

**UTAH PROSECUTION COUNCIL MEETING**  
**AMENDED AGENDA**

Friday, January 8, 2016, 1:00 p.m.  
Salt Lake County District Attorney's Office

Pre-meeting Reminder: The meeting is recorded and the equipment is pretty sensitive. It does pick up sidebar conversations.

- I. Change of Chairmanship - Bob
  - A. Thanks to Stephen Foote for his leadership the last two years.
  - B. Steve Garside is the new Chair.
  
- II. Election of Chair-Elect - Steve
  - A. Nominees from "large" county.
  
- III. Welcome and Approval of the minutes from the September 16, 2015 meeting - Steve  
*Tab A*
  
- IV. UPC Conferences - Bob and Marilyn
  - A. Completed Conferences, *Tab B*
  - B. 2016 Conference Schedule, *Tab C*
  
- V. Financial Report - Bob
  - A. Surcharge FY16 and Year to Date, *Tab D*
  - B. Adjusted FY16/Budget Comparison Report, *Tab E*
  
- VI. Training Committee Report - Steve
  
- VII. UPAA Report - Chris
  
- VIII. Resource Prosecutors Reports
  - A. Donna: *Tab F*
  - B. TSRP: Tyson Skeen hired.
  
- IX. IT Issues: PIMS / Case Management / Webpage - Ron and Bob
  - A. Conference Evaluation Innovations
  - B. Electronic Scanners
  - C. Case Management, *Tab G*

- X. Eyewitness Identification Issues, *Tabs H- O*
  - A. Rocky Mountain Innocence Project conducted two day training for Unified Police in December 2016. Put out erroneous information.
- XI. Appointee to Criminal Law Section of State Bar - Bob
- XII. LEOJ - Bob
- XIII. UCDAAs Offer of Help - Bob
- XIV. Other Business
- XV. Next meeting: April 13, 2016, 10:30 a.m. SLCDA's Office
- XVI. Adjourn

## Director's Summary of UPC Agenda Items

- I. Change in Chairmanship
  - A. Stephen Foote's tenure is over. Thanks for your service.
  - B. Steve Garside is the new Chair for the next two years.
  
- II. Election of Chair-Elect
  - A. The chair has rotated between large county, small county then city.
  - B. Based on this pattern chair-elect should be from a larger county.
  - C. Chair-elect to serve for two years followed by two years as Chair.
  
- III. Welcome and Approval of the Minutes.
  - A. See the enclosed minutes from the September 16, 2015 meeting. **Tab A**
  
- IV. UPC Conferences - Bob and Marilyn
  - A. Completed Conferences and Expense Reports. **Tab B**
    1. Fall
      - a. Overall it was a great conference.
      - b. The topic - visual trial - was well received with many positive comments.
      - c. Had 4 defense counsel attend. Cheapest CLE in town.
        - (1) Discussion item.
          - (a) Do we raise the cost from \$150 to something higher for non-governmental/non-prosecuting attorneys?
      - d. Problems with the hotel
        - (1) They exercised a clause in the contract that said they could relocate the meeting rooms within the hotel based on the number of conferences and attendees. They did this without consulting with us. The room they put us in was too small. When we talked with the General Manager, he apologized and said by that point there was nothing he could do. The conference manager should not have made the change without talking with us first.
          - (2) Parking is not great.
      - e. Cost of conference:
        - (1) Budgeted: \$24,500.00
        - (2) Spent: \$23,898.07
    2. Government Civil
      - a. Great conference.
      - b. Thanks to Kelly Wright and his committee for putting it together.
      - c. Thanks for UAC and UCIP for their sponsorship dollars.
      - d. Cost of conference:
        - (1) Budgeted: \$11,000.00
        - (2) Spent: \$11,267.61

