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**TESTIMONY OF REBECCA BROWN,
SR. POLICY ADVOCATE FOR STATE AFFAIRS, INNOCENCE PROJECT,
BEFORE THE CONNECTICUT JUDICIARY COMMITTEE**

**Re: HB No. 6344 (Raised) – An Act Concerning Eyewitness Identification
SB No. 945 (Raised) – An Act Concerning Recording of Custodial Interrogations**

On behalf of the Innocence Project, thank you for allowing me to testify today before the Connecticut Judiciary Committee.

Since its U.S. introduction, post-conviction DNA testing has proven the innocence of 266 people who had been wrongly convicted of serious crimes. With the certainty of innocence that DNA provides, we can also be certain that something(s) went wrong in the process which led fact finders to believe beyond a reasonable doubt that the innocent person was, in fact, guilty of the crime.

The Innocence Project was founded in 1992 at the Benjamin N. Cardozo School of Law to exonerate the innocent through post-conviction DNA testing. We regard each DNA exoneration as an opportunity to review what causes wrongful convictions, and identify factually-supported methods to minimize the possibility that such errors will continue to create wrongful convictions. The recommendations that we make are grounded in robust social science findings and practitioner experience, all aimed at improving the reliability of the criminal justice system.

Eyewitness Identification Reform

At least one mistaken eyewitness identification contributed to the wrongful conviction in a full 75% of cases of wrongful conviction proven through DNA testing. But it is not just the wrongfully convicted who suffer when an eyewitness misidentifies an innocent person as the perpetrator of a crime. When an



eyewitness misidentifies someone, police are also led away from the real perpetrator, and instead focus their investigation on an innocent person. What's more, if the police do again focus their case on the real 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 person who benefits is the real perpetrator of a crime.

The good news is that over the past 25 years, a large body of peer-reviewed research and practice has been developed, showing us how simple reforms to the eyewitness identification process can greatly reduce the inadvertent misleading influences present in traditional eyewitness identification procedures.

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

From DNA exonerations we've learned that the traditional lineup procedures provide many opportunities to inadvertently cause a witness to misidentify an innocent person as the perpetrator of crime. Traditional eyewitness identification methods also often reinforce a witness's wrong choice, resulting in even stronger witness confidence in an identification that was incorrect. **Social science research over the past three decades has consistently confirmed the fallibility of eyewitness identifications as well as the unwitting contamination of witness recall through many standard eyewitness identification procedures. This same research has also identified simple changes in eyewitness identification procedures that can greatly reduce the possibility of misidentification.**

Responding to the proliferation of research in this area, police and prosecutors from across the country have begun to rethink traditional eyewitness identification procedures and promulgated updated policies for use by their law enforcement officials. Attorneys General in New Jersey and Wisconsin have gone so far as to promulgate best practices for use in their respective states. In April 2001, New Jersey became

the first state in the nation to officially adopt best practices related to eyewitness identification protocols when the Attorney General issued Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures, mandating the requirement that lineups be administered by blind administrators – by all law enforcement agencies statewide. In Minnesota in October of 2009, the Ramsey County Attorney’s Office, the Minnesota Bureau of Criminal Apprehension and the Minnesota County Attorneys Office sponsored statewide training on the “blind sequential lineup” for the entire law enforcement community in that state in these best practices.

Just two months ago, a nine-member task force in Rhode Island, which included membership from all corners of the criminal justice community, called for every law-enforcement agency in the state to establish a written policy for conducting eyewitness identifications consistent with the report’s recommended best practices and that all law-enforcement officers be trained in these “best practices” by June of this year. The best practices recommended by the Rhode Island task force include blind administration of live and photo lineups, proper filler selection, the issuance of specific instructions, and that a confidence statement be taken immediately upon identification. According to Task Force Co-Chair Deputy Attorney Gerald Coyne, “We all have an interest in making sure the right person is convicted.”¹

Reforms Embraced by Other Jurisdictions

These changes have proven to be successful across the country. The states of New Jersey, North Carolina, Ohio, large cities such as Minneapolis, MN, Winston-Salem NC, and Boston, MA (to name just a few) and small towns such as Northampton, MA have implemented these practices and have found that they have improved their quality of their eyewitness identifications, thus strengthening prosecutions and reducing the likelihood of convicting the innocent.

