

RE: 5832 EXHIBIT
KAREN A. GOODROW
CT INNOCENCE PROJECT



STATE OF WISCONSIN
OFFICE OF THE ATTORNEY GENERAL
WISCONSIN DEPARTMENT OF JUSTICE
BUREAU OF TRAINING AND STANDARDS FOR CRIMINAL
JUSTICE



**Response to Chicago Report
on Eyewitness Identification Procedures**

I. Introduction

After examining wrongful convictions based on misidentification and social science research and recommendations concerning eyewitness identification procedures, the Wisconsin Attorney General's Office in April 2005 issued Model Policy and Procedure for Eyewitness Identification. *Model Policy* takes a comprehensive approach to the issue of eyewitness identification by addressing six major recommendations of the scientific community:

- 1) Use non-suspect fillers chosen to minimize any suggestiveness that might point toward the suspect.
- 2) Use a "double blind" procedure, in which the administrator is not in a position to unintentionally influence the witness's selection
- 3) Give eyewitnesses an instruction that the real perpetrator may or may not be present and that the administrator does not know which person is the suspect
- 4) Present the suspect and the fillers sequentially (one at a time) rather than simultaneously (all at once). Because eyewitnesses are unable to see the subjects all at once and are unable to know when they have seen the last subject, this procedure discourages relative judgment and encourages absolute judgments of each person presented.
- 5) Assess eyewitness confidence immediately after identification
- 6) Avoid multiple identification procedures in which the same witness views the same suspect more than once.

In 2005 Act 60, the Wisconsin legislature required each Wisconsin law enforcement agency to "adopt written policies for using an eyewitness to identify a suspect upon viewing the suspect in person or upon viewing a representation of the suspect."¹ Act 60 also requires law enforcement agencies to "consider model policies and policies

¹ 2005 Wis. Act 60, § 17 (to be codified at Wis. Stat. § 175.50(2)).

adopted by other jurisdictions.”² The statute further requires agencies to “consider including in policies adopted under this section practices to enhance the objectivity and reliability of eyewitness identifications and to minimize the possibility of mistaken identifications,” with specific attention directed to procedures also found in *Model Policy*.³

In April, 2006, the Chicago Police Department released a report (hereinafter *Chicago Report*) describing the results of a pilot program on eyewitness identification procedures conducted in three Chicago-area police departments: the Chicago Police Department, the Joliet Police Department, and the Evanston Police Department.⁴ The report, which was prepared by Sheri H. Mecklenburg, general counsel to the Superintendent of the Chicago Police Department, suggests that the Chicago pilot program casts doubt on recent reform of eyewitness identification procedures, including some aspects of *Model Policy*.

This response explains how the *Chicago Report* does not change the scientific basis for the recommendations in the *Model Policy*.

II. The *Chicago Report* does not change the scientific basis for the recommendations in the Attorney General’s *Model Policy*

A. The *Chicago Report* does not address four of the six recommendations in the Attorney General’s *Model Policy*.

The Chicago program does not attempt to analyze any of the following issues:

- Selection of non-suspect fillers (*Model Policy* recommendation #1)
- Instructions to eyewitnesses (*Model Policy* recommendation #3)
- Assessments of confidence (*Model Policy* recommendation #5)
- Multiple procedures (*Model Policy* recommendation #6)

Thus, the *Chicago Report* has no bearing on those four recommendations.

B. Scientific research demonstrates that double-blind administration is superior, and the results of the Chicago program do not suggest otherwise.

The *Chicago Report* addresses two elements of the eyewitness identification procedures recommended by social scientists: double-blind administration, and sequential presentation of the suspect and fillers. The Chicago program included one

² 2005 Wis. Act 60, § 17 (to be codified at Wis. Stat. § 175.50(4)).

³ 2005 Wis. Act 60, § 17 (to be codified at Wis. Stat. § 175.50(5)).

⁴ The report dated March 17, 2006, is titled *Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double-Blind Identification Procedures* (hereinafter *Chicago Report*) and is available at <http://www.chicagopolice.org/IL%20Pilot%20on%20Eyewitness%20ID.pdf>. On June 19, 2006, the Program Director of the report published an *Addendum to the Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double-blind Identification Procedures*, available at <http://www.chicagopolice.org/Addendum%20to%20IP-Report.pdf>

group of lineups that used a “double-blind/sequential” procedure (incorporating *Model Policy* recommendations 2 and 4). The results for that group produced fewer identifications of suspects and more identifications of fillers.⁵ Relying on this data, the *Chicago Report* expresses doubt about the superiority of double-blind procedures (and, as discussed in the next section, casts doubt on the superiority of sequential procedures).⁶ However, scientific research demonstrates that double-blind procedures are superior, and the results of the Chicago program do not seem to suggest otherwise.

