



Eyewitness Identification Task Force

Report to the Judiciary Committee of the Connecticut General Assembly

February 8, 2012

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Dear Members of the Judiciary Committee:

The Eyewitness Identification Task Force is pleased to submit this report summarizing its activities and recommendations for policy reform.

In 2011, Public Act No. 11-252, Section 2, created the Connecticut Eyewitness Identification Task Force, and mandated that it focus its efforts on: “The science of sequential methods of conducting a live lineup and a photo lineup, (2) the use of sequential lineups in other states, (3) the practical implications of a state law mandating sequential lineups, and (4) other topics as the task force deems appropriate relating to eyewitness identification and the provision of sequential lineups.”

The Task Force membership consists of all of the relevant stakeholders and the entire spectrum of critical interests, including: the Co-Chairs and Ranking Members of the Judiciary Committee; a retired judge; representatives of the Offices of the Chief State’s Attorney and Chief Public Defender; representatives of state and local police departments; legal scholars; social scientists; the State Victim Advocate; a representative of the Connecticut Innocence Project; representatives of the public; and representatives of the Bar.

The work of the Task Force was greatly facilitated by the collaborative efforts and cooperation of relevant stake-holders, in particular, police and law enforcement. The entire law enforcement community is keenly aware of the risks of erroneous identifications by eye-witnesses. Police and prosecutors are on the front-line of arrests and prosecutions, and understand the critical need to establish reliable identification procedures, while preserving a viable investigative tool in eye-witness identifications. In short, when the wrong person is convicted, not only is a great injustice done to that individual, but the true perpetrator remains at large, free to continue to offend.

The Task Force began its work in mid-September, 2011. Throughout the fall, distinguished experts in the fields of human memory, police procedures and best practices were invited to present their research findings and field experiences regarding the use of sequential and simultaneous arrays and lineups. The Task Force also reviewed the legislation and recommendations of committees in jurisdictions throughout the country. The Task Force found that both laboratory research and field studies demonstrate that the use of sequential rather than simultaneous arrays produces more reliable results in reducing the incidents of identification of innocent persons without significantly reducing the identification of actual perpetrators. The Task Force recognizes the evolving nature of the relevant social sciences, and makes its recommendations cognizant of the fact that the area of study will likely continue to evolve and develop in the future.

A simultaneous procedure involves presenting to a victim or a witness of a crime a number of photographs, referred to as an array, and among which is a photo of the person whom the police have identified as the suspect of the crime. The photos usually consist of six or eight photographs. The witness is asked to view the array in its entirety to determine whether the witness can identify the perpetrator of the crime. A sequential procedure involves presenting the same photos to the witness one at a time, rather than simultaneously, and asking the witness, as to each photo, whether he/she recognizes the photo as that of the perpetrator of the crime, before going on to the next photo.

Double-blind procedure means that the police officer administering a photo or live lineup should not be aware of the identity of the suspect, and the witness should be told that the officer does not know the identity of the suspect. Additionally, the witness does not know, and cannot know, which photo in the array is that of the suspect identified by the police. Blind means that the officer administering the photo array may know the identity of the suspect, but cannot know where the suspect’s photo is

in the array, cannot know which photo the witness is viewing during the presentation of the photo array, and is not in a position to leak information to the witness or to give feedback to the witness regarding his/her identification.

After careful consideration, the members voted unanimously to require law enforcement in Connecticut to use sequential rather than simultaneous presentations of photo arrays to witnesses. The Task Force unanimously voted to require double-blind procedure, if practicable, and if not practicable, blind procedure. The Task Force also arrived at consensus in other important areas, including police training, data collection and pilot programming.

The work of the Eyewitness Identification Task Force could not have been accomplished without the significant contributions of its members. Their diligent efforts have enabled the Task Force to develop a set of recommendations that we believe will benefit the State of Connecticut and its system of justice for many years to come. The Task Force was to submit its report by April 1, 2012. The extraordinary interest and commitment of its members have enabled the Task Force to prepare this report well in advance of the April reporting date.

The Task Force wishes to express its sincere gratitude to the staff of the Task Force, who served without any compensation: Sherry Haller, Executive Director of The Justice Education Center; Inc., Ronald Schack, Ph.D, Partner, Charter Oak Group, LLC; Alex Tsarkov, Legislative Aide to Representative Gerald Fox III and Clerk of the Judiciary Committee; and Deborah Blanchard, Judiciary Committee Administrator. These persons performed their duties as staff far above and beyond what could reasonably have been expected of them. We simply could not have performed our tasks without their enormous efforts.

Respectfully submitted,

A handwritten signature in black ink, reading "David M. Borden". The signature is written in a cursive, flowing style.

Justice David M. Borden
Task Force Chair

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Task Force Membership

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Representative Gerald Fox, III
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I. Election of Chair and Selection of Task Force Members

At the first Task Force meeting in September 2011, Retired Connecticut Supreme Court Justice David Borden was nominated and unanimously elected to serve as Chair. From the outset, members strongly agreed on the importance of the Task Force's charge: to develop procedures designed to make eyewitness identification as reliable as possible, thus reducing the number of wrongful convictions and making the identification of actual perpetrators as accurate as possible.

The Co-Chairs of the Judiciary Committee, Senator Eric Coleman and Representative Gerald Fox III, expressed their deep appreciation to Task Force members for their participation and noted the importance of a broad range of interests being represented on the Task Force including the judiciary, as well as the law enforcement, defense, prosecutorial and victim advocacy communities.

II. Recommendations

Based on the expert testimony, review of the literature available and extensive discussions among Task Force members, the following is unanimously recommended:

- A. **Sequential/Double-Blind:** It shall be mandatory for all law enforcement officers in the State of Connecticut to utilize the sequential method of administering photo arrays during eye-witness identification procedures; further, it shall be mandatory for law enforcement to utilize the double blind method of administration only where practicable; and where not practicable, the blind procedure shall be used. The Task Force recommends that these mandatory changes be made statutorily.
- B. **Police Officer Standards and Training Council (POST) & Connecticut State Police Training Academy (CSPTA)**
POST and CSPTA shall develop uniform mandatory policies and appropriate guidelines that all law enforcement officials must follow. In addition, POST and CSPTA will establish intensive training programs in order to implement the new policies and guidelines, which programs shall be available to all law enforcement throughout the State.
- C. **Instructions to Eyewitnesses**
In addition to any additional instructions mandated by POST/CSPTA policies, the following instructions shall be made by law enforcement administrators to witnesses, and shall be mandatory and uniform:
 - 1. I will ask you to view a series of photographs, and will show them to you one at a time;
 - 2. Please take as much time as you would like to view the photos;
 - 3. Please do not feel that you are compelled to make an identification;
 - 4. It is as important to clear innocent people as to identify the guilty;
 - 5. Persons in the photos may not look exactly as they did on the date of the incident, because features like facial or head hair can change;
 - 6. The person you saw *may or may not* be in these photographs;

7. The police will continue to investigate this incident, whether you identify someone or not.

D. Relationship of Images to Eyewitness Descriptions

The photo lineup or live lineup shall be composed so that the fillers generally fit the description of the person suspected as the perpetrator and, in the case of a photo lineup, so that the photograph of the person suspected as the perpetrator resembles his or her appearance at the time of the offense and does not unduly stand out.

E. Number of Images

POST/CSPTA shall develop mandatory policies and appropriate guidelines regarding the number of images to be shown to eyewitnesses during the identification procedure.

F. Number of Times Images are Viewed (Number of Laps), Shuffling of Images and Use of Software to Present Images

Witnesses shall be allowed to view the photos sequentially a second time ("lap") only, and only if requested to do so by the witness. Witnesses shall not be told at the start of the procedure that they will be allowed a second lap. POST/CSPTA shall develop mandatory policies and appropriate guidelines regarding whether or not photos should be reshuffled in the event of a second lap.

G. Written Recording of Procedures

POST/CSPTA shall develop mandatory policies and appropriate guidelines regarding the written recording of eyewitness identification procedures. POST/CSPTA shall also develop and create standard forms to be utilized by law enforcement for the purpose of accurately recording the eyewitness identification process.

H. Tracking Eyewitness Procedures

The total number of eyewitness procedures shall be tracked, including the number and percent of procedures using the sequential and double-blind or blind process. Where the mandated process is not used, a detailed record shall be maintained, which record shall include the reason that the law enforcement officer did not utilize the mandated process. Tracking shall include the number and percent of suspect identifications, and the number and percent of filler identifications. POST/CSPTA shall develop and create standard forms to be utilized by law enforcement for the purpose of accurately recording the tracking of eyewitness procedures.

I. Pilot Program for Videotaping of Procedures

The Task Force recommends a pilot program for videotaping double-blind/blind sequential procedures.

J. Show-Ups

POST/CSPTA shall develop mandatory policies and appropriate guidelines regarding show-ups.

K. Continuation of the Eyewitness Identification Task Force

Continue and fund the work of the Eyewitness Identification Task Force for two additional years to monitor and assist in the implementation of the recommendations, to ensure that best practices are updated, and to gather data on the use and impact of the sequential and double-blind or blind method of eyewitness identification.

III. Overview of Eyewitness Identification

Mistaken eyewitness identification is the leading cause of wrongful convictions in the United States. It is now undisputed that nationwide, within the past 15 years, 289 persons convicted of serious crimes -- mainly murder and sexual assault -- have been exonerated of those crimes by DNA evidence. More than 75 percent of those convictions rested, in significant part, on positive, but false, eyewitness identification evidence. These figures do not include, of course, the many convictions for crimes that did not involve DNA evidence; e.g., the drive-by shootings, the street muggings, the convenience store robberies, and the homicides and sexual assaults for which no DNA evidence may be available. Due to these data, it is clear that our current eyewitness identification procedures can and should be improved.

Connecticut is not immune from wrongful convictions. In the past several years, there have been three DNA exonerations in Connecticut of individuals who have been wrongfully convicted. In each of the three DNA exonerations, the DNA which exonerated the innocent ultimately led to the arrest and conviction of the true perpetrator. The conviction of one of the individuals, James Calvin Tillman, was based almost entirely on inaccurate eyewitness identification evidence.

Law enforcement recognizes the need to establish reliable eye-witness identification procedures while maintaining the utility of such identifications as a useful investigative tool. In Connecticut, as well as in other states, law enforcement has begun to institute changes in the way that eye-witness identification procedures are conducted in order to guard against mis-identifications and wrongful convictions. The new procedures are based on studies by social scientists that have shed light on the memory process and the factors that may influence a witness's identification.

For the past 35 years, social scientists have been conducting thousands of laboratory experiments that have yielded hundreds of peer-reviewed papers on the science of eyewitness evidence. In addition, they have conducted a number of field studies. The result of this research is a general scientific consensus on a set of best practices regarding such evidence. Among these best practices is the use of sequential, rather than simultaneous, procedures of a photo array in which there is a suspect for the crime under investigation. The work of the Task Force has been to bring that science and those law enforcement procedures together.

The Task Force recognized and emphasized that the importance of adopting procedures to reduce the incidence of false positive identifications is not just a matter of concern to those wrongfully convicted. It is a matter of grave concern to law enforcement and to the public at large, because whenever a person is wrongfully arrested and convicted on the basis of a positive, but false identification, the actual perpetrator remains free to commit other crimes.

IV. Task Force Focus: Simultaneous vs. Sequential Methods of Identification and Double Blind

Simultaneous vs. Sequential Methods of Identification

There are two methods of administering an eyewitness identification procedure to a victim or a witness. These are the “simultaneous” and the “sequential” procedures.

The most commonly used method, both in Connecticut and elsewhere, is the simultaneous method. In this method, once the police have identified a suspect for the crime under investigation, a photo of that suspect is placed in a group of photos, called an array. The array also includes photos of other individuals who generally fit the same description of the perpetrator given by the witness, but who are not suspects. The photos of these additional individuals are called “fillers”. The photo array is presented to the witness all at once, or simultaneously. A witness may be asked whether the witness can identify the perpetrator, whether anyone in the photo array looks familiar, or some other question or statement intended to determine whether the witness is able to make an identification from the array.

Scientific research has now established that, when the simultaneous method is used and when a photo of the actual perpetrator is not included in the array, witnesses tend to choose from the array the photo that most closely resembles the perpetrator, relative to the other photos in the array. This process, known as the “relative judgment process”, is now viewed as a significant factor resulting in witnesses’ identification of “false positives” (i.e., mistaken identification of innocent persons as perpetrators).

The second method in eyewitness identification procedures is the sequential method. In the sequential method, the same group of photos -- suspect and fillers -- is presented to the witness, but one at a time, rather than all at once. The witness is given preliminary instructions regarding recognition of any of the photos.

Research on the use of the sequential procedure has established that the procedure helps reduce or eliminate the “relative judgment” effect that tends to occur in the simultaneous array procedure, as described above. As a result, the sequential procedure helps witnesses avoid making false positive identifications.

Prior to the beginning of the Task Force’s work, there was some appropriate concern about the use of the sequential procedure, in part due to the evolving nature of the social sciences that have helped to inform best practices in eyewitness identification. There was a concern that the research, being based primarily on laboratory experiments, did not reflect actual conditions in the field. In mid-September, 2011, the American Judicature Society (AJS) published the results of its large scale two-year field study. The field study was led by Dr. Gary Wells, Dr. Jennifer Dysart, and Dr. Nancy Steblay, three well-recognized and widely-respected researchers in the field. The AJS study was based on hundreds of actual, law enforcement conducted eyewitness identification procedures in Charlotte, North Carolina; Dallas, Texas; Tucson, Arizona; and San Diego, California. Its findings confirmed what years of scientific lab results had found, namely, that the sequential method yields significantly fewer misidentifications of innocent persons, without significantly reducing the rate of accurate identifications of actual suspects.