¹ Mulvaney, Katie. “R.I. General Assembly to take up report on guidelines for eyewitness evidence.” Providence Journal, January 26, 2011.

Across the country, jurisdictions that have implemented these reforms at first experienced resistance, but 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, there is widespread agreement that these improved eyewitness identification procedures increase the accuracy of their criminal investigations, and the effectiveness of their criminal prosecutions.

Legislation requiring the uniform implementation of best practices has been considered by this committee for several years, but has not spurred its voluntary implementation by law enforcement. Simply put, Connecticut can wait no longer, and this legislation represents a reasonable way for the state to uniformly advance in this critically important area of wrongful conviction reform.

False "confessions" are far more prevalent than one might think.

A false confession, admission, or dream statement was found to have contributed to nearly 25% of the wrongful convictions in America's 266 DNA exonerations. Electronically recording custodial interrogations from Miranda onward removes serious questions about the "confession" in question, by enabling the finder of fact to consider the most accurate presentation of the confession evidence at trial, thus narrowing the possibility of a wrongful conviction.

Ancillary Benefits of Recording Interrogations

There are a number of ancillary benefits that can be achieved through the implementation of mandatory recording. A record of the interrogation can resolve disputes about the conduct of law enforcement officers—allegations of police misconduct can be disproven. Investigators will not have to focus upon writing up a meticulous account of the statements provided by the suspect, and may instead focus his

attention on small details, such as subtle changes in the narrative, which he might have otherwise missed. Having a record of good interrogation techniques can be a useful training device for police departments, particularly as cases with distinctive characteristics come to light. Overburdened courts will welcome a huge reduction in defense motions to suppress unrecorded statements and confessions as well as pretrial and trial hearings focused upon establishing what transpired during the course of an interrogation.

The single best reform available to hinder the occurrence of false confessions, the mandatory electronic recording of interrogations, is being embraced by police departments around the country, now estimated at 750 law enforcement agencies. The states of Alaska, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Wisconsin, and the District of Columbia already require it in serious cases, and the same is done in large metropolitan cities such as Phoenix, AZ; Los Angeles, San Diego, San Francisco and San Jose, CA; Denver, CO; Austin and Houston, TX. As of this writing, we understand that a pilot project is underway in Connecticut and that the preliminary feedback from law enforcement speaks to the benefits previously articulated in this testimony. What is required, however, is statewide, uniform implementation of this critical reform, whose innumerable benefits will undeniably bolster the investigations of criminal cases.

In the summer of 2004, Thomas P. Sullivan, the former U.S. Attorney for the Northern District of Illinois, published a report detailing police experiences with the recording of custodial interrogations.

Researchers interviewed officers in 238 law enforcement agencies which have implemented the reform in 38 states and concluded, "virtually every officer with whom we spoke, having given custodial recordings a try, was enthusiastically in favor of the practice." (Sullivan, Thomas, "Police

Experiences with Recording Custodial Interrogations.” Report presented by Northwestern University School of Law’s Center on Wrongful Convictions, p. 6.)

SB 945 carves out broad exceptions to recording interrogations that seek to protect law enforcement, while also ensuring that the best possible evidence is available to fact finders during the course of criminal proceedings. Passage of SB 945 will assure protections to the innocent, which in turn will allow law enforcement to focus its attention on the apprehension of the true culprit. Less than ideal interrogation procedures have contributed to or been the main factor in nearly one in five of the nation’s wrongful convictions of individuals later exonerated through DNA evidence. In each of these cases, the true perpetrator remained at large, able to commit additional crimes.