The superiority of double-blind procedures is based on three basic principles:

- 1) research shows that suggestion (intentional or unintentional) can occur when the lineup administrator knows the suspect’s identity;
- 2) double-blind administration provides a safeguard that prevents suggestion, because the administrator is no longer in a position to provide cues; and
- 3) double-blind administration does not affect legitimate memory processes, because its only effect is removing inappropriate suggestion, through either intentional or inadvertent action/s of an administrator.

Even though the *Chicago Report* does not challenge any of these principles, the report relies on the higher rate of suspect identifications in non-blind lineups to support a claim that non-blind procedures are superior. However, this result—more identifications of suspects in non-blind lineups—is exactly what the research on suggestion predicts, and exactly the problem double-blind administration was designed to prevent. Because a higher rate of suspect identifications in the non-blind group may have been influenced by cues provided by the non-blind administrators, the results of the *Chicago Report* could be seen to reinforce the principle that double-blind procedures are necessary to ensure that eyewitnesses make identification decisions for the right reason: because the memory of the perpetrator matches the suspect, not because of unintentional suggestion from lineup administrators.

C. *Scientific research demonstrates that sequential procedures reduce misidentifications, and the results of the Chicago program do not suggest otherwise.*

Scientific research demonstrates that sequential procedures result in fewer misidentifications than simultaneous procedures. Despite the report’s claims, the results of the Chicago program do not seem to suggest otherwise. Although the “sequential/double-blind” condition in the *Chicago Report* resulted in more identifications of fillers than the “simultaneous/non-blind” condition, this may be at least in part because the non-blind administrators unintentionally cued witnesses to select suspects rather than fillers. Although the *Chicago Report* attributes the higher rate of filler identifications to the sequential procedure, the design of the program does not seem to

⁵ *Chicago Report*, supra note 4 at 37-42.

⁶ *Chicago Report*, supra note 4 at 47.

support such an inference or conclusion. Because the Chicago program did not separately compare double-blind simultaneous to double-blind sequential (it instead attempts to compare non-blind simultaneous to double-blind sequential), there is no way to ascertain whether the different rates of selection of suspects and fillers in the two tested conditions were the result of the difference between double-blind and non-blind procedures, or between sequential and simultaneous procedures. If the former (which seems likely based on prior research demonstrating the suggestive effects of non-blind administration), the lower hit rate on suspects simply reflects the witnesses' true ability to make accurate identifications without cues (intentional or unintentional) from lineup administrators.

Moreover, even though the non-blind simultaneous procedure used in the *Chicago Report* produced a higher rate of hits on suspects than did the double-blind sequential, this does not necessarily mean that the non-blind simultaneous procedure produced more *accurate* identifications, because some of the suspects identified could potentially be actually innocent, and thus their identifications might have been erroneous. Field programs simply cannot absolutely assess which selections are accurate and which are not.

Finally, analysis of field research in other parts of the country has concluded that both double-blind administration and sequential presentation are superior procedures. After a pilot program in Hennepin County, MN, that included both double-blind and sequential procedures, Hennepin County District Attorney Amy Klobuchar asked a prominent eyewitness researcher, Dr. Nancy Steblay, to analyze the data from the field research and evaluate the efficacy of double-blind administration and sequential procedures. Following Dr. Steblay's analysis, Klobuchar concluded: "[T]he Hennepin County pilot project substantially decreased the rate of false identification, yet maintained an effective rate of suspect identification."⁷

III. Summary

The *Chicago Report* does not address four of the six recommendations in the Attorney General's *Model Policy and Procedure on Eyewitness Identification*. Furthermore, because the *Chicago Report* does not separate the effects caused by a double-blind procedure from those caused by a sequential procedure, it does not permit reliable conclusions about the effect of either procedure in isolation. Thus, the extensive prior laboratory research revealing that the double-blind and sequential procedures are superior remains the best scientific information available.

The strength of Wisconsin's guidelines and recommendations for reliable and accurate eyewitness identifications lies in their comprehensiveness based on solid science and extensively validated research. Therefore, the Attorney General's Office continues to encourage adoption of the "best practices" found in *Model Policy*.

⁷ Amy Klobuchar and Hilary Lindell Caligiuri, *Protecting the Innocent/ Convicting the Guilty: Hennepin County's Pilot Project in Blind Sequential Eyewitness Identification*, 32 WM. MITCHELL L. REV. 1, 24 (2005), available at: <http://www.wmitchell.edu/lawreview/Volume32/Issue1/1Klobuchar.pdf>