Task Force member Robert Farr expressed concern that the sequential procedure may not be appropriate for certain child witnesses, or witnesses who exhibit dementia or other form of mental impairment. This concern was based on the 2011 meta-analysis report by Steblay, et. al. which

indicated that “a sequential lineup was not of benefit when eyewitnesses were children”. Page 109. Mr. Farr suggested that the Task Force recommendation include an exception for such witnesses. However, the position of the other members of the Task Force was that the statutory mandate be without exception, but that consideration of the issue be given for future study and review by the Task Force.

Double-Blind

The term “double-blind” means that the police officer administering a photo or live lineup should not be aware of the identity of the suspect, and the witness should be told that the officer does not know the identity of the suspect. Additionally, the witness does not know, and cannot know, which photo in the array is that of the suspect identified by the police. Blind means that the officer administering the photo array may know the identity of the suspect, but cannot know where the suspect’s photo is in the array, cannot know which photo the witness is viewing during the presentation of the photo array, and, as explained in the next paragraph, is not in a position to leak information to the witness or to give feedback to the witness regarding his/her identification.

In any scientific test-particularly one involving face-to-face contact between the tester and the person being tested, such as an eyewitness identification procedure--best practices require that the person administering the test not know the desired outcome. Blinding the tester to the desired outcome is a universally accepted scientific protocol as the person administering the test may unconsciously “leak” information regarding the desired outcome to the person being tested. Leaking may occur by non-verbal communication, such as body language, tone of voice, and gesture. In addition, research shows that when a police officer knows who the suspect is in the array, if the witness identifies that suspect as the perpetrator, the police officer may give positive feedback or reinforcement of that identification, which in turn may artificially inflate the degree of certainty on the part of the witness in his/her identification. Once such an identification is made by the witness, whether correct or not, the witness’ memory of the identification can then “replace” the person’s memory of the event. For these reasons, scientists have recommended, as an ideal best practice, that eyewitness identification procedures be double-blind.

In the legislation establishing the Eyewitness Identification Task Force, (Public Act No. 11-52) Section 1 provides that all state and local police departments employ the double-blind procedure “where practicable” as of January 1, 2011. Although the use of double-blind procedures are not the main focus of the Task Force’s work, Task Force members recognized at the outset, and the police department survey confirmed, that the strict requirement of a double-blind procedure may pose some difficulties for police departments, particularly small ones where all or most of the sworn personnel may know the identity of suspect under investigation of the major crime. Testimony before the Task Force from experts in the field indicated that the difficulties can be overcome by softening the double-blind requirement to a “blinded” procedure with the use of the so-called “folder shuffle method”, or some similar procedure. With the careful positioning of the investigating officer, the risk of either leaking information, or undue positive or negative reinforcement, can be avoided. Consequently, the Task Force is recommending an amendment to section 1 of the 2011 Public Act such that double blind will be required where practicable, but where impracticable, the blind procedure will be used.

V. Workplan and Timeframe

The Eyewitness Identification Task Force began its work in September, 2011, and met approximately every two weeks. The activities and steps taken by the Task Force during the fall and winter of 2011 included: presentations by experts in the field, both in and outside of Connecticut; development of the Police Survey; review of legislative approaches in other states; research issues relating to “show ups”; identification of the key elements of possible legislative language for Connecticut; and review of the issues of blind versus double-blind procedures.

VI. Working Groups

Early in the process, Justice Borden appointed two working groups. The first group was charged with surveying Connecticut police departments regarding their methods of and experience with eyewitness identification procedures. This group was headed by Darien Chief of Police Duane Lovello, and included Thomas Flaherty, Beau Thurnauer, Regina Rush-Kittle and Dr. Ron Schack. The second was charged with gathering and analyzing the legislation adopted in other states regarding the sequential method of presentation. This group was headed by Attorney Karen Goodrow, and included Deborah DelPrete Sullivan, Richard Colangelo, David Cameron and John DeCarlo.

Police Working Group

Results of the Police Department Survey

A critical component to the Eyewitness Identification Task Force’s work was to determine current police practices in the state and any concerns departments might have in utilizing the sequential procedure with eyewitnesses. The Police Department Survey was distributed to all Connecticut Police Departments via e-mail during the first week of November, 2011. The survey, administered via an internet survey tool, gathered enough responses (70) to provide a good interim sense of current practice. Paper surveys were also distributed via regional meetings of the Connecticut Association of Chiefs of Police.

The survey established a baseline of current police department practices across the state. According to the results received to date, 72.5% of police departments currently use a simultaneous approach and 70% of them plan to move to sequential. Fifteen police departments do not plan on moving to sequential, and half of those believe that sequential is less effective than the simultaneous approach. Only three police departments utilize sequential double-blind. Sixty percent of police departments believe that there are obstacles for them to implement the double blind method.

When using the sequential approach, many police departments allow for more than two laps (allowing the witness to look through the series of images more than two times) and use computers to find images. Eight departments use computers to present lineups and only one department uses facial recognition software. No departments that responded currently track the number of lineups and the accuracy of the lineups.

The barriers that most police departments listed in adopting sequential lineups include the need for additional training, few officers on duty, and information sharing in high profile cases. Seven respondents indicated the use of the sequential “single-blind” method. Single-blind refers to the situation where the administering officer is aware of the suspect, but is

positioned in such a way that he or she does not know which photographs the witness is viewing.

Legislative Working Group

The Legislative Working Group was charged with the task of identifying the states and jurisdictions around the country that require sequential administration of photo arrays and line-ups in eyewitness identification (EWID) procedures. They found that many jurisdictions mandate sequential, while others require it only when possible or feasible; and some jurisdictions merely recommend sequential procedures. The Legislative Working Group briefly outlined, as follows, the states and jurisdictions that require or recommend sequential administration of EWID procedures.

The listing below shows that the shift to blind and sequential procedures is rapidly extending throughout the nation, as more and more police departments recognize the science on which they are based.

Jurisdictions Mandating Blind, Double-Blind and/or Sequential Administration

1. **Boston, MA:** blind (whenever possible)/sequential
2. **Northampton, MA:** blind/sequential
3. **Chelsea, MA:** blind (whenever possible)/sequential
4. **Wellesley, MA:** blind/sequential
5. **New Jersey:** blind (when practicable)/sequential (where possible) per Attorney General's guidelines
6. **North Carolina:** blind or alternative/sequential
7. **Ohio:** blind (unless impracticable)/sequential
8. **Denver, CO:** blind (for all felonies and others with some exceptions)/sequential
9. **Minneapolis, MN:** blind/sequential (with exceptions)
10. **St. Paul, MN:** double blind (photo lineups)/ sequential (photo lineups)
11. **Chaska, MN:** double blind (preferred)/ sequential
12. **Virginia Beach, VA:** blind (whenever practical)/ sequential
13. **Roanoke, VA:** blind/sequential
14. **Virginia:** requires written policies reflecting current best practices
15. **Wisconsin:** blind (to extent feasible) and sequential (to extent feasible)
16. **Santa Clara, CA:** double-blind (whenever possible)/sequential
17. **Texas:** statute requires written policies (model policies or best practices); double blind/blinded if practicable
18. **Coral Springs, FL:** double blind/sequential
19. **Margate, FL:** double blind and sequential (to extent practicable)
20. **Palm Beach County, FL:** double blind (preferred if reasonably available)/sequential
21. **Caroline County Sheriff's Department, MD:** blind (whenever possible)/sequential
22. **Colstrip, MT:** blind (whenever possible)/sequential
23. **Lincoln, NE:** double blind (when possible)/ sequential
24. **Cannon Beach, OR:** double blind/sequential
25. **Grant County Sheriff, OR:** double blind (whenever possible)/sequential
26. **Lincoln County Sheriff, OR:** double blind (when practicable)/sequential
27. **Mount Pleasant, SC:** double blind/sequential
28. **Spartanburg, SC:** blind (unless there is a prior approval from a Lieutenant or above)/sequential

Jurisdictions Recommending/Preferring Double-Blind/Sequential

1. **Lighthouse Point, FL:** double blind and sequential (preferred)
2. **MD: Brunswick, MD:** double blind (when possible)/sequential (preferred)
3. **Caroline County, MD:** double blind (when possible)/sequential (preferred)
4. **Montgomery County, MD:** double blind and sequential (preferred). If circumstances prohibit part of these procedures, the officer should perform the lineup anyway and document the procedure used
5. **North Charleston, SC:** double blind/sequential (preferred), simultaneous is only conducted with a supervisor's approval
6. **Richmond, VA:** blind (preferred)/ sequential

Jurisdictions Offering the Option of Double-Blind/Sequential:

1. **Ohio:** blind (unless impracticable)/describes the folder system.
2. **Brunswick Police Department, MD:** blind (for sequential and when possible)/ no preference for sequential vs. simultaneous
3. **Bristol, RI:** double blind (whenever possible)/ no preference for sequential vs. simultaneous
4. **Cumberland, RI:** no preference for sequential vs. simultaneous. The sequential photo lineup described is the folder shuffle method
5. **Warwick, RI:** recommends double blind (when feasible)/ no preference for simultaneous vs. sequential
6. **Charleston County, SC:** double blind (required)/sequential (for live lineups, no preference for photo lineups)
7. **Austin, TX:** double blind (required unless there are extraordinary circumstances)/no preference for sequential vs. simultaneous
8. **Richardson, TX:** blind (preferred)/no preference for sequential vs. simultaneous (sequential only when it's blind)

The Legislative Working Group also provided a list of the jurisdictions in Connecticut presently utilizing the sequential process and noted that, although the mandate of the Task Force is to consider sequential administration, there are aspects of blind administration where the two areas naturally intersect (such as instructions to the witness, training, etc.) which required examination. The Working Group also stated that while the emphasis of the Task Force focused on photo array procedures, live lineup procedures are generally treated in the same fashion, and may require additional or specific protocols.

VII. Overview of Research Studies and Expert Presentations

Justice Borden invited prominent researchers in the field, representatives from Connecticut police departments as well as police departments and prosecutorial offices outside of the state to present their experiences and research findings regarding the use of sequential photo arrays.

The invitees included: Dr. Gary L. Wells, Professor of Psychology and Distinguished Professor of Liberal Arts and Sciences, Iowa State University; Dr. Jennifer Dysart, Associate Professor of Psychology, John Jay College; William G. Brooks III, Deputy Chief of Police of Wellesley,

Massachusetts and Michael Fabbri, Deputy District Attorney of Middlesex County, Massachusetts; and Duane Lovello, Chief of Police of the Darien Police Department, who is also a member of the Task Force.

In addition, the Task Force received and considered an extensive written report from Dr. Steven Clark, Professor of Psychology, at the University of California, Riverside. His research focuses on questions about human memory and eyewitness memory. Lastly, Professor David Cameron, a member of the Task Force, prepared a synopsis of the relevant research, which has been appended to this report.

VIII. Social Science Evidence:

A. Presentation by Dr. Gary Wells, Professor of Psychology and Distinguished Professor of Liberal Arts and Sciences, Iowa State University

Dr. Wells discussed his many years of research on the topic of eyewitness identification. He began conducting his research over 30 years ago by creating laboratory events where both the perpetrator and incident were identified. He then began manipulating various factors, for example: the characteristics of witnesses; instructions prior to the line-ups; types of line-ups; and, the behaviors of the line-up administrators.

Through these efforts, Dr. Wells identified the process of relative judgment in 1984, which remains a staple idea in eyewitness science today. As explained above, relative judgment means that, in an array that does not contain the actual perpetrator, the witness tends to pick out the one photo out of the array that most resembles the perpetrator relative to the other photos in the array. When the actual perpetrator's photo is not present in the array, this relative judgment tendency can result in the witness's identification of a "false positive".

Dr. Wells began to research ways to improve eyewitness performance focusing on the use of sequential, rather than simultaneous, procedures. The sequential procedure requires each witness to view a number of perpetrators, individually and sequentially, without knowing how many will appear. The eyewitness can respond "yes, no, not sure" to each viewing. This process allows the eyewitness to compare individual perpetrators to their memory rather than to other perpetrators.

Dr. Wells noted that in a recent laboratory test involving 13,143 participant witnesses worldwide, mistaken identifications were reduced by 22% using the sequential rather than simultaneous method, while the identification of the perpetrator was reduced by 8%. Dr. Steven Penrod of John Jay College then examined the 8% figure more deeply and found that the 8% figure diminishes when certain factors are considered, such as when the witness is unaware of the number of fillers in the line-up.

Dr. Wells' research, which admittedly is evolving, has found that the sequential method tends to work more effectively than the simultaneous method. Additional procedures also help to insure reliability, such as back-loading, where the eyewitness does not know how many photos will be viewed, a continuation procedure which requires the eyewitness to go through the remaining photos even if an identification has been made, allowing the eyewitness to talk through and potentially resolve a situation whereby he/she makes more than one identification, more than one view or lap of the photos when requested by the witness, and maintaining an accurate record of the identification procedure.