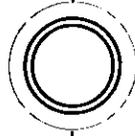
By uniformly recording interrogations in serious cases, false confessions can be more readily identified, police will be relieved of needless (and some would say endless) questioning from defense lawyers about what transpired during the interrogation, and perhaps most importantly judges and juries will have the best evidence of what was and was not said during an interrogation.

We hope the Committee will agree that taking advantage of the emerging research and best practices will further enhance the ability to swiftly and surely convict offenders, and avoid being misled into pursuing others, or worse, convicting the innocent. Passage of both HB 6344 and SB 945 will assure protections to the innocent, which in turn will allow law enforcement to focus its attention on the detection of the true culprit.

INNOCENCE PROJECT



EXHIBIT

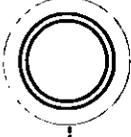


SOCIAL SCIENCE RESEARCH SUPPORTING EYEWITNESS IDENTIFICATION REFORM

**SUBMITTED TO THE
CONNECTICUT JUDICIARY
COMMITTEE**

**REBECCA BROWN,
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Blind Administration of Lineups

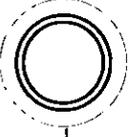


Blind testing means that the person administering the test does not know the “correct” or “desired” answer.

In tests of new drugs, for instance, the medical person who examines subjects does not know whether the subject received the experimental drug or a placebo.

Blind testing simply applies a fundamental scientific principle to the criminal setting.

Why is blind administration necessary?



The call for blind testing does not call into question the integrity of law enforcement.

People generally do not know when they are unintentionally influencing others.

Purpose of blind administration: to prevent inadvertent cueing of the eyewitness.

What Blind Administration Can Prevent

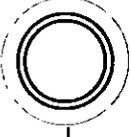
Verbal influences on identification decision:

- e.g. suspect is in position #3
Witness: “um..number two..”
Detective: “Now, be sure you look at everyone”
- e.g. if suspect is in position #3
Witness: says “um..number three..”
Detective: “Tell me about number three”
- e.g. if the suspect is in position #3
Witness: says nothing..
Detective: “I noticed you paused on number three”

Nonverbal influences on identification:

- Pauses, leaning, displays of interest/disinterest

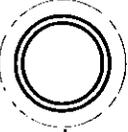
Blind Administration is Scientifically Supported



“The need for double-blind testing procedures is one of the best known, best respected, and best documented findings in all of scientific psychology and is a staple in science.” – Gary Wells, prominent social scientist

Robert Rosenthal – meta-analysis of 345 studies concluded that the effect of the testers’ expectations is robust and, based on the scientific data, there is less than one chance in a million that there is no relation between a testers expectations and the behavior of the person tested.
[Rosenthal & Rubin, 1978, *Behavioral and Brain Sciences*]

More Scientific Support for Blind Administration



Phillips et al. (1999) *J. Applied Psychology*

erroneous belief of the lineup administrators led eyewitnesses to be more likely to choose that person (in sequential lineups)

Haw and Fisher (2004) *J. Applied Psychology*

Close contact led to an increase (from a mere 3% to 30%) in choosing the person that the lineup administrator was led to erroneously think was the correct person. (in simultaneous lineups)

Douglas, Smith, & Frafer (2005) *Law and Human Behavior*

All lineup administrators were blind, but the identification behavior of the first eyewitness (an individual who picked an innocent person) led the second eyewitness to misidentify the same person.

Garrioch and Brimabombe (2001) *Law and Human Behavior*

Lineup administrators' erroneous beliefs regarding which lineup member was the suspect influenced the eyewitnesses confidence in their choice.

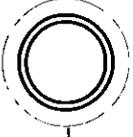
Greathouse and Kovera (2009) *Law and Human Behavior*

Lineup administrators' beliefs regarding which lineup member was the suspect influenced witnesses to choose that person, especially when other factors present that led to propensities to choose.

Clark, Marshall, & Rosenthal (2009) *Journal of Experimental Psychology: Applied*

Subtle influences from administrator affected witnesses and witnesses showed little or no awareness that they were influenced.

Line-up Composition: Proper Selection of Fillers

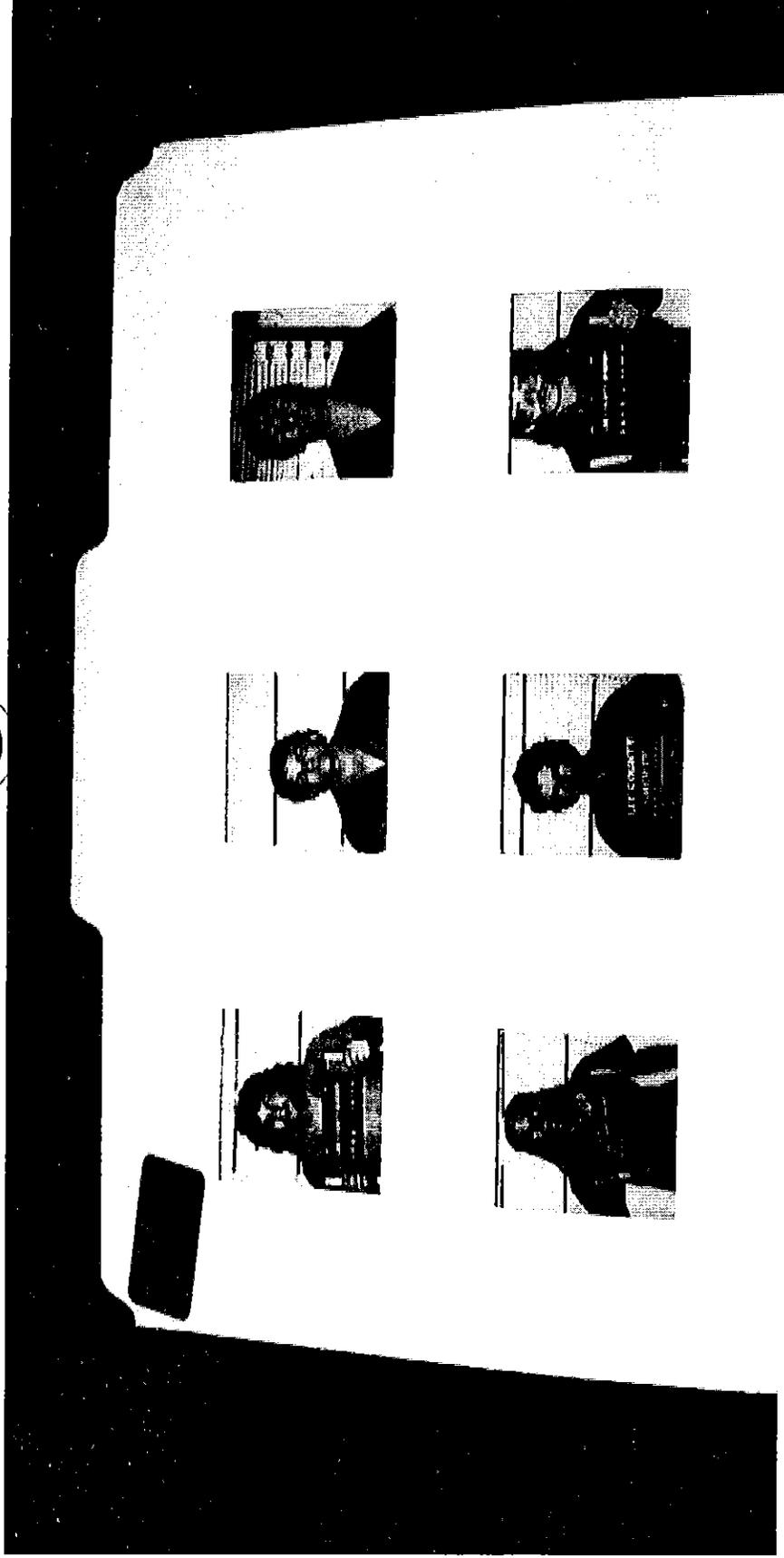


Fillers need to be selected carefully so that the person of interest does not stand out (e.g., as being the only one who fits the description).

Mock witness test:

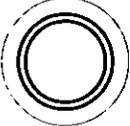
Given the description that the witness gave of the perpetrator, would mock witnesses (who have never seen the perpetrator) be able to pick him out of the lineup?

Proper Composition of Lineup



The witness described the perpetrator as white male, about 6'2", dark hair just over the ears, clean shaven

Instructing the Eyewitness



“Instructions” are a series of statements issued by the identification procedure administrator to the eyewitness that deter the eyewitness from feeling compelled to make a selection, seek clues from the administrator about whom to (not) pick, or whether or not a selection was correct, and otherwise help minimize the likelihood of a misidentification.

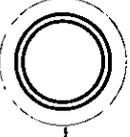
Instructing the Witness



In identification procedures where the perpetrator is absent (and therefore any identification would be incorrect), the type of instructions provided – “biased” or “unbiased” – have a significant effect on eyewitness’s accuracy.

- When “unbiased” instructions are given, the number of (incorrect) identifications decrease.
- When “biased” instructions were given, the number of (incorrect) identifications increase.

Instructing the Witness: Scientific Support



When the perpetrator is absent, and thus when the innocent suspect is more vulnerable, unbiased instructions lead to fewer false identifications, whereas biased instructions lead to an increased rate of false identifications.

Source: Malpass, R. S. & Devine, P. G. (1981) Eyewitness identification: Lineup instructions and the absence of the offender. *Journal of Applied Psychology*, 66, 482-489.

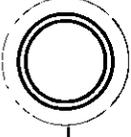
Instructing the Witness: Scientific Support

These findings are supported by a **meta-analysis** of results from twenty-two individual studies (with **2,588 participant witnesses**) on the effects of instructions, which found that when biased instructions were provided to witnesses, a higher level of choosing occurred.

When unbiased instructions were provided to witnesses, correct identifications (including correct rejections of lineup members when the suspect was absent) occurred fifty-six percent of the time. On the other hand, when biased instructions were provided, correct identifications fell to forty-four percent.

Source: Steblay, N. M.. (1997) Social influence in eyewitness recall: A meta-analytic review of lineup instruction effects. Law and Human Behavior, 21, 283-298.

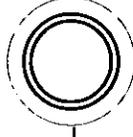
Recommended Instructions



Issued by National Institute of Justice Technical Working Group on Eyewitness Identification:

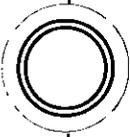
1. Instruct each eyewitness without other persons present.
2. Describe the photo array to the eyewitness only as a “collection of photographs.”
3. Instruct the eyewitness that **the person who committed the crime may or may not be present** in the identification procedure.
4. Consider suggesting to the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

The Value of Confidence Statements



Studies consistently show that people (i.e. jurors) consider an eyewitness's confidence level the primary factor in determining the accuracy of his identification.

False Certainty Can Be Created
(And Can Never Be Undone)



Eyewitnesses can be influenced even after they have made a choice from the lineup.

**** This is known as ‘confirming feedback’****

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.

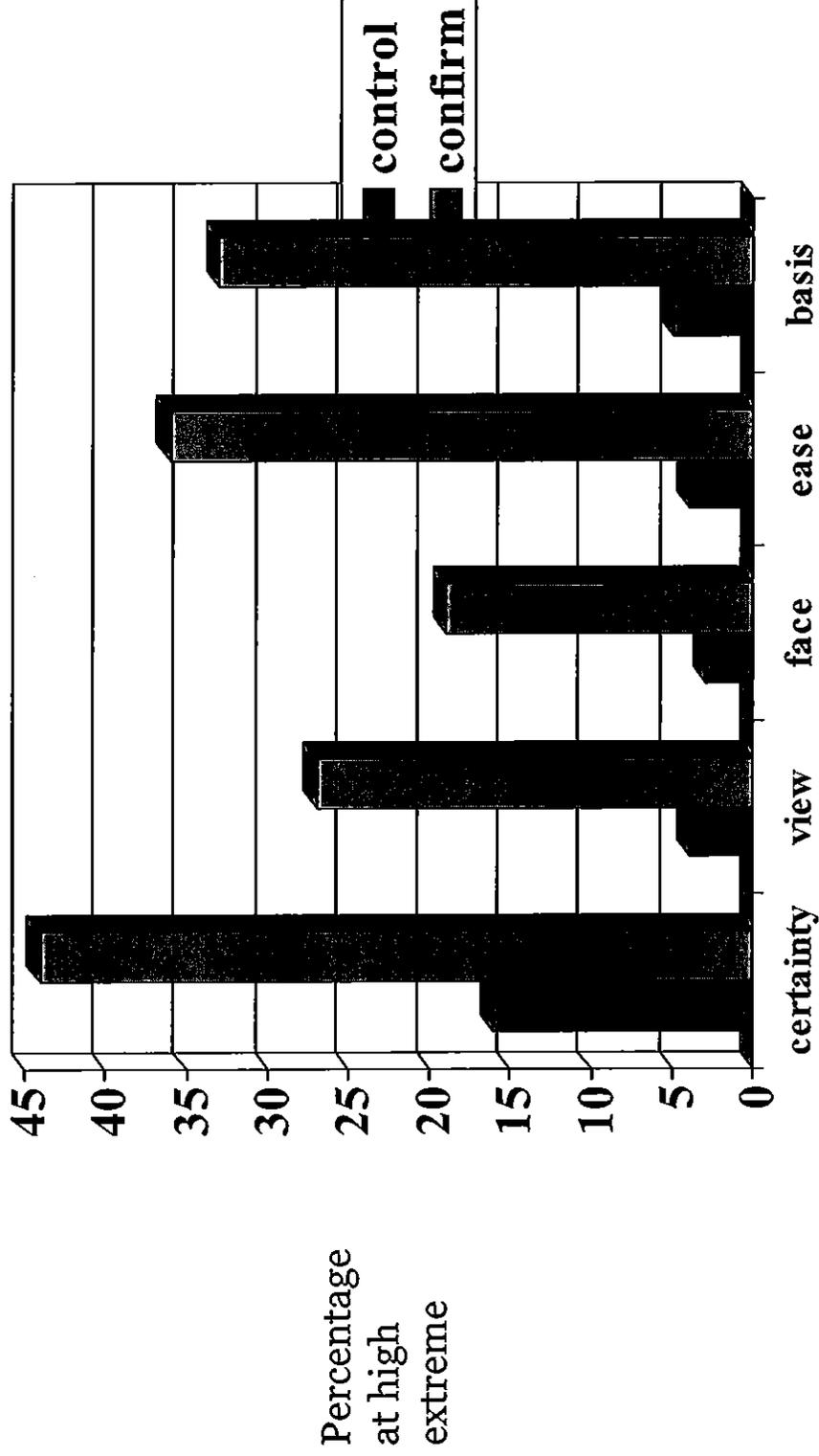
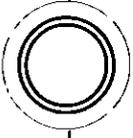
After identification, participants were asked:

CONTROL GROUP: Received no feedback

COMPARISON GROUP: Received confirming feedback

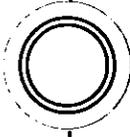
- How certain were you at the time your identification that you identified the real gunman?
- How good was the view you had of the gunman?
- How well could you make out details of the gunman's face?
- How easy was it for you to identify the gunman?
- How good of a basis did you think you had for making an identification?

The Power of Confirming Feedback



Difference between 'control' and 'confirming feedback' = Manufactured false confidence

Post-Identification Feedback Articles



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