3. County Executive Seminar
    - a. Again, great discussion items. Never enough time.
      - (1) John Huber addressed group. Good presentation and made sure everyone knew he and his office are available for questions, concerns.
      - (2) Justice reinvestment big topic.
      - (3) 6<sup>th</sup> Amendment Report. Discussed how to respond to GRAMA requests from defense counsel.
        - (a) other indigent defense topics discussed
      - (4) Mission statement of SWAP, UCDA
    - b. Again, thanks to Kelly Wright, UAC and UCIP.
    - c. Cost of conference:
      - (1) Budgeted: \$1,500.00
      - (2) Spent: \$248.25
        - (a) Not all receipts accounted for yet.
  4. White Collar Crime
    - a. Same time as County Executive Seminar
      - (1) Marilyn and Rich Hamp hosted.
        - (a) Thanks to Salt Lake County DA's office for co-sponsoring
      - (2) Attendance lower than expected.
        - (a) One of the state fraud agencies held similar training earlier in the fall so think that affected attendance at this conference.
    - b. UPC won't host this conference again. The AG's office has sponsored the training in the past so will let them pick up that training topic.
    - c. Cost of conference:
      - (1) Budgeted: \$3,000.00
      - (2) Spent: \$3,000.64
  5. National Association of Prosecutor Coordinators (NAPC)
    - a. Utah selected to host winter 2017 conference at Zion's.
    - b. No cost to UPC
    - c. NAPC funds everything
    - d. Will invite Washington County to play host
- B. Upcoming Conferences 2016, *Tab C*
1. Human Trafficking Conference
    - a. January 28, 29, 2016, Salt Lake County Government Building
    - b. Sponsored by NAG, AG's office.
      - (1) UPC has assisted with registration, CLE.
  2. Train the Trainer
    - a. February 9-12, 2016, Layton Courtyard Marriott
    - b. Received \$16,000 grant from NHTSA/NAPC
      - (1) Will cover the cost of the conference facility, rooms, meals,

- travel for faculty and rooms and meals for students.
      - (2) Individual offices covering mileage for their prosecutors
    - c. Have invited 18 in-state students
      - (1) 12 confirmed so far
      - (2) Can accept a few more nominations
    - d. Have opened 5-7 slots to out of state students
      - (1) Out of state students pay their own costs
      - (2) Washington state has indicated they'd like to send a couple students.
      - (3) Assistant Pottawattamie County Attorney, Council Bluffs, IA attending
  - 3. Spring Conference
    - a. April 14, 15, 2016, Sheraton Hotel
    - b. Of note:
      - (1) This will be Lauara Dupaix' last case law update. She specifically put off retiring until after Spring Conference.
        - (a) Should we provide her with any kind of "thank-you?"
      - (2) Ken Wallentine to present on the release of video evidence; body cameras, dash cam, etc. Ethics credit.
      - (3) John Huber to speak.
      - (4) Josh Player to address civility, "Through Others Eyes"
        - (a) How prosecutors deal with and interact with support staff.
        - (b) Specific request by UPAA

V. FY 15/16 Financial Report - Bob

A. Surcharge Report *Tab D*

- 1. Monthly totals since last meeting
 

a.	Sept 15: \$46,185.27	Sept 14: \$45,200.18
b.	Oct 15: \$45,649.47	Oct 14: \$48,718.33
c.	Nov 15: \$40,416.50	Nov 14: \$36,033.08
d.	Dec 15: not available yet	Dec 14: \$46,179.69

B. Adjusted FY16 Budget/Comparison Report, *Tab E*

- 1. \$16,000 NHTSA/NAPC Grant for Train the Trainer
- 2. Salary numbers have not been submitted for November and December 2015 yet. State usually 2 months behind in getting that information submitted.
- 3. Final FY16 budget numbers
  - a. Income: \$1,041,288.40
  - b. Expenses \$1,025,673.03

