Evidence: A Guide for Law Enforcement)*, New Jersey provides an example of the successful implementation of reform protocols and their pragmatic effectiveness. While most law enforcement agencies or departments are controlled locally, the Attorney General of New Jersey was able to mandate changes in procedure across the entire state due to the unique supervisory authority of the Attorney General in that state. Since April 2001, New Jersey has conducted double-blind, sequential lineups. In addition, police officers issue cautionary instructions, ensure that lineups are constructed effectively with an adequate number of appropriate

fillers, and document the identification procedures, including the witness's statement of certainty.

On July 31, 2006, the New Jersey Supreme Court, noting the importance of a complete record of an identification procedure in ensuring the reliability of eyewitness evidence presented to a jury, made complete documentation of the identification procedure a condition of admissibility of out-of-court identifications.[30] According to the opinion, "[G]iven the importance of ensuring the accuracy and integrity of out-of-court identifications, we will exercise our rulemaking authority to require . . . that the police record, to the extent feasible, the dialogue between witnesses and police during an identification procedure." The decision was unanimous.

NORTH CAROLINA

In November 2002, Justice I. Beverly Lake created the North Carolina Actual Innocence Commission to study and recommend potential strategies for lessening the incidence of wrongful convictions. The Commission issued recommendations for eyewitness identification in October 2003 and endorsed changes in procedures such as the delivery of cautionary instructions, documentation of a witness's confidence in the identification without any feedback given by the administrator, effective use of fillers (a minimum of eight photos in photo identification procedures and a minimum of six individuals in live identification procedures), and sequential double-blind presentation.[31]

While the Commission has no official authority over law enforcement agencies in the state, the Commission members include the North Carolina attorney general, district attorneys, police chiefs, Supreme Court Justices, and others. A number of North Carolina's law enforcement agencies are increasingly implementing the Commission's eyewitness recommendations to date.

WISCONSIN

After studying the problem of mistaken identifications, the Training and Standards Bureau of the Wisconsin Department of Justice, working with the University of Wisconsin Law School's Frank J. Remington Center, developed a comprehensive set of eyewitness identification guidelines for law enforcement, which were adopted and distributed to law enforcement throughout the state in March 2005.[32] The guidelines — which include cautionary instructions to eyewitnesses, assessments of confidence immediately after identifications, proper selection of fillers, and double-blind, sequential presentation of lineups — represent a model for implementation of the "best practices" in eyewitness identification.

Legislation passed in November 2005 requires each law enforcement agency in the state to adopt policies or guidelines on eyewitness identification procedures. Though the model policy developed by the Attorney General is not mandatory, the Wisconsin Department of Justice has developed a training program to educate law enforcement across the state on the need for changes in procedure to lessen the risk of misidentification. Some departments have adopted the model policy, and more are likely to follow. To date, the program has trained over 800 investigators on the new procedures. Training on these procedures has also been incorporated into the curriculum for new investigators.[33]

MINNESOTA

Beginning in 2003, Hennepin County Attorney Amy Klobuchar spearheaded an effort to implement a sequential, double-blind pilot program in four police departments in the state, including Minneapolis. A follow-up study analyzing the pilot found that the pilot project was relatively easy to implement, with projects up and running in the smaller counties in two weeks, and in the larger counties in under a month. The reforms incurred minimal costs, no perceived drop in suspect identifications, and a reduction in filler identifications.[34] The study showed increased protections against misidentification, practical benefits for investigators, and a higher quality of eyewitness evidence. As a result of the pilot, the Hennepin County Attorney urged adoption of the reform protocol county-wide.

OTHER STATES

In 2003, the Illinois legislature passed legislation mandating cautionary instructions, as well as documentation and lineup composition requirements. In addition, a number of individual jurisdictions throughout the country have adopted reforms at the local level. These jurisdictions include the Boston Police Department and other departments in Suffolk County (in coordination with the Suffolk County District Attorney), Northampton, Massachusetts, Virginia Beach, Virginia and Santa Clara, California, among others.[35]

VOICES OF SUPPORT

"I did see many flaws in witnesses who felt like they were trying to be people pleasers, felt they had to select someone. Now people are actually comparing the one photo in front of them to what's in their mind, not going through process of elimination."[36]

Joy Rikala
Chief of Police
Minnetonka Police Department
Governing Magazine, May 2006

"It is axiomatic that eyewitness identification evidence is often crucial in identifying perpetrators and exonerating the innocent. However, recent cases, in which DNA evidence has been utilized to exonerate individuals convicted almost exclusively on the basis of eyewitness identifications, demonstrate that this evidence is not fool-proof . . . While it is clear that current eyewitness identification procedures fully comport with federal and state constitutional requirements, the adoption of these Guidelines will enhance the accuracy and reliability of eyewitness identifications and will strengthen prosecutions in cases that rely heavily, or solely, on eyewitness evidence."[37]

John J. Farmer, Jr.
New Jersey Attorney General
Memorandum, April 18, 2001

"Every time you see something coming along that makes your job a little harder, you kind of cringe a little. It's going to take extra time and personnel, but if it's going to make a case a little more solid or if it's going to eliminate a bad identification or a situation where an officer may try to influence an identification, then it's beneficial."[38]

John E. Miliano
Chief of Police, Linden, New Jersey
New York Times, July 21, 2001

"If you don't do this, you risk having good convictions and good identifications thrown out."[39]

