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**TESTIMONY OF EZEKIEL R. EDWARDS, STAFF ATTORNEY ON EYEWITNESS
IDENTIFICATION, INNOCENCE PROJECT,
BEFORE THE CONNECTICUT JOINT COMMITTEE ON JUDICIARY
RE: SENATE BILL NO. 357, AN ACT CONCERNING EYEWITNESS IDENTIFICATION
MARCH 24, 2009**

Chairman McDonald, Chairman Lawlor, and Members of the Judiciary Committee:

My name is Ezekiel Edwards and I am Staff Attorney on Eyewitness Identification at the Innocence Project. I appreciate the opportunity to testify in enthusiastic support of Raised Bill No. 357, An Act Concerning Eyewitness Identification, and I ask that my written statement be included in the record.

To date, forensic DNA testing has proven the innocence of 234 people who had been wrongly convicted of serious crimes. At least one mistaken eyewitness identification was a contributing factor in a full 75% of cases of wrongful conviction proven through DNA testing. The problem of misidentifications is not unique to certain geographic regions, but afflicts all law enforcement agencies nationwide, regardless of size or location. As horrible the harm to innocent people wrongfully convicted after eyewitnesses misidentify them as the perpetrator of a crime, they are not the only ones who suffer. Public safety is greatly diminished, as misidentifications cause the police to focus their investigation on an innocent person, leading them away from the real perpetrator, who is then free to commit further crimes. Furthermore, in the rare instances when the police return their focus on the actual perpetrator, the eyewitness who had previously identified an innocent person is "burned," and thus not of use in the criminal prosecution. Simply put, nobody – not the police, prosecutors, judge, jury, or indeed, the public

at large – benefits from a misidentification. The only beneficiary is the actual perpetrator.

The good news is that over the past 35 years, a large body of peer-reviewed research and practice has been developed, demonstrating how simple, inexpensive reforms to eyewitness identification procedures can greatly reduce the rate of identification error, particularly by minimizing the inadvertent misleading influences present in traditional procedures.

In the wake of leadership from the National Institute of Justice at the U.S. Department of Justice¹, the American Bar Association², the Police Executive Research Forum³, the International Association of Chiefs of Police⁴, the Commission on the Accreditation of Law Enforcement Agencies⁵, the California Commission on the Fair Administration of Justice,⁶ and others, states across the nation have taken significant steps toward eyewitness identification reform. In the past two years alone, the Georgia⁷, North Carolina⁸, California⁹, West Virginia¹⁰, and Vermont¹¹ legislatures passed legislation to advance reform, and many other states – from New Mexico to Texas, Ohio to Oregon – are currently considering similar

¹ Eyewitness Evidence, A Guide For Law Enforcement, United States Department of Justice (Oct. 1999).

² See ACHIEVING JUSTICE: FREEING THE INNOCENT AND CONVICTING THE GUILTY at 23-45 (Paul Giannelli et. al. eds., 2006).

³ See JAMES M. CRONIN ET. AL., PROMOTING EFFECTIVE HOMICIDE INVESTIGATIONS at 35-60 (2007).

⁴ See Int'l Ass'n of Chiefs of Police, Training Key #600.

⁵ See Standards 42.02.11 and 42.02.12 (CALEA, a credentialing authority created through the joint efforts of law enforcement's major executive associations – IACP; National Organization of Black Law Enforcement Executives (NOBLE); National Sheriffs' Association (NSA); and the Police Executive Research Forum (PERF) – adopted these standards to require all agencies seeking accreditation to promulgate written policies regarding lineup and showup procedures, policies which must address, at minimum, the manner in which fillers are selected, warning witnesses, obtaining confidence assessments, prohibiting confirming feedback, and video and/or audio documentation of the procedure).

⁶ See Cal. Comm'n on the Fair Admin. Of Justice, Report and Recommendations Regarding Eye Witness Identification Procedures (2006), available at www.ccfaj.org/documents/reports/eyewitness/official/eyewitnessidrep.pdf.

⁷ H.R. 352, 2007 Leg. (Ga. 2007).

⁸ H.B. 1625, 2007 Leg. (N.C. 2007).

⁹ S.B. 756, 2007 Leg. (Cal. 2007).

¹⁰ S.B. 82, 2007 Leg. (W.Va. 2007).

¹¹ S.B. 6, 2007 Leg. (Vt. 2007).

legislation. Enactment of S.B. 357 would ensure that Connecticut's eyewitness identification procedures foster eyewitness identifications that are as accurate as possible.

The Innocence Project regards DNA exonerations as learning moments, opportunities to review where the system fell short and identify policies and procedures to minimize the possibility that such errors will impair justice again in the future. We try to ensure that our recommendations, all aimed at improving the reliability of the criminal justice system, are grounded in both robust social science findings and practitioner experience.

This testimony will summarize our support for the provisions contained within S. B. 357 while also providing supplemental or clarifying information where necessary. Connecticut's recognition of and support for these reforms promises to help law enforcement enhance the accuracy of its criminal investigations and the legal community to assess identification evidence in a more reliable and sophisticated manner, thereby better assuring that justice is served during the course of criminal proceedings.

Misidentification is the Largest Contributor to Wrongful Convictions

Of all the causes of wrongful conviction, the most prevalent is mistaken eyewitness identification. In fact, in many wrongful convictions, it was not just one, but multiple eyewitnesses who mistakenly identified an innocent person:

- Luis Diaz, a Florida cook who was married with three children at the time of his arrest, was convicted of a string of sexual assaults and served 25 years in Florida prisons. He had been misidentified by *eight* witnesses.
- Kirk Bloodsworth, a former United States Marine, was convicted of having raped and murdered a



little girl in Baltimore County, Maryland based on the mistaken identification of *five* eyewitnesses. Prior to his exoneration, Mr. Bloodsworth had been sentenced to death.

- Brandon Moon, an Army veteran and college student who was released in 2005 from the Texas prison system after serving 17 years for a rape that DNA proved he did not commit, was misidentified by *five* witnesses.
- Dennis Maher, a Massachusetts man, served 19 years for a series of rapes, having been misidentified by *three* different victims.
- Stephen Phillips, a Texas man, was exonerated of a string of sexual assaults after serving 25 years in prison. In the 11 crimes for which Phillips was wrongfully convicted, there were at least 60 victims. At least *ten* of those victims erroneously identified Phillips as the perpetrator. Mr. Phillips was exonerated in 2008.

Connecticut, of course, is not immune to this problem; this Committee is well aware that James Tillman, the only individual in Connecticut whose wrongful conviction was proven through DNA testing, was himself the victim of a mistaken identification.

Even before the exoneration of Mr. Tillman, Connecticut's Supreme Court acknowledged the fallibility of eyewitness evidence in *State v. Ledbetter*¹² and strongly encouraged police and prosecutors to reduce the inherent risk of misidentification. It is our understanding that as a result of the *Ledbetter* decision, the Connecticut Chief State's Attorney's Law Enforcement Council recommended instructing police officers to provide eyewitnesses with specific instructions, to record eyewitness statements made at the time of identification, and to document and preserve as much of the procedure as possible.

¹² *State v. Ledbetter*, 275 Conn. 534 (2005).