VI. Training Committee Report - Steve Garside

- A. Training Committee met in October
- B. Planned 2016's calendar

VII. UPAA Report - Chris Stevens

VIII. Resource Prosecutors Reports

- A. Donna, *Tab F*
- B. TSRP: Tyson Skeen
  - 1. Ed resigned and has been traveling in Tasmania.
  - 2. Hiring process for new TSRP
    - a. The interview committee was composed of Steve Garside, Sgt Ted Tingey, UHP, Kristy Rigby, Dept of Public Safety and TSRP Grant Manager, Marilyn Jasperson and Bob Church
    - b. Interviewed 7/18 applicants.
    - c. Those interviewed were all very qualified which made the decision challenging but ultimately Tyson was offered the position.
    - d. He starts on January 19, 2016.

IX. IT Issues: PIMS / Case Management / Webpage

- A. Conference Evaluation Innovations
  - 1. Ron transitioning us to all on-line evaluations.
    - a. Will create tab on Member's page where attendees will enter their evaluations.
    - b. Defense attorneys and others will have the ability to submit evaluations as well.
    - c. Once evaluations submitted, will be sent CLE certificate
- B. Registration - Scanners
  - 1. After the person is registered, they'll receive an e-mail with their conference confirmation.
  - 2. Confirmation will have a "barcode" that the person brings and scans in when they arrive.
  - 3. Looking at process to also send text message with "barcode"
- C. Case Management, *Tab G*
  - 1. See handout I passed out at the County Executive Seminar.
    - a. It raises many issues and concerns.
    - b. I don't know if they can all be addressed equitably or in a way that will provide a case management system to every office that wants one.
    - c. What is the Council's guidance?
  - 2. Proving a challenge just to get all interested parties together to come up with a plan.

X. Appointee to the Criminal Law Section of State Bar

- A. One of the bylaws of the criminal law section states that UPC will appoint a Vice-Chair at large to assist the Vice-Chair of Continuing Legal Education.

- B. UPC's nominee serves for a 1-year term, subject to re-appointment up to five consecutive terms.
- C. I solicited volunteers. The only person who responded was Janise Macannas, AG's office.
- D. For professional reasons she asked if Matt Lloyd, AG's office could take her place. Since no one else had volunteered and based on Matt's experience, Matt was appointed.

XI. Eye Witness Identification

- A. Kris Hamann, Director, Prosecutor Center for Excellence, found the attached article in the Deseret News reporting how the Rocky Mountain Innocence Project (RMIP) conducted a 2-day training with Unified Police in December 2015.
  - 1. Deseret News Article, New Ways to Question Eyewitnesses Could Prevent Wrongful Convictions, Group Says, December 14, 2015, *Tab H*
  - 2. Sim's office was unaware that the training was taking place.
- B. Kris pointed out that some of the facts taught by RMIP have been proven wrong.
- C. She sent me several documents with the latest research. They are included in your packet for reference.
  - 1. New York State Identification Procedures, January 29, 2014, *Tab I*
  - 2. Letter to the Committee on Scientific Approaches to Understanding and Maximizing the Validity and Reliability of Eyewitness Identification in Law Enforcement and the Courts from Patricia A. Riley, Assistant United States Attorney, *Tab J*
  - 3. Identification Procedures: Photo Arrays and Line-ups Model Policy, New York State Municipal Police Training Council, March 2015, *Tab K*
  - 4. Confident Eyewitnesses Considered Credible, December 2015, *Tab L*
  - 5. Estimating the Reliability of Eyewitness Identifications From Police Lineups, Harvard University, *Tab M*
  - 6. Comparing the Diagnostic Accuracy of Suspect Identifications Made by Actual Eyewitnesses From Simultaneous and Sequential Lineups in a Randomized Field Trial, October 2014, *Tab N*
- D. Kris is available with more information and is willing to help in any way possible.
- E. This underscores the importance of staying in contact with our law enforcement officials and know what and who is training them.
- F. Work with POST to get the word out regarding the erroneous information that is being presented by RMIP.
- G. If Spring Conference agenda were not already full I would suggest this topic being added.
  - 1. Option: provide lunch and have luncheon speaker
  - 2. Raise cost of conference by \$13

XII. LEOJ

- A. Paul Boyden has asked to be "released" from his involvement with the LEOJ program.

