APPENDIX TO
REPORT TO THE LEGISLATURE
OF THE STATE OF ILLINOIS:
THE ILLINOIS PILOT PROGRAM ON
SEQUENTIAL DOUBLE-BLIND IDENTIFICATION
PROCEDURES
# Appendix

**To Report to the Legislature of the State of Illinois: The Illinois Pilot Program on the Sequential Double-Blind Identification Procedures**

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Exhibit 1
TO: ALL COUNTY PROSECUTORS
COL. CARSON J. DUNBAR, JR., SUPERINTENDENT, NJSP
ALL POLICE CHIEFS
ALL LAW ENFORCEMENT CHIEF EXECUTIVES

Re: Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures

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. In one 1998 study of DNA exoneration cases, ninety percent of the cases analyzed involved one or more mistaken eyewitness identifications.1 The attached Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures, which incorporate more than 20 years of scientific research on memory and interview techniques, will improve the eyewitness identification process in New Jersey to ensure that the criminal justice system will fairly and effectively elicit accurate and reliable eyewitness evidence. These Guidelines apply to both adult and juvenile cases. With these Guidelines, New Jersey will become the first state in the Nation to officially adopt the recommendations issued by the United States Department of Justice in its Eyewitness Evidence Guidelines.

Components of these Guidelines are already being utilized by many of our law enforcement officers, such as instructing witnesses prior to lineups or photo identifications that a perpetrator may not be among those in a lineup or photo spread and, therefore, the witness should not feel compelled to make an identification. Two procedural recommendations contained in these Guidelines are particularly significant and will represent the primary area of change for most law enforcement agencies. The first advises agencies to utilize, whenever practical, someone other than the primary

investigator assigned to a case to conduct both photo and live lineup identifications. The individual conducting the photo or live lineup identification should not know the identity of the actual suspect. This provision of the Guidelines is not intended to question the expertise, integrity or dedication of primary investigators working their cases. Rather, it acknowledges years of research which concludes that even when utilizing precautions to avoid any inadvertent body signals or cues to witnesses, these gestures do occur when the identity of the actual suspect is known to the individual conducting the identification procedure. This provision of the Guidelines eliminates unintentional verbal and body cues which may adversely impact a witness’ ability to make a reliable identification.

I recognize that this is a significant change from current practice that will not be possible or practical in every case. When it is not possible in a given case to conduct a lineup or photo array with an independent investigator, the primary investigator must exercise extreme caution to avoid any inadvertent signaling to a witness of a “correct” response which may provide a witness with a false sense of confidence if they have made an erroneous identification. Studies have established that the confidence level that witnesses demonstrate regarding their identifications is the primary determinant of whether jurors accept identifications as accurate and reliable. Technological tools, such as computer programs that can run photo lineups and record witness identifications independent of the presence of an investigator, as well as departmental training of a broader range of agency personnel to conduct lineups and photo identifications may also assist agencies and departments with staff and budget constraints in implementing this recommendation.

The Guidelines also recommend that, when possible, “sequential lineups” should be utilized for both photo and live lineup identifications. “Sequential lineups” are conducted by displaying one photo or one person at a time to the witness. Scientific studies have also proven that witnesses have a tendency to compare one member of a lineup to another, making relative judgements about which individual looks most like the perpetrator. This relative judgement process explains why witnesses sometimes mistakenly pick someone out of a lineup when the actual perpetrator is not even present. Showing a witness one photo or one person at a time, rather than simultaneously, permits the witness to make an identification based on each person’s appearance before viewing another photo or lineup member. Scientific data has illustrated that this method produces a lower rate of mistaken identifications. If use of this method is not possible in a given case or department, the Guidelines also provide recommendations for conducting simultaneous photo and live lineup identifications.

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Although the Guidelines are fairly self-explanatory, their implementation will require a steep learning curve. To that end, training will be conducted. To accommodate appropriate training, the Guidelines will become effective within 180 days of the date of this letter. However, I would encourage you to implement the Guidelines sooner, if possible. I am requesting that each County Prosecutor designate key law enforcement personnel and police training coordinators to work with the Division of Criminal Justice to train your staff as well as the local law enforcement agencies within your jurisdiction.

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. The issuance of these Guidelines should in no way be used to imply that identifications made without these procedures are inadmissible or otherwise in error. Your cooperation is appreciated as all members of our law enforcement community strive to implement these procedures. Should you have any questions regarding the implementation of these Guidelines, please contact the Division of Criminal Justice, Prosecutors & Police Bureau, at 609-984-2814.

Very truly yours,

John J. Farmer, Jr.
Attorney General

Attachment
cc: Director Kathryn Flicker
Chief of Staff Debra L. Stone
Deputy Director Wayne S. Fisher, Ph.D.
Deputy Director Anthony J. Zarillo, Jr.
Chief State Investigator John A. Cocklin
SDAG Charles M. Grinnell, Acting Chief,
Prosecutors & Police Bureau
ATTORNEY GENERAL GUIDELINES FOR PREPARING AND CONDUCTING PHOTO AND LIVE LINEUP IDENTIFICATION PROCEDURES

PREAMBLE

While it is clear that current eyewitness identification procedures fully comport with federal and state constitutional requirements, that does not mean that these procedures cannot be improved upon. Both case law and recent studies have called into question the accuracy of some eyewitness identifications. The Attorney General, recognizing that his primary duty is to ensure that justice is done and the criminal justice system is fairly administered, is therefore promulgating these guidelines as "best practices" to ensure that identification procedures in this state minimize the chance of misidentification of a suspect.

I. COMPOSING THE PHOTO OR LIVE LINEUP

The following procedures will result in the composition of a photo or live lineup in which a suspect does not unduly stand out. An identification obtained through a lineup composed in this manner should minimize any risk of misidentification and have stronger evidentiary value than one obtained without these procedures.

A. In order to ensure that inadvertent verbal cues or body language do not impact on a witness, whenever practical, considering the time of day, day of the week, and other personnel conditions within the agency or department, the person conducting the photo or live lineup identification procedure should be someone other than the primary investigator assigned to the case. The Attorney General recognizes that in many departments, depending upon the size and other assignments of personnel, this may be impossible in a given case. In those cases where the primary investigating officer conducts the photo or live lineup identification procedure, he or she should be careful to avoid inadvertent signaling to the witness of the "correct" response.

B. The witness should be instructed prior to the photo or live lineup identification procedure that the perpetrator may not be among those in the photo array or live lineup and, therefore, they should not feel compelled to make an identification.

C. When possible, photo or live lineup identification procedures should be conducted sequentially, i.e., showing one photo or one person at a time to the witness, rather than simultaneously.
D. In composing a photo or live lineup, the person administering the identification procedure should ensure that the lineup is comprised in such a manner that the suspect does not unduly stand out. However, complete uniformity of features is not required.

E. **Photo Lineup.** In composing a photo lineup, the lineup administrator or investigator should:

1. Include only one suspect in each identification procedure.

2. Select fillers (nonsuspects) who generally fit the witness' 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.

3. Select a photo that resembles the suspect's description or appearance at the time of the incident if multiple photos of the suspect are reasonably available to the investigator.

4. Include a *minimum* of five fillers (nonsuspects) per identification procedure.

5. Consider placing the suspect in different positions in each lineup when conducting more than one lineup for a case due to multiple witnesses.

6. Avoid reusing fillers in lineups shown to the same witness when showing a new suspect.

7. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness.

8. View the array, once completed, to ensure that the suspect does not unduly stand out.

9. Preserve the presentation order of the photo lineup. In addition, the photos themselves should be preserved in their original condition.

F. **Live Lineups.** In composing a live lineup, the lineup administrator or investigator should:

1. Include only one suspect in each identification procedure.

2. Select fillers (nonsuspects) who generally fit the witness' 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.

3. Consider placing the suspect in different positions in each lineup when conducting more than one lineup for a case due to multiple witnesses.

4. Include a minimum of four fillers (nonsuspects) per identification procedure.

5. Avoid reusing fillers in lineups shown to the same witness when showing a new suspect.

II CONDUCTING THE IDENTIFICATION PROCEDURE

The identification procedure should be conducted in a manner that promotes the accuracy, reliability, fairness and objectivity of the witness' identification. These steps are designed to ensure the accuracy of identification or nonidentification decisions.

A. Simultaneous Photo Lineup: When presenting a simultaneous photo lineup, the lineup administrator or investigator should:

1. Provide viewing instructions to the witness as outlined in subsection I B, above.

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 or 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 II E, "Recording Identification Results."
6. Document in writing the lineup procedure, 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.

B. Sequential Photo Lineup: When presenting a sequential photo lineup, the lineup administrator or investigator should:

1. Provide viewing instructions to the witness as outlined in subsection 1B, above.

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 prior to viewing all photos; 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 or 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 II E, “Recording Identification Results.”
8. Document in writing the lineup procedure, 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.

C. **Simultaneous Live Lineup**: When presenting a simultaneous live lineup, the lineup administrator or investigator should:

1. Provide viewing instructions to the witness as outlined in subsection I B, above.

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, etc.) 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 or she has selected prior to obtaining the witness’ statement of certainty.

6. Record any identification results and witness’ statement of certainty as outlined in subsection II E, “Recording Identification Results.”

7. Document in writing the lineup procedure, including:
   a. Identification information of lineup participants.
   b. Names of all persons present at the lineup.
   c. Date and time of the identification procedure.

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 discourage contact with the media.

D. Sequential Live Lineup: When presenting a sequential live lineup, the lineup administrator or investigator should:

1. Provide viewing instructions to the witness as outlined in subsection I B, above.

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 or her.
   e. All individuals will be presented, even if an identification is made prior to viewing all the individuals; or the procedure will be stopped at the point of an identification (consistent with jurisdictional/departamental 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 action (e.g., speaking, moving, etc.) 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 or 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 II E, "Recording Identification Results."
10. Document in writing the lineup procedure, 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 either depict 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.

E. Recording Identification Results

   When conducting an identification procedure, the lineup administrator or investigator shall preserve the outcome of the procedure by documenting any identification or nonidentification results obtained from the witness. Preparing a complete and accurate record of the outcome of the identification procedure is crucial. This record can be a critical document in the investigation and any subsequent court proceedings. When conducting an identification procedure, the lineup administrator or investigator should:

1. Record both identification and nonidentification results in writing, including the witness' own words regarding how sure he or she is.

2. Ensure that the 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.

Dated: April 18, 2001, effective no later than the 180th day from this date.
MEMORANDUM

TO: All COUNTY PROSECUTORS

FROM: Chief Jessica Oppenheim
Prosecutors Supervision & Coordination

DATE: May 12, 2003

SUBJECT: Survey: Eyewitness ID Guidelines

We are approaching two years since the October 2001 Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Procedures were implemented statewide. We are interested in how these new procedures are working. We are not asking you to devote a significant research effort into answering these questions. Instead we are merely asking you to give us your impressions and, on a few items, estimates based on your best judgment. We would like to receive at least one completed survey from each County Prosecutor’s Office. However, feel free to copy this survey and have staff members from different units complete this questionnaire.

Please have the staff member(s) whom you feel would be in the best position to provide feedback complete the form and fax it back to the Prosecutors Supervision and Coordination Bureau at (609) 341-2077. Should you have any questions concerning this survey, please call (609) 984-2814 for assistance. Thank you in advance for your cooperation.
SURVEY

2001 EYEWITNESS ID GUIDELINES

Office Completing Survey: ________________________________

Bureau or Unit: _________________________________________

Name & Title: ___________________________________________

Section 1: Frequencies of Lineups

A. Please estimate, as best you can, how often you conduct *photo lineup* identification procedures by filling in an approximate number and circling a time frame:

   Our agency conducts approximately ______ photo lineups every WEEK, MONTH, YEAR (circle time frame)

B. Please estimate, as best you can, how often you conduct *live lineup* identification procedures by filling in an approximate number and circling a time frame:

   Our agency conducts approximately ______ live lineups every
Section 2: Independent Investigator

One significant feature of the 2001 Guidelines calls for an independent investigator (someone who does not know the identity of the suspect) to administer the lineup. The following questions refer to this feature of the Guidelines:

A. Have you been able to implement the independent investigator recommendation? (circle one)
   
   Yes, in every case
   Yes, in almost every case
   Yes, about half of the time
   Yes, but less than half of the time
   No, not at all

B. If there have been cases where you have not implemented the independent investigator recommendation, did you take other measures (such as video taping the lineup procedure or utilizing a software program to administer a photo lineup) to attempt to minimize the chances of the lineup administrator influencing the witness? If so, please give a brief description in the space below:

C. If you used an independent investigator to administer a lineup, where did you obtain this person? (please circle all that apply):

   Our own department’s officers
   A non-officer in our own department
   An officer from another department
Other (please specify below)

D. Have you had any significant difficulties implementing the independent investigator recommendation? (circle one)

- No difficulties
- Minor difficulties that were easily overcome
- Difficulties that were not easily overcome

If you checked the "minor difficulties" or "major difficulties" boxes, please explain:

E. If you have implemented the independent investigator recommendation, how has this affected confidence in any identifications that have resulted from those lineups? (circle one and feel free to provide comments)

- It has increased confidence in the results
- It has had no effect on confidence in the results
- It has decreased confidence in the results

F. In cases involving law enforcement officers as witnesses, such as in cases where undercover drug buys occur, do you use an independent administrator to conduct the identification procedure? (circle one... If you responded “no” please note what type of procedure is used)
Yes, in every case
Yes, in almost every case
Yes, about half of the time
Yes, but less than half of the time
No, not at all.

Section 3: The Sequential Procedure

Another significant feature of the 2001 Guidelines calls for the use of sequential lineups (one lineup member shown at a time) rather than simultaneous lineups (all lineup members shown at once). The following questions refer to this feature of the Guidelines:

A. Have you been able to implement the sequential lineup recommendation? (circle one)

   Yes, in every case
   Yes, in almost every case
   Yes, about half of the time
   Yes, but less than half of the time
   No, not at all

B. Have you had any significant difficulties implementing the sequential lineup recommendation? (circle one)

   No difficulties
   Minor difficulties that were easily overcome
   Difficulties that were not easily overcome

If your checked the “minor difficulties” or “major difficulties” boxes, please explain:
C. Have you noticed any significant increase or decrease in the number of cases in which your witnesses make a positive identification of the suspect? (circle one)

Yes, the witnesses seem to be better able to pick out the suspect
No, no difference has been noticed
Yes, the witnesses seem to pick the suspect less often

D. Have you noticed any significant increase or decrease in the number of cases that the witness makes an error in identifying a lineup filler? (circle one)

Yes, the witnesses seem to make fewer errors in identifying a filler
No, no difference has been noticed
Yes, the witnesses seem to pick fillers more often

E. How has the use of sequential identification procedures affected overall confidence in any identifications that have resulted from those lineups? (circle one and feel free to provide comments)

It has increased confidence in the results
It has had no effect on confidence in the results
It has decreased confidence in the results

F. In cases involving law enforcement officers as witnesses, such as in
cases where undercover drug buys occur, do you use a sequential lineup to conduct the identification procedure? (circle one...If you responded “no” please note what type of procedure is used)

Yes, in every case
Yes, in almost every case
Yes, about half of the time
Yes, but less than half of the time
No, not at all

Section 4: Related Issues

A: Do you feel that identification procedures conducted utilizing the 2001 Guidelines have reduced the number of defense challenges in this area?

Yes
No

Please feel free to provide comments:

B: Have you had any *Wade* hearings for cases in which identifications using sequential/independent administrator were challenged on that basis?

Yes
No

If yes, please explain the outcome:
C: Have you had any *Wade* hearings challenging identification procedures conducted before October 2001 wherein defense counsel has argued that prior identification procedures used were faulty as compared to the 2001 ID Guidelines?

Yes
No

If yes, please explain the outcome:

D. Are there any other aspects of the 2001 Lineup Guidelines that you have found to be especially useful or problematic? If so, please specify:

E. DCJ receives frequent inquiries from other states and law enforcement agencies world wide who are considering utilizing, or who have already adopted, the key components of NJ's 2001 Eyewitness ID Guidelines. Would you be willing to speak with other law enforcement agencies or the media if they request other contacts? Circle any that apply.

Yes, I will speak with law enforcement agencies.
Yes, I will speak with the media.
Yes, I will speak with both law enforcement agencies and the media.

If you will respond to inquiries, please provide the name, title and phone number of the individual who will speak on behalf of your agency:
Thank you for completing this survey. Please fax it at your earliest convenience to:

Prosecutors Supervision & Coordination
Division of Criminal Justice
(609) 341-2077
MEMORANDUM

TO: Law Enforcement Executives
FROM: Chief Jessica Oppenheim
       Prosecutors Supervision & Coordination
DATE: May 12, 2003
SUBJECT: Survey: Eyewitness ID Guidelines

We are approaching two years since the October 2001 Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Procedures were implemented statewide. We are interested in how these new procedures are working. We are not asking you to devote a significant research effort into answering these questions. Instead we are merely asking you to give us your impressions and, on a few items, estimates based on your best judgment. We would like to receive at least one completed survey from each agency. However, feel free to copy this survey and have staff members from different units complete this questionnaire.

Please have the staff member(s) whom you feel would be in the best position to provide feedback complete the form and fax it back to the Prosecutors Supervision and Coordination Bureau at (609) 341-2077. Should you have any questions concerning this survey, please call (609) 984-2814 for assistance. Thank you in advance for your cooperation.
SURVEY

2001 EYEWITNESS ID GUIDELINES

Office Completing Survey: __________________________

Bureau or Unit: __________________________

Name & Title: __________________________

Section 1: Frequencies of Lineups

A. Please estimate, as best you can, how often you conduct photo lineup identification procedures by filling in an approximate number and circling a time frame:

   Our agency conducts approximately _____ photo lineups every WEEK, MONTH, YEAR (circle time frame)

B. Please estimate, as best you can, how often you conduct live lineup identification procedures by filling in an approximate number and circling a time frame:

   Our agency conducts approximately _____ live lineups every WEEK, MONTH, YEAR (circle time frame)

Section 2: Independent Investigator

One significant feature of the 2001 Guidelines calls for an independent investigator (someone who does not know the identity of the suspect) to administer the lineup. The following questions refer to this feature of the Guidelines:
A. Have you been able to implement the independent investigator recommendation? (circle one)

Yes, in every case
Yes, in almost every case
Yes, about half of the time
Yes, but less than half of the time
No, not at all

B. If there have been cases where you have not implemented the independent investigator recommendation, did you take other measures (such as video taping the lineup procedure or utilizing a software program to administer a photo lineup) to attempt to minimize the chances of the lineup administrator influencing the witness? If so, please give a brief description in the space below:

C. If you used an independent investigator to administer a lineup, where did you obtain this person? (please circle all that apply):

Our own department’s officers
A non-officer in our own department
An officer from another department
Other (please specify below)

D. Have you had any significant difficulties implementing the independent investigator recommendation? (circle one)

No difficulties
Minor difficulties that were easily overcome
Difficulties that were not easily overcome
If you checked the “minor difficulties” or “major difficulties” boxes, please explain:

E. If you have implemented the independent investigator recommendation, how has this affected confidence in any identifications that have resulted from those lineups? (circle one and feel free to provide comments)

- It has increased confidence in the results
- It has had no effect on confidence in the results
- It has decreased confidence in the results

F. In cases involving law enforcement officers as witnesses, such as in cases where undercover drug buys occur, do you use an independent administrator to conduct the identification procedure? (circle one...If you responded “no” please note what type of procedure is used)

- Yes, in every case
- Yes, in almost every case
- Yes, about half of the time
- Yes, but less than half of the time
- No, not at all.
Section 3: The Sequential Procedure

Another significant feature of the 2001 Guidelines calls for the use of sequential lineups (one lineup member shown at a time) rather than simultaneous lineups (all lineup members shown at once). The following questions refer to this feature of the Guidelines:

A. Have you been able to implement the sequential lineup recommendation? (circle one)
   Yes, in every case
   Yes, in almost every case
   Yes, about half of the time
   Yes, but less than half of the time
   No, not at all

B. Have you had any significant difficulties implementing the sequential lineup recommendation? (circle one)
   No difficulties
   Minor difficulties that were easily overcome
   Difficulties that were not easily overcome

   If your checked the “minor difficulties” or “major difficulties” boxes, please explain:

C. Have you noticed any significant increase or decrease in the number of cases in which your witnesses make a positive identification of the suspect? (circle one)
   Yes, the witnesses seem to be better able to pick out the suspect
   No, no difference has been noticed
   Yes, the witnesses seem to pick the suspect less often
D. Have you noticed any significant increase or decrease in the number of cases that the witness makes an error in identifying a lineup filler? (circle one)

Yes, the witnesses seem to make fewer errors in identifying a filler
No, no difference has been noticed
Yes, the witnesses seem to pick fillers more often

E. How has the use of sequential identification procedures affected overall confidence in any identifications that have resulted from those lineups? (circle one and feel free to provide comments)

It has increased confidence in the results
It has had no effect on confidence in the results
It has decreased confidence in the results

F. In cases involving law enforcement officers as witnesses, such as in cases where undercover drug buys occur, do you use a sequential lineup to conduct the identification procedure? (circle one...If you responded "no" please note what type of procedure is used)

Yes, in every case
Yes, in almost every case
Yes, about half of the time
Yes, but less than half of the time
No, not at all
Section 4: Related Issues

A: Are there any other aspects of the 2001 Lineup Guidelines that you have found to be especially useful or problematic? If so, please specify:

B. DCJ receives frequent inquiries from other states and law enforcement agencies world wide who are considering utilizing, or who have already adopted, the key components of NJ’s 2001 Eyewitness ID Guidelines. Would you be willing to speak with other law enforcement agencies or the media if they request other contacts? Circle any that apply.

Yes, I will speak with law enforcement agencies.
Yes, I will speak with the media.
Yes, I will speak with both law enforcement agencies and the media.

If you will respond to inquiries, please provide the name, title and phone number of the individual who will speak on behalf of your agency:

Thank you for completing this survey. Please fax it at your earliest convenience to:

Prosecutors Supervision & Coordination
Division of Criminal Justice
(609) 341-2077
Exhibit 3
HENNEPIN COUNTY ATTORNEY'S OFFICE
Adult Prosecution Division
MEMORANDUM

TO: Investigators/Detectives
Minneapolis (Central Investigation Division)
Bloomington, Minnetonka and New Hope Police Departments

FROM: Paul Scoggin, Managing Attorney, Violent Crimes Division,
Hennepin County Attorney's Office

RE: Pilot Program for the Sequential Identification Process

DATE: October 27, 2003

A. INTRODUCTION

Your departments have volunteered to participate in a pilot program using “Sequential Identification” procedures for the display of photographs to eyewitnesses. “Sequential Identification” is shorthand for four steps in conducting eyewitness identification by photographic display:

1. The witnesses are told the suspect “may or may not” be in a set of photos and that the investigator does not know whether the suspect is in the photo display or not.
2. The investigator showing the photos does not know which photo is of the suspect.
3. The photos are shown one at a time.
4. The witnesses’ level of certainty is recorded before the witness learns whether the identification fits other facts in the case.

B. PILOT PROGRAM IDENTIFICATION PROCEDURES

1. Use existing “M-RAP” parameters. Obviously these defaults include the use of photographs depicting suspects of a similar age, skin color, complexion, hair style, build, backdrop, glasses, and the consistent use of color or black and white suspect photos.
2. Jail markings and booking information should be removed or covered.
3. Use no less than six photographs.
4. Do not place the suspect in photograph number one position.
5. Preserve a copy of the photos in the order in which they were displayed (one way is to preserve the traditional simultaneous six photo display).
6. Assemble separate photographic line-ups for each suspect with new fillers in each line-up.
7. Print individual photos, or cut up a six-photo display into six individual photos.
8. Interview witnesses in private, separate from other witnesses.
9. Ask witnesses not to discuss their identification or lack of identification with other witnesses (especially before that witness gives a statement concerning the identification).
10. Do not tell the witness that the suspect is in a group of photos. The witness should be told the suspect “may or may not” be in the group of photos.
11. Tell the witness that the displaying officer does not know whether the suspect is in the group of photos.
12. Any officer knowing which photo is of the suspect should be out of the view of the witnesses during the display. But a knowledgeable officer may be available for consultation during the display and to provide support after the display process is finished.
13. The photos should be shown one at a time with the other photos face down, or otherwise out of sight during the display of another photo.
14. The witness may look at the photos more than once, but all the photos should be shown in the same order each time. The witness may take as long as he or she needs to look at the photos, but may not pull the photos out of order.
15. If a witness identifies a photo before looking at all of the photos, the rest of the display should be shown and the witness asked to identify or eliminate the rest of the photos. The officer should not encourage the witness to focus on a particular photo.
16. After the display, the investigator showing the photos should create a report describing how many times the witness looked through the photos, how quickly an identification was made, the level of certainty expressed by the witness, any other comments made by the witness during the display and any other relevant observations.
17. After the display, the investigator should ask the witness to describe the level of certainty associated with any identification (or lack of identification) including the qualifying conditions about the photo (longer hair, older, heavier, etc.) Numerical certainty (percentages) should be avoided but a statement of why the photo looks like the suspect is encouraged.
18. Exceptions:

- Do not use sequential identification with children age twelve or younger.
- The blind examination requirement may be abandoned if necessary. For example, the display may take place at 3:00 a.m. and no uninformed officer is available or everyone in your department knows the suspect. Reports should include why sequential identifications are not possible.

19. Place a copy of your sequential identification report in the folder designated by your department for those cases using sequential identification, or use whatever "flagging" system your department designates for identifying sequential identification cases.

Note to participants, Convicting the Guilty, Protecting the Innocent:

Since the inception of the pilot program some police agencies have used laptops to substitute for "blind" officers. The laptop is used a little like the children's game "Battleship." The witness operates a slideshow with the photos while the display panel is turned away from the officer. The photos are scrambled and the officer does not know the order. We think this may alleviate the chief practical concern raised in the pilot program – the availability of a second officer who knows nothing about the case. We will track these cases and compare identification rates and outcomes with both traditional lineups and blind sequential lineups.
"The Usual Suspects"
A Pilot Project to Improve Eyewitness Identifications from Lineups

The Hennepin County Attorney's Office and four municipal police departments (Minneapolis Central Investigations, Minnetonka, Bloomington, and New Hope) implemented a pilot program last fall to test the feasibility of "sequential identification" - a new eyewitness protocol that promises to improve the reliability of identifications made from picking suspects out of a group of photographs.

We are now midway through the pilot program. A new lineup protocol was developed, police training was conducted, and officers began using "sequential identification procedures" last November. To date, the experience of this pilot project suggests that the new protocol is workable for police and it elicits valuable new information for the effective investigation and prosecution of criminal cases. With the benefit of these procedures, police and prosecutors are able to get better-quality identifications that reflect a clearer view of what eyewitnesses actually saw. As a result, there can be even greater assurance that justice will be served with the arrest and conviction of the true perpetrator of a crime.

This section of the Criminal Justice Institute program walks through that protocol, updates our progress, and makes several preliminary observations about the practical implementation of sequential identification.

Why we are testing sequential identification:

High profile DNA exoneration cases over the past ten years have compelled us to take a hard look at what went wrong. Eyewitness misidentification is the "single most common error" leading to the arrest or conviction of the wrong man, Best Practice Recommendations for Eyewitness Evidence Procedures: New Ideas for the Oldest Way to Solve a Case, Turtle, Lindsay and Wells, The Canadian Journal of Police and Security Services, March 2003. A review of forty DNA exoneration cases resolved before 1998 suggested thirty-six (90%) were in part based on eyewitness misidentifications. Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads, Law and Human Behavior, Vol. 22, No. 6 (1998).

Misidentification by a witness is a two-fold miscarriage of justice. No prosecutor or police officer wants to accuse an innocent man. Likewise, a mistaken accusation allows the real suspect the freedom to strike again. Neither result is acceptable and any thoughtful participant in the criminal justice system should welcome the chance to improve identification procedures.

A growing body of research from psychologists in the academic community suggests that the traditional way in which witnesses identify suspects may contribute to the risk of misidentification. The most common method employed by police investigators is to assemble six very similar appearing photographs and present them, all at once, to the eyewitness. By
testing whether the witness can pick out an identified suspect, the police, prosecutors, and ultimately the jury, can be confident that the person charged with an offense is the real perpetrator.

Last summer, Dr. Gary Wells, a professor of psychology at Iowa State University, presented his research to the Criminal Justice Institute suggesting that some of this confidence may be misplaced. Wells suggested several flaws:

1. Witnesses may be engaging in relativism, i.e., by seeing the photos all at once, the witness is simply comparing photos and determining which one looks most like the suspect rather than deciding the photo is of the suspect.
2. Witnesses may believe the suspect must be in the lineup – why else would the police be showing it to the witness? As such, the witness is under some self-imposed pressure to pick someone – most likely the one who most resembles the real suspect.
3. Officers who know who the suspect is may (to borrow from the world of poker) engage in “tells” – subtle body language or other behavior hinting at the preferred photo.
4. Witnesses may gain false confidence in their pick (right or wrong) because they learn other facts in the case that incriminate the suspect but have nothing to do with witness identification.

Dr. Wells and his supporters in the academic community are not alone in their observations. The Department of Justice fell short of adopting sequential identification procedures in its 1999 training manual, Eyewitness Evidence, a Guide for Law Enforcement (October 1999), but the Department acknowledged that such measures deserved further consideration. The State of New Jersey implemented sequential identification procedures as a statewide best practice in 2002, see, Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures (August 2001). A copy of a preliminary survey of New Jersey Police Departments is attached. Last October, the North Carolina Actual Innocence Commission (acting under the authority of the North Carolina Supreme Court) made similar recommendations.

The conclusion reached in Dr. Wells’ clinical labs largely remain, however, untested in the real world. It’s one thing for a group of college students to take a sporting chance and identify a suspect. It is quite another for real victims to make real choices knowing the consequences of their decisions. We wanted to know how the suggestions made by Wells and others worked out in the real world:

1. Did the number and quality of identifications made using sequential procedures change?
2. Can departments implement these procedures without unreasonable drains on manpower and other resources (or, a subsidiary question, what exceptions to the policy should be tolerated)?

After several months, we are starting to get answers. First, and probably most important; we can make this work. Departments can implement sequential identification without breaking the bank. There are bumps in the road but both large and small departments can use sequential
identification procedures without undercutting a department's ability to solve cases. We also expect to make some recommendations at the end of the pilot program that will make the project easier. Second, sequential identification procedures tell us a lot more about what a witness really means when an identification is made. This, in turn, allows the lawyers, the judge, and the jury to be more confident when an identification is made and understand when a witness places conditions on an identification. Put another way, we believe sequential identification procedures give us a clearer view of the truth.

**What the program is:**

The four groups of investigators involved in the program received training in a protocol developed by the Hennepin County Attorney’s Office and the four chiefs. A copy of that protocol is attached.

In a nutshell, the program centers around four steps designed to address the four observations made by Wells and his colleagues:

1. The witnesses are told the suspect “may or may not” be in a set of photos and that the investigator does not know whether the suspect is in the photo display or not.
2. The investigator showing the photos does not know which photo is of the suspect.
3. The photos are shown one at a time.
4. The witness’s level of certainty is recorded before the witness learns whether the identification fits other facts in the case.

Although the program is referred to as sequential identification, the title only covers one of the four steps — showing photos one at a time. The protocol also uses a “blind” officer; an officer who does not know who the suspect is. Likewise, the witness is expressly warned the suspect may not be in the lineup and statements nailing down the degree of confidence expressed by the witness are taken before the witness learns of any other facts in the case.

At least two of these steps are not new. Experience suggests that the “may or may not” language is widely used in the law enforcement community and most officers are careful not to create false confidence (or document a lack of confidence) during the identification process. Put another way, most officers already acknowledge a healthy respect for potential cross-examination should the case go to trial.

The protocol also sought to disrupt other present practices as little as possible. For example, the present rules for assembling photo lineups were preserved. Placing a filler photo in the first spot and the display of all the photos (even if an ID has already been made) was required to avoid the appearance of a one-photo “show up.” The protocol also encouraged steps that fall under the category of “being careful and methodical” no matter what method of display is used. These include documenting witness questions during the display, presenting photos one witness at a time, as well as separating witnesses. Other provisions to the protocol ask the witness to explain why they’ve made an identification of this particular photograph.
Some preliminary observations:

1. We can do this.

Putting sequential identifications into operation last fall worked. The Departments and County Attorney's Office traded drafts of a protocol and incorporated several practical suggestions from line investigators. Investigators attended training sessions (and made several more suggestions) and started using the protocol the second week of November. The departments forward copies of cases using the protocol to the County Attorney's Office on a periodic basis. The County Attorney has collected the cases and, in conjunction with Professor Steblay of Augsburg College, will evaluate the program after November of 2004.

On a practical level we've found most cases can use sequential identification without difficulty. The program was rolled out with less difficulty than some of us expected. But this pilot program was also designed to identify the "bumps in the road" in implementation. Some of those bumps are as follows:

- Small departments don't have that many investigators to start with.
- A surprisingly large number of suspects are so chronic that every officer available recognizes the suspect and it follows that if the suspect is in the lineup it must be for a reason.
- Departments are gravitating towards throwing a lot of officers at the crime just after it happens rather than isolating the case with a small number of investigators. This obviously undercuts the pool of uninformed officers available for displaying lineups.
- Crime takes place at odd hours of the day when fewer officers are on shift.
- Municipal departments tend to operate independently. Although municipalities have mutual aid packs for patrol response, such arrangements are rare for follow up investigation. This, again, reduces the pool of available uninformed investigators.

Despite these difficulties, a preliminary view of the project suggests that these problems are not insurmountable. It seems reasonable to suggest that if officers have laptops or some other technology that allows interested investigators to conduct lineups themselves, the protocol could work on a more widespread basis.

2. Sequential identification and the following documentation requirements do a better job of conveying what a witness really means.

Sequential identification gives us a clearer view of what the witness really meant.

In some ways this is Dr. Wells' real point. The witness didn't mean this is the guy - he meant this might be the guy, the photo looks a lot like him. We're learning that eyewitness identification isn't all or nothing. Identification takes place on a sliding scale. Some identifications "jump out" - the witness is absolutely certain and will "never forget the
face of the man" who committed the crime. Others are less sure or place conditions on the identification ("it’s him except he’s older" – t hinner, or has different hair). The procedure encourages two things. It encourages the witness to make an independent judgment on each photo and encourages the investigator to document what those judgments are. This gives the rest of us (prosecutors, judges, and jurors) a clearer view of the truth – and much more confidence in the result.

3. When is a lineup not really a lineup?

Dr. Wells' studies presume a crime committed against a stranger. Reality suggests most crime is committed between people who are, to a greater or lesser degree, acquainted with each other. For a host of reasons, however, they may not reveal this at first or not reveal the degree of that relationship. This challenges the blind officers in a couple of ways:

- The witness may say things or lend context to the identification (or lack of identification) that confuses the officer. The witness may also ask questions about the suspect that the officer cannot answer.
- The witness may show reluctance to identify not because of a lack of knowledge but because of a lack of cooperation. Blind officers find it difficult to tell the difference between the two or manage that reluctance.

4. Multiple witness cases are challenging.

Something between ten and twenty percent of the cases we’ve looked at involve multiple witnesses. Once a blind officer shows a sequential lineup to the first witness, the officer is no longer really blind. Does a seven witness case require seven additional officers? The hardship to a small department is obvious.

We're not done yet:

The sequential identification pilot program is over halfway through the data collection phase. Obviously evaluating that data is as important as collecting it. Nevertheless, it’s not too early to suggest that sequential identification can work even in an era of shrinking resources. We think the study will provide useful information about what works and what doesn’t and guidance about how to tweak the system to make sequential identification easier to implement across the county. The early reports support Dr. Wells' contention that the procedure isn’t about giving one side an advantage over the other, it’s about restoring or maintaining confidence in the identifications eyewitnesses make. At a minimum the procedures give us more information about what an eyewitness really means when an identification is made and, in the end, a clearer view of the truth.
Exhibit 4
NORTH CAROLINA ACTUAL INNOCENCE COMMISSION
RECOMMENDATIONS FOR EYEWITNESS IDENTIFICATION

The following recommendations are the results of a study conducted by the North Carolina Actual Innocence Commission. Information used by the Commission in reaching its recommendations included the U.S. Department of Justice research report, Eyewitness Evidence, A Guide for Law Enforcement (October 1999); the New Jersey Division of Criminal Justice training manual, Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures (August 2001); a survey and study of the identification procedures currently followed by North Carolina’s law enforcement; and presentations and consultations by experts Professor Gary Wells, Distinguished Professor of Psychology at Iowa State University and expert on eyewitness memory; Professor Brian Cutler, Chair of the Department of Psychology at UNC-Charlotte and expert on eyewitness memory; and New Jersey Deputy Attorney General, Lori Linskey, who was responsible for the statewide implementation of revised identification procedures in that state. The recommendations cover the most important aspects of “best practices” in witness identification procedures; however, they leave the details of implementation of these practices to the discretion of law enforcement.

The recommendations made herein are not intended to create, do not create, and may not be relied on to create, any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. Jurisdictional or logistical conditions may preclude the use of particular procedures.

I. COMMISSION OBJECTIVES

All recommended procedures

a) identify practices that will produce more reliable and accurate eyewitness evidence while improving or eliminating practices that can undermine eyewitness reliability and accuracy;

b) are supported by expert social science research;

c) combine best workable police practices and psychological research;

d) consider the diverse perspectives of researchers, police, judiciary, prosecutors, defense attorneys and victim advocates;

e) assume good faith of law enforcement and do not flow from fear of misconduct;

f) consider budgetary restrictions and result in minimal incremental costs.

II. SUMMARY OF LINEUP PROCEDURE RECOMMENDATIONS

a) Lineups should be presented sequentially (individuals or photos are shown to the witness one at a time) rather than simultaneously (individuals or photos are shown at the same time). Presentation in this manner reduces misidentifications resulting from witnesses making identifications by comparing members of the lineup to determine which one looks the most like the perpetrator.

b) The individual conducting the photo or live lineup should not know the identity of the actual suspect. This is called a double-blind procedure and addresses
misidentifications resulting from unintentional influences from those conducting the identification procedure.

c) Witnesses should be instructed that the suspect may or may not be in the lineup.
d) A minimum of eight photos should be used in photo identification procedures.
e) A minimum of six individuals should be used in live identification procedures.
f) Witnesses should not receive any feedback during or after the identification process.
g) Witnesses should be asked to give feedback in their own words regarding their level of confidence in their identification.

III. IDENTIFICATION PROCEDURE DETAIL

1. General Instructions for all Identification Procedures:

a) Separate all witnesses. Each witness should be given instructions regarding the identification procedures without other witnesses present. Witnesses should not be allowed to confer with one another either before, during, or after the procedure.
b) Use an independent administrator. The individual conducting the photo or live lineup should be someone who does not know which member of the lineup is the suspect. When it is not possible to conduct a lineup with an independent investigator, the primary investigator must exercise extreme caution to avoid inadvertent signaling to the witness of the "correct" response. Technological tools, such as computer programs that can run photo lineups and record witness identifications without the presence of an investigator, may assist agencies with resource constraints. Additionally, agency personnel can be trained to assist with identification procedures.
c) The administrator should avoid saying anything to the witness that may influence the witness's selection.
d) There should not be anyone present during the lineup procedure who knows the suspect's identity, except counsel, as required by law.
e) Include a minimum of seven fillers (non-suspects) per photo identification procedure and five for live lineups.
f) If there is more than one suspect that fits the description of the perpetrator, there can be more than one suspect in the lineup; however the number of fillers should be increased to a minimum of seven (or five for live lineups) per suspect. Whether to include one suspect and seven fillers per line-up, or to include more than one suspect and increase the number of fillers to keep the proportion of suspects to fillers constant at 1 to 7, is a discretionary decision. By keeping the proportion of fillers to suspects constant, the reliability of the identification remains constant.
g) Fillers should resemble the witness's description of the perpetrator in significant features (face, profile, height, weight, build, posture, gait, voice, specific articles of clothing, etc.) or, in the case where a composite is used, based on their resemblance to a composite. If the perpetrator was described as having an
unusual identifying mark, all fillers should have similar markings or all lineup members should have similar coverings over the described area.

h) When there is an inadequate description of the perpetrator, or when there is a suspect whose appearance differs from the description of the perpetrator, fillers should resemble the suspect in significant features. For example, if a suspect is identified through fingerprints and the suspect’s appearance differs from the witness’s description of the perpetrator, fillers should be chosen that resemble the suspect in appearance.

i) When showing a new suspect, avoid reusing the same fillers in lineups shown to the same witness.

j) In the case of photo lineups, ensure no writings or information concerning previous arrests or previous identification results are visible to the witness.

k) Ensure that any identification actions (e.g., speaking, moving) are performed by all members of a live lineup.

l) Always lead lineups with a filler. Research suggests that witnesses are reluctant to identify someone in the first position and if it happens to be the culprit, it could contribute to a missed identification.

m) Place suspects in different positions in each lineup when there are multiple witnesses in the same case. Position all other members of the lineup randomly. Placement in this way eliminates the possibility that a second or third witness picks someone based on the position number communicated to them by the first witness.

n) Individuals or photos should be presented to witnesses “sequentially,” rather than “simultaneously.” Sequential presentation requires each individual/photo to be presented to the witness separately, in a previously determined order, removing each individual/photo after it is viewed; whereas simultaneous presentation presents all individuals/photos at the same time.

o) An independent administrator is the preferred administrator for both sequential and simultaneous presentations. Because there is a greater risk that an administrator may convey unintentional cues during sequential presentations, sequential presentation should only be used if the identification procedure is being conducted by an independent administrator. If an independent administrator is not available, simultaneous presentation of individuals/photos is necessary.

p) In the case of sequential lineups, witnesses should not know how many individuals/photos will be shown.

q) Presentation administrators should give the identical instruction at the beginning of every identification procedure and should use great care not to influence the witness’s selection in any way. (See verbal instructions outlined below.) Administrators should avoid making any comments during the selection procedure and should be aware that witnesses can perceive such things as unintentional voice inflection or prolonged eye contact as messages regarding their selection.

r) Each of the witness’s responses to the question “Is this the person you saw [insert description of act here]? Yes or no?” should be documented with a reference to the number of the photo or individual being presented and the exact response given. If the witness answers “no” to the question, the next photo or person is
shown. If the witness answers “yes”, the administrator should ask, “Can you describe how sure you are?” The witness’s exact statement should be documented. Witnesses should not be compelled to give an answer to this question.

\( s \) Witnesses should be shown all photos/individuals, even if they make an identification during the presentation.

\( t \) If the witness cannot make an ID after all photos/individuals are shown, the administrator can ask, “Would you like to view the lineup again?” The fact that the witness did not make an identification the first time through and that the administrator asked the witness if they would like to view the lineup again, as well as the outcome of the second display, must be documented in the record. It is important not to tell the witness prior to the complete lineup presentation that they will be allowed to view the lineup a second time if they do not make an ID the first time through.

\( u \) If a witness asks to see just one specific photo or individual a second time, documentation of that request is required. If a witness asks to see more than one specific photo or individual a second time, the entire array should be shown and the fact that there was a second presentation should be documented.

\( v \) Ensure identification results are signed and dated by the witness.

\( w \) Ensure the witness does not write or mark any materials that will be used in other identification procedures.

\( x \) The lineup administrator should document their name, the procedure employed, the number of photos or individuals shown, sources of all photos used, names of persons present during the lineup, number of times the lineup is viewed and the results of the procedure, including the witness’s own words regarding how certain he/she is of any identification. Any specific words, conduct or gestures required of lineup participants should also be documented. Documentation should include the date, time, and location of the procedure. A standard form should be used by each department for recording lineup results.

\( y \) Do not give witnesses any feedback regarding the individual he/she has selected or comment on the outcome of the identification procedure in any way.

\( z \) Document live lineups 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, but should preserve the presentation order of the lineup.

\( aa \) In the case of photo lineups, after the photographs have been viewed they should be marked denoting the order that they were shown to the witnesses and retained for later use in court.
2. Verbal Instructions:

Witnesses should be instructed as follows prior to the lineup:

For sequential presentation:

In a moment, I am going to show you a series of photos [or individuals]. The person who committed the crime may or may not be included. I do not know whether the person being investigated is included. Even if you identify someone during this procedure, I will continue to show you all photos [individuals] in the series.

Keep in mind that things like hair styles, beards, and mustaches can be easily changed [(for photo line-ups only] and that complexion colors may look slightly different in photographs].

You should not feel like you have to make an identification. This procedure is important to the investigation whether or not you identify someone.

The photos [individuals] will be shown to you one at a time and are not in any particular order. Take as much time as you need to look at each one. After each photo [or individual], I will ask you "Is this the person you saw [insert crime here].....yes or no?" Take your time answering the question. If you answer "yes", I will then ask you, "Can you describe how sure you are?"

Because you are involved in an ongoing investigation, in order to prevent damaging the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the lineup procedure will be conducted and the other instructions I have given you?

For simultaneous presentation:

In a moment, I am going to show you a series of photos [or individuals]. The person who committed the crime may or may not be included. I do not know whether the person being investigated is included.

Keep in mind that things like hair styles, beards, and mustaches can be easily changed [(for photo line-ups only] and that complexion colors may look slightly different in photographs].

You should not feel like you have to make an identification. This procedure is important to the investigation whether or not you identify someone.
Take as much time as you need to look at the photo [or individual] lineup and then tell me whether you see the person who [insert crime here]. If you identify anyone in the lineup, I will then ask you, “Can you describe how sure you are?”

Because you are involved in an ongoing investigation, in order to prevent damaging the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the lineup procedure will be conducted and the other instructions I have given you?