Dr. Wells stated that the goal needs to be to make eyewitness identification procedures as reliable as possible without creating an insurmountable burden for the prosecution. He also noted eyewitness identification should be weighed along with other information and that, at the outset, eyewitnesses should not be made to feel that they must be 100% certain in order to make an identification.

B. The 2011 American Judicature Society Field Study

Dr. Wells discussed the simultaneous vs. sequential field experiment conducted under the auspices of the American Judicature Society over a two year period, ending in 2011 with four police departments – Austin, TX; Charlotte, NC; San Diego, CA; Tucson, AZ. The study involved a collaborative effort with prosecutors and police departments and was funded by the JEHT Foundation, Open Society and Arnold Foundations.

Photo lineups were administered by laptop computers, to insure all administrators followed the same protocol. All responses were automatically entered on record and audio taping was used to make the identification. Further, random assignment was used at the last possible moment for either the simultaneous or sequential process and the photos were scrambled. In addition, the process was double-blind, i.e., the detective in the room administering the lineup did not know which person was the real suspect. The study found that sequential lineups yielded an identification of the suspect in 27.3% of the cases, while simultaneous lineups yielded an identification of the suspect in 25.5%. This difference was not statistically significant. However, the study found a significant reduction in the number of times victims misidentified someone. Victims misidentified photos as those of the perpetrator in 18.1% of the procedures using the simultaneous method and 12.2% of the procedures using the sequential method. Thus the field study corroborated the numerous lab studies finding that use of the sequential procedure significantly reduces the rate of misidentification of an innocent person, while not significantly reducing the rate of accurate identification of the actual perpetrator.

Dr. Wells underscored the importance of the sequential method in improving accuracy, while noting that it was not a magic bullet. Dr. Wells also stated that, while videotaping was not a part of the study, it could easily be done in the future. Dr. Wells also noted the AJS study limited eyewitness views of photos to two laps, but that in Hennepin County, Minnesota, witnesses were allowed as many laps as possible. The findings in Hennepin County were that by the third, fourth and fifth lap, eyewitness accuracy was reduced, thus suggesting a limitation to two laps for purposes of reliability.

Dr. Wells also noted the importance of flexibility in the use of double-blind procedures, to include blinding the administrator. An easy and inexpensive method to blind the administrator is the use of the folder shuffle method described above.

C. Presentation by Jennifer Dysart, Associate Professor of Psychology, John Jay College

Dr. Dysart discussed the findings of the American Judicature Society's (AJS) study and answered questions from Task Force members regarding questions raised from a review of the report of Dr. Steven Clark. Dr. Dysart's testimony echoed in large measure the opinions of Dr. Wells, and need not be set forth here in detail.

D. Report of Dr. Steven Clark, Professor of Psychology, University of California at Riverside

Dr. Clark's report was a reminder to the Task Force of the on-going and evolving science of human memory. Dr. Clark expressed an area of concern regarding a interpretive aspect of the AJS study. Dr. Clark's report was discussed and considered by the Task Force members.

IX. Law Enforcement Representatives

A. Presentation by Duane Lovello, Chief of the Darien Police Department

Task Force member Chief Duane Lovello presented testimony regarding the Darien's Police Department's photo lineup protocols. He began by describing Darien, its population, and the town's very low crime rate, noting that violent crime was a rarity. Chief Lovello estimated that Darien used photo lineups 12 times per year and stressed that using eyewitness identification as the sole evidence in any case was difficult.

Chief Lovello stated that the Darien Police Department began using the double-blind sequential protocol approximately two years ago. He reported that a minimal amount of training was needed, and the method easy to implement. He described the new witness identification form, witness instructions and protocol after the lineup. Chief Lovello stated that instructions to eyewitnesses were read aloud. He noted that, once the lineup is completed, the officer asks the witness to read three statements and initial the one that most accurately describes their opinion about whether he/she was or was not able to identify the offender with certainty.

Chief Lovello also addressed the Task Force's Police Survey. He mentioned that the initial survey's results indicated that, regardless of department size, concerns were not raised about sequential lineups. The only issue mentioned by some police departments focused on the costs associated with software upgrades. Concern, however, was raised with regard to the first section of the legislation regarding the double-blind procedure. Chief Lovello noted that the present Eyewitness Identification Act passed in the 2011 session of the Connecticut General Assembly describes double-blind only and that the Task Force might want to examine the double-blind requirement and the option of blind lineups.

There was discussion about a blinded sequential process using shuffled folders. In Darien, Chief Lovello noted that the police officer is out of view so the witness cannot infer any information from facial or body expressions. Chief Lovello emphasized the importance of insuring that the process be a fair one. The importance of having a statewide standard to make it easier for personnel from one police department to another to assist in the eyewitness identification process across jurisdictional lines was emphasized.

B. Presentations by William G. Brooks III, Deputy Chief of the Wellesley Police Department and Michael Fabbri, Middlesex County Deputy District Attorney

Chief Brooks

Chief Brooks has been employed with the Wellesley Police Department for 34 years. He became involved with police training in 2005, writing the policy on sequential lineups with the Middlesex District Attorney's Office, and instituting a training program at the Detective's Basic Training Course.

Chief Brooks cited the American Judicature Society's (AJS) recent research report as excellent work and noted that the AJS study found witnesses were more likely to use relative judgment with the simultaneous array. He also stated that false identifications are a concern for the entire criminal justice system.

Chief Brooks noted that simultaneous vs. sequential lineups should not be considered in a vacuum. Police officers are now moving toward the use of cognitive interviews - asking the witness to "sit back and talk about what happened", rather than disrupting the witness' memory by asking a barrage of questions. He also spoke about the use of composites, citing Dr. Wells' finding that composites can skew a witness' memory, making the identification less accurate with a subsequent photo array.

Chief Brooks mentioned that a variety of blind techniques work and that double-blind is not always necessary. He cited, by way of example, the folder shuffle method as one technique. Chief Brooks stated that in his department, a second officer is used to show the array. The patrol officer reads the instructions, introduces the second officer, and then the second officer presents the photographs.

Chief Brooks also noted that his department has been using the sequential method since 2005 with no implementation issues. He stated that clear policies are important and training is vital. He advocated that new detectives be trained within six months of their assignment. Chief Brooks supported a collaborative effort by the police to join in eyewitness identification reform as it makes police better investigators and witnesses.

Deputy District Attorney Fabbri

Attorney Fabbri has been a prosecutor for 26 years, and has worked overseeing the child abuse unit, and presently, as Chief of Homicide. Attorney Fabbri also conducts a number of training programs on eyewitness identification. He discussed the importance of treating eyewitness identification evidence just like one would treat other evidence; i.e., by focusing on how to capture, preserve and present it.

The use of sequential lineups was established in Massachusetts by case law only; there is no legislative mandate. In 2002 and 2003, Suffolk County began experiencing a number of DNA challenges, and started to examine the issue of eyewitness identification. As part of its examination, the District Attorney's Office began to conduct eyewitness identification trainings. Police departments in Middlesex County were required to adhere to the following protocol in every eyewitness identification procedure: 1. Specific instructions to witnesses regarding the procedure, 2. blind or double-blind administration, and 3. although not mandatory, the use of sequential, rather than simultaneous, administration. It was emphasized that the three protocols were to be employed together. Since 2003, 54 cities and towns have adopted all three procedures.

Attorney Fabbri concurred with Chief Brooks that it was important for law enforcement to take the lead in eyewitness identification reform. He noted that a task force in Massachusetts will soon be established and one of its responsibilities will be to determine what procedures are being used throughout the rest of the Commonwealth. He also spoke about his preference for using sequential vs. simultaneous, stating it preserves integrity, and that science and research show it is more reliable.

Attorney Fabbri emphasize that sequential and double-blind or blinded procedures should be made as easy as possible for police departments, and that training sessions are essential to reduce concerns. As part of their training, the police and prosecutors have developed a standardized protocol for all law enforcement, including the development of witness instructions and forms to insure both adherence to protocol and accuracy of record-keeping.

X. Best Practices

A best practice is a policy, process, activity, or strategy that has been established to be effective through laboratory and field research and application in the field. Best practices can evolve as research and application suggest new modifications to practice. The term “best practice” is used here to describe any aspect of the eyewitness identification process where research and experience suggests a specific method or procedure that is effective in producing desired outcomes (i.e., reduce the number of false eyewitness identifications while allowing accurate identifications).

Based upon its investigations as described above, the Eyewitness Identification Task Force has identified several recommended best practices in the eyewitness identification process to be incorporated into the eyewitness identification policy of each police department. These best practices are set forth in the recommendations included at the beginning of this report. The Task Force appreciates the desire of law enforcement to maintain eye-witness identifications as a viable investigative tool, while recognizing the need to reform the present practices in order to ensure as best as possible that the procedures used in Connecticut are reliable. In a nutshell, the Task Force recommends Connecticut’s adoption of the mandatory use of sequential eyewitness identification procedures and discontinuation of use of simultaneous array procedures. It is important that the best practices be uniform across the state, and that they be mandatory. These best practices are derived from the research as well as from the expert testimony presented to the Task Force from both academic and law enforcement personnel.

It is important to note that the best practices described in this report do not constitute a magic bullet. Human memory is not a videotape. It remains malleable, corruptible, dynamic and constructive, and mistakes will inevitably be made. Nonetheless, the Task Force recognizes that eyewitness evidence is often necessary for effective law enforcement. These best practices will not ensure that every eyewitness identification will be absolutely accurate. However, adoption of best practices will significantly reduce the incidence of false identifications, without significantly reducing the incidence of accurate identifications of actual perpetrators.

XI. Conclusion

The Eyewitness Identification Task Force unanimously believes that these best practices will significantly improve our state’s law enforcement and criminal justice systems, and will bring Connecticut to the forefront, along with the other jurisdictions that are in the process of revising their policies, by ensuring the reliability of eyewitness identification, and to ensure justice for the citizens of the State of Connecticut. We urge the legislature to enact appropriate legislation incorporating these best practices and recommendations.

Appendix I



Substitute House Bill No. 6344

Public Act No. 11-252

AN ACT CONCERNING EYEWITNESS IDENTIFICATION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2011*) (a) For the purposes of this section:

- (1) "Eyewitness" means a person who observes another person at or near the scene of an offense;
- (2) "Photo lineup" means a procedure in which an array of photographs, including a photograph of the person suspected as the perpetrator of an offense and additional photographs of other persons not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator;
- (3) "Live lineup" means a procedure in which a group of persons, including the person suspected as the perpetrator of an offense and other persons not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator;
- (4) "Identification procedure" means either a photo lineup or a live lineup; and
- (5) "Filler" means either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure.

(b) Not later than January 1, 2012, each municipal police department and the Department of Public Safety shall adopt procedures for the conducting of photo lineups and live lineups that comply with the following requirements:

(1) When practicable, the person conducting the identification procedure shall be a person who is not aware of which person in the photo lineup or live lineup is suspected as the perpetrator of the offense;

(2) The eyewitness shall be instructed prior to the identification procedure:

(A) That the perpetrator may not be among the persons in the photo lineup or the live lineup;

(B) That the eyewitness should not feel compelled to make an identification; and

(C) That the eyewitness should take as much time as needed in making a decision;

(3) The photo lineup or live lineup shall be composed so that the fillers generally fit the description of the person suspected as the perpetrator and, in the case of a photo lineup, so that the photograph of the person suspected as the perpetrator resembles his or her appearance at the time of the offense and does not unduly stand out;

(4) If the eyewitness has previously viewed a photo lineup or live lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup in which the person suspected as the perpetrator participates or in which the photograph of the person suspected as the perpetrator is included shall be different from the fillers used in any prior lineups;

(5) At least five fillers shall be included in the photo lineup and at least four fillers shall be included in the live lineup, in addition to the person suspected as the perpetrator;

(6) In a photo lineup, no writings or information concerning any previous arrest of the person suspected as the perpetrator shall be visible to the eyewitness;

(7) In a live lineup, any identification actions, such as speaking or making gestures or other movements, shall be performed by all lineup participants;

(8) In a live lineup, all lineup participants shall be out of the view of the eyewitness at the beginning of the identification procedure;

(9) The person suspected as the perpetrator shall be the only suspected perpetrator included in the identification procedure;

(10) Nothing shall be said to the eyewitness regarding the position in the photo lineup or the live lineup of the person suspected as the perpetrator;

(11) Nothing shall be said to the eyewitness that might influence the eyewitness's selection of the person suspected as the perpetrator;

(12) If the eyewitness identifies a person as the perpetrator, the eyewitness shall not be provided any information concerning such person prior to obtaining the eyewitness's statement that he or she is certain of the selection; and

(13) A written record of the identification procedure shall be made that includes the following information:

(A) All identification and nonidentification results obtained during the identification procedure, signed by the eyewitness, including the eyewitness's own words regarding how certain he or she is of the selection;

(B) The names of all persons present at the identification procedure;

(C) The date and time of the identification procedure;

(D) In a photo lineup, the photographs themselves;

(E) In a photo lineup, identification information on all persons whose photograph was included in the lineup and the sources of all photographs used; and

(F) In a live lineup, identification information on all persons who participated in the lineup.

Sec. 2. (*Effective from passage*) (a) There is established an Eyewitness Identification Task Force to study issues concerning eyewitness identification in criminal investigations and the use of sequential live and photo lineups. The task force shall examine: (1) The science of sequential methods of conducting a live lineup and a photo lineup, (2) the use of sequential lineups in other states, (3) the practical implications of a state law mandating sequential lineups, and (4) such other topics as the task force deems appropriate relating to eyewitness identification and the provision of sequential lineups.