- B. UPC had no real direct involvement with this program other than providing \$2,000 per year to help defray the costs for the two courses.
- C. It has been a valued and coveted class among prosecutors and judges. It's a course that should continue to be made available.
- D. Propose working with Paul to see if there is someone else who would be willing to take over this responsibility.
- E. We may need to pay someone to teach the classes. In addition to the \$2,000 UPC has donated we may need to charge registration fees to cover additional costs.
- F. Courses vary between \$50-75.
- G. Council's guidance?

XIII. UCDAAs Offer of Help

- A. James Swink reached out and wants to know how they can help UPC.
  - 1. Case management
  - 2. Putting together a review committee, including city reps, to figure out what to do with the grant?
- B. Are there areas the Council sees UCDAAs being able to help?

XIV. Other Business

XV. Next Meeting

- A. April 13, 2016, 10:30 a.m., SLCDA's Office

XVI. Adjourn

***Tab A***

**UTAH PROSECUTION COUNCIL**

**Wednesday, September 16, 2015**

**Park City Marriott**

**1895 Sidewinder Drive**

**Park City, Utah**

**PENDING MINUTES**

UPC : Stephen Foote, Chair, Duchesne County Attorney  
Steven Garside, Chair-elect, Layton City Attorney  
Paul Bitmann, Cedar City Attorney  
Jann Farris, Morgan County Attorney  
Sim Gill, Salt Lake District Attorney  
Barry Huntington, Garfield County Attorney  
Kelly Sparks, Deputy Director of P.O.S.T (*designee of Commissioner Keith Squires*)  
Scott Sweat, Wasatch County Attorney  
Christine Stevens, UPAA Chair, Millard County Attorney's Office

**EXCUSED:**

Sean Reyes, Utah Attorney General  
Commissioner Lance Davenport, Utah Department of Public Safety  
Donna Kelly, Staff Attorney

UPC            Bob Church, Director  
STAFF:        Marilyn Jasperson, Training Coordinator  
                 Edward Berkovich, Staff Attorney  
                 Ronald Weight, IT Director

GUESTS:      Paul Boyden, Executive Director, SWAP  
                 Jeff Buhman, Utah County Attorney  
                 Robert Hilder, Summit County Attorney  
                 Blake Nakamura, Deputy Salt Lake County Attorney  
                 Tyson Skeen, UMPA President, West Jordan City Attorney's  
                 G. Mark Thomas, Uintah County Attorney

**I. WELCOME AND APPROVAL OF THE JUNE 19, 2015 MEETING MINUTES**

- A. The Council members were welcomed and the meeting convened.
- B. Jann Farris moved to approve the minutes from June 19, 2015, seconded by Steve Garside. The motion passed unanimously.

**II. UPC Conferences**

- A. Completed Conferences
  - 1. UPAA Report:

Chris Stevens reported that the UPAA Conference held June 24-26, 2015 at the St. George Courtyard Marriott was well received. There was 85 in attendance, three people took the CUPA exam and one person passed. The UPAA FY15 budget ended to the good. Next year the conference will be held on the Wasatch Front.

2. UMPA Report:

Bob Church gave an in depth report of the following completed conferences. Please refer to the Director's Summary for details.

- a. By all accounts, this year's conference received rave reviews.
- b. Administration changes included:
  - (1) The title "President-elect" to "Vice President" to indicate that person is more than a figurehead.
  - (2) Tyson Skeen of West Jordan City Attorney's Office was voted as President.
  - (3) Ann Boyle was elected as Vice-President. This may pose as a problem as she was elected before Salt Lake City Prosecutor's Office became part of the SLDA's office.
  - (4) President and Vice President will service two year terms in their respective office.
  - (5) Besides the planning of the UMPA annual conference, there are no known records of bylaws or written responsibilities and role of the UMPA president, so Tyson will establish a working committee to draft bylaws, policies, etc. He will collaborate with UMAA, SWAP, UPPAC and UPC.