Witnesses should be given a written copy of the above instructions and the following statement should be signed and dated by the witness.

“I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to review the photographs [or individuals] which will be presented to me, and I will follow the instructions provided on this form.”

3. Instructions specific to Show-up Procedures:

a) Show-ups should only be used when circumstances require the prompt display of a single suspect to a witness (e.g., there is no probable cause for detention long enough to construct a proper lineup or there are public safety concerns).

b) If possible, encourage the suspect to consent to voluntary detainment to participate in a live lineup or to consent to being photographed for use in a photo lineup. A written consent that they are a willing participant in the lineup without promises, threats, pressure, or coercion should be signed and dated by the suspect.

c) Show-ups should only be conducted when the suspect matching the description of the perpetrator is located in close proximity in time and place to the crime.

d) A description of the perpetrator should be documented prior to the show-up.

e) If practical, transport the witness to the location of the detained suspect to limit the legal impact of the suspect’s detention.

f) Show-ups should not be conducted with more than one witness present at a time.

g) Witnesses should be given a cautionary instruction that the individual may not be the perpetrator.

h) If there are multiple witnesses and one witness makes an identification during a show-up, reserve the remaining witnesses for another identification procedure.

i) Words or conduct of any type that may suggest to the witness that the individual is or may be the perpetrator should be carefully avoided.
Exhibit 5
REPORT OF THE
VIRGINIA STATE CRIME COMMISSION

MISTAKEN EYEWITNESS IDENTIFICATION

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 40

COMMONWEALTH OF VIRGINIA
RICHMOND
2005
January 11, 2005

TO: The Honorable Mark Warner, Governor of Virginia
And
Members of the Virginia General Assembly

The 2004 General Assembly, through House Joint Resolution 79, requested the Virginia State Crime Commission study mistaken identification in criminal cases.

Enclosed for your review and consideration is the report which has been prepared in response to this request. The Commission received assistance from all affected agencies and gratefully acknowledges their input into this report.

Respectfully submitted,

[Signature]

David B. Albo
Chairman
From the Virginia House of Delegates

David B. Albo, Chairman
    Robert F. McDonnell
    H. Morgan Griffith
    Terry G. Kilgore
    Kenneth R. Melvin
    Brian J. Moran

From the Senate of Virginia

Kenneth W. Stolle, Vice Chairman
    Janet D. Howell
    Thomas K. Norment, Jr.

Gubernatorial Appointments

Glenn R. Croshaw
    Col. W. Gerald Massengill
    The Honorable William G. Petty

Office of the Attorney General

The Honorable Jerry W. Kilgore

Virginia State Crime Commission Staff

    Kimberly J. Hamilton, Executive Director
    G. Stewart Petoe, Director of Legal Services
    Christina M. Barnes, Legislative Policy Analyst
    Stephen W. Bowman, Staff Attorney/Senior Policy Analyst
    Thomas E. Cleator, Staff Attorney
    Jaime H. Hoyle, Senior Staff Attorney
    Kristen M. Jones, Legislative Policy Analyst
    John B. Reaves, Legislative Policy Analyst
    Sylvia A. Reid, Office Manager
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Attachment 3: Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures
Attachment 4: Virginia Department of Criminal Justice Services Training Standard for Photographic Lineups
I. Authority

The Code of Virginia, § 30-156, authorizes the Virginia State Crime Commission to study, report and make recommendations on all areas of public safety and protection. Additionally, the Commission is to study matters “including apprehension, trial and punishment of criminal offenders.” Section 30-158(3) provides the Commission the power to “conduct studies and gather information and data in order to accomplish its purposes as set forth in § 30-156. . . and formulate its recommendations to the Governor and the General Assembly.”

Using the statutory authority granted to the Crime Commission, the staff conducted a study of mistaken identification in criminal cases.

II. Executive Summary

During the 2004 Session of the Virginia General Assembly, Delegate Harry R. Purkey introduced House Joint Resolution 79 (HJR 79)\(^1\), directing the Virginia State Crime Commission to study mistaken identification in criminal cases. Specifically, the resolution directs the commission to: (i) review the cases in the United States in which DNA profiling was used to exonerate persons convicted of a crime; (ii) examine the procedures used in traditional police lineups or photographic review; and, (iii) consider the sequential method as a procedure for identifying suspects. As a result of the study effort, the staff made recommendations to improve the procedures for conducting lineups in the Commonwealth of Virginia. These recommendations, as follows, were approved by the Virginia State Crime Commission:

Recommendations:

Recommendation 1: Amend the Code of Virginia to require local police and sheriff’s departments to have a written policy for conducting in-person and photographic lineups.

Recommendation 2: Request the Department of Criminal Justice Services (DCJS), in cooperation with the Virginia State Crime Commission, to establish a workgroup to develop a model policy for conducting in-person and photographic lineups.

Recommendation 3: Request DCJS, through regulation, to amend the entry level and in-service training academy requirements regarding lineups to include only use of the sequential method, by October 1, 2005.

Recommendation 4: Request DCJS to work with the Virginia Law Enforcement Professional Standards Commission to include the sequential method for conducting lineups as part of the accreditation process for law

\(^1\) House Joint Resolution 79 (2004). See Attachment 1.
enforcement agencies.

**Recommendation 5:** Require DCJS, in conjunction with the Crime Commission, work with the Virginia Sheriffs’ Association and the Virginia Chiefs of Police Association to assist members in using and understanding the benefits of the sequential method of lineups; presentation to each association’s annual meetings will occur.

**Recommendation 6:** Amend the *Code of Virginia* to designate the Virginia State Police, through their oversight of the Central Criminal Records Exchange, as a repository for all mug shots and queries for photographic lineups.

### III. Methodology

The Virginia State Crime Commission utilized three research methodologies to examine HJR 79. First, a literature review of psychology and legal documents regarding mistaken eyewitness identification in criminal cases was conducted. Research from the United States Department of Justice and the National Institute of Justice “Eyewitness Evidence: Guidelines for Law Enforcement” (DOJ Guidelines) was reviewed. Staff also conducted a case law review of instances in which DNA profiling was used to exonerate persons convicted of a crime, as well as those cases involving the constitutionality of identification procedures.

Second, staff thoroughly examined law enforcement training materials, guidelines and policies related to conducting lineups. As part of this examination, federal and other states’ policies and guidelines were examined and compared, as well as any national and state law enforcement accreditation requirements. In addition, staff collected Virginia police academy new employment and in-service curricula to determine how law enforcement is currently trained on conducting line-ups.

Third, staff examined the policies and procedures specific to each police department and sheriff’s office in Virginia. As part of this examination, staff requested each police and sheriff’s department send a copy of its policy or general order related to conducting lineups. Staff then thoroughly reviewed these policies and compared them to federal and other state’s policies. Then, staff developed and distributed a survey to each of the police departments and sheriff’s offices who had responded to our request for a policy to identify how their line-up policies and procedures are carried out in practice. Finally, staff conducted site visits to police departments and sheriff’s offices to examine their in-person and photographic lineup capabilities.

### IV. Background

Recent cases in which DNA evidence has been used to exonerate individuals previously convicted of crimes, prompted inquiries into what evidence was used to obtain these wrongful convictions. According to a 1999 National Institute of Justice report, over
75,000 people a year become criminal defendants based on eyewitness identification.\(^2\) Specifically, there have been 151 DNA exoneration cases, nationally.\(^3\) In 61 of the first 70 DNA exoneration cases, mistaken eyewitness identification was a factor leading to the conviction; and, in 45 of the first 82 DNA exoneration cases, a photographic lineup was the type of pre-trial identification procedure used.\(^4\)

A. DNA and Mistaken Eyewitness Identification

In 1989, Virginia became the first state to establish a criminal DNA database. Now, as of October 31, 2004, the Division of Forensic Science (DFS) at the Virginia Department of Criminal Justice Services has 225,318 DNA profiles on file.\(^5\) As of this date, it has also recorded 2,271 cold hits, where DNA analysis of a crime scene sample with no suspect matches a profile in a database of previously convicted offenders, a database of samples from those individuals arrested for specified crimes, or a database of other crime scene profiles.\(^6\)

There have been eight DNA exoneration cases in Virginia since 1989 when the DNA database was established:

<table>
<thead>
<tr>
<th>Defendant Name</th>
<th>Date of Conviction</th>
<th>Date of Exoneration</th>
</tr>
</thead>
<tbody>
<tr>
<td>David Vasquez</td>
<td>1985</td>
<td>1989</td>
</tr>
<tr>
<td>Walter Snyder</td>
<td>1986</td>
<td>1993</td>
</tr>
<tr>
<td>Edward Honaker</td>
<td>1984</td>
<td>1994</td>
</tr>
<tr>
<td>Troy Webb</td>
<td>1989</td>
<td>1996</td>
</tr>
<tr>
<td>Earl Washington</td>
<td>1984</td>
<td>2000</td>
</tr>
<tr>
<td>Marvin Anderson</td>
<td>1982</td>
<td>2001</td>
</tr>
<tr>
<td>Julius Ruffin</td>
<td>1981</td>
<td>2003</td>
</tr>
<tr>
<td>Arthur Lee Whitfield</td>
<td>1984</td>
<td>2004</td>
</tr>
</tbody>
</table>

Furthermore, since 2001, when the law allowing for post-conviction review of DNA evidence under certain circumstances was enacted, the DFS has received requests for testing in 17 post-conviction cases:
- Three tests excluded the defendant (Arthur Whitfield, Julius Ruffin and Marvin Anderson);
- Seven tests have included the defendant;

\(^3\)Id.
\(^4\)Id.
\(^6\)Id.
Six tests were inconclusive; and,

One test is pending. 7

Mirroring the national trend, in each of the three excluded cases, mistaken eyewitness identification was a factor leading to the conviction, with a lineup procedure being used in two of these cases. Specifically, in the case of Julius Ruffin, who was spent 21 years in prison for rape and sodomy he did not commit, mistaken eyewitness identification led to the conviction. In this case, the victim did not identify Ruffin in a lineup, but saw him on an elevator at the Eastern Virginia Medical School where she was nursing student and he was a maintenance worker. After she exited the elevator, she called the police and identified Ruffin as her assailant. During the trials, the victim testified that she was 100% certain Ruffin was the man who committed the crimes against her. 8 Two juries could not reach a unanimous verdict, but the third jury found Ruffin guilty. 9

In the case of Marvin Anderson, who spent 15 years in prison on the identification of an Ashland rape victim, it was a color photograph that tainted the identification procedures. Because no mugshot was available for Anderson, a color photo of Anderson was used in the identification amongst numerous black and white photos. The victim chose the color photograph of Anderson, and then subsequently identified him in the lineup, and again at trial. The victim was confident in her identification, but she was mistaken and Marvin Anderson was wrongly convicted. 10

Similarly, in the most recent case of Arthur Lee Whitfield who was charged with the rape of two women, it was a lineup procedure and mistaken identification that led to his being convicted of one of the crimes and pleading guilty to the second. The first victim picked out seven photographs, one of which was Whitfield, in a simultaneous line-up procedure at the police station. The witness then later identified Whitfield in a live simultaneous lineup. During trial, the defense argued unsuccessfully that Whitfield had been misidentified, but Whitfield was subsequently convicted based on the mistaken identification and served 22 years for crimes he did not commit.

Throughout the United States, in the 90% of convictions involving mistaken eyewitness accounts that were later cleared through DNA evidence, “witness reliability and identification were challenged but upheld by the courts.” 11 Although extremely significant, DNA is only one safeguard for the wrongfully convicted. DNA cannot exonerate those persons wrongfully convicted on the basis of eyewitness testimony where no DNA evidence exists. The fact that DNA evidence only exonerates those convicted individuals who leave trace evidence and that the vast majority of these convictions

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7 Phone interview with Dr. Paul Ferrara, Director, Division of Forensic Science, Virginia Department of Criminal Justice Services. (September 9, 2004).
8 Tim McGlone. “Special Report: Earl Ruffin, the Wrong Man.” The Virginian-Pilot. (February 8, 2004).
9 Id.
10 Frank Green. “Eyes don’t always have it: Eyewitnesses can be sure but still be wrong on ID.” Richmond Times-Dispatch. (January 28, 2002).
resulted from eyewitness identification highlights the need for a change in eyewitness identification procedures in the Commonwealth.

**B. Mistaken Eyewitness Identification Procedures**

Psychological factors are at play with any eyewitness identification. Beginning in the late 1970s, modern psychologists noted that psychology could play a significant role in preventing the occurrence of eyewitness errors in the first place rather than postdicting errors after the fact. This new movement argued that some variables affect the accuracy of eyewitness accounts over which the justice system actually has control. The structure of a lineup, for example, is one such variable because the system controls how lineups are structured. In a police lineup, a suspect is embedded among several known-ineffec innocent people, or fillers, and the eyewitness is asked if he/she can identify the perpetrator. A lineup contains only one suspect.

There is a large body of psychological evidence pointing to the fact that people, under certain conditions, will misidentify someone from a live or photo lineup. Researchers and psychologists have determined system variables that can create an environment susceptible to misidentification. These variables include: similarity of fillers; instructions prior to viewing lineup; presentation of the lineup procedure; and, law enforcement feedback.

Turning to the first variable, similarity of fillers, researchers and psychologists have noted that the fillers used in a lineup must be similar in order to prevent the lineup from being biased against an innocent suspect. A suspect positioned among fillers with mainly dissimilar characteristics increases the likelihood that the eyewitness will focus his/her attention on the suspect, giving an unreliable identification. Additionally, too much similarity can confuse witnesses and reduce accurate identifications.

The nature of the instructions given to the eyewitness prior to his viewing the lineup is another important system variable. Eyewitnesses need to be instructed that the actual perpetrator might not be present in the lineup. If an eyewitness assumes that the perpetrator is in the lineup, the eyewitness will likely pick the person who most closely resembles the perpetrator. Informing the eyewitness of the possibility that the suspect is not present in the lineup helps to prevent witnesses from forcing an identification.

Along those same lines, the processes of relative and absolute judgment are factors in the structure of a lineup procedure. Specifically, relative judgment is the ability

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13 Id.
14 Id.
15 Wells, p. 584.
16 Id.
17 Id.
18 Wells, p. 585
19 Id.
20 Id.
to detect a difference between two or more stimuli; and, absolute judgment is the ability to accurately judge the level of a stimulus without comparison stimulus. Relative judgment is at play with a simultaneous lineup. A simultaneous lineup procedure allows a witness to look at a group of photographs displayed side-by-side, usually in a 6-to-a-page manila folder. With this method, a witness often uses relative judgment and makes an identification by comparing and combining various characteristics of the individuals displayed. As a result, the witness often identifies the individual that most looks like the person he/she remembers as compared to the other persons in the lineup. The witness tends to compare one member of a lineup to another, making relative judgments about which individual looks most like the perpetrator.

In the alternative, sequential lineups make use of absolute judgment. In a sequential lineup procedure, the eyewitness is presented with one lineup member at a time, and it allows the witness to make an identification based on each person’s appearance before viewing another photo or lineup member. This procedure discourages the eyewitness from making relative judgments about who looks most like the perpetrator. Although one subject might look more like the perpetrator than the last, the eyewitness cannot be sure that the next subject is not the perpetrator.

Another important system variable is law enforcement feedback and its impact on confidence malleability. People often believe that confidence relates to accuracy, that a witness that is confident in his/her identification is more than likely to also be accurate. However, research indicates that feedback influences eyewitness confidence and is independent of accuracy. Feedback can come in the form of instructing eyewitnesses that a co-witness identified the same person or confirming, outright or through inadvertent verbal and body cues, that the person identified is the actual suspect. This feedback can induce false confidence in witnesses. When law enforcement use precautions to avoid confirming a witness’s choice and encourage a witness to focus on his/her on thought processes, the problem of confidence inflation is lessened. However, even when utilizing precautions to avoid any inadvertent body signals or cues to witnesses, inadvertent body signals or cues to witnesses do occur when the identity of the actual suspect is known to the individual conducting the identification procedure. Ensuring that the individual conducting the lineup does not know the identity of the actual suspect eliminates unintentional verbal and body cues, which may adversely impact a witness’ ability to make a reliable identification.

C. Court Safeguards to Mistaken Eyewitness Identifications

The court system does have certain safeguards in place to prevent mistaken eyewitness identifications from leading to a wrongful conviction. Prior to 1972, the United States Supreme Court (Court) indicated that unnecessarily suggestive eyewitness identification procedures should result in exclusion of the identification evidence. Notably, in Stovall v. Denno, the Court “held that the defendant could claim that ‘the

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21 Wells, p. 586.
22 Id.
23 Id.
confrontation conducted ... was so unnecessarily suggestive and conductive to irreparable mistaken identification that he was denied due process of law."

This case went further to hold that denial of due process based on the suggestiveness of an identification procedure must be determined on the totality of the circumstances. Subsequently, in the 1972 case of Neil v. Biggers, the Court held that eyewitness identification evidence will be excluded only if the unnecessarily suggestive procedure created a substantial risk of mistaken identification. The Court laid out factors to be considered in evaluating the likelihood of misidentification. These factors include:

- The opportunity of the witness to view the criminal at the time of the crime;
- The witness’ degree of attention;
- The accuracy of the witness’ prior description of the criminal;
- The level of certainty demonstrated by the witness at the confrontation; and,
- The length of time between the crime and the confrontation.

Finally, in Manson v. Brathwaite, the Court held that “reliability is the linchpin in determining the admissibility of identification testimony.” The Court established a two-prong test for the exclusion of eyewitness identification evidence. In the first prong, the suggestiveness of the identification procedure must be shown. In the second prong, it must be established that the suggestive identification procedure resulted in unreliable eyewitness evidence. The Court stated that the factors for assessing reliability are those established in Neil v. Biggers. These factors are then to be weighed against the suggestive identification itself to determine if the suspect’s due process rights were violated and therefore have the eyewitness evidence excluded.

Although these cases indicate that the legal system has tools in place to prevent wrongful convictions based on mistaken eyewitness identifications, they are solutions to a problem that has already occurred, i.e. the suggestive identification procedure. If the suggestive procedures were avoided in the first place, then prevention of wrongful convictions based on mistaken eyewitness identifications would not rest solely on court safeguards.

D. Department of Justice, National Institute of Health Guidelines

The possibility that procedures within the criminal justice system could allow for repeated mistakes led the United States Department of Justice, National Institute of Health, to initiate a study to determine if certain guidelines could be established to prevent wrongful convictions based on eyewitness identifications.

26 Id.
28 Id.
30 Id.
31 Id.
32 Id.
33 Id.
Justice to form the Technical Working Group for Eyewitness Evidence (TWGEYEE) to specifically address these concerns and suggest solutions. The group consisted of 34 members from the fields of law enforcement, the legal system, and research professions, from both urban and rural jurisdictions in the United States and Canada. TWGEYEE met over a year long period with the goal of developing improved protocols for collecting and preserving eyewitness evidence so that the most accurate and reliable evidence could be presented in court.\textsuperscript{34} The product of this collaboration was the handbook, \textit{Eyewitness Evidence: A Guide for Law Enforcement}, which incorporates their years of scientific research on memory and interview techniques into investigative practices that can be used by various jurisdictions to ensure that the criminal justice system will fairly and effectively elicit accurate and reliable eyewitness evidence.\textsuperscript{35}

The purpose of the guidelines is to prevent eyewitness error rather than correcting errors after they have occurred. The guidelines take the basic elements of police investigations and suggest workable changes in order to achieve more consistent eyewitness results. For example, standard police questioning practices originally were designed to elicit information from uncooperative suspects rather than to foster reliable information for cooperative witnesses.\textsuperscript{36} The guidelines focus on increasing the amount of information gathered in eyewitness interviews and ensuring that only the eyewitness supplies the information.\textsuperscript{37} Specifically, the guidelines look to establish criteria for photo-identifications and lineups and address the many opportunities these situations afford for a biased result.

The guidelines suggest:

- Showing only one suspect per identification;
- Selecting photos of “fillers”, or nonsuspects, that match the eyewitness’s description of the criminal rather than the person the investigators suspect of the crime. The original process of choosing persons who match the description of the suspect narrows the universe of options for the witness and risks creating a subtle suggestion to the witness about what the police think the suspect looks like;\textsuperscript{38}
- Avoiding the use of nonsuspects who so closely resemble the suspect that a person familiar with the suspect might have difficulty distinguishing between the nonsuspect and the suspect;
- Placing a suspect in different positions in each photo array when dealing with more than one eyewitness in a given case;

\textsuperscript{34} Doyle, Larson, and DiTraglia, “The Eyes Have It – Or Do They? New Guides for Better Eyewitness Evidence Procedures.” \textit{Criminal Justice, American Bar Association’s Section of Criminal Justice} (Fall 2001).
\textsuperscript{35} See attachment 2.
\textsuperscript{36} Doyle, Larson, and DiTraglia, “The Eyes Have It – Or Do They? New Guides for Better Eyewitness Evidence Procedures.” \textit{Criminal Justice, American Bar Association’s Section of Criminal Justice} (Fall 2001).
\textsuperscript{37} Id.
\textsuperscript{38} Doyle, Larson, and DiTraglia, “The Eyes Have It – Or Do They? New Guides for Better Eyewitness Evidence Procedures.” \textit{Criminal Justice, American Bar Association’s Section of Criminal Justice} (Fall 2001).
• Properly instruct the witness that the actual suspect might not be present in the lineup; and,
• Display suspects sequentially, or one at a time, rather than simultaneously. 39

E. Other State’s Policies and Procedures

In April 2001, the New Jersey Attorney General, who has the power to dictate law enforcement policy, issued the Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures. 40 With these Guidelines, New Jersey became the first state to officially adopt the recommendations issued by the United States Department of Justice in its Eyewitness Evidence Guidelines. The implementation of these guidelines required appropriate training. To allow for this training, the Attorney General delayed the effective date 180 days, and requested that each county prosecutor designate key law enforcement personnel and police training coordinators to work with the Division of Criminal Justice to train its staff as well as the local law enforcement agencies within each jurisdiction.

The New Jersey Attorney General’s Office, Division of Criminal Justice, Prosecutors & Police Bureau oversees the implementation of the Guidelines. 41 There are 21 County Prosecutors who report directly to the Attorney General. Furthermore, every county consists of county and municipal police departments who report to the County Prosecutor. In total, there are approximately 700 of these county and municipal police departments. Therefore, in order to consolidate training efforts, the New Jersey Attorney General’s Office conducted one statewide-training, requesting all the local trainers to attend. Then, each trainer left with a CD-rom and a training manual to allow them to train their officers locally.

The Guidelines apply to all law enforcement, including sheriffs. However, in New Jersey, campus police do not rise to the same level, and therefore receive assistance from the county police departments. 42 The Guidelines are used in all cases, including juvenile cases. Anytime an identification procedure is used, the officers must adhere to the Guidelines. New Jersey has no indication that the Guidelines are not being followed but insist that the greatest assurance that the Guidelines will be followed is a defense attorney arguing lack of adherence to the Guidelines on cross-examination. 43

As far as the costs of implementing the Guidelines in New Jersey, the biggest cost comes from the elimination of the 6-pack folders previously used for photo-identification. One county had an innovative solution to this cost in that they hired a carpenter to build a sequential photo book from the original 6-pack folder. 44 So, law enforcement is free to

39 Doyle, Larson, and DiTraglia, “The Eyes Have It – Or Do They? New Guides for Better Eyewitness Evidence Procedures.” Criminal Justice, American Bar Association’s Section of Criminal Justice (Fall 2001).
40 See attachment 3.
41 Lori Linskey, Prosecutor, New Jersey Attorney General’s Office.
42 Id.
43 Lori Linskey, Prosecutor, New Jersey Attorney General’s Office.
44 Id.
determine their own ways to implement the Guidelines. Another cost associated with the implementation is staffing concerns for small localities that do not have a trained independent officer to conduct the identification procedures, and they cannot afford to train additional staff. As a solution to this problem, local departments are banding together and forming task forces, with officers on call to help out in the procedures wherever they are needed. Additionally, the County Prosecutor provides assistance.

The overall response to the adoption of the DOJ Guidelines in New Jersey has been positive, both within the state and throughout the country. The Attorney General's Office reports that the state's law enforcement has been innovative and dedicated to the process. Although, they remain the only jurisdiction that has implemented these procedures statewide, other jurisdictions and/or local police and sheriff's departments throughout the United States have adopted these guidelines on their own accord. The New Jersey Attorney General's Office has received inquiries from almost every other jurisdiction, including Ohio, Connecticut, Rhode Island, Hawaii, and Missouri. They also recently confirmed that the Syracuse, New York District Attorney's Office has implemented the Guidelines.  

V. Virginia Policies and Procedures for the Identification of Suspects

Currently, in Virginia, the Virginia Department of Criminal Justice Service, Standards and Training Section is responsible for the implementation of regulations promulgated by the Criminal Justice Services Board pertaining to minimum and in-service training requirements for police and sheriff's departments. The current training curriculum is taught to the newly employed law enforcement officers within 12 months of employment. It is this curriculum that contains the training standard related to photographic line-ups. The in-service training occurs every other year, and that curriculum changes in order to provide an opportunity for growth and advancement. Thirty police academies in Virginia conduct the training. A curriculum review committee meets periodically to suggest changes to the curriculum. This committee makes recommendations and has a public hearing before the Criminal Justice Services Board which establishes the minimum training requirements.

A. Current Training Related to Lineups

DCJS requires the basic academies to train and test new officers on the following criteria related to in-person and photographic lineups:

- Use of the same sex;
- Use of similar size, build, color, race, ethnic background;
- Use of either black/white photos in a group or color photos in a group (do not mix the group);
- Use of descriptors that the victim or witnesses provide; and,
- Do not use photos that reflect bias toward one person, i.e.

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*45 Id.
*46 Id.
*47 See attachment 4.
mug shots for some and not all.

DCJS provides a sample lesson plan to the academies and requires these factors to be included in the curriculum for the newly employed. DCJS allows for both the simultaneous and/or the sequential method to be taught at the training academies.

B. Accreditation Requirements

The Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) was established as an independent national accrediting authority for law enforcement agencies in 1979 by the four major law enforcement membership associations: International Association of Chiefs of Police (IACP); National Organization of Black Law Enforcement Executives (NOBLE); National Sheriffs’ Association (NSA); and, Police Executive Research Forum (PERF). The Executive Directors of these four associations appoint members to the Commission annually. The commission has 21 members and derives its general authority from the four major law enforcement membership associations and derives its accreditation authority from those agencies that voluntarily participate in the accreditation program. The mission of the Commission’s accreditation program is to improve delivery of law enforcement service by offering a body of standards, developed by law enforcement practitioners, covering a wide range of up-to-date law enforcement topics. A decision to participate in the accreditation program is entirely voluntary in order to insure that law enforcement agencies are committed to addressing and complying with applicable standards.\(^{48}\) Accredited agencies benefit from CALEA accreditation by obtaining recognition, controlling liability insurance costs, and increased governmental and community support.\(^{49}\) Currently, CALEA does not require law enforcement to use the sequential method or to conduct double blind lineups in order to receive accreditation. Twenty-two Virginia law enforcement agencies currently have CALEA accreditation, as well as one training academy.\(^{50}\)

Law enforcement accreditation at the state level requires an adherence to the Virginia Law Enforcement Professional Standards Commission (VLEPSC). The Virginia Sheriffs’ Association, the Virginia Association of Chiefs of Police and DCJS comprise the VLEPSC. Executive board members consisting of active Sheriffs and Chiefs of Police establish professional standards and administer the accreditation process by which Virginia agencies can be systematically measured, evaluated, and updated. The mission of VLEPSC is to increase the effectiveness and efficiency of law enforcement agencies in the Commonwealth; to promote cooperation among all components in the criminal justice system; to insure the appropriate level of training for law enforcement personnel; and to promote public confidence in law enforcement.\(^{51}\) As with CALEA, accreditation with VLEPSC is voluntary and use of the sequential method or the requirement of double blind lineups is also not required for accreditation in Virginia. Forty-nine Virginia law enforcement agencies currently have VLEPSC accreditation.

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\(^{48}\) Available at [http://www.calea.org/newweb/AboutUs/Aboutus.htm](http://www.calea.org/newweb/AboutUs/Aboutus.htm).

\(^{49}\) Ibid.

\(^{50}\) Ibid.

C. Local Department Findings

Currently, there is no statutory or regulatory rule requiring Virginia police and sheriffs’ departments to have a policy related to conducting lineups. To determine if any law enforcement departments had voluntarily adopted a written policy for conducting lineups, staff surveyed all of Virginia’s law enforcement. Seventy-three percent (259 of 356) of local law enforcement departments responded to the survey regarding photographic identifications and lineups. Specifically, 144 police departments and 115 sheriffs’ departments responded. The majority of the non-respondents were very small town police departments or sheriffs’ departments without law enforcement responsibilities.

Thirty-seven percent (96 of 259) of the responding departments had a written policy concerning the procedures for lineups in their department:
- 49 Police Departments, and,
- 47 Sheriffs’ Offices.
Sixty-three percent (163 of 259) of the responding departments did not have a written policy concerning lineups:
- 95 Police Departments, and,
- 68 Sheriffs’ Offices.

D. Survey Results

Staff developed and distributed a second survey to the 259 Virginia police departments and sheriffs’ offices who responded to the first survey. The second survey was designed to determine the actual procedures used by each department.

Ten law enforcement departments reported conducting a total of 32 live lineups during Fiscal Year 2004 (FY 04). The Henry County Sheriff’s Office reported the most usage of live lineups with eight during FY 04. One hundred eight law enforcement departments reported conducting a total of 5,298 photographic lineups during FY 04. The number of photographic lineups by agency ranged from a low of one at Christopher Newport University to a high of 800 at Roanoke City Police Department.

As to the type of photographic lineups reported used by departments with a lineup during FY 04:
- 58 respondents reported using all color photographs;
- 2 respondents reported using all black and white photographs;
- 47 reported using either all color photographs or all black and white photographs, depending on case specifics; and,
- 1 did not respond.

The overwhelming majority of departments reported using at least six photographs per
lineup. The numbers of photographs reported used by departments with a lineup in FY 04 were:

- 96 (89%) used at least 6 photos;
- 9 (8%) used at least 8 photos;
- 1 (1%) used at least 7 photos;
- 1 (1%) used at least 9 photos; and,
- 1 (1%) used at least 10 photos.

Sixty-five percent of the departments reported using multiple sources for acquisition of photographic lineups. Local law enforcement departments reported the following as their source of photos for lineups:

- Computer-generated only: 24 (22%)
- DMV only: 1 (1%)
- Mug books only: 13 (12%)
- Polaroid/arrest photos only: 1 (1%)
- Photo ID’s only: 1 (1%)
- Jail photos only: 3 (3%)
- Combination of the above: 65 (60%)

Smaller law enforcement agencies reported having difficulty acquiring and conducting photographic lineups due to a lack of available photographs. Fifty-four of the 108 responding agencies reported having to go outside of their department for mugshots to use in lineups. In fact, outside resources were used to conduct 194 lineups in FY 03. In each of these cases, the wait for receiving the requested mugshot and lineup was 6-8 weeks.

Forty-six representatives from the responding departments reported solely using the simultaneous photo method to conduct photographic lineups; whereas five of the survey respondents interviewed reported solely using the sequential method to conduct photographic lineups in FY 04 (Goochland County Sheriff’s Office, New Kent County Sheriff’s Office, Tappahannock Police Department, Tazewell Sheriff’s Office, and Virginia Beach Police Department). Furthermore, six of the survey respondents interviewed reported using either the simultaneous or the sequential method to conduct photographic lineups, depending upon the officer (Smyth County Sheriff’s Office, Virginia Tech Police Department, Charlottesville Police Department, Herndon Police Department, Metro Transit Police Department, and South Boston Police Department). Waynesboro Police Department indicated they were changing policy to move toward the use of the sequential method.

E. Site Visits

Staff conducted four site visits to local law enforcement departments to examine their computer-generated systems for conducting photographic lineups. The Goochland Sheriff’s Office:

- Uses the sequential method;
• Has a small database of pictures, and often must rely on other entities to obtain photographic lineups; and,
• Has a computerized, searchable database.

The Henrico County Police Department uses the six-to-a-page photographic lineups (pictures are placed in a manila folder and the witness views the photographs simultaneously) and, has a computerized, searchable database of approximately 5,000 arrest photos taken from the jail population. The Chesterfield County Police Department also uses the six-to-a-page photographic lineups and has a computerized, searchable database of approximately 5,200 arrest photos.

The Virginia Beach Police Department uses the sequential method and has a computerized, searchable database of approximately 10,000 arrest photos. However, Virginia Beach has a database that allows them to share information and photographs with 11 other law enforcement agencies in the Tidewater area CRIMES network. Virginia Beach also conducts mandatory training twice a year on the use of the sequential method of photographic identification.

As a policy, Virginia Beach does not use lineups as the only evidence for a prosecution, but are only used as a tool to aide an investigator in an investigation. To successfully prosecute a case, Virginia Beach advocates that there must be additional evidence to support a positive result in a lineup identification. Without supplemental evidence the chances of a wrongful prosecution of an innocent individual is greatly increased.

The Virginia Beach Police Department modeled its eyewitness identification procedures after the DOJ Guidelines. Representatives from the department reported that use of their procedures minimizes the risk of misidentification and the identification has a stronger evidentiary value than one obtained without these procedures.

VI. Conclusion and Recommendations

In summary, there is overwhelming psychological evidence supporting the need for changes in the current procedures Virginia law enforcement is required and trained to use in conducting in-person and photographic lineups. Virginia law enforcement is trained on both the simultaneous and sequential method and is not mandated to use the sequential method. There is no requirement that law enforcement even have a policy on the proper procedures and practices for conducting more reliable lineups. Additionally, smaller departments lack the resources necessary for producing a lineup and need access to up-to-date photographs of suspects and fillers.

Based on the study analysis, the Virginia State Crime Commission made the following recommendations to improve the procedures for conducting lineups in the Commonwealth of Virginia.
**Recommendation 1:** Amend the *Code of Virginia* to require local police and sheriff’s departments to have a written policy for conducting in-person and photographic lineups.

**Recommendation 2:** Request the Department of Criminal Justice Services (DCJS), in cooperation with the Virginia State Crime Commission, to establish a workgroup to develop a model policy for conducting in-person and photographic lineups.

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**Recommendation 5:** Require DCJS, in conjunction with the Crime Commission, work with the Virginia Sheriffs’ Association and the Virginia Chiefs of Police Association to assist members in using and understanding the benefits of the sequential method of lineups; presentation to each association’s annual meetings will occur.

**Recommendation 6:** Amend the *Code of Virginia* to designate the Virginia State Police, through their oversight of the Central Criminal Records Exchange, as a repository for all mug shots and queries for photographic lineups.

**VII. Acknowledgements**

The Virginia State Crime Commission extends its appreciation to the following agencies and individuals for their assistance and cooperation on this study:

**Chesterfield County Police Department**
Sergeant Casey Carr

**Goochland County Sheriff’s Office**
Sheriff James L. Agnew

**Henrico Police Department**
Captain Jan Stern
Sergeant Al Harper
Steve Guthrie, Project Leader, Department of Information Technology
New Kent County Sheriff's Office
Wakie Howard, Sheriff

New Jersey Office of the Attorney General
Lori Linskey, Prosecutor

Virginia Compensation Board
Jim Matthews, Deputy Director

Virginia Department of Criminal Justice Services
Leon Baker, Interim Division Director, Division of Regulation and Research
Ron Bessent, Criminal Justice Program Manager, Standards and Training Division
Dr. Paul Ferrara, Division Director, Division of Forensic Sciences
George Gotschalk, Section Chief, Standards and Training Division
Judy Kirkendall, Job Task Analysis Administrator, Standards and Training Division

Virginia Department of Motor Vehicles
Karen Chappell, Deputy Commissioner
Ed Ryder

Virginia Sheriffs’ Association
John Jones, Executive Director

Virginia Beach Police Department
Detective Rick Deems
Deputy Chief Gregory Mullen
Sergeant Bruce Razey

Virginia State Police
Mary Crawford, AFIS Manager
Lt. Tom Turner
Elaine Shepherd
Attachment 1:
HOUSE JOINT RESOLUTION NO. 79


Agreed to by the House of Delegates, February 17, 2004
Agreed to by the Senate, March 9, 2004

WHEREAS, of the first 40 cases in the United States in which DNA profiling was used to exonerate persons convicted of a crime, 90 percent involved mistaken identification by one or more eyewitnesses; and

WHEREAS, traditional police lineups or photographic review may create a situation where eyewitnesses identify the person in the lineup or in the photograph who looks most like the suspect relative to the others in the lineup or photo array; and

WHEREAS, in a study by Iowa State University, of 63 wrongful convictions, 53 were based on eyewitness identification; and

WHEREAS, in virtually all of these cases, the actual criminal did not appear in the lineups; and

WHEREAS, the United States Justice Department now recommends the Iowa State-developed sequential method as being less error prone when one person, or photo, at a time is brought before an eyewitness rather than a half dozen or so individuals at the same time; and

WHEREAS, New Jersey became the first state to adopt this sequential method as standard procedure and other states are now examining the use of a similar process; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission be directed to study mistaken identification in criminal cases. In conducting its study, the Commission shall (i) review the cases in the United States in which DNA profiling was used to exonerate persons convicted of a crime; (ii) examine the procedures used in traditional police lineups or photographic review; and (iii) consider the sequential method as a procedure for identifying suspects.

Technical assistance shall be provided to the Commission by the Department of Criminal Justice Services' Division of Forensic Science. All agencies of the Commonwealth shall provide assistance to the Commission for this study, upon request.

The Virginia State Crime Commission shall complete its meetings by November 30, 2004, and the Chairman of the Commission shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2005 Regular Session of the General Assembly. The executive summary shall state whether the Commission intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a
document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.
Exhibit 6
A BILL

IN THE COUNCIL IN THE DISTRICT OF COLUMBIA

Councilmember Kathy Patterson introduced the following bill, which was referred to the Committee on ____________________________.

To create and mandate an eyewitness identification process; to codify best practices in identification procedures; to require that line-up procedures be recorded; and to create a rebuttable presumption that a line-up procedure not in accordance with this law is unreliable.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Eyewitness Identification Procedure Act of 2004.”

Sec. 2. Definitions.

For the purposes of this section:

(1) “Line-up” means a procedure conducted by law enforcement in which a witness views a number of persons or photographs and is asked whether the witness can make an identification. Unless specifically stated otherwise, reference to a line-up in this act refers to both a line-up composed of actual persons and a photographic display.

(2) “Photographic display” means a group of photographs of possible suspects and/or fillers shown to the witness during a lineup procedure.
(1) an explanation to the witness that the investigator does not know which
person, if any, is the actual suspect in the case;

(2) an explanation to the witness that the actual suspect may or may not be
present in the line-up;

(3) an instruction that each individual in the line-up will be viewed
individually;

(4) an assurance that an identification does not have to be made and that
the police will continue to investigate the incident regardless of whether the witness identifies
anyone in the lineup;

(5) an instruction to the witness to take as much as they need with each
photograph or live line-up participant before making a determination;

(6) an explanation to the witness that the investigator must ask how certain
they are if an identification is made, and will subsequently record this response;

(7) an explanation that the lineup may be videotaped;

(8) an instruction that the witness should not discuss the lineup with any
other witnesses.

(d) Investigators must clearly record in writing both identifications and non-
identifications made by witnesses during a line-up to preserve the true outcome of the procedure
and subsequently have the witness sign the documented results along with the date and time of
the lineup procedure. A standard form should be used for recording line-up results.

(e) Investigators performing the line-up procedure must have no knowledge of the person
deemed the actual suspect in the line-up.
(f) Investigators may not make any comment, gesture, facial expression, noise or other response when a witness makes an identification or non-identification.

(g) Witnesses should not receive any feedback from investigators after the identification.

(h) Investigators must ensure that all photographs or live line-up participants have reasonably similar characteristics (face, profile, height, weight, build, posture, gait, voice, age, skin tone, distinguishing features, specific articles of clothing, etc.). Fillers should resemble the witness’s description of the perpetrator. Suspects should not stand out significantly from other participants in a line-up. Investigators must create a reasonably consistent appearance between the suspect and fillers with respect to unique, remarkable, or unusual features. Investigators should examine photographic spreads before presentation to a witness to ensure the suspect does not stand out.

(i) Investigators must present photographs or live line-up participants in random order and allow the witness as much time as they need with each photograph or live line-up participant.

(j) Investigators may only present photographs or live line-up participants to the witness one at a time, or “sequentially”. The witness must make a determination on each individual in the lineup before the next individual is shown. The investigator must record all comments and determinations by the witness for each participant in the lineup.

(k) If the witness makes an identification, the investigator should ask the witness to describe in her or her own words how certain the witness is of identification. The investigator should record the witness’s response.

(l) For a live lineup, any identification actions such as speaking or moving must be performed by each individual participant when they are sequentially shown to the witness.
(m) Investigators must utilize at least five (5) fillers for live line-ups and at least five (5) fillers for photographic line-ups.

(n) Investigators must show witnesses the entire photographic display or allow each live line-up participant to be shown, even if the witness identifies the suspected perpetrator.

(o) When such equipment is reasonably available, the police shall videotape live sequential lineups or sequential photographic displays including the witness’s comments, determinations on each participant, and stated level of confidence. When such equipment is not reasonably available, investigators should record the number of photos or individuals shown, sources of all photos used, the presentation order of the line-up, names of persons present during the line-up, and the number of times the line-up is viewed.

Sec. 4. Procedures For Witnesses Involved In Double Blind Sequential Line-ups

(a) Every witness viewing a double blind sequential photographic line-up or live line-up must sign a form containing the following: “Please read the following description of how the identification procedure will happen:

(1) You are not required to make an identification and the police will continue to investigate regardless of the determination of the witness;

(2) The suspect may or may not be in the photographic display or live line-up at all;

(3) It is just as important to clear innocent individuals from the line-up as it is to implicate possible suspects;

(4) You should not assume that the investigator conducting the lineup knows which person, if any, is the suspect in the case;
(5) You will be asked to rate your level of certainty if an identification is made.

By signing this form I agree that I have read and understand the above information.”

(b) Witnesses must be informed of the procedures for both photographic line-ups and live line-ups, including all items described in Section 3(c) of this Act.

Sec. 5. Procedures for Investigators Conducting a Showup.

(a) Showups should only be used in case of exigent circumstances requiring the prompt display of a single suspect to a witness. If a showup is used, the exigent circumstances requiring its use will be recorded and preserved by the investigator.

(b) If possible, investigators will encourage the suspect to consent to voluntary detention to participate in a live lineup or to consent to being photographed for use in a photo lineup. A written consent that they are a willing participant in the lineup without promises, threats, pressure, or coercion should be signed and dated by the suspect.

(c) Showups should only be conducted when the suspect matching the description of the perpetrator is located in close proximity in time and place to the crime.

(d) A description of the perpetrator should be documented prior to the showup

(e) If practical, investigators should transport the witness to the location of the detained suspect to limit the legal impact of the suspect's detention.

(f) Showups should not be conducted with more than one witness present at a time.

(g) Witnesses should be given a cautionary instruction prior to the showup that the individual may not be the perpetrator.
(h) If there are multiple witnesses and one witness makes an identification during a showup, investigators should reserve the remaining witnesses for another identification procedure.

(i) Words or conduct of any type that may suggest to the witness that an individual is or may be the perpetrator should be carefully avoided.

Sec. 6. Failure to Follow the Eyewitness Identification Procedure Act of 2004.

(a) Any identification of a person accused of a criminal offense in the Superior Court of the District of Columbia which is made by a witness during a lineup or showup which is not conducted in accordance with the procedures required by this Act shall be subject to a rebuttable presumption that the identification is unreliable.

(b) This presumption may be overcome if the government proves by clear and convincing evidence that the identification procedure was not suggestive and was reliable, otherwise the identification will be suppressed.

(c) If suppression is not ordered:

(1) the existence of the statutory procedures and investigators' failure to comply with those procedures shall be admissible in evidence to challenge the reliability of the identification at trial; and

(2) properly qualified expert testimony about the failure to comply with statutory procedures and the importance of the statutory procedures to ensuring reliability shall be admissible in evidence along with the identification.

(a) This act is passed to ensure that identification procedures should always be conducted in a manner that promotes fairness, accuracy, reliability, objectivity, and furthers the overall interests of justice. This act shall be construed in light of its purpose.

(b) Nothing in this Act shall be construed to limit the admissibility of properly qualified expert witnesses on matters relating to the reliability and accuracy of eyewitness identifications.

Sec. 9. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1974 (87 Stat. 813, D.C. Official Code § 1-206.02(c)(3)).