(b) The task force shall consist of the following members or their designees: The chairpersons and ranking members of the joint standing committee of the General Assembly on the judiciary; the Chief State's Attorney; the Chief Public Defender; the Victim Advocate; an active or retired judge appointed by the Chief Justice of the Supreme Court; a municipal police chief appointed by the president of the Connecticut Police Chiefs Association; a representative of the Police Officer Standards and Training Council; a representative of the State Police Training School appointed by the Commissioner of Public Safety; a representative of the criminal defense bar appointed by the president of the Connecticut Criminal Defense Lawyers Association; a representative from the

Innocence Project; and six public members, including the dean of a law school located in this state and a social scientist, appointed one each by the president pro tempore of the Senate, the speaker of the House of Representatives, the majority leader of the Senate, the majority leader of the House of Representatives, the minority leader of the Senate, and the minority leader of the House of Representatives.

(c) The task force may solicit and accept gifts, donations, grants or funds from any public or private source to assist the task force in carrying out its duties.

(d) The task force shall report its findings and recommendations to the joint standing committee of the General Assembly on the judiciary in accordance with section 11-4a of the general statutes not later than April 1, 2012.

Approved July 13, 2011

Appendix II

Connecticut Police Department Eyewitness Identification Police Department Survey Results

Introduction

This survey is intended to provide a baseline for current eyewitness identification procedures in Connecticut police departments. This survey was distributed to all CT Police Departments via email during the first week of November, 2011. The survey, which is administered via an internet survey tool, was open through January 30, 2012. Seventy-three (73) responses have been collected and provide a good sense of current practice. Paper surveys were also distributed via regional meetings of the Connecticut Association of Chiefs of Police. The results in this appendix differ slightly (but insignificantly) from the interim results reported by the taskforce in December 2011.

Table 1. Number of Sworn Officers in Responding Department

How many sworn officers in your department?		
Answer Options	Response Percent	Response Count
less than 25	20.5%	15
25-50	45.2%	33
51-100	15.1%	11
101-200	15.1%	11
201-250	0.0%	0
251+	4.1%	3
<i>answered question</i>		73
<i>skipped question</i>		0

Table 2. Current Eyewitness Identification Process

Which of the following best describes your eyewitness identification process?		
Answer Options	Response Percent	Response Count
double-blind, simultaneous	6.8%	4
single-blind, simultaneous	64.4%	38
double-blind, sequential	5.1%	3
single-blind, sequential	11.9%	7
other	11.9%	7
<i>answered question</i>		59
<i>skipped question</i>		14

Other Comments:

- Photo array depicting suspect photo included among seven other individuals with similar features.
- 8 subject photo array with warning.
- Double-blind if possible
- double blind sequential to be implement 12/1, presently using traditional non blind method
- Depends on the circumstances of each case.
- As a very small University agency with only one detective, we have not had to use a lineup in quite some time.

Table 3. Upcoming Use of Sequential Identification

If your department is not currently using sequential identification, is your department planning on implementing this in the next year?		
Answer Options	Response Percent	Response Count
Yes	65.4%	34
No	34.6%	18
<i>answered question</i>		52
<i>skipped question</i>		21

Table 4. Reasons For Not Implementing Sequential ID Procedure

If no, please check any of the reasons that may apply for not implementing a sequential identification procedure:		
Answer Options	Response Percent	Response Count
Too complicated	15.8%	3
Requires additional training	26.3%	5
Not believed to be as effective as current procedure	52.6%	10
other	52.6%	10
<i>answered question</i>		19
<i>skipped question</i>		54

Table 5. Identification of Obstacles To Implementing Double-Blind Procedure

A double-blind procedure is required by statute beginning January 1, 2012, where practicable. Do you foresee any obstacles to implementing the double-blind procedure by then?		
Answer Options	Response Percent	Response Count
Yes	59.3%	35
No	40.7%	24
<i>answered question</i>		59
<i>skipped question</i>		14

Table 6. Reasons For Not Implementing Double Blind Procedure

If Yes, please check any of the reasons that may apply for not implementing a double blind procedure:		
Answer Options	Response Percent	Response Count
Too complicated	24.3%	9
Requires additional training	37.8%	14
Not believed to be as effective as current procedure	5.4%	2
Other	73.0%	27
<i>answered question</i>		37
<i>skipped question</i>		36

Table 7. Use of Multiple “Laps” In Sequential Process

If you are currently using sequential identification, do you allow witnesses to look at the sequence more than once?		
Answer Options	Response Percent	Response Count
Yes	69.2%	18
No	30.8%	8
<i>answered question</i>		26
<i>skipped question</i>		47

Table 8. How Many “Laps” Allowed

If yes, how many times do you allow witnesses to look through the sequence?		
Answer Options	Response Percent	Response Count
1 more time	15.8%	3
2 more times	5.3%	1
As many times as they want	78.9%	15
<i>answered question</i>		19
<i>skipped question</i>		54

Table 9. Use of Computer in Eyewitness ID Process

Do you use a computer for any part of the eyewitness identification process? If so, how? (check all that apply)		
Answer Options	Response Percent	Response Count
To find images that resemble the eyewitness description	93.5%	43
To present the images to the eyewitness	17.4%	8
Other	19.6%	9
<i>answered question</i>		46
<i>skipped question</i>		27

Table 10. Use of Facial Recognition Software

If you use the computer to find images that resemble the eyewitness description, do you use facial recognition software of any kind?		
Answer Options	Response Percent	Response Count
Yes	2.0%	1
No	98.0%	50
<i>answered question</i>		51
<i>skipped question</i>		22

Table 11. Tracking of Misidentifications

Do you track the number of misidentifications that occur in your eyewitness identification process?		
Answer Options	Response Percent	Response Count
Yes	1.8%	1
No	98.2%	56
<i>answered question</i>		57
<i>skipped question</i>		16

Table 12. Barriers To Implementation of Sequential, Double Blind Process

Are there certain circumstances that you feel make the implementation of a sequential, double blind process more difficult or impractical? (circle all that apply)		
Answer Options	Response Percent	Response Count
Violent crimes	11.1%	6
Need for a quick identification	61.1%	33
Multiple eyewitnesses	37.0%	20
Eyewitness description includes very distinctive features	18.5%	10
Periods when there are few officers on duty at the station	68.5%	37
Crimes where an "all hands on deck" investigation leaves all officers with knowledge of the suspects identification	75.9%	41
Other	22.2%	12
<i>answered question</i>		54
<i>skipped question</i>		19

Appendix A: Responding Departments

Ansonia
Berlin Police Department
Bethel Police
Bloomfield Police
Branford Police Department
Bridgeport Police Department
Brookfield
Canton
Central CT State University
Cheshire Police Department
City of Groton Police Department
Coventry Police Department
Cromwell Police
Danbury Police Department
Darien
East Hartford
Eastern Connecticut State University
Fairfield CT Police Department
Farmington Police Department
Granby Police Department
Greenwich
Guilford
Hartford Police Department
Madison Police Department
Manchester Police
Middlebury
Middletown Police Department
Monroe Police Department
Naugatuck Police
New Canaan Police Department
New Haven Police Department
New Milford Police Department
Newington Police Department
Newtown

Norwalk PD
Norwich Police Department
Orange Police Department
Plainfield
Plainville Police Dept.
Putnam Police Department
Redding Police Department
Seymour Police Department
Shelton Police Department
Simsbury Police Department
Southington Police Department
State Capitol Police
Stratford Police Department
Suffield Police Department
Thomaston Police Department
Trumbull Police
UConn Health Center Police Department
Vernon Police Department
Waterford Police Department
West Hartford Police Department
West Haven Police Department
Weston Police Department
Westport Police Department
Wethersfield
Willimantic
Wilton
Winchester Police Department
Windsor Locks
Wolcott Police Department
Woodbridge Police Dept.
Stonington

Appendix B: Other Barriers To Implementing Sequential ID Process “Other” Responses

- However, this will cause us expense and other problems in that our computer system software is not currently designed to provide sequential ID photos.
- It is more difficult for witnesses under stress
- Modification needed to software
- Would require a change in the procedure in producing the ID paper(s).
- Currently using computer program that does not allow for it. We are looking at ways to change this such as printing out photos and then showing them sequentially.
- Require reprogramming of records managements system which creates line ups.
- Simultaneous array is easier to preserve as evidence.

Appendix C: Other Barriers To Implementing Double-Blind Process

- In some cases, especially high profile, all department sworn members will know who we are looking for.
- Due to regular information sharing, number of officers on shift, etc. nearly impossible to find any officer without knowledge of incident/suspect identity, or requires additional overtime expenses to call someone in to conduct procedure. Also, speed may be factor for apprehension of offender(s) not allowing for involvement of another officer to conduct id process. RMS system does not currently store sequential line-ups, formatted to preserve simultaneous arrays.
- small number of personnel may make it difficult to find someone who does not know the identity of the suspect
- Smaller departments where all of the officers know the most active and common suspects. It would be impossible to find an officer without knowledge of an incident, especially when they are encouraged to share info.
- In small departments, when it is important to conduct a line up quickly, it may be difficult to assign an officer who hasn't any knowledge of the crime or suspect(s) to conduct the line up.
- We are a small department with very limited manpower. Also in a small department officers are very familiar with ALL active investigations.
- Manpower and budget limitations.
- Requires additional personnel to conduct identification process.
- Time consuming and there will be a cost to training personnel. Procedural issues with smaller departments. Detective Divisions are small and normally are aware of who the suspect is. Blind becomes an issue.
- Everyone in the agency may know the suspect in the entire department. May cause extra expenditures.
- A small department like Granby (15 sworn officers) might find it difficult to find officers that don't know who the suspect is.
- Requires more manpower
- When practicable? According to who? In a small dept it is not always easy to do and puts an additional work burden on others who may not be available.
- Double blind procedures may initially appear to be confusing to the victim, witness.
- We will need to change our method of producing the ID process, but it is not an insurmountable issue.
- Manpower. We recently had a robbery where one Detective was doing multiple photo line-ups to multiple people. Waiting to get a Detective who knows nothing about the suspects could be difficult

- Requires software changes to photo line-up system
- Not sure as to potential software costs. That would have to be evaluated.
- Most Detectives and Officers are familiar with the cases/suspects-burdensome to seek out personnel unfamiliar with case when timing is an issue
- Manpower
- In some instances the investigative process requires swift action to identify suspects. A process that demands numbers of staff, the use of a facility instead of field identification, and therefore added time may impede an investigation unnecessarily. Moreover, according to the NIJ: "So far, research that compares simultaneous and sequential lineups and the use of "blind" administrators has not been conclusive."
- It may be difficult to find a blind administrator if the department is small or if the case is well-known in the agency. Also, it requires added personnel and therefore added cost.
- Problems may occur when suspect well known, small department, or time constraints, such as a serious assault where an identification is needed to prevent flight of a suspect.
- We will need to assign more personnel to assist the detective whenever a lineup is required.
- Small departments may have difficulty in finding officers completely removed from the issues or persons involved in the case.
- Our small department would make it difficult to assure that one or more officers would not have knowledge of the identity of the suspect.
- limited resources in smaller PD's
- Lack of number of Police Officers on duty at any time. It may only be one.

Appendix III

From: Eyewitness Identification Task Force Legislative Working Group

[Karen Goodrow, David Cameron, Richard Colangelo, John DeCarlo, Deborah DelPrete Sullivan]

To: Justice David Borden, Chair, Eyewitness Identification Task Force

Re: Recommendations of Legislative Working Group - Jurisdictions Requiring Sequential Administration of Photo Arrays & Line-Ups

A. Overview: There are several states and many jurisdictions around the country that require sequential administration of photo arrays and line-ups in eyewitness identification (“EWID”) procedures. Some jurisdictions mandate sequential, while others require it only when possible or feasible; a few jurisdictions merely recommend sequential procedures. This document contains recommendations from the Legislative Working Group, and briefly outlines the states and jurisdictions that require or recommend sequential administration of EWID procedures. The information was compiled by the Innocence Project, and can be found at www.innocenceproject.org. Additionally, a list of the jurisdictions in Connecticut that are presently utilizing the sequential process will be provided to the Task Force. Although the mandate of the Task Force is to consider sequential administration, recommendations of the Group contemplate aspects of blind administration where the two naturally intersect (such as instructions to the witness, training, etc.). Finally, although the emphasis is on photo array procedures, live line-up procedures are generally treated in the same fashion, but may require additional or specific protocols.

B. Recommendations: the Legislative Working Group makes the following recommendations to the Task Force:

1. mandate sequential administration
2. adopt uniform protocol of sequential administration (allowing for alternative methods of viewing photos by individual, folder shuffle, and computer)
3. adopt uniform witness instructions, both before and after viewing (consider adoption of Attorney General’s 1999 Guidelines, with additional instructions from other jurisdictions)
4. record accurately entire EWID procedure (consider further use of video, audio, forms), including pre-administration instructions
5. adopt remedies for non-compliance (admissibility of evidence at pre-trial and trial proceedings; jury instructions)
6. mandatory training of police, judiciary, prosecutors, defense counsel

C. Implementation:

1. In order to insure **mandated standardized, statewide sequential administration of photo arrays and line-ups**, every police department should have and implement written policies on eyewitness identification. Language such as “where feasible” and “when practicable” should be avoided; additionally, a written explanation should be required when uniform procedures are not followed.
2. EWID procedures should be administered individually with a witness, outside the presence of other potential witnesses.