3. Basic Report:

Bob Church reported that this year's Basic Prosecutor Course began on the Sunday night instead of Monday morning with introductions and icebreaker. It was very well received so the faculty felt that this addition be continued to next year.

B. Upcoming Conference and Remainder of Year

1. Fall Conference - September 16-18, 2015, Park City Marriott
2. Government Civil Practice Conference - October 14-16, 2015, Moab Valley Inn
3. White Collar Crime, November - November 12, 2015, Veridian Conference Center, West Jordan, Utah
4. County Attorney Executive Seminar - November 12-14, 2015, Dixie Convention Center, St. George, Utah

**III. FINANCIAL REPORT**

Bob Church made the following financial report. Additional information is included in the Director's Summary.

A. Surcharge FY15 and Year to Date:

1. July surcharge receipts ended at \$42,471.35. Last year July surcharge receipts end at \$38,807.56. August and September numbers were not available.

B. Budget Comparison Report:

1. Bob invited questions. Hearing none, he moved to the next item

**IV. FINAL FY16 BUDGET**

- A. Non-lapsing carry over is \$54,894.00.

**B. Train the Trainer**

1. Because of the carry over we will be able to hold Train the Trainer. The last one was held in 2011. \$27,000 has been budgeted for this training. It will be held either in February or early March 2016. Also, Bob will apply for grant funding from NAPC.

Bob will give an update report on the FY15 budget at the next meeting.

Steve Garside made the motion to approve FY16 budget as presented. Barry Huntington seconded the motion. The motion passed unanimously.

**V. TRAINING COMMITTEE REPORT**

Steve Garside, UPC Training Committee Chair gave the following report.

- A. Training Committee will meet October 12-13, 2015 at the Moab Fairfield Inn. Suggested topics for the training committee to consider included GRAMA and discovery, HIPPA issues.
- B. NAAG is bringing a Human Trafficking Training to Salt Lake City on January 28-29, 2016 and there is no cost for this training. It will be held at the Salt Lake County Government complex. The Attorney General's Office and UPC are collaborating with NAAG.

**VI. RESOURCE PROSECUTORS REPORTS**

Donna Kelly and Ed Berkovich referred the Council to the in depth SA/DVRP and TSRP reports as outlined in the handouts.

**VII. IT ISSUES: PIMS/CASE MANAGEMENT/WEBPAGE**

In addition to the in depth report in the Director's Summary, Ronald Weight and Bob Church gave the following PIMS report.

- A. PIMS:  
Ron indicated that even though user numbers continue to decline he is available to address any issues that arise.
- B. Webpage:  
Ron is updating the webpage so users can access and obtain their own MCLE reports instead of contacting Marilyn directly. However, she is still available for any assistance needed. Training videos are also available and can be used for MCLE credit as well. So far, there are 152 registered members.
- C. Conference Management System (CMS):  
There was an exchange regarding the challenges prosecutor offices are facing with their new CMS. Utah County has gone with NewDawn/JustWare and Uintah County has gone with Karpel. Mark Thomas noted that one of the challenges is integrating with the courts and matching each vendor with the courts offense table and AOC EFLEX filing. Blake Nakamura has been meeting with the AOC to address EFLEX issues such as email notifications, summons in particular. Blake's assessment is that there is an automated problem on the AOC's side in populating information and a filter capability on the prosecutor's side. Another problem is that Judges are unable to access the efilng system so paper notifications are sent out which creates confusion. After a lengthy discussion it was decided that Bob and Blake will work together and come up with a list of questions and information to send out all county attorneys. After the information is compiled, the findings will be presented to the county attorneys at the County Attorney Executive Seminar in November in the UPC session.