Section 10. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(2)), and publication in the District of Columbia Register.
Exhibit 7
AN ACT to repeal 165.77 (2m) (a); to amend 165.77 (2m) (b), 165.81 (3) (b), 165.81 (3) (c) (intro.), 165.81 (3) (c) 1., 165.81 (3) (c) 2. a. and b., 165.81 (3) (c) 3., 165.81 (3) (d), 165.81 (3) (e), 165.85 (3) (d), 757.05 (1) (a), 757.54 (2) (b), 757.54 (2) (c) (intro.), 757.54 (2) (c) 1., 757.54 (2) (c) 2. a. and b., 757.54 (2) (c) 3., 757.54 (2) (d), 757.54 (2) (e), 939.74 (2d) (b) and (c), 968.205 (2), 968.205 (3) (intro.), 968.205 (3) (a), 968.205 (3) (b) 1. and 2., 968.205 (3) (c), 968.205 (4), 968.205 (5), 974.07 (8), 978.08 (2), 978.08 (3) (intro.), 978.08 (3) (a), 978.08 (3) (b) 1. and 2., 978.08 (3) (c), 978.08 (4) and 978.08 (5); and to create 16.964 (10), 20.455 (2) (i) 16., 20.505 (6) (k), 165.75 (3) (g), 165.81 (3) (bm), 175.50, 757.54 (2) (bm), 938.195, 938.31 (3), 939.74 (2d) (am), 968.073, 968.205 (2m), 972.115, 974.07 (12) (c) and 978.08 (2m) of the statutes; relating to: retention and testing of evidence that includes biological material, time limits for prosecuting a crime that is related to a sexual assault, law enforcement procedures for using an eyewitness to identify a person suspected of committing a crime, making audio or audio and visual recordings of custodial interrogations, limitations on admitting unrecorded statements into evidence in juvenile delinquency and criminal proceedings, and creating a grant program for digital recording equipment and training for digital recording of custodial interrogations.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 16.964 (10) of the statutes is created to read:

16.964 (10) (a) In this subsection:
1. “Custodial Interrogation” has the meaning given in s. 968.073 (1) (a).
2. “Law enforcement agency” has the meaning given in s. 165.83 (1) (b).

(b) From the appropriation under s. 20.505 (6) (k), the office shall provide grants to law enforcement agencies for the purchase, installation, or maintenance of digital recording equipment for making audio or audio and visual recordings of custodial interrogations or for training personnel to use such equipment. Grants awarded under this subsection may be used to reimburse law enforcement agencies for expenses incurred or payments made on or after July 7, 2005. Grants awarded under this subsection may be used to support recording of custodial interrogations of either juveniles or adults and of interrogations related to either misdemeanor or felony offenses. The office may award more than one grant under this subsection to a law enforcement agency. The office shall develop criteria and procedures to administer this subsection. Notwithstanding s. 227.10 (1), the criteria and procedures need not be promulgated as rules under ch. 227.

(c) A law enforcement agency shall include the following information in an application for a grant under this subsection:
1. How the agency proposes to use the grant funds.
2. Procedures to be followed when recording equipment fails to operate correctly, including procedures for
reporting failures, using alternative recording equipment, and repairing or replacing the equipment.
3. Procedures for storing recordings of custodial interrogations, including storage format, storage location, and indexing of recordings for retrieval.
4. Measures to prevent or detect tampering with recordings of custodial interrogations.
5. Any other information required by the office.

Section 2. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

<table>
<thead>
<tr>
<th>2005–06</th>
<th>2006–07</th>
</tr>
</thead>
<tbody>
<tr>
<td>PR-S A</td>
<td>312,500</td>
</tr>
</tbody>
</table>

20.505 Administration, department of

Office of Justice Assistance

(kc) Grants for digital recording of custodial interrogations

Section 3. 20.455 (2) (i) 16. of the statutes is created to read:

20.455 (2) (i) 16. The amount transferred to s. 20.505 (6) (kc) shall be the amount in the schedule under s. 20.505 (6) (kc).

Section 4. 20.505 (6) (kc) of the statutes is created to read:

20.505 (6) (kc) Grants for digital recording of custodial interrogations. The amounts in the schedule for grants to law enforcement agencies under s. 16.964 (10) for equipment or training used to digitally record custodial interrogations. All moneys transferred from the appropriation account under s. 20.455 (2) (i) 16. shall be credited to this appropriation account.

Section 5. 165.75 (3) (g) of the statutes is created to read:

165.75 (3) (g) Deoxyribonucleic acid testing ordered under s. 974.07 shall have priority, consistent with the right of a defendant or the state to a speedy trial and consistent with the right of a victim to the prompt disposition of a case.

Section 6. 165.77 (2m) (a) of the statutes is repealed.

Section 7. 165.77 (2m) (b) of the statutes is amended to read:

165.77 (2m) (b) The if the laboratories analyze biological material pursuant to an order issued under s. 974.07 (8), the laboratories may compare the data obtained from the material received under par. (a) with data obtained from other specimens. The laboratories may make data obtained from any analysis and comparison available to law enforcement agencies in connection with criminal or delinquency investigations and, upon request, to any prosecutor, defense attorney, or subject of the data. The data may be used in criminal and delinquency actions and proceedings. The laboratories shall not include data obtained from deoxyribonucleic acid analysis of material received under par. (a) that is tested pursuant to an order under s. 974.07 (8) in the data bank under sub. (3).

Section 8. 165.81 (3) (b) of the statutes is amended to read:

165.81 (3) (b) Except as provided in par. (c), if physical evidence that is in the possession of the laboratories includes any biological material that was collected in connection with a criminal investigation that resulted in a criminal conviction, a delinquency adjudication, or commitment under s. 971.17 or 980.06 and the biological material is from a victim of the offense that was the subject of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense, the laboratories shall preserve the physical evidence until every person in custody as a result of the conviction, adjudication, or commitment has reached his or her discharge date.

Section 9. 165.81 (3) (bm) of the statutes is created to read:

165.81 (3) (bm) The laboratories shall retain evidence to which par. (b) applies in an amount and manner sufficient to develop a deoxyribonucleic acid profile, as defined in s. 939.74 (2d) (a), from the biological material contained in or included on the evidence.

Section 10. 165.81 (3) (c) (intro.) of the statutes is amended to read:

165.81 (3) (c) (intro.) Subject to par. (e), the department may destroy evidence that includes biological material before the expiration of the time period specified in par. (b) if all of the following apply:

Section 11. 165.81 (3) (c) 1. of the statutes is amended to read:

165.81 (3) (c) 1. The department sends a notice of its intent to destroy the biological material evidence to all persons who remain in custody as a result of the criminal conviction, delinquency adjudication, or commitment, and to either the attorney of record for each person in custody or the state public defender.

Section 12. 165.81 (3) (c) 2. a. and b. of the statutes are amended to read:

165.81 (3) (c) 2. a. Files a motion for testing of the biological material evidence under s. 974.07 (2).

b. Submits a written request to preserve the biological material for retention of the evidence to the department.
SECTION 13. 165.81 (3) (c) 3. of the statutes is amended to read:

165.81 (3) (c) 3. No other provision of federal or state law requires the department to preserve retain the biological material evidence.

SECTION 14. 165.81 (3) (d) of the statutes is amended to read:

165.81 (3) (d) A notice provided under par. (c) 1. shall clearly inform the recipient that the biological material evidence will be destroyed unless, within 90 days after the date on which the person receives the notice, either a motion for testing of the material evidence is filed under s. 974.07 (2) or a written request to preserve for retention of the material evidence is submitted to the department.

SECTION 15. 165.81 (3) (e) of the statutes is amended to read:

165.81 (3) (e) If, after providing notice under par. (c) 1. of its intent to destroy biological material evidence, the department receives a written request to preserve for retention of the material evidence, the department shall preserve retain the material evidence until the discharge date of the person who made the request or on whose behalf the request was made, subject to a court order issued under s. 974.07 (7), (9) (a), or (10) (a) 5., unless the court orders destruction or transfer of the biological material evidence under s. 974.07 (9) (b) or (10) (a) 5.

SECTION 16. 165.85 (3) (d) of the statutes is amended to read:

165.85 (3) (d) Establish minimum curriculum requirements for preparatory courses and programs, and recommend minimum curriculum requirements for recertification and advanced courses and programs, in schools operated by or for this state or any political subdivision of the state for the specific purpose of training law enforcement recruits, law enforcement officers, tribal law enforcement recruits, tribal law enforcement officers, jail officer recruits, jail officers, secure detention officer recruits, or secure detention officers in areas of knowledge and ability necessary to the attainment of effective performance as an officer, and ranging from traditional subjects such as first aid, patrolling, statutory authority, techniques of arrest and, firearms, and recording custodial interrogations to subjects designed to provide a better understanding of ever-increasing complex problems in law enforcement such as human relations, civil rights, constitutional law, and supervision, control, and maintenance of a jail or secure detention facility. The board shall appoint a 13-member advisory curriculum committee consisting of 6 chiefs of police and 6 sheriffs to be appointed on a geographic basis of not more than one chief of police and one sheriff from any one of the 8 state administrative districts together with the director of training of the Wisconsin state patrol. This committee shall advise the board in the establishment of the curriculum requirements.

SECTION 17. 175.50 of the statutes is created to read:

175.50 Eyewitness identification procedures. (1) In this section:

(a) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).
(b) "Suspect" means a person suspected of committing a crime.

(2) Each law enforcement agency shall adopt written policies for using an eyewitness to identify a suspect upon viewing the suspect in person or upon viewing a representation of the suspect. The policies shall be designed to reduce the potential for erroneous identifications by eyewitnesses in criminal cases.

(3) A law enforcement agency shall biennially review policies adopted under this section.

(4) In developing and revising policies under this section, a law enforcement agency shall consider model policies and policies adopted by other jurisdictions.

(5) A law enforcement agency shall consider including in policies adopted under this section practices to enhance the objectivity and reliability of eyewitness identifications and to minimize the possibility of mistaken identifications, including the following:

(a) To the extent feasible, having a person who does not know the identity of the suspect administer the eyewitness' viewing of individuals or representations.
(b) To the extent feasible, showing individuals or representations sequentially rather than simultaneously to an eyewitness.

(c) Minimizing factors that influence an eyewitness to identify a suspect or overstate his or her confidence level in identifying a suspect, including verbal or nonverbal reactions of the person administering the eyewitness' viewing of individuals or representations.

(d) Documenting the procedure by which the eyewitness views the suspect or a representation of the suspect and documenting the results or outcome of the procedure.

SECTION 18. 757.05 (1) (a) of the statutes, as affected by 2005 Wisconsin Act 25, is amended to read:

757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance except for a violation of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bw) or (5), or for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, or for a violation of state laws or municipal or county ordinances involving nonmoving traffic violations or safety belt use violations under s. 347.48 (2m), there shall be imposed in addition a penalty surcharge under ch. 814 in an amount of 25% of the fine or forfeiture imposed. If multiple offenses are involved, the penalty surcharge shall be based upon the total fine or forfeiture for all offenses. When a fine or forfeiture is
suspended in whole or in part, the penalty surcharge shall
be reduced in proportion to the suspension.

Section 19. 757.54 (2) (b) of the statutes is amended to read:

757.54 (2) (b) Except as provided in par. (c), if an exhibit in a criminal action or a delinquency proceeding
under ch. 938 includes any biological material that was
collected in connection with the action or proceeding and
that is either from a victim of the offense that was the sub-
ject of the action or proceeding or may reasonably be
used to incriminate or exculpate any person for the
offense, the court presiding over the action or proceeding
shall ensure that the exhibit is preserved retained until
every person in custody as a result of the action or pro-
ceeding, or as a result of commitment under s. 980.06 that
is based on a judgment of guilty or not guilty by reason
of mental disease or defect in the action or proceeding,
has reached his or her discharge date.

Section 20. 757.54 (2) (bm) of the statutes is created to read:

757.54 (2) (bm) The court shall ensure that an exhibit to
which par. (b) applies is retained in an amount and
manner sufficient to develop a deoxyribonucleic acid
profile, as defined in s. 939.74 (2d) (a), from the biological
material contained in or included on the exhibit.

Section 21. 757.54 (2) (c) (intro.) of the statutes is amended to read:

757.54 (2) (c) (intro.) Subject to par. (e), the court
may destroy an exhibit that includes biological material
before the expiration of the time period specified in par.
(b) if all of the following apply:

Section 22. 757.54 (2) (c) 1. of the statutes is amended to read:

757.54 (2) (c) 1. The court sends a notice of its intent
to destroy the biological material exhibit to all persons
who remain in custody as a result of the criminal action,
delinquency proceeding, or commitment under s. 980.06
and to either the attorney of record for each person in cus-
tody or the state public defender.

Section 23. 757.54 (2) (c) 2. a. and b. of the statutes
are amended to read:

757.54 (2) (c) 2. a. Files a motion for testing of the
biological-material exhibit under s. 974.07 (2).

b. Submits a written request to preserve the biological-
material exhibit for retention of the exhibit to the court.

Section 24. 757.54 (2) (c) 3. of the statutes is amended to read:

757.54 (2) (c) 3. No other provision of federal or state
law requires the court to preserve retention of the biological-
material exhibit.

Section 25. 757.54 (2) (d) of the statutes is amended to read:

757.54 (2) (d) A notice provided under par. (c) 1.
shall clearly inform the recipient that the biological mate-
rial exhibit will be destroyed unless, within 90 days after
the date on which the person receives the notice, either a
motion for testing of the material exhibit is filed under s.
974.07 (2) or a written request to preserve for retention
of the material exhibit is submitted to the court.

Section 26. 757.54 (2) (e) of the statutes is amended to read:

757.54 (2) (e) If, after providing notice under par. (c)
1. of its intent to destroy biological material an exhibit,
a court receives a written request to preserve for retention
of the material exhibit, the court shall preserve the mate-
rial exhibit until the discharge date of the person who made the request or on whose
behalf the request was made, subject to a court order
issued under s. 974.07 (7), (9) (a), or (10) (a) 5., unless the
court orders destruction or transfer of the biological
material exhibit under s. 974.07 (9) (b) or (10) (a) 5.

Section 27. 938.195 of the statutes is created to read:

938.195 Recording custodial interrogations. (1)
In this section:
(a) "Custodial interrogation" has the meaning give in
s. 968.073 (1) (a).
(b) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).
(c) "Place of detention" means a secure detention facility, jail, municipal lockup facility, or secured correc-
tional facility, or a police or sheriff's office or other building
under the control of a law enforcement agency, at which juveniles are held in custody in connection with an
investigation of a delinquent act.

(2) (a) A law enforcement agency shall make an audio or audio and visual recording of any custodial
interrogation of a juvenile that is conducted at a place of
detention unless a condition under s. 938.31 (3) (c) 1. to 5. applies.

(b) If feasible, a law enforcement agency shall make an audio or audio and visual recording of any custodial
interrogation of a juvenile that is conducted at a place other than a place of detention unless a condition under
s. 938.31 (3) (c) 1. to 5. applies.

(3) A law enforcement officer or agent of a law
enforcement agency conducting a custodial interrogation is
not required to inform the subject of the interrogation
that the officer or agent is making an audio or audio and
visual recording of the interrogation.

Section 28. 938.31 (3) of the statutes is created to read:

938.31 (3) (a) In this subsection:
1. "Custodial interrogation" has the meaning given
in 968.073 (1) (a).
2. "Law enforcement agency" has the meaning given
in s. 165.83 (1) (b).
3. "Law enforcement officer" has the meaning given
in s. 165.85 (2) (c).
4. "Statement" has the meaning given in s. 972.115
(1) (d).

(b) Except as provided under par. (c), a statement
made by the juvenile during a custodial interrogation is
not admissible in evidence against the juvenile in any court proceeding alleging the juvenile to be delinquent unless an audio or audio and visual recording of the interrogation was made as required under s. 938.195 (2) and is available.

(c) A juvenile's statement is not inadmissible in evidence under par. (b) if any of the following applies or if other good cause exists for not suppressing a juvenile's statement under par. (b):

1. The juvenile refused to respond or cooperate in the custodial interrogation if an audio or audio and visual recording was made of the interrogation so long as a law enforcement officer or agent of a law enforcement agency made a contemporaneous audio or audio and visual recording or written record of the juvenile's refusal.

2. The statement was made in response to a question asked as part of the routine processing after the juvenile was taken into custody.

3. The law enforcement officer or agent of a law enforcement agency conducting the interrogation in good faith failed to make an audio or audio and visual recording of the interrogation because the recording equipment did not function, the officer or agent inadvertently failed to operate the equipment properly, or, without the officer's or agent's knowledge, the equipment malfunctioned or stopped operating.

4. The statement was made spontaneously and not in response to a question by a law enforcement officer or agent of a law enforcement agency.

5. Exigent public safety circumstances existed that prevented the making of an audio or audio and visual recording or rendered the making of such a recording infeasible.

(d) Notwithstanding ss. 968.28 to 968.37, a juvenile's lack of consent to having an audio or audio and visual recording made of a custodial interrogation does not affect the admissibility in evidence of an audio or audio and visual recording of a statement made by the juvenile during the interrogation.

Section 29. 939.74 (2d) (am) of the statutes is created to read:

939.74 (2d) (am) For purposes of this subsection, crimes are related if they are committed against the same victim, are proximate in time, and are committed with the same intent, purpose, or opportunity so as to be part of the same course of conduct.

Section 30. 939.74 (2d) (b) and (c) of the statutes are amended to read:

939.74 (2d) (b) If before the time limitation under sub. (1) expired, the state collected biological material that is evidence of the identity of the person who committed a violation of s. 940.225 (1) or (2), the state identified a deoxyribonucleic acid profile from the biological material, and comparisons of that deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons did not result in a probable identification of the person who is the source of the biological material, the state may commence prosecution of the person who is the source of the biological material for the violation of s. 940.225 (1) or (2) or a crime that is related to the violation or both within 12 months after comparison of the deoxyribonucleic acid profile relating to the violation results in a probable identification of the person.

(c) If before the time limitation under sub. (2) (c) expired, the state collected biological material that is evidence of the identity of the person who committed a violation of s. 948.02 (1) or (2) or 948.025, the state identified a deoxyribonucleic acid profile from the biological material, and comparisons of that deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons did not result in a probable identification of the person who is the source of the biological material, the state may commence prosecution of the person who is the source of the biological material for the violation of s. 948.02 (1) or (2) or 948.025 or a crime that is related to the violation or both within 12 months after comparison of the deoxyribonucleic acid profile relating to the violation results in a probable identification of the person.

Section 31. 968.073 of the statutes is created to read:

968.073 Recording custodial interrogations. (1) In this section:

(a) "Custodial interrogation" means an interrogation by a law enforcement officer or an agent of a law enforcement agency of a person suspected of committing a crime from the time the suspect is or should be informed of his or her right to counsel and to remain silent until the questioning ends, during which the officer or agent asks a question that is reasonably likely to elicit an incriminating response and during which a reasonable person in the suspect's position would believe that he or she is in custody or otherwise deprived of his or her freedom of action in any significant way.

(b) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

(c) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

(2) It is the policy of this state to make an audio or audio and visual recording of a custodial interrogation of a person suspected of committing a felony unless a condition under s. 972.115 (2) (a) 1. to 5. applies or good cause is shown for not making an audio or audio and visual recording of the interrogation.

(3) A law enforcement officer or agent of a law enforcement agency conducting a custodial interrogation is not required to inform the suspect of the subject of the interrogation that the officer or agent is making an audio or audio and visual recording of the interrogation.

Section 32. 968.205 (2) of the statutes is amended to read:

968.205 (2) Except as provided in sub. (3), if physical evidence that is in the possession of a law enforcement
agency includes any biological material that was collected in connection with a criminal investigation that resulted in a criminal conviction, delinquency adjudication, or commitment under s. 971.17 or 980.06 and the biological material is from a victim of the offense that was the subject of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense, the law enforcement agency shall preserve the physical evidence until every person in custody as a result of the conviction, adjudication, or commitment has reached his or her discharge date.

Section 33. 968.205 (2m) of the statutes is created to read:

968.205 (2m) A law enforcement agency shall retain evidence to which sub. (2) applies in an amount and manner sufficient to develop a deoxyribonucleic acid profile, as defined in s. 939.74 (2d) (a), from the biological material contained in or included on the evidence.

Section 34. 968.205 (3) (intro.) of the statutes is amended to read:

968.205 (3) (intro.) Subject to sub. (5), a law enforcement agency may destroy evidence that includes biological material before the expiration of the time period specified in sub. (2) if all of the following apply:

Section 35. 968.205 (3) (a) of the statutes is amended to read:

968.205 (3) (a) The law enforcement agency sends a notice of its intent to destroy the biological material evidence to all persons who remain in custody as a result of the criminal conviction, delinquency adjudication, or commitment, and to either the attorney of record for each person in custody or the state public defender.

Section 36. 968.205 (3) (b) of the statutes are amended to read:

968.205 (3) (b) 1. Files a motion for testing of the biological material evidence under s. 974.07 (2).

2. Submits a written request to preserve the biological material for retention of the evidence to the law enforcement agency or district attorney.

Section 37. 968.205 (3) (c) of the statutes is amended to read:

968.205 (3) (c) No other provision of federal or state law requires the law enforcement agency to preserve retain the biological material evidence.

Section 38. 968.205 (4) of the statutes is amended to read:

968.205 (4) A notice provided under sub. (3) (a) shall clearly inform the recipient that the biological material evidence will be destroyed unless, within 90 days after the date on which the person receives the notice, either a motion for testing of the material evidence is filed under s. 974.07 (2) or a written request to preserve for retention of the material evidence is submitted to the law enforcement agency.

Section 39. 968.205 (5) of the statutes is amended to read:

968.205 (5) If, after providing notice under sub. (3) (a) of its intent to destroy biological-material evidence, a law enforcement agency receives a written request to preserve for retention of the material evidence, the law enforcement agency shall preserve retain the material evidence until the discharge date of the person who made the request or on whose behalf the request was made, subject to a court order issued under s. 974.07 (7), (9) (a), or (10) (a) 5., unless the court orders destruction or transfer of the biological-material evidence under s. 974.07 (9) (b) or (10) (a) 5.

Section 40. 972.115 of the statutes is created to read:

972.115 Admissibility of defendant's statement. (1) In this section:

(a) "Custodial interrogation" has the meaning given in s. 968.073 (1) (a).

(b) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

(c) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

(d) "Statement" means an oral, written, sign language, or nonverbal communication.

(2) (a) If a statement made by a defendant during a custodial interrogation is admitted into evidence in a trial for a felony before a jury and if an audio or audio and visual recording of the interrogation is not available, upon a request made by the defendant as provided in s. 972.10 (3) and unless the state asserts and the court finds that one of the following conditions applies or that good cause exists for not providing an instruction, the court shall instruct the jury that it is the policy of this state to make an audio or audio and visual recording of a custodial interrogation of a person suspected of committing a felony and that the jury may consider the absence of an audio or audio and visual recording of the interrogation in evaluating the evidence relating to the interrogation and the statement in the case:

1. The person refused to respond or cooperate in the interrogation if an audio or audio and visual recording was made of the interrogation so long as a law enforcement officer or agent of a law enforcement agency made a contemporaneous audio or audio and visual recording or written record of the subject's refusal.

2. The statement was made in response to a question asked as part of the routine processing of the person.

3. The law enforcement officer or agent of a law enforcement agency conducting the interrogation in good faith failed to make an audio or audio and visual recording of the interrogation because the recording equipment did not function, the officer or agent inadvertently failed to operate the equipment properly, or, without the officer's or agent's knowledge, the equipment malfunctioned or stopped operating.

4. The statement was made spontaneously and not in response to a question by a law enforcement officer or agent of a law enforcement agency.
s. 974.07 (2) or a written request to preserve for retention of the material evidence is submitted to the district attorney.

Section 50. 978.08 (5) of the statutes is amended to read:

978.08 (5) If, after providing notice under sub. (3) (a) of its intent to destroy biological material evidence, a district attorney receives a written request to preserve for retention of the material evidence, the district attorney shall preserve retain the material evidence until the discharge date of the person who made the request or on whose behalf the request was made, subject to a court order issued under s. 974.07 (7), (9) (a), or (10) (a) 5., unless the court orders destruction or transfer of the biological material evidence under s. 974.07 (9) (b) or (10) (a) 5.

Section 51. Initial applicability.

1. Recording Interrogations of Juveniles. The treatment of sections 938.195 and 938.31 (3) of the statutes first applies to custodial interrogations, as defined in section 968.073 (1) (a) of the statutes, as created by this act, conducted on the effective date of this subsection.

2. Recording Interrogations of Adults. The treatment of sections 968.073 and 972.115 of the statutes first applies to custodial interrogations, as defined in section 968.073 (1) (a) of the statutes, as created by this act, conducted on January 1, 2007.

3. Penalty Surcharge Increase. The treatment of section 757.05 (1) (a) of the statutes first applies to acts or omissions committed on the effective date of this subsection.

4. Time limits for prosecuting crimes related to sexual assaults. The treatment of section 939.74 (2d) (am), (b), and (c) of the statutes first applies to offenses that are not barred from prosecution on the effective date of this subsection.

Section 52. Effective date.

1. Eyewitness Identification Procedures. The treatment of section 175.50 of the statutes takes effect on the first day of the 12th month beginning after publication.
AVERY TASK FORCE

EYEWITNESS IDENTIFICATION
PROCEDURE RECOMMENDATIONS

The Eyewitness Identification Procedures outlined below are recommended for consideration by Wisconsin law enforcement. Implementation of procedures based on these recommendations should enhance the reliability of eyewitness identification, reducing the potential for erroneous eyewitness identification in criminal cases. Experience in other jurisdictions has shown that use of such procedures is consistent with good law enforcement investigation practices.

In cases where known erroneous convictions have occurred, mistaken eyewitness identification has been identified as perhaps the leading contributor. Even when a potential erroneous conviction is not at issue, a known mistaken eyewitness identification can negatively affect an investigation by tainting that witness for any future identifications in the case.

Traditional lineup and photo array procedures can unintentionally influence human memory in ways that contribute to erroneous eyewitness identifications. To address the effects of memory contamination and relative judgment, these recommended eyewitness identification procedures emphasize use of a double-blind procedure and sequential presentation, explained in Part I., below. The recommended procedures include additional provisions that minimize influences on witnesses and also include procedures for documenting the identification procedure and procedure results. More generally, the recommendations include procedures for sequential photo arrays, sequential live lineups, and “show-ups.”

It is recognized that the ability to fully implement the recommended procedures will vary among individual law enforcement agencies, depending on available resources, and that the procedures will often be tailored to meet individual circumstances. The procedures to some extent account for varying resources and circumstances; for example, a “folder system” is included for use in a photo array procedure where an independent administrator is not feasible.

The recommendations are based on review of, and include selected aspects of, procedures developed for use in the States of New Jersey and North Carolina and by the City of Madison, Wisconsin. (See: Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures, Office of the Attorney General, State of New Jersey (2001); Recommendations for Eyewitness Identification, North Carolina Actual Innocence Commission; and Sequential Photo Lineup Procedure, Madison Police Department, Madison, Wisconsin.)

The individual and social costs of erroneous eyewitness identifications in criminal cases are high. It is hoped that Wisconsin law enforcement agencies will adopt procedures similar to those recommended below and that, as a result, the reliability of eyewitness identifications in this state will be enhanced.

January 2005
I. **Generally**

A. **Double-Blind Procedure**

The individual conducting the photo array or live lineup procedure should not know which photo or member of the lineup is the suspect. This is sometimes referred to as a “double-blind procedure.” Use of a neutral or independent administrator helps to minimize unintentional influences or signals to the witness regarding who may or may not be the suspect and, therefore, serves to reduce incorrect identifications. Where circumstances or resources make use of an independent administrator impractical, the “folder system,” a variation of the sequential photo array, should be used (see part II. C.).

*Note:* Use of a neutral or independent administrator to conduct the photo array or live lineup assumes that the person composing, in contrast to conducting, the photo array or live lineup is not the person conducting the array or lineup (with the exception of the folder system).

B. **Sequential Presentation**

Photo arrays and live lineups should be presented sequentially, rather than simultaneously. Sequential presentation requires each photo or individual to be presented to the witness separately, in a previously determined order, removing each photo or individual after it is viewed (simultaneous presentation presents all photos or individuals at the same time). Sequential presentation reduces the occurrence of misidentifications that result from a witness making relative judgment identifications by comparing members of the array or lineup to determine which one looks most like the suspect, rather than focusing on whether a particular array or lineup member actually is the suspect.

*Note:* The City of Madison Police Department recommends that children 10 and under should not be shown a sequential array or lineup; a simultaneous array or lineup should be used instead. (Subject to this possible exception, use of simultaneous presentations is not recommended and, consequently, these recommendations include no provisions concerning simultaneous presentations.)

II. **Sequential Photo Array Procedure**

A. **Composing the Array**

Though complete uniformity of features is not required, the person composing the photo array should ensure the array is comprised so the suspect does not unduly standout.

1. **Number of Suspects.** Include only one suspect at a time in each identification procedure.

2. **Photo of Suspect.** If multiple photos of the suspect are reasonably available, select a photo resembling the suspect’s description or appearance at the time of the incident.

3. **Number of Fillers.** Except in extraordinary circumstances, include a minimum of seven fillers (nonsuspects) per identification procedure.

4. **Resemblance of Fillers to Suspect.** Fillers should resemble the witness’ description of the suspect in significant features (face, profile, height, weight, age, build, posture, specific articles of
5. **Information on previous arrests.** Ensure that no writings or information concerning a previous arrest will be visible to the witness.

6. **Filler as Lead Photo.** Always lead photo arrays with a filler (give the array administrator one filler photograph to be used as the first photo shown). Research suggests witnesses are reluctant to identify someone in the first position and, if that person is the suspect, a misidentification may result.

7. **Arrangement of Other Photos.** Give the photo array administrator the lead filler photo (photo number one), two blank photos (numbered 9 and 10), and the suspect photo and remaining filler photos. Do not tell the administrator which photo is the suspect. Have the administrator mix the unnumbered photos and number them 2 to 8.* Photos 9 and 10 are blank and are not shown to the witness but are used so the witness does not know when he or she is viewing the last photo.

8. **Positioning of Suspect When Multiple Arrays Used.** Have the administrator remix photos 2 to 8 and renumber them accordingly, in each subsequent photo array when there are multiple witnesses for the same case. Placement in this way reduces the possibility that a subsequent witness identifies someone based on the position number communicated to them by a previous witness. Effective separation of witnesses, as recommended in B.1., below, will prevent inappropriate communication between witnesses.

9. **Reuse of Fillers for Same Witness.** When showing a new suspect, avoid reusing the same fillers previously used in lineups shown to the same witness.

**B. Conducting the Array**

The identification procedure should be conducted in a manner that promotes the accuracy, reliability, fairness, and objectivity of the witness identification. The recommendations below are designed to enhance the accuracy of identification or nonidentification decisions by the witness.

1. **Separation of Witnesses.** Separate all witnesses. Each witness should be given identification procedure instructions without the presence of other witnesses. Witnesses should not be allowed to confer with one another either before, during, or after the procedure.

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* Assumes 7 fillers. These numbers and the numbers for the blank photos will, of course, change if a different number of fillers is used.
2. Presence of Persons Aware of Suspects Identity. No one should be present during the photo array procedure who knows the suspect’s identity except counsel, if present. It is recognized that, in practice, this recommendation is sometimes not feasible.

3. Initial Instructions to Witness. The photo array administrator should give the identical instruction at the beginning of each identification procedure. See Appendix A for recommended instructions to the witness.

4. Influencing the Witness. The administrator should avoid making any comments during the identification procedure and should be aware that witnesses can perceive such things as unintentional voice inflection or prolonged eye contact as messages regarding their selection.

5. Availability of Other Results to Witness. Ensure that no writings or information concerning previous identification results are visible to the witness.

6. Awareness of Witness of Number of Photos. The witness should not know how many photos will be shown.

7. Presentation of Photos. Present each photo to the witness separately, in a previously determined order, removing those previously shown. Hand the first photo to the witness for viewing. When the witness is done viewing the photo, have the witness hand the photo back. The second photo is then handed to the witness and the process is repeated through photo number 8. Show all photos to the witness, even if an identification is made before the procedure is completed.

8. Commenting on Selection and Outcome. Do not give the witness any feedback regarding the individual selected or comment on the outcome of the identification procedure in any way.

9. Request for Additional Viewing. Upon request of the witness, the witness may view one or more of the photos again after the photo procedure has been completed. If this occurs, it must be thoroughly documented. This should occur only if the witness requests it and only after the first procedure is completed; it should never be at the suggestion of the photo lineup administrator.

10. Alteration of Materials by Witness. Ensure that the witness does not write or mark any materials that will be used in other identification procedures.

C. Folder System

In the absence of an independent administrator, the “folder system” should be used. Recommendations for composing and conducting a sequential eyewitness identification procedure using the folder system are set forth in Appendix B.

D. Documenting and Recording Procedures and Results

1. Preserving Presentation Order and Photos. After the photos have been viewed, they should be marked, denoting the order in which presented to the witness, and retained in their original condition for possible later use.

2. Documenting Procedure. The photo array administrator should document: his or her name; the procedure employed; the number of photos shown; sources of all photos used; names of persons
present during the lineup; and the date, time, and location of the procedure. If, pursuant to a request, additional viewing occurs (see B. 9., above), that procedure should be thoroughly documented.

3. **Recording Results.** The photo array administrator should preserve the outcome of the procedure by documenting any identification or nonidentification results obtained from the witness. Preparing a complete and accurate record of the outcome of the identification procedure is crucial. The record can be a critical document in the investigation and any subsequent court proceedings.

   a. **Recording results and witness certainty.** Each of the witness’ responses to the question: “Is this the person you saw [insert description of act here]?” should be documented with a reference to the number of the photo being presented and the exact response given. If the witness answers “no” to the question, the next photo is shown. If the witness answers “yes,” the administrator should ask: “Can you describe how sure you are”? The witness’ exact response should be documented. A witness should not be compelled to give an answer to this question.

   b. **Witness signing of results.** Ensure identification results are signed and dated by the witness.

**III. SEQUENTIAL LIVE LINEUP PROCEDURE**

A. **Composing the Lineup**

Though complete uniformity of features is not required, the person composing the live lineup should ensure the lineup is comprised so the suspect does not unduly standout.

1. **Number of Suspects.** Include only one suspect at a time in each identification procedure.

2. **Number of Fillers.** Include a minimum of five fillers (nonsuspects) per identification procedure.

3. **Resemblance of Fillers to Suspect.** Fillers should resemble the witness’ description of the suspect in significant features (face, profile, height, weight, age, build, posture, gait, voice, specific articles of clothing, etc.) or, in cases where a composite is used, based on the filler’s resemblance to the composite. If the suspect was described as having an unusual identifying mark, all fillers should have similar markings or all lineup members should have similar coverings over the described area. When there is an inadequate description of the suspect, or when there is a suspect whose appearance differs from the description of the perpetrator, fillers should resemble the suspect in significant features. For example, if a suspect is identified through fingerprints and the suspect’s appearance differs from the witnesses’ description of the perpetrator, fillers should be chosen who resemble the suspect in appearance. View the entire lineup to ensure that no person unduly stands out.

4. **Filler as Lead Person.** Always lead lineups with a filler. Research suggests witnesses are reluctant to identify someone in the first position and, if that person is the suspect, a misidentification may result.

5. **Positioning of Suspect When Multiple Lineups Used.** Place the suspect in different positions in each lineup when there are multiple witnesses for the same case. Position all other members
of the lineup randomly. (Placement in this way eliminates the possibility that a second or third witness identifies someone based on the position number communicated to them by the first witness.)

6. **Reuse of Fillers for Same Witness.** When showing a new suspect, avoid reusing the same fillers previously used in lineups shown to the same witness.

**B. Conducting the Lineup**

The identification procedure should be conducted in a manner that promotes the accuracy, reliability, fairness, and objectivity of the witness identification. The recommendations below are designed to enhance the accuracy of identification or nonidentification decisions by the witness.

1. **Separation of Witnesses.** Separate all witnesses. Each witness should be given identification procedure instructions without the presence of other witnesses. Witnesses should not be allowed to confer with one another either before, during, or after the procedure.

2. **Presence of Persons Aware of Suspect's Identity.** No one should be present during the lineup procedure who knows the suspect's identity except counsel, if present. It is recognized that, in practice, this recommendation is sometimes not feasible.

3. **Initial Instructions to Witness.** The lineup administrator should give the identical instruction at the beginning of each identification procedure. See Appendix C for recommended instructions to the witness.

4. **Influencing the Witness.** The administrator should avoid making any comments during the identification procedure and should be aware that witnesses can perceive such things as unintentional voice inflection or prolonged eye contact as messages regarding their selection.

5. **Awareness of Witness of Number of Individuals.** The witness should not know how many individuals will be shown.

6. **Presentation of Individuals.** Begin with all lineup participants out of the view of the witness. Present each individual to the witness separately, in a previously determined order, removing those previously shown.

7. **Identification Actions of Participants.** Ensure that any identification actions (e.g., speaking, moving, etc.) are performed by all members of the lineup.

8. **Commenting on Selection and Outcome.** Do not give the witness any feedback regarding the individual selected or comment on the outcome of the identification procedure in any way.

9. **Request for Additional Viewing.** Upon request of the witness, the witness may view one or more of the individuals again after the procedure has been completed. If this occurs, it must be thoroughly documented. This should occur only if the witness requests it and only after the first procedure is completed; it should never be at the suggestion of the lineup administrator.
C. Documenting and Recording Procedures and Results

1. Preserving Lineup and Presentation Order. Document the lineup by photo or video. The documentation should represent the lineup clearly and fairly. Photo documentation can be of either the group or each individual, but should preserve the presentation order of the lineup.

2. Documenting Procedure. The lineup administrator should document: his or her name; the procedure employed; the number of individuals shown; specific words, conduct, or gestures required of lineup participants; names of persons present during the lineup; and the date, time, and location of the procedure. If, pursuant to a request, additional viewing occurs (see B. 9., above), that procedure should be thoroughly documented.

3. Recording Results. The lineup administrator should preserve the outcome of the procedure by documenting any identification or nonidentification results obtained from the witness. Preparing a complete and accurate record of the outcome of the identification procedure is crucial. The record can be a critical document in the investigation and any subsequent court proceedings.

   a. Recording results and witness certainty. Each of the witness’ responses to the question: “Is this the person you saw [insert description of act here]?” should be documented with a reference to the number of the individual being presented and the exact response given. If the witness answers “no” to the question, the next individual is shown. If the witness answers “yes,” the administrator should ask: “Can you describe how sure you are?” The witness’ exact response should be documented. A witness should not be compelled to give an answer to this question.

   b. Witness signing of results. Ensure identification results are signed and dated by the witness.

IV. SHOW-UP PROCEDURE

It is recognized that, although show-ups are inherently more suggestive than the eyewitness identification procedures previously recommended, under some circumstances the use of show-ups is appropriate. It is difficult to identify all these circumstances but generally, although not exclusively, they arise when circumstances require the prompt display of a suspect to a witness and the suspect matching the description of the perpetrator is located in close proximity in time and place to the crime.

If used in appropriate circumstances and with appropriate procedures, show-ups can be a reliable means for both identifying and excluding suspects. In particular, their use in close proximity in time to the crime can be advantageous: the witness’s memory is fresh and the suspect’s appearance is ordinarily unchanged. However, because of the suggestiveness of the procedure, it is important to adhere to some basic procedural components when a show-up is utilized.

A. Documenting Description

A description of the suspect by a witness should be documented before the show-up procedure is commenced.
B. Location of Suspect

If practical, transport the witness to the location of the detained suspect to limit the legal impact of the suspect’s detention and to minimize the influence on the witness of seeing the suspect transported under custody.

C. Conducting the Procedure

1. Instruction. The witness should be given standard instructions before viewing the suspect. At a minimum, the witness should be given a cautionary instruction that the individual in the show-up may or may not be the suspect. See Appendix D for recommended instructions to the witness.

2. Suggestive Words or Conduct. Words or conduct of any type that may suggest to the witness that the individual is or may be the suspect should be carefully avoided.

3. Degree of Certainty. If a positive identification is made, the witness should be asked how certain he or she is. The witness should not be compelled to answer this question.

4. Multiple Witnesses. Show-ups should not be conducted with more than one witness present at a time. If there are multiple witnesses and one witness makes an identification during a show-up, consider reserving the remaining witnesses for a sequential photo array or sequential live lineup identification procedure, as outlined in parts II and III, above.

D. Documenting the Procedure

A person conducting the procedure should document: his or her name; the date and time of the procedure; the procedure employed, including the location of the procedure and whether the witness was transported to the witness or vice versa; the appearance of the suspect, by taking a photo or video if possible; specific instructions or information provided to the witness; specific words, conduct, or gestures required of the suspect; and names of persons present during the procedure.

E. Recording Results

A person conducting the procedure should document each of the witness’s responses regarding the identity of the suspect and, if a positive identification is made, the witness’s response concerning the degree of certainty. The witness’s statements should be recorded verbatim, or as close to verbatim as possible. Identification results should be signed and dated by the witness.

Attachments
Exhibit 8
BOSTON POLICE DEPARTMENT
RULES AND PROCEDURES

RULE 330 – PROCEDURES FOR COLLECTION AND PRESERVATION OF
EYEWITNESS IDENTIFICATION EVIDENCE

Purpose: To standardize the procedures for using eyewitness identification evidence. Specifically, this rule will establish standard protocol for utilizing various eyewitness identifications from photo lineups, live lineups, show-ups and other methods that rely upon the recollection of a percipient witness to determine the identity of an offender. Its provisions are effective immediately, superseding all previously issued rules, regulations, procedures, orders, directives, and training bulletins on this subject.

General Considerations: Nationwide, eyewitness identification procedures have been the subject of considerable study and criticism. Erroneous identifications have been cited as the most frequent cause of wrongful convictions. The Boston Police Department recognizes the need to maintain the public’s confidence in the fairness of our investigative procedures. While our current procedures are constitutionally sufficient and accepted by all Massachusetts and federal courts, improvement and standardization will result in greater confidence in the fairness of our investigations in general, and eyewitness identifications in particular. Adoption of a standard method will improve the quality of investigations and enhance the professional image of the Boston Police Department. The most notable procedures adopted by the rule reflect the latest developments of the National Institute of Justice, Technical Working Group for Eyewitness Evidence. While some of the procedures are new, the principles remain the same, to protect the suspect’s constitutional right of due process by avoiding unnecessarily suggestive identification procedures.

Investigations are dynamic endeavors with limitless variables. Officers may not be able to incorporate every aspect of the rule in every situation. In those situations where it is impracticable to incorporate some component of the rule, the investigator is required to use his best professional judgment and employ a practice that affords substantially similar protections of the suspect’s due process rights. In such circumstances the investigator must document any deviation and articulate the reason why the standard procedure could not be used.

Boston police officers should be particularly mindful of the difficulty some witnesses may experience after witnessing, or having been a victim of, a crime. As always the victim/witness should be treated cordially and professionally. They should also be provided with contact information for the officers or detectives who will be assigned to the case, in the event that they may have additional information or concerns regarding the case.

Section 1. Key Considerations. Most important in any eyewitness evidence procedure is to ensure the following:
That the witness is informed that the person who committed the crime may or may not be in the lineup;
That the witness is informed that it is just as important to clear innocent persons from suspicion as it is to identify guilty parties;
That the witness is informed that regardless of whether an identification is made, the police will continue to investigate the incident;

That the witness, when making an identification, expresses his/her certainty in his/her own words, which are then documented in an investigative report.

Section 2. Definitions- Types of Eyewitness Evidence:

Show-ups – A field identification procedure used when a prompt display of a suspect to a witness is required. Soon after the crime is committed a witness may be brought to the location where a suspect is detained; the suspect may also be transported to the witness, although it is preferred to transport the witness if circumstances permit.

Field View – Police arrange for a witness to view a group of people in a public place. It is less suggestive than the show-up and may occur well after the commission of the crime being investigated. There must be several people in the area who generally look like the suspect (i.e. age, race, general physical description).

Line-ups- may be either photo or live line-ups. The suspect, or his/her photo, will be included with additional individuals, or photos, and the witness will view them sequentially, one individual or photo at a time.

Photo books or Digital Imaging System compilations – These are collections of photos that a witness may view when other investigative methods have failed to identify a suspect. This technique should be used only after other investigative techniques have failed, or are not possible to conduct. Any identification that results should be cautiously evaluated.

Composite – A sketch based upon a witness description is a form of evidence that may be a beneficial investigative tool, but should not be relied upon as “stand alone” evidence, as it is unlikely to rise to the level of probable cause without some other evidence.

Section 3. Show-ups. In the immediate aftermath of a crime, where a description is available, and a suspect is located, police may consider conducting a show-up during which the victim or witness, with a fresh memory of the event, is able to view a person who matches the description of the suspect.

A. Considerations. Generally, a show-up should be conducted within two hours of the commission of the crime, unless otherwise dictated by the circumstances (i.e. medical treatment or recent sighting). Officers must have reasonable suspicion to detain a suspect for a show-up. The suspect may also consent. It is preferable, when operating without reasonable suspicion, unless time is a critical element in the investigation, to
take a photo of the suspect with his/her consent, and then assemble a photo line-up to show the witness.

B. Witness preparation. Separate witnesses and get a detailed description of the suspect(s) from each prior to the show-up. Keep witnesses separate until the show-up has been completed. Instruct them not to discuss the identification procedure with other witnesses. Prior to conducting the show-up tell the witnesses that you are taking them to look at someone. Do not comment further. Do not state that the person matches the description. Tell the witnesses that the person may or may not be the perpetrator, and that the investigation will continue, whether or not an identification is made. Advise the witnesses that it is just as important to free the innocent from suspicion, as it is to identify offenders. Tell the witnesses that they will be asked to make a statement of certainty, in their own words, if they make an identification.

C. Viewing. To conduct the show-up, transport the witness to the suspect whenever possible. If there are multiple suspects and/or witnesses, show each suspect separately to each witness separately. Officers should present the suspect/s to the witness/witnesses just as the officer found him/her.

If the suspect is transported to the witness, or otherwise detained in a police vehicle, remove the suspect from the police vehicle, if it is safe to do so, prior to the show-up procedure. Present the suspect to the witness/witnesses just as the officer found him/her. Effective security measures must be taken, but those that are less evident to the witness should be used when possible. Remove handcuffs, if possible without undue risk, or at least try to conceal the handcuffs, if it is not safe to remove them. Avoid having the suspect surrounded or held by officers, if reasonable. Do not bring a suspect to the residence of a witness, unless it was the scene of the crime. If the suspect is brought back to the scene of the crime, be careful not to contaminate the crime scene. Bring him/her only close to the area, but not within the crime scene itself.