The Connecticut law enforcement community is to be commended for taking these important steps toward improving the accuracy of eyewitness identifications in Connecticut. Given the proven potential of reform, however, it would be entirely appropriate for the Connecticut Legislature to require uniformly that – in the interests of justice and the public safety generally – every critical eyewitness reform becomes standard procedure for all Connecticut police departments.

Mistaken Eyewitness Identifications Also Harm Victims

Jennifer Thompson and Penny Beernstein were each crime victims who identified the wrong person as their assailants, and even after DNA proved the innocence of those men, continued to believe in their guilt – until DNA also identified the real perpetrator. It was difficult for them to accept, not to mention horrifying for them to learn, that their memories of the actual perpetrator were wrong and that their mistakes sent innocent people to prison. Yet as a result of their experiences, Ms. Thompson and Ms. Beernstein are now strong advocates for the eyewitness identification reform procedures being rapidly adopted in jurisdictions around the country and contained in S.B. 357.

Every time a witness makes a misidentification, the entire system suffers. Erroneous eyewitness identifications harm crime victims, unintentionally distract police and prosecutors' attention from the true culprit, mislead witnesses, undercut their credibility, and force innocent people to defend their innocence and possibly go to prison for crimes they did not commit. It is, therefore, imperative that eyewitness identification procedures be improved through the passage of S.B. 357.

Lineup Protocols Should be Grounded in Best Practices & Social Science Research

From DNA exonerations we have learned that the standard non-blind lineup procedures provide many opportunities for the lineup administrator to inadvertently cause a witness to select the suspect even when

the witness is unsure that this is the person from the crime scene. In other words, traditional procedures increase identifications made as a result of witnesses guessing as opposed to actual recognition.

Traditional eyewitness identification protocol (if there is any protocol at all) also often reinforces a witness's wrong choice through confirming feedback that ultimately increases their confidence in that pick, regardless of initial hesitance, in addition to contaminating the witness's memory of the actual event. Indeed, social science research has consistently confirmed not only the fallibility of eyewitness identifications but also the unwitting tainting of witness memory through many standard eyewitness identification procedures.

A decade ago, the Department of Justice (DOJ) addressed the problem of misidentification in a technical working group, which sought to identify best practices supported by rigorous social science research. The National Institute of Justice, the research arm of the DOJ, formed the "Technical Working Group for Eyewitness Evidence," composed of membership from the scientific, legal and criminal justice communities, which recommended a series of protocols in a report and an attendant training manual.¹³ Indeed, these recommendations are embodied in the provisions of S.B. 357.

Since its publication, a number of bar associations, police groups, and state commissions have conducted more comprehensive consideration of these reforms. The American Bar Association's House of Delegates adopted Resolution 111C in 2004, a statement of Best Practices for Promoting Accuracy of Eyewitness Identification Procedures, which delineated general guidelines for administering lineups and photo arrays, and which, again, are largely reflected in S.B. 357. In a report of the American Bar Association's Criminal Justice Section's Innocence Committee to Ensure the Integrity of the Criminal

¹³ Technical Working Group for Eyewitness Evidence. (1999) *Eyewitness evidence: A Guide for Law Enforcement*. Washington, DC. United States Department of Justice, Office of Justice Programs; and Technical Working Group for Eyewitness Evidence. (2003) *Eyewitness evidence: A Trainer's Manual for Law Enforcement*. Washington, DC. United States Department of Justice, Office of Justice Programs.

Process, the ABA resolved that federal, state and local governments should be urged to adopt a series of principles consistent with those contained in its resolution, incorporating scientific advances in research that has been developed over time.

In 2006, the International Association of Chiefs of Police (IACP) published a "Training Key on Eyewitness Identification," which concludes that "of all investigative procedures employed by police in criminal cases, probably none is less reliable than the eyewitness identification. Erroneous identifications create more injustice and cause more suffering to innocent persons than perhaps any other aspect of police work. Proper precautions must be followed by officers if they are to use eyewitness identifications effectively and accurately." The IACP Training Key endorses a number of key reforms, including blind administration, recording the procedure, instructing the witness and obtaining a confidence statement.

Efforts to address misidentification have also taken place on the state level. In April 2001, New Jersey became the first state in the nation to officially adopt the NIJ recommendations when the Attorney General issued *Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures*, mandating implementation of the recommendations – in addition to requiring that lineups be administered blind and presented sequentially – by all law enforcement agencies statewide. In May 2005, the Criminal Justice Standards Division of the North Carolina Department of Justice endorsed recommendations set forth in the North Carolina Actual Innocence Commission's report, *Recommendations for Eyewitness Identification*, which included "blind" and "sequential" lineups.¹⁴ In September 2005, the Wisconsin Attorney General's Office followed New Jersey's lead and issued a similar set of policies for statewide use, *Model Policy and Procedure for Eyewitness Identification*, which

¹⁴ North Carolina Department of Justice, Criminal Justice Standards Division. *Recommendations for Eyewitness Identification*, May 19, 2005.

also mandated the “blind-sequential” reform package.¹⁵ In 2006, the California Commission on the Fair Administration of Justice, comprised of key criminal justice stakeholders from across the state of California, embraced a set of reforms in its Report and Recommendations Regarding Eye Witness Identification Procedures.¹⁶ In 2007, the North Carolina legislature mandated the “blind-sequential” reform package when it passed HB 1625, perhaps the most comprehensive piece of eyewitness identification reform legislation to date.

Scientific Support for Eyewitness Reform

The large body of scientific research that supported these groundbreaking guidelines devised by NIJ’s working group nearly a decade ago has only been bolstered by a significant amount of additional peer-reviewed study on every aspect of these reforms. Simply put, today there is solid research and experiential support for all of these reforms. I will now spend a few minutes reviewing the research reflected in the Report that prove the value of these reforms.

Blind Administration

We strongly support S.B. 357’s requirement that identification procedures be conducted double-blind, ensuring that the lineup administrator does not know which photograph or live lineup member being viewed by the eyewitness is the suspect. Over forty years of general social science research has demonstrated that test administrators’ expectations are communicated either openly or indirectly to test subjects, who then modify their behavior in response.¹⁷ A prominent meta-analysis conducted at Harvard University, which combined the findings of 345 previous studies, concluded that in the absence of a blind

¹⁵ State of Wisconsin, Office of the Attorney General. *Model Policy and Procedure for Eyewitness Identification*, 2005.

¹⁶ Please see <http://ccfaj.org/documents/reports/eyewitness/official/eyewitnessidrep.pdf>.

¹⁷ e.g. Adair, J. G., & Epstein, J. S. (1968). Verbal cues in the mediation of experimenter bias. *Psychological Reports*, 22, 1045–1053; Aronson, E., Ellsworth, P. C., Carlsmith, J. M., & Gonzales, M. H. (1990). On the avoidance of bias. *Methods of Research in Social Psychology* (2nd ed., pp. 292–314). New York: McGraw-Hill.

administrator, individuals typically tailor their responses to meet the expectations of the administrator.¹⁸

Eyewitnesses themselves may seek clues from an identification procedure administrator. A recent experiment examining the decision-making processes of eyewitness test subjects concluded that, “witnesses were more likely to make decisions consistent with lineup administrator expectations when the level of contact between the administrator and the witness was high than when it was low.”¹⁹ The only way to avoid the influence of the administrator’s expectations on the eyewitness is through the use of a blind administrator.