**VIII. UTAH PROSECUTOR POLICY ADVISORY COMMITTEE (UPPAC)**

Bob referred the Council to the UPPAC minutes handout. He invited comments or questions. Hearing none, he moved to the next item.

**IX. UPC EMPLOYEE STATUS**

Bob state that he has yet to hear back from Spencer Austin. Based on previous Council guidance, he will continue to operate with what is outlined in the Director's Summary. Bob was advised to maintain the checks and balances with AG's office according to its policies and procedures, but the council would like to play a role as issues come about (i.e., personnel issues and/or incentive awards, etc.) Bob will update the Council if there is a change or update.

**X. AOC's EFLEX FILING**

Please refer to Blake Nakamura's report above VII. C.

**XI. HORSE SORING**

This item was tabled for SWAP to address.

**XII. PROPOSED 2016 MEETING SCHEDULE**

- A. Friday, January 8, 2016  
1:00 p.m.  
Salt Lake District Attorney's Office  
111 East Broadway - 5<sup>th</sup> Floor Conference Room  
Salt Lake City, Utah
- B. Wednesday, April 13, 2016  
10:30 a.m.  
Salt Lake District Attorney's Office  
111 East Broadway - 5<sup>th</sup> Floor Conference Room  
Salt Lake City, Utah
- C. Friday, June 10, 2016  
Location TBD
- D. Wednesday, September, 14, 2016  
Hilton Garden Inn  
1731 S. Convention Center Drive  
St. George, Utah  
8:30 a.m.

**XIII. OTHER BUSINESS**

**XIV. ADJOURN**

***Tab B***

## Utah Prosecution Council Net Cost of Conference Fall Conference

	Fall Conference (Conferences)	Total Conferences	TOTAL
Income			
CONFERENCE REGISTRATION FEES	9,075.00	9,075.00	9,075.00
Fall Conference	9,075.00	9,075.00	9,075.00
Total CONFERENCE REGISTRATION FEES	9,075.00	9,075.00	9,075.00
Total Income	9,075.00	9,075.00	9,075.00
Expense			
Conferences			
Fall Conference	375.00	375.00	375.00
air fare	600.00	600.00	600.00
audio-visual	4,381.00	4,381.00	4,381.00
catering	5,066.83	5,066.83	5,066.83
facilities charge	400.00	400.00	400.00
honoraria	8,096.09	8,096.09	8,096.09
lodging	1,666.50	1,666.50	1,666.50
MCLE fee	882.00	882.00	882.00
meals	943.09	943.09	943.09
mileage	1,487.56	1,487.56	1,487.56
UPC Brief Cases	23,898.07	23,898.07	23,898.07
Total Fall Conference	23,898.07	23,898.07	23,898.07
Total Conferences	23,898.07	23,898.07	23,898.07
Total Expense	23,898.07	23,898.07	23,898.07
Net Income	-14,823.07	-14,823.07	-14,823.07

Budgeted \$24,500

## Utah Prosecution Council Net Cost of Conference Civil Conference

	Civil Conference (Conferences)	Total Conferences	TOTAL
<b>Income</b>			
CONFERENCE REGISTRATION FEES	3,325.00	3,325.00	3,325.00
Civil Conference	3,325.00	3,325.00	3,325.00
<b>Total CONFERENCE REGISTRATION FEES</b>	<b>3,325.00</b>	<b>3,325.00</b>	<b>3,325.00</b>
<b>Total Income</b>	<b>3,325.00</b>	<b>3,325.00</b>	<b>3,325.00</b>
<b>Expense</b>			
Conferences			
Civil Training Conference			
catering	1,045.96	1,045.96	1,045.96
facilities charge	1,050.00	1,050.00	1,050.00
lodging	3,345.52	3,345.52	3,345.52
MCLE fee	735.00	735.00	735.00
meals	829.00	829.00	829.00
mileage	3,496.80	3,496.80	3,496.80
miscellaneous	719.33	719.33	719.33
<b>Total Civil Training Conference</b>	<b>11,221.61</b>	<b>11,221.61</b>	<b>11,221.61</b>
Executive meals	46.00	46.00	46.00
<b>Total Executive</b>	<b>46.00</b>	<b>46.00</b>	<b>46.00</b>
<b>Total Conferences</b>	<b>11,267.61</b>	<b>11,267.61</b>	<b>11,267.61</b>
<b>Total Expense</b>	<b>11,267.61</b>	<b>11,267.61</b>	<b>11,267.61</b>
<b>Net Income</b>	<b>-7,942.61</b>	<b>-7,942.61</b>	<b>-7,942.61</b>