Note. In order to avoid possible contamination of forensic evidence, articles of clothing that have been discarded by a suspect in flight should not be placed back on his body. The witness can view the article of clothing, however, if the viewing can be done without risk of contamination.

D. Post-viewing. After the show-up, ask the victim how certain, in his/her own words, he/she is of any identification made. Document in an investigative report the exact words that he/she uses. Do not ask him/her to quantify their certainty in terms of percentages (e.g., "90% sure"). Expect, however, that witnesses will sometimes respond with a degree of certainty expressed as a percentage, and the witness’ statements, including the percentage, must be recorded. Remind the witness not to talk to other witnesses about the identification, and not to talk with anyone who might disclose the information, such as the media, without checking with the investigator first.
E. Documentation. Document the fact of an identification on the 1.1 incident report only if necessary to provide probable cause for an arrest. On a separate investigative report, describe the time of the offense, the basis for reasonable suspicion to detain the suspect for a show-up (or consent), time and location of show-up, witness precautions, circumstances of show-up (cuffed or not, number of officers around suspect, etc.), exact words of witness describing certainty, identity of witnesses, and sequence of witness and suspect viewing, when there are multiple witnesses and suspects. Record the names of all officers involved in the identification process.

In cases where no identification is made, this fact must be documented and described in the same manner as for identifications. If a witness does not identify a suspect, but becomes emotional, or states that he/she is frightened upon seeing the suspect, that should be included in the description of the circumstances.

Section 4. Field View. The field view ideally will result in an “in person” viewing of the suspect, but precautions should be taken to avoid an actual confrontation between the victim and the suspect. If identification is made, efforts should be made to identify other people present at the scene.

A. Considerations. There is no time limit as to when this procedure can be used. Since the witness should be able to view several people, it should be equivalent to a line-up. There is no reasonable suspicion requirement, since the police are merely putting the witness in a location where he/she may have the opportunity to see the suspect. This procedure can be used in most public places, but should never be used in a courtroom without prior coordination with the prosecutors who will likely coordinate with defense counsel and the judge.

B. Witness preparation. Separate the witnesses and get a detailed description from each prior to the field view. Keep the witnesses separate until the field view has been completed. Instruct them not to discuss the identification procedure with other witnesses. Prior to conducting the field view, tell the witnesses that you are taking them to a location to look at people. Do not comment further. Do not state that any person matches the description. Tell the witness not to assume that the perpetrator will be present, and that the investigation will continue regardless of whether the witness sees the perpetrator. Advise the witnesses that it is just as important to free the innocent from suspicion, as it is to identify offenders. Remind the witness not to discuss the procedure with other witnesses. Tell the witnesses that they will be asked to make a statement of certainty, in their own words, if they make an identification.

C. Viewing. Be sure that there are several people who match the same general characteristics as the suspect at the location before taking the witness there. For
multiple offender cases, if possible, pick a location where only one offender will be present when the witness is brought there.

D. Post-viewing. After the field view, if the witness has made an identification, ask him/her to state how certain he/she is, in his/her own words. Document in an investigative report the exact words that he/she uses. Do not ask him/her to quantify their certainty in terms of percentages (e.g., “90% sure”). Expect, however, that witnesses will sometimes respond with a degree of certainty expressed as a percentage, and the witness' statements, including the percentage, must be recorded. Remind the witness not to talk to other witnesses about the identification, and not to talk to anyone who may disclose the information, such as the media, without checking with the investigator first. Provide contact information, and advise the witness to contact you with any other information that he/she may be able to add.

E. Documentation. Document the fact of an identification on the 1.1 incident report only if necessary to provide probable cause for an arrest. On a separate investigative report, record the date and time of the offense, the date, time, and location of the field view, and witness precautions. Record the circumstances of the field view (i.e., number of people around suspect, how many resembled suspect in terms of age, height, build, hair, clothes, etc.). Record the exact words of witness describing certainty of any identification made.

In cases where no identification is made, this fact must be documented and described in the same manner as for identifications. If a witness does not identify a suspect, but becomes emotional, or states that he/she is frightened upon seeing the suspect, that should be included in the description of the circumstances.

Section 5. Photo and Live Line-ups. Photo and live line-ups must be conducted in a manner that ensures accuracy, reliability, fairness, and objectivity. Live line-ups generally give rise to additional rights. In some instances, the suspect has a right to have counsel present for the live line-up procedure. Therefore, all live line-ups must be coordinated through the district attorney's office and the prosecutor for the particular case should be present to interact with defense counsel.

A. Considerations. Photo and live line-ups are conducted in the same way. Therefore, the following principles apply to both procedures.

B. Assembling the Line-up. Include only one suspect in each identification procedure. Select fillers who generally fit the witness' description of the perpetrator. Complete uniformity is not required. Avoid fillers that so closely match the suspect that a person familiar with the suspect would have difficulty distinguishing the fillers. Create a uniform appearance between suspect and fillers with respect to any specific features, such as scars, tattoos, etc., by artificially adding or concealing the particular feature. For
multiple witnesses, show the photo or live line-up separately, and re-position the photos
or persons in each line-up. Ensure that no writing or information about previous arrests
will be visible to the witness. Review the line-up to ensure that the suspect does not
unduly stand out.

Photo line-ups. For each identification procedure include a total of 8 photos consisting
of seven (7) fillers, plus one (1) suspect. Select photos that resemble the suspect’s
description or appearance at the time of the incident. Once the photos are selected the
investigator/administrator shall mark the back of each photo with a sequential number,
and record the order in which they are to be shown. Preserve the photos in their
original condition, or if that is not possible, make high quality copies.

2. Live line-ups. For each identification procedure include a minimum of
four (4) fillers, plus one (1) suspect, for a minimum total of five (5)
people. The maximum number should be a total of eight (8) people,
consisting of seven (7) fillers, plus one (1) suspect. Preserve the
presentation of the line-up via videotape and photograph the
procedure.

C. Witness Preparation. Give the witness the Witness Preparation Form (BPD Form
2986) and read it to him/her. If the witness is not fluent in the English language, have
read his or her native language and there is a form prepared in that language, the
witness should be given that form in addition to having the form read to him/her. If no
translator is available to read and discuss the form and there is a time sensitive
exigency, the witness may read the form without having it read to him/her. In all cases,
the officer administering the lineup shall determine if the witness understands the
instruction. The administrator shall proceed with the lineup only when satisfied that the
witness does understand. The administrator shall:

Ask the witness to view a group of photos/individuals
Tell the witness that it is just as important to clear innocent persons from
suspicion as it is to identify guilty parties.
Tell the witness that the person who committed the crime may or may not be
in the line-up.
Tell the witness that individuals depicted in the line-up may not appear
exactly as they did on the date of the incident and that features such as
hairstyle and facial hair are subject to change. For photo line-ups advise the
witness that the person’s complexion may appear different in the photo than in
person, (i.e. either lighter or darker).
Inform the witness that regardless of whether an identification is made, the
police will continue to investigate the incident.
Explain that photos/individuals are in a random order, and will be shown
sequentially, one at a time. Do not state how many photos/individuals will be shown.
Instruct the witness to view all photos/individuals and to take as much time on
each as needed.
Inform the witness that if he/she recognizes anyone, to state which photograph he/she
recognizes and how he/she recognizes the individual.
Tell the witness that he/she will be asked to make a statement of certainty, if he/she
makes an identification.
Inform the witness not to tell other witnesses that he/she has or has not identified
anyone.

D. Viewing. “Blind” administration procedures should be used whenever possible to
eliminate accusations of influencing the witness. A Boston Police detective or detective
superior officer, not familiar with the identity of the suspect in the procedure, should
instruct the witness and administer the procedure. The administrator may be involved in
other aspects of the investigation as long as he/she had no role in preparing the
procedure and does not know which photo/individual is the suspect.

The administrator of a photo line-up, after having properly instructed the witness, will
place the photo pack in front of the witness. The witness will be instructed to look at
each photo for as long as he/she wants. Then he/she is to place that photo face down
on the table.

The administrator of a live line-up, after having properly instructed the witness, will have
each individual to be viewed come into the viewing area one at a time, and remain as
long as the witness needs. The individual may be instructed to turn and step forward as
necessary, as long as all movements are uniform for each individual.
The administrator should not say anything to the witness, nor make any gestures that
may distract the witness while viewing the procedure.
If the witness recognizes a photo or individual, he/she may so indicate, and state the
level of certainty in his/her own words and state how he/she recognizes that individual,
but should be instructed to look at the remaining photos or individuals.
If the witness makes an identification, the administrator should not make any comment
about the identification.
The administrator should request that the witness sign and date the back of a copy of
the photo selected.

If the witness requests to view the procedure a second time, the administrator should
ask if the witness was able to make an identification from the original viewing. If the
witness is unable to make an identification, but feels that it would be helpful to see it
again, then it is permissible to repeat the procedure by placing the same
photos/individuals, in a reshuffled order, in front of the witness. If this scenario occurs, it
must be clearly documented. The specific statement of the witness, as to his/her ability
or inability to identify someone from the first viewing, as well as subsequent
identification, or lack thereof, must be documented.
RULE 330 – PROCEDURES FOR COLLECTION AND PRESERVATION OF EYEWITNESS IDENTIFICATION EVIDENCE

E. Post Viewing. After the viewing, if the witness has made an identification, ask him/her to state how certain he/she is, in his/her own words. Document in an investigative report the exact words that he/she uses. Do not ask him/her to quantify their certainty in terms of percentages (e.g., “90% sure”). Expect, however, that witnesses will sometimes respond with a degree of certainty expressed as a percentage, and the witness’ statements, including the percentage, must be recorded. Remind the witness not to discuss the identification process with other witnesses, or with anyone who could divulge the information to other witnesses.

F. Documentation. Document the fact of an identification on the 1.1 incident report only if necessary to provide probable cause for an arrest. On a separate investigative report, record the results of the photo or live line-up, including the time, date, investigating officers, administering officer, witness, and witness statement regarding identification. Investigators should be prepared to account for any deviation from the standard sequential photo or live line-up procedure. Record any non-identification, noting the specific words of the witness. Ensure that the witness signs and dates the back of a copy of any photo selected during the procedure.

Section 6. Photo Books and Digital Imaging System. Generally, other investigative methods should be pursued before resorting to viewing of large numbers of photographs or computer images. When using photo book or imaging system compilations, the investigator should be extremely cautious before taking any action on the basis of the identification alone.

A. Viewing Preparations. Ensure that identifying information is available for all individuals, and that the images are contemporary. Images should be selected by specific characteristics (i.e. race, age, sex, etc.). Show images individually either by computer, or by removing from a photo book.

B. Witness Instructions. With the witness separated from other witnesses, instruct the witness that he/she will view a “collection of images.” Do not refer to them as mug shots. If asked, explain that the police department has photos on file for a variety of reasons (e.g., driver’s license photos from the Registry of Motor Vehicles, firearms and hackney license photos, and even photos of officers not in their uniforms). Provide instructions as in Section 5C. Because the nature of the photo book/digital imaging system is such that the investigating officer does not know who the suspect is, there is no need to use the blind administration procedure.

C. Documentation. In an investigative follow-up report, record the results of the photo book/digital imaging system, including the time, date, investigating officers, administering officer, witness, and witness statement regarding identification. In such circumstances the investigator must document any deviation and articulate the reason
why the standard procedure could not be used. Record any non-identification, noting the specific words of the witness. Ensure that the witness signs and dates the back of a copy of any photo selected.

Section 7. Composites. Composite sketches may be useful in developing information, but alone are not sufficient to rise to the level of probable cause. When the investigator determines that a composite sketch could be valuable, he/she should take the usual precautions of separating witnesses, and have each witness individually work with the person compiling the composite. The witness should state, in his/her own words, how accurately the composite reflects how the suspect appeared during the crime, and a report should be prepared regarding the composite procedure.
Exhibit 9
BIOGRAPHICAL SKETCH OF SHERI H. MECKLENBURG

Sheri H. Mecklenburg is currently the General Counsel to the Superintendent of the Chicago Police Department. Prior to that, she was an attorney in the City of Chicago Law Department, where she was lead counsel in high-profile cases involving mistaken eyewitness identifications and other allegations of wrongful convictions. As counsel on those cases, Ms. Mecklenburg worked with experts on eyewitness identification issues.

Ms. Mecklenburg is a frequent lecturer and instructor on eyewitness identification, confessions and forensic issues. She created a training course, which she taught at law enforcement academies throughout the State of Illinois ("Eyewitness Identification: The Law, The Science, The Practice"); this was the first course to introduce Illinois law enforcement to the concept of the sequential, double-blind procedure. Ms. Mecklenburg also developed and presented a two-part training session for state prosecutors in 2003 ("Eyewitness Identification: Priming the Prosecutor"). Ms. Mecklenburg has spoken to a number of organizations on the subject of eyewitness identification, including: the American Academy of Forensic Sciences, the Illinois Chiefs of Police Association, the International Association of Chiefs of Police, the Association of Government Attorneys in Capital Litigation and the Illinois State Appellate Prosecutor’s Advanced Advocacy Program. Ms. Mecklenburg emphasized the study of eyewitness identification during her work in obtaining a Certificate of Forensic Science Studies from Northwestern University.

Ms. Mecklenburg is a fellow of the American Academy of Forensic Sciences. She also is the founder and president of Women’s DNA Initiative, a nonprofit organization created to raise funds and awareness for DNA testing of backlogged rape kits. Prior to entering public service, Ms. Mecklenburg was a partner in a large, international law firm. She received her J.D. with honors from Loyola University of Chicago School of Law, where she served as Lead Articles Editor of the Loyola Law Journal.
Exhibit 10
Roy S. Malpass

Curriculum Vitae

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EDUCATIONAL HISTORY:

B. Sc. 1959
Union College, Schenectady, New York

M.A. 1961
The Graduate Faculty, The New School for Social Research,
New York, NY

Ph.D. 1968
Syracuse University, Syracuse, New York

TITLE OF THESIS:
The Effects of Attitude on Learning and Memory: The Influence of
Instruction-Induced Sets.
Advisors: Marshall H. Segall, George G. Stern

PROFESSIONAL HISTORY:

1992 - present
Professor of Psychology
Professor of Criminal Justice
University of Texas at El Paso
El Paso, Texas 79968

2004 – 2005
Head, Legal Psychology Ph.D. Program
Department of Psychology
University of Texas at El Paso

1992 – 2005
Director, Criminal Justice Program
University of Texas at El Paso
El Paso, Texas 79968

1980 - 1992
Professor of Behavioral Science
S.U.N.Y. College of Arts & Science
Plattsburgh, New York 12901

1973 - 1980
Associate Professor of Behavioral Science
S.U.N.Y. College of Arts & Science
Plattsburgh, New York 12901

1967 - 1973
Assistant Professor of Psychology
University of Illinois
Champaign, Illinois 61820

1965 - 1967
National Defense Education Act Title IV Fellow
Syracuse University, Syracuse NY 13210
1962 - 1965
Lecturer in Psychology
Mount Allison University
Sackville, New Brunswick, Canada

1961 - 1962
Research Assistant, Research Foundation
Children’s Hospital of the District of Columbia
Washington, D.C.

PROFESSIONAL ASSOCIATIONS AND RELATED ACTIVITIES:

American Psychological Association (APA) Fellow, 1982.
Member, Scientific Committee, planning the 1998 meetings of the
International Association of Applied Psychology.
Division 3 (Experimental Psychology).
Division 8 (Personality & Social Psychology).
Division 9 (Society for the Psychological Study of Social Issues - SPSSI).
  Co-Chair, Committee on Relations with Other Organizations.
  Minority Affairs Committee, 2005 – present.
  Liaison to the APA Committee on International Relations in Psychology, 2006 - present
European Association of Psychology and Law (EAPL).
International Association of Applied Psychology (IAAP).
  Division of Psychology and Law (Founding President, 1988 - 1998).
International Association for Cross-Cultural Psychology (IACCP)
  Membership Committee, 1988 - 90 (Chair, 1988 - 90)
PSYLA-W-L Internet listserv discussion list, devoted to discussions of psychology and law.
The Psychonomic Society
Society for Applied Research in Memory and Cognition (SARMAC).
  Executive Director, 1997 – 1999.
Society for Cross-Cultural Research (SCCR).
  President, 1989-90.
  Nominations Committee Chair, 1990-91.
Society for Experimental Social Psychology (SESP).
XCUL Internet listserv discussion list devoted to cross-cultural psychology.
  Founder and owner 1988 - 1996

AWARDS, APPOINTMENTS AND DISTINCTIONS:


1998 - present  Appointed to the Technical Working Group for Eyewitness Evidence, National Institute of
Justice, Department of Justice, USA

1998 – 2006  Elected to the Executive Committee, International Association for Applied Psychology

1997 Visiting Scholar, Interdisciplinary Graduate School, University of Muenster, Muenster, Germany.


1991 Appointed Visiting Professor of Psychology, Department of Education, Nanjing Normal University, Nanjing, Peoples Republic of China.


1982 Chancellor's Award for Excellence in Teaching. State University of New York.


1981 Elected to the Society for Experimental Social Psychology.

1973 Graduate Student Association Award for Excellence in Teaching and Contributions to Graduate Education. Department of Psychology, University of Illinois at Urbana-Champaign.

EDITORIAL RESPONSIBILITIES:

Editor:

Book Review Editor:

Editorial Board Member:
International Journal of Intercultural Relations: 1985 - present.

Occasional editorial consultant or reviewer for the following:

African Studies Review
American Ethnologist
American Journal of Psychology
American Psychologist
Applied Cognitive Psychology
Basic and Applied Social Psychology
Behavioral and Brain Sciences
British Journal of Psychology
Canadian Journal of Behavioural Science Convention submissions, APA, Divisions 8 and 41.
The Edwin Newman Awards
European Journal of Social Psychology
Evaluation and Program Planning
Journal of Abnormal Psychology

Journal of Applied Psychology
Journal of Applied Social Psychology
Journal of Experimental Research in Personality
Journal of Experimental Social Psychology
Journal of Experimental Psychology: Applied
Journal of Experimental Psychology: General
Journal of Gerontology: Psychological Sciences
Journal of Personality & Social Psychology
Law and Human Behavior
National Institutes of Health
National Science Foundation
Cultural Anthropology
ILI Program
PUBLICATIONS.

BOOKS.

URL: http://www.ncjrs.org/pdffiles1/ncj/188678.pdf

URL: http://www.ncjrs.org/pdffiles1/ncj/178240.pdf


ARTICLES AND CHAPTERS.


BOOK REVIEWS.


INVITED PRESENTATIONS:


Malpass, R.S. (2000, December). A series of lectures at the Chinese People’s Public Security University, Beijing, China, on

- Psychology and Law
- Eyewitness Identification
- The Evaluation of Eyewitness Identification Procedures
- Psychology, Law and Culture


INVITED COLLOQUIA.


A Utility Analysis of Policy Alternatives: Simultaneous and Sequential Lineups. Invited Colloquy given in the Department of Psychology, New Mexico State University, February 27, 2004.

Some interactions with Psychology and Law. Invited talk given in the Group Dynamics Seminars series, University of Michigan, November, 2001


Psychology, law and culture: Tensions in the application of law based on cultural diversity. Invited talk given in the Graduate School, University of Muenster, Germany. May, 1997.

Invited Seminars, Interdisciplinary Graduate School, University of Muenster, Germany, May 1997.

Methods for Understanding other cultures: Basic Problems
Methods for Understanding other cultures: Selected approaches
Social experience and cross-race face recognition.


Department of Psychology, University of Colorado at Boulder, April, 1992.
Department of Psychology, University of Texas, El Paso, May, 1992.
Department of Psychology, Rhodes University, South Africa, May, 1992.
Department of Psychology, Fort Hare University, Ciskei, South Africa, May, 1992.
Department of Psychology, University of Capetown, South Africa, May, 1992.
Department of Psychology, University of Transkei, South Africa, June, 1992.


On the evidentiary value of person identifications. Presented in the School of Law, University of Marburg, Federal Republic of Germany, June 1989

Context effects in eyewitness memory. Presented in the Department of Psychology, University of Texas, El Paso, February, 1988

Utilitarian thinking in psychology. Presented in the Department of Psychology, State University of New York at Albany, March, 1988

Fairness and bias in eye-witness identification. Presented in the Department of Psychology, University of Newcastle, Australia, August, 1988

Differential face recognition: 20 years in and out of cross-cultural psychology. Presented in the Department of Psychology, University of Newcastle, Australia, August, 1988
Suggestion in eyewitness identification. Presented in the Psychology Department, University of Utah, Salt Lake City, Utah, February 1984

Ethical hedges and applied social psychology. Presented in the Department of Psychology, Union College, Schenectady, New York, November, 1984

Eyewitness identification. Presented in the Psychology Department, Colgate University, Hamilton, New York, April, 1982

Suggestion in eyewitness identification. Presented in the Psychology Department, Ohio State University, Columbus, Ohio, May, 1982

Recent research on eyewitness identification. Presented in the Psychology Department, Dalhousie University, Halifax, Nova Scotia, November, 1981

Suggestion in eyewitness identification lineups. Presented in the Psychology Department, Union College, Schenectady, New York, May, 1981. (with P.G. Devine)

Eyewitness identification: Recent advances. Presented in the Department of Psychology, Tilburg University, The Netherlands, April, 1981

The psychological basis of methodology in cross-cultural psychology. Presented at the Department of Psychology, University of Allahabad, India, January, 1981

Research on eyewitness identification. Presented at the Department of Psychology, University of Connecticut, Storrs, May, 1979

Cross-cultural continuities in psychological processes: Does everybody's head work the same? Presented at the S.U.N.Y. College of Arts & Science, Cortland, New York, October, 1977

PAPERS PRESENTED AT MEETINGS AND CONFERENCES:


Page 10


Malpass, R. S., McQuiston, D. E., MacLin, O. H., Zimmerman, L. A. & Gaitens, K. E. (2002, October). The Use of Quantitative Techniques for the evaluation of eyewitness identification lineups: Application to
actual cases. Poster presented at the 2002 National Conference on Science and the Law, Miami, FL.


Herrera, V., MacLin, M. K., & Malpass, R. S. (April, 2001). Sequential versus simultaneous presentation and its influence on the "criminality effect." Poster presented at the Rocky Mountain Psychological Association Convention, Reno, NV.


MacLin, O. H., Malpass, R. S., Honaker, S., & McQuiston, D. E. (March, 2000). Another attempt to understand the cross-race effect. In J. C. Brigham (Chair), What do we know about the own-race bias in face recognition? Symposium conducted at the 2000 Biennial Meeting of the American Psychology-Law Society, Division 41 of the American Psychological Association, New Orleans, LA.


Malpass R.S. (1998, March). Interdisciplinary Criminal Justice: The view from the Program Director's Chair. In R.S. Malpass (Chair), An Interdisciplinary Approach to Criminal Justice Education Based in Political Science, Psychology, Sociology and Law. Symposium conducted at the meetings of the Academy of Criminal Justice Sciences, Albuquerque, NM.


Malpass, R.S. (1997, August). Instructions on viewing lineups. In G.L. Wells, (Chair) Good Practice Recommendations for Lineups and Photospreads. Discussion conducted at the meetings of the American Psychological Association, Chicago, IL.


Wogalter, M. S., Burger, M. A., & Malpass, R. S. (1993, September). Methods of constructing live and photographic lineups by police officers in the United States. In M. S. Wogalter (Chair), *Forensic applications of face recognition research.* Symposium conducted at the International Conference on Face Processing, Welsh Branch of the British Psychological Society, University of Wales, Cardiff, Wales, United Kingdom.


Malpass, R.S. (1993, July). What is the role of the IACCP? Presented in H.C. Triandis (Chair), *What can psychology contribute to solving problems concerning population and the environment?* Symposium conducted at the XXIV Interamerican Congress of Psychology, Santiago, Chile.


Malpass, R.S. (1992, November). Cross-racial face recognition: A meeting place for cultural, cognitive and legal psychology. Presented in B. Ruback (Chair) *Behavioral Similarity and Differences Across Cultures.* Symposium conducted at the meetings of the Society of Southeastern Social Psychologists, Charleston, SC.


Malpass, R.S. (1984, August). Developmental interventions: Managing compromises between local needs and technical applications. In P. Dasen (Chair), *Applications of Cross-Cultural Psychology to the promotion of healthy human development*. Symposium conducted at the 7th International Conference of the International Association for Cross-Cultural Psychology, Acapulco, Mexico.


Malpass, R.S. (1984, February). What is the contribution of cross-cultural studies? In P. Rosenblatt (Chair), *So what? Who cares? What do we have to say anyway?*. Symposium conducted at the meeting of the Society for Cross-Cultural Research, Boulder, Colorado.


Malpass, R.S. (1981, January). How good are our data? In Y.H. Poortinga (Chair), *How good are our data?*. Symposium conducted at the Fifth International Conference of the International Association for Cross-Cultural Psychology, Bhubaneswar, India.
Malpass, R.S. (1980, September). Recent developments in cross-cultural psychology. In D. Taylor (Chair), *Recent developments in cross-cultural psychology*. Symposium conducted at the meeting of the American Psychological Association, Montreal, Canada.


**TECHNICAL REPORTS AND WORKING PAPERS.**


Malpass, R.S., & Symonds, J.D. (1972). *Value preferences are more strongly associated with social class than with sex or race.* (Technical Report No. 17, SRS-15-P-55175/5). Champaign: University of Illinois, Department of Psychology.

Malpass, R.S. (1972). *Systematizing personal knowledge of others.* Unpublished manuscript. Champaign: University of Illinois, Department of Psychology.


Malpass, R.S. (1971). *Notes on social experience, degree of contact, increasing knowledge, degree of belief, and information seeking.* Unpublished manuscript. Champaign: University of Illinois, Department of Psychology.


Smith, J.E., & Malpass, R.S. (1965). *Social distance towards six selected ethnic groups in four areas of Nova Scotia.* Unpublished manuscript. Sackville, NB, Canada: Mount Allison University, Department of Psychology and Sociology.

GRANTS.

Research Grants Awarded.


*A Study Of Psychological And Sociological Determinants Of Economic Dependency Among The Micmac Indians.* (1964 - 1966) Small grants from Social Science Research Council (Atlantic Provinces Studies
Project), University of British Columbia (Indian Research Project), and Department of Citizenship and Immigration (Canada), totaling $10,648. In collaboration with J.E. Smith.

**Instructional and Program Grants Awarded.**


An Undergraduate Research Instruction Program in the Behavioral Sciences. (1986). In-House Mini-Grant, SUNY at Plattsburgh, $8,000.00.

An Undergraduate Research Instruction Program in the Behavioral Sciences. (1987). In-House Mini-Grant, SUNY at Plattsburgh, $1,000.00.

Undergraduate Research Participation. (1976). National Science Foundation, EPP76-03857. $12,000.


**INSTRUCTION.**

Papers Presented By Undergraduate Students Working With Me (Undergraduate names in bold):


Teaching

Courses:

- Cross-Cultural Psychology
- Evaluation Research
- Introduction to Human Behavior
- Introduction to Psychology
- Psychology and Law
- Psychological Research Methods
- Social Psychology
- Cross-Cultural Research Methods (Graduate)
- Eyewitness Identification and Memory (Graduate)

Seminars:

- Applied Memory (Graduate)
- Cross-Cultural Research Methods (Graduate)
- Extrasensory Perception? (Freshman seminar)
- Honors Research
- Legal Psychology (Graduate)
- Motives and Motivation
- Social Psychology and Law
- Stereotyping (Graduate and Undergraduate)
- Writing a Script for the College Environment (Honors)
- Psychology and Law (Honors)
- Wrongful Conviction

Interdisciplinary collaborative courses:

- Introduction to Criminal Justice
- Philosophy, Science and the Paranormal
- Population Regulation
- Sociobiology

UNIVERSITY ADMINISTRATION, UNIVERSITY AND COMMUNITY SERVICE

University of Texas at El Paso:

2004 – present: Psychology Department Executive Committee (Legal Psychology Rep)
2004 – present: Head, Legal Psychology Graduate Program
1992 – present: Director, Criminal Justice Program, College of Liberal Arts.
1992 – present: Committee of Chairs and Directors, Dean of Liberal Arts.
2000 – 2003: College of Liberal Arts Promotion and Tenure Committee (Chair, 2002, 2003)
1992 – 1994: Committee on Research, Behavioral Science Departments and Programs.

S.U.N.Y. College of Arts & Science at Plattsburgh:

1978 - 1980: Ad Hoc Committee on Women’s Intercollegiate Athletics.
1974 - 1977: Elected to Campus Senate.
1974 - 1976: Faculty Senate Committee on Undergraduate Studies, (Chair, 1974 - 1975).
1973 - 1976: Curriculum Committee, Faculty of Social Science.
1973 - 1976: Honors Committee, Faculty of Social Science.
1973 - 1976: Graduate Committee, Faculty of Social Science.

University of Illinois, Champaign:

1969 - 1973: Committee on Undergraduate Advising and Instruction (Chair).
1969 - 1973: Department Head’s Advisory Committee.
1969 - 1973: Director, Undergraduate Honors Program, Department of Psychology.
1969 - 1973: Director, NSF Undergraduate Research Participation Program, Department of Psychology.
1969 - 1971: Champaign-Urbana Campus Senate.

Mount Allison University:

1964 - 1965: Faculty Association, Canadian Association of University Teachers (Secretary-Treasurer).
Exhibit 11
Dr. Ebbe B. Ebbesen's Vita

Ebbe B. Ebbesen

Personal Information

Business Address: Department of Psychology, 0109
University of California, San Diego
9500 Gilman Dr.
San Diego, California 92093 - 0109
Office Phone: (858) 534-3003
Fax (Office) (858) 534-7190
Cell Phone
email: eebbesen@ucsd.edu
Webpage: http://www-psy.ucsd.edu/~eebbesen

Academic History

New York University, 1962-1966: B.A., cum laude, with highest honors in Psychology

Academic Honors and Research Grants

Phi Beta Kappa, New York University, 1966
Founders Day Award, New York University, 1966
NDEA Fellowship, Stanford, 1966-1969
NSF Fellowship, Stanford, 1970
NSF Research Grant, #GB 37005, Organization of Response Repertoires, 1973-1975
NIMH Research Grant, #MH 26069, Cognitive Factors in Learning-by-Example, 1974-1977
NIMH Research Grant, Renewal of #MH 26069, 1977-1980
University of California, San Diego Research Council, Archival analysis of rape and robbery cases, 1999

Memberships Currently or Previously Held in Professional Organizations

American Association for the Advancement of Science
American Psychology Association, Fellow
American Psychology and Law Society
American Psychological Society (Charter Member)
Midwestern Association for Behavioral Analysis
Psychonomic Society
Sigma Xi
Society for Experimental Social Psychology
Western Psychology Association

Editorial Activities: Past and Present

Reviewing for Journals: Journal of Experimental Social Psychology
Journal of Personality and Social Psychology
Child Development
Journal of Applied Psychology
Journal of Educational Psychology
Journal of Applied Social Psychology
Personality and Social Psychology Bulletin
Psychological Bulletin
Dr. Ebbe B. Ebbesen's Vita

Law and Human Behavior
Journal of Personality
Psychological Review

Reviewing for Agencies:
National Science Foundation
Canada Council
American Psychological Association

Consulting Editor:
Behavior and Philosophy

Teaching

Courses taught:
Undergraduate
  General Introductory Psychology
  Introduction to Social Psychology (self-paced, lower-division course with emphasis on behavioral modification)
  Experimental Methods in Social Psychology (with emphasis on design and measurement)
  Methods in Experimental Social Psychology (emphasis on experimental methods)
  Methods in Applied Social Psychology (emphasis on external validity)
  Social Psychology (general topic areas covered: emotion, aggression, personality, helping, compliance, attitudes and attitude change, psychology and the law, liking, etc.)
  Psychology and the Law (emphasizing methodology)
  Introduction to Personality
  Psychology and Social Policy (methodology in assessing social policy)
  Topics in Legal Psychology (advanced undergraduate class)
  Honors in Psychology (advanced class for honors students)
Graduate
  Basic Seminar in Social Psychology
  Advanced Topics in Human Social Behavior
  Graduate Seminar in Psychology and the Law (eyewitness ID and legal decision making)
  Graduate Research Seminars in various topics in social psychology

Specialization and Research Interests

Psychology and law (with emphasis on methodology, external validity issues, and decision making), emotion, aggression, physiological arousal, cognitive processes in interpersonal perception (e.g., encoding, storage, organization and retrieval of behavioral information about self and others), social learning, self-control, attitudes and self-labeling, judgment, decision making, eyewitness memory, reinforcement and the organization of response repertoires, and methodological issues in applied psychology.

Employment History

1970 (Summer) Lecturer, Stanford University
1970-1975 Assistant Professor, University of California, San Diego
1975-1976 Associate Professor, University of California, San Diego
1976-1977 Member of Technical Staff, Bell Laboratories, Murray Hill
1977-1980 Associate Professor, University of California, San Diego
1980-1983 Full Professor, University of California, San Diego
1983-1988 Chair, Psychology Department, University of California, San Diego
1988-present Full Professor, University of California, San Diego

Present Position
Professor of Psychology, University of California, San Diego

**Consultant to Legal System**

Expert and consultant (in research methodology and jury selection procedures) for prosecution.


Expert and consultant in area of false confessions. Issue concerns the factors that have been shown to lead to an increased probability that individuals will to confess to actions that they did not perform as well as actions that they did perform.

Calif. v. Elmer Lee Nance (San Diego, Aug., 1992)

Expert, consultant, and educator in area of change of venue. (Testified and/or consulted about the methodological problems inherent in establishing a reasonable likelihood that a defendant cannot receive a fair trial in a given venue. Main issues concern the validity of inferences made about jury bias from community attitude telephone surveys, e.g., sampling problems, survey design problems, and statistical analysis problems, and from content analyses of news coverage, e.g., subjective vs. objective content analysis procedures.)

For DA Howard Shore: Calif. v. Cinco, San Diego County (July, 1985)
For DA Tim Frawley: Calif. v. Ashmus, Sacramento County (Sept., 1985)
For DA Chris Yeager: Calif. v. Neidiffer and Cruz, Imperial County (Oct., 1985)
For DA Ramona Garrett: Calif. v. Verkets, Solano County (Dec., 1986)
For DA Jeff Rose: Calif. v. Pride, Sacramento County (Dec., 1986)
For DA Woody Clark: Calif. v. Lucas, San Diego County (May, 1986)*
For DA John Posey: Calif. v. Carpenter, Marin County (June, 1986)
For DA Will Mattley: Calif. v. Siervonti, Butte County (by affidavit, July, 1986)
For DA Tim Frawley: Calif. v. Nicolaus, Sacramento County (Sept., 1986)
For DA Paul Pfingst: Calif. v. Troiani, San Diego County (Oct., 1986)
For DA Dave Paulson: Calif. v. Remington & Kirk, Solano County (Jan., 1987)
For DA Joseph Tressider: Calif. v. Bigelow, Merced County (March, 1987)
For DA John Darlington: Calif. v. Kruse & Beaver, Nevada County (May, 1987)
For DA John Cofer: Calif. v. Rubio, Solano County (by affidavit Oct., 1987)
For DA Paul Meyers: Calif. v. Martinez, San Diego County (Dec., 1987)
For DA John Cofer: Calif. v. Melton, Solano County (by affidavit Feb., 1988)
For DA Eric DuTemple: Calif. v. Manning, Tuolomne County (April, 1988)
For DA Phillip J. Cline: Calif. v. Smith & Gravlee, Tulare County (June, 1989)
For DA MaeCrea O'Etahra: Calif. v. Tulare County (June, 1989)
For DA John Martin: Calif. v. F. Rubio, Calaveras County (July, 1989)
For DA Richard Ferguson: Calif. v. Charlie Richards, Tulare County (Nov., 1989)
For DA Tim Casserly: Calif. v. Roberta Pearce, San Diego (Jan, 1990)
For DA Allan Charmetz, Calif. v. Segura & Diaz, Marin County (June, 1990)
For DA Lori Barker: Calif. v. Many teenagers, Butte County (Chico) (Nov., 1990)
For DA David Dunn: Calif. v. Scott Pommier, Sonoma County (Dec., 1990)
For DA Gary Meyer: Calif. v. Polk & Richardson, Monterey County (March, 1992)*
For DA Ellen O'Hara: Calif. v. Cunningham, Tulare County (March, 1992)
For DA M. Mantyla: Calif. v. Henry Hubert, San Diego County (April, 1992)
For DA Doug Fontan: Calif. v. Johnsen, Stanislaus County (Jan., 1994)
For DA Tim Frawley: Calif. v. Nguyen, Sacramento County (Jan., 1994)
For DA Peter Kossoris: Calif. v. Mark Thornton, Ventura County (June, 1994)*
For DA Gregory Jacobs: Calif. v. Richard Allen Davis, Sonoma County (Jan., 1995)*
For DA Peter Kossoris: Calif. v. Daniel Tuffree, Ventura County (April, 1996)
For DA Larry Scoufos: Calif. v. Scully and Moore, Sonoma County (June, 1996)*
For DA Stephen Hedstrom: Calif. v. Munoz and Marquez, Lake County (Feb., 1997)
For DA Jim Mulgrew: Calif. v. Famalero, Orange County (March, 1997)
For DA Peter Kossoris: Calif. v. Haun and Daly, Ventura County (March, 1997)*
For DA Daniel Gong: Calif. v. Matt Shultz, Placer County (June, 1998)*
For DA Michael Stone: Calif. v. Larwick, Stanislaus County (Feb., 2000)
For DA Brad Fenecio: Calif. v. Aarturo Suarez, Placer County (Feb., 2000)*
For DA Tim Covello: Calif. v Rex Allan Krebs, San Luis Obispo County (May, 2000)
For DA Stephen Hedstrom: Calif. v Jerrold Johnson, Lake County (June, 2000)
For Miles, Sears & Fanni: Waski v. Cal Trans, Kern County (March, 2001)
For DA Lela Henke-Dobroth: Calif v Vincent Sanchez, Ventura County (Dec., 2002)*
For DA Steven Lember: NJ v Jayson Williams, Hunterdon County (Sept., 2003)
For DA Dave Harris: Calif. v Scott Peterson, Modesto County (Dec., 2003)*
For DA David Merin, Calif. v Fagan, Tonsing, & Lee, San Francisco County (Aug., 2004)*
For DA Lisa Gamoian, Calif. v Marcus Wesson, Fresno County (Aug., 2004)*
For DA James Mulgrew, Calif. v. Alejandro Avila, Orange County (Sept., 2004)*
For DA David Rubin, Calif. v. Adrian George Camacho, San Diego County (July, 2005)
For DA

* Designed my own survey in the case.

Consultation on McGown hearing (i.e., a hearing to decide to which venue should a case be sent after deciding defendant cannot receive a fair trial in original venue) in Richard Allen Davis case (Nov., 1995).

Consultation and/or testimony in severance motions


Consultation on Child-Support Survey Research
Sampling design and analysis of data from a survey conducted by the Family Support Services division of the California District Attorney’s Association. The survey was designed to assess the relative rates of different family support cases that made up the over 2 million cases being dealt with by all district attorneys’ offices in California between 1995 and 1996.

Redesign of CDAA Family Support Survey and oversight of the conduct of this second survey for the 1997 year. I was also responsible for conducting the data analysis and writing up a report to CDAA presenting the results from this second survey.

Expert, consultant, and educator in area of eyewitness identification.
(Testified about or consulted with attorney about methodological problems in assessing the reliability of eyewitness identification and about the external validity of research dealing with the accuracy of eyewitness reports. Main issues are the probative vs. prejudicial value of testimony by other psychologists about factors that are claimed to affect eyewitness accuracy, the appropriateness of research designs that are used in the field, and the consistency of the evidence in support of conclusions about eyewitness memory).

Arizona

In Yuma County
For DA Mary White: Ariz. v. Ramon Altamirano (Jan., 1995)
Dr. Ebbe B. Ebbesen's Vita

California

In Antelope Valley
For DA Kelly Cromer (Dec. 1997)

In Kern County
For DA Dennis Ryan: California v. Wanda Fraley (Sept., 1987)
For DA Joseph Beckett: California v. Jackson (March, 1988)
For DA Joseph Beckett: California v. Watson & Carrick (July, 1988)
For DA Dennis Ryan: Calif. v. (March, 1990)
For DA Carla Grabert: Calif. v. Finley & Frost (March, 1994)

In Los Angeles County
For DA Pat Dixon: California v. Keith T. Fudge (March, 1987)
For DA John Sorrentino: Calif. v. Oliver Montez & Datan Newton (Dec., 1992)
For DA Marlene Sanchez: Calif. v. Ernest Williams (March, 1994)
For DA Susan Powers: Calif. v. Richard Noble (June, 1994)
For DA Karen Nobumoto: Calif. v. Travis Duran (Sept., 1999)
For DA Maureen Green: Calif. v. Tyrone Dunn & Lasonts Cole (Dec., 1999)
For DA Stephanie Wilson: Calif. v. Juan Carlos Herrera (Jan., 2001)
For DA Carlos Chung: Calif. v. Kevawn Cook & Patton (June, 2001)
For DA Terrie Tengelsen: Calif. v. Morales & Avila (June, 2001)
For DA Kim Smith: Calif. v. Cox & Sherman (Nov., 2001)
For DA Michael Blake: Calif.v. Christofer Cory Hilton (March, 2003)
For DA Nicole Flood: Calif v. Triado (Feb., 2003)
For DA Beth Silverman: Calif v. Ash (July, 2003)

In Marin County
For DA Mr. Evans: Multiple defendants (Dec., 1986)
For DA Kevin Jones: California v. Irvin Tatum (March, 1989)
For DA Paula Kamida: Calif v. Felix & Pedrico (April, 1991)

In Merced County
For DA David Elgin: CA v. Juan Velasco (April, 2005)

In Nevada County

In Orange County
For DA Randy Pawloski: Calif. v. Gonzales, Eleazar (April, 1993)
For DA William Feccia: Calif. v. Alfredo Garcia (March, 1996)
For DA Jim Tanizaki: Calif v. Leonard Mundy (June, 1998)
For DA Karen Wule: Calif. v. Guy Miles (June, 1999)
For DA William Feccia: Calif. v. Bryon Valesquez (June, 1999)
For DA Dennis Conway: Calif. v. Benjamin Lemus (Dec., 1999)
For DA Rebecca Heinlein: Calif. v. Mark Parr (Jan., 2000)
For DA Margaret Roper: Calif. v. Sanchez (Jan., 2002)

In Pomona County
For DA Ms. Cady (from California State Attorney General's Office) (March, 1987)

In Riverside County
For Public Defender Robert L. Ebert: Calif. v. P. Carney (Jan., 1995)
For DA Dianna Carter: Calif. v. Fred L. Weatherton (Feb., 2002)
For DA Joseph Daily: P. v. Sousa (July 1, 2002)
For DA Sean Lafferty: CA v. Charles L Hale, Jr. (March, 2005)

In San Bernardino County
For DA David Whitney: Calif. v. Joe Ariaz (June, 1991)

In San Diego County
For DA Chuck Patrick: California v. Palmer (Nov., 1984)
For DA B. Massucco (Dec., 1984)
For DA Lisa Guy-Shall (Jan., 1985)
For DA Craig Rooten (April, 1985)
For DA Massucco (Aug., 1985)
For DA Chuck Patrick (Sept., 1985)
For DA Dick Lewis: California v. Anthony Jack (Feb., 1986)
For DA Chuck Patrick (Aug., 1986)
For DA Jeff Dusek: California v. Dale Carr (Sept., 1986)
For DA Jeff Dusek: California v. Bowman (Nov., 1986)
For DA Julie Saake: California v. James Brown (Feb., 1987)
For DA Larry Burns (from Federal Attorney General's Office, March, 1987)
For DA Denise McGuire: California v. Fred Kennedy (June, 1987)
For DA Massucco: California v. Hinajoso (June, 1987)
For DA Mark Pettine: California v. Noman Smith (July, 1987)
For DA Chuck Patrick: California v. Richard Mayes (Nov., 1987)
For DA Jeff Dusek: California v. Gary Poe (Dec. 1988)
For DA Jeff Dusek: California v. Michael Brito (March, 1989)
For DA Debra Factor: California v. Dennis M. Silver (May, 1989)
For DA Mr. Hammes: (Jan, 1990)
For DA Mr. Clabby: Calif. v. Rudy Isaquirre (Oct. 1990)
For DA Terri Schools: Calif. v. J. Plom (Feb. 1991)
For DA James Romo: (July, 1991)
For DA David Bost: Calif. v. Tally & Brown (Aug., 1992)
For DA Terri Schools: Calif. v. Darrell Mason (Nov. 1993)
For DA Glen McAllister: Calif. v. Williams (Nov. 1995)
For DA Mary-Ellen Barrett: Calif. v. Chavez (Feb. 1996)
For DA David Rubin: Calif. v. Tyron Turner (March, 1996)
For DA Kathleen Lewis: Calif. v. Rubin Harper (April, 1996)
For DA David Bost: Calif. v. Levette and Purter (May, 1996)
For DA Jane Via: Calif. v. Anthony Hill (Oct., 1996)
For DA M. Shultz (training) (Oct., 1997)
For DA Lisa Shall: Calif. v. Larry Vorise (Oct., 1997)
For DA Laura Rogers: Calif. v. Ronnie Luckett (Sept., 1998)
For DA Carol Buck: Calif. v. Deidrie Williams (Dec., 1999)
For DA Kevin Vienna: Calif. v. Estrada (Sept., 2001)
For Bacalski, Byrne & Koska: Benton v Moondoggies (July, 2002)
For DA David Rubin: Calif. v Webber (Feb., 2004)
For DA Amy Maund: Calif. v Jorge D. Oropesa (June, 2005)

In San Diego District of California, U. S. Department of Justice

In San Francisco County
For DA John Carbone, Jr.: Calif. v. Hu and Diep (May, 1996)
For DA Paul Kelley: Calif. v. Eric Williams (April, 1997)
For DA Kamila Harris: Calif. v. M. Salizar (Nov., 1998)
For DA Jerry Colman: General consulting about Dr. Shomer (April, 2005).