David Angel
Deputy District Attorney
Santa Clara County, California
Pittsburgh Post-Gazette, May 9, 2005

"We hadn't changed the way we do eyewitness procedures in decades . . . DNA [exonerations] obviously have shown us that we have to change."[40]

Ken Patenaude
Detective Lieutenant
Northampton, MA Police Department
Pittsburgh Post-Gazette, May 9, 2005

"The psychology behind these procedures is to have witnesses focus on their actual memory of the incident and the suspect. We want to eliminate any kind of extraneous influence or bias in the identification process."[41]

Robert Olson
Chief of Police, Minneapolis, Minnesota
November 3, 2003

"I will never forget the day I learned about the DNA results. I was standing in my kitchen when the detective and the district attorney visited. They were good and decent people who were trying to do their jobs — as I had done mine, as anyone would try to do the right thing. They told me: "Ronald Cotton didn't rape you. It was Bobby Poole." The man I was so sure I had never seen in my life was the man who was inches from my throat, who raped me, who hurt me, who took my spirit away, who robbed me of my soul. And the man I had identified so emphatically on so many occasions was absolutely innocent . . . If anything good can come out of what Ronald Cotton suffered because of my limitations as a human being, let it be an awareness of the fact that eyewitnesses can and do make mistakes."[42]

Jennifer Thompson
Victim/Activist for Eyewitness Identification Reform
New York Times, June 18, 2000

"God forbid that we would put an innocent person in jail because of a less than confident eyewitness. And then we would be allowing a guilty person to go out and commit more crimes."[43]

William Mullen
Chief Deputy Sheriff of Allegheny County and
Former Assistant Chief of Police, Pittsburgh, PA
Associated Press, May 9, 2005

QUESTIONS & ANSWERS

Why change our existing protocol, which has worked for years?

Given the firm scientific basis for recommending the protocol, it is worth comparing these justifications with the current standard protocol. The standard way of conducting lineups today is not rooted in careful science. Rather, it was developed as an *ad hoc* procedure created and embraced in the law enforcement community because of its intuitive plausibility. Nothing more recommends or justifies it than tradition.

Nonetheless, eyewitness memory science has established that many factors related to eyewitness memory that seem intuitive and obvious are not necessarily true. For example, a witness's confidence in an identification is not a reliable predictor of accuracy. This is counter-intuitive, but the lack of a close correlation has been very well documented. Traditional methods need to be updated and procedures modernized to catch up with our modern understanding of eyewitness memory issues.

While no one can deny that many guilty people have been convicted based on evidence obtained with the traditional protocol, we have witnessed far too many innocent people convicted based on incorrect eyewitness testimony and later exonerated by DNA testing. The result — investigations led off course and prematurely ended, allowing predators to go uninvestigated and unpunished. It is incumbent upon us to live up to our commitment to public safety and base our procedures on the best science, not tradition.

Why haven't we heard of the research or improved procedures before?

It is not surprising that many people in law enforcement are unfamiliar with this scientific research. Police officers typically do not read technical peer reviewed academic journals (who could blame them?) or attend conferences about experimental psychology. Increasingly, however, opportunities have been created to foster a dialog, and many law enforcement agencies have modernized procedures based on the science. Only in recent years, upon the dawning of the age of DNA, have people begun to appreciate the problem of mistaken eyewitness identification, leading people in all aspects of the criminal justice system to look more carefully at ways of enhancing accuracy and putting higher quality evidence into the courtroom.

Isn't the blind administration component an insult to the integrity and professionalism of detectives?

Requiring a neutral administrator is NOT about challenging the integrity or professionalism of law enforcement personnel. Structuring procedures to generate the best quality of evidence is what professionalism demands. The issues addressed here have nothing to do with suggestions of misconduct. Rather, they address certain realities about normal human psychology and the possibility of the *inadvertent* cuing of a witness. All manner of verbal and nonverbal human behaviors may have the *unintended* effect of influencing a witness. Using a neutral administrator eliminates this possibility and ensures the best quality of evidence.

Just as in double-blind clinical drug trials, we are not assuming doctors and medical researchers are nefarious and dishonest; requiring neutral administrators is simply good practice — especially with such important matters as liberty and public safety on the line.

The courts don't seem to have any problems with the standard procedures, so why change?

The courts have increasingly begun to recognize that many of our traditional assumptions about eyewitness memory are wrong (such as the link between certainty and accuracy). Exonerations have made clear the need for change (and the terrible human costs of persisting with traditional practices), and developments in eyewitness memory science have identified ways of enhancing accuracy through more carefully designed procedures. Because the state of the science is now very solid, courts have often been more willing to allow challenges to existing protocols. Rather than picking apart in-court identifications that follow from flawed procedures, it is in the best interest of all parties to implement best practices that guarantee the best quality of evidence at the outset, on the front end of the process. Some courts have already ordered new procedures on that basis.

Why should we care about experiments with "staged crimes" and "mock witnesses"?

Experimental psychologists carefully design their experiments to isolate certain phenomena so that they may be better observed and understood in ways that

'real world' observation does not allow. These methods are the only way to fully control the different variables and track their changes under different conditions. In actual cases, for example, we cannot otherwise be completely certain whether an identified suspect is, in fact, the perpetrator the way we can in experiments.

While the experiments have created a solid basis for the various elements of the protocol, we know from real world applications (statewide in New Jersey, as well as in many other individual jurisdictions) that the system is practical and pragmatically workable. There is already a track record of real world success.