Budgeted \$ 11,000

**Utah Prosecution Council  
Net Cost of Conference  
County Executive Conference**

	Executive (Conferences)	Total Conferences	TOTAL
Income	0.00	0.00	0.00
Expense			
Conferences			
Executive	248.25	248.25	248.25
miscellaneous	248.25	248.25	248.25
Total Executive	248.25	248.25	248.25
Total Conferences	248.25	248.25	248.25
Total Expense	248.25	248.25	248.25
Net Income	-248.25	-248.25	-248.25

*Not all receipts accounted for.  
Budgeted \$1500*

2:24 PM  
12/30/15  
Cash Basis

Utah Prosecution Council  
White Collar Crime  
July 2015 through June 2016

Type	Date	Num	Name	Memo	Class	Clr	Split	Original Amount	Paid Amount
<b>Conferences</b>									
<b>White Collar Crime</b>									
catering	11/23/2015	6226	Utah Food Services	Catering			UPC Expendit...	1,488.75	1,488.75
Check									1,488.75
Total catering									
<b>miscellaneous</b>									
Check	11/02/2015	6296	IPS	Invoice #80764			UPC Expendit...	414.58	414.58
Check	11/02/2015	6296	IPS	Invoice #81046			UPC Expendit...	917.31	917.31
Check	11/04/2015	6217	Utah State Board of...	MCLE Fees			UPC Expendit...	180.00	180.00
Total miscellaneous									
Total White Collar Crime									
Total Conferences									
<b>TOTAL</b>									

Budget \$3000

***Tab C***

# ***2016 TRAINING SCHEDULE***

## **UTAH PROSECUTION COUNCIL**

January 28-29	Human Trafficking	Salt Lake County Building
February 8-12	Train the Trainer	Layton Courtyard Marriott
April 14-15	SPRING CONFERENCE <i>Legislative and case law updates, civility/professionalism and more</i>	Sheraton Hotel Salt Lake City, UT
April & May	REGIONAL LEGISLATIVE UPDATES	23 Locations around the state
May 16-18	CJC/DV CONFERENCE For anyone who has a role in DV or Child Abuse Cases	Cliff Lodge Snowbird Resort
June 22-24	UTAH PROSECUTORIAL ASSISTANTS ASSN. ANNUAL CONFERENCE <i>Training for para-legals and secretarial staff in prosecutor offices</i>	Park City Marriott
August 4-5	UTAH MISDEMEANOR PROSECUTORS ASSN. SUMMER CONFERENCE <i>Training for city prosecutors and others who carry a misdemeanor case load</i>	Ruby's Inn Bryce, UT
August 15-19	BASIC PROSECUTOR COURSE <i>Trial advocacy and substantive legal instruction for new prosecutors</i>	University Inn Logan, UT
September 14-16 or 21-23	FALL PROSECUTORS TRAINING CONFERENCE <i>The annual CLE and idea sharing event for all Utah prosecutors</i>	TBD
October 19-21	GOVERNMENT CIVIL PRACTICE CONFERENCE <i>Training designed specifically for government civil attorneys from counties and cities</i>	Hilton Garden Inn St. George, UT
November 10-11	COUNTY/DISTRICT ATTORNEYS' EXECUTIVE SEMINAR <i>An opportunity for all county/district attorneys to discuss common issues</i>	Dixie Center St. George, UT