In San Joaquin County
For DA Kevin Mayo: Calif. v. James Galvin (July, 2003)

In San Luis Obispo County
For DA Dennis Schloss: California v. Walter Sweeney (July, 1989)

In Northern District, San Francisco

In Santa Barbara County
For DA Joyce Dudley: Calif. v. David Green (March, 1997)

Colorado
In Denver

Delaware
In Wilmington
For State Attorney General Caroline Cross: Delaware v. Sadiki Garden (Feb. 2001)

Florida
In Orlando

In Kissimmee
For State Attorney Elliot Wilcox: FL v. Romon Gonzalez (Dec., 2004)

Illinois
In Chicago
For Individual Defense Litigation, Sheri Mecklenberg, Ronald Jones v Markham, et al. (June, 2003)
For Office of State's Attorney, Criminal Division, Charise Kazaglis, P v Antoine Winston (June, 2003)
For Silvia Mercado-Masters, Rock Fusco, LLC, Michael Evans v. Chicago (Dec., 2005)

Maryland
In Baltimore
Dr. Ebbe B. Ebbesen's Vita

Massachusetts

In Boston
For Assist US Attorney Seth Berman; US v. Delfino Miranda (Sept., 2004)

In Worcester
For DA Joseph Moriarty, Jr.: Commonwealth v Cosenza (June, 2002)
For DA Joseph Moriarty, Jr.: Commonwealth v John Yang (Sept., 2004)

Michigan

In Ann Arbor

Nevada

In Nellis Airforce Base
For Office of Staff Judge Advocate, Nellis AFB, Melissa Saragosa, US v Aguirre (May, 2003)

New Jersey

In Hudson County
For DA Patrick Raviola: State v. Jose Velez (July, 1989)

In Camden County

New Mexico

In Albuquerque
For DA Michael Fricke: P v. Chase (Sept., 2005)

New York

In Manhattan (New York County)

Oregon

In Portland
For DA Paul Graebner: State v. John E. Dunn (July, 1997)

Pennsylvania

In Western District of Pennsylvania, U.S. Department of Justice

Tennessee

In Knoxville: U.S. Attorney's Office, Eastern Tennessee

Utah

In Salt Lake City: U.S. Attorney's Office

Washington

In Tacoma
For US Assistant Attorney Tom Wales (Dec. 1989)
West Virginia
In Monondalia County
For DA Susan Tucker (Feb., 1995)

Publications


**Manuscripts in Preparation** (Research Completed)

Flowe, H. D., Ebbesen, E. B., & Pucha, A. "Nice girls don't get raped and bad girls shouldn't complain." The relationship between sexual behavior and rape allegations. (Draft available)


Ebbesen, E. B. Why we cannot generalize conclusions from source misattribution (or misleading post-event information) studies to actual crime situations. http://www-pys.ucsd.edu/~eeebesen/Misleading.html.
Moore, P., Ebbesen, E. B., & Konecni, V. J. A description of actual eyewitness testimony: What does it look like? (Draft available)

Ebbesen, E. B., Konecni, V. J. & Howard, S. Extent of news coverage and jury bias: The role of news in simulated jury decisions.

Ebbesen, E. B. & Konecni, V. J. How stable are community attitudes about the guilt of defendants in well-publicized felony cases?

Ebbesen, E. B. & Konecni, V. J. Factors affecting higher court decisions to grant change of venue motions: Does the court follow its own guidelines?

Moore, P. & Ebbesen, E.B. Another look at showup v. lineup eyewitness identifications: How different are they?

Bosworth, C. & Ebbesen, E. B. Weapon focus effect depends on location of weapon.

Ebbesen, E. B. & Rienick, C. Cross-race face recognition memory effect, duration of exposure, and confidence.

Ebbesen, E. B. & Libuser, M. A signal detection analysis of accuracy and confidence in lineup v. showup face recognition memory.

Ebbesen, E. B. & Stretch, V. Change of venue surveys: Measuring fixedness of attitudes in a well publicized murder case.

Ebbesen, E.B. Pretrial publicity, change of venue motions, and death qualification.

Rienick, C. & Ebbesen, E. B. The role of duration, frequency of exposure, and attractiveness in face memory.

Ebbesen, E. B., & Rienick, C. The real mugshot effect.

**Technical Reports and Affidavits**


Ebbesen, E. B. Affidavit of Ebbe Bruce Ebbesen, Professor and Chair, Department of Psychology, University of California, San Diego (In reference to People v. Remington and Kirk). 1987
Ebbesen, E. B. Affidavit of Ebbe Bruce Ebbesen, Professor and Chair, Department of Psychology, University of California, San Diego (In reference to People v. Rubio). 1987

Ebbesen, E. B. Affidavit of Ebbe Bruce Ebbesen, Professor and Chair, Department of Psychology, University of California, San Diego (In reference to People v. O'Callaghan). 1988

Ebbesen, E. B. Affidavit of Ebbe Bruce Ebbesen, Professor and Chair, Department of Psychology, University of California, San Diego (In reference to People v. Melton). 1988


Ebbesen, E.B. Gakkai v. Shoshu: Report on Dr. Fyfe's classroom demonstration and conclusions drawn from that demonstration about the nature of human memory. University of California, San Diego (A report that provided
a critical analysis of research conducted by Dr. Fythe and the conclusions drawn by Dr. Fythe from that research regarding the nature of human memory.), Oct. 2001.


Ebbesen, E.B. People v. Vincent Sanchez: Change of venue survey results. University of California, San Diego (A report of results from jury pool survey examining whether potential jurors held fixed opinions regarding defendant’s guilt), 2002


Ebbesen, E.B. People v Fagan, Tonsing, and Lee: Change of venue survey results for San Francisco County Jury Pool, University of California, San Diego, 2004

Ebbesen, E.B. People v. Marcus Wesson: Change of venue survey results for San Diego and Fresno Counties, University of California, San Diego, 2004

Ebbesen, E.B. CA v. Alejandro Avila: Change of venue report, Results and analysis of surveys of potential jurors in Orange county, University of California, San Diego, 2005

Ebbesen, E.B. People v. Ramadan Abdulla: Analysis of Dr. Shoenthaler’s change of venue survey results. University of California, San Diego, 2005

**Paper and Poster Presentations**

Attitude change over time as a function of sexual arousal and experimenter attributes. EPA, 1966 (with S. C. Fraser).


Effects of restriction on the reorganization of response repertoires. WPA, 1973 (with G. Kjos).

The effects of substitution patterns on the necessary conditions for reinforcement in humans. MPA, 1974 (with D. Bernstein).

Non-reversibility of reinforcement. WPA, 1974 (with R. Bowers).

Attribution processes in choice shift. WPA, 1974 (with R. Bowers).

The effects of attribute comparison, frustration and initial choice on delay of gratification. WPA, 1974 (with D. Bernstein).

Presence of sequential and motivational constraints in ethological records of human behavior. MPA, 1974 (with D. Bernstein).

The role of a research psychologist in the courtroom and legal decision making. Defense Bar Association of San Diego, 1975.

The subjective evaluation process in delay of gratification. WPA, 1975 (with C. Cohen).
Rater and ratee contributions to rating consistency: A field study of the perceiver and the perceived. WPA, 1975 (with G. Kjos and P. Roberts).


Analysis of legal-decision making: Bail-setting and sentencing. APA, 1975 (with V. J. Konecni).

Factors affecting sentencing. The American Society of Criminologists, 1976

Insufficiency of rate of responding as a dependent variable for human subjects. MABA, 1976 (with D. Bernstein).

The effects of timing and type of attitude salience on attitude change and recall accuracy in a forced compliance paradigm. WPA, 1976 (with R. J. Bowers and B. Steinfield).

Boundaries of the frequency of exposure effect: Frequency, duration, evaluative dimensions and prior experience. WPA, 1976 (with G. Kjos and E. Litvak).


Fairness in sentencing: Severity of crime and judicial decision-making. APA, 1976 (with V. J. Konecni).

Parole: Legal, policy-making and psychological issues. (Discussant), APA (1976).


First approximations to an instrumental response taxonomy. WPA, 1977 (with G. Kjos).


Interview observational and experimental methods in studying judicial decisions. APA, 1977 (with V. J. Konecni).


Handling the ID expert witness, California District Attorneys Association, National Homicide Symposium, Costa Mesa, CA. April 4, 1989


Archival analysis of actual felony criminal cases. Western Criminal Justice Society meeting. Feb. 1992 (with Philip J. Moore)


The effect of retention interval on eyewitness memory for personal identifying attributes. American Society of Criminology, Boston, Nov. 17, 1995 (with Cynthia M. Burke)
Confidence and accuracy in cross-racial face recognition. American Society of Criminology, Boston, Nov. 17, 1995 (with Cynthia M. Burke and Mitchell Yap).


The relationship between eyewitness identification, confidence, and accuracy. 27th Annual Conference of the Western Society of Criminology, Kona-Kailua, HI, February 25, 2000 (with Mara E. Libuser).

Nice girls don’t get raped and bad girls shouldn’t complain. The relationship between sexual behavior and false rape accusations. Presented at the American Psychology and Law Society, March 2000 (with Heather Flowe).

At the scene of the crime: An examination of the external validity of published studies on line-up identification accuracy. Presented at the American Psychological Society Annual Convention, Toronto, Canada, June 15, 2001 (with Heather Flowe, Cynthia Burke, and Paul Chivabundit).

Routinely measuring lineup similarity in experimental research is a good idea. Kingston, Canada, June 14, 2001: Society for Applied Research in Memory and Cognition (with Heather Flowe).


The (mis)information effect: Trace alternation or coexistence. Aberdeen, Scotland, July 4, 2003 Society for Applied Research in Memory and Cognition (SARMAC) (with Heather Flowe)


**Technical Working Groups**


Participated as invited guest in conference of national sample of district attorneys, defense attorneys, police officers, and psychologists to develop national guidelines for proper procedures for assessing eyewitness memory. NIJ, January 23 - 26, 1999.

**Congressional Testimony**
California Commission on the Fair Administration of Justice, Invited to testify about eyewitness identification before the Commission, San Francisco, March 15, 2006

**Conferences: Invited Participant**

Conference on Developmental Aspects of Self-regulation, NIMH, Feb. 18-21, 1972, La Jolla, California.

Conference on Information Integration and Multidimensional Scaling, August, 1974, University of California, San Diego.


New policies, new procedures, fresh perspectives on eyewitness identification. Loyola University, Chicago School of Law, April 20-21, 2006

Invited Talks

Yale University, Political Science Department: “Social psychology and legal decision making”, December 13, 1976.

University of California, Santa Barbara, Psychology Department: “Field methods and legal decision making”, March 12, 1976.


Rutgers University, Livingston College, Department of Psychology: “Structure and function in response repertoires”, May 31, 1977.


University of California, Los Angeles: “Applications of social psychology to understanding legal process”, May 27, 1982.


San Diego County Prosecutor's Association, San Diego California: “What can psychologists say about eye-witness reliability.” 1985

University of California, Santa Barbara, Department of Psychology. “Eyewitness Experts: Knowing less than we know.” March 1, 1991

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14. The effect of lineup member similarity on recognition accuracy in simultaneous and sequential lineups. Heather Flowe, 2005
Exhibit 12
DETECTIVE/INVESTIGATOR SURVEY
PARTICIPANTS IN THE SEQUENTIAL, DOUBLE-BLIND PILOT PROGRAM

CIRCLE YOUR AGENCY: Chicago Joliet Evanston
Print Name & Star (Optional): ____________________________
(Identity will be kept confidential; identity will be used only for Program Director for verification or questions)

Please clearly circle the answer which best reflects your experience:

1. During the pilot program, how often did you participate, either as an investigator or an administrator, in a sequential double-blind identification procedure for a **photo array**:

   **AS INVESTIGATOR/DETECTIVE**
   a. Never  
b. 1-5 times  
c. 6-10 times  
d. More than 10 times

   **AS ADMINISTRATOR**
   a. Never  
b. 1-5 times  
c. 6-10 times  
d. More than 10 times

2. During the pilot program, how often did you participate, either as an investigator or an administrator, in a sequential double-blind identification procedure for a **live lineup**:

   **AS INVESTIGATOR/DETECTIVE**
   a. Never  
b. 1-5 times  
c. 6-10 times  
d. More than 10 times

   **AS ADMINISTRATOR**
   a. Never  
b. 1-5 times  
c. 6-10 times  
d. More than 10 times

3. How often during your career have you conducted a traditional ("simultaneous") photo array?
   a. Never  
b. 1-10 times  
c. 11-20 times  
d. 21-50 times  
e. More than 50 times

4. How often during your career have you conducted a traditional ("simultaneous") live lineup?
   a. Never  
b. 1-10 times  
c. 11-20 times  
d. 21-50 times  
e. More than 50 times
5. How would you characterize the sequential double-blind identification procedure for photo arrays?
   a. Very Easy
   b. Easy
   c. Difficult
   d. Very Difficult
   e. Not enough experience to characterize

6. How would you characterize the sequential double-blind identification procedure for live lineups?
   a. Very Easy
   b. Easy
   c. Difficult
   d. Very Difficult
   e. Not enough experience to characterize

7. How would you characterize the procedure of showing photos in a sequential manner, without regard to the double-blind requirement?
   a. Very Easy
   b. Easy
   c. Difficult
   d. Very Difficult
   e. Not enough experience to characterize

8. How would you characterize the procedure of showing participants in a live lineup in a sequential manner, without regard to the double-blind requirement?
   a. Very Easy
   b. Easy
   c. Difficult
   d. Very Difficult
   e. Not enough experience to characterize

9. How would you characterize finding a blind administrator for a photo array?
   a. Very Easy
   b. Easy
   c. Difficult
   d. Very Difficult
   e. Not enough experience to characterize
10. How would you characterize finding a blind administrator for a live lineup?
   a. Very Easy
   b. Easy
   c. Difficult
   d. Very Difficult
   e. Not enough experience to characterize

11. Did the sequential double-blind procedure affect your ability to do your job, and if so, how?
   a. substantially improves my ability to do my job
   b. improves my ability to do my job
   c. no effect on my ability to do my job
   d. interferes with my ability to do my job
   e. substantially interferes with my ability to do my job

12. Did the witnesses appear to understand the sequential double-blind procedure?
   a. witnesses appeared to have no trouble understanding the procedure
   b. witnesses appeared to have some trouble understanding the procedure
   c. witnesses appeared to have substantial trouble understanding the procedure

13. Compare the witnesses' understanding of the sequential double-blind procedure to the witnesses' understanding of the traditional lineup procedure:
   a. witnesses understood both procedures about equally
   b. witnesses had less difficulty understanding the sequential double-blind procedure than the traditional lineup procedure
   c. witnesses had more difficulty understanding the sequential double-blind procedure than the traditional lineup procedure

14. By the conclusion of the pilot program, how did you like the sequential double-blind procedure?
   a. no preference for one procedure over the other
   b. preferred the sequential double-blind procedure over the traditional identification procedures
   c. preferred the traditional identification procedure over the sequential double-blind procedure

15. Did your opinion of the sequential double-blind procedure change over the course of the pilot program?
   a. no change
   b. Yes, it changed for the better as the pilot program progressed
   c. Yes, it changed for the worse as the pilot program progressed
16. Which of the following best reflects your experience by the conclusion of the pilot program?
   a. there is no difference in the reliability of identifications obtained from the sequential double-blind method and the traditional method of identification
   b. the sequential double-blind method of identification produces more reliable identifications than the traditional method of identification
   c. The sequential double-blind method of identification produces less reliable identifications than the traditional method of identification

17. If the sequential double-blind procedure is optional, will you continue to use it? (Check One)
   ___Yes
   ___No
   ___Might use it occasionally - if so, when:

18. Identify the positives, if any, of the sequential double-blind identification procedure:

19. Identify the negatives, if any, of the sequential double-blind identification procedure:

20. Additional comments:
Exhibit 13
LINEUP/PHOTOSPREAD ADVISORY FORM
CHICAGO POLICE DEPARTMENT

I, ____________________________, agree to view a lineup/photospread at
(Print Name)
___________________________ on ________________________.
(Location) (Date)

* I understand that the suspect may or may not be in the lineup/photospread.

* I understand that I am not required to make an identification.

* I do not assume that the person administering the lineup/photospread knows which person is the suspect.

Signature of person viewing lineup/photospread

Date ____________________________ Time ____________________________

Detective /Officer ____________________________ Star No. ____________________________

RD No. ____________________________

CPD-11.900 (11/03)
Exhibit 14
INVESTIGATOR'S LINEUP REPORT

Date: ______________________

RD# _________ Witness name: _________________________________

Crime: ____________________ District of Crime: _________

Photo Spread ___ Physical Lineup ___

Sequential procedure employed? Yes ___ No ___

If YES, Identify Blind Administrator:
Name ______________________ Rank: __________ Star _________ Unit ______
Date/Time blind administrator was first requested: __________
Date/Time blind administrator first arrived: __________
Document in detail how you found blind administrator:
________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________

If NO, give reasons:
________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________

Suspect's name: ______________________ Suspect's position: ____ out of ____
Witness age/race: _____________ Suspect age/race: ______
crime involved multiple offenders: Y N suspect appearance changed since crime: Y N

ADDITIONAL COMMENTS:
________________________________________________________________
________________________________________________________________
________________________________________________________________

Investigating Detective Name/Star: ________________________________
Supervisor approval: _____________________________________
Exhibit 15
SEQUENTIAL ADMINISTRATOR’S LINEUP REPORT

Date: ____________________

RD# _______  Witness name: ________________________________

First viewing (check one):
_____ witness made identification and person identified was in position no. _____
_____ witness could not make any identification
_____ witness excluded all lineup participants as offender

Certainty of witness (include any words used by witness in making identification):

________________________________________________________________________

Second viewing (check one):
_____ witness made identification and person identified was in position no. _____
_____ witness could not make any identification
_____ witness excluded all lineup participants as offender

Witness asked for third viewing but was refused: ______________

Certainty of witness (include any words used by witness in making identification):

________________________________________________________________________

________________________________________________________________________

Additional Comments:

________________________________________________________________________

________________________________________________________________________

Administrator’s signature: ________________________________

Unit: __________
Exhibit 16
Roy S. Malpass, Laura A. Zimmerman, Stephen J. Ross, & Lisa D. Topp
With the assistance of
Vanessa Uribe, Dannette De Leon, Sarah Ramirez and Jessica Belisle
University of Texas at El Paso

Incoming case data from three police jurisdictions in Illinois (Joliet, Evanston, Chicago) typically includes a lineup report and a police report. These reports contain information about the crime, the witness, the suspect, the lineup procedure and outcome. The forms are not standardized between the three jurisdictions, making it important to search carefully through each case for the necessary information. Additionally, not all cases contain both reports and some contain extra sheets of information. Thus, coders need to assess each case based on the information given. Coders should attempt to retrieve all pertinent data from the case information. It is necessary to search through and read both the lineup and the police report and compare information in order to get a clear picture of the case activities.

General Procedure

**Coding Data:** Each case will be hand-coded by one coder and a second coder will double-check the information by comparing Coder 1’s data to the case reports. The two coders will discuss any discrepancies and verify the correct information in the case reports. If the coders cannot reach a consensus on how to code an item, or if procedural questions arise during the coding process, the coders should consult with the lead investigators.

**Entering Data:** After all data has been coded and verified, it will be entered into an excel spreadsheet. All data will be entered twice. Two sheets are provided on the spreadsheet. Use the sheet labeled “Punch 1” to enter one complete set of the data. Use the “Punch 2” data sheet to enter another complete set of the same data. Different researchers should enter data on these two sheets, so that no single researcher enters the same case information twice. Excel will compare the data from the two sheets and highlight any differences between them. Researchers will go back to the cases to determine which entry is correct and make changes on the sheet titled “Final punch.” Once all corrections are made the “final punch” sheet will be imported into SPSS for data analysis.

**Police reports:** Double check that the lineup discussed on the lineup report is the same lineup discussed in the police report. If these two reports are different, pull this data from the batch and file in a separate file. An attempt will be made to get the correct police report and/or lineup report.

Coding Procedures
**Coding Key:** Refer to the coding key to assign numbers to each item.

**Missing and ambiguous data:** If information is unclear, contradictory, or indecipherable, code the item as ‘9’. If data is missing, mark that space on the coding sheet with a dash or check mark to indicate that you searched for the information but could not find it. Use code ‘9’ for data that is unclear, contradictory, or indecipherable from a coder standpoint (unsure what the writing means, can’t read the writing, information on the police report does not match information on the lineup report). Consider missing data from an officer reporting standpoint (no reference to gender on reports and the name is gender neutral = missing data). Consider as missing data any item that an officer does not explicitly state. For example: If the report does not state that photos in a sequential lineup were shown after the witness made an identification, then mark it as missing data.

**Jurisdiction:** Enter the code corresponding to the jurisdiction named at the top of the lineup reports.

**Jurisdiction Page #:** Find at the bottom of each page. Once the columns are filled in on the first sheet for a jurisdiction (which includes 2 pages worth of code rows), start a new set of sheets. Label the first set as Jurisdiction Page #1a and 1b, the next set as 2a and 2b, etc.

**Identification #:** Think of the identification number as the same thing as the “subject number” used in most research projects. This number identifies each lineup report and will be used to track and sort data sheets and data. Each case may contain multiple suspects and/or multiple witnesses. Each witness and suspect in the case will be assigned an identification number. For example: within the same case #, assign ID #1 to witness 1 and suspect 1, ID #2 to witness 2 and suspect 1, ID #3 to witness 2 and suspect 2, etc.

**Case Information**

**Case #:** Police case numbers will be assigned research case numbers for this evaluation. A key will track the police case numbers and research case numbers. Prior to coding, a lead researcher will assign a research case number to each case. When coding, use the number that is hand-written next to the police case number. For example: Police report says “Case# 04-42410,” and hand written next to that number is “= 2” This means that the research case number is 2. Each jurisdiction designates case numbers differently. For Joliet, Case # = D.T.#; for Evanston, Case # = Case#; for Chicago, Case # = RD#.

**District:** Only Chicago has district #'s. Find this number on the line for “District of Crime.”
Detective/Star #: This is the number written next to the investigator or detective's name. If more than one lead investigator is named, write the star number of the first detective listed.

Date: The date the investigator wrote the report. Find on the first line of the lineup reports.

Wanted Flyer: Only Joliet asks if a wanted flyer was published. For Chicago and Evanston, look through the reports. Code 'yes' if a wanted flyer was made, 'no' if not.

Composite: Same as Wanted Flyer

Crime Information

Date of Offense: Find this information on the police reports either under 'date of original report' or under 'date of occurrence.'

Time of Offense: Generally only found for Chicago, but may be written for other jurisdictions. For Chicago, the time is written next to the date of occurrence. They use military time, e.g. 9:00 pm = 21:00.

Offense/Crime: Use the crime codes used by police. Refer to the crime code table to find code that matches the crime written on the lineup report.

Multiple offenders: On lineup report, find "Crime involved multiple offenders" and circled will be yes or no. Code as yes or no. Also, look in the police report for the number of offenders. The number of suspects does not necessarily equal the number of offenders. If there is more than one offender, write the number of offenders on the additional comments sheet.

Suspect Information

Suspect #: Prior to coding, a lead researcher will assign a suspect number to each suspect. When coding, use the number that is hand-written next to the suspect's name. For example: Police report says "Joe Smith," and hand written next to that number is "= 2." This means that this is suspect number two for this jurisdiction. If a suspect's name appears on more than one lineup report, that suspect will have the same number on each report.

Suspect gender: Gender does not generally appear on the lineup report, although some officers specify gender on the "suspect age/race" line. Usually gender is written as 'F' for female and 'M' for male. If gender is not specified on the lineup report, it can usually be found within the context of police report by the use of pronouns (i.e., he, she, his, etc.). Some names are gender specific (i.e., John, Emily) but try to verify this assumption with references to gender in the police report. Many names are gender neutral (i.e., Erin, Jamie).
**Suspect age:** On the lineup report, find age written on the “suspect age/race” line. Double-check that this information is consistent with the information on the police report.

**Suspect race:** On the lineup report, find age written on the “suspect age/race” line. Double-check that this information is consistent with the information on the police report.

**Appearance change:** On the lineup report, is the question “Suspect appearance changed since the crime?” ‘Yes’ or ‘No’ should be circled in response to this question. Officers sometimes write in “unk,” if this is written in or circled, code a 3 = unknown. If nothing is circled or written in the police report, code as dash (-) for missing data.

**Witness Information**

**Witness #:** Prior to coding, a lead researcher will assign a witness number to each witness. When coding, use the number that is hand-written next to the witness’ name. For example: Police report says “Mary Jones,” and hand written next to that number is “= 4.” This means that this is witness number four for this jurisdiction. If a witness’s name appears on more than one lineup report, that witness will have the same number on each report.

**Witness gender:** Gender does not generally appear on the lineup report, although some officers specify gender on the “witness age/race” line. Usually gender is written as ‘F’ for female and ‘M’ for male. If gender is not specified on the lineup report, it can usually be found within the context of police report by the use of pronouns (i.e., he, she, his, etc.). Some names are gender specific (i.e., John, Emily) but try to verify this assumption by finding references to gender within the police report. Remember, many names are gender neutral (i.e., Erin, Jamie).

**Witness age:** On the lineup report, find age written on the “witness age/race” line. Double-check that this information is consistent with the information on the police report.

**Witness race:** On the lineup report, find age written on the “witness age/race” line. Double-check that this information is consistent with the information on the police report.

**Witness knows suspect?:** This information is not always explicitly stated. Look in the police report for this information. If it is not explicitly stated or obvious that the witness did or did not know the suspect, *assume the witness did not know the suspect.* If the witness did know the suspect (they grew up together, her cousin, know him from the neighborhood, etc), then code it as ‘knows’. Code a ‘did not know’ in cases that explicitly state that the witness and suspect were strangers. For example: “I have never seen him before”, “two strange guys grabbed me in the parking lot,” “the suspect was unknown to the witness,” etc. If the witness has seen the suspect before, it does not mean they knew the suspect. For example: If the witness states “I'd seen him around the neighborhood,” or “he had come into the store a few times before” this indicates that the witness was familiar with the suspect but did not actually know him or her. Coded
this as ‘familiar’ since the witnesses did not actually know the suspect, but the suspect was not completely unknown either.

**Direct victim or bystander?:** Determine from the police report if the witness was a direct victim of a crime or a bystander who witnessed the event. For example, if a person was robbed at gunpoint, he/she is a direct victim. If a store employee is reporting a theft from the store, he/she is a bystander.

**Witness injured?:** Determine from the police report if the witness suffered any injuries during the crime.

**Weapon present:** Determine from the police report if a weapon was present during the crime. Code for type of weapon (see code sheet) and note on additional comments any notes about the witness’ observation of the weapon. If a weapon was present, but the type of weapon was not specified, code a 4 = unknown/other.

**Lineup Information**

**Where LU presented:** Find this information in the police report. Officers usually state where they met with the witness to present the lineup. For example: “The witness came to the police station to view the lineup,” “I met the witness at her home”).

**Type of presentation:** Refers to live or photo lineups. On the lineup reports, 4th line down, officers circle or check either, “photo spread” or “physical lineup.”

**Type of lineup:** Refers to simultaneous or sequential. Find below specification of presentation type, the question “Sequential procedure employed?” Officers mark ‘Yes’ or ‘No’. If the identification was from a mugbook, code the lineup type as ‘mugshot.’ Write in additional comments if a mugshot was identified or not.

**If Seq, all photos shown?:** The procedure is to show all the photos even after the witness makes an identification. But, it is not always stated that this procedure was followed. Often, this information is in the police report. For example: “the witness said ‘yes’ to #3 and said ‘no’ to all remaining photos.” Some officers report that they tell witnesses prior to viewing the lineup that they will be shown all photos even after they make an identification. If it is not stated that all photos were shown or not shown, code as a dash (-) for missing data.

**# of photos in LU:** Find this information on the lineup report where it says “Suspect’s Position: (blank) out of (blank).” The first number designates the suspects position, the second number designates how many photos/people were in the lineup.

**# of suspects in LU:** See line “Crime involved multiple offenders.” If the answer is ‘no’, only one suspect appeared in the lineup. If the answer is ‘yes’, look in the police report for this suspect and the other suspects to establish if all suspects appeared in different lineups. Often the police reports contain the names of all lineup members.
Check that the suspects' names do not appear in each other's lineups. If the names are different for each suspect, they did not appear in each other's lineups.

**Suspect position in LU:** Find this information on the lineup report where it says “Suspect's Position: (blank) out of (blank).” The first number designates the suspect's position, the second number designates how many photos/people were in the lineup.

**Lineup Administrator Information (if different from investigating detective)**

**Blind Administrator:** The policy is to use blind administrators only for sequential lineups. On the lineup report is a section for blind administrator information. If the officer used a sequential lineup, code a 'yes' on the code sheet. If the officer used a simultaneous lineup, code as a 'no'.

**Name/Star #:** Code the star number of the blind administrator. This is the number written after the blind administrator's name and rank.

**Rank:** Find rank of blind administrator written after to the blind administrator's name. Use the code sheet to code rank. For example: Detective = 1.

**Unit:** Find unit where blind administrator is assigned written after the blind administrator's name, rank, and star number. This is usually a numerical designation. If words are used to designate the unit, code it as a '9'.

**Date requested:** Find on the lineup report under “Date/Time blind administrator requested.”

**Time requested:** Find on the lineup report under “Date/Time blind administrator requested.” It is written after the date requested and is expressed in military time (e.g., 11:00 pm = 23:00).

**Date arrived:** Find on the lineup report under: Date/Time blind administrator arrived.

**Time arrived:** Find on the lineup report under “Date/Time blind administrator arrived.” It is written after the date requested and is expressed in military time (e.g., 11:00 pm = 23:00).

**How admin. found:** Find on the lineup report for Evanston and Chicago under “Document in detail how you found blind administrator.” The Joliet lineup reports do not contain a request for this information. If information is written in this section, code as 'in-house' if lead investigator asked for assistance from an officer at his or her station. Code as 'called' if the investigator called someone in from outside. Use the code 'other' for all other methods used to find an administrator. Write information about how this administrator was found on additional comments sheet.
**Identification Information**

*Language used in ID:* Typically, nothing is written about the language used. For this category, it is OK to assume the language used was English unless otherwise stated. If the name is of an ethnic origin that implies English may not be their first language (Jose Hernandez, Chan Wong), double check that the investigator did not seek the aid of officer who speaks the witness’ native language or use a translator. If a translator was used, code the language used as the language the translator used to speak to the witness. See code sheet for language codes.

*Admonitions:* Find this information in the police report. If officers state that standard admonitions were given, code as ‘standard’ on the code sheet. If the officers report admonitions that deviate from the standard departmental admonitions (refer to each jurisdiction’s witness instruction policy), code as ‘other’ on the code sheet and write details about the specific instructions given to the witness on the *additional comments sheet.* If there is no indication that admonitions were given, code as a dash (-) for missing data.

*# of viewings by wit:* Find this information in the police report. Chicago and Evanston provide an additional sequential lineup report which indicates the procedures used during “first viewing” and “second viewing.” If “second viewing” is left blank, assume only one viewing was administered. Joliet does not provide this sheet, instead, find the procedural information within the police report.

*Suspect ID:* Find this information in the police report. Code this information as ‘yes’ if the witness identified the suspect, or ‘no’ if the witness did not identify the suspect.

*Filler ID:* Find this information in the police report. Code this information as ‘yes’ if the witness identified a filler, or ‘no’ if the witness did not identify a filler.

*Confidence:* Find this information on either the lineup report or police report. Officers sometimes write this information under “additional comments.” For Chicago and Evanston, the sequential lineup report contains a section “Certainty of witness.” Joliet does not directly ask for this information, nor does Chicago or Evanston for simultaneous lineups. Witnesses may express confidence as a percentage (e.g., “the witness was 80% sure”) or as a statement (e.g., “the witness pointed to #4 but stated he was not sure,” “the witness started shaking as said they were positive #5 was the guy”). When an indication of confidence is reported, code as a ‘yes’ and write detail about the confidence statement on the *additional comments sheet.* In cases where an implication of confidence is stated (“the witness hesitated but then chose #2,” “he immediately pointed to #3”), but no explicit request for confidence was made or the witness did not directly state how confident they were, code as “no.” But statements such as these about the characteristics of the witness’ identification are informative, so code a 1 in ‘additional comments’ and write the information on the *additional comments sheet.*
Additional comments: If additional comments are written on the lineup report, or if additional information is given in the police report that seems important, code this as a 'yes' and write the information on the additional comments sheet.

# of photos presented: For simultaneous lineups, this will be the same as the number of photos in the lineup. For sequential lineups, this is the number of photos shown up until the witness made the identification. HOWEVER, if witnesses viewed photos after the ID, the number of photos presented should include those photos also. If witnesses viewed photos after the identification, the number of photos presented should equal the number of photos in the lineup. If it is unknown whether witnesses viewed photos after a sequential identification, consider it missing data and code as a dash (-). This should correspond with the coding for variable “If seq, all photos shown?”

Coder Initials – Code 1: The person who first codes the information from the police reports should initial this box. This way if any questions arise, this coder can be consulted.

Coder Initials – Code 2: The person who double-checks the coded information should initial this box. This way if any questions arise, this coder can be consulted.

Additional Comments sheets

Use the Additional Comments / Other Information sheet to record all information from the police cases that cannot immediately be coded. Use a separate sheet for each jurisdiction and number each page for that jurisdiction. Include on this sheet, information about admonitions, confidence statements, and how the administrator was found. Write details about the inconsistencies found in the lineup and police reports on this sheet. For each line of information, record the ID # that corresponds to the ID # for the report where the information is coming from. Once all information is recorded, codes will be designated based on patterns of information and will subsequently be entered into the data set.

Common codes used by police

DNA: Did Not Answer

Race codes: Chicago sometimes designates race of the witness and suspect as a number –
1 = African American
Pre-Analysis Data-Filtering

Following the coding of each identification report (see coding protocol for information as to how the coding was conducted), the data was entered into two (2) exclusive databases by separate researchers. Once all of the data was entered into both databases, the two databases were compared to ensure that there were no discrepancies. If discrepancies were found, the corresponding ID report was pulled and the appropriate value for the variable under question was entered into both databases. When all discrepancies were corrected, the final dataset was imported into SPSS for statistical analysis. This data set consisted of 710 independent identification reports.

Prior to conducting any analyses, the data set was examined to determine if any variables should be modified. Four variables were modified in order to ensure that the analyses were conducted appropriately and that the results would be interpreted correctly. The first of these variables (named “witknows” in the dataset) classified the ID reports in relation to how well the witness knew the suspect in the case. This variable contained 3 categories. An ID report was classified in the “knows suspect” category when the witness stated that they knew the suspect very well, such as identifying the suspect by name or when stating that the suspect was a friend/family member. An ID report was classified as “suspect familiar” when the witness stated that he/she was familiar with the suspect. This classification was appropriate when the witness stated that he/she knew the suspect from the neighborhood, recognized the suspect from previous experiences, or had heard that the suspect was the individual who committed the crime. Finally, the “does not know suspect” category was used for all ID reports in which the witness stated that he/she did not know who committed the crime (see coding protocol for additional information regarding the classification criteria).

When examining the “witknows” variable, we found that 71 of the ID reports involved crimes where the witness knew the suspect. Of these 71 reports, 68 involved the witness identifying the suspect. None of these 71 reports involved a witness identifying a known innocent/filler. These results are not surprising since it would be expected that when a witness knows the individual that committed a crime he/she would be likely to identify that individual in a police lineup and would not be likely to identify an individual that was not the suspect. Interestingly, the 3 instances in which the witness rejected the lineup and did not identify the suspect occurred when the witness was presented with a sequential lineup. A z-test calculated on these two proportions (1.0 for simultaneous and .875 for sequential) was not significant, indicating that this result was not a function of a difference between simultaneous and sequential lineups.

In order to ensure that the results of any further analyses were not influenced by the ceiling effect found in the “knows suspect” condition, the data was filtered to only include those ID reports that involved a witness that was familiar with the suspect (“suspect familiar”) or those reports in which the witness did not know who committed the crime (“does not know suspect”). Using this procedure, 146 of the original 710 ID reports were filtered out of the data set. Of these 146, 71 were reports in which the witness knew the suspect and 75 were reports in which the level of familiarity between
the witness and the suspect could not be interpreted or was not reported. The filtering of these reports from the data set resulted in 564 reports that met the inclusion criteria.

Further examination of the data set resulted in the modification of the dependent variables of interest in the subsequent analyses. These variables were suspect identification rates (suspid), known innocent/filler identification rates (fillerid), and lineup rejection rates (noid). Identification reports were classified for each of the variables into one of three categories. For each of these dependent variables, an ID report could either be a “yes”, “no”, or “tentative”. A report was classified as “tentative” if the witness did not make an ID, but tentatively stated that one of the members could be the perpetrator. Of the remaining 564 reports, an additional 15 included a “tentative” response on one of these 3 dependant variables. Since the ambiguity of a “tentative” ID is difficult to interpret, these 15 reports were also filtered from the subsequent analyses leaving a total of 549 ID reports. Of these 549 reports, 59 were supplied by the Evanston Police Department, 172 were supplied by the Joliet Police Department, and 318 were supplied by the Chicago Police Department.

**Multiple Identifications by a Single Witness**

Some witnesses identified more than one individual in a lineup. There are some cases in which the witness identified both the suspect and a filler and other cases in which the witness identified more than one filler. This causes the identification frequencies to add up to more than 100% because in a few instances more than one identification was made.
Exhibit 17
# Results of the Illinois Lineup Project

Roy S. Malpass, Laura A. Zimmerman, Stephen J. Ross, & Lisa D. Topp

With the assistance of

Vanessa Uribe, Dannette De Leon, Sarah Ramirez and Jessica Belisle

University of Texas at El Paso

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</table>
And Identification on Identification Rates.

Effects of Simultaneous v. Sequential Presentation, and Witness Age on Identification Rates.

Effects of Simultaneous v. Sequential Presentation and number of offenders in The Crime on Identification Rates.


Effects of Simultaneous v. Sequential Presentation and Violence on Identification Rates.

Results of the Illinois Lineup Project

Identification Procedure Frequencies by Jurisdiction.
This table displays the frequencies of simultaneous and sequential lineups, according to whether they were presented live or by photo, in each of the three jurisdictions. The complete results are shown in Table 1.

The Most Frequent Crimes.
This list of crimes is derived from the case reports and includes all crime categories having a frequency of 10% or more of the records from any one of the three jurisdictions. The list is shown in order of their total percentages across the jurisdictions. The complete results are shown in Table 2.

Effects Of Simultaneous V. Sequential Presentation On Identification Rates Overall And For Three Jurisdictions.
Simultaneous and sequential lineups had differential impacts on overall eyewitness identification rates. Analyses were conducted on 548 identification reports of which 319 included simultaneous lineups and 229 included sequential lineups. Results indicated that witnesses who viewed a simultaneous lineup identified the suspect more often than those witnesses who viewed a sequential lineup (suspect identification rates of 59.9% and 45% respectively). In addition, witnesses who viewed a simultaneous lineup chose a filler less often than those who viewed a sequential lineup (filler identification rates of 2.8% and 9.2% respectively). Witnesses who viewed a simultaneous lineup were less likely to choose no one than were those who viewed a sequential lineup (no identification rates of 37.6% and 47.2% respectively). In short, simultaneous lineups led to an increase in overall witness choosing rates marked by an increased likelihood to identify the suspect, and a decreased likelihood of identifying a filler as compared to the choosing rates of witnesses in sequential lineups.

The overall pattern of results for suspect identifications (simultaneous > sequential) was present in Chicago and Evanston, however no differences between simultaneous and sequential lineups was observed for the Joliet sample, where the percentage of suspect identifications with sequential lineups was not different from suspect identifications for simultaneous lineups in the other two jurisdictions. The cause for the absence of differences in the Joliet sample cannot be determined based on information available in this research.

The overall pattern of non-identifications (sequential > simultaneous) was found in Evanston but not in the other two jurisdictions.
The complete results are shown in Table 3.

Effects of Simultaneous v. Sequential Presentation And Identification Location on Identification Rates.
The location of the lineup task, police station or elsewhere, was evaluated to determine whether location influences witness identification rates. The analysis is restricted to photo lineups because live lineups were not conducted outside of the police station.

Of the 332 reports included in the analysis, 173 were recorded at the police station and 159 were recorded elsewhere. Analyses revealed that there were no significant differences
between simultaneous and sequential lineups on suspect identification rates when the lineups were conducted outside of the police station.

When lineups were conducted at the police station differences between simultaneous and sequential lineups were found. Witnesses viewing a simultaneous lineup were more likely to identify a suspect (68.5%) and less likely to make no identification (30.4%) than witnesses who viewed a sequential lineup (44.4% and 49.4%, respectively). Additionally, witnesses viewing a simultaneous lineup at the station were more likely to identify the suspect (68.5%) than when they viewed a simultaneous lineup elsewhere (47.2%). No differences were observed between locations for sequential lineups.

The complete results are shown in Table 4.

**Effects of Simultaneous v. Sequential Presentation and Cross v. Own Race on Identification Rates.** Suspect identification rates were higher for persons of the same race as the witness, for both simultaneous and sequential lineups.

Filler identifications were higher for same race sequential lineups (12.6%) compared with cross-race sequential lineups (3.4%) and compared with both simultaneous cross-race and same race lineups (4.3% and 2%, respectively).

Witnesses shown sequential cross-race lineups made substantially more non-identifications (64.4%) than those shown sequential same-race lineups (37.3%) as well as simultaneous same (33.7%) and cross race (44%) lineups.

The complete results are shown in Table 5.

**Effects Of Familiarity With The Suspect On Identification Rates.**

The degree to which the witness was familiar with the suspect was evaluated to determine whether familiarity influenced witness identification rates. A total of 620 identification reports were included in these analyses. Of these 620 reports, 71 included suspects known to the witness, 81 included suspects “familiar” to the witness, and 468 included suspects unknown to the witnesses (see the Illinois Lineup Evaluation Project Protocol and Code Book for “know”, “familiar”, and “don’t know” classification criteria). Analyses revealed differences in suspect identification rates. Witnesses who claimed to know the perpetrator were much more likely to identify the suspect than those who said they were familiar with the perpetrator (95.8% > 71.8%), and witnesses who said they were familiar with the perpetrator were more likely to identify the suspect than those who did not know the suspect at all (71.8% > 50.4%).

Non-identifications showed a contrasting pattern. If the witness claimed to know the perpetrator non-identifications of the suspect were very infrequent (4.2%). When witnesses said they were familiar with the perpetrator the rate of non-identifications increased to 21.0%, and when the perpetrator was previously unknown to the witness non-identifications rose to 45.1%.

Filler identifications were few overall. Witnesses who claimed to know the perpetrator never identified a filler. Witnesses who said they were familiar with the perpetrator and those who did not know the perpetrator at all were more likely to identify a filler in the lineup (7.4% and 5.1% respectively). These patterns were consistent across all 3 jurisdictions and across simultaneous and sequential lineups.

Personal knowledge of the perpetrator is a power factor in identification, leading to nearly 96% suspect identification. It is unlikely that other factors, such as lineup type, would have
any influence on these witnesses, and for this reasons these 71 witnesses are not included in subsequent analyses involving identification rates.

The complete results are shown in Table 6.

Effects of Simultaneous v. Sequential Presentation And Presentation Medium (Live v. Photo) on Identification Rates.
The influence of live versus photographic presentation of lineups was also analyzed. Live simultaneous lineups resulted in more suspect identifications than live sequential lineups and more than photographic simultaneous or sequential lineups. Of the 92 live-simultaneous lineups, 70.7% resulted in a suspect identification whereas only 45.4% of the 108 live-sequential lineups, 55.5% of the 227 photo-simultaneous lineups, and 44.9% of the photo-sequential lineups resulted in suspect identifications.

Live simultaneous lineups led to significantly fewer filler identifications than live-sequential lineups. Of the 92 live simultaneous lineups, 1.1% resulted in a filler identification in contrast to the 9.3% of the 108 live-sequential lineups. There were no differences between the photographic and live presentations in filler identifications.

Live simultaneous lineups resulted in fewer non-identifications than live sequential lineups and fewer than photographic lineups of either type. There was no difference in non-identifications among live sequential, photo sequential and photo simultaneous lineups. Of the 92 live-simultaneous lineups, 28.3% resulted in a non-identification whereas 45.4% of the 108 live-sequential lineups, 41.4% of the 227 photo-simultaneous lineups, and 49.2% of the photo-sequential lineups resulted in non-identifications.

The complete results are shown in Table 7.