Is the protocol practically feasible, especially for some smaller departments?

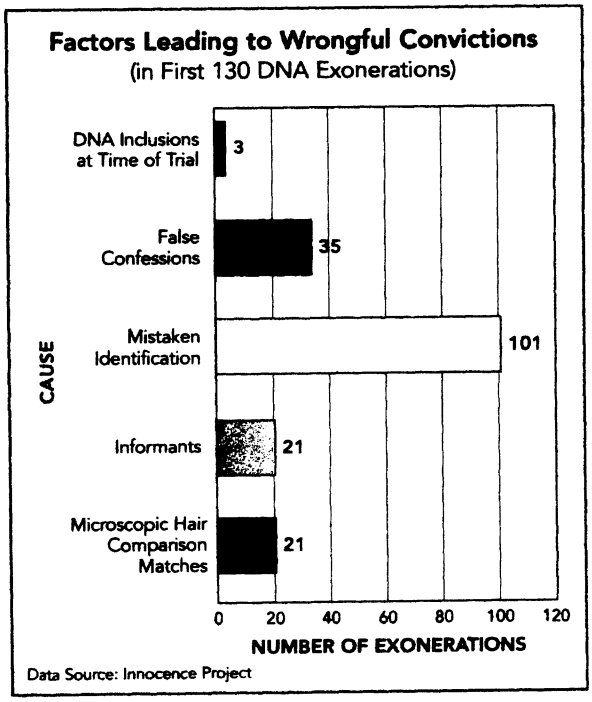
Experience in other jurisdictions across the country shows that the protocol is practical and workable. The protocol is sensitive to the potential problem of finding a neutral administrator, and provides for alternatives that accomplish the same goals.

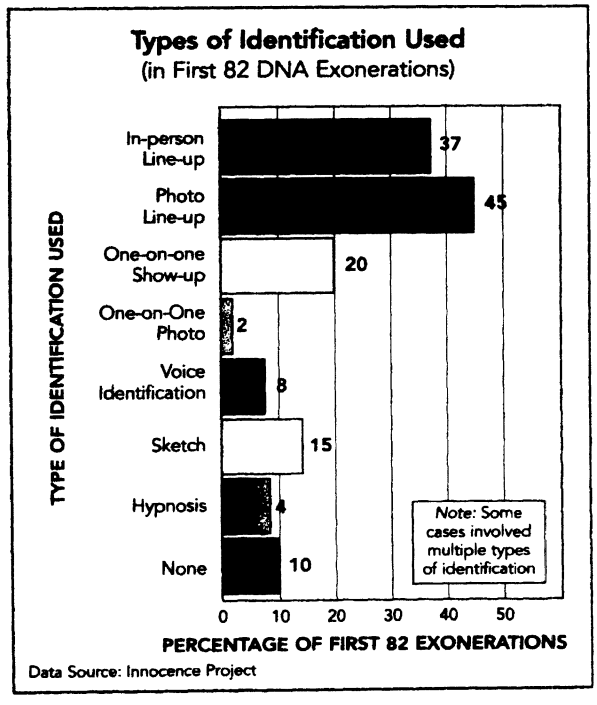
STATISTICS

The Innocence Project found that mistaken eyewitness identifications were the leading cause of the first 130 DNA exonerations, accounting for 101 of the total. A subsequent study by the Innocence Project found that over 75 percent of the now nearly 200 post-conviction DNA exonerations in the U.S. involve mistaken eyewitness identification testimony, making it the leading cause of these wrongful convictions.

In addition, the Center on Wrongful Convictions at Northwestern University School of Law also studied the cases of 86 defendants who had been sentenced to death but legally exonerated based on strong claims of actual innocence, finding that eyewitness testimony played a role in the convictions of 54 percent of the death-sentenced defendants. Eyewitness testimony was the only evidence used against 38 percent of the defendants.

The Innocence Project also found that photo lineups were the most oft-used identification method in the first 82 DNA exonerations. Investigators used a photo lineup in 45 percent of the cases.





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A MODEL POLICY

AN ACT CONCERNING EYEWITNESS IDENTIFICATION PROCEDURES

WHEREAS the goal of a police investigation is to accurately identify and apprehend the true perpetrators of crimes; and

WHEREAS eyewitness error is the leading cause of mistaken convictions; and

WHEREAS cases of mistaken conviction in [insert jurisdiction] owing to eyewitness misidentification have resulted in the actual perpetrators remaining free to commit more crimes; and

WHEREAS scientific studies of eyewitness memory have demonstrated that eyewitness evidence is, like trace physical evidence, susceptible to contamination if not handled properly; and

WHEREAS well-intentioned witnesses and authorities acting in good faith may sometimes inadvertently undermine the accuracy of an identification procedure unless appropriate safeguards are in place; and

WHEREAS extensive scientific research has shown that modified methods of conducting identification procedures greatly enhance accuracy;

We hereby enact the following

EYEWITNESS ACCURACY ENHANCEMENT ACT:

Section 1: Definitions. For purposes of this section the following definitions apply:

1) Photo Lineup: a selected group of photographs of persons presented to an eyewitness to a crime, containing a single suspect and several fillers, for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.
2) Live Lineup: A selected group of persons presented to an eyewitness to a crime containing a suspect and several fillers for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.
3) Suspect: A person under investigation for participation in a crime.
4) Filler: A person, not a suspect in the crime under investigation, not known to the witness, who is made part of a live lineup; or a photograph of a person, not a suspect in the crime under investigation, not known to the witness, made part of a photo lineup and presented to a witness.
5) Neutral Blind Administrator: A person who conducts photo or live lineup procedures while unaware of which person in the lineup is the suspect and which are fillers.