Advocating for the use of a blind administrator does not call into question the integrity of law enforcement; rather it acknowledges a fundamental principle of properly conducted experiments – that a person administering an experiment (or an eyewitness identification) should not have any predisposition about what the subject’s response should be – and applies it to the eyewitness procedure. This eliminates the possibility – proven to exist in the eyewitness identification process – that a witness could seek, and an administrator might inadvertently provide, cues as to the expected response.

Consider the case of Thomas McGowan, who spent 23 years in the Texas prison system for a sexual assault he did not commit. DNA cleared him in April 2008, making him the 25th man from Texas (now 28) – and the 13th person in Dallas County (now 15) – proven innocent through DNA testing after eyewitness misidentification led to a wrongful conviction. In this case, the crime victim looked through a stack of photographs and placed one of Mr. McGowan aside, indicating that she thought it was her assailant. The detective assigned to the case then told her, “You have to be sure, yes or no.” The crime

¹⁸ Rosenthal, R., & Rubin, D. B. (1978). Interpersonal expectancy effects: The first 345 studies. *Behavioral and Brain Sciences*, 3, 377-386.

¹⁹ Haw, R. M. & Fisher, R. P. (2004). Effects of administrator-witness contact on eyewitness Identification accuracy. *Journal of Applied Psychology*, 89, 1106-1112.

victim recalled the detective's instructions as follows:

He said if I was going to say it was somebody, if I was going to say it was that picture, I had to be sure. He said I couldn't think it was him. He said I had to make a positive ID. I had to say yes or no.

It was at this point that the witness decided that McGowan was "definitely" the perpetrator of the crime. The McGowan case demonstrates that even when an officer is well-intentioned, his knowledge of the suspect's identity can easily push the witness into making a positive (but mistaken) identification and/or inflate the witness's confidence in a misidentification. Had the witness in the McGowan case paused on one of the non-suspect photographs, it is unlikely the detective would have been as forceful in attempting to elicit an identification or bolster the victim's level of confidence in the identification she made. Using a blind administrator ensures that the eyewitness, unlike the one in McGowan's case, will not be subject to the same well-intentioned pressure or provided with inadvertent verbal or non-verbal cues, the latter of which, while extremely influential, are particularly difficult to avoid when a non-blind administrator is conducting an identification procedure.

Some worry that double-blind administration is not feasible, potentially too expensive or resource-heavy, but this has not proven true in the field and, moreover, need not be the case. First, both large and small police departments that have progressed to using double-blind lineups, including those in New Jersey, North Carolina, Boston, Northampton, Denver, Minneapolis, most of Wisconsin, etc., are doing so routinely without complaint, problems, or prohibitive expenses. Just last month, the Dallas Police Department announced that it was adopting blind sequential lineups. *See Jennifer Emily, Dallas Police Drop Study, Plan Photo Lineup Changes, Dallas Morning News, January 16, 2009.* The experience of these departments should quell concerns about the practicality of conducting blind lineups.

Second, jurisdictions that have been concerned about expending any additional manpower have

implemented an alternative form of blind administration in which they “blind” the non-blind administrator. This can be done using a “folder shuffle method,” as used in Wisconsin, as well as through the use of laptop computers, as employed in Charlotte, NC.²⁰

Instructing the Eyewitness

In addition to blind lineups, “cautionary instructions,” or what we prefer to call “witness warnings,” are a key component of reform aimed at reducing the rate of mistaken identifications. Indeed, studies have demonstrated the dramatic decrease in mistaken identifications when witnesses understand that they are not required to identify someone at a lineup. See Nancy Steblay, *Social Influence in Eyewitness Recall: A Meta-Analytic Review of Lineup Instruction Effects*, 21 L. and Hum. Behav. 283 (1997) (finding a reduction in misidentifications when the culprit was not present from 78% to 33%, while still resulting in 87% identification of the culprit when the culprit was present). S.B. 357 identifies what we believe to be the most important of these warnings – that the perpetrator may or may not be in the lineup and that the eyewitness should not feel compelled to make an identification – we would also suggest that S.B. 357 also include the warning that “the investigation will continue whether or not an identification is made.” These witness warnings have been adopted or recommended in part or entirely by North Carolina (House Bill 1625), West Virginia (Senate Bill 821), the American Bar Association, the New Jersey Attorney General, the California Commission on the Fair Administration of Justice, and the International Association of the Chiefs of Police (Training Key #600).²¹

Taken together with the additional instructions specifically alluded to in the S.B. 357, these will deter the eyewitness from feeling compelled to make a selection or seek clues or feedback from the administrator

²⁰ Based on the best practices we have advocated for some time, the Innocence Project has included attached with this submission its recommended practices for “blinding” the administrator.

²¹ The aforementioned NIJ Working Group on Eyewitness Evidence issued a set of recommended instructions, some of which have been referenced in our model best practices at the conclusion of this submission.

during the identification procedure about whom to pick or whether or not a selection was correct, and otherwise help minimize the likelihood of a misidentification. This “best practice” is generally accepted by law enforcement and easily administered.

Proper Composition of the Lineup

Clearly, the optimal composition of a lineup assures more accurate selections. Therefore, the Innocence Project supports S.B. 357’s recommendation that the fillers be selected for a live and/or photo lineups based on their similarity to the witness’s description rather than on their resemblance to the suspect. As found by Gary Wells, “the match-description strategy is as effective as the resemble-suspect strategy at holding down false-identification rates. In addition, our results show that the match-description strategy is much better than the resemble-suspect strategy at promoting high rates of accurate identification.

These results bolster the argument that selecting distractors who resemble a suspect can be detrimental to maintaining high accurate-identification rates.” Wells, G.L., Rydell, S.M. and Seelau, E.P., *On the selection of distractors for eyewitness lineups*, 78 J. of Applied Psychol. 835 (1993).

In light of this research, the match-to-description basis for selecting lineup fillers has been recommended by the National Institute of Justice in both its *Eyewitness Evidence: A Guide for Law Enforcement* and *Eyewitness Evidence: A Trainer’s Manual for Law Enforcement*, the New Jersey Attorney General’s *Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures*, the Wisconsin Department of Justice’s *Model Policy and Procedure for Eyewitness Identification*, the California Commission On The Fair Administration Of Justice’s *Report And Recommendations Regarding Eyewitness Identification Procedures*, and the American Bar Association’s *Statement Of Best Practices For Promoting The Accuracy Of Eyewitness Identification Procedures*.

Consequently, as required by S.B. 357, non-suspect photographs and/or live lineup fillers should be selected based on their resemblance to the description provided by the witness – as opposed to their resemblance to the police suspect – yet in such a way that the suspect does not unduly stand out from the fillers.

We also agree that no more than one suspect be placed in an identification procedure.