Effects of Number of Viewings on Identification Rates in Sequential Lineups.
Multiple viewings of a lineup were uniquely a part of the sequential procedure. Fifty-one (22.3%) of the 229 sequential lineups contained a second viewing. Witnesses who viewed a lineup twice were less likely to identify the suspect. Of the 51 reports wherein the witness viewed the lineup twice, 27.5% identified the suspect whereas 50.0% of the 178 reports in which the witness viewed the lineup once resulted in a suspect identification. Further analyses revealed that of the 51 sequential identifications in which the witness viewed the lineup twice (2 passes), 7 were removed from any interpretation because the reports of the witness' decision in the first viewing were not recorded.

Of the remaining 44 reports, 39 (89%) involved the witness making the same (confirmatory) choice in the second viewing as s/he made in the first viewing. Of the 5 reports where the witness changed his/her decision between the first and second viewing, 3 (7%) involved the witness making no decision in the first viewing and identifying the suspect in the second viewing, 1 (2%) involved the witness making no decision in the first viewing and excluding all members as the perpetrator after the second viewing, and 1 (2%) involved the witness changing his decision from a tentative ID of a filler in the first viewing to a positive ID of the suspect after the second viewing.

The complete results are shown in Table 8.

Effects of Simultaneous v. Sequential Presentation and Number of Suspects In The Lineup On Identification Rates.
The vast majority of lineups contained only one suspect (n=464), and the results for these are the same as for the overall analysis of the effects of simultaneous and sequential lineups on identifications: simultaneous lineups lead to a higher rate of suspect identifications and a lower rate of non-identifications than sequential lineups.

Lineups containing two suspects (n=46) were approximately 9% of the total. Their pattern of identifications was quite different, but only for sequential lineups. Sequential lineups with multiple suspects lead to considerably fewer suspect identifications (12.5%), more filler identifications (18.8%) and more non-identifications (68.8%) compared with simultaneous lineups (57.1%, 7.1% and 37.5%, respectively) and 1-suspect sequential lineups (50.8%, 6.9% and 42.9%, respectively).

Lineups containing 3 suspects were very few (n=13) and none were administered in sequential format. The number of cases is too small for statistical analysis.

The complete results are shown in Table 9.

Effects of Simultaneous v. Sequential Presentation and Witness Status (Victim/Bystander) on Identification Rates.

Whether the witness was a victim or a bystander was evaluated to determine the effects on identification rates. Of the 542 reports included in the analysis, 308 were made by victims and 234 by bystanders. Analysis revealed that overall there were no significant differences between victims and bystanders on identification rates.

Examination of the simultaneous v. sequential comparison revealed that victims were more likely than bystanders to identify the suspect in a simultaneous lineup. Also, victims were more likely to identify a suspect in a simultaneous lineup than in a sequential lineup. No significant differences were observed between victims and bystanders for sequential lineups. However, both victims and bystanders were more likely to identify fillers in a sequential than a simultaneous lineup.

The complete results are shown in Table 10.

Effects of Simultaneous v. Sequential Presentation and Delay Between Crime And Identification on Identification Rates.

Delay between crime and identification and lineup type were analyzed to determine whether these variables interact to influence witness identification rates. Of the 548 identification reports, 137 were made less than 48 hours after the crime occurred, 110 between 48 hours and one week after the crime occurred, 170 between one week and 31 days after the crime, and 131 made after 31 days. The analysis shows that the overall pattern of differences between simultaneous and sequential lineups occurs at each degree of delay. No overall effect of delay was observed.

The complete results are shown in Table 11.

Effects of Simultaneous v. Sequential Presentation, and Witness Age on Identification Rates.

Witness age was examined to determine whether age influences the pattern of identification rates in simultaneous and sequential lineups. Of the 548 identification reports included in this analysis, 97 were made by witnesses 17 years of age or younger, 445 reports by witnesses between the ages of 18 and 69, and 6 by witnesses 70 years of age or older.
The analysis shows that witness age does not lead to patterns of identification in simultaneous and sequential lineups that are different from the overall pattern discussed earlier, and no differences between age groups were observed.

The complete results are shown in Table 12.

**Effects of Simultaneous v. Sequential Presentation and number of offenders In The Crime On Identification Rates.**

Multiple offender crimes were nearly 40% more frequent than single offender crimes (317 > 229). Multiple offender crimes lead to a substantial difference between simultaneous and sequential lineups that was not observed for single-offender crimes. Witnesses to multiple offender crimes and shown simultaneous lineups made more (71.4%) suspect identifications compared to those shown sequential lineups (40.2%). Those shown sequential lineups made more filler identifications (11.1%) than those shown simultaneous lineups (3.0%). Witnesses to multiple offender crimes and shown simultaneous lineups made fewer non-identifications (26.3%) compared to those shown sequential lineups (50.4%).

The number of offenders did not produce differences in suspect identifications, filler identifications or non-identifications for sequential lineups. For simultaneous lineups, however, multi-offender crimes lead to more suspect identifications (71.4% > 51.1%) than single offender crimes, and fewer non-identifications (26.3% < 46.2%).

The complete results are shown in Table 13.

**Effects of Simultaneous v. Sequential Presentation and Witness injury on Identification Rates.**

No differences were found in identification rates based on whether or not the witness was injured during the crime. Comparisons were made between simultaneous and sequential lineups for suspect, filler, and no identifications. Witness injury did not influence these identification rates.

The complete results are shown in Table 14.

**Effects of Simultaneous v. Sequential Presentation and Violence on Identification Rates.**

Crimes were categorized as either violent or non-violent. Violent crimes were defined as those involving physical injury or direct threat of injury (homicide, armed robbery, sexual assault) while non-violent crimes were those that caused indirect harm (burglary, fraud, petty theft). Comparing identification rates for violent and non-violent crimes across simultaneous and sequential lineups revealed no differences. Both simultaneous and sequential identification rates were similar whether the crime was violent or non-violent.

The complete results are shown in Table 15.

**Effects of Simultaneous v. Sequential Presentation and Weapon Presence on Identification Rates.**

No differences were found in identification rates based on the presence or absence of a weapon during the crime. Some studies have found that when a weapon is present during a crime, witnesses are less accurate when making later identifications, but an effect of weapon presence was not found in the present study, for either simultaneous or sequential lineups.

The complete results are shown in Table 16.
Illinois Lineup Project: Tables

Table 1. Identification Procedure Frequencies by Jurisdiction

<table>
<thead>
<tr>
<th></th>
<th>Simultaneous</th>
<th></th>
<th>Sequential</th>
<th></th>
<th>Total</th>
</tr>
</thead>
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<td></td>
<td>Photo</td>
<td>Live</td>
<td>Photo</td>
<td>Live</td>
<td></td>
</tr>
<tr>
<td>Chicago</td>
<td>81</td>
<td>90</td>
<td>66</td>
<td>110</td>
<td>347</td>
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<tr>
<td>Evanston</td>
<td>27</td>
<td>9</td>
<td>32</td>
<td>3</td>
<td>71</td>
</tr>
<tr>
<td>Joliet</td>
<td>159</td>
<td>0</td>
<td>39</td>
<td>0</td>
<td>198</td>
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</table>
Table 2. Most Frequent Crimes, by Jurisdiction.

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<thead>
<tr>
<th>Jurisdiction</th>
<th>Total</th>
<th>Chicago</th>
<th>Evanston</th>
<th>Jollet</th>
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<td>351</td>
<td>70</td>
<td>195</td>
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<tr>
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<td>19.5</td>
<td>20.2</td>
<td>8.6</td>
<td>22.1</td>
</tr>
<tr>
<td>armed robbery</td>
<td>19.3</td>
<td>23.9</td>
<td>4.3</td>
<td>16.4</td>
</tr>
<tr>
<td>robbery</td>
<td>13.0</td>
<td>19.1</td>
<td>8.6</td>
<td>3.6</td>
</tr>
<tr>
<td>homicide</td>
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<td>17.9</td>
<td>5.7</td>
<td>3.1</td>
</tr>
<tr>
<td>petty theft</td>
<td>8.9</td>
<td>2.6</td>
<td>8.6</td>
<td>20.5</td>
</tr>
<tr>
<td>assault/battery</td>
<td>7.6</td>
<td>3.7</td>
<td>11.4</td>
<td>13.3</td>
</tr>
<tr>
<td>sexual assault</td>
<td>5.0</td>
<td>5.1</td>
<td>14.3</td>
<td>1.5</td>
</tr>
<tr>
<td>burglary</td>
<td>2.4</td>
<td>0.9</td>
<td>11.4</td>
<td>2.1</td>
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Table 3.a. Effects of Simultaneous v. Sequential Presentation on Identification Rates.

<table>
<thead>
<tr>
<th></th>
<th>Simultaneous</th>
<th>Sequential</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>n=548</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(319)</td>
<td>(229)</td>
</tr>
<tr>
<td>Suspect ID</td>
<td>59.9</td>
<td>45</td>
</tr>
<tr>
<td>Filler ID</td>
<td>2.8</td>
<td>9.2</td>
</tr>
<tr>
<td>No ID</td>
<td>37.6</td>
<td>47.2</td>
</tr>
</tbody>
</table>

Table 3.b. Effects of Simultaneous v. Sequential Presentation on Identification Rates, By Jurisdiction

<table>
<thead>
<tr>
<th></th>
<th>Chicago</th>
<th>Evanston</th>
<th>Joliet</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sim. (151)</td>
<td>Seq. (167)</td>
<td>Sim. (31)</td>
<td>Seq. (27)</td>
</tr>
<tr>
<td>Suspect ID</td>
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<td>43.1</td>
<td>67.7</td>
<td>25.9</td>
</tr>
<tr>
<td>Filler ID</td>
<td>0.7</td>
<td>10.2</td>
<td>0</td>
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</tr>
<tr>
<td>No ID</td>
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<td>48.5</td>
<td>32.3</td>
<td>63.0</td>
</tr>
<tr>
<td></td>
<td>n = 332</td>
<td>Police Station</td>
<td>Elsewhere</td>
<td>n = 332</td>
</tr>
<tr>
<td>------------------</td>
<td>---------</td>
<td>----------------</td>
<td>-----------</td>
<td>---------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sim. (N = 92)</td>
<td>Seq. (N = 81)</td>
<td>Sim. (N = 125)</td>
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<tr>
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<td>11.8</td>
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<td>No ID</td>
<td>30.4</td>
<td>49.4</td>
<td>48.0</td>
<td>50.0</td>
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Table 4. Effects of Simultaneous v. Sequential Presentation And Identification Location on Identification Rates.
Table 5. Effects of Simultaneous v. Sequential Presentation and Cross v Same Race on Identification Rates

<table>
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<th>n = 537</th>
<th>Simultaneous</th>
<th>Sequential</th>
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<tbody>
<tr>
<td></td>
<td>Cross (116)</td>
<td>Same (199)</td>
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<tr>
<td>Suspect ID</td>
<td>51.7</td>
<td>64.8</td>
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<td>Filler ID</td>
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<td>2.0</td>
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<td>No ID</td>
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<table>
<thead>
<tr>
<th>n = 537</th>
<th>Cross</th>
<th>Same</th>
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<tbody>
<tr>
<td></td>
<td>Sim (116)</td>
<td>Seq (87)</td>
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<td>Suspect ID</td>
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<td>Filler ID</td>
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<td>3.4</td>
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Table 6. Effect of Familiarity with Suspect on Identification Rates.

<table>
<thead>
<tr>
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<th>Know (71)</th>
<th>Familiar (81)</th>
<th>Don't Know (468)</th>
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<tbody>
<tr>
<td>Suspect ID</td>
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<td>72.8</td>
<td>50.4</td>
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<tr>
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<td>5.1</td>
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<tr>
<td>No ID</td>
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Table 7. Effects of Simultaneous v. Sequential Presentation And Presentation Medium on Identification Rates: Two Views

<table>
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<th></th>
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<tbody>
<tr>
<td></td>
<td>Live</td>
<td>Photo</td>
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</tr>
<tr>
<td></td>
<td>Sim.</td>
<td>Seq.</td>
<td>Sim.</td>
</tr>
<tr>
<td></td>
<td>(n = 92)</td>
<td>(n = 108)</td>
<td>(n = 227)</td>
</tr>
<tr>
<td>Suspect ID</td>
<td>70.7</td>
<td>45.4</td>
<td>55.5</td>
</tr>
<tr>
<td>Filler ID</td>
<td>1.1</td>
<td>9.3</td>
<td>3.5</td>
</tr>
<tr>
<td>No ID</td>
<td>28.3</td>
<td>45.4</td>
<td>41.4</td>
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</table>

<table>
<thead>
<tr>
<th></th>
<th>n = 545</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Simultaneous</td>
<td>Sequential</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Live</td>
<td>Photo</td>
<td>Live</td>
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<tr>
<td></td>
<td>(n = 92)</td>
<td>(n = 227)</td>
<td>(n = 108)</td>
</tr>
<tr>
<td>Suspect ID</td>
<td>70.7</td>
<td>55.5</td>
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<td>Filler ID</td>
<td>1.1</td>
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<tr>
<td>No ID</td>
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<td>41.4</td>
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Table 8. Effects of Number of Viewings on Identification Rates in Sequential Lineups.

<table>
<thead>
<tr>
<th></th>
<th>1 View</th>
<th>2 Views</th>
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<tbody>
<tr>
<td>n=229 (n=178)</td>
<td></td>
<td>(n=51)</td>
</tr>
<tr>
<td>Suspect ID</td>
<td>50.0</td>
<td>27.5</td>
</tr>
<tr>
<td>Filler ID</td>
<td>8.4</td>
<td>11.8</td>
</tr>
<tr>
<td>No ID</td>
<td>43.3</td>
<td>60.8</td>
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Table 9. Effects of Simultaneous v. Sequential Presentation and Number of Suspects In The Lineup On Identification Rates

<table>
<thead>
<tr>
<th></th>
<th>1 Suspect (n=464)</th>
<th>2 Suspects (n=46)</th>
<th>3 Suspects (n=13)</th>
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<tbody>
<tr>
<td>Suspect ID</td>
<td>64.0</td>
<td>50.8</td>
<td>57.1</td>
</tr>
<tr>
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<td>7.1</td>
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<tr>
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<td>33.5</td>
<td>42.9</td>
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</table>

n = 523
Table 10. Effects of Simultaneous v. Sequential Presentation and Witness Status (Victim/Bystander) on Identification Rates

<table>
<thead>
<tr>
<th>Victim/Bystander x Identification Type</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Victim</td>
<td>Bystander</td>
</tr>
<tr>
<td></td>
<td>(308)</td>
<td>(234)</td>
</tr>
<tr>
<td>n = 542</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Suspect ID</td>
<td>56.5</td>
<td>50.4</td>
</tr>
<tr>
<td>Filler ID</td>
<td>4.9</td>
<td>6.4</td>
</tr>
<tr>
<td>No ID</td>
<td>39.3</td>
<td>44.0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sim.</th>
<th>Seq</th>
</tr>
</thead>
<tbody>
<tr>
<td>n = 542</td>
<td></td>
</tr>
<tr>
<td>Victim</td>
<td>Byst.</td>
</tr>
<tr>
<td></td>
<td>(176)</td>
</tr>
<tr>
<td>Suspect ID</td>
<td>65.9</td>
</tr>
<tr>
<td>Filler ID</td>
<td>2.3</td>
</tr>
<tr>
<td>No ID</td>
<td>32.4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Victim</th>
<th>Bystander</th>
</tr>
</thead>
<tbody>
<tr>
<td>n = 542</td>
<td></td>
</tr>
<tr>
<td>Suspect ID</td>
<td>65.9</td>
</tr>
<tr>
<td>Filler ID</td>
<td>2.3</td>
</tr>
<tr>
<td>No ID</td>
<td>32.4</td>
</tr>
</tbody>
</table>
Table 11. Effects of Simultaneous v. Sequential Presentation and Delay Between Crime And Identification on Identification Rates: Two Views.

### Delay X Sim/Seq X Identification Rates

<table>
<thead>
<tr>
<th></th>
<th>Simultaneous</th>
<th></th>
<th></th>
<th></th>
<th>Sequential</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>&lt; 48 hours</td>
<td>48 hrs-1wk</td>
<td>1 wk-31 days</td>
<td>&gt; 31 days</td>
<td>&lt; 48 hours</td>
<td>48 hrs-1wk</td>
<td>1 wk-31 days</td>
</tr>
<tr>
<td>n = 548</td>
<td></td>
<td>(N = 67)</td>
<td>(N = 68)</td>
<td>(N = 108)</td>
<td>(N = 76)</td>
<td>(N = 70)</td>
<td>(N = 42)</td>
<td>(N = 62)</td>
</tr>
<tr>
<td>Suspect ID</td>
<td>56.7</td>
<td>52.9</td>
<td>61.1</td>
<td>67.1</td>
<td>47.1</td>
<td>40.5</td>
<td>40.3</td>
<td>50.9</td>
</tr>
<tr>
<td>Filler ID</td>
<td>4.5</td>
<td>4.4</td>
<td>0.9</td>
<td>2.6</td>
<td>12.9</td>
<td>7.1</td>
<td>4.8</td>
<td>10.9</td>
</tr>
<tr>
<td>No ID</td>
<td>40.3</td>
<td>42.6</td>
<td>38.0</td>
<td>30.3</td>
<td>41.4</td>
<td>52.4</td>
<td>54.8</td>
<td>41.8</td>
</tr>
</tbody>
</table>

### Delay X Sim/Seq X Identification Rates

<table>
<thead>
<tr>
<th></th>
<th>Simultaneous</th>
<th></th>
<th></th>
<th></th>
<th>Sequential</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>&lt; 48 hours</td>
<td></td>
<td>48 hrs-1wk</td>
<td></td>
<td>1 wk-31 days</td>
<td></td>
<td>&gt; 31 days</td>
</tr>
<tr>
<td>n = 548</td>
<td></td>
<td>(N = 67)</td>
<td></td>
<td>(N = 68)</td>
<td></td>
<td>(N = 108)</td>
<td></td>
<td>(N = 76)</td>
</tr>
<tr>
<td>Suspect ID</td>
<td>56.7</td>
<td>47.1</td>
<td>52.9</td>
<td>40.5</td>
<td>61.1a</td>
<td>40.3a</td>
<td>67.1</td>
<td>50.9</td>
</tr>
<tr>
<td>Filler ID</td>
<td>4.5</td>
<td>12.9</td>
<td>4.4</td>
<td>7.1</td>
<td>0.9</td>
<td>4.8</td>
<td>2.6</td>
<td>10.9</td>
</tr>
<tr>
<td>No ID</td>
<td>40.3</td>
<td>41.4</td>
<td>42.6</td>
<td>52.4</td>
<td>38.0</td>
<td>54.8</td>
<td>30.3</td>
<td>41.8</td>
</tr>
</tbody>
</table>
Table 12. Effects of Simultaneous v. Sequential Presentation, and Witness Age on Identification Rates: Two Views.

<table>
<thead>
<tr>
<th></th>
<th>Simultaneous</th>
<th></th>
<th></th>
<th>Sequential</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>17yr or</td>
<td>18-69</td>
<td>70+</td>
<td>17yr or</td>
<td>18-69</td>
<td>70+</td>
</tr>
<tr>
<td></td>
<td>less</td>
<td></td>
<td></td>
<td>less</td>
<td></td>
<td></td>
</tr>
<tr>
<td>n = 548</td>
<td>(N = 60)</td>
<td>(N = 256)</td>
<td>(N = 3)</td>
<td>(N = 40)</td>
<td>(N = 189)</td>
<td>(N = 3)</td>
</tr>
<tr>
<td>Suspect ID</td>
<td>56.7</td>
<td>60.5</td>
<td>66.7</td>
<td>54.1</td>
<td>43.4</td>
<td>33.3</td>
</tr>
<tr>
<td>Filler ID</td>
<td>3.3</td>
<td>2.7</td>
<td>0.0</td>
<td>8.1</td>
<td>9.5</td>
<td>0.0</td>
</tr>
<tr>
<td>No ID</td>
<td>40.0</td>
<td>37.1</td>
<td>33.3</td>
<td>37.8</td>
<td>48.7</td>
<td>66.7</td>
</tr>
</tbody>
</table>

Age X Sim/Seq X Identification Rates

<table>
<thead>
<tr>
<th></th>
<th>Simultaneous</th>
<th></th>
<th></th>
<th>Sequential</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>17yr or</td>
<td>18-69</td>
<td>70+</td>
<td>17yr or</td>
<td>18-69</td>
<td>70+</td>
</tr>
<tr>
<td></td>
<td>less</td>
<td></td>
<td></td>
<td>less</td>
<td></td>
<td></td>
</tr>
<tr>
<td>n = 548</td>
<td>(N = 60)</td>
<td>(N = 256)</td>
<td>(N = 3)</td>
<td>(N = 40)</td>
<td>(N = 189)</td>
<td>(N = 3)</td>
</tr>
<tr>
<td>Suspect ID</td>
<td>56.7</td>
<td>54.1</td>
<td></td>
<td>60.5</td>
<td>43.4</td>
<td></td>
</tr>
<tr>
<td>Filler ID</td>
<td>3.3</td>
<td>8.1</td>
<td></td>
<td>2.7</td>
<td>9.5</td>
<td></td>
</tr>
<tr>
<td>No ID</td>
<td>40.0</td>
<td>37.8</td>
<td></td>
<td>37.1</td>
<td>48.7</td>
<td>33.3</td>
</tr>
</tbody>
</table>
Table 13. Identification Rates By Lineup Type And Number Of Offenders In The Crime: Two Views

<table>
<thead>
<tr>
<th></th>
<th>&gt;1 offender</th>
<th>One Offender</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sim.</td>
<td>Seq.</td>
</tr>
<tr>
<td></td>
<td>(N = 133)</td>
<td>(N = 184)</td>
</tr>
<tr>
<td>Suspect ID</td>
<td>71.4</td>
<td>40.2</td>
</tr>
<tr>
<td>Filler ID</td>
<td>3.0</td>
<td>11.1</td>
</tr>
<tr>
<td>No ID</td>
<td>26.3</td>
<td>50.4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Simultaneous</th>
<th>Sequential</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>&gt;1 offender</td>
<td>1 offender</td>
</tr>
<tr>
<td></td>
<td>(N = 133)</td>
<td>(N = 117)</td>
</tr>
<tr>
<td>Suspect ID</td>
<td>71.4</td>
<td>51.1</td>
</tr>
<tr>
<td>Filler ID</td>
<td>3.0</td>
<td>2.7</td>
</tr>
<tr>
<td>No ID</td>
<td>26.3</td>
<td>46.2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Simultaneous</th>
<th></th>
<th>Sequential</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Injured</td>
<td>Not Injured</td>
<td>Injured</td>
<td>Not Injured</td>
</tr>
<tr>
<td>Suspect ID</td>
<td>69.1</td>
<td>58.9</td>
<td>64.7</td>
<td>40.6</td>
</tr>
<tr>
<td>Filler ID</td>
<td>3.6</td>
<td>2.8</td>
<td>2.9</td>
<td>10.6</td>
</tr>
<tr>
<td>No ID</td>
<td>29.1</td>
<td>38.3</td>
<td>35.3</td>
<td>50.0</td>
</tr>
</tbody>
</table>

n = 517
Table 15. Effects of Simultaneous v. Sequential Presentation and Violence on Identification Rates: Two Views.

<table>
<thead>
<tr>
<th></th>
<th>Simultaneous</th>
<th></th>
<th></th>
<th>Sequential</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Violent (N = 224)</td>
<td>Non-Violent (N = 94)</td>
<td></td>
<td>Violent (N = 193)</td>
<td>Non-Violent (N = 33)</td>
</tr>
<tr>
<td>Suspect ID</td>
<td>61.6</td>
<td>56.4</td>
<td></td>
<td>44.6</td>
<td>42.4</td>
</tr>
<tr>
<td>Filler ID</td>
<td>1.3</td>
<td>6.4</td>
<td></td>
<td>9.3</td>
<td>9.1</td>
</tr>
<tr>
<td>No ID</td>
<td>37.5</td>
<td>37.2</td>
<td></td>
<td>47.7</td>
<td>48.5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Simultaneous</th>
<th></th>
<th>Sequential</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No Weapon</td>
<td>Weapon</td>
<td>No Weapon</td>
<td>Weapon</td>
</tr>
<tr>
<td>(N = 121)</td>
<td>(N = 41)</td>
<td>(N = 190)</td>
<td>(N = 41)</td>
<td>(N = 184)</td>
</tr>
<tr>
<td>Suspect ID</td>
<td>62.0</td>
<td>58.4</td>
<td>39.0</td>
<td>46.7</td>
</tr>
<tr>
<td>Filler ID</td>
<td>5.8</td>
<td>1.1</td>
<td>12.2</td>
<td>8.7</td>
</tr>
<tr>
<td>No ID</td>
<td>32.2</td>
<td>41.1</td>
<td>48.8</td>
<td>46.2</td>
</tr>
</tbody>
</table>

n = 536
Illinois Pilot Program

Comparison of Standard Simultaneous Lineups with Sequential, Blind Administered Lineups in Three Jurisdictions

Ebbe B. Ebbesen & Kristin Finklea

With the assistance of:
Jeff Osborne & Joseph Hicken

Department of Psychology
University of California, San Diego
Nature of the Sample

The entire sample contained a total of 367 different cases. These cases involved a total of 741 lineups. Table 1 shows the number of cases in each of 14 different global crime categories, the number of lineups that were run within each of these different crime categories, and the percent of all lineups generated from the different crime categories. Examination of Table 1 shows that most of the cases and lineups arose from three global crime categories, namely, aggravated assault, armed robbery, and robbery. In fact, about 69% of all lineups were generated from these three crime types (largely because these were the three most common crimes).

Table 1. Number of Lineups Generated from Different Crime Categories

<table>
<thead>
<tr>
<th>Crime Category</th>
<th>Number of Cases</th>
<th>Number of Lineups</th>
<th>Percent of Lineups</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggravated Assault</td>
<td>79</td>
<td>165</td>
<td>22.21</td>
</tr>
<tr>
<td>Armed Robbery</td>
<td>64</td>
<td>165</td>
<td>22.21</td>
</tr>
<tr>
<td>Assault</td>
<td>28</td>
<td>34</td>
<td>4.58</td>
</tr>
<tr>
<td>Child Crime</td>
<td>3</td>
<td>4</td>
<td>0.54</td>
</tr>
<tr>
<td>Criminal Property Damage</td>
<td>8</td>
<td>10</td>
<td>1.35</td>
</tr>
<tr>
<td>Deception</td>
<td>16</td>
<td>23</td>
<td>3.10</td>
</tr>
<tr>
<td>Disorderly Conduct</td>
<td>9</td>
<td>11</td>
<td>1.48</td>
</tr>
<tr>
<td>Home Invasion</td>
<td>3</td>
<td>5</td>
<td>0.67</td>
</tr>
<tr>
<td>Homicide</td>
<td>28</td>
<td>86</td>
<td>11.57</td>
</tr>
<tr>
<td>Kidnapping</td>
<td>4</td>
<td>10</td>
<td>1.35</td>
</tr>
<tr>
<td>Robbery</td>
<td>95</td>
<td>180</td>
<td>24.23</td>
</tr>
<tr>
<td>Sexual Assault</td>
<td>25</td>
<td>37</td>
<td>4.98</td>
</tr>
<tr>
<td>Stalking</td>
<td>2</td>
<td>2</td>
<td>0.27</td>
</tr>
<tr>
<td>Weapon Discharge</td>
<td>5</td>
<td>11</td>
<td>1.48</td>
</tr>
</tbody>
</table>

---

1 The numbers in various tables may not sum to the same totals because information was missing about different aspects of different lineups and cases. Each analysis presents the results for the subset of lineups and cases for which the relevant information was known.

2 A case was defined as one or more files with the same "case number". Case numbers were assigned by investigators in each jurisdiction. In general, a case number corresponded to a particular criminal event.

3 One curbside ID and one search through "photobooks" were in the original sample but were not included in the analyses because they did not involve either standard or sequentially presented lineups. In addition, two sequential lineups did not have a specific suspect. Although these were similar to photo searches, we included them as multiple suspect lineups because a choice of anyone of the photos could have resulted in charges being filed against the chosen person (even though these lineups did not contain any fillers). All lineup information was coded, including lineups that investigators described in their reports but for which there were no protocol forms.
Size of Lineups

Lineups came in different sizes. Table 2 shows the number of lineups in the sample with different numbers of known potential choices. The smallest size of a lineup (excluding the one curbside ID that was not included in the analyses) was 4 and the largest was 46.

Table 2. Number of Different Size Lineups in the Sample for Those Lineups with Known Size.

<table>
<thead>
<tr>
<th>Size of Lineup (Number of People in the Lineup)</th>
<th>Number of Each Lineup Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>31</td>
</tr>
<tr>
<td>5</td>
<td>250</td>
</tr>
<tr>
<td>6</td>
<td>414</td>
</tr>
<tr>
<td>7</td>
<td>9</td>
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<tr>
<td>8</td>
<td>15</td>
</tr>
<tr>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>11</td>
<td>1</td>
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<tr>
<td>12</td>
<td>4</td>
</tr>
<tr>
<td>17</td>
<td>6</td>
</tr>
<tr>
<td>25</td>
<td>3</td>
</tr>
<tr>
<td>46</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>738</td>
</tr>
</tbody>
</table>

We collapsed the larger lineups into two categories, those of size 9 or more and those between 7 and 8. Table 2a shows the resulting numbers of lineups of different size that were used in simultaneous and sequential lineups. Simultaneous lineups tended to be more likely to be of size 6 while sequential lineups were equally likely to be of size 5 or size 6. The very largest lineups tended to be sequential, however.

Table 2a Number of Different Size Lineups in the Sample for Simultaneous and Sequential Lineup Procedures

<table>
<thead>
<tr>
<th>Size of Lineup</th>
<th>Number of Each Lineup Procedure with Each Size</th>
<th>Percent of Each Lineup Procedure with Each Size</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Simultaneous</td>
<td>Sequential</td>
</tr>
<tr>
<td>4</td>
<td>22</td>
<td>9</td>
</tr>
<tr>
<td>5</td>
<td>102</td>
<td>148</td>
</tr>
<tr>
<td>6</td>
<td>268</td>
<td>146</td>
</tr>
<tr>
<td>7</td>
<td>18</td>
<td>6</td>
</tr>
<tr>
<td>9</td>
<td>3</td>
<td>16</td>
</tr>
</tbody>
</table>
Suspect Structure of Lineups

Suspect structure refers to the number of suspects per lineup. Lineups were classified as either single or multiple suspect lineups. A lineup was classified as a single suspect lineup when there was only one suspect present in the lineup and all remaining people in the lineup were fillers. A multiple suspect lineup contained more than one suspect, either for the same culprit or for additional suspects for other perpetrators. A total of 355 of the cases in the project included one or more lineup procedures with known (to us) suspect structures. These cases generated a total of 725 standard and sequential lineups with known suspect structures.

Table 3 breaks the data down into four categories of lineups. It divides the lineups by type, namely, the choice options were presented in photographs or live individuals were paraded in front of the witnesses and victims in a physical lineup. In addition, for each type of lineup, some were conducted with a simultaneous presentation of all of the options and others were presented in a sequential (one at a time) presentation procedure in which the administrator was also “blind” (he or she did not know who the suspect was). The total number of cases, the total number of lineups, and the mean number of lineups per case were determined for each of these four categories of lineup for those lineups with known suspect structure.

Table 3. Total Number of Cases<sup>a</sup> (With Known Suspect Structure<sup>b</sup>)

<table>
<thead>
<tr>
<th>Type</th>
<th>Procedure</th>
<th>Number of Cases</th>
<th>Total Number of Lineups&lt;sup&gt;c&lt;/sup&gt;</th>
<th>Mean Number of Lineups per Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Photo</td>
<td>Sim</td>
<td>161</td>
<td>295</td>
<td>1.83</td>
</tr>
<tr>
<td>Photo</td>
<td>Seq</td>
<td>117</td>
<td>185</td>
<td>1.58</td>
</tr>
<tr>
<td>Physical</td>
<td>Sim</td>
<td>51</td>
<td>114</td>
<td>2.24</td>
</tr>
<tr>
<td>Physical</td>
<td>Seq</td>
<td>53</td>
<td>131</td>
<td>2.47</td>
</tr>
</tbody>
</table>

<sup>a</sup>A case is defined by the “case number” given by an investigator (crimes with a unique case file number - although a few crimes may have been assigned multiple case numbers). Lineups conducted on different days and/or with different witness/victims and/or with different numbers of suspects were considered to have originated from the same case if the different investigator reports had the same case number. The lineup structures were unknown for 14 lineups that investigators reported conducting. In addition, some cases did not involve lineups but some other form of identification, e.g., a photobook or a curbside ID. In some cases, both single and multiple lineups were conducted.

<sup>b</sup>Suspect structure refers to whether a lineup contained just one suspect or more than one suspect. Multiple suspect lineups either contained multiple suspect possibilities for a single culprit or single suspects for multiple culprits. We did not know the suspect structure for 16 lineups.

<sup>c</sup>Different lineups may have involved the same witness/victim viewing different lineups for the same culprit in the same case or different witnesses/victims viewing the same lineup in the same case. In a few instances different witnesses/victims viewed different lineups in the same case.

Table 4 shows the total number of lineups with known suspect structure that were conducted during the project period for each type of lineup (photo or physical) and for each lineup procedures (simultaneous or sequential/blind administered). The majority (or
88%) of all lineups consisted of single suspect lineups. Ninety percent of the
simultaneous lineups contained a single suspect and 86% of the sequential lineups
contained a single suspect.

Table 4. Total Number of Lineups Conducted with Known Suspect
Structuresa

<table>
<thead>
<tr>
<th>Type</th>
<th>Procedure</th>
<th>Suspect Structure</th>
<th>Number of Lineups</th>
</tr>
</thead>
<tbody>
<tr>
<td>Photo</td>
<td>Sim</td>
<td>Single Suspect</td>
<td>282</td>
</tr>
<tr>
<td>Photo</td>
<td>Seq</td>
<td>Single Suspect</td>
<td>166</td>
</tr>
<tr>
<td>Photo</td>
<td>Sim</td>
<td>Multiple Suspect</td>
<td>13</td>
</tr>
<tr>
<td>Photo</td>
<td>Seq</td>
<td>Multiple Suspect</td>
<td>17</td>
</tr>
<tr>
<td>Photo</td>
<td>Seq</td>
<td>Photo Searchb</td>
<td>2</td>
</tr>
<tr>
<td>Physical</td>
<td>Sim</td>
<td>Single Suspect</td>
<td>87</td>
</tr>
<tr>
<td>Physical</td>
<td>Seq</td>
<td>Single Suspect</td>
<td>105</td>
</tr>
<tr>
<td>Physical</td>
<td>Sim</td>
<td>Multiple Suspect</td>
<td>27</td>
</tr>
<tr>
<td>Physical</td>
<td>Seq</td>
<td>Multiple Suspect</td>
<td>26</td>
</tr>
</tbody>
</table>

aSometimes multiple lineups were conducted in a given case, however, they were not always the same type
of lineup. For example, ten cases involved at least one sequential photo lineup with a single suspect and a
second physical sequential lineup with a single suspect. Six cases included simultaneous photo and physical
lineups with single suspects. One case involved at least one sequential photo lineup with multiple suspects,
one sequential physical lineup with a single suspect, and one sequential photo lineup with a single suspect.
bTwo of the sequential lineups were conducted without an actual suspect present in the lineup.

The size of the lineups with known suspect structure was also examined to determine
whether lineups tended to contain different numbers of people depending on the
procedure and on the suspect structure of the lineup. Table 5 shows the mean number of
people in simultaneous and sequential lineups with single or multiple suspects. As can be
seen, multiple suspect lineups tended to contain more people (on average) than single
suspect lineups and this trend was especially true for sequential lineups. (However, if
these average results are compared to the frequency data in Table 2a, we can see that the
pattern of means in Table 5 is largely due to the fact that some of the sequential lineups
were very large. For the majority of sequential lineups, especially those with single
suspects, there was no difference in lineup size.

Table 5. Mean Number of People in the Lineup as a Function of Lineup Procedure
(Simultaneous v Sequential) and Whether the Lineup Contained a Single or Multiple
Suspects

<table>
<thead>
<tr>
<th>Suspect Structure</th>
<th>Simultaneous</th>
<th>Sequential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Suspect</td>
<td>5.64</td>
<td>5.67</td>
</tr>
<tr>
<td>Multiple Suspects</td>
<td>6.76</td>
<td>7.69</td>
</tr>
</tbody>
</table>
Choice Rates as Function of Lineup Procedure

Single Suspect Lineups

We first examine the rate of suspect, filler, and no choices made when the lineups that witnesses and victims saw contained only one suspect. Table 6 shows the number of suspect, filler and no choices that were made for simultaneous and sequential lineups that contained only one suspect. We can see from the results in Table 6 that (for known single suspect lineups) over all three jurisdictions investigators conducted a total of 366 standard simultaneous lineups and a total of 271 sequential, blind lineups. Witness/victims chose the suspect in 244 (or 67%) of all of the simultaneous lineups and in 154 (or 57%) of the sequential/blind lineups. Witness/victims chose fillers a total of 8 times (or 2.2%) when viewing simultaneous lineups and 18 times (or 6.6%) when viewing sequential lineups (the difference in choice rates between the simultaneous and sequential lineup procedures was statistically significant). Thus, overall, the suspect choice rate was higher and the filler choice rate was lower for the simultaneous than sequential lineup procedure (for all known single suspect lineups).

Table 6: Number and Percent of Suspect and Filler Choices for Known Single Suspect Lineups as a Function of Lineup Procedure

<table>
<thead>
<tr>
<th>Lineup Procedure</th>
<th>Number of Choices</th>
<th>Percent of Total Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Suspects</td>
<td>Fillers</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>244</td>
<td>8</td>
</tr>
<tr>
<td>Sequential</td>
<td>154</td>
<td>18</td>
</tr>
</tbody>
</table>

We next examine the same results broken down by jurisdiction. Table 7 presents the rate of suspect, filler and no choices for each single-suspect lineup type conducted within each of the three jurisdictions involved in the pilot project. Examination of the results in Table 7 show that the tendency for witnesses to choose suspects more frequently and fillers less frequently when tested with simultaneous lineups than when tested with sequential lineups was replicated for two of the three jurisdictions, Chicago and Evanston. In the case of Chicago, suspects were chosen 64% of the time with simultaneous lineups and 49.5% with sequential lineups. In addition, with simultaneous lineups no fillers were chosen but with sequential lineups 6.3% of the choices were of fillers. Similarly, in Evanston, suspects were chosen 72.1% of the time and fillers were not chosen at all with simultaneous lineups but with sequential lineups suspects were chosen 44.2% of the time and fillers were chosen 13.5% of the time (with single suspect lineups). In Joliet, the pattern was slightly different. The suspect choice rates were 61.7% for simultaneous and 69.4% for sequential lineups. The filler choice rates were 4.4% for simultaneous and 6.5% for sequential lineups. In summary, in all three jurisdictions, the known error rate was higher with sequential than simultaneous lineups, although suspect
choice rates were higher in simultaneous than sequential lineups for two out of three of the jurisdictions.

Table 7: Number and Percent of Suspect and Filler Choices for Known Single Suspect Lineups as a Function of Jurisdiction and Lineup Procedure

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Lineup Procedure</th>
<th>Number of Choices</th>
<th>Percent of Total Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Suspects Fillers No Choice</td>
<td>Suspects Fillers No Choice</td>
</tr>
<tr>
<td>Chicago</td>
<td>Simultaneous</td>
<td>121 0 68</td>
<td>64.0 0.0 36.0</td>
</tr>
<tr>
<td>Chicago</td>
<td>Sequential</td>
<td>102 13 91</td>
<td>49.5 6.3 44.2</td>
</tr>
<tr>
<td>Evanston</td>
<td>Simultaneous</td>
<td>31 0 12</td>
<td>72.1 0.0 27.9</td>
</tr>
<tr>
<td>Evanston</td>
<td>Sequential</td>
<td>23 7 22</td>
<td>44.2 13.5 42.3</td>
</tr>
<tr>
<td>Joliet</td>
<td>Simultaneous</td>
<td>111 8 61</td>
<td>61.7 4.4 33.9</td>
</tr>
<tr>
<td>Joliet</td>
<td>Sequential</td>
<td>43 4 15</td>
<td>69.4 6.5 24.2</td>
</tr>
</tbody>
</table>

We next examine the same relationships for known single suspect lineups broken down by both photo and physical lineup types as well as by simultaneous and sequential lineup procedure for each jurisdiction. Table 8 shows the number of suspect, filler and no choices and the percent of suspect and filler choices broken down into these categories. The same pattern was observed as before. A higher suspect choice rate in simultaneous lineups and a higher filler choice rate in sequential lineups was observed for both photo and physical lineups in both Chicago and Evanston. We can see that the highest suspect choice rate occurred with simultaneous photo lineups in Evanston and the highest rate of filler choices occurred with sequential photo lineups in Evanston.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Type</th>
<th>Procedure</th>
<th>Number of Choices</th>
<th>Percent of Total Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Suspects</td>
<td>Fillers</td>
</tr>
<tr>
<td>Chicago</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>45</td>
<td>0</td>
</tr>
<tr>
<td>Chicago</td>
<td>Photo</td>
<td>Sequential</td>
<td>30</td>
<td>1</td>
</tr>
<tr>
<td>Chicago</td>
<td>Physical</td>
<td>Simultaneous</td>
<td>58</td>
<td>0</td>
</tr>
<tr>
<td>Chicago</td>
<td>Physical</td>
<td>Sequential</td>
<td>58</td>
<td>6</td>
</tr>
<tr>
<td>Evanston</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>25</td>
<td>0</td>
</tr>
<tr>
<td>Evanston</td>
<td>Photo</td>
<td>Sequential</td>
<td>20</td>
<td>7</td>
</tr>
<tr>
<td>Evanston</td>
<td>Physical</td>
<td>Simultaneous</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>Evanston</td>
<td>Physical</td>
<td>Sequential</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Joliet</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>110</td>
<td>8</td>
</tr>
<tr>
<td>Joliet</td>
<td>Photo</td>
<td>Sequential</td>
<td>43</td>
<td>4</td>
</tr>
</tbody>
</table>
Multiple Suspect Lineups

Table 9 shows the results for the known multiple suspect lineups. Table 10 shows the combined results for both known multiple and single suspect lineups.

Table 9: Number and Percent of Suspect and Filler Choices for Known Multiple Suspect Lineups as a Function of Jurisdiction, Type of Lineup, and Lineup Procedure

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Type</th>
<th>Procedure</th>
<th>Number of Choices</th>
<th>Percent of Total Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Suspects</td>
<td>Fillers</td>
</tr>
<tr>
<td>Chicago</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Chicago</td>
<td>Photo</td>
<td>Sequential</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>Chicago</td>
<td>Physical</td>
<td>Simultaneous</td>
<td>17</td>
<td>0</td>
</tr>
<tr>
<td>Chicago</td>
<td>Physical</td>
<td>Sequential</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Evanston</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Evanston</td>
<td>Photo</td>
<td>Sequential</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Evanston</td>
<td>Physical</td>
<td>Simultaneous</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Evanston</td>
<td>Physical</td>
<td>Sequential</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Joliet</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Joliet</td>
<td>Photo</td>
<td>Sequential</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>
Table 10: Number and Percent of Suspect and Filler Choices for All Known Single and Multiple Suspect Lineups as a Function of Jurisdiction, Type of Lineup, and Lineup Procedure

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Type</th>
<th>Procedure</th>
<th>Number of Choices</th>
<th>Percent of Total Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Suspects</td>
<td>Fillers</td>
</tr>
<tr>
<td>Chicago</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>46</td>
<td>0</td>
</tr>
<tr>
<td>Chicago</td>
<td>Photo</td>
<td>Sequential</td>
<td>40</td>
<td>3</td>
</tr>
<tr>
<td>Chicago</td>
<td>Physical</td>
<td>Simultaneous</td>
<td>75</td>
<td>0</td>
</tr>
<tr>
<td>Chicago</td>
<td>Physical</td>
<td>Sequential</td>
<td>60</td>
<td>8</td>
</tr>
<tr>
<td>Evanston</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>25</td>
<td>0</td>
</tr>
<tr>
<td>Evanston</td>
<td>Photo</td>
<td>Sequential</td>
<td>20</td>
<td>7</td>
</tr>
<tr>
<td>Evanston</td>
<td>Physical</td>
<td>Simultaneous</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>Evanston</td>
<td>Physical</td>
<td>Sequential</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Joliet</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>111</td>
<td>8</td>
</tr>
<tr>
<td>Joliet</td>
<td>Photo</td>
<td>Sequential</td>
<td>43</td>
<td>4</td>
</tr>
</tbody>
</table>

Adding the multiple suspect lineups results to the single suspect lineup results did not change the basic pattern of results seen in previous tables. For Chicago and Evanston and for both photo and physical lineups suspects were chosen at a higher rate when the options were presented simultaneously than sequentially. In addition, fillers were chosen at a higher rate for both photo and physical lineups in Chicago and for photo lineups in Evanston. Because so few physical lineups were conducted in Evanston and Joliet (none), differences in filler choice rates for these lineup types were not reliable.
Choice Rates as a Function of Prior Relationship between Witness/Victim and Suspect/Culprit

We next examined the choice rates for different types of relationships between the suspect and the witness. Relationships were coded into a number of different categories (see Table 11). These categories were then combined into three different global relationship categories: any prior acquaintance, no prior acquaintance or strangers, and an unknown (to us) relationship. Table 11 shows the choice numbers and percentages for the two different lineup types and procedures for each of the relationship categories in the original coding system. Table 12 shows the results for the global relationship categories for the two lineup types and procedures (collapsed across the three jurisdictions and for all lineups with known suspect structure).