3. Formal standardized instructions (pre-printed form) should be read fully to the witness prior to all identification procedures, as well as after the procedure. The eyewitness is to acknowledge that the instructions were read and received in writing. The instructions should include but not be limited to the following:
 - a. Instructing the witness that the person who committed the crime may or may not be present in the lineup or photo array.
 - b. Instructing the witness that the lineup administrator does not know the suspect's identity.
 - c. Assuring the witness that regardless of whether he/she makes an identification, the police will continue to investigate the case.
 - d. Instructing the witness that individuals may not appear exactly as they did on the date of the incident because certain features such as facial hair (or complexion in photos) are subject to change.
 - e. Instructing the witness that it is just as important to clear a person from suspicion as it is to identify a person as the wrongdoer.
4. No input from the administrator prior to and during the eyewitness identification process, and no feedback from the administrator after the eyewitness identification, if one is made.
5. The witness should not be told that they could view the sequential lineup a second time, but the second lap should be allowed upon the request of the witness. The witness should not be informed of the number of photos to be shown in the lineup.
6. The administrator rather than the witness is to handle the photos in the lineup.
7. Video/Audio recording of eyewitness identification is required, unless good cause shown.
8. Training programs should be implemented to train law enforcement personnel in the use of the procedures for eyewitness identification. (Include training for the Judiciary, State and Defense on the scientific research re mistaken identification, and the recommended reforms.)

D. Other Jurisdictions Mandating Blind, Double-Blind and/or Sequential Administration:

1. **Boston, MA:** blind (whenever possible)/sequential.
2. **Northampton, MA:** blind/sequential.
3. **Chelsea, MA:** blind (whenever possible)/sequential.
4. **Wellesley, MA:** blind/sequential.
5. **New Jersey:** blind (when practicable)/sequential (where possible) per Attorney General's guidelines.
6. **North Carolina:** blind or alternative/sequential.
7. **Ohio:** blind (unless impracticable)/sequential.
8. **Denver, CO:** blind (for all felonies and others with some exceptions)/sequential.
9. **Minneapolis, MN:** blind/sequential (with exceptions).
10. **St. Paul, MN:** double blind (photo lineups)/ sequential (photo lineups).
11. **Chaska, MN:** double blind (preferred)/ sequential.
12. **Virginia Beach, VA:** blind (whenever practical)/ sequential
13. **Roanoke, VA:** blind/sequential
14. **Virginia:** requires written policies reflecting current best practices.
15. **Wisconsin:** blind (to extent feasible) and sequential (to extent feasible).
16. **Santa Clara, CA:** double-blind (whenever possible)/sequential.
17. **Texas:** statute requires written policies (model policies or best practices); double blind/blinded if practicable.
18. **Coral Springs, FL:** double blind/sequential
19. **Margate, FL:** double blind and sequential (to extent practicable)
20. **Palm Beach County, FL:** double blind (preferred if reasonably available)/sequential.
21. **Caroline County Sheriff's Department, MD:** blind (whenever possible)/sequential.
22. **Colstrip, MT:** blind (whenever possible)/sequential.

23. **Lincoln, NE:** double blind (when possible)/ sequential.
24. **Cannon Beach, OR:** double blind/sequential.
25. **Grant County Sheriff, OR:** double blind (whenever possible)/sequential.
26. **Lincoln County Sheriff, OR:** double blind (when practicable)/sequential.
27. **Mount Pleasant, SC:** double blind/sequential.
28. **Spartanburg, SC:** blind (unless there is a prior approval from a Lieutenant or above)/sequential.

E. Jurisdictions Recommended/Preferring Double-Blind/Sequential:

1. **Lighthouse Point, FL:** double blind and sequential (preferred).
2. **MD: Brunswick, MD:** double blind (when possible)/sequential (preferred).
3. **Caroline County, MD:** double blind (when possible)/sequential (preferred)
4. **Montgomery County, MD:** double blind and sequential (preferred). If circumstances prohibit part of these procedures, the officer should perform the lineup anyway and document the procedure used.
5. **North Charleston, SC:** double blind/sequential (preferred), simultaneous is only conducted with a supervisor's approval.
6. **Richmond, VA:** blind (preferred)/ sequential.

F. Jurisdictions Offering the Option of Double-Blind/Sequential:

1. **Ohio:** blind (unless impracticable)/describes the folder system.
2. **Brunswick Police Department, MD:** blind (for sequential and when possible)/ no preference for sequential vs. simultaneous.
3. **Bristol, RI:** double blind (whenever possible)/ no preference for sequential vs. simultaneous.
4. **Cumberland, RI:** no preference for sequential vs. simultaneous. The sequential photo lineup described is the folder shuffle method.
5. **Warwick, RI:** recommends double blind (when feasible)/ no preference for simultaneous vs. sequential.
6. **Charleston County, SC:** double blind (required)/sequential (for live lineups, no preference for photo lineups).
7. **Austin, TX:** double blind (required unless there are extraordinary circumstances)/no preference for sequential vs. simultaneous.
8. **Richardson, TX:** blind (preferred)/no preference for sequential vs. simultaneous (sequential only when it's blind)

G. Other Jurisdictions Considering Legislative Mandates:

1. **Pennsylvania** (Wrongful Convictions of the Pennsylvania Joint State Government Commission)
2. **New York** (New York State Justice Task Force)
3. **Rhode Island** (Rhode Island's Task Force to Identify & Recommend Policies and Procedures to Improve the Accuracy of Eyewitness Identifications)

H. Items for further study:

1. ***Should confidence statements be included?*** The consensus of the sub-group was that confidence statements are not measures of reliability, however, there may be research supporting the correlation between confidence statements and accuracy when statements are given immediately following identification. If confidence statements are included, they should be taken at the time

the identification is made, in the precise words of the witness and accurately recorded. Confidence statements should not be taken in percentages.

2. ***Should the eyewitness identification be videotaped?*** Ideally yes, but there are obvious cost concerns. At the very minimum, the entire process must be recorded accurately; discussion regarding using standardized forms and tools re pre-process questions to witness and post-process questions to witness such that the procedure becomes as standardized as that used for Miranda warnings. Should the witness be told that the process will be recorded?
3. ***How many laps/views of photos to allow/require?*** Should the photo/live lineups be in the same order upon multiple viewings, or reshuffled to allow randomness?
4. ***What should be the precise method of viewing of the photos?*** How much time should a witness have to look at each photo and should the witness be allowed to look at the photos for different amounts of time.
5. ***What number fillers should be required?*** Some states require six or eight. Should a minimum standard be set for the number of fillers? The file shuffle method generally requires ten folders: the suspect, four blanks and five fillers.
6. ***What are the appropriate remedies where sequential or even double blind procedures are not followed?*** Generally, jurisdictions allow evidence of non-compliance to be used at pre-trial hearings and at trial, and also provide specific jury instructions.

Appendix IV

Simultaneous vs. Sequential Presentation in Eyewitness Identifications: Laboratory Experiments and Field Studies

David R. Cameron

For decades, law enforcement agencies routinely presented a suspect in a crime for viewing by an eyewitness in a live lineup or photo array that included several other individuals known to be innocent. Over the past thirty years, more than 70 laboratory experiments have been conducted to compare the frequencies with which eyewitnesses identify perpetrators of simulated crimes or others in lineups in which the photos or persons are presented and viewed simultaneously with the frequencies with which they identify perpetrators or others when the photos or persons are presented and viewed sequentially – that is, one at a time. Over the past eight years, a handful of field studies have been conducted in several cities in which those frequencies have been observed in actual police lineups that include suspects in actual crimes who are viewed by eyewitnesses to the crimes. This note summarizes the results of those laboratory experiments and field studies.

Laboratory Experiments

Over the course of ten years from 1967 to 1977, the U.S. Supreme Court issued at least half a dozen important decisions pertaining to eyewitness identifications.¹ In the wake of those decisions, and perhaps influenced to some degree by the Court's concerns about suggestiveness in the identification procedure and the possibility of misidentification, researchers in the U.S., Canada, and elsewhere began investigating the many factors that could affect the reliability of eyewitness identifications.

In an important article published in 1978, Gary Wells (1978) grouped those factors into two categories – system variables and estimator variables. System variables included all the aspects of the identification procedure that can be controlled by law enforcement – beginning with the separation of eyewitnesses at the crime scene, interviewing them and obtaining their descriptions, selecting photographs or individuals in the case of live lineups that correspond to the description of the perpetrator provided by the eyewitness, providing instructions to the eyewitness regarding the procedure, and presenting the lineup to the eyewitness. Estimator variables included all of the factors – time of day, lighting, distance from the crime, presence of a weapon, the race of the perpetrator and eyewitness, whether the eyewitness was the victim, characteristics of the witness, etc. – that can't be controlled by law enforcement and depend on the circumstances of each crime. Because the system variables could be controlled by law enforcement, a substantial body of research began to accumulate regarding how such variables affect the reliability of an identification. One such variable involves the method by which the lineup is presented to the eyewitness.

For many years, the conventional way of presenting a lineup was either to have the suspect and others stand together to be viewed by the eyewitness or show the eyewitness photographs of the suspect and others arrayed on a photo board. Because the eyewitness saw the suspect and up to a half-dozen others who were known to be innocent simultaneously, the method of presentation came to be known as the simultaneous method. In another important article, Wells (1984)

¹ Among the most important were *United States v. Wade*, 388 U.S. 218 (1967); *Stovall v. Denno*, 388 U.S. 293 (1967); *Simmons v. United States*, 390 U.S. 377 (1968), *Neil v. Biggers*, 409 U.S. 188 (1972); and *Manson v. Brathwaite*, 432 U.S. 98 (1977).

suggested that, when asked to identify the perpetrator in a lineup based on a simultaneous presentation, eyewitnesses tend to make a “relative judgment.” That is, they tend to compare the individuals in the live lineup or photo array and choose the person they believe looks most like the perpetrator, rather than making an “absolute” judgment that compares each individual with their recollection of what the perpetrator looked like.

In that article, Wells reported the results of an experiment that found that the presentation of a blank lineup which omitted the suspect prior to presentation of a second lineup with the suspect present substantially reduced the number of false identifications. However, as Lindsay and Wells (1985) noted in a follow-up article, employing two lineups would create several problems. It would, first of all, require two lineups, meaning the police would have to obtain sufficient fillers for two lineups. More importantly, all eyewitnesses making a selection in the first lineup would be eliminated, which would create an obvious problem if there were only one eyewitness and that eyewitness made a selection in the first lineup. Finally, they noted that it might soon become widely known among the public that the first lineup omitted the suspect.

Lindsay and Wells (1985): Those problems led Lindsay and Wells to propose, as an alternative, sequential presentation of the photos of the suspect and fillers. To test their hypothesis that sequential presentation would reduce the number of filler identifications, they conducted an experiment involving a staged crime and 240 student eyewitnesses, randomly assigned to one of four groups each of which had 60 students. One group was shown a photo lineup with six photos, one of the culprit and five of fillers. A second group was shown a photo lineup with six fillers, one of whom resembled the culprit. A third group was shown photos of the culprit and five fillers sequentially. A fourth group was shown photos of six fillers, one of whom resembled the culprit, sequentially.

The results of the Lindsay and Wells experiment are presented below.² They found that sequential presentation of culprit-present lineups significantly reduced the frequency with which fillers were chosen compared with the frequency in simultaneous culprit-present lineups (2 percent in sequential lineups vs. 12 percent in simultaneous lineups). They also found that sequential presentation greatly reduced the frequency with which fillers (including the person resembling the culprit) were selected in culprit-absent lineups compared with the frequency with which fillers were selected in simultaneous culprit-absent lineups (35 percent in sequential lineups vs. 58 percent in simultaneous lineups) and greatly increased the frequency of correct non-identifications in culprit-absent lineups (65 percent in sequential lineups vs. 42 percent in simultaneous lineups.) However, they did find that sequential presentation of culprit-present lineups reduced the frequency of suspect IDs (from 58 percent in simultaneous to 50 percent in sequential) and substantially increased the frequency of no identification (from 30 percent in simultaneous to 48 percent in sequential) in such lineups.

² Researchers have used various labels – “perpetrator,” “target,” “culprit” – to refer to the individual who committed the simulated crime in the laboratory experiment. The field studies, which involve actual police lineups, on the other hand, use “suspect” since the individual is in fact a suspect. To avoid confusion, the tables presented below use “culprit” to refer to those who committed the simulated crime in a laboratory experiment and “suspect” to refer to those suspected of having committed a crime in a field study. Researchers also use various labels – e.g., “filler” or “foil” – to refer to the persons known to be innocent who are included in lineups. To simplify, the tables presented below use “filler” to refer to the individuals other than the culprit or suspect who are included in the lineups.

Lindsay & Wells Experiment (1985)

	Simultaneous	Sequential	Difference
	<hr/>	<hr/>	<hr/>
Culprit present:			
Culprit ID (correct)	58	50	-8
Filler ID	12	2	-10
No ID	30	48	18
Culprit absent:			
Filler ID	58	35	-23
No ID (correct)	42	65	23

Source: Lindsay and Wells (1985), Table 1, p. 561.