Section 2: Development and Dissemination of Eyewitness Identification Protocol. Prior to [insert date] the [insert jurisdiction] Attorney General shall consult with law enforcement and scientific experts in eyewitness memory to develop, adopt, and disseminate to all law enforcement jurisdictions in the state comprehensive, written policies and procedures and associated training materials for [insert jurisdiction] law enforcement agencies regarding photo and live lineup eyewitness identification procedures that implement the requirements set forth in section 3 of this act.

Section 3: Requirements for Photo and Live Line-up Identification Procedures.
For any offense alleged to have been committed on or after [insert date], all photo and live lineup identification procedures conducted by law enforcement officers shall be administered pursuant to the procedures developed by the Attorney General described in section 2 of this act and consistent with the requirements in this section.

A. Witness Instructions. Prior to presenting a live lineup or photo array identification procedure, the lineup administrator shall instruct the witness that:

1) The procedure is intended to identify guilty parties as well as to clear innocent suspects from suspicion;
2) The witness should not guess or conclude that the perpetrator is among the persons in the lineup;
3) The witness should not feel compelled to make an identification because the perpetrator may or may not be among those shown;
4) The person administering the lineup may not be aware of which person in the lineup is the suspect;
5) Individuals depicted in lineup photos may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change;
6) The police will continue to investigate the incident whether or not the witness identifies someone.

B. Documentation of Identification Procedures.

1) All photo and live lineup identification procedures conducted in connection with a criminal investigation shall be documented, regardless of whether an identification is made, made a part of the case record, and provided to the prosecuting authority in the event any prosecution related to the crime being investigated occurs. The documentation shall include:
    a. The time, date, location and identities of all persons present;
    b. A form listing the instructions enumerated in section A. of this act signed by the witness to confirm understanding of the instructions prior to administration of the identification procedure;
    c. A photograph of any live lineup as presented to a witness; or all photographs used in any photo lineup preserved in their original condition;
    d. The order of presentation of photographs or individuals.
2) All comments and exchanges during an identification procedure shall be electronically recorded with audio or audio/video recording equipment whenever possible. When it is not feasible to electronically record the identification procedure, comments and exchanges among persons present during an identification procedure shall be documented in writing, and an explanation of why electronic recording was not feasible shall be included in the record. The documentation, whether electronic or written, shall include all witness comments, using the witness's own words, regarding the persons or photos in the lineup and all questions and commentary by the lineup administrator and any other persons present during the identification procedure.
3) If the witness makes an identification as a result of a photo or live lineup, the lineup administrator shall immediately ask the witness to state in his or her own words how confident he or she is that

the person identified is the perpetrator, and make the witness's words part of the record prior to any commentary or feedback from the lineup administrator or any other persons present.

4) If no electronic recording of the identification procedure is made, the witness shall review and sign the written record of the identification procedure, including all comments regarding the persons or photos presented, and any statements regarding an identification and degree of certainty, prior to any feedback or communication of information from the administrator or others involved in the investigation regarding the identification procedure.

C. General requirements for composition and conduct of lineup identification procedures

1) During the identification procedure, the administrator shall refrain from any commentary or feedback to the witness regarding particular persons or photographs in a lineup until after the procedure is concluded and the witness certifies the record of the procedure.
2) At least five fillers shall be included in a photo lineup, in addition to the suspect, and at least four fillers shall be included in a live lineup, in addition to the suspect.
3) Only one member of a photo or live lineup shall be a suspect, and the remainder shall be fillers who are not suspects.
4) Fillers shall be selected who generally fit the witness's description of the perpetrator. When there is a limited or inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
5) Lineup administrators shall create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature such as scars or tattoos used to describe the perpetrator by artificially adding or concealing that feature in filler photographs.
6) In photo line-ups, the suspect's photo should resemble his or her appearance at the time of the offense and not unduly stand out.
7) If the eyewitness has previously viewed a photo lineup or live lineup in connection with the investigation of another person suspected of involvement in the offense, the fillers in the lineup in which the suspected perpetrator participates shall be different from the fillers used in any prior lineups.
8) Law enforcement shall seek identification of any particular suspect through photo or live lineup only once from any given witness.
9) In a photo lineup, no writings or information concerning any previous arrest, indictment, or conviction of the suspected perpetrator shall be visible or made known to the eyewitness.
10) The position of the suspect in a photo or live lineup should be changed for each new witness to view the photo lineup.
11) In a live lineup, any identifying actions, such as speech, gestures, or other movements, shall be performed by all lineup participants.
12) In a live lineup, witnesses shall not be exposed to the members of the lineup before the procedure begins.

D. Neutral Blind Administration of Photo and Live Line-ups

1) Whenever possible, the administrator of photo or live lineup identification procedures shall be someone who is not aware of which member of the lineup is the suspect in the case and which

are fillers, and no person familiar with the identity of the suspect shall be present during the identification procedure.