Table 11. Degree of Witness/Victim and Culprit Relationship for Lineups with Known Suspect Structure

<table>
<thead>
<tr>
<th>Type</th>
<th>Procedure</th>
<th>Relationship</th>
<th>Number of Choices</th>
<th>Percent of Total Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Suspects</td>
<td>Fillers</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Acquaintances</td>
<td>57</td>
<td>7</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Friends</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Friends</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Past</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Relationship Boy/Girl</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Relationship Friend</td>
<td>41</td>
<td>1</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Strangers</td>
<td>26</td>
<td>1</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>Acquaintances</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>Family</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>Rival Gang Members</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>Strangers</td>
<td>28</td>
<td>6</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>Acquaintances</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>Strangers</td>
<td>45</td>
<td>0</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>Acquaintances</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>Other</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>Strangers</td>
<td>26</td>
<td>3</td>
</tr>
</tbody>
</table>
Table 12. Number and Percent of Suspect and Filler Choices as a Function of Lineup Type, Procedure and Prior Relationship between the Witness/Victim and the Culprit for Lineups with Known Lineup Structure

<table>
<thead>
<tr>
<th>Type</th>
<th>Procedure</th>
<th>Relationship</th>
<th>Number of Choices</th>
<th>Percent of Total Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Suspects</td>
<td>Fillers</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Acquaintances</td>
<td>84</td>
<td>0</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Strangers</td>
<td>41</td>
<td>1</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Unknown</td>
<td>57</td>
<td>7</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>Acquaintances</td>
<td>29</td>
<td>1</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>Strangers</td>
<td>28</td>
<td>6</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>Unknown</td>
<td>46</td>
<td>7</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>Acquaintances</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>Strangers</td>
<td>45</td>
<td>0</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>Unknown</td>
<td>30</td>
<td>0</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>Acquaintances</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>Strangers</td>
<td>26</td>
<td>3</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>Unknown</td>
<td>34</td>
<td>5</td>
</tr>
</tbody>
</table>

* Acquaintance is defined as any prior relationship between the suspect and the culprit. Those cases protocols which did not provide enough information to determine the relationship were classified as "unknown".

We can see from Table 12 that the probability that the suspect will be chosen from a lineup (regardless of type) is much higher when the witness/victim shared a prior relationship with the culprit than when they were strangers. Since the witness/victim and culprits were strangers for almost all of the physical lineups, examination of the photo lineups shows this most clearly. With simultaneous photo lineups, 90.3% of the witness/victims chose the suspect when a prior relationship existed but only 53.6% of them chose the suspect when they were strangers. With sequential photo lineups, these percentages were 76.3% and 43.8% respectively. (The identification attempts in which the relationships were unknown to us were most similar to those in which a "stranger" relationship existed.) With regard to filler choices from photo lineups, with simultaneous lineups, 0.0% of the witness/victims chose a filler when a prior relationship existed but 1.3% of them chose a filler when they were strangers. With sequential photo lineups, these percentages were 2.6% and 9.4% respectively. Thus, fillers were chosen more often when a "stranger" relationship existed in both lineup types.
Strangers Only

The above results can be looked at differently. We can use them to ask whether the simultaneous v. sequential effects noted earlier are due to the fact that the degree of relationship between the witness and culprit varied across lineup procedure. If we just examine the results for those cases in which the witness/victim and culprit were strangers, we find the results in Table 13.

Table 13. Number and Percent of Suspect and Filler Choices as a Function of Lineup Type, Procedure for Lineups with Known Lineup Structure in which the Suspect and Witness Were Known to Be Strangers

<table>
<thead>
<tr>
<th>Type</th>
<th>Procedure</th>
<th>Number of Choices</th>
<th>Percent of Total Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Suspects Fillers</td>
<td>No Choices</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Suspect Filler</td>
<td></td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>41 1 36</td>
<td>52.6 1.3</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>28 6 30</td>
<td>43.8 9.4</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>45 0 10</td>
<td>81.8 0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>26 3 27</td>
<td>46.4 5.4</td>
</tr>
</tbody>
</table>

The suspect choice rates were 52.6% and 81.8% for simultaneous photo and physical lineup types, respectively, and 43.8% and 46.4% for sequential photo and physical lineup types, respectively. Thus, suspects were more likely to be chosen from both photo and physical lineups when simultaneous than sequential lineups were used for stranger identification attempts. The filler choice rates were 1.3% and 0.0% for simultaneous photo and physical lineup types, respectively, and 9.4% and 5.4% for sequential photo and physical lineup types, respectively. Thus, fillers were more likely to be chosen from both photo and physical lineups when sequential/blind than simultaneous lineup presentation procedures were used for stranger identification attempts. In short, the pattern noted earlier cannot be explained by the fact that one lineup presentation procedure may have had more stranger-identifications than the other procedure.
Weapons

We examined suspect and filler choice rates as a function of the presence of a weapon in the crime. Table 14 shows the number and percent of suspect and filler choices for cases with and without a gun (for just those cases with a known suspect structure). We also include those cases in which we did not know whether a weapon was involved and a few instances in which a weapon was implied but not shown to the witness/victim.

Examination of the results in Table 14 shows that there was no large difference in suspect or filler choice rates when a weapon was present compared to when a weapon was known not to be present. The results in Table 15 which presents the weapon differences separately for simultaneous and sequential lineups show that if anything, the presence of a weapon (compared to no weapon) was associated with a slightly higher suspect choice rate and a slightly lower filler choice rate.

Table 14. Number and Percent of Suspect and Filler Choices for all Lineups with Known Suspect Structure as a Function of Weapon Presence

<table>
<thead>
<tr>
<th>Presence of a Weapon</th>
<th>Number of Choices</th>
<th>Percent of Total Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Suspect</td>
<td>Filler</td>
</tr>
<tr>
<td>Unknown</td>
<td>81</td>
<td>7</td>
</tr>
<tr>
<td>Implied</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>No Weapon</td>
<td>85</td>
<td>8</td>
</tr>
<tr>
<td>Weapon Present</td>
<td>262</td>
<td>17</td>
</tr>
</tbody>
</table>

Table 15. Number and Percent of Suspect and Filler Choices for all Lineups with Known Suspect Structure as a Function of Weapon Presence

<table>
<thead>
<tr>
<th>Lineup Procedure</th>
<th>Weapon Presence</th>
<th>Number of Choices</th>
<th>Percent of Total Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Suspect</td>
<td>Filler</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>Unknown</td>
<td>47</td>
<td>3</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>No Weapon</td>
<td>62</td>
<td>3</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>Weapon Present</td>
<td>154</td>
<td>2</td>
</tr>
<tr>
<td>Sequential</td>
<td>Unknown</td>
<td>34</td>
<td>4</td>
</tr>
<tr>
<td>Sequential</td>
<td>No Weapon</td>
<td>23</td>
<td>5</td>
</tr>
<tr>
<td>Sequential</td>
<td>Weapon Present</td>
<td>108</td>
<td>15</td>
</tr>
</tbody>
</table>
Table 16 shows the results for weapon effects for all weapon categories rather than for the global weapon categories, present, not present, and unknown.

<table>
<thead>
<tr>
<th>Lineup Procedure</th>
<th>Weapon Presence</th>
<th># of Suspects</th>
<th># of Fillers</th>
<th># of No Choices</th>
<th>% Suspect</th>
<th>% Filler</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simultaneous</td>
<td>Unknown</td>
<td>48</td>
<td>3</td>
<td>20</td>
<td>67.6</td>
<td>4.2</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>Gun</td>
<td>94</td>
<td>2</td>
<td>64</td>
<td>58.8</td>
<td>1.3</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>None</td>
<td>61</td>
<td>3</td>
<td>33</td>
<td>62.9</td>
<td>3.1</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>Blunt Weapon</td>
<td>20</td>
<td>0</td>
<td>9</td>
<td>69.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>Bodily Weapon</td>
<td>20</td>
<td>0</td>
<td>1</td>
<td>95.2</td>
<td>0.0</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>Gun Implied</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>Knife/cutting</td>
<td>20</td>
<td>0</td>
<td>5</td>
<td>80.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>Vehicle</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Sequential</td>
<td>Unknown</td>
<td>38</td>
<td>5</td>
<td>24</td>
<td>56.7</td>
<td>7.5</td>
</tr>
<tr>
<td>Sequential</td>
<td>Gun</td>
<td>76</td>
<td>9</td>
<td>61</td>
<td>52.1</td>
<td>6.2</td>
</tr>
<tr>
<td>Sequential</td>
<td>None</td>
<td>23</td>
<td>5</td>
<td>17</td>
<td>51.1</td>
<td>11.1</td>
</tr>
<tr>
<td>Sequential</td>
<td>Blunt Weapon</td>
<td>7</td>
<td>0</td>
<td>0</td>
<td>100.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Sequential</td>
<td>Bodily Weapon</td>
<td>5</td>
<td>2</td>
<td>0</td>
<td>71.4</td>
<td>28.6</td>
</tr>
<tr>
<td>Sequential</td>
<td>Chemical</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>40.0</td>
<td>20.0</td>
</tr>
<tr>
<td>Sequential</td>
<td>Gun Implied</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>100.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Sequential</td>
<td>Knife/cutting</td>
<td>12</td>
<td>0</td>
<td>5</td>
<td>70.6</td>
<td>0.0</td>
</tr>
<tr>
<td>Sequential</td>
<td>Vehicle</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>100.0</td>
<td>0.0</td>
</tr>
</tbody>
</table>
Confidence

We next examined suspect and filler choice rates as a function of the confidence that witnesses expressed in their identifications. Table 17 shows the suspect and filler choice patterns for all lineups with known suspect structure. High and moderate confidence choices were associated with higher suspect choice rates than low confidence choices. Moderate and low confidence choices were associated with higher rates of filler choices. Results in Table 18 present the same analysis but just for those lineups known to contain a single suspect. The pattern of results remains the same for this subset.

Table 17. Number and Percent of Suspect and Filler Choices as a Function of Expressed Confidence for all Lineups with Known Suspect Structure

<table>
<thead>
<tr>
<th>Confidence</th>
<th>Number of Choices</th>
<th>Percent of Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Suspect</td>
<td>Filler</td>
</tr>
<tr>
<td>High</td>
<td>186</td>
<td>7</td>
</tr>
<tr>
<td>Moderate</td>
<td>32</td>
<td>9</td>
</tr>
<tr>
<td>Low</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>Not Known</td>
<td>204</td>
<td>12</td>
</tr>
</tbody>
</table>

Table 18 shows the confidence results for the subset of lineups in which there was a single suspect broken down by type of lineup and by lineup procedure.

Table 18. Number and Percent of Suspect and Filler Choices as a Function of Expressed Confidence for all Lineups with a Single Known Suspect

<table>
<thead>
<tr>
<th>Confidence</th>
<th>Number of Choices</th>
<th>Percent of Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Suspect</td>
<td>Filler</td>
</tr>
<tr>
<td>High</td>
<td>180</td>
<td>7</td>
</tr>
<tr>
<td>Moderate</td>
<td>30</td>
<td>8</td>
</tr>
<tr>
<td>Low</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>Not Known</td>
<td>182</td>
<td>8</td>
</tr>
</tbody>
</table>
Table 19. Number and Percent of Suspect and Filler Choices as a Function of Expressed Confidence for all Lineups with a Single Known Suspect Who Did Not Know the Culprit Prior to the Crime (and for Comparison, Those Lineups for Which the Relationship Was Not Known to Us).

<table>
<thead>
<tr>
<th>Relationship</th>
<th>Confidence</th>
<th>Number of Choices</th>
<th>Percent of Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Suspect</td>
<td>Filler</td>
</tr>
<tr>
<td>Strangers</td>
<td>High</td>
<td>45</td>
<td>1</td>
</tr>
<tr>
<td>Strangers</td>
<td>Moderate</td>
<td>9</td>
<td>2</td>
</tr>
<tr>
<td>Strangers</td>
<td>Low</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Strangers</td>
<td>Not Known</td>
<td>58</td>
<td>3</td>
</tr>
<tr>
<td>Unknown</td>
<td>High</td>
<td>76</td>
<td>6</td>
</tr>
<tr>
<td>Unknown</td>
<td>Moderate</td>
<td>21</td>
<td>5</td>
</tr>
<tr>
<td>Unknown</td>
<td>Low</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Unknown</td>
<td>Not Known</td>
<td>62</td>
<td>5</td>
</tr>
</tbody>
</table>

The results in Table 19 suggest that the pattern observed for the entire data set holds for strangers who are presented with lineups containing a single suspect. In particular, high and moderate confidence choices are associated with a higher rate of suspect choices and moderate and low expressions of confidence are associated with a higher rate of filler choices.

Table 20 breaks the results down in a slightly different manner. In this table the number and percentage of suspect and filler choices are shown separately for lineups (with single suspects and for all suspect-culprit relationships) conducted with either a simultaneous or a sequential presentation procedure.

Table 20. Number and Percent of Suspect and Filler Choices as a Function of Lineup Procedure and Expressed Confidence in Choice (for All Single Suspect Lineups Only, Includes Acquaintance, Stranger and Unknown Relationships)

<table>
<thead>
<tr>
<th>Relationship</th>
<th>Confidence</th>
<th>Number of Choices</th>
<th>Percent of Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Suspect</td>
<td>Filler</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>High</td>
<td>68</td>
<td>4</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>Moderate</td>
<td>14</td>
<td>2</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>Low</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>Not Known</td>
<td>158</td>
<td>2</td>
</tr>
<tr>
<td>Sequential</td>
<td>High</td>
<td>112</td>
<td>3</td>
</tr>
<tr>
<td>Sequential</td>
<td>Moderate</td>
<td>16</td>
<td>6</td>
</tr>
<tr>
<td>Sequential</td>
<td>Low</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Sequential</td>
<td>Not Known</td>
<td>68</td>
<td>4</td>
</tr>
</tbody>
</table>

17
Table 21 breaks the results down even further. In this table the number and percentage of suspect and filler choices are shown separately for photo and physical lineups (with single suspects only for all suspect-culprit relationships) conducted with a simultaneous or a sequential presentation procedure.

Table 21. Number and Percent of Suspect and Filler Choices as a Function of Lineup Type, Lineup Procedure, and Stated Confidence in Choice (for All Single Suspect Lineups Only, Includes Acquaintance, Stranger and Unknown Relationships)

<table>
<thead>
<tr>
<th>Lineup Type</th>
<th>Procedure</th>
<th>Confidence</th>
<th>Number of Choices</th>
<th>Percent of Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>No Choices Suspects</td>
<td>Fillers</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>High</td>
<td>59 4 25</td>
<td>67.0</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Moderate</td>
<td>13 2 1</td>
<td>81.3</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Low</td>
<td>1 0 2</td>
<td>33.3</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Unknown</td>
<td>107 2 64</td>
<td>61.8</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>High</td>
<td>67 3 13</td>
<td>80.7</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>Moderate</td>
<td>8 3 0</td>
<td>72.7</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>Low</td>
<td>2 3 6</td>
<td>18.2</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>Unknown</td>
<td>16 3 42</td>
<td>26.2</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>High</td>
<td>9 0 3</td>
<td>75.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>Moderate</td>
<td>1 0 0</td>
<td>100.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>Low</td>
<td>3 0 3</td>
<td>50.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>Unknown</td>
<td>51 0 16</td>
<td>76.1</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>High</td>
<td>45 0 13</td>
<td>77.6</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>Moderate</td>
<td>8 3 1</td>
<td>66.7</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>Low</td>
<td>0 0 6</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>Unknown</td>
<td>8 3 17</td>
<td>28.6</td>
</tr>
</tbody>
</table>
Table 22 shows the same breakdown of lineup choices as that in Table 21 expect that it only presents results for those lineups in which the witness did not know the culprit.

Table 22. Number and Percent of Suspect and Filler Choices as a Function of Lineup Type, Lineup Procedure, and Stated Confidence in Choice (for All Single Suspect Lineups with Stranger Relationships Only)

<table>
<thead>
<tr>
<th>Lineup Type</th>
<th>Procedure</th>
<th>Confidence</th>
<th># Suspects</th>
<th># Fillers</th>
<th># No Choices</th>
<th>% Suspects</th>
<th>% Fillers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>High</td>
<td>14</td>
<td>1</td>
<td>3</td>
<td>77.8</td>
<td>5.6</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Moderate</td>
<td>4</td>
<td>0</td>
<td>1</td>
<td>80.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Low</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>33.3</td>
<td>0.0</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Unknown</td>
<td>20</td>
<td>0</td>
<td>22</td>
<td>47.6</td>
<td>0.0</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>High</td>
<td>7</td>
<td>0</td>
<td>5</td>
<td>58.3</td>
<td>0.0</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>Moderate</td>
<td>4</td>
<td>2</td>
<td>0</td>
<td>66.7</td>
<td>33.3</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>Low</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>20.0</td>
<td>40.0</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>Unknown</td>
<td>9</td>
<td>2</td>
<td>20</td>
<td>29.0</td>
<td>6.5</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>High</td>
<td>5</td>
<td>0</td>
<td>1</td>
<td>83.3</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>Moderate</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>Low</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>75.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>Unknown</td>
<td>24</td>
<td>0</td>
<td>6</td>
<td>80.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>High</td>
<td>19</td>
<td>0</td>
<td>10</td>
<td>65.5</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>Moderate</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>50.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>Low</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>Unknown</td>
<td>5</td>
<td>1</td>
<td>10</td>
<td>31.3</td>
<td>6.3</td>
</tr>
</tbody>
</table>

It is of some interest to note that there was only one known error (filler choice) out of a total of 65 high confidence identifications of strangers regardless of lineup type and procedure when there was only one suspect in the lineup. Out of 81 high confidence stranger identifications (for both single and multiple suspect lineups), there was only one filler choice. We recorded a total of 260 high confidence identifications (including all suspects structures and relationship categories). Of these 187 were suspect choices, 66 were no choices, and seven were filler choices. Thus, the rate of known errors for high confidence choices was 7/260 or 2.7%. For simultaneous lineups the high confidence filler choice rate was 4/69 or 5.8% and for sequential lineups the high confidence filler choice rate was 3/118 or 2.5%.

\[1\] In thinking about these results it is worth noting that confidence was only known for 31% of the simultaneous lineups and 63% of the sequential lineups. Thus, there is considerably more missing confidence information for the simultaneous lineups than for the sequential lineups.
All Lineups

The following tables include all of the lineup results (except those that we know did not involve a simultaneous or a sequential lineup, e.g., ID attempt was a curbside ID).

Table 23 Total Cases (No Curbside, no photobook, no photo search) and Total Number of Witness/Victims as a Function of Jurisdiction, Type of Lineup, Lineup Procedure

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Type</th>
<th>Procedure</th>
<th>Total Number of Cases</th>
<th>Total Number of Witness/Victims</th>
<th>Mean Number of Wit/Vic per Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chicago</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>60</td>
<td>88</td>
<td>1.47</td>
</tr>
<tr>
<td>Chicago</td>
<td>Photo</td>
<td>Sequential</td>
<td>43</td>
<td>86</td>
<td>2.00</td>
</tr>
<tr>
<td>Chicago</td>
<td>Physical</td>
<td>Simultaneous</td>
<td>44</td>
<td>104</td>
<td>2.36</td>
</tr>
<tr>
<td>Chicago</td>
<td>Physical</td>
<td>Sequential</td>
<td>46</td>
<td>121</td>
<td>2.63</td>
</tr>
<tr>
<td>Evanston</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>22</td>
<td>33</td>
<td>1.50</td>
</tr>
<tr>
<td>Evanston</td>
<td>Photo</td>
<td>Sequential</td>
<td>34</td>
<td>45</td>
<td>1.32</td>
</tr>
<tr>
<td>Evanston</td>
<td>Physical</td>
<td>Simultaneous</td>
<td>7</td>
<td>10</td>
<td>1.43</td>
</tr>
<tr>
<td>Evanston</td>
<td>Physical</td>
<td>Sequential</td>
<td>6</td>
<td>10</td>
<td>1.67</td>
</tr>
<tr>
<td>Joliet</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>84</td>
<td>180</td>
<td>2.14</td>
</tr>
<tr>
<td>Joliet</td>
<td>Photo</td>
<td>Sequential</td>
<td>43</td>
<td>62</td>
<td>1.44</td>
</tr>
</tbody>
</table>

It is of some interest to note that Joliet was the one jurisdiction in which there was a significant tendency for simultaneous lineups to have more witnesses/victims per case than sequential lineups.

Table 24 Total Cases (No Curbside, No Photobook) and Total Number of Witness/Victims as a Function of Type and Procedure of Lineup

<table>
<thead>
<tr>
<th>Type</th>
<th>Procedure</th>
<th>Total Number of Cases</th>
<th>Total # Wit/Vic per Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>166</td>
<td>1.81</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>120</td>
<td>1.61</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>51</td>
<td>2.24</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>52</td>
<td>2.52</td>
</tr>
</tbody>
</table>
*Number of Viewings*

Eighty-one (or 25.6%) out of the 316 witness/victims who viewed sequential lineups and for whom we had the relevant information requested to view the sequential lineup more than one time. Table 25 below shows that the witness/victims who requested to view a sequential lineup a second time were less likely to pick a suspect ($\chi^2 (1, 311) = 9.147, p = .0025$) and just slightly more likely to pick a filler ($\chi^2 (1, 311) = 1.83, p = .176$) (although they were less likely to make a choice).

Table 25. Number and Percentage of Suspect and Filler Choices as a Function of Number of Times Witness/Victims Viewed the Lineup (for those cases in which number of viewings was known) as a Function of Lineup Procedure

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Number of Viewings</th>
<th>Number of Choices</th>
<th>Percent of Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Suspects</td>
<td>Fillers</td>
</tr>
<tr>
<td>Sequential</td>
<td>1</td>
<td>134</td>
<td>15</td>
</tr>
<tr>
<td>Sequential</td>
<td>2</td>
<td>31</td>
<td>9</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>1</td>
<td>219</td>
<td>7</td>
</tr>
</tbody>
</table>

If we include the additional 86 simultaneous lineups for which the number of viewings was unknown to us (but were probably viewed only once), the suspect choice rate for the simultaneous case is 63.8% and the filler choice rate is 1.9%:

Table 26. Number and Percentage of Suspect and Filler Choices as a Function of Number of Times Witness/Victims Viewed the Lineup (for those cases in which number of viewings was known), Lineup Type, and Procedure

<table>
<thead>
<tr>
<th>Type</th>
<th>Procedure</th>
<th>Number of Viewings</th>
<th>Number of Choices</th>
<th>Percent of Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Suspects</td>
<td>Fillers</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>1</td>
<td>144</td>
<td>7</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>1</td>
<td>90</td>
<td>8</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>2</td>
<td>15</td>
<td>6</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>1</td>
<td>75</td>
<td>0</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>1</td>
<td>44</td>
<td>7</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>2</td>
<td>16</td>
<td>3</td>
</tr>
</tbody>
</table>
We can separate out just those lineups in which the suspect and the witness/victim are strangers.

Table 27. Number and Percentage of Suspect and Filler Choices as a Function of Number of Times Witness/Victims Viewed the Lineup (for those cases in which number of viewings was known), Lineup Type, and Procedure for Stranger Relationship Only

<table>
<thead>
<tr>
<th>Type</th>
<th>Procedure</th>
<th>Number of Viewings</th>
<th>Number of Choices</th>
<th>Percent of Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Suspects</td>
<td>Fillers</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>1</td>
<td>35</td>
<td>1</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>1</td>
<td>27</td>
<td>4</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>1</td>
<td>40</td>
<td>0</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>1</td>
<td>21</td>
<td>3</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>2</td>
<td>5</td>
<td>2</td>
</tr>
</tbody>
</table>

We can see from the results in Table 27 that the effect of lineup procedure on the rate of “first view” suspect choices for lineups in which the witness/victims did not know the culprit depended on the type of lineup. For photo lineups, the suspect choice rate was unaffected by the procedure. When viewing simultaneously presented photos, 50% of the witness/victims chose the suspect. When viewing sequentially presented photos, 54% chose the suspect. A very different result was found for physical lineups. Here, the suspect was chosen 80% of the time with a simultaneous presentation but only 37% of the time with a sequential presentation. Furthermore, for both photographic and live presentations, the rate of foil choices increased when a sequential presentation was used. For photos the rate was 1.4% for simultaneous and 8% for sequential lineups. For physical lineups, the rate was 0% for the simultaneous presentation and 5.3% for the sequential presentation. These results are extremely important because they suggest that the observed differences between the two procedures persist even after witnesses whose memories might have been weak (because they wanted to view the sequential lineup a second time) were eliminated from the sequential lineup results.

The results in Table 27 also show that the rate of foil choices increased and the rate of suspect choices decreased when witnesses/victims were allowed to view the sequential lineups a second time. These results suggest that it would be mistake to allow witnesses and victims to view sequential lineups more than one time. Requesting a second look might well indicate that the witness’s/victim’s memory is not as clear as it should be.
Table 28. Number and Percentage of Suspect and Filler Choices as a Function of Number of Times Witness/Victims Viewed the Lineup (for those cases in which number of viewings was known), Lineup Type, and Procedure for Acquaintance Relationship Only

<table>
<thead>
<tr>
<th>Type</th>
<th>Procedure</th>
<th>Number of Viewings</th>
<th>Number of Choices</th>
<th>Percent of Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Suspects</td>
<td>Fillers</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>1</td>
<td>71</td>
<td>0</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>1</td>
<td>26</td>
<td>1</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>2</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>1</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>1</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
Suspect Position in Lineups

Of initial interest are results that measure the rate at which suspects appeared in different lineup positions for the two different procedures. Table 29 shows these results.

Table 29. Number of Lineups with Suspect in Positions 1 to 6 as a Function of Jurisdiction, Type of Lineup, and Lineup Procedure

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Type</th>
<th>Procedure</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chicago</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>11</td>
<td>14</td>
<td>18</td>
<td>18</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Chicago</td>
<td>Photo</td>
<td>Sequential</td>
<td>6</td>
<td>15</td>
<td>25</td>
<td>16</td>
<td>11</td>
<td>3</td>
</tr>
<tr>
<td>Chicago</td>
<td>Physical</td>
<td>Simultaneous</td>
<td>27</td>
<td>20</td>
<td>9</td>
<td>19</td>
<td>14</td>
<td>1</td>
</tr>
<tr>
<td>Chicago</td>
<td>Physical</td>
<td>Sequential</td>
<td>3</td>
<td>31</td>
<td>54</td>
<td>18</td>
<td>11</td>
<td>0</td>
</tr>
<tr>
<td>Evanston</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>0</td>
<td>8</td>
<td>9</td>
<td>5</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>Evanston</td>
<td>Photo</td>
<td>Sequential</td>
<td>1</td>
<td>9</td>
<td>18</td>
<td>9</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Evanston</td>
<td>Physical</td>
<td>Simultaneous</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>5</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Evanston</td>
<td>Physical</td>
<td>Sequential</td>
<td>1</td>
<td>0</td>
<td>7</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Joliet</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>2</td>
<td>9</td>
<td>37</td>
<td>58</td>
<td>36</td>
<td>33</td>
</tr>
<tr>
<td>Joliet</td>
<td>Photo</td>
<td>Sequential</td>
<td>6</td>
<td>6</td>
<td>24</td>
<td>19</td>
<td>7</td>
<td>0</td>
</tr>
</tbody>
</table>

*a Some of the lineups presented less than or more than six examples. In this table the results for these lineups are combined with those that used exactly six per lineup.

Table 30. Percentage of Lineups with Suspect in Positions 1 to 6 as a Function of Jurisdiction, Type of Lineup, and Lineup Procedure

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Type</th>
<th>Procedure</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chicago</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>17.2</td>
<td>21.9</td>
<td>28.1</td>
<td>28.1</td>
<td>4.7</td>
<td>0.0</td>
</tr>
<tr>
<td>Chicago</td>
<td>Photo</td>
<td>Sequential</td>
<td>7.9</td>
<td>19.7</td>
<td>32.9</td>
<td>21.1</td>
<td>14.5</td>
<td>3.9</td>
</tr>
<tr>
<td>Chicago</td>
<td>Physical</td>
<td>Simultaneous</td>
<td>30.0</td>
<td>22.2</td>
<td>10.0</td>
<td>21.1</td>
<td>15.6</td>
<td>1.1</td>
</tr>
<tr>
<td>Chicago</td>
<td>Physical</td>
<td>Sequential</td>
<td>2.6</td>
<td>26.5</td>
<td>46.2</td>
<td>15.4</td>
<td>9.4</td>
<td>0.0</td>
</tr>
<tr>
<td>Evanston</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>0.0</td>
<td>25.8</td>
<td>29.0</td>
<td>16.1</td>
<td>25.8</td>
<td>3.2</td>
</tr>
<tr>
<td>Evanston</td>
<td>Photo</td>
<td>Sequential</td>
<td>2.3</td>
<td>20.5</td>
<td>40.9</td>
<td>20.5</td>
<td>11.4</td>
<td>4.5</td>
</tr>
<tr>
<td>Evanston</td>
<td>Physical</td>
<td>Simultaneous</td>
<td>0.0</td>
<td>10.0</td>
<td>20.0</td>
<td>50.0</td>
<td>20.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Evanston</td>
<td>Physical</td>
<td>Sequential</td>
<td>10.0</td>
<td>0.0</td>
<td>70.0</td>
<td>10.0</td>
<td>10.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Joliet</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>1.1</td>
<td>5.1</td>
<td>21.1</td>
<td>33.1</td>
<td>20.6</td>
<td>18.9</td>
</tr>
<tr>
<td>Joliet</td>
<td>Photo</td>
<td>Sequential</td>
<td>9.7</td>
<td>9.7</td>
<td>38.7</td>
<td>30.6</td>
<td>11.3</td>
<td>0.0</td>
</tr>
</tbody>
</table>

24
Table 31. Percent of Lineups with Suspect in Different Positions as Function of Lineup Procedure

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Suspect Position Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>10.81</td>
</tr>
<tr>
<td>Sequential</td>
<td>5.50</td>
</tr>
</tbody>
</table>

We can see from the results above that suspects tended to appear in different positions in simultaneous than in sequentially presented lineups. The most common position for sequential lineups was the third person viewed in the sequence. However, when simultaneous procedures were used, suspects were somewhat more likely to appear in earlier and later positions (e.g., 1 and 6).

Is there a difference in the rate at which witness/victims selected suspects as function of the suspect position in the two lineup procedures? Yes and no. See below

Table 32. Percent of Suspect and Filler Choices as a Function of Suspect Position and Lineup Procedure

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Suspect Position</th>
<th>Number of Choices</th>
<th>Percent of Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Suspect</td>
<td>Filler</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>1</td>
<td>29</td>
<td>0</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>2</td>
<td>39</td>
<td>1</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>3</td>
<td>51</td>
<td>1</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>4</td>
<td>72</td>
<td>3</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>5</td>
<td>45</td>
<td>1</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>6</td>
<td>14</td>
<td>1</td>
</tr>
<tr>
<td>Sequential</td>
<td>1</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>Sequential</td>
<td>2</td>
<td>35</td>
<td>4</td>
</tr>
<tr>
<td>Sequential</td>
<td>3</td>
<td>60</td>
<td>8</td>
</tr>
<tr>
<td>Sequential</td>
<td>4</td>
<td>40</td>
<td>7</td>
</tr>
<tr>
<td>Sequential</td>
<td>5</td>
<td>19</td>
<td>2</td>
</tr>
<tr>
<td>Sequential</td>
<td>6</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>
Because the prior analyses included results from lineups containing less than and more than six people, we selected out those lineups that contained exactly six people. Table 33 shows the number of times suspects appeared in one of the six different positions as a function of jurisdiction, lineup type, and lineup procedure and Table 34 shows these same results in percentages.

### Table 33. Number of Lineups with Suspect in Positions 1 to 6 as a Function of Jurisdiction, Type of Lineup, and Lineup Procedure for Those Lineups that Contained Exactly Six Options

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Type</th>
<th>Procedure</th>
<th>Suspect Position in Lineup</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Chicago</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>2</td>
</tr>
<tr>
<td>Chicago</td>
<td>Photo</td>
<td>Sequential</td>
<td>3</td>
</tr>
<tr>
<td>Chicago</td>
<td>Physical</td>
<td>Simultaneous</td>
<td>4</td>
</tr>
<tr>
<td>Chicago</td>
<td>Physical</td>
<td>Sequential</td>
<td>1</td>
</tr>
<tr>
<td>Evanston</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>0</td>
</tr>
<tr>
<td>Evanston</td>
<td>Photo</td>
<td>Sequential</td>
<td>1</td>
</tr>
<tr>
<td>Evanston</td>
<td>Physical</td>
<td>Simultaneous</td>
<td>0</td>
</tr>
<tr>
<td>Evanston</td>
<td>Physical</td>
<td>Sequential</td>
<td>-</td>
</tr>
<tr>
<td>Joliet</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>2</td>
</tr>
<tr>
<td>Joliet</td>
<td>Photo</td>
<td>Sequential</td>
<td>6</td>
</tr>
</tbody>
</table>

### Table 34. Percentage of Lineups with Suspect in Positions 1 to 6 as a Function of Jurisdiction, Type of Lineup, and Lineup Procedure for Those Lineups that Contained Exactly Six People

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Type</th>
<th>Procedure</th>
<th>Suspect Position in Lineup</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Chicago</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>7.14</td>
</tr>
<tr>
<td>Chicago</td>
<td>Photo</td>
<td>Sequential</td>
<td>11.54</td>
</tr>
<tr>
<td>Chicago</td>
<td>Physical</td>
<td>Simultaneous</td>
<td>36.36</td>
</tr>
<tr>
<td>Chicago</td>
<td>Physical</td>
<td>Sequential</td>
<td>5.56</td>
</tr>
<tr>
<td>Evanston</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>0.00</td>
</tr>
<tr>
<td>Evanston</td>
<td>Photo</td>
<td>Sequential</td>
<td>2.27</td>
</tr>
<tr>
<td>Evanston</td>
<td>Physical</td>
<td>Simultaneous</td>
<td>0.00</td>
</tr>
<tr>
<td>Evanston</td>
<td>Physical</td>
<td>Sequential</td>
<td>-</td>
</tr>
<tr>
<td>Joliet</td>
<td>Photo</td>
<td>Simultaneous</td>
<td>1.15</td>
</tr>
<tr>
<td>Joliet</td>
<td>Photo</td>
<td>Sequential</td>
<td>10.53</td>
</tr>
</tbody>
</table>

We can see from the results in Tables 33 and 34 that suspects did not randomly appear in the six different lineup positions. Suspects tended to find themselves in the middle positions more often than the ends. Table 35 shows this result more clearly by collapsing across jurisdiction and lineup type.
Table 35. Percent of Lineups with Suspect in Different Positions as Function of Lineup Procedure for Those Lineups that Contained Exactly Six People

<table>
<thead>
<tr>
<th>Procedure</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simultaneous</td>
<td>3.19</td>
<td>9.16</td>
<td>21.51</td>
<td>32.27</td>
<td>19.92</td>
<td>13.94</td>
</tr>
<tr>
<td>Sequential</td>
<td>7.59</td>
<td>13.79</td>
<td>39.31</td>
<td>21.38</td>
<td>14.48</td>
<td>3.45</td>
</tr>
</tbody>
</table>

Table 36 shows the number and percent of suspect and filler choices broken down by the suspect’s position in the two lineup procedures for lineups of size six. We can see from the results in Table 36 that there was not a consistent effect of position on suspect and filler choices in the two lineup procedures. This is interesting because we would expect, by chance, that suspects placed in later positions in sequential lineups would have less of a chance of being selected (because the witnesses had more opportunities to be drawn away by a filler presented earlier in the sequence).

Table 36. Percent of Suspect and Filler Choices as a Function of Suspect Position and Lineup Procedure for Those Lineups with Exactly Six People

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Suspect Position</th>
<th># Suspects</th>
<th># Fillers</th>
<th># No Choices</th>
<th>% Suspects</th>
<th>% Fillers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simultaneous</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td>5</td>
<td>37.50</td>
<td>0.00</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>2</td>
<td>17</td>
<td>1</td>
<td>5</td>
<td>73.91</td>
<td>4.35</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>3</td>
<td>41</td>
<td>1</td>
<td>12</td>
<td>75.93</td>
<td>1.85</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>4</td>
<td>58</td>
<td>3</td>
<td>20</td>
<td>71.60</td>
<td>3.70</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>5</td>
<td>33</td>
<td>1</td>
<td>16</td>
<td>66.00</td>
<td>2.00</td>
</tr>
<tr>
<td>Simultaneous</td>
<td>6</td>
<td>14</td>
<td>1</td>
<td>20</td>
<td>40.00</td>
<td>2.86</td>
</tr>
<tr>
<td>Sequential</td>
<td>1</td>
<td>6</td>
<td>1</td>
<td>4</td>
<td>54.55</td>
<td>9.09</td>
</tr>
<tr>
<td>Sequential</td>
<td>2</td>
<td>10</td>
<td>1</td>
<td>8</td>
<td>52.63</td>
<td>5.26</td>
</tr>
<tr>
<td>Sequential</td>
<td>3</td>
<td>21</td>
<td>5</td>
<td>29</td>
<td>38.18</td>
<td>9.09</td>
</tr>
<tr>
<td>Sequential</td>
<td>4</td>
<td>20</td>
<td>6</td>
<td>5</td>
<td>64.52</td>
<td>19.35</td>
</tr>
<tr>
<td>Sequential</td>
<td>5</td>
<td>9</td>
<td>2</td>
<td>10</td>
<td>42.86</td>
<td>9.52</td>
</tr>
<tr>
<td>Sequential</td>
<td>6</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>40.00</td>
<td>20.00</td>
</tr>
</tbody>
</table>
**Race and Lineup Choices**

Table 37 Number and Percent of Suspect and Filler Choices as a Function of Lineup Type, Lineup Procedure, and Racial Similarity of Witness/Victim and Culprit (for All Lineups)

<table>
<thead>
<tr>
<th>Lineup Type</th>
<th>Lineup Procedure</th>
<th>Race of Wit/Vic &amp; Culprit</th>
<th># Suspects</th>
<th># Fillers</th>
<th># No Choice</th>
<th>% Suspects</th>
<th>% Fillers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Other</td>
<td>52</td>
<td>4</td>
<td>55</td>
<td>46.8</td>
<td>3.6</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Same</td>
<td>130</td>
<td>3</td>
<td>52</td>
<td>70.3</td>
<td>1.6</td>
</tr>
<tr>
<td>Photo</td>
<td>Simultaneous</td>
<td>Unknown</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>0.0</td>
<td>33.3</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>Other</td>
<td>30</td>
<td>5</td>
<td>30</td>
<td>46.2</td>
<td>7.7</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>Same</td>
<td>75</td>
<td>9</td>
<td>41</td>
<td>60.0</td>
<td>7.2</td>
</tr>
<tr>
<td>Photo</td>
<td>Sequential</td>
<td>Unknown</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>Other</td>
<td>22</td>
<td>0</td>
<td>7</td>
<td>75.9</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>Same</td>
<td>58</td>
<td>0</td>
<td>24</td>
<td>70.7</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Simultaneous</td>
<td>Unknown</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>50.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>Other</td>
<td>21</td>
<td>4</td>
<td>35</td>
<td>35.0</td>
<td>6.7</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>Same</td>
<td>40</td>
<td>6</td>
<td>21</td>
<td>59.7</td>
<td>9.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Sequential</td>
<td>Unknown</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>100.0</td>
<td>0.0</td>
</tr>
</tbody>
</table>
Table 38. Number and Percent of Suspect and Filler Choices as a Function of Lineup Type, Lineup Procedure, Relationship Between Witness/Victim and Culprit, and Racial Similarity of Witness/Victim and Culprit (for All Lineups)

<table>
<thead>
<tr>
<th>Type</th>
<th>Procedure</th>
<th>Relationship</th>
<th>Racial Similarity</th>
<th># Suspects</th>
<th># Fillers</th>
<th># No Choice</th>
<th>% Suspects</th>
<th>% Fillers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Photo</td>
<td>M</td>
<td>Strangers</td>
<td>Other</td>
<td>9</td>
<td>1</td>
<td>24</td>
<td>26.5</td>
<td>2.9</td>
</tr>
<tr>
<td>Photo</td>
<td>M</td>
<td>Strangers</td>
<td>Same</td>
<td>32</td>
<td>0</td>
<td>18</td>
<td>64.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Photo</td>
<td>Q</td>
<td>Strangers</td>
<td>Other</td>
<td>7</td>
<td>2</td>
<td>16</td>
<td>28.0</td>
<td>8.0</td>
</tr>
<tr>
<td>Photo</td>
<td>Q</td>
<td>Strangers</td>
<td>Same</td>
<td>22</td>
<td>4</td>
<td>15</td>
<td>53.7</td>
<td>9.8</td>
</tr>
<tr>
<td>Physical</td>
<td>M</td>
<td>Strangers</td>
<td>Other</td>
<td>15</td>
<td>0</td>
<td>3</td>
<td>83.3</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>M</td>
<td>Strangers</td>
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<td>29</td>
<td>0</td>
<td>7</td>
<td>80.6</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Q</td>
<td>Strangers</td>
<td>Other</td>
<td>7</td>
<td>0</td>
<td>26</td>
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<td>0.0</td>
</tr>
<tr>
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<td>Strangers</td>
<td>Same</td>
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<td>5</td>
<td>14</td>
<td>50.0</td>
<td>13.2</td>
</tr>
<tr>
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<td>M</td>
<td>Acquaintances</td>
<td>Other</td>
<td>16</td>
<td>0</td>
<td>0</td>
<td>100.0</td>
<td>0.0</td>
</tr>
<tr>
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<td>M</td>
<td>Acquaintances</td>
<td>Same</td>
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<td>0</td>
<td>9</td>
<td>88.3</td>
<td>0.0</td>
</tr>
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<td>Q</td>
<td>Acquaintances</td>
<td>Other</td>
<td>9</td>
<td>1</td>
<td>2</td>
<td>75.0</td>
<td>8.3</td>
</tr>
<tr>
<td>Photo</td>
<td>Q</td>
<td>Acquaintances</td>
<td>Same</td>
<td>21</td>
<td>0</td>
<td>4</td>
<td>84.0</td>
<td>0.0</td>
</tr>
<tr>
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<td>M</td>
<td>Acquaintances</td>
<td>Other</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>100.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>M</td>
<td>Acquaintances</td>
<td>Same</td>
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<td>0</td>
<td>0</td>
<td>100.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
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<td>Acquaintances</td>
<td>Other</td>
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<td>0</td>
<td>100.0</td>
<td>0.0</td>
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<tr>
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<td>100.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Photo</td>
<td>M</td>
<td>Unknown</td>
<td>Other</td>
<td>27</td>
<td>3</td>
<td>31</td>
<td>44.3</td>
<td>4.9</td>
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<tr>
<td>Photo</td>
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<td>Unknown</td>
<td>Same</td>
<td>30</td>
<td>3</td>
<td>25</td>
<td>51.7</td>
<td>5.2</td>
</tr>
<tr>
<td>Photo</td>
<td>Q</td>
<td>Unknown</td>
<td>Other</td>
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<td>12</td>
<td>50.0</td>
<td>7.1</td>
</tr>
<tr>
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<td>Unknown</td>
<td>Same</td>
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<td>5</td>
<td>20</td>
<td>56.1</td>
<td>8.8</td>
</tr>
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<td>Physical</td>
<td>M</td>
<td>Unknown</td>
<td>Other</td>
<td>6</td>
<td>0</td>
<td>4</td>
<td>60.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>M</td>
<td>Unknown</td>
<td>Same</td>
<td>24</td>
<td>0</td>
<td>17</td>
<td>58.5</td>
<td>0.0</td>
</tr>
<tr>
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<td>Q</td>
<td>Unknown</td>
<td>Other</td>
<td>13</td>
<td>4</td>
<td>9</td>
<td>50.0</td>
<td>15.4</td>
</tr>
<tr>
<td>Physical</td>
<td>Q</td>
<td>Unknown</td>
<td>Same</td>
<td>19</td>
<td>1</td>
<td>7</td>
<td>70.4</td>
<td>3.7</td>
</tr>
<tr>
<td>Photo</td>
<td>Q</td>
<td>Other</td>
<td>Same</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>100.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>Q</td>
<td>Other</td>
<td>Same</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>100.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Photo</td>
<td>Q</td>
<td>Strangers</td>
<td>Unknown</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>100.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>M</td>
<td>Strangers</td>
<td>Unknown</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>100.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Photo</td>
<td>Q</td>
<td>Unknown</td>
<td>Unknown</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>100.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Physical</td>
<td>M</td>
<td>Unknown</td>
<td>Unknown</td>
<td>0</td>
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<td>100.0</td>
<td>0.0</td>
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<tr>
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<td>1</td>
<td>100.0</td>
<td>0.0</td>
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<tr>
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<td>Q</td>
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<td>Unknown</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>100.0</td>
<td>0.0</td>
</tr>
</tbody>
</table>

We can collapse the results in Tables 37 and 38 and examine just the association between racial similarity and choice rates. Table 39 shows these results.