Obtaining a Confidence Statement

A significant body of peer-reviewed research clearly indicates that post-identification feedback to the eyewitness at the time the identification is made both artificially inflates the confidence of a witness in his or her identification and also contaminates the witness's memory of the event.²² In other words, In addition to the danger of confidence inflation and false certainty, when post-identification confirming feedback is provided to an eyewitness who has incorrectly identified an innocent person, it can produce "strong effects" on witnesses' memory, including recollection of their opportunity to view the perpetrator and their degree of attention on the perpetrator.²³ This contaminating effect of confirming feedback, therefore, confounds the efforts of courts to assess the reliability of identification evidence, since it distorts and renders untrustworthy three of the five "reliability" factors enunciated in *Neil v. Biggers*, 409 U.S. 188 (1972) (a witness's degree of certainty, opportunity to view the perpetrator at the time of the incident, and degree of attention on the perpetrator). It also makes it difficult, if not impossible, for the jury to properly assess the witness's confidence at the time of the out-of-court confrontation, leaving it only with the witness's testimonial certainty months later. No one benefits in this situation – save for the

²² See, e.g., Bradfield, A. L., Wells, G. L., & Olson, E. A. (2002). The damaging effect of confirming feedback on the relation between eyewitness certainty and identification accuracy. *Journal of Applied Psychology*, 87, 112-120. and Wright, D. B., & Skagerberg, E. M. Post-identification feedback affects real eyewitnesses. *Psychological Science*, 18, 172-178 (2007).

²³ Wells, G.L., & Bradfield, A.L. (1998). "'Good, You Identified the Suspect': Feedback to Eyewitnesses Distorts Their Reports of the Witnessing Experience," *Journal of Applied Psychology*, 83, 360-376.

real perpetrator, who becomes that much more sheltered from ever being identified, prosecuted, and convicted.

Given the corrupting effect of confirming feedback, documenting the witness's certainty, in his or her own words, immediately at the time of the identification, is critical, particularly in light of research that has consistently shown that the eyewitness's degree of confidence in his identification at trial is the single largest factor affecting whether jurors believe that the identification is accurate.²⁴ The more confidence the eyewitness exudes – irrespective of accuracy –, the more likely jurors will believe that the identification is accurate.

Therefore, we support S.B. 357's requirement that immediately following the lineup procedure the eyewitness should provide a statement, in his or her own words, that articulates the level of confidence he or she has in the identification. Assessing a witness's level of certainty at the time of the identification is called for not only by social scientists,²⁵ but is consistent with the Supreme Court's dictates in *Manson v. Brathwaite*, 432 U.S. 98, 114 (1977) ("the factors to be considered ... include ... the level of certainty demonstrated at the confrontation").

Creating a Record of the Identification Procedure

As recognized by S.B. 357, it is essential to document the entire identification procedure. While S.B. 357 requires that the procedure be recorded in writing at a minimum, there is nothing in S.B. 357 that would prevent the police from using even more optimal recording techniques, such as video or audio.

²⁴ Bradfield, A. L. & Wells, G. L. (2000). The perceived validity of eyewitness identification testimony: A test of the five *Biggers* criteria, *Law and Human Behavior*, 24, 581-594 and Wells, G.L., Small, M., Penrod, S., Malpass, R.S., Fulero, S.M., & Brimacombe, C.A.E. (1998). Eyewitness identification procedures: Recommendations for lineups and photospreads, *Law and Human Behavior*, 22, 603-647. (Surveys and studies show that people believe strong relation exists between eyewitness confidence and accuracy).

²⁵ Douglass, A.B. & Steblay, N. (2006). Memory Distortion in Eyewitnesses: A Meta-Analysis of the Post-identification Feedback Effect. *Applied Cognitive Psychology*, 20, 859-869.

Documentation provides courts, prosecutors, defense lawyers, and jurors with the most complete access to the identification procedure, and is the most reliable account of any possible eyewitness identification. Moreover, in light of the potential hazard of inadvertent cues and confirming feedback discussed above, as well as the importance of assessing witness certainty contemporaneous with the identification, accurate and thorough recording of the procedure, including the precise verbal and non-verbal communications (captured most effectively when recorded by video) made by both the eyewitness and administrator, are indispensable.

It is worth noting that accurate recording enables documentation not only of suggestive elements of an identification procedure, but also of fair identification procedures conducted consistent with H.B. 357's recommendations, thus helping to protect the police and prosecutors from potential allegations of unnecessary suggestion or unreliable procedures.

Given its importance, it is important that law enforcement document every step of the procedure and/or failure to preserve every photograph, array, and document used in an identification procedure. In fact, in recognition of the importance of recordation, the New Jersey Supreme Court recently held that as a condition to the admissibility of an out-of-court identification, law enforcement officers must make a written record detailing the out-of-court eyewitness identification procedure, including a verbatim account of any exchange between police and witnesses. *See State v. Delgado* 188 N.J. 48 (2006).

Finally, knowing that these types of procedures are being recorded boosts public confidence in the criminal justice process. Simply put, creating a thorough (and preferably electronic) record of eyewitness identification procedures provides everyone with the best evidence of what actually transpired during those procedures. In addition, it is absolutely critical that the actual photographs from a photo lineup and

photographic documentation of live lineup members are preserved.

Showups

While S.B. 357 does not include a provision related to showup identification procedures – where an eyewitness is presented with a single suspect to see if the eyewitness identifies the individual as the perpetrator of the crime – we strongly encourage the Judiciary Committee to include a provision that would require law enforcement to follow the best practices as covered in the other provisions of S.B. 357 when conducting showup identification procedures. Research has demonstrated that innocent suspects are at a greater risk in showups than in lineups, particularly (and not surprisingly) those who bear a resemblance to the actual perpetrator and/or are wearing similar clothing. Showups can be problematic because, as social scientists have argued, the format of an identification procedure should not directly communicate law enforcement’s hypothesis of the perpetrator’s identity to the eyewitness.²⁶ Further, an alternative format, such as a photo or live lineups, can rule out at least some incorrect identifications, while a show-up does not present the opportunity to identify any errors. Consequently, some criminal justice practitioners have concluded that the show-up procedure is inherently suggestive.²⁷

Despite the intrinsic suggestiveness of the show-up procedure, there are occasions when it might be necessary for law enforcement. The show-up procedure can be useful for police officers who may lack the probable cause necessary for an arrest but believe the suspect, detained close in time and proximity to the incident, matches a general description of the perpetrator and should therefore participate in an identification procedure. While increasing the risk to innocent suspects of being mistakenly identified, the show-up can also afford protection to innocent suspects who are not identified and thus may be

²⁶ G. Wells, G.L., Small, M. & Penrod, S. et al. (1998), *Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads*, 22 *Law & Human Behavior*, 603, 619-20.

²⁷ See *State v. Dubose*, 699 N.W.2d 582, 592 (Wisc. 2005)(the Wisconsin Supreme Court ruled that show-up identification evidence is inadmissible unless, on the basis of the totality of the circumstances, it was shown to be necessary).

immediately shielded from further suspicion, excluded as potential suspects, and protected from an otherwise humiliating arrest and investigation process.

It is critical, however, given the inherent suggestiveness of the show-up identification procedure format, that any perceived benefits be balanced against the inherent risks. Therefore, several safeguards should be built into all show-up procedures to minimize the deleterious effects of its format.²⁸ For instance, prior to the show-up procedure, the police should record the description of the perpetrator provided by the eyewitness and transport the witness to a neutral (i.e., non-law enforcement/not-crime scene location). During the show-up procedure, the police should provide a set of warnings to the eyewitness equivalent to those recommended by S.B. 357 and by the Innocence Project in this testimony. The police should also take measures to minimize potentially damaging or prejudicial inferences that could be drawn about the suspect's guilt, including removing the suspect from the squad car, removing handcuffs before the arrival of the witness, and avoiding any words or conduct that may imply that the suspect is the perpetrator of the crime. The police should not conduct showups inclusive of more than one suspect or to more than one witness at a time. If one eyewitness makes a positive identification of the suspect, this should provide the police with sufficient probable cause to arrest the suspect, and thus each additional eyewitness should instead participate in either a photo or live line-up. Lastly, the police should document the show-up procedure (using video or audio recording if practicable), including the eyewitness's verbal reaction to the suspect presented and degree of certainty, in the eyewitness's own words, in his or her identification.