Stebly, Dysart, Fulero, and Lindsay (2001): Lindsay and Wells' suggestion that sequential presentation of photos in a lineup reduces the frequency of mistaken identifications by eyewitnesses prompted a number of scholars to conduct experiments designed to compare the effects of the two methods of presentation. By 2000, more than two dozen experiments had been conducted by scholars in the U.S., Canada, the United Kingdom, Germany, and other countries. Most of the experiments confirmed the Lindsay and Wells finding. But some did not and in many of the ones that did confirm the Lindsay and Wells finding the effect was not statistically significant.

The mixed findings led Stebly et al. to conduct a meta-analysis of the findings that had accumulated over the past two decades. They identified 23 papers, nine of which had been published, that provided 30 tests of the hypothesis that eyewitnesses are less likely to make an incorrect identification when the lineup is presented sequentially rather than simultaneously. The 30 tests included a total of 4,145 participants. The sample sizes ranged from 32 to 327 and had a mean of 138. Two of the 30 tests did not include the statistics required in the meta-analysis and were therefore omitted from the meta-analysis.

The overall frequencies of culprit, filler and no IDs in the 28 tests, presented below, were generally consistent with those found in the Lindsay and Wells study. With the culprit in the lineup, the frequency with which fillers were identified was less in lineups with sequential presentation than in those with simultaneous presentation (19 percent in sequential vs. 24 percent in simultaneous). And the frequency with which fillers were identified in culprit-absent lineups was substantially lower with sequential presentation than with simultaneous presentation (28 percent in sequential vs. 51 percent in simultaneous.) On the other hand, the reduction in filler IDs with sequential presentation in culprit-present lineups was less than Lindsay and Wells had reported (-5 vs. -10 in Lindsay and Wells). And the reduction in culprit IDs with sequential presentation in culprit-present lineups was substantially greater than the reduction reported by Lindsay and Wells (-15 vs. -8 in Lindsay and Wells). Overall, then, the results tended to confirm the initial finding that sequential presentation reduces filler IDs, especially in the culprit-absent lineups. But they also confirmed the initial finding that sequential presentation results in a substantial reduction in culprit IDs.

Stebly et al. Meta-Analysis, 2001
(28 experiments, 1983-2000)

	<u>Simultaneous</u>	<u>Sequential</u>	<u>Difference</u>
Culprit present:			
Culprit ID (correct)	50	35	-15
Filler ID	24	19	-5
No ID	26	46	20
Culprit absent:			
Filler ID	51	28	-23
No ID (correct)	49	72	23

Source: Steblay et al. (2001), Table 1, p. 463.

Stebly et al. (2001, pp. 466-7) examined the impact of a variety of moderator variables on the frequency of correct and false identifications. One of the more important moderator variables involves the age of the eyewitness – specifically, when the eyewitness is either a young child or an elderly adult. At that time there was only one study based exclusively on elementary students. That study found that, compared with the overall results in the other experiments, the sequential method of presentation produced substantially fewer culprit IDs than the simultaneous method in the culprit-present lineups and only slightly more correct no IDs in the culprit-absent lineups. And in contrast to the other studies, it found very little difference in the frequency of filler IDs in culprit-absent lineups. That finding led Steblay et al. (2001) to conclude that sequential lineups do not produce superior results (more correct IDs, fewer filler IDs) among children and, citing earlier work by Lindsay et al. (1997), can produce inferior results. Steblay et al. (2001, p. 471) went on to say, “Alternative procedures are required to deal with child witnesses.” Although noting that some promising work has been done in that regard by Pozzulo and Lindsay (1997, 1999), they concluded, “Reliable identification evidence from younger children may be difficult to obtain until a new innovation occurs in identification research.”³

Stebly, Dysart, and Wells (2011): The mixed findings summarized by Steblay et al. in their 2001 meta-analysis generated a good deal of debate among the proponents and opponents of sequential presentation, and over the next decade more than 40 tests of the effects of sequential and simultaneous presentation were conducted in nearly two dozen labs. In 2011, Steblay, Dysart and Wells published another meta-analysis that included the tests considered in the earlier meta-analysis as well as 41 new ones. The 2011 meta-analysis reported the results of 72 tests covering experiments from 1985 to 2010 that included a total of 13,143 participants.⁴ The sample sizes ranged from 32 to 2529, with a mean of 183; excluding the largest test, which was conducted online, the samples ranged from 32 to 619, with a mean of 150.

³ Pozzulo and Lindsay (1997, 1999) suggest several ways to improve the reliability of identifications by child witnesses – for example, by including an explicit “I don’t know” option, providing more extensive instructions, including an instructional video or handout, and/or asking them to first eliminate individuals.

⁴ The authors excluded several tests that included multiple suspects in a single lineup, allowed witnesses multiple laps through a lineup, allowed the witness to control the sequential lineup, or allowed the witness to view photos side-by-side in a sequential lineup. See Steblay, Dysart, and Wells (2011), p. 104.

The overall results of the 72 tests, presented below, are quite similar to those presented by Steblay et al. in the 2001 meta-analysis – hardly surprising, of course, since almost half of the 72 tests were the focus of the earlier meta-analysis.

Steblay, Dysart, Wells meta-analysis (2011)
(72 Experiments, 1985-2010)

	Simultaneous	Sequential	Difference
Culprit present:			
Culprit ID (correct)	52	38	-14
Filler ID	24	24	0
No ID	27	41	14
Culprit absent:			
Filler ID	57	36	-21
No ID (correct)	43	64	21

Source: Steblay, Dysart, and Wells (2011), Table 1, p. 107.

The 2011 meta-analysis found that sequential presentation dramatically reduces the frequency of filler IDs in culprit-absent lineups (36 percent in sequential vs. 57 percent in simultaneous). And it substantially reduces the frequency of culprit IDs (38 percent in sequential vs. 52 percent in simultaneous) and increases the frequency of no IDs (41 percent in sequential vs. 27 percent in simultaneous) in culprit-present lineups. However, contrary to the initial Lindsay and Wells test and the results reported in the 2001 meta-analysis, sequential presentation appears not to have reduced the frequency of filler IDs in culprit-present lineups; indeed, the frequency of filler IDs was identical – 24 percent – in both types of presentation.

Not surprisingly, the quality of the 72 experiments included in the 2011 meta-analysis varied widely. For example, many of the experiments did not employ a full 2 (culprit present/absent) X 2 (simultaneous/sequential) and fully randomized design, as Lindsay and Wells had in their 1985 study. However, 13 laboratories published a total of 27 tests that did employ a fully randomized 2 X 2 design, which Steblay, Dysart, and Wells rightly regard as “the gold standard” in experimental research.

When the analysis is confined to those 27 tests, the results (Table 3, p. 113) offer more support than the full set of 72 tests for the hypothesis that the frequency of filler IDs is lower in sequentially-presented lineups (19 percent) than in simultaneously-presented lineups (25 percent). In addition, the fully randomized 2 X 2 subset reveal a smaller loss in culprit IDs in sequential lineups compared with simultaneous lineups (8 percentage points compared with a loss of 14 percentage points in the full set of 72 tests). And it reveals, as did the full set of 72 tests, a substantially lower frequency of filler IDs in the culprit-absent sequential lineups (32 percent) than in the culprit-absent simultaneous lineups (54 percent).

27 2 X 2 Fully Randomized Tests, 1985-2010

	Simultaneous	Sequential	Difference
Culprit present:			
Culprit ID (correct)	52	44	-8
Filler ID	25	19	-6
No ID	24	39	15
Culprit absent:			
Filler ID	54	32	-22
No ID (correct)	46	68	22

As in the 2001 meta-analysis, Steblay, Dysart, and Wells (2011) considered the impact of a number of moderator variables, including the age of the eyewitness. Noting recent research (e.g., Memon and Gabbert, 2003) that suggests older adults experience difficulties in making lineup decisions that result in considerable misidentifications, they compared the frequencies of correct and filler IDs among children under 12, adults, and older adults in both culprit-present and culprit-absent lineups with simultaneous or sequential presentation (Table 2, p. 110). They found that the difference in the frequencies of suspect IDs in culprit-present lineups with simultaneous and sequential presentation was considerably greater for older adults than for adults in general, suggesting a greater loss of suspect IDs with the sequential method for older adults. With respect to children under the age of 12, they found the method of presentation appeared to have no impact on the frequency with which children made correct and incorrect selections in culprit-absent lineups; they had very high rates of misidentification with both types of presentation.

These findings were based on only a handful of tests involving older adults (5) or children under 12 (4) and should therefore be treated with some caution. Nevertheless, the authors draw an important conclusion from those findings concerning the potential unreliability of identifications, regardless of the method of presentation, when witnesses are older adults or young children. They state (pp. 109-10) that, “tests with older adults and those with children show a significant advantage of the simultaneous lineup in a culprit-present lineup condition, and older adults demonstrate a significant sequential lineup advantage in a culprit-absent condition. However, the general lesson from the few available tests is that older witnesses and children make large percentages of errors. When the culprit is absent from the array, the sequential format seems to inhibit choosing somewhat with older adults, but overall these tests show relatively high filler pick rates with both formats: 50% with sequential lineups and 74% with simultaneous lineups. Similarly, in these tests, children chose from both sequential and simultaneous lineups at high rates...with very high error levels regardless of lineup format. In short, children and older adults show significantly different (and profoundly poorer) eyewitness performance than does the (non-older) adult population regardless of whether they are using the simultaneous format or the sequential format.”

Field Studies

As the research accumulated about the impact of system and estimator variables on eyewitness identifications, a development occurred that caused policy makers to focus increased attention on identification procedures. In 1984, Alec Jeffreys, a young genetic scientist at the University of Leicester, discovered that the DNA of individuals, even members of the same family, varied and

was unique to each individual.⁵ Within two years, DNA had been used for the first time to convict a rapist and murderer in Leicestershire and free a suspect who otherwise probably would have been convicted of the crime.

The forensic use of DNA spread very rapidly after Jeffreys' discovery. Genotyping protocols for forensic identification were developed in the U.K. and the U.S. and soon thereafter national DNA databases were created in both countries. DNA was used as a basis for conviction in the U.S. for the first time in 1987. In 1989, the first exoneration through DNA occurred in the U.S. As the number of exonerations grew year by year in the U.S. – as of February 2012, the Innocence Project reported a total of 289 exonerations through DNA – increased attention was directed at eyewitness identification procedures because misidentifications were found to have occurred in a great majority of the wrongful convictions for which an exoneration was later obtained with DNA. An early study by Wells et al. (1998) of 40 DNA exonerations found that 36 of the wrongful convictions – 90 percent – were based, at least in part, on one or more mistaken eyewitness identifications. The Innocence Project reports that eyewitness misidentifications were a contributing cause in more than 75 percent of all wrongful convictions that were overturned with DNA evidence.⁶

The U.S. Department of Justice Guidelines (1999): Prompted by the large and growing number of wrongful convictions that had come to light with post-conviction DNA testing and the prominent role of eyewitness misidentifications in contributing to those convictions, in 1999 the U.S. Department of Justice (1999) issued guidelines for eyewitness identification procedures. The guidelines were influenced by the academic research that had accumulated – in fact, Gary Wells served on the Planning Panel and the Technical Working Group – about the impact of various system variables. But while describing procedural best practices, the guidelines refrained from recommending certain practices such as “blind” administration of the identification procedure or sequential presentation of lineups. However, the report did note, under the heading “further considerations,” both as areas of potential change. In regard to the presentation of lineups, it said, “Scientific research indicates that identification procedures such as lineups and photo arrays produce more reliable evidence when the individual lineup members or photographs are shown to the witness sequentially – one at a time – rather than simultaneously” (p. 9). However, it noted there was as yet no consensus on any particular method that could be recommended as a preferred procedure. In regard to the administration of the identification procedure, the report said, “investigators” unintentional cues (e.g., body language, tone of voice) may negatively impact the reliability of eyewitness evidence. Psychology researchers have noted that such influences could be avoided if “blind” identification procedures were employed (i.e., procedures conducted by investigators who do not know the identity of the actual suspect).” However, it noted that “blind” administration may be impractical for some jurisdictions and wasn’t, therefore included as a preferred practice. But it did identify blind administration as “a direction for future exploration and field testing.”

The New Jersey Guidelines: In April 2001, in the wake of the exoneration of a man who was convicted of sexual assault and sentenced to 60 years solely on the basis of an eyewitness identification, New Jersey Attorney General John J. Farmer, Jr. issued guidelines for the preparation and conduct of photo and live lineup identification procedures.⁷ In doing so, New Jersey became the first state in the country to officially adopt the recommendations issued by the

⁵ The only exception is identical twins.

⁶ Innocence Project at <http://www.innocenceproject.org/understand/Eyewitness-Misidentification.php>. See also Garrett (2009), pp. 45-83.

⁷ On the conviction and exoneration of McKinley Cromedy, see http://www.innocenceproject.org-/Content/McKinley_Cromedy.php

U.S. Department of Justice in its 1999 report. But the New Jersey guidelines (New Jersey, 2001) went further than the report. They stated (Section I.A) that “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.” And they stated (section I.C) that “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.”