2) When it is not feasible to have the procedure administered by someone unaware of which person is the suspect, that reason shall be documented, and a photo lineup procedure may be conducted using an alternative method specified and approved by the Attorney General. Any alternative procedure shall be structured to achieve neutral blind administration and prevent the administrator from viewing the lineup simultaneously with the witness or knowing the order of photographs as presented to the witness during the identification procedure. Alternative methods may include the following:
    i. automated computer programs approved by the Attorney General for such use that can automatically administer the lineup identification procedure directly to a witness, and during which the administrator cannot see which photo the witness is viewing until after the procedure is completed; or, alternatively,
    ii. a procedure approved by the Attorney General in which photographs are placed in folders, randomly numbered and shuffled, and then presented to a witness such that the administrator cannot see or determine the order of photograph being presented to the witness until after the procedure is completed; or, alternatively,
    iii. other such procedures as specified by the Attorney General which achieve neutral blind administration.

Note: Due to a lack of comprehensive data from pilot studies, the above model does not include a provision regarding sequential procedure. Nonetheless, researchers are currently pairing with other jurisdictions to add to the credible literature on the topic. While some questions have been raised about the value of sequential presentation, on balance most experts believe that it has proven to be superior in both experimental research and in the field. Thus, jurisdictions may also want to consider the addition of the sequential procedure, if and only if, neutral-blind administration is employed. In that event, the following provision may be inserted in the above model:

E. Sequential Procedure.

1) Live line-up and photo array identification procedures shall be presented to witnesses using a sequential method, in which a witness is shown photographs or live lineup participants one at a time, and not simultaneously. The witness shall be asked to state for each person whether the individual shown is the perpetrator, prior to viewing the next lineup participant.
2) The administrator shall not offer any comment or feedback to the witness regarding the witness's responses.
3) If there are multiple eyewitnesses, witnesses shall be presented with the identification procedure separately, and the suspect shall be placed in a different position in the lineup for each eyewitness.
4) Under no circumstances shall a sequential presentation be used unless the procedure complies fully with neutral blind administration specified in section D.

LITERATURE

SUGGESTED READINGS

The following materials are essential reading for individuals interested in improving eyewitness identification procedures.

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The following listing includes some of the key source material used in developing the content of this policy review. While by no means an exhaustive list of the sources consulted, it is intended as a convenience for those wishing to engage in further study of the topic of improved eyewitness identification procedures. Many of the entries contain hyperlinks for ease in locating an article, report or document on the web.

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The Justice Project is comprised of two nonpartisan organizations dedicated to fighting injustice and to creating a more humane and just world. The Justice Project, Inc., which lobbies for reform, and The Justice Project Education Fund, which increases public awareness of needed reforms, work together on the Campaign for Criminal Justice Reform to reaffirm America's core commitment to fairness and accuracy by designing and implementing national and state-based campaigns to advance reforms that address significant flaws in the American criminal justice system, with particular focus on the capital punishment system.

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Police Lineups: Making Eyewitness Identification More Reliable

by Beth Schuster

About the Author
Ms. Schuster is the managing editor of the *NIJ Journal.*

In 1981, 22-year-old Jerry Miller was arrested and charged with robbing, kidnapping, and raping a woman. Two witnesses identified Miller, in a police lineup, as the perpetrator. The victim provided a more tentative identification at trial. Miller was convicted, served 24 years in prison, and was released on parole as a registered sex offender, requiring him to wear an electronic monitoring device at all times.

Recent DNA tests, however, tell a different story: Semen taken from the victim's clothing—which could have come only from the perpetrator—did not come from Miller. In fact, when a DNA profile was created from the semen and entered into the Federal Bureau of Investigation's convicted offender database, another man was implicated in the crime.

On April 23, 2007, Miller became the 200th person in the United States to be exonerated through DNA evidence.[1]

Eyewitnesses play a vital role in the administration of justice in this country. Their testimony can provide the key to identifying, charging, and convicting a suspect in a criminal case. Indeed, in some cases, eyewitness evidence may be the only evidence available.

Yet cases like Miller's show that eyewitness evidence is not perfect. Even the most well-intentioned witnesses can identify the wrong person or fail to identify the perpetrator of a crime. According to the American Judicature Society, misidentification by eyewitnesses was the leading cause of wrongful conviction in more than 75 percent of the first 183 DNA exonerations in the United States.[2,3]

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These cases have caused criminal justice professionals to take a closer look at eyewitness evidence, specifically at the effectiveness of identifying suspects from photographic and live lineups. And recent studies on lineup structure and implementation have led to even more questions and disagreement in the field, highlighting the need for more research and dialogue about what works. The National Institute of Justice (NIJ) has initiated a multisite field experiment of eyewitness evidence to examine the effectiveness and accuracy of this crucial and powerful component of the Nation's criminal justice system as it is used in police departments and courtrooms across the country.

Elements of a Lineup

At its most basic level, a police lineup involves placing a suspect among people not suspected of committing the crime (fillers) and asking the eyewitness if he or she can identify the perpetrator. This can be done using a live lineup of people or, as more commonly done in U.S. police departments, a lineup of photographs. Live lineups typically use five or six people (a suspect plus four or five fillers) and photo lineups six or more photographs.[4]

There are two common types of lineups: simultaneous and sequential. In a simultaneous lineup (used most often in police departments around the country),[5] the eyewitness views all the people or photos at the same time. In a sequential lineup, people or photographs are presented to the witness one at a time.