The Experiences of Those Jurisdictions that have Adopted Reforms

These changes have proven to be successful across the country. In the states of North Carolina and New

²⁸ These safeguards are derived from Wisconsin's Avery Task Force's "Eyewitness Identification Procedure Recommendations," which was based upon a comprehensive review and analysis of best practices, as well as from anecdotal recommendations and other existing research.

Jersey, for instance, all jurisdictions were directed to promulgate their own policies and procedures for implementing these reforms, and, after an exhaustive review of research and practitioner experience, opted to implement the “blind-sequential” reform package. Both states reported that while there was initial resistance from many about the need for and value of such reforms, after police were provided the opportunity to learn more about them, receive training about how to properly implement them, and to participate in the formation of the specific adaptations of the reforms in their jurisdictions, those initial concerns have been replaced with acceptance of and appreciation for eyewitness identification procedures that increase the accuracy of criminal investigations and the effectiveness of criminal prosecutions and, by virtue of employing the most accurate eyewitness procedures available, strengthen the persuasive and probative value of eyewitness identifications before, during and after trial.²⁹

In addition to New Jersey and North Carolina, large cities such as Minneapolis and St. Paul, MN and Milwaukee WI, medium-sized jurisdictions such as Santa Clara, CA, and Madison, WI, and small towns such as Northampton, MA have implemented best practices, including blind administration, and have found that they have improved their quality of their eyewitness identifications, strengthened prosecutions, and reduced the likelihood of convicting the innocent. Recently, the Dallas Police department joined the expanding list of “best practices” jurisdictions by electing to conduct its lineup procedures double-blind and sequentially.

We would be glad to put you in contact with persons involved with the implementation of these reforms in any of the aforementioned jurisdictions if you would like to speak with them about their experiences.

²⁹ The North Carolina initiative described above flowed from a working group led by their Chief Justice. It is worth noting, however, that the North Carolina Legislature chose to *require* the implementation of such reforms when – after the Duke Lacrosse case and other incidents – it became clear that guidelines were not enough.

Conclusion

The strong body of peer-reviewed research, jurisdictional successes, a history of legislative action, and the support of national law enforcement and legal organizations for eyewitness identification reform all commend the public safety leadership that the Connecticut Legislature can provide with passage of H.B. 357. Adoption of this bill will enhance Connecticut's ability to swiftly and surely convict offenders - and avoid being misled into pursuing others, or worse, convicting the innocent. Ultimately, implementation of eyewitness identification protocols identified in H.B. 357 promises to serve the entire criminal justice community by serving the interests of law enforcement by helping to identify the guilty, promise the fair administration of justice by better protecting the innocent, and enhance the public safety.

Thank you for the opportunity to testify before you about this critically important reform. We commend Senate Looney for introducing S.B. 357 and for its consideration by the Judiciary Committee. I would be glad to answer any questions.

BLINDING THE ADMINISTRATOR:
How To Effect 'Blind' Administration of Eyewitness Procedures For Police Departments
With Limited Manpower

To enhance the accuracy of any eyewitness identification procedure, the officer administering a lineup should not know which lineup member is the police suspect. Eyewitness identification procedures should therefore be conducted by a non-investigating, or 'blind,' administrator.

Understandably, small police departments with limited officer manpower – or larger departments with officers conducting identifications in the field - may believe that the requirement of 'blind administration' of eyewitness procedures is unfeasible. Yet this need not be the case at all.

Workable solutions have emerged to address this concern. Law enforcement agencies that have implemented this reform report that they are able to 'blind' the administrator without expending additional manpower resources. This is done through the time-tested 'folder system' or by means of emerging laptop technology.

THE FOLDER SYSTEM

The "Folder System" was devised to address concerns surrounding limited resources while allowing for blind administration. Should the investigating officer of a particular case be the only law enforcement personnel available to conduct a photo lineup, the following instructions are recommended:

1. Use one suspect photograph that resembles the description of the perpetrator provided by the witness, five filler photographs that match the description but do not cause the suspect photograph to unduly stand out, and ten folders [four of the folders will not contain any photos and will serve as 'dummy folders'].
2. Affix one filler photo to Folder #1 and number the folder.
3. The individual administering the lineup should place the suspect photograph and the other four filler photographs into Folders #2-6 and shuffle the photographs so that he is unaware of which folder the suspect is in, and then number the remaining folders, including Folders #7-10, which will remain empty. [This is done so that the witness does not know when he has seen the last photo].
4. The administrator should provide instructions to the witness. The witness should be informed that the perpetrator may or may not be contained in the photos he is about to see and that the administrator does not know which folder contains the suspect.
5. Without looking at the photo in the folder, the administrator is to hand each folder to the witness individually. Each time the witness has viewed a folder, the witness should indicate whether or not this is the person the witness saw and the degree of

confidence in this identification, and return the photo to the administrator. The order of the photos should be preserved, in a facedown position, in order to document in Step 6.

6. The administrator should then document and record the results of the procedure. This should include: the date, time and location of the lineup procedure; the name of the administrator; the names of all of the individuals present during the lineup; the number of photos shown; copies of the photographs themselves; the order in which the folders were presented; the sources of all of the photos that were used; a statement of confidence *in the witness's own words* as to the certainty of his identification, taken immediately upon reaction to viewing; and any additional information the administrator deems pertinent to the procedure.

* The information described above was informed by "Eyewitness Identification Procedure Recommendations" put forth by Wisconsin's Avery Task Force as well as existing research on the folder shuffle.

LAPTOP TECHNOLOGY

A number of software companies have begun to develop technologically advanced software for law enforcement agencies that allow for computer-based identification procedures. In addition to assuring blind administration through laptop technology, some of these companies have also ensured that their programs incorporate many of the reforms that are endorsed or urged by the National Institute of Justice and the American Bar Association, including: the provision of witness instructions and confidence statements; the proper generation of fillers based on the witness's description; and the recordation of the procedure from start to finish.

Police departments in Charlotte and Winston-Salem, North Carolina, have already begun to use one such application, and other law enforcement agencies are exploring the option in an attempt to streamline their procedures, while ensuring that safeguards to the innocent are in place.



Benjamin N. Cardozo School of Law, Yeshiva University

EYEWITNESS IDENTIFICATION REFORM

Mistaken Identifications Are the Leading Factor in Wrongful Convictions

Mistaken eyewitness identifications contributed to 75% of the 234 wrongful convictions in the United States overturned by post-conviction DNA evidence.

- Inaccurate eyewitness identifications can confound investigations from the earliest stages. Critical time is lost while police are distracted from the real perpetrator, focusing instead on building the case against an innocent person.
- Despite solid and growing proof of the inaccuracy of traditional eyewitness ID procedures – and the availability of simple measures to reform them - traditional eyewitness identifications remain among the most commonly used and compelling evidence brought against criminal defendants.

Traditional Eyewitness Identification Practices – and Problems

- In a standard lineup, the lineup administrator typically knows who the suspect is. Research shows that administrators often provide unintentional cues to the eyewitness about which person to pick from the lineup.
- In a standard lineup, without instructions from the administrator, the eyewitness often assumes that the perpetrator of the crime is one of those presented in the lineup. This often leads to the selection of a person despite doubts.
- In a standard lineup, an eyewitness is shown individuals or photographs *simultaneously*. Research shows that this tends to lead eyewitnesses to choose a lineup member based upon a relative judgment (i.e. who *looks most like* the perpetrator?), rather than basing the identification on his or her own mental image of the perpetrator.

How to Improve the Accuracy of Eyewitness Identifications

The Innocence Project endorses a range of procedural reforms to improve the accuracy of eyewitness identification. These reforms have been recognized by police, prosecutorial and judicial experience, as well as national justice organizations, including the National Institute of Justice and the American Bar Association. The benefits of these reforms are corroborated by over 30 years of peer-reviewed comprehensive research.

1. The “Double-blind” Procedure/ Use of a Blind Administrator:

A “double-blind” lineup is one in which neither the administrator nor the eyewitness knows who the suspect is. This prevents the administrator of the lineup from providing inadvertent or intentional verbal or nonverbal cues to influence the eyewitness to pick the suspect. Smaller police departments with limited officer manpower or larger departments conducting identifications in the field using blind lineups report that they are able to ‘blind’ the administrator

without expending additional manpower resources by employing the 'folder system' or emerging laptop technology.

2. Instructions

"Instructions" are a series of statements issued by the lineup administrator to the eyewitness that deter the eyewitness from feeling compelled to make a selection. They also prevent the eyewitness from looking to the lineup administrator for feedback during the identification procedure. One of the recommended instructions includes the directive that *the suspect may or may not be present in the lineup*.

3. Composing the Lineup

Suspect photographs should be selected that do not bring unreasonable attention to him. Non-suspect photographs and/or live lineup members (fillers) should be selected based on their *resemblance to the description provided by the eyewitness* – as opposed to their resemblance to the police suspect. Note, however, that within this requirement, the suspect should not unduly stand out from among the other fillers.

4. Confidence Statements

Immediately following the lineup procedure, the eyewitness should provide a statement, in his own words, that articulates the level of confidence he has in the identification made.

5. The Lineup Procedure Should Be Documented

Ideally, the lineup procedure should be electronically recorded. If this is impracticable, an audio or written record should be made.

Jurisdictions Utilizing "Double-Blind" Procedures:

These following jurisdictions have implemented "double-blind" (and "sequential") as standard procedure: the states of New Jersey and North Carolina; Madison & Milwaukee, WI; Denver, CO; Hennepin County (Minneapolis), MN; Ramsey County (St. Paul), MN; Santa Clara County, CA; and Northampton, MA. In addition, Dallas, TX, recently announced that it would adopt double-blind sequential procedures.

The states of Georgia and Wisconsin have recommended/promulgated "double-blind sequential" voluntary guidelines and incorporated them into law enforcement training.

Improving eyewitness identification

Editor's note:

Det. Lt. Ken Patenaude worked alongside 33 criminal justice professionals and social science researchers to look at the processes of collecting eyewitness evidence and examine how current procedures could be improved. As a result, the National Institute of Justice Technical Working Group published "Eyewitness Evidence: A Guide for Law Enforcement." While Patenaude says the guide made some very necessary procedural improvements, he believes there are still more improvements to be made.

Since 1989, DNA technology has proven time and time again (some 137 exonerations to date) that the criminal justice system has flaws. As a result of the first 28 exoneration cases, studies were con-

ducted and findings were published in "Convicted by Juries, Exonerated by Science," a mid-1990s National Institute of Justice research report that indicated there were several reasons why so many people were wrongfully convicted. The areas of concern or flaws that led to these wrongful convictions were identified as bad science, defense and/or prosecutorial malfeasance or misconduct, and police misconduct. However, the majority of these wrongful convictions were based on faulty eyewitness identifications — evidence that prosecutors most commonly rely upon even today.

Police officers receive very little, if any, training on how to conduct a lineup or photo array identification process. Traditionally, experienced detectives or supervisors show new officers what they have been doing

over the years and what the court allows — and that is the extent of the training. This process is usually as simple as putting together six to eight photographs based on the description given by the victim/witness and/or the suspect's characteristics. The photographs are then placed into a file folder and the victim is asked to look at the photos and tell the investigator if he recognizes the perpetrator. The process has not changed in decades. DNA technologies, as well as eyewitness identification research, has proven the need for change beyond a reasonable doubt. Law enforcement must be accountable to the innocent, as well as the victim. Formal training programs for eyewitness identification procedures must be implemented.

A valuable resource to help improve eyewitness identification procedures is the U.S. Department of Justice, National Institute of Justice "Eyewitness Evidence: A Guide for Law Enforcement," 1999. (See www.nejrs.org.) The guide made some necessary procedural improvements in comparison to past practices.

However, not all of the researchers' recommended procedural changes found their way into the guide. I believe now that the publication should have documented the researchers' recommendations for conducting sequential procedures for live lineups and photo arrays as the preferred method for conducting eyewitness identifications. Also, blind administration of lineups should have been the recommended practice whenever feasible. The changes recommended in this article and within the guide are very reasonable and easy to implement. More importantly, they are procedurally sound and will strengthen any investigation



OPINION

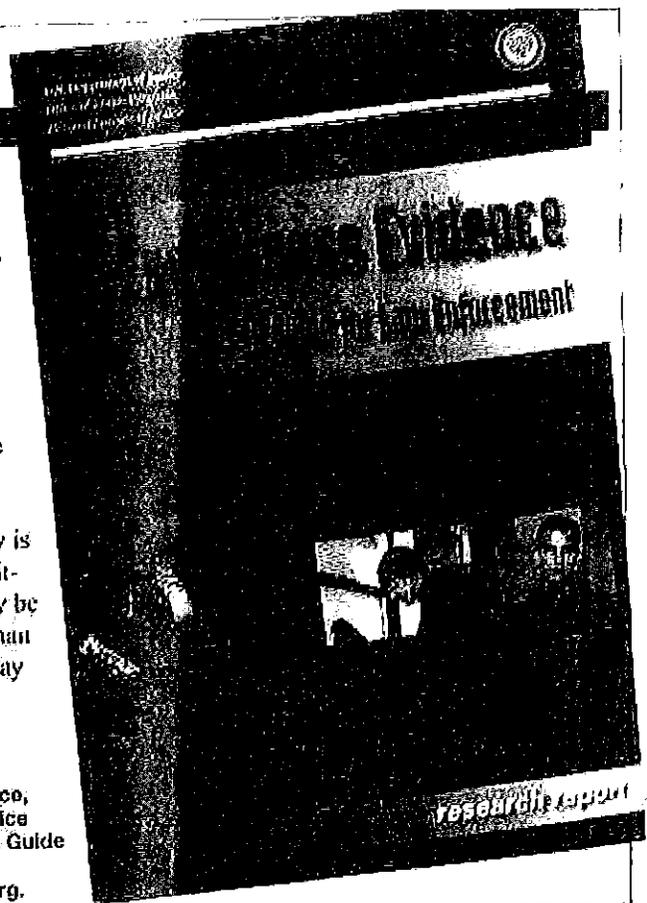
and lessen the potential for mistaken identifications.

Human memory as evidence

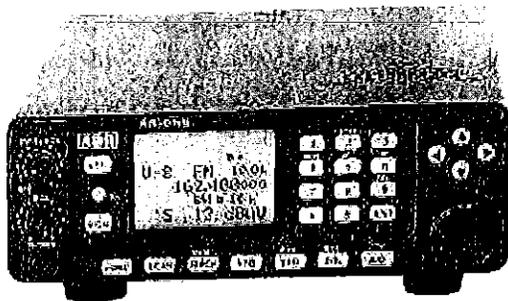
Try to think of eyewitness evidence (human memory) as a form of trace evidence. Compare eyewitness evidence to other trace evidence forms such as blood, hair, fingerprints, saliva and semen. Police officers know that blood, hair and body fluids are subjected to deterioration, mishandling and contamination. The same trace evidence issues can arise with eyewitness accounts. Officers must learn to appreciate the fragility of human memory. Human memory is not like a video recorder. We cannot just hit the play button and wait for the incident to be played back for us by the witness. We cannot expect him to supply us with all the necessary details to assist us in our investiga-

tion. Eyewitness accounts need to be gathered as soon as possible before that evidence begins to deteriorate and before the eyewitness memories are contaminated by other witness accounts, police officers and media reports. We also must understand that memory is subjective. What one witness may have seen may be significantly different than what another witness may have seen.

U.S. Department of Justice, National Institute of Justice "Eyewitness Evidence: A Guide for Law Enforcement" is available at www.ncjrs.org.



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Consider this case example. One afternoon in downtown Northampton, a 15-year-old boy stabs a 16-year-old boy to death in a high traffic area. As investigators arrive at the station to begin their follow-up investigation, they are greeted by an officer who proudly announces, "Hey Lieutenant, all your witnesses are in the lobby." Having so many witnesses willing to assist the police is wonderful. However, there are approximately a dozen witnesses crowded into a lobby that is about 12 feet by 14 feet. The dilemma is getting the witnesses separated as soon as possible to prevent post-event contamination. You do not want witnesses sharing stories and accounts of what they saw. If one person mentions that he saw the guy wearing a Boston Red Sox hat to another witness who may not have seen the baseball hat, this may now

become that witness's memory. This is known as post-event contamination and can be very damaging to an investigation.

You do not want witnesses sharing stories and accounts of what they saw.

Let's consider another important concept regarding eyewitness information. Confidence does not always equate to accuracy. Many variables at the scene are important to consider when evaluating the accuracy and confidence of your witness. Variables that you cannot control are the duration

that the witness was exposed to the perpetrator, the lighting conditions, the distance from the witness to the perpetrator, and the condition of the witness at the time of the incident. Variables that you can control are the interviewing techniques, the witness instructions provided prior to presenting a lineup and/or photo array, and the gathering of a statement of confidence from the witness. (How sure are you?) If all these factors are considered, an improved evaluation of the accuracy and confidence of a witness can be measured. This will result in reducing the possibility for misidentifications.

Cognitive interviewing techniques for the cooperative witnesses

Understanding how the human memory functions is the first step in improving the process of collecting

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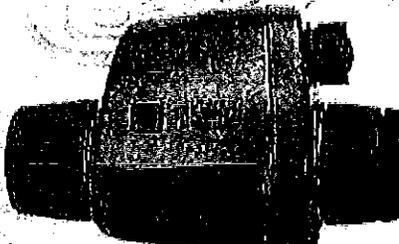
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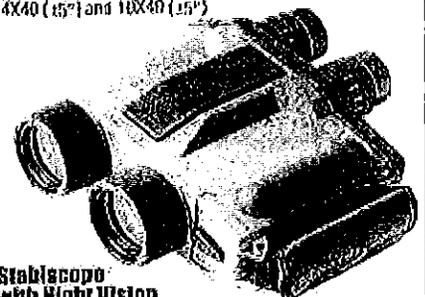


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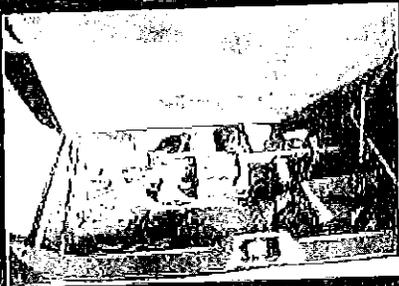
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OPINION

eyewitness evidence. You can gather more accurate information and details from a witness if you use cognitive interviewing techniques. Utilizing cognitive interviewing techniques not only increases the amount of information gathered, but more importantly, ensures the accuracy of that information. Ronald P. Fisher, Ph.D., and Ed Geiselman, Ph.D., authors of "Memory-Enhancing Techniques for Investigative Interviewing," suggest the following to improve the amount as well as the accuracy of information obtained from the witness: (1) establish a rapport with the cooperative witness (the social dynamics component), (2) facilitate the witness memory and thinking to assist in recalling more accurate information, and (3) improve communication between the witness and interviewer. This book published by Charles C. Thomas Publisher in 1992 provides principles for effective interviewing and identifies techniques to avoid. The authors believe that when police officers use proper questioning techniques, they elicit a narrative response and more information. Many of the techniques described in this publication can assist any police officer in eliciting much more information from a cooperative witness than can be obtained by using the "fill in the box," canned questions.

*We must learn to let the witness
give a description in the way the
witness remembers the events
and avoid interrupting.*

Human memory does not always work in a way that accommodates the first responder on the scene. The police officer usually wants a description of the perpetrator from head to foot. The human memory does not work like this. We must learn to let the witness give a description in the way the witness remembers the events and avoid interrupting. An officer can accomplish this by asking an open-ended question that promotes a narrative response. Telling the witness that this is his story to tell and then asking open-ended questions will assist in a narrative response, which should not be interrupted. A first responder must allow for the witness to work through a pregnant pause because the witness may be attempting to remember more details. As police officers, we are action-oriented and feel the need to fill the voids. Be patient and do not interrupt the witness. When the witness is having problems recalling certain events, you can assist in the memory retrieval process by asking him to remember the incident from a different perspective. Learn to break old habits of firing questions that only require one-word or short answers. If we take our time and promote memory recall, we can gather more information as well as increase the accuracy of the information.

Proper witness instructions

What has been taken for granted over the years with the identification process are the instructions given to witnesses prior to the presentation of a suspect at a show-up, photo array or live lineup. Inherently, when an officer is about to show a witness a small group of individuals (six to eight) or photographs, the witness concludes that the police have a suspect. (He thinks: "Why else are they showing me only a few photographs?") He feels obligated to find the suspect and pick him out of the lineup. This may not be a problem when the perpetrator is in the lineup. It becomes a problem when the perpetrator is absent, which then may lead to a misidentification. We can improve identification procedures by first giving proper instructions to witnesses prior to any presentation of individuals or photographs. It is important to tell the witness the perpetrator may or may not be in the lineup. This can be a crucial point in the process. We also must tell the witness it is just as important to exonerate the innocent as it is to identify the guilty party and that if he doesn't recognize the perpetrator in the lineup, the investigation will continue. This can relieve the witness from feeling pressured to select someone in the lineup.

Sequential versus simultaneous lineups

During a simultaneous lineup procedure, the witness views all individuals or photographs at the same time. When you present all members of the lineup at one time and the perpetrator is absent, frequently the witness begins the process of elimination and may select the one person who looks most like the perpetrator. In any lineup, there is usually one person or photograph that looks more like the perpetrator than the others. The witness begins to eliminate all others by comparison before selecting the one that looks closest to the actual perpetrator. This is also known as the process of relative judgment, which can lead to misidentifications when the perpetrator is absent from the lineup.

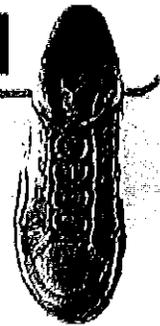
Using a sequential method, photographs and/or individuals are presented one at a time. The sequential process allows the witness to make a decision about each member before looking at the next. It reduces the comparison process (relative judgment) when the photos/individuals are shown one at a time.

In 2001, I rewrote the Northampton Police Department's policy that mandates sequential lineups and it is believed the Northampton Police Department is the first in the country to do so. In 1999, the Northampton Police Department began using sequential lineups in order to test them in actual cases. Based upon the feedback from detectives, using the sequential lineup method and the research on that subject, the Northampton Police Department concluded that the sequential method was the best practice for presenting lineups. While we have had fewer hits, the identifications are much stronger. The investigators are comfortable with the selections made and are prepared to respond to any defense motion or provide court testimony regarding the procedures

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OPINION

and their results. They have received formal training and the support of a policy that guides them through the process that they believe in.

Gathering a witness statement of confidence

The gathering of a witness's statement of confidence before saying anything to the witness about his selection can diminish what is called witness bolstering. We have all made some sort of remark or gesture reaffirming when a witness selects our suspect. This type of reaction by a police officer can lead to wrongful convictions and imprisonment. Consider the Ronald Cotton and Jennifer Thompson case. Jennifer Thompson selected Ronald Cotton from a photo array and then picked him out again in a live lineup in response to

an officer saying, "That's who we thought it was." It was this reactionary statement that convinced Jennifer Thompson that she had

Avoid saying anything suggestive to a witness until you have obtained a confidence statement.

picked out the right suspect that had raped her. Once your victim or witness senses that he has selected your suspect, he begins to gain a confidence that he has identified the right person. This, of course, could

lead the witness to making a misidentification. Ronald Cotton served 10 years of a double life sentence before he was exonerated by DNA evidence.

Obtaining a confidence statement

Avoid saying anything suggestive to a witness until you have obtained a confidence statement. It could be something he says during the lineup process such as: "That's the guy who shot me." You may hear something like, "He has No. 3's nose but his hair is more like No. 6." The confidence statement may not be so confident but it could be very helpful to the investigation. You may learn that the suspect you identified is not the perpetrator. However, you learn more about the features of the perpetrator.



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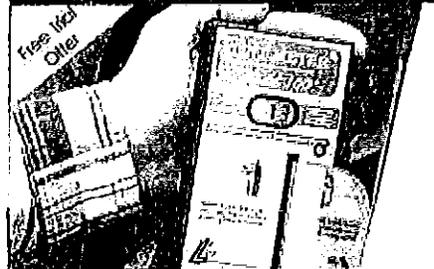
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Blind administration of the lineup or photo array

One last procedural point that will improve the identification procedure is having an array presented to the witness by a police officer who does not know which photo is the photo of the suspect. This also was a sticking point for some members of the TWG, and it may be more difficult for small departments with few officers. Although the researchers had the best intentions, the message seemed clear that this procedure would suggest that the police cannot be trusted. However, this is a good procedure that does not intimate the potential of police misconduct but rather eliminates any inadvertent cues that the investigator may give to the witness. If the administrator of the lineup is unaware of who the suspect is, he cannot unintentionally cue the witness or bolster the witness's confi-

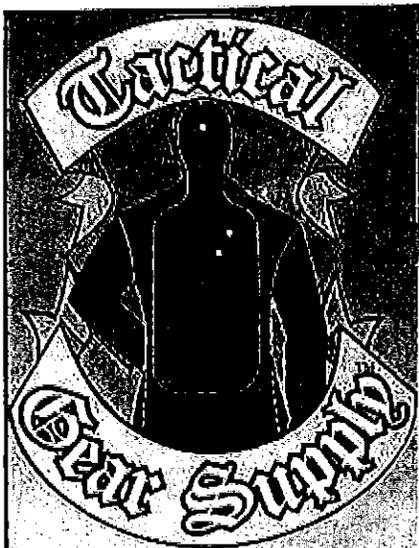
dence by making inappropriate comments about the witness's selection.

*We need to do
a better job
of collecting
eyewitness evidence.
Convicting the
innocent assures the
guilty remain free.*

It's time for change. DNA technology and social science researchers have shown that we need to do a better job of collecting eyewitness evidence in the future. I never want to be that

police officer or investigator who was responsible for convicting an innocent person of any crime. Convicting the innocent assures the guilty remain free. It also erodes the public's faith in law enforcement agencies and the criminal justice system as a whole. ■

Lt. Ken Patenaude is a 25-year veteran of the Northampton (Massachusetts) Police Department. He has commanded the Detective Bureau as a detective lieutenant for the past 10 years. He has specialized training in homicide investigations, child sexual assaults and hostage crisis negotiations. He has a master's degree in criminal justice administration and has taught the subject of eyewitness evidence procedures in several states. He can be reached at kpatenaude@city.northampton.ma.us.



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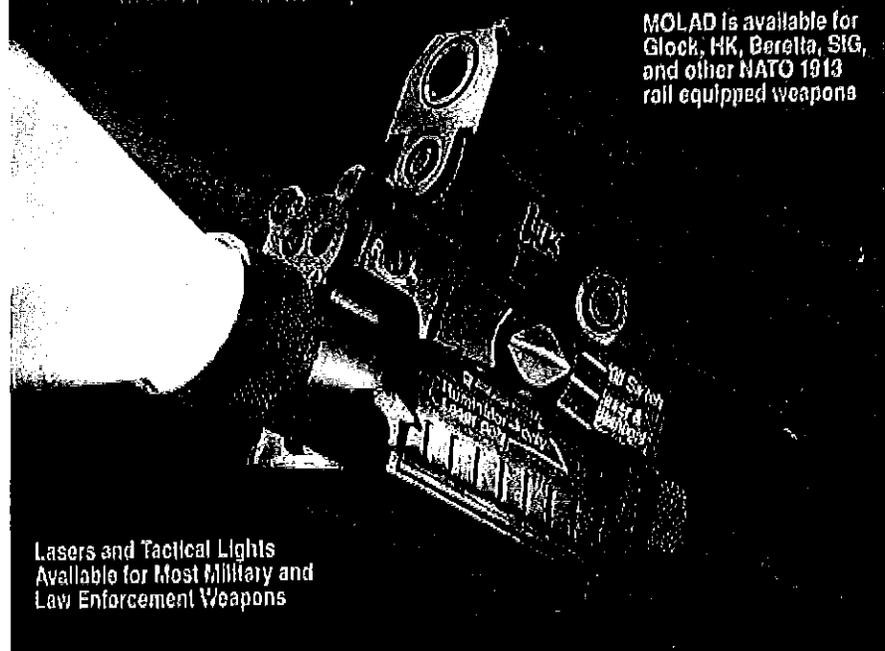
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