Several states followed New Jersey in endorsing the federal guidelines and recommending blind administration and sequential presentation as best practices. In 2003, the North Carolina Actual Innocence Commission recommended that an independent administrator – that is, someone who doesn’t know which member of the lineup is the suspect – be used whenever possible.⁸ And it recommended that individuals or photos be presented to witnesses sequentially rather than simultaneously. In 2005, Peg Lautenschlager, the Attorney General of Wisconsin, developed a model policy and procedures for eyewitness identifications that included double-blind administration of identification procedures and sequential presentation of the suspect and fillers.⁹

The Hennepin County Pilot Project: In the spirit of the Department of Justice’s call for future exploration and field testing, Amy Klobuchar, the County Attorney of Hennepin County, Minnesota, initiated, with the support of the National Institute of Justice, a pilot project – the first in the country – to test for the impact of both blind administration of lineups and sequential presentation of suspects and fillers in lineups. The project began in November 2003 and ran for 12 months through November 2004. It involved four police departments in Hennepin County – those of Minneapolis, Bloomington, Minnetonka, and New Hope. The project involved a total of 280 lineups from 117 cases with 206 eyewitnesses. (For a description of the project, see Klobuchar, Steblay, and Caligiuri, 2006.)

The results of the pilot project are presented below, along with data Klobuchar, Steblay, and Caligiuri presented to compare the results from the pilot project with those reported in the 2001 meta-analysis and in an article by Behrman and Davey (2001) that reported on their archival study of live and photo lineups conducted in Sacramento and other northern California counties in 1987-98. The most consequential finding in the Hennepin County field study was the fact that the combination of double blind administration and sequential presentation substantially reduced the frequency of filler IDs compared with frequencies reported in laboratory experiments and the archival study. Indeed, the frequency of filler IDs was more than 50 percent lower than the frequencies reported in the meta-analysis and the archival study of live lineups (8 percent in all Hennepin County lineups and 11 percent in those in which the eyewitness was not familiar with the suspect vs. 24 percent in the meta-analysis and the archival study). The frequency of suspect IDs was roughly comparable – 54 percent in Hennepin County vs. 50 percent in the meta-analysis and 48 and 50 percent in the archival study. However, when the 93 lineups in which the eyewitness was familiar with the suspect are excluded, there was a substantially lower frequency of suspect IDs – not surprising since several studies have reported very high frequencies of suspect IDs in lineups when the eyewitness is familiar with the suspect. (Indeed, in the Hennepin

⁸ In 2008, North Carolina passed legislation requiring that lineups be conducted by an “independent administrator or by an alternative method” and that individuals or photos be presented to witnesses sequentially.

⁹ A number of cities have recommended or required blind administration and/or sequential presentation of lineups. For example, Suffolk County (Boston and three adjacent cities), Northampton, and Wellesley require both as do Dallas and St. Paul. Denver requires sequential presentation and blind administration unless specific exceptions apply. Minneapolis requires blind administration and sequential presentation unless specified exceptions apply.

County study, 90 percent of the eyewitnesses familiar with the suspect identified the suspect, only 3 percent identified a filler, and only 6 percent were unable to make a choice.)

Hennepin County Pilot Project, 2003-04

	Labs* 2001 meta- analysis	N. California* Photo (284)	Live (58)	Hennepin County Total (271)	(Excluding lineups in which witness familiar w. suspect)
Suspect ID	50	48	50	54	35
Filler ID	24		24	8	11
No ID	26		26	38	53

Source: Klobuchar, Steblay, and Caliguiri (2006), Table 2, p. 397.

* Lab results are from the 2001 Meta-analysis with simultaneous presentation. In their northern California archival study, Behrman and Davey (2001) did not disaggregate filler and no IDs in the 284 photo lineups but did so for the 58 live lineups.

The fact that the Hennepin County study did not test for the separate effects of blind administration and sequential presentation and did not conduct lineups in the county that used non-blind administration, simultaneous presentation, and both non-blind administration and sequential presentation makes it impossible to draw precise estimates of the separate and combined effects of blind administration and sequential presentation.¹⁰ Nevertheless, the study does suggest that, relative to the laboratory experiments and field studies that existed at the time, the combination of blind administration and sequential presentation dramatically reduces the frequency of filler IDs, albeit at the cost of a substantial reduction in suspect IDs.

The Hennepin County study provided useful information regarding the effect of allowing eyewitnesses in sequentially-presented lineups to have multiple viewings of the full lineup. Most if not all laboratory experiments had not allowed multiple viewings, or “laps,” on the grounds that doing so would inevitably turn the procedure into an exercise in “relative judgment” not unlike the type of judgment assumed to take place when photos are viewed simultaneously. However, as Klobuchar, Steblay, and Caligiuri (2006, p. 398) note, although “ideal blind sequential protocol calls for only one viewing of the lineup per witness,” they allowed additional sequential presentations of the photos. They did so encountering concerns among law enforcement personnel that some good identifications – i.e., identifications of suspects who would later turn out to be guilty - might be lost if eyewitnesses weren’t allowed to take one or more additional “laps.”

Unfortunately, although the lineup administrators were directed to record the number of laps used by each eyewitness, less than half of them did so. Nevertheless, the frequencies of suspect, filler, and no IDs, disaggregated by the number of laps and also by whether the eyewitness knew the suspect, are worth noting. The disaggregated results, presented below suggest that, while a second and third lap produce additional suspect IDs, additional laps also increase the likelihood

¹⁰ In fairness to the study, it should be noted that its purpose was not to compare simultaneous and sequential lineups but to determine whether double-blind administration and sequential presentation could be implemented without increasing the cost of an identification procedure or impairing an investigation. Personal communication, Nancy Steblay, Jan. 22, 2012.

that witnesses will identify fillers rather than suspects. Thus, while only three percent of the eyewitnesses who made an identification after one lap identified a filler, 12 percent of those making a selection after a second lap chose a filler. Among those taking three or more laps, the frequency of filler IDs more than doubled to 29 percent. And among those taking four, five, or six laps, 75 percent identified a filler. Clearly, allowing multiple laps has advantages in terms of increasing the number of suspects identified. But doing so also runs the risk of substantially increasing the likelihood of misidentifications.¹¹

Hennepin County Pilot Project, 2003-04

	Number of "Laps"			
	1	2	3+	4, 5 or 6
Suspect ID	66 (42)	50 (32)	44 (43)	25
Filler ID	3 (3)	10 (13)	28 (29)	75
No ID	31 (55)	40 (55)	28 (29)	0

Source: Klobuchar, Steblay, and Caliguiri (2006), Table 3, p. 399.
 Parentheses contain frequencies when the witness didn't know the suspect.

The Illinois Pilot Program: In 2002 the Governor's Commission on Capital Punishment issued 53 recommendations, including six pertaining to eyewitness identifications in homicide cases. The recommendations concerned the use of blind administrators, selection of fillers, instructions to be given to eyewitnesses, confidence statements, the use of sequential procedure, and the videotaping of lineups. In 2003, the Illinois legislature passed legislation enacting the recommendations pertaining to the construction of lineups and the instructions to be issued to eyewitnesses, and it directed the State Police to conduct a year-long pilot program to test the effectiveness of the blind administration and sequential presentation of photo and live lineups. Illinois was the first state to mandate such a pilot program.

Three police departments – those in Chicago, Joliet, and Evanston – were selected to participate in the program. One feature of the program absent from the Hennepin County pilot program was the effort to compare the frequencies of suspect, filler and no IDs in blind sequential lineups with those obtained in simultaneous lineups. Toward that end, each department developed criteria for selecting the cases that would make use of the blind sequential procedure or continue to use simultaneous presentation. In Evanston, selection was determined simply by the last digit of the case number; odd-numbered cases would have sequential presentation, even-numbered cases simultaneous presentation. In Joliet, which has four policing areas, areas 1 and 2 would have sequential presentation while areas 3 and 4 would have simultaneous. In Chicago, which has five detective division areas, the eleventh district of area 4 would use sequential presentation and the remainder of area 4 simultaneous presentation.

The pilot program began in the autumn of 2004 and ran through the autumn of 2005. During that time, more than 600 lineups were conducted in the areas selected for the study. After removal 71 lineups in which the eyewitness previously knew the suspect, there were 548 lineups, of which 229 were conducted with sequential presentation. The frequencies of suspect, filler, and no IDs with each type of presentation are presented below.

¹¹ One way to reduce if not eliminate the increase in filler IDs with additional "laps" might be to provide an additional instruction prior to the additional "lap," informing the witness that the objective is not to identify the person who looks most like the perpetrator but, rather, to identify the perpetrator and that "not sure" or "don't know" are acceptable choices.

The Illinois Pilot Program, 2004-05

	Simultaneous (319 lineups)	Sequential (229 lineups)
Suspect ID	59.9	45.0
Filler ID	2.8*	9.2
No ID	37.6	47.2

Source: Mecklenburg (2006), Table 3a, p. 38.

* 0 in Chicago and Evanston, 6 in Joliet. Subsequent analysis revealed that an unknown number of filler IDs were not reported.

Consistent with the laboratory experiments and the Hennepin County study, the Illinois pilot program found that the frequency of suspect IDs was substantially lower in lineups that involved blind administration and sequential presentation than in the others (45 percent vs. 59.9 percent). And, again consistent with laboratory experiments and the Hennepin County study, the frequency with which witnesses made no ID was greater in the lineups using sequential presentation than in those using simultaneous presentation (47.2 percent vs. 37.6 percent). But surprisingly – and contrary to much of the laboratory research over the previous two decades and the Hennepin County study – the Illinois pilot program found that the frequency of filler IDs was substantially *lower* in the lineups using simultaneous presentation than in those using sequential presentation (2.8 percent vs. 9.2 percent).

In her report to the legislature on the pilot program (Mecklenburg, 2006), Sheri Mecklenburg, the Program Director, said, “Surprisingly, the Illinois data did not bear out the research experiments that sequential, double-blind lineups produce a lower rate of known false identifications. Instead, the sequential, double-blind procedures resulted in an overall higher rate of known false identifications than did the simultaneous lineups” (p. iv). Later in the report, after presenting the data, she reiterated that finding: “The Illinois data shows that the sequential, double-blind method as proposed by the scientific research did not prove to be a superior lineup procedure when compared to the simultaneous method as currently employed by law enforcement and, in fact, proved to be inferior” (p. 47). Lest the legislature have any doubt about the results, in concluding she said, “The Illinois Pilot Program represents the first field study of the sequential, double-blind identification procedure using the recommended scientific protocol and comparing that data to a control group of simultaneous lineups. The data collected shows that the sequential double-blind method led to a lower rate of suspect identifications as well as a higher rate of known false errors” (p. 61).

Although Mecklenburg claimed the Illinois program used “the recommended scientific protocol” in fact it was deeply flawed in its design. A proper comparison of sequential and simultaneous presentation would have involved comparing the results after controlling for all other system variables that could influence the outcome, including how the procedure was administered. Given that the areas in which the lineups were presented sequentially also had blind administration, the only way to assess the effect of sequential presentation would have been to compare the frequencies obtained in the blind sequential areas with frequencies obtained in other areas in which there was blind administration and simultaneous presentation. Likewise, the only way to assess the effect of blind administration would have been to compare the frequencies in the blind sequential areas with frequencies in other areas in which there was non-blind administration but sequential presentation. Instead, the Illinois program compared the frequencies of suspect, filler, and no IDs in areas that had blind administration and sequential presentation with those in areas that had non-blind administration and simultaneous presentation.

Given this fundamental error in research design, the conclusions of the Illinois report quoted above should be disregarded.

Beyond that fundamental design flaw, a subsequent analysis of the lineup results in Evanston found that the lineups with non-blind administration and simultaneous presentation differed markedly from those with double-blind administration and sequential presentation (Stebly, 2011).¹² Despite the apparent random assignment of cases to the two methods of administration and presentation, the non-blind simultaneous lineups were more likely to involve witnesses who had already identified the suspect in a previous lineup or knew the suspect. And the witnesses in those lineups viewed the lineups sooner after the crime than did those who viewed them sequentially. Both differences suggest that, notwithstanding the apparent random assignment of cases to the two types of lineup, the cases were assigned to one or the other type of lineup in a non-random manner. That non-random assignment could have contributed to the differences in the observed frequencies of suspect and filler IDs.¹³

As flawed as it was, the Illinois study nevertheless provides support – no doubt unintentionally – for the blind administration of identification procedures and the sequential presentation of suspects and fillers. Why is it that less than three percent of all eyewitnesses in the areas using non-blind administration and simultaneous presentation identified fillers? Why is it that in two of the three cities – Chicago and Evanston – the frequency of filler IDs in the non-blind simultaneous lineups was zero? It could be, and apparently was in fact the case, that, as Wells, Stebly, and Dysart (2011, p. 4) report, some unknown number of filler IDs were not reported, perhaps because the investigators conducting the lineups and knowing, as they did, who the suspect was simply treated a filler ID as a no ID. It could also be the case that some non-blind administrators gave eyewitnesses verbal and/or non-verbal cues, either intentionally or unintentionally, that influenced their choice and moved them away from a filler to the suspect. Whatever the reasons, the unusually high frequency of suspect IDs and implausibly low frequency of filler IDs in the non-blind and simultaneous lineups in the Illinois study is regarded by some as persuasive evidence in support of the blind administration of the eyewitness identification procedure and the sequential presentation of suspect and fillers in that procedure.

The American Judicature Society Study: As soon as it appeared, the Illinois program was subjected to severe criticism from researchers and others for the reasons noted above.¹⁴ In September 2006, the American Judicature Society convened a meeting of researchers, lawyers, prosecutors, and police in Greensboro, North Carolina to discuss where research should go in the wake of the Illinois program. The participants developed guidelines for another field study that would test the simultaneous vs. sequential issue. There was a general agreement that, among other things, the new field experiment should do what neither the Hennepin County nor the Illinois study did – compare the frequencies of suspect, filler, and no IDs in double blind sequential lineups with those in double-blind simultaneous lineups in order to identify the impact of sequential presentation. The participants also agreed that identification procedure should be fully randomized, standardized to the maximum extent possible, and recorded by using computers

¹² In 2007, the National Association of Criminal Defense Lawyers filed a Freedom of Information lawsuit against the three departments involved in the Illinois study, requesting the reports prepared on all of the lineups. Evanston made its reports available; Chicago and Joliet did not.

¹³ Stebly (2011) reports another difference between the two types of lineup. There was a substantial difference in the frequency with which the lineup reports contained the verbatim comments of the eyewitness; 83 percent of the reports on the double blind sequential lineups did so vs. 39 percent of the reports on the non-blind simultaneous lineups.

¹⁴ See Gary Wells' comments on the Mecklenburg Report at http://www.psychology.iastate.edu/~glwells/-Illinois_Project_Wells_comments.pdf.

with software designed specifically for the task so as to ensure the results were comparable across all lineups and jurisdictions.

The experiment was conducted between 2008 and 2011 in four cities – Tucson, San Diego, Austin, and Charlotte-Mecklenburg. (For the initial report on the study, see Wells, Steblay, and Dysart, 2011.) For various reasons, the number of lineups included in the experiment varied widely across the four cities – 144 in Tucson, 43 in San Diego, 615 in Austin, and 53 in Charlotte-Mecklenburg. Charlotte-Mecklenburg had to drop out of the study relatively early after the state mandated that all lineups be conducted with sequential presentation and there were technical problems in connecting the software with the photo databases in San Diego and Tucson. In addition, 358 of the original 855 lineups had to be omitted from the analysis either because they were not double-blind (about 210 of the original 855 lineups), because the witness knew the suspect (about 125), because the witness had already seen the suspect or the suspect’s image, or because the witness could not decide between two or more photos. After excluding those lineups, the experiment made use of 497 lineups, of which about 341 were obtained in Austin, 76 in Tucson, 48 in Charlotte, and 29 in San Diego.¹⁵ The results of the AJS are presented below.

**The American Judicature Society Study
Austin, Tucson, San Diego, Charlotte-Mecklenburg, 2008-11**

	Simultaneous Double Blind	Sequential Double Blind (2 laps) (1 lap)	
Suspect ID	25.5	27.3	23.5
Filler ID	18.1	12.2	10.9
No ID	56.4	60.5	65.6
Of No IDs,			
Certain	80.8	53.5	
Not sure	19.2	46.5	

Source: Wells, Steblay, and Dysart (2011), Figure 2, p. 12, and Figure 4, p. 13.

At least three findings in the AJS study are noteworthy: First, the lower frequency of filler IDs with sequential presentation; second and surprisingly, the higher frequency of suspect IDs when the identifications of witnesses in sequential lineups who requested a second lap are included; and third and also surprisingly, the substantially higher proportion of those making no ID in sequential lineups who said they were “not sure” rather than “certain” about their choice. Each of these deserves some discussion.

Regarding filler IDs, the study found a substantially lower frequency of such IDs in the lineups that employed sequential presentation (10.9 percent with one lap, 12.2 percent with second laps included vs. 18.1 percent in the lineups that employed simultaneous presentation). This difference is statistically significant.¹⁶ From the perspective of reducing eyewitness

¹⁵ Data presented by Jennifer Dysart to the Task Force, Nov. 30, 2011.

¹⁶ The chi-square (χ^2) for the frequencies of filler IDs under the two procedures is 3.05 with 1 degree of freedom. That means the null hypothesis – that there is no difference between the frequencies of filler IDs under the two procedures – can be rejected at the .06 level. Put differently, that means the probability that the frequency of filler IDs with sequential presentation is less than the frequency of such IDs with simultaneous presentation is .94.

misidentifications, the study unambiguously confirms Wells' (1984) suggestion nearly 30 years ago that the sequential method of presenting suspects and fillers to eyewitnesses produces fewer filler IDs than the simultaneous method.

Regarding suspect IDs, the study found, surprisingly, that the frequency of suspect IDs is quite comparable regardless of whether the simultaneous or sequential method of presentation is used. About one-quarter of the eyewitnesses identified the suspect. Even more surprising was the fact that, if one considered not only the 84 percent of the sequential lineups in which the eyewitnesses took only one lap but the combined results of the one-lappers and the 16 percent who asked for a second lap, the frequency of suspect IDs was *greater* with sequential presentation (27.3 percent) than with simultaneous presentation (25.5).¹⁷

Equally interesting, the AJS study found that those who made a second lap were much more likely to identify the suspect after two laps than those who took only one lap. As a result, including the IDs made on the second lap increased the overall frequency of suspect IDs by 3.8 percentage points while increasing the overall frequency of filler IDs by only 1.3 percentage points. Wells, Steblay, and Dysart (2011) did not disaggregate the frequencies of suspect, filler, and no IDs for those who took a second lap. But based on the frequencies reported above and the fact that 16 percent of the witnesses in the sequential lineups took a second lap, it appears that roughly 48 percent of those taking a second lap identified the suspect, 19 percent chose a filler, and 33 percent were unable to make a selection even after the second lap. As in Hennepin County, taking a second lap increased the frequency of filler IDs, from roughly 11 with one lap to 19 percent. But allowing a second lap did help many of the witnesses – nearly one-half of those requesting a second lap – to identify the suspect.

The fact that, regardless of method of presentation, the study found that approximately one-quarter of the witnesses identified a suspect is noteworthy for another reason. Recall that the Illinois study reported that 60 percent of the witnesses in the non-blind simultaneous lineups identified a suspect, as did roughly 50 percent of the witnesses in the archival study conducted in northern California. The contrast between those figures and the substantially lower frequency of suspect IDs in the AJS study suggests the non-blind administration of eyewitness identifications may substantially inflate the frequency of suspect IDs because of the verbal or non-verbal cues or other forms of influence that an investigator who knows the identity of the suspect may convey, intentionally or inadvertently, to the witness.

It should be noted that the frequencies of suspect IDs varied considerably across the four cities in the AJS study. In Austin, where 341 of the 494 lineups were conducted, the suspect was identified in 24.1 percent of the lineups with a simultaneous presentation of suspect and fillers and 30.4 percent of those with sequential presentation. But in the other three cities, the frequencies in the two methods of presentation corresponded to the general pattern found in laboratory experiments and previous field studies – that is, that, compared with the simultaneous method, the sequential method resulted in a lower frequency of suspect IDs. In Tucson, the suspect was identified in 27.7 percent of the lineups with simultaneous presentation and 20.7 percent of those with sequential presentation. In Charlotte, the suspect was identified in 41.7 percent of the lineups with simultaneous presentation and 25 percent of those with sequential presentation. And in San Diego, the suspect was identified in 11.8 percent of the lineups with

¹⁷ Witnesses were not told they could view the sequential lineup a second time. However, if they requested a second lap, they were allowed to take one in the same order as in the first lap. Approximately 16 percent of the witnesses in the sequential lineups requested a second lap.

simultaneous presentation and none of the lineups with sequential presentation.¹⁸ While the small number of lineups in Tucson (76), Charlotte (48), and San Diego (29) make it difficult to draw any conclusions from the frequencies observed in those cities, it nevertheless is the case that, in the three cities taken together, simultaneous lineups produced a greater frequency of suspect IDs (28.4 percent) than did sequential lineups (18.5 percent). The Austin result and the overall AJS result, which reflects the fact that roughly 70 percent of the lineups were conducted in Austin, is anomalous, not only with respect to the previous laboratory and field research but to the results in the other three cities. Why the frequency of suspect IDs was greater in lineups with sequential presentation in Austin is a question that will no doubt be addressed in follow-up research on the AJS study.

Regarding the frequency of no IDs, the AJS study found it was several percentage points greater in the lineups that used sequential presentation than in the lineups that used simultaneous presentation. The fact that the frequencies of suspect IDs were roughly comparable in the two types of presentation while the sequential lineups had fewer filler IDs and more witnesses who couldn't make an ID suggests the simultaneous procedure increases the propensity of some witnesses to choose a filler rather than make no selection.

One of the most intriguing, and potentially most important, findings in the AJS study involves the difference between the two methods of presentation in the proportions of the witnesses making no identification who said they were certain or not sure about their non-identification. In the lineups using simultaneous presentation, more than 80 percent provided a flat rejection of all photos, including that of the suspect. Only 19 percent said they weren't sure. In the lineups using sequential presentation, only 54 percent said they were certain while 46 percent said they weren't sure. This quite substantial difference, which was unanticipated by the authors but testifies to the qualitatively different mental exercise involved in selection from a sequence rather than a simultaneously-presented array, is potentially of considerable importance at subsequent stages in the criminal justice process. For one thing, it means that the sequential method of presentation reduces the likelihood that a witness who is unable to identify the suspect will go further and exclude the suspect as the person the witness saw, which may be important in the event the suspect is indicted and prosecuted.

Despite the various problems encountered during the course of the AJS study – the early withdrawal of Charlotte-Mecklenburg, the software issues and unexpectedly low number of lineups in Tucson and San Diego, the apparent failure of the participating departments to ensure that all of the lineups were double-blind – it undoubtedly represents, from a research design perspective, the best field study ever conducted. For that reason, its results are likely to be regarded as authoritative for some time to come. The results of the AJS study provide persuasive support for the double blind administration of eyewitness identification procedures and the sequential presentation of suspects and fillers in those procedures.

Conclusion

In the wake of several U.S. Supreme Court decisions in the 1960s and 1970s concerned with the reliability of eyewitness identifications, academic researchers began to conduct experiments to identify the impact of various aspects of the ID procedure. One such aspect concerned the method by which a suspect in a crime is presented for identification by an eyewitness. For decades, law enforcement agencies routinely presented the suspect in a live lineup or photo array that included several other individuals or photos of individuals known to be innocent. In 1984,

¹⁸ Data presented by Jennifer Dysart to the Task Force, Nov. 30, 2011. The disaggregated city-by-city frequencies with which witnesses requested and took second laps in sequential lineups, the extent to which second laps increased the frequency of suspect IDs, and the frequencies of filler IDs and no IDs in both types of lineup have not yet been reported.

Wells (1984) suggested that the simultaneous method of presentation may contribute to misidentifications by causing eyewitnesses to make a “relative judgments” – that is, to compare the six or eight photographs (or persons in a live lineup) and choose the person who looked most like the person they saw commit the crime – rather than an “absolute judgment” – that one of the individuals was the person they saw commit the crime.

In 1985, Lindsay and Wells (1985) proposed the sequential method of presentation – that is, one at a time in separate photos – of the suspect and fillers as an alternative to the simultaneous method. Over the nearly three decades since then, more than 70 experiments have been conducted to compare the frequencies with eyewitnesses to a simulated crime identified the culprit or others in a lineup when the photos were presented and viewed simultaneously with the frequencies when the photos were presented and viewed sequentially. Taken together, those experiments suggested that, while the sequential method does result in a modest reduction in culprit IDs, it reduces the likelihood that an eyewitness will identify someone other than the actual culprit as the person who committed the crime.

Over the past decade, those laboratory experiments have been supplemented with several field studies – that is, studies conducted in police departments – that have observed the frequencies of suspect IDs, filler IDs, and no IDs in lineups that included a suspect in an actual crime and were viewed by actual eyewitnesses to a crime. Those studies – conducted in Hennepin County (Minneapolis and three other cities), Illinois (Chicago and two other cities), and, most recently, Austin, Texas and three other cities – establish conclusively that the sequential presentation of suspect and fillers, when coupled with the double-blind administration of the lineup, reduces the likelihood that a filler – someone who is known to be innocent – will be identified by an eyewitness to a crime as the person who committed the crime. In the Hennepin County study, eyewitnesses who did not know the suspect identified a filler rather than the suspect in 11 percent of the lineups conducted with double-blind administration and sequential presentation. Despite serious flaws in some aspects of the Illinois study and the inferences that were drawn from it, its findings were very similar; a filler rather than the suspect was identified by an eyewitness as the person who committed the crime in 9.2 percent of the lineups conducted with double-blind administration and sequential presentation. And in the AJS study conducted in Austin, Tucson, Charlotte, and San Diego, a filler rather than the suspect was identified as the perpetrator in 11-12 percent of the lineups in which there was double-blind administration and sequential presentation.

Unlike the Hennepin County and Illinois studies, which for different reasons were not designed so as to allow a comparison of the frequencies of suspect, filler, and no IDs in blind sequential lineups with those obtained in blind simultaneous lineups, the AJS study was designed so as to allow such a comparison. That comparison demonstrated that the likelihood that a filler will be identified by an eyewitness as the perpetrator of the crime he or she witnessed is substantially lower in lineups conducted with double-blind administration and sequential presentation (11-12 percent) than in lineups conducted with double-blind administration and simultaneous presentation (18 percent). Controlling for virtually every other system variable – lineup administration, filler selection, instructions, etc. – the AJS study revealed that sequential presentation reduced the frequency with which fillers were identified by about 33 percent. Put another way, the simultaneous method of presentation resulted in a 50 percent increase in the frequency with which a filler was identified by an eyewitness as the perpetrator of the crime he or she saw.

As Wells, Steblay, and Dysart (2011) say, sequential presentation is not a “silver bullet;” it won’t prevent eyewitness misidentifications – the single most important cause of wrongful convictions. But it will substantially reduce the likelihood that such misidentifications – and wrongful convictions – occur.

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