Table 39. Number and Percent of Suspect and Filler Choices as a Function of Racial Similarity of Witness/Victim and Culprit for All Lineups Containing Race Information

<table>
<thead>
<tr>
<th>Racial Similarity</th>
<th>Suspect</th>
<th>Filler</th>
<th>No Choice</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Race</td>
<td>(126) 47.37%</td>
<td>(13) 4.86%</td>
<td>(127) 47.74%</td>
<td>266</td>
</tr>
<tr>
<td>Same Race</td>
<td>(303) 66.01%</td>
<td>(18) 3.92%</td>
<td>(138) 30.07%</td>
<td>459</td>
</tr>
<tr>
<td>Total</td>
<td>(429)</td>
<td>(31)</td>
<td>(265)</td>
<td>725</td>
</tr>
</tbody>
</table>

We can see from above results in Tables 37-39 that the probability that witness/victims will choose a suspect increased when the suspect and witness were of the same race compared to when they were of different races. However, the filler choice rates were
unaffected. Thus, when witness/victims attempted to identify suspects who were in a different racial group than their own, they were less likely to identify the suspect as the culprit and were no more likely to make a known error by identifying a filler. Another way to describe this result is that when confronted with an other-race lineup, suspects were less likely to choose someone as the perpetrator. Examination of the results in Table 38 suggest that this result was primarily due to lineups in which the witness/victim and suspect were strangers.
<table>
<thead>
<tr>
<th>Question</th>
<th>Category</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Circle Your Agency</td>
<td>Chicago</td>
<td>68</td>
<td>60.18%</td>
</tr>
<tr>
<td></td>
<td>Joliet</td>
<td>25</td>
<td>22.12%</td>
</tr>
<tr>
<td></td>
<td>Evanston</td>
<td>20</td>
<td>17.70%</td>
</tr>
</tbody>
</table>

**Please clearly circle the answer which best reflects your experience:**

1. During the pilot program, how often did you participate in a sequential double-blind identification procedure for a photo array:

   As an investigator/detective:
   - Never: 42 (37.2%)
   - 1-5 times: 44 (38.9%)
   - 6-10 times: 17 (15.0%)
   - More than 10 times: 10 (8.8%)

   As an administrator:
   - Never: 55 (48.7%)
   - 1-5 times: 48 (42.5%)
   - 6-10 times: 5 (4.4%)
   - More than 10 times: 5 (4.4%)

2. During the pilot program, how often did you participate in a sequential double-blind identification procedure for a live lineup:

   As an investigator/detective:
   - Never: 68 (60.2%)
   - 1-5 times: 36 (31.9%)
   - 6-10 times: 7 (6.2%)
   - More than 10 times: 2 (1.8%)

   As an administrator:
   - Never: 73 (64.6%)
   - 1-5 times: 40 (35.4%)
   - 6-10 times: 0 (0.0%)
   - More than 10 times: 0 (0.0%)

3. How often during your career have you conducted a traditional ("simultaneous") photo array?

   - Never: 1 (0.9%)
   - 1-10 times: 10 (8.8%)
   - 11-20 times: 15 (13.3%)
   - 21-50 times: 29 (25.7%)
   - More than 50 times: 58 (51.3%)

4. How often during your career have you conducted a traditional ("simultaneous") live lineup?

   - Never: 14 (12.4%)
   - 1-10 times: 26 (23.0%)
   - 11-20 times: 17 (15.0%)
   - 21-50 times: 25 (22.1%)
   - More than 50 times: 31 (27.4%)

5. How would you characterize the sequential double-blind identification procedure for photo arrays?

   - Very easy: 3 (2.7%)
   - Easy: 38 (34.2%)
   - Difficult: 33 (29.7%)
   - Very difficult: 12 (10.8%)
   - Not enough exper.: 25 (22.5%)

6. How would you characterize the sequential double-blind identification procedure for live lineups?

   - Very easy: 1 (0.9%)
   - Easy: 19 (16.8%)
   - Difficult: 25 (22.1%)
   - Very difficult: 23 (20.4%)
   - Not enough exper.: 45 (39.8%)
7. How would you characterize the procedure of showing photos in a sequential manner, without regard to the double-blind requirement? n = 112

- Very easy: 29 (25.9%)
- Easy: 52 (46.4%)
- Difficult: 12 (10.7%)
- Very difficult: 4 (3.6%)
- Not enough exper.: 15 (13.4%)

8. How would you characterize the procedure of showing participants in a *live lineup* in a sequential manner, without regard to the double-blind requirement? n = 113

- Very easy: 12 (10.6%)
- Easy: 34 (30.1%)
- Difficult: 25 (22.1%)
- Very difficult: 4 (3.5%)
- Not enough exper.: 38 (33.6%)

9. How would you characterize finding a blind administrator for a *photo array*? n = 113

- Very easy: 1 (0.9%)
- Easy: 21 (18.6%)
- Difficult: 49 (43.4%)
- Very difficult: 19 (16.8%)
- Not enough exper.: 23 (20.4%)

10. How would you characterize finding a blind administrator for a *live lineup*? n = 113

- Very easy: 0 (0.0%)
- Easy: 12 (10.6%)
- Difficult: 31 (27.4%)
- Very difficult: 24 (21.2%)
- Not enough exper.: 46 (40.7%)

11. Did the sequential double-blind procedure affect your ability to do your job, and if so, how? n = 107

- Substantially improves my ability to do my job: 0 (0.0%)
- Improves my ability to do my job: 0 (0.0%)
- No effect on my ability to do my job: 55 (51.4%)
- Interferes with my ability to do my job: 36 (33.6%)
- Substantially interferes with my ability to do my job: 16 (15.0%)

12. Did the witness appear to understand the sequential double-blind procedure? n = 104

- Witnesses appeared to have no trouble understanding the procedure: 51 (49.0%)
- Witnesses appeared to have some trouble understanding the procedure: 44 (42.3%)
- Witnesses appeared to have substantial trouble understanding the procedure: 9 (8.7%)

13. Compare the witnesses' understanding of the sequential double-blind procedure to the witnesses' understanding of the traditional lineup procedure: n = 104

- Witnesses understood both procedures about equally: 47 (45.2%)
- Witnesses had less difficulty understanding the sequential double-blind procedure than the traditional lineup procedure: 2 (1.9%)
- Witnesses had more difficulty understanding the sequential double-blind procedure than the traditional lineup procedure: 55 (52.9%)

14. By the conclusion of the pilot program, how did you like the sequential double-blind procedure? n = 108

- No preference for one procedure over the other: 25 (23.1%)
- Preferred the sequential double-blind procedure over the traditional identification procedure: 2 (1.9%)
- Preferred the traditional identification procedure over the sequential double-blind procedure: 81 (75.0%)

15. Did your opinion of the sequential double-blind procedure change over the course of the pilot program? n = 109

- No change: 68 (62.4%)
- Yes, it changed for the better as the pilot program progressed: 5 (4.6%)
- Yes, it changed for the worse as the pilot program progressed: 36 (33.0%)
16. Which of the following best reflects your experience by the conclusion of the pilot program?

<table>
<thead>
<tr>
<th>Option</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is no difference in the reliability of identifications obtained from the sequential double-blind method and the traditional method of identification</td>
<td>77</td>
<td>74.8%</td>
</tr>
<tr>
<td>The sequential double-blind method of identification produces more reliable identifications than the traditional method of identification</td>
<td>5</td>
<td>4.9%</td>
</tr>
<tr>
<td>The sequential double-blind method of identification produces less reliable identifications than the traditional method of identification</td>
<td>21</td>
<td>20.4%</td>
</tr>
</tbody>
</table>

17. If the sequential double-blind procedure is optional, will you continue to use it?

<table>
<thead>
<tr>
<th>Option</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>13</td>
<td>12.3%</td>
</tr>
<tr>
<td>No</td>
<td>84</td>
<td>79.2%</td>
</tr>
<tr>
<td>Might use it</td>
<td>9</td>
<td>8.5%</td>
</tr>
</tbody>
</table>

18. Identify the positives, if any, of the sequential double-blind identification procedure.

<table>
<thead>
<tr>
<th>Positive</th>
</tr>
</thead>
<tbody>
<tr>
<td>No possible law suits</td>
</tr>
<tr>
<td>Court concerns</td>
</tr>
<tr>
<td>None</td>
</tr>
<tr>
<td>If you're a defense attorney, then great</td>
</tr>
<tr>
<td>None</td>
</tr>
<tr>
<td>More CYA procedures for lawsuits the city doesn't have the political will to fight</td>
</tr>
<tr>
<td>None</td>
</tr>
<tr>
<td>Not enough experience with procedure</td>
</tr>
<tr>
<td>None</td>
</tr>
<tr>
<td>None</td>
</tr>
<tr>
<td>No</td>
</tr>
<tr>
<td>None</td>
</tr>
<tr>
<td>There is a perception of impartiality and fairness. This perception is false.</td>
</tr>
<tr>
<td>None</td>
</tr>
<tr>
<td>None</td>
</tr>
<tr>
<td>None were noted</td>
</tr>
<tr>
<td>I cannot identify any positives of this procedure.</td>
</tr>
<tr>
<td>None</td>
</tr>
<tr>
<td>None</td>
</tr>
<tr>
<td>No positive</td>
</tr>
<tr>
<td>Squelching any suggestion of illegitimate/favorable lineups by detectives.</td>
</tr>
<tr>
<td>Participants weren't able to do process of elimination</td>
</tr>
<tr>
<td>The warning sheet is more detailed and better explains the procedure so that the directions are universal for everyone.</td>
</tr>
<tr>
<td>Better ID</td>
</tr>
<tr>
<td>Only positive I can see is that they...</td>
</tr>
<tr>
<td>It shows that much time can be wasted over a non-existent &quot;problem&quot; therefore making you appreciate that this is not permanent (yet).</td>
</tr>
<tr>
<td>No one could ever say the officer pointed out the suspect</td>
</tr>
<tr>
<td>May be useful if questioned in court regarding single photo ID to multiple photo ID</td>
</tr>
<tr>
<td>Showing one photo at a time is good for some witnesses, it seemed less overwhelming to them, and they could focus concentration on each one.</td>
</tr>
<tr>
<td>Easier to put together than a photoarray</td>
</tr>
<tr>
<td>If you can get the same types of pictures such as clear photos of our offender and fillers, it is just as easy as full photo lineup. I have no experience in live sequential lineups</td>
</tr>
<tr>
<td>None</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>Got more detective involvement with the cases</td>
</tr>
<tr>
<td>I could not identify any positives, but it was not as hard to conduct photo arrays as I originally thought.</td>
</tr>
<tr>
<td>Can't think of any positives.</td>
</tr>
<tr>
<td>I liked the fact each photo/filler was shown one at a time and the witness only got two showings</td>
</tr>
<tr>
<td>None</td>
</tr>
<tr>
<td>None noted</td>
</tr>
<tr>
<td>Showing photos one at a time seems to be better than all at once</td>
</tr>
<tr>
<td>Unknown</td>
</tr>
<tr>
<td>None</td>
</tr>
<tr>
<td>None noted at this time</td>
</tr>
</tbody>
</table>

**19: Identify the negatives. If any, of the sequential double-blind identification procedure:**

<table>
<thead>
<tr>
<th>Too many steps in already complicated rules and regs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time delay, more manpower</td>
</tr>
<tr>
<td>Offender might be first one out, prefer blind traditional lineup</td>
</tr>
<tr>
<td>1) testify in court difficult with the exception that you should know more about the case, victims, and witnesses. 2) finding a blind administrator. 3) report required after the procedure were confusing and unnecessary</td>
</tr>
<tr>
<td>More people needed to conduct lineups (shuffling suspects around), safety issues</td>
</tr>
<tr>
<td>Some people cannot grasp the concept, investigators are limited by the victim/witness abilities</td>
</tr>
<tr>
<td>Too confusing to civilians</td>
</tr>
<tr>
<td>Witnesses had a hard time because they would pick more than one subject. They wanted subjects together for comparison</td>
</tr>
<tr>
<td>1) finding a blind administrator. 2) blind administrator finally shows up. 3) submit your reports when your blind administrator</td>
</tr>
<tr>
<td>Difficulty in locating administrators, more time expended in location of administrators, coordination, paperwork, etc while time is being limited of how long offenders, witnesses can be held</td>
</tr>
<tr>
<td>Personnel not always available, addition time for witness/victim to wait</td>
</tr>
<tr>
<td>Adds yet another procedure to already difficult task of case preparation and processing of a case</td>
</tr>
<tr>
<td>None</td>
</tr>
<tr>
<td>Not enough experience with procedure</td>
</tr>
<tr>
<td>It's all negative because it is useless and does not have a purpose</td>
</tr>
<tr>
<td>Too much down time finding and waiting for blind administrator, interrupts flow of investigation. Causes more inconvenience for witnesses having to wait around to view lineup</td>
</tr>
<tr>
<td>Taking detectives from their own jobs to come to area. Victims have no time or patience. Administrators are angry when responding to area</td>
</tr>
<tr>
<td>To much wasted time and personnel. Victims waiting an excessive amount of time</td>
</tr>
<tr>
<td>1) it is impractical to find 4 fillers for each offender when more than one offender is in custody. 2) finding a blind administrator (from outside the area especially) unnecessarily delays the process. 3) there was nothing wrong with lineup procedures in the first place. We detectives are impartial. We are interested in only finding the truth and the real offender. We are professionals. 4) sequential lineups confuse victims and witnesses</td>
</tr>
<tr>
<td>Finding willing administrators in not always easy. It seems too complicated for its perceived effect.</td>
</tr>
<tr>
<td>Having detectives come in from other areas was difficult, as to their availability, their attitude and the length of time it took for them to respond.</td>
</tr>
<tr>
<td>Waiting period. Cannot go into Chris/Clear and make own photo arrays to show to victim immediately after an incident occurred which gives victim/witness(es) opportunity to forget suspects.</td>
</tr>
<tr>
<td>1) impossible to get a blind administrator to respond to administer lineups thus leaving victims waiting an eternity to view lineup. 2) in lineups with multiple offenders, the required fillers can only be used in one lineup, meaning that as many as 10 to 15 participants in addition to suspects have to be found. This requirement exhausted the pool of arrestees available and often caused detectives to use filler participants that did not match the suspect's physical characteristics in any manner other than race. This method of lineup led to less reliable lineups. Finally, the police facilities are not equipped to handle 15 lineup participants and the procedure often compromised officer safety.</td>
</tr>
<tr>
<td>The procedure could be time consuming (find blind administrators etc) when the clock is already ticking on the 48 hours.</td>
</tr>
<tr>
<td>1) investigations can be significantly delayed when detectives are trying to locate available administrators and then wait for them to arrive. 2) even a temporary presence of additional detectives in a sensitive case (eg, sexual assaults, offenses involving children/elderly) can upset a victim, making ensuing interviews more difficult. 3) when movement between rooms - leading suspects and fillers in and out of lineup rooms - increases, there are increased security risks.</td>
</tr>
<tr>
<td>Victim/witness confusion; takes longer; takes time to find blind administrator; blind administrator doesn't want to do supplemental report, not their case; need more detectives to babysit fillers with sequential procedure; costs city more, causes overtime; more detectives subpoenaed for court = overtime; more paperwork; details of victim/witness reaction during lineup is ammo for impeachment</td>
</tr>
<tr>
<td>It is very inconvenient for both the police and the victim/witness to wait for an administrator to respond.</td>
</tr>
</tbody>
</table>
The only thing this procedure does is make it more difficult for witnesses to make an identification. Most witnesses are either traumatized by their involvement in the criminal incident and the ensuing investigation or for one reason or another are reluctant to participate and cooperate in the investigation. Every requirement, including this procedure, which makes things more difficult for the witnesses, just makes it more difficult to obtain their cooperation. When is the government and the criminal justice system going to stop permitting a small but vocal group of liberal thinkers, whose only concern is the rights of criminals, to dictate procedures and start doing its job of protecting the innocent victims and witnesses?

Victims/witnesses have to wait unnecessarily for a blind administrator.

Delays in getting detectives from other areas causes frustration with the victims who don't want to wait

All

Wastes time, makes it harder on the investigating detectives, interrupt the blind administrator's own cases. Doubles the man power.

Too much time

Time constraints in homicide investigations, manpower - taking working detectives off their cases to administer lineups. Waiting for blind administrators affects the flow of the case, results in witnesses waiting longer (more agitated/less apt to be cooperative). Not more effective than traditional lineups

The witness almost always wants to go back and look at the previous picture and not wait to see them in order.

Time consuming

Sometimes its difficult to find an administrator who did not know anything about your case or the suspect

Sometimes it is not easy to find a blind administrator to conduct the photo array so it wastes time.

Utter waste of valuable time

A lot more work to find someone, to show lineup, to make lineup, and for court both parties have to go.

Takes too much time when you have to arrange for a blind administrator. If cops are bad and want to cheat they are going to do it. There is not need for a blind administrator. Waste of time!

Finding a blind administrator

Having to use a administrator in a police setting had drawbacks. Finding someone not associated with the case was sometimes difficult. Witnesses were unsure of what was going on when the person they'd been dealing with wasn't the same any longer. It felt like I left some witnesses with the feeling that we'd been dishonest in the past, so we were having to conduct lineups in this manner. Can undermine confidence in PD.

Finding a detective

The administrative paperwork attached to it

None

Just makes photo lineups more complicated if you only have a polaroid of offender and no other polaroids similar to offender. With traditional you can work the picture into a traditional photospread cut out with other similar color pictures. With sequential you cannot use cut out and do not have similar picture format thus tainting lineup.

None

Timing. I found it hard at times to get a witness and a blind administrator when I needed them.

It was extremely difficult and too time consuming to conduct physical lineups when there were multiple offenders/witnesses/ It is hard enough for smaller agencies to find fillers for physical lineups and will be even more difficult if they have to spend all day at the station.

Finding blind administrators is many times not possible and takes too much time

As a detective, you develop a rapport and trust with your victims. Your victims depend on you, the investigator, and must likely resent being "punted" to other, unknown detectives, on the case. I felt that my integrity as a detective/policeman was being questioned; the insinuation that photo lineups may be biased or steered by the investigator is a slap in the face to those of us who have and still conduct the followups in the most professional and unbiased manner. These allegations and suspicions towards any impropriety by any investigator or police officer must be substantiated by fact.

1) many times blind administrators were difficult to find due to staffing or high profile cases. 2) The blind administrator could not answer any questions the witness might have pertaining to the case.

It's a very difficult process, which results in no increase of reliability of identifications.

None noted

The need to know what degree of certainty is unknown if another detective is conducting the lineup.

Always had to get someone to assist with a simple photo lineup

More paperwork, complicates a simple process, eludes that police are biased and dishonest

Negatives are the difficulty of finding a blind administrator working that has the knowledge on conduct a lineup.

20 Additional comments

This is a bad idea, scrap it

The traditional identification procedures work well with little problems. There is no need for a change.

Get rid of it, it is useless. Stop making the idiot who decided to start this look like they have a purpose

Can live with running sequential photo arrays and live lineups if we drop the blind administrator portion. The investigating detective should conduct his/her own lineups. The blind administrator portion is about challenging the integrity of the investigating detective. The lineup portion of an investigation is just one part of the overall work that a detective undergoes to solve a crime. Logic would dictate that if we trust and expect the detective to conduct an honest and complete investigation then we should not need a blind administrator to conduct lineups
The requirement to use a "blind administrator", not only is an inconvenience, but it demeans the integrity of the detectives who are assigned to the investigation.

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Bad idea</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A witness is going to identify an offender either way. See #19 for the negatives.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal method of ID's should be used by the dept. meaning a photo lineup with picture from the computer should be adequate.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>None</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If a photo array is tainted, it can and should be handled in court</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Too many forms to fill out. Simplify by combining any advisory-signatures into one form.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>None</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Make this optional</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I don't think having sequential/non-sequential or double-blind/normal lineups has an impact on the accuracy in identifications. As far as the honesty aspect on the law enforcement side of lineup/photo arrays, a dishonest officer can taint either procedure just as easy.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Glad to be back to the old way</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Good cops always conduct fair lineups: Evanston PD has good cops</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The sequential format as opposed to the traditional format does not appear to be a problem. However, the blind administrator poses logistical problems for investigators and administrators of police departments.</td>
<td></td>
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</tr>
</tbody>
</table>
Exhibit 20
POLICE AND CRIMINAL EVIDENCE ACT 1984

CODE D

CODE OF PRACTICE FOR THE IDENTIFICATION OF PERSONS BY POLICE OFFICERS

Commencement - Transitional Arrangements
This code has effect in relation to any identification procedure carried out after midnight on 31 July 2004
1 Introduction

1.1 This Code of Practice concerns the principal methods used by police to identify people in connection with the investigation of offences and the keeping of accurate and reliable criminal records.

1.2 Identification by witnesses arises, e.g., if the offender is seen committing the crime and a witness is given an opportunity to identify the suspect in a video identification, identification parade or similar procedure. The procedures are designed to:
  • test the witness’ ability to identify the person they saw on a previous occasion
  • provide safeguards against mistaken identification.

While this Code concentrates on visual identification procedures, it does not preclude the police making use of aural identification procedures such as a "voice identification parade", where they judge that appropriate.

1.3 Identification by fingerprints applies when a person’s fingerprints are taken to:
  • compare with fingerprints found at the scene of a crime
  • check and prove convictions
  • help to ascertain a person’s identity.

1.4 Identification by body samples and impressions includes taking samples such as blood or hair to generate a DNA profile for comparison with material obtained from the scene of a crime, or a victim.

1.5 Taking photographs of arrested people applies to recording and checking identity and locating and tracing persons who:
  • are wanted for offences
  • fail to answer their bail.

1.6 Another method of identification involves searching and examining detained suspects to find, e.g., marks such as tattoos or scars which may help establish their identity or whether they have been involved in committing an offence.

1.7 The provisions of the Police and Criminal Evidence Act 1984 (PACE) and this Code are designed to make sure fingerprints, samples, impressions and photographs are taken, used and retained, and identification procedures carried out, only when justified and necessary for preventing, detecting or investigating crime. If these
provisions are not observed, the application of the relevant procedures in particular cases may be open to question.

2 General

2.1 This Code must be readily available at all police stations for consultation by:
• police officers and police staff
• detained persons
• members of the public

2.2 The provisions of this Code:
• include the Annexes
• do not include the Notes for guidance.

2.3 Code C, paragraph 1.4, regarding a person who may be mentally disordered or otherwise mentally vulnerable and the Notes for guidance applicable to those provisions apply to this Code.

2.4 Code C, paragraph 1.5, regarding a person who appears to be under the age of 17 applies to this Code.

2.5 Code C, paragraph 1.6, regarding a person who appears blind, seriously visually impaired, deaf, unable to read or speak or has difficulty orally because of a speech impediment applies to this Code.

2.6 In this Code:
• ‘appropriate adult’ means the same as in Code C, paragraph 1.7,
• ‘solicitor’ means the same as in Code C, paragraph 6.12

and the Notes for guidance applicable to those provisions apply to this Code.

2.7 References to custody officers include those performing the functions of custody officer.

2.8 When a record of any action requiring the authority of an officer of a specified rank is made under this Code, subject to paragraph 2.18, the officer’s name and rank must be recorded.

2.9 When this Code requires the prior authority or agreement of an officer of at least inspector or superintendent rank, that authority may be given by a sergeant or chief
inspector who has been authorised to perform the functions of the higher rank under PACE, section 107.

2.10 Subject to paragraph 2.15, all records must be timed and signed by the maker.

2.11 Records must be made in the custody record, unless otherwise specified. References to ‘pocket book’ include any official report book issued to police officers or police staff.

2.12 If any procedure in this Code requires a person's consent, the consent of a:

- mentally disordered or otherwise mentally vulnerable person is only valid if given in the presence of the appropriate adult
- juvenile, is only valid if their parent's or guardian's consent is also obtained unless the juvenile is under 14, when their parent's or guardian's consent is sufficient in its own right. If the only obstacle to an identification procedure in section 3 is that a juvenile’s parent or guardian refuses consent or reasonable efforts to obtain it have failed, the identification officer may apply the provisions of paragraph 3.1. See Note 2A.

2.13 If a person is blind, seriously visually impaired or unable to read, the custody officer or identification officer shall make sure their solicitor, relative, appropriate adult or some other person likely to take an interest in them and not involved in the investigation is available to help check any documentation. When this Code requires written consent or signing, the person assisting may be asked to sign instead, if the detainee prefers. This paragraph does not require an appropriate adult to be called solely to assist in checking and signing documentation for a person who is not a juvenile, or mentally disordered or otherwise mentally vulnerable (see Note 2B and Code C paragraph 3.15).

2.14 If any procedure in this Code requires information to be given to or sought from a suspect, it must be given or sought in the appropriate adult’s presence if the suspect is mentally disordered, otherwise mentally vulnerable or a juvenile. If the appropriate adult is not present when the information is first given or sought, the procedure must be repeated in the presence of the appropriate adult when they arrive. If the suspect appears deaf or there is doubt about their hearing or speaking ability or ability to understand English, and effective communication cannot be established, the information must be given or sought through an interpreter.

2.15 Any procedure in this Code involving the participation of a person (whether as a suspect or a witness) who is mentally disordered, otherwise mentally vulnerable or a juvenile, must take place in the presence of the appropriate adult. However, the adult must not be allowed to prompt any identification of a suspect by a witness.
2.16 References to:

- 'taking a photograph', include the use of any process to produce a single, still, visual image
- 'photographing a person', should be construed accordingly
- 'photographs', 'films', 'negatives' and 'copies' include relevant visual images recorded, stored, or reproduced through any medium
- 'destruction' includes the deletion of computer data relating to such images or making access to that data impossible.

2.17 Except as described, nothing in this Code affects the powers and procedures:

(i) for requiring and taking samples of breath, blood and urine in relation to driving offences, etc, when under the influence of drink, drugs or excess alcohol under the:

- Road Traffic Act 1988, sections 4 to 11
- Road Traffic Offenders Act 1988, sections 15 and 16
- Transport and Works Act 1992, sections 26 to 38;

(ii) under the Immigration Act 1971, Schedule 2, paragraph 18, for taking photographs and fingerprints from persons detained under that Act, Schedule 2, paragraph 18 (Administrative Controls as to Control on Entry etc.); for taking fingerprints in accordance with the Immigration and Asylum Act 1999; sections 141 and 142(3), or other methods for collecting information about a person's external physical characteristics provided by regulations made under that Act, section 144;

(iii) under the Terrorism Act 2000, Schedule 8, for taking photographs, fingerprints, skin impressions, body samples or impressions from people:

- arrested under that Act, section 41,
- detained for the purposes of examination under that Act, Schedule 7, and to whom the Code of Practice issued under that Act, Schedule 14, paragraph 6, applies ("the terrorism provisions")

See Note 2C;

(iv) for taking photographs, fingerprints, skin impressions, body samples or impressions from people who have been:
arrested on warrants issued in Scotland, by officers exercising powers under the Criminal Justice and Public Order Act 1994, section 136(2)

arrested or detained without warrant by officers from a police force in Scotland exercising their powers of arrest or detention under the Criminal Justice and Public Order Act 1994, section 137(2). (Cross Border powers of arrest etc.).

Note: In these cases, police powers and duties and the person’s rights and entitlements whilst at a police station in England and Wales are the same as if the person had been arrested in Scotland by a Scottish police officer.

2.18 Nothing in this Code requires the identity of officers or police staff to be recorded or disclosed:

(a) In the case of enquiries linked to the investigation of terrorism;

(b) if the officers or police staff reasonably believe recording or disclosing their names might put them in danger.

In these cases, they shall use warrant or other identification numbers and the name of their police station. See Note 2D

2.19 In this Code:

(a) ‘designated person’ means a person other than a police officer, designated under the Police Reform Act 2002, Part 4, who has specified powers and duties of police officers conferred or imposed on them;

(b) any reference to a police officer includes a designated person acting in the exercise or performance of the powers and duties conferred or imposed on them by their designation.

2.20 If a power conferred on a designated person:

(a) allows reasonable force to be used when exercised by a police officer, a designated person exercising that power has the same entitlement to use force;

(b) includes power to use force to enter any premises, that power is not exercisable by that designated person except:

(i) in the company, and under the supervision, of a police officer; or

(ii) for the purpose of:
Codes of practice – Code D Identification of persons by police officers

• saving life or limb; or
• preventing serious damage to property.

2.21 Nothing in this Code prevents the custody officer, or other officer given custody of the detainee, from allowing police staff who are not designated persons to carry out individual procedures or tasks at the police station if the law allows. However, the officer remains responsible for making sure the procedures and tasks are carried out correctly in accordance with the Codes of Practice. Any such civilian must be:

(a) a person employed by a police authority maintaining a police force and under the control and direction of the Chief Officer of that force;

(b) employed by a person with whom a police authority has a contract for the provision of services relating to persons arrested or otherwise in custody.

2.22 Designated persons and other police staff must have regard to any relevant provisions of the Codes of Practice.

Notes for guidance

2A For the purposes of paragraph 2.12, the consent required from a parent or guardian may, for a juvenile in the care of a local authority or voluntary organisation, be given by that authority or organisation. In the case of a juvenile, nothing in paragraph 2.12 requires the parent, guardian or representative of a local authority or voluntary organisation to be present to give their consent, unless they are acting as the appropriate adult under paragraphs 2.14 or 2.15. However, it is important that a parent or guardian not present is fully informed before being asked to consent. They must be given the same information about the procedure and the juvenile’s suspected involvement in the offence as the juvenile and appropriate adult. The parent or guardian must also be allowed to speak to the juvenile and the appropriate adult if they wish. Provided the consent is fully informed and is not withdrawn, it may be obtained at any time before the procedure takes place.

2B People who are seriously visually impaired or unable to read may be unwilling to sign police documents. The alternative, i.e. their representative signing on their behalf, seeks to protect the interests of both police and suspects.

2C Photographs, fingerprints, samples and impressions may be taken from a person detained under the terrorism provisions to help determine whether they are, or have been, involved in terrorism, as well as when there are reasonable grounds for suspecting their involvement in a particular offence.
2D The purpose of paragraph 2.18(b) is to protect those involved in serious organised crime investigations or arrests of particularly violent suspects when there is reliable information that those arrested or their associates may threaten or cause harm to the officers. In cases of doubt, an officer of inspector rank or above should be consulted.

3 Identification by witnesses

3.1 A record shall be made of the suspect’s description as first given by a potential witness. This record must:

(a) be made and kept in a form which enables details of that description to be accurately produced from it, in a visible and legible form, which can be given to the suspect or the suspect’s solicitor in accordance with this Code; and

(b) unless otherwise specified, be made before the witness takes part in any identification procedures under paragraphs 3.5 to 3.10, 3.21 or 3.23.

A copy of the record shall where practicable, be given to the suspect or their solicitor before any procedures under paragraphs 3.5 to 3.10, 3.21 or 3.23 are carried out. See Note 3E

(a) Cases when the suspect’s identity is not known

3.2 In cases when the suspect’s identity is not known, a witness may be taken to a particular neighbourhood or place to see whether they can identify the person they saw. Although the number, age, sex, race, general description and style of clothing of other people present at the location and the way in which any identification is made cannot be controlled, the principles applicable to the formal procedures under paragraphs 3.5 to 3.10 shall be followed as far as practicable. For example:

(a) where it is practicable to do so, a record should be made of the witness’ description of the suspect, as in paragraph 3.1(a), before asking the witness to make an identification;

(b) care must be taken not to direct the witness’ attention to any individual unless, taking into account all the circumstances, this cannot be avoided. However, this does not prevent a witness being asked to look carefully at the people around at the time or to look towards a group or in a particular direction, if this appears necessary to make sure that the witness does not overlook a possible suspect simply because the witness is looking in the opposite direction and also to enable the witness to make comparisons between any suspect and others who are in the area; See Note 3F
(c) where there is more than one witness, every effort should be made to keep them separate and witnesses should be taken to see whether they can identify a person independently;

(d) once there is sufficient information to justify the arrest of a particular individual for suspected involvement in the offence, e.g., after a witness makes a positive identification, the provisions set out from paragraph 3.4 onwards shall apply for any other witnesses in relation to that individual. Subject to paragraphs 3.12 and 3.13, it is not necessary for the witness who makes such a positive identification to take part in a further procedure;

(e) the officer or police staff accompanying the witness must record, in their pocket book, the action taken as soon as, and in as much detail, as possible. The record should include: the date, time and place of the relevant occasion the witness claims to have previously seen the suspect; where any identification was made; how it was made and the conditions at the time (e.g., the distance the witness was from the suspect, the weather and light); if the witness's attention was drawn to the suspect; the reason for this; and anything said by the witness or the suspect about the identification or the conduct of the procedure.

3.3 A witness must not be shown photographs, computerised or artist's composite likenesses or similar likenesses or pictures (including 'E-fit' images) if the identity of the suspect is known to the police and the suspect is available to take part in a video identification, an identification parade or a group identification. If the suspect’s identity is not known, the showing of such images to a witness to obtain identification evidence must be done in accordance with Annex E.

(b) Cases when the suspect is known and available

3.4 If the suspect's identity is known to the police and they are available, the identification procedures set out in paragraphs 3.5 to 3.10 may be used. References in this section to a suspect being 'known' mean there is sufficient information known to the police to justify the arrest of a particular person for suspected involvement in the offence. A suspect being 'available' means they are immediately available or will be within a reasonably short time and willing to take an effective part in at least one of the following which it is practicable to arrange:

- video identification;
- identification parade; or
* group identification.

**Video Identification**

3.5 A 'video identification' is when the witness is shown moving images of a known suspect, together with similar images of others who resemble the suspect. See paragraph 3.21 for circumstances in which still images may be used.

3.6 Video identifications must be carried out in accordance with Annex A.

**Identification parade**

3.7 An 'identification parade' is when the witness sees the suspect in a line of others who resemble the suspect.

3.8 Identification parades must be carried out in accordance with Annex B.

**Group identification**

3.9 A 'group identification' is when the witness sees the suspect in an informal group of people.

3.10 Group identifications must be carried out in accordance with Annex C.

**Arranging identification procedures**

3.11 Except for the provisions in paragraph 3.19, the arrangements for, and conduct of, the identification procedures in paragraphs 3.5 to 3.10 and circumstances in which an identification procedure must be held shall be the responsibility of an officer not below inspector rank who is not involved with the investigation, 'the identification officer'. Unless otherwise specified, the identification officer may allow another officer or police staff, see paragraph 2.21, to make arrangements for, and conduct, any of these identification procedures. In delegating these procedures, the identification officer must be able to supervise effectively and either intervene or be contacted for advice. No officer or any other person involved with the investigation of the case against the suspect, beyond the extent required by these procedures, may take any part in these procedures or act as the identification officer. This does not prevent the identification officer from consulting the officer in charge of the investigation to determine which procedure to use. When an identification procedure is required, in the interest of fairness to suspects and witnesses, it must be held as soon as practicable.
Circumstances in which an identification procedure must be held

3.12 Whenever:

(i) a witness has identified a suspect or purported to have identified them prior to any identification procedure set out in paragraphs 3.5 to 3.10 having been held; or

(ii) there is a witness available, who expresses an ability to identify the suspect, or where there is a reasonable chance of the witness being able to do so, and they have not been given an opportunity to identify the suspect in any of the procedures set out in paragraphs 3.5 to 3.10,

and the suspect disputes being the person the witness claims to have seen, an identification procedure shall be held unless it is not practicable or it would serve no useful purpose in proving or disproving whether the suspect was involved in committing the offence. For example, when it is not disputed that the suspect is already well known to the witness who claims to have seen them commit the crime.

3.13 Such a procedure may also be held if the officer in charge of the investigation considers it would be useful.

Selecting an identification procedure

3.14 If, because of paragraph 3.12, an identification procedure is to be held, the suspect shall initially be offered a video identification unless:

a) a video identification is not practicable; or

b) an identification parade is both practicable and more suitable than a video identification; or

c) paragraph 3.16 applies.

The identification officer and the officer in charge of the investigation shall consult each other to determine which option is to be offered. An identification parade may not be practicable because of factors relating to the witnesses, such as their number, state of health, availability and travelling requirements. A video identification would normally be more suitable if it could be arranged and completed sooner than an identification parade.

3.15 A suspect who refuses the identification procedure first offered shall be asked to state their reason for refusing and may get advice from their solicitor and/or if present, their appropriate adult. The suspect, solicitor and/or appropriate adult shall be allowed to
make representations about why another procedure should be used. A record should
be made of the reasons for refusal and any representations made. After considering
any reasons given, and representations made, the identification officer shall, if
appropriate, arrange for the suspect to be offered an alternative which the officer
considers suitable and practicable. If the officer decides it is not suitable and
practicable to offer an alternative identification procedure, the reasons for that
decision shall be recorded.

3.16 A group identification may initially be offered if the officer in charge of the investigation
considers it is more suitable than a video identification or an identification parade and
the identification officer considers it practicable to arrange.

**Notice to suspect**

3.17 Unless paragraph 3.20 applies, before a video identification, an identification parade
or group identification is arranged, the following shall be explained to the suspect:

(i) the purposes of the video identification, identification parade or group
identification;

(ii) their entitlement to free legal advice; see Code C, paragraph 6.5;

(iii) the procedures for holding it, including their right to have a solicitor or friend
present;

(iv) that they do not have to consent to or co-operate in a video identification,
identification parade or group identification;

(v) that if they do not consent to, and co-operate in, a video identification,
identification parade or group identification, their refusal may be given in
evidence in any subsequent trial and police may proceed covertly without their
consent or make other arrangements to test whether a witness can identify
them, see paragraph 3.21;

(vi) whether, for the purposes of the video identification procedure, images of them
have previously been obtained, see paragraph 3.20, and if so, that they may
co-operate in providing further, suitable images to be used instead;

(vii) if appropriate, the special arrangements for juveniles;

(viii) if appropriate, the special arrangements for mentally disordered or otherwise
mentally vulnerable people;
(ix) that if they significantly alter their appearance between being offered an identification procedure and any attempt to hold an identification procedure, this may be given in evidence if the case comes to trial, and the identification officer may then consider other forms of identification, see paragraph 3.21 and Note 3C;

(x) that a moving image or photograph may be taken of them when they attend for any identification procedure;

(xi) whether, before their identity became known, the witness was shown photographs, a computerised or artist's composite likeness or similar likeness or image by the police, see Note 3B;

(xii) that if they change their appearance before an identification parade, it may not be practicable to arrange one on the day or subsequently and, because of the appearance change, the identification officer may consider alternative methods of identification, see Note 3C;

(xiii) that they or their solicitor will be provided with details of the description of the suspect as first given by any witnesses who are to attend the video identification, identification parade, group identification or confrontation, see paragraph 3.1.

3.18 This information must also be recorded in a written notice handed to the suspect. The suspect must be given a reasonable opportunity to read the notice, after which, they should be asked to sign a second copy to indicate if they are willing to co-operate with the making of a video or take part in the identification parade or group identification. The signed copy shall be retained by the identification officer.

3.19 The duties of the identification officer under paragraphs 3.17 and 3.18 may be performed by the custody officer or other officer not involved in the investigation if:

(a) it is proposed to hold an identification procedure at a later date, e.g., if the suspect is to be bailed to attend an identification parade; and

(b) an inspector is not available to act as the identification officer, see paragraph 3.11, before the suspect leaves the station.

The officer concerned shall inform the identification officer of the action taken and give them the signed copy of the notice. See Note 3C.

3.20 If the identification officer and officer in charge of the investigation suspect, on reasonable grounds that if the suspect was given the information and notice as in paragraphs 3.17 and 3.18, they would then take steps to avoid being seen by a
witness in any identification procedure, the identification officer may arrange for images of the suspect suitable for use in a video identification procedure to be obtained before giving the information and notice. If suspect's images are obtained in these circumstances, the suspect may, for the purposes of a video identification procedure, co-operate in providing suitable new images to be used instead, see paragraph 3.17(vi).

(c) **Cases when the suspect is known but not available**

3.21 When a known suspect is not available or has ceased to be available, see paragraph 3.4, the identification officer may make arrangements for a video identification (see Annex A). If necessary, the identification officer may follow the video identification procedures but using still images. Any suitable moving or still images may be used and these may be obtained covertly if necessary. Alternatively, the identification officer may make arrangements for a group identification. See Note 3D. These provisions may also be applied to juveniles where the consent of their parent or guardian is either refused or reasonable efforts to obtain that consent have failed (see paragraph 2.12).

3.22 Any covert activity should be strictly limited to that necessary to test the ability of the witness to identify the suspect.

3.23 The identification officer may arrange for the suspect to be confronted by the witness if none of the options referred to in paragraphs 3.5 to 3.10 or 3.21 are practicable. A “confrontation” is when the suspect is directly confronted by the witness. A confrontation does not require the suspect’s consent. Confrontations must be carried out in accordance with Annex D.

3.24 Requirements for information to be given to, or sought from, a suspect or for the suspect to be given an opportunity to view images before they are shown to a witness, do not apply if the suspect’s lack of co-operation prevents the necessary action.

(d) **Documentation**

3.25 A record shall be made of the video identification, identification parade, group identification or confrontation on forms provided for the purpose.

3.26 If the identification officer considers it is not practicable to hold a video identification or identification parade requested by the suspect, the reasons shall be recorded and explained to the suspect.
3.27 A record shall be made of a person's failure or refusal to co-operate in a video identification, identification parade or group identification and, if applicable, of the grounds for obtaining images in accordance with paragraph 3.20.

(e) **Showing films and photographs of incidents and information released to the media**

3.28 Nothing in this Code inhibits showing films or photographs to the public through the national or local media, or to police officers for the purposes of recognition and tracing suspects. However, when such material is shown to potential witnesses, including police officers, see Note 34, to obtain identification evidence, it shall be shown on an individual basis to avoid any possibility of collusion, and, as far as possible, the showing shall follow the principles for video identification if the suspect is known, see Annex A, or identification by photographs if the suspect is not known, see Annex E.

3.29 When a broadcast or publication is made, see paragraph 3.28, a copy of the relevant material released to the media for the purposes of recognising or tracing the suspect, shall be kept. The suspect or their solicitor shall be allowed to view such material before any procedures under paragraphs 3.10, 3.21 or 3.23 are carried out, provided it is practicable and would not unreasonably delay the investigation. Each witness involved in the procedure shall be asked, after they have taken part, whether they have seen any broadcast or published films or photographs relating to the offence or any description of the suspect and their replies shall be recorded. This paragraph does not affect any separate requirement under the Criminal Procedure and Investigations Act 1996 to retain material in connection with criminal investigations.

(f) **Destruction and retention of photographs and images taken or used in identification procedures**

3.30 PACE, section 64A, provides powers to take photographs of suspects detained at police stations and allows these photographs to be used or disclosed only for purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions by, or on behalf of, police or other law enforcement and prosecuting authorities inside and outside the United Kingdom. After being so used or disclosed, they may be retained but can only be used or disclosed for the same purposes.

3.31 Subject to paragraph 3.33, the photographs (and all negatives and copies), of suspects not detained and any moving images, (and copies), of suspects whether or not they have been detained which are taken for the purposes of, or in connection
with, the identification procedures in paragraphs 3.5 to 3.10, 3.21 or 3.23 must be
destroyed unless the suspect:

(a) is charged with, or informed they may be prosecuted for, a recordable offence;
(b) is prosecuted for a recordable offence;
(c) is cautioned for a recordable offence or given a warning or reprimand in
   accordance with the Crime and Disorder Act 1998 for a recordable offence; or
(d) gives informed consent, in writing, for the photograph or images to be retained
   for purposes described in paragraph 3.30.

3.32 When paragraph 3.31 requires the destruction of any photograph or images, the
person must be given an opportunity to witness the destruction or to have a certificate
confirming the destruction if they request one within five days of being informed that
the destruction is required.

3.33 Nothing in paragraph 3.31 affects any separate requirement under the Criminal
Procedure and Investigations Act 1996 to retain material in connection with criminal
investigations.

Notes for guidance

3A Except for the provisions of Annex E, paragraph 1, a police officer who is a witness
for the purposes of this part of the Code is subject to the same principles and
procedures as a civilian witness.

3B When a witness attending an identification procedure has previously been shown
photographs, or been shown or provided with computerised or artist's composite
likenesses, or similar likenesses or pictures, it is the officer in charge of the
investigation's responsibility to make the identification officer aware of this.

3C The purpose of paragraph 3.19 is to avoid or reduce delay in arranging identification
procedures by enabling the required information and warnings, see sub-paragraphs
3.17(ix) and 3.17(xii), to be given at the earliest opportunity.

3D Paragraph 3.21 would apply when a known suspect deliberately makes themself
'unavailable' in order to delay or frustrate arrangements for obtaining identification
evidence. It also applies when a suspect refuses or fails to take part in a video
identification, an identification parade or a group identification, or refuses or fails to
take part in the only practicable options from that list. It enables any suitable images
of the suspect, moving or still, which are available or can be obtained, to be used in
an identification procedure.
3E When it is proposed to show photographs to a witness in accordance with Annex E, it is the responsibility of the officer in charge of the investigation to confirm to the officer responsible for supervising and directing the showing, that the first description of the suspect given by that witness has been recorded. If this description has not been recorded, the procedure under Annex E must be postponed. See Annex E paragraph 2.

3F The admissibility and value of identification evidence obtained when carrying out the procedure under paragraph 3.2 may be compromised if:

(a) before a person is identified, the witness’ attention is specifically drawn to that person; or

(b) the suspect’s identity becomes known before the procedure.

4 Identification by fingerprints

(A) Taking fingerprints in connection with a criminal investigation

(a) General

4.1 References to ‘fingerprints’ means any record, produced by any method, of the skin pattern and other physical characteristics or features of a person’s:

(i) fingers; or

(ii) palms.

(b) Action

4.2 A person’s fingerprints may be taken in connection with the investigation of an offence only with their consent or if paragraph 4.3 applies. If the person is at a police station consent must be in writing.

4.3 PACE, section 61, provides powers to take fingerprints without consent from any person over the age of ten years:

(a) under section 61(3), from a person detained at a police station in consequence of being arrested for a recordable offence, see Note 4A, if they have not had their fingerprints taken in the course of the investigation of the offence unless those previously taken fingerprints are not a complete set or some or all of those fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching.