Testimony of David R. Cameron
in support of
House Bill 5501 (Raised), An Act Concerning Eyewitness Identification Procedures

Committee on the Judiciary
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I am David R. Cameron. I am a Professor of Political Science at Yale University and a resident of New Haven, CT. I am a member of the Eyewitness Identification Task Force which was created by Public Act No. 11-252. I appear before you today in support of House Bill No. 5501 (Raised), An Act Concerning Eyewitness Identification Procedures.

As you know, the Innocence Project has found that the single most frequently-occurring cause of the 289 wrongful convictions that have been overturned with DNA evidence is the identification of an innocent person as the perpetrator by one or more eyewitnesses to a crime. It has found that such misidentifications occurred in more than 75 percent of the wrongful convictions that were later – usually much later – vacated because of DNA evidence.

Public Act No. 11-252 represented an important step forward in reducing the frequency with which eyewitness misidentifications occur. In particular, it mandated that, "when practicable, the person conducting the identification procedure shall be a person who is not aware of which person in the photo lineup or live lineup is suspected as the perpetrator of the offense." In other words, when practicable, the administration of the identification procedure would be "double blind." That provision took effect on Jan. 1, 2012.

The Innocence Project argues – persuasively, I believe – that the single most crucial reform needed to reduce the frequency of eyewitness misidentifications is double blind administration. As important as Public Act No. 11-252 was, the words "when practicable" created a large loophole that allows investigators who know the identity of the suspect to administer the identification procedure. The size of that loophole is perhaps best illustrated by the fact that only seven of the 73 police departments that responded to the Task Force survey said double blind administration best describes their eyewitness identification process (Table 2, Appendix II of the Task Force report). Likewise, only 24 of the 73 said they foresaw no obstacles to implementing double blind administration by Jan. 1, 2012. (Table 3, Appendix II of the Task Force report)

Section 1(c)(2) provides an important remedy for that loophole. It stipulates that, in the event double blind administration is not practicable, as may well be the case for small departments and perhaps even large ones at certain times of the day, "the photo lineup shall be conducted by the use of a folder shuffle method, computer program or other comparable method so that the person conducting the procedure does not know which photograph the eyewitness is viewing during the procedure." This alternative, which the Task Force developed in the course of its meetings with law enforcement personnel and researchers, ensures that, even if the identification is conducted by the officer investigating the crime, that officer will not know which photo the eyewitness is viewing at any particular moment.

As you know, the primary reason the Task Force was created was "to study issues concerning eyewitness identification in criminal investigations and the use of sequential live and photo lineups." It was directed to "examine: (1) The science of sequential methods of conducting a live lineup and a photo lineup, (2) the use of sequential lineups in other states, (3) the practical implications of a state law mandating sequential lineups, and (4) such other topics as the task force deems appropriate relating to eyewitness identification and the provision of sequential lineups." (Sec. 2(a), Public Act No. 11-252) The Task Force was given that charge largely because there existed a good deal of controversy about the sequential – i.e., one-at-a-time method of presentation to an eyewitness of a crime of photos of the suspected perpetrator and others who are known to be innocent.

I prepared a memorandum for the Task Force that summarized the academic research conducted over the past 30 years that has sought to compare the effects of simultaneous and sequential methods of presentation as well as the several field studies conducted in police departments over the past decade that have examined the issue. That memorandum appears as Appendix IV of the Task Force report. Since you have that memorandum, I shall limit myself to a very brief summary of the research and field studies. (Full citations appear in the memorandum.)

In the wake of several U.S. Supreme Court decisions in the late 1960s and 1970s that were concerned with the reliability of eyewitness identifications, academic researchers began to conduct laboratory experiments to identify the impact of various aspects of the identification procedure on the frequency of misidentifications. One such aspect concerned the method by which a suspect in a crime is presented for possible identification by one or more eyewitnesses to the crime. For decades, law enforcement agencies routinely presented the suspect in a live lineup or photo array that included several other individuals or photos of individuals known to be innocent. In 1984, Dr. Gary Wells suggested that the simultaneous method of presentation may contribute to misidentifications by causing eyewitnesses to make a "relative judgment" – that is, to compare the six or eight photographs (or persons in a live lineup) and choose the person who looks most like the person they saw commit the crime – rather than an "absolute judgment" – that one of the individuals was in fact the person they saw commit the crime.

In 1985, Lindsay and Wells (1985) proposed the sequential method of presentation – that is, the suspect and innocent fillers viewed one at a time in separate photos – as an alternative to the simultaneous method. Using a fully randomized 2 X 2 experimental design – i.e., culprit present/culprit absent, sequential/simultaneous presentation – they found the sequential method of presentation resulted in a substantially lower frequency of filler identifications – only 2 percent vs. 12 percent with the simultaneous method of presentation. And they found that with the culprit absent, there was a much lower frequency of filler identification with the sequential method (35 percent) than with the simultaneous method (58 percent).

Over the nearly three decades since then, more than 70 experiments have been conducted to compare the frequencies with which eyewitnesses to a simulated crime identified the culprit or others in a lineup when the photos were presented and viewed simultaneously or sequentially. Twenty-seven of those 70-plus experiments employed the fully randomized 2 X 2 design. In their meta-analysis of those experiments, Steblay, Dysart, and Wells (2011) found the sequential method of presentation produced a lower frequency of filler identifications than the simultaneous method in culprit-present lineups (19 percent vs. 25 percent) and a substantially lower frequency

of filler identifications in culprit-absent lineups (32 percent vs. 54 percent). Employing the sequential method of presentation certainly will not eliminate all misidentifications. But it will at least result in fewer misidentifications than occur with simultaneous presentation.

Over the past decade, those laboratory experiments have been supplemented with several studies conducted in police departments that have observed the frequencies of filler identifications in lineups that included a suspect in an actual crime and were viewed by actual eyewitnesses to a crime. Those studies – conducted in Hennepin County (Minneapolis and three neighboring cities), Illinois (Chicago and two neighboring cities), and, most recently, Austin, Texas and three other cities – establish conclusively that the sequential presentation of suspect and fillers, when coupled with the double-blind administration of the lineup, reduces the likelihood that an eyewitness to a crime will identify an innocent filler rather than the person who is suspected of having committed the crime.

In the Hennepin County study, directed by Sen. Amy Klobuchar when she was County Attorney, eyewitnesses who did not know the suspect identified a filler rather than the suspect in 11 percent of the lineups conducted with double-blind administration and sequential presentation. Despite serious flaws in some aspects of the Illinois study and the inferences that were widely and incorrectly drawn from it, its findings were very similar with respect to lineups that used both double blind administration and sequential presentation: fillers were incorrectly identified as the perpetrator by eyewitnesses in 9.2 percent of such lineups.

Unlike the Hennepin County and Illinois studies, which for different reasons were not designed so as to allow a comparison of the frequencies of filler identifications in lineups that employed only double blind administration but varied in using either simultaneous or sequential presentation, the American Judicature Society study conducted by Professors Wells, Steblay, and Dysart (2011) in Austin, Tucson, Charlotte, and San Diego, was designed to allow such a comparison. That study found that fillers were incorrectly identified by eyewitnesses as the perpetrator in 12.2 percent (with two laps) of the lineups in which the photos were presented sequentially and in 18.1 percent of the lineups in which the photos were presented simultaneously. Controlling as it did for virtually every other "system" variable – lineup administration, filler selection, instructions, etc. – the AJS study revealed that sequential presentation reduced the frequency with which fillers were mistakenly identified by about 33 percent. Put another way, the simultaneous method of presentation resulted in a 50 percent increase in the frequency with which an innocent filler was incorrectly identified by an eyewitness as the perpetrator of the crime he or she saw.

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