Typically, the law enforcement official or lineup administrator knows who the suspect is.[6] Experts suggest that lineup administrators might—whether purposefully or inadvertently—give the witness verbal or nonverbal cues as to the identity of the suspect. For instance, if an eyewitness utters the number of a filler, the lineup administrator may say to the witness, "Take your time . . . . Make sure you look at all the photos." Such a statement may effectively lead the witness away from the filler.[7] In a "double-blind" lineup, however, neither the administrator nor the witness knows the identity of the suspect, and so the administrator cannot influence the witness in any way.[8] (See graphic on p. 5, "Live Police Lineups: How Do They Work?")

If continued field research validates the effectiveness of the double-blind sequential model, will police departments be able to smoothly and effectively implement this new procedure?

Additional variables that can affect the outcome of police lineups include:

- **Prelineup instructions given to the witness.** This includes explaining that the suspect may or may not be present in the lineup. Research on prelineup instructions by Nancy Steblay, Ph.D., professor of psychology at Augsburg College in Minneapolis, Minnesota, revealed that a "might or might not be present" instruction reduced mistaken identification rates in lineups where the suspect was absent.[9]
- **The physical characteristics of fillers.** Fillers who do not resemble the witness's description of the perpetrator may cause a suspect to stand out.[10]
- **Similarities or differences between witness and suspect age, race, or ethnicity.** Research suggests that when the offender is present in a lineup, young children and the elderly perform nearly as well as young adults in identifying the perpetrator. When the lineup does not contain the offender, however, young children and the elderly commit mistaken identifications at a rate higher than young adults. Research has also indicated that people are better able to recognize faces of their own race or ethnic group than faces of another race or ethnic group.[11]
- **Incident characteristics, such as the use of force or weapons.** The presence of a weapon during an incident can draw

PRACTICE GUIDE, TRAINER'S MANUAL ON EYEWITNESS IDENTIFICATION

Eyewitness Evidence: A Guide for Law Enforcement, a 1999 report published by the National Institute of Justice (NIJ), offers recommendations for the collection and preservation of eyewitness evidence.

These recommendations were developed by a technical working group of law enforcement investigators, prosecutors, defense lawyers, and psychology researchers convened by NIJ to explore ways to improve the accuracy, reliability, and availability of information obtained from eyewitnesses. The recommendations included:

- Composing lineups in a way to ensure that the suspect does not stand out unduly.
- Explaining to the witness before the lineup begins that the person who committed the crime may or may not be in the lineup.
- Preserving the outcome of the lineup by documenting any identification or nonidentification by the witness.

Four years later, NIJ published *Eyewitness Evidence: A Trainer's Manual for Law Enforcement* to assist law enforcement trainers. This 2003 report can be found on NIJ's Web site: www.ojp.usdoj.gov/nij.

In fall 2007, NIJ plans to convene another advisory panel of researchers and practitioners to help establish protocols for upcoming field experiments on police lineups (see main article).

visual attention away from other things, such as the perpetrator's face, and thus affect an eyewitness's ability to identify the holder of the weapon.[12]

Simultaneous vs. Sequential

Recent DNA exonerations have ignited heated debate among law enforcement officials, prosecutors, defense attorneys, and researchers over the best way to obtain reliable eyewitness evidence using police lineups.

The most common lineup procedure in use by law enforcement is the simultaneous lineup.[13] Researchers like Gary Wells, Ph.D., from Iowa State University, claim, however, that during simultaneous lineups, witnesses use "relative judgment," meaning that they compare lineup photographs or members to each other, rather than to their memory of the offender. This is a problem when the perpetrator is not present in the lineup because often the witness will choose the lineup member who most closely resembles the perpetrator.[14]

During sequential lineups, on the other hand, witnesses must make a decision about each photograph or member before moving on to the next, prompting them to use "absolute judgment." In other words, witnesses compare each photograph or person only to their memory of what the offender looked like.[15]

As the body of research into simultaneous versus sequential methods continued to grow, some researchers working in the lab discovered that the double-blind sequential method—in which the administrator does not know the identity of the suspect—produced fewer false identifications than the traditional simultaneous method.[16] In 2003, the Illinois legislature put this research to the test. Lawmakers charged the Illinois State Police with conducting a yearlong examination of the double-blind sequential

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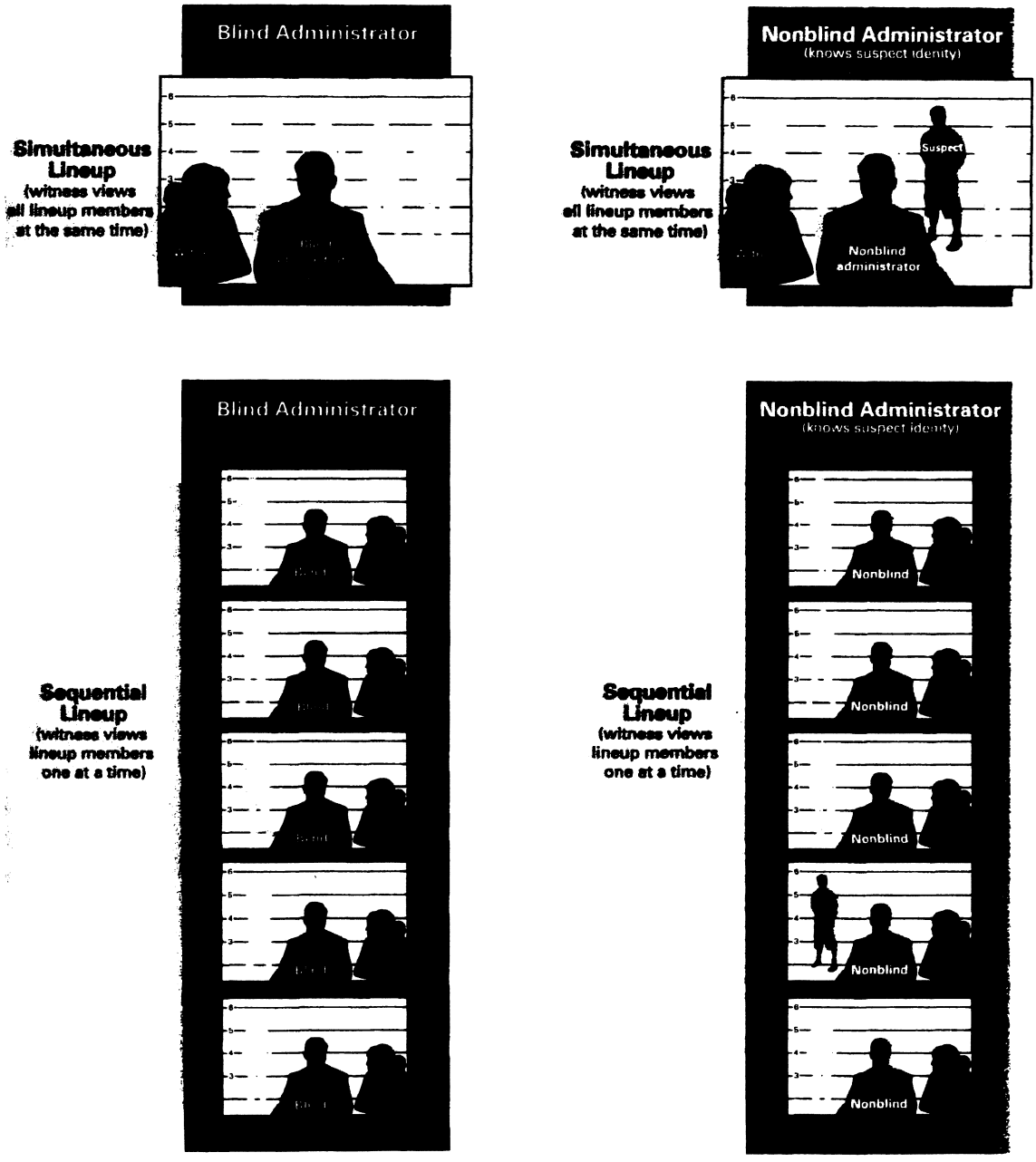
Live Police Lineups: How Do They Work?*



* Most U.S. police departments use photo lineups. The same concepts depicted in this graphic—simultaneous and sequential, blind and nonblind—apply in photo lineups.

PANEL CALLS DESIGN OF ILLINOIS STUDY 'FLAWED'

A panel of social scientists recently said that the design of the Illinois Pilot Program—which compared double-blind sequential lineup procedures to traditional nonblind simultaneous procedures—has "devastating consequences for assessing the real-world implications."

Writing in the July 2007 issue of *Law and Human Behavior,* the panel said that the design of the Illinois field study "guaranteed that most outcomes would be difficult or impossible to interpret."

The panel was convened by the Center for Modern Forensic Practice of the John Jay College of Criminal Justice and included Daniel Schacter of Harvard University and Nobel Laureate Daniel Kahneman of Princeton University. Also on the panel were Robyn Dawes of Carnegie Mellon University; Henry L. "Roddy" Roediger and Larry L. Jacoby of Washington University in St. Louis; Richard Lempert of the University of Michigan Law School; and Robert Rosenthal of the University of California, Riverside.

"The only way to sort this out [that is, which lineup methods produce the most reliable results] is by conducting further studies," the panelists said. (See main article for information on NIJ's recent funding of the Urban Institute to test simultaneous and sequential, blind and nonblind police lineups in the field.)

"The design of these studies, however, will be crucial," they added. "A well-designed field study that avoids the flaw built into the Illinois effort can be an important first step toward learning what we need to know about the best practices in identification procedures."

To read the full article, see www.jjay.cuny.edu/extra/policyforum.pdf.

versus the simultaneous (commonly used) eyewitness identification procedure to determine which produced fewer false identifications.

The results, published in March 2006, surprised many. Although the double-blind sequential lineup had produced more reliable outcomes in the laboratory, this was not the case in the field. Data collected from approximately 700 photo arrays and live lineups from urban, suburban, and semi-rural Illinois police departments revealed that the double-blind sequential procedure resulted in an overall higher rate of false identifications and a lower rate of "suspect picks" than the simultaneous lineup.[17]

The stunning implications of the Illinois Pilot Program have since been marred, however, by questions about the methodology used. Wells, for instance, has noted that the study used double-blind procedures in the sequential lineups but not in the simultaneous lineups. This, he argues, left open the potential for lineup administrators to influence witnesses during the simultaneous lineups.[18] In July, a panel of social scientists expressed similar concerns about the field test's design (see sidebar above, "Panel Calls Design of Illinois Study 'Flawed'").

Also in 2003, around the same time as the Illinois Pilot Program, officials at the Hennepin County, Minnesota, Attorney's Office became convinced by the growing body of scientific laboratory evidence that the double-blind sequential procedure was essential to reduce the risk of misidentification.[19] They instituted a new photographic double-blind sequential lineup protocol in several county police departments. Over a 12-month period, the project involved 280 lineups with

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206 eyewitnesses. An NIJ-funded analysis of the project found that although these field tests produced suspect identification rates similar to those in other jurisdictions that used traditional simultaneous lineups, witnesses in Hennepin County chose fillers at a lower rate. The Hennepin County data also revealed that additional viewings (or laps) of the sequential lineup reduced eyewitness accuracy.[20]

Will Double-Blind Sequential Lineups Work in the Field?

Implementation is a crucial factor when examining the reliability of the sequential lineup model versus the simultaneous model. If continued field research validates the effectiveness of the double-blind sequential model, will police departments—most of which currently use simultaneous lineups in which the administrator knows which person is the suspect—be able to smoothly and effectively implement this new procedure?

Departments involved in the Illinois study experienced challenges when implementing the double-blind sequential model. Although the model was relatively easy for them to use with photo arrays, it was more difficult in live lineups, particularly in cases with multiple perpetrators. In these cases, officers often had to place more than one suspect in a lineup because they lacked enough fillers for separate lineups. Conducting sequential lineups with more than one suspect was determined to be difficult and confusing, and therefore the use of sequential lineups in multiple-perpetrator cases was discontinued.

Finding administrators blind to the suspect's identity was also challenging, particularly during photo lineups that took place outside the police station, such as in the witnesses' homes or places of work. This created delays in investigations and inconveniences to witnesses.

After the Illinois Pilot Program had ended, the majority of officers who had participated said they did not think that the sequential lineup was superior; instead, they said that witnesses who can identify the offender can do so under either procedure. Officers also expressed concerns that using a blind administrator disrupts the relationship that an investigator tries to build with a witness.[21]

When Hennepin County tested the double-blind sequential model, police officers initially expressed similar concerns about using blind administrators. To deal with shortages of blind administrators, the Hennepin County investigators turned to other department staff, such as patrol officers, captains, and sergeants, to serve as blind administrators. Overall, the double-blind sequential procedure involved minimal cost to implement, and officials—both chiefs and investigators—found it easier to do so than originally anticipated.[22]

Continuing the Discussion

The current state of research on simultaneous versus sequential lineups—including the limited amount of field testing and the dispute over test designs and methodology—has generated more questions than answers. The results of the Illinois and Hennepin County studies highlight the need for more research on what works in police lineups and how police departments can easily and effectively implement them.

To continue the important discussion of eyewitness evidence and, particularly, to help identify areas for further research, NIJ and the Government Innovators Network at Harvard University's John F. Kennedy School of Government recently sponsored a discussion—a Web chat—among experts. (Hear the Web chat at www.innovations.harvard.edu/xchat.html.)

"At the present time, [when comparing simultaneous and sequential lineup presentations,] there is no definitive sense that one form of lineup presentation is superior to the other," Roy S. Malpass, Ph.D., professor of psychology at the University of Texas at El Paso, said during the Web chat.

"This is the time for academics and law enforcement to come together, have a dialogue, use each other's resources, and move on with a program of research."

–Roy S. Malpass, Ph.D.
University of Texas at El Paso

Malpass noted that certain practices typically used in sequential lineups—such as asking witnesses to make a separate decision on each photograph or individual—have not been examined in simultaneous lineups. Thus, it is unclear whether differences in the effectiveness of the two lineup models are due to method of presentation (simultaneous or sequential) or the presence of these other variables.

Nancy Steblay, also a panelist on the Web chat, noted that, as with many other criminal justice procedures and protocols, there are two sources of information on eyewitness identification: the laboratory and the field. According to James Doyle, director of the Center for Modern Forensic Practice at John Jay College of Criminal Justice in New York City and the third panelist on the Web chat, both field research and lab research have limitations. Lab studies are limited by a lack of real-world, operational challenges. Field studies are limited by uncertainty about who is really the perpetrator.

According to Steblay, the field has gone past the lab and made decisions about certain elements of eyewitness identification, adapting recommended lab-based protocol to the logistics of street practice and to concerns about later courtroom challenges. It is now time for labs to follow up and see if these field decisions make a difference in eyewitness accuracy, she said.

Malpass added that because U.S. academic researchers work outside of law enforcement, law enforcement investigators, who are on the front lines, are not as familiar as they might be with research results and researchers are generally not as familiar as they might be with in-the-field police practices.

"This is the time for academics and law enforcement to come together, have a dialogue, use each other's resources, and move on with a program of research," he said.

Committed to fostering collaboration between researchers and practitioners, NIJ recently funded the Urban Institute to test the reliability of using simultaneous versus sequential and blind versus nonblind lineups in the field. This important research will be guided by an NIJ-sponsored study group of law enforcement officials, defense attorneys, prosecutors, victim/witness advocates, and other stakeholders from across the Nation.

During the recent NIJ-Harvard Web chat, Doyle offered guidance as the criminal justice community continues to grapple with the issue of eyewitness identification. "There are people on the one hand who would like to strangle this double-blind sequential thing and end it right here and now, and there are other people who would like to legislate it down people's throats," he said. "We have to try to avoid the two extremes."

He added, "What we have to do is recognize that we are dealing with a very unusual, complex kind of trace evidence here . . . . It's difficult to recover, easy to contaminate, and very hard to handle."

"All that police want from eyewitness identification is a true and accurate eyewitness identification," said Philip J. Cline, superintendent of the Chicago Police Department, during the Web chat. "We can do better—and we welcome collaboration and guidance from researchers and lawyers, whichever side of the table they sit on."

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