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April 1, 2015  
MEMORANDUM

**TO:** Office of the Attorney General of Utah

**FROM:** Chris Toth, NAAG Deputy Executive Director and NAGTRI Director

**RE:** **Human Trafficking Training**  
January 28-29  
Salt Lake City, Utah

**Registration Deadline is Friday, January 15, 2016**

The **Utah Office of the Attorney General** is pleased to announce that the National Attorneys General Training & Research Institute (NAGTRI) of the National Association of Attorneys General (NAAG) is conducting a *tuition-free*, one and one-half day training for prosecutors and investigators on **Human Trafficking**. The training will be limited to prosecutors and investigators. The first day will include an overview of human trafficking, an introduction to the legal framework – international, national, and state – regarding trafficking in persons, partnership models, victim issues, investigatory and interviewing techniques, and prosecutorial theories and practices. The second day will include a discussion on prosecutorial theories and practices, an ethics discussion based on a human trafficking case study, and a workshop on developing a human trafficking prosecution.

The training will take place on January 28-29, 2016, at the Salt Lake City Council Chambers, 2001 So. State Street, Salt Lake City, Utah. Attendees will be responsible for paying for their own food, parking, and transportation expenses. The Attorney General's Office will provide lunch on January 28. Please see the attached draft agenda for more details.

There will be a limited number of scholarships for hotel accommodations at the Sheraton Salt Lake City Hotel, provided to those who live more than **50 miles away**. Please indicate that need when applying for the training. If you require hotel accommodations, your application must be received by **Friday, December 18, 2015**.

Please send your registration via email directly to Marilyn Jasperson at [mjasperson@utah.gov](mailto:mjasperson@utah.gov). /for questions call Tammie Atkin at (801)281-1206. Your request for registration should include your name, your position, office, email address, and POST or CLE numbers.

**General Registration will close on Friday, January 15, 2016**

**Registration for Those Needing Hotel Rooms will close on TBA**



**NATIONAL ATTORNEYS GENERAL  
TRAINING & RESEARCH INSTITUTE**  
THE TRAINING & RESEARCH ARM OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

**Human Trafficking for State Prosecutors and Investigators**

January 28-29, 2016

Salt Lake City, Utah

**AGENDA**

**Thursday, January 28, 2016**

8:00-8:20 A.M. Registration

8:20-8:30A.M. Welcome

**Utah Attorney General Sean Reyes**

**Judy McKee**

Deputy Director

National Attorneys General Training & Research Institute

8:30-8:45A.M. Overview of Human Trafficking

**Judy McKee**

8:45-9:00A.M. International and National Legal Framework

**Judy McKee**

9:00- 9:30A.M. Utah Legal Framework

**Greg Ferbache**

Assistant Attorney General

Utah Attorney General's Office

9:30-9:45A.M. *Break*

9:45-10:00 AM Case Studies

**Janet Drake**

Senior Assistant Attorney General

Colorado Department of Law

**Lou Longhitano**

Supervisor, Human Trafficking Unit

Cook County, State's Attorney's Office

10:00-10:30 AM Success Through Partnerships

**Janet Drake and Lou Longhitano**

10:30-10:40 AM Faces of Prostitution

**Janet Drake**

- 10:40 AM-11:30 AM The Human Trafficking Victim: Recruitment Methods: Psychological Trauma, and What Keeps Victims Victimized.  
**Janet Drake**
- 11:30 AM -12:00 PM Victim Services in Utah  
**Elizabeth Hendrix**  
Asian Association of Utah, Salt Lake City  
**Tammie Atkin**  
Utah Attorney General's Office
- 12:00 PM-1:00 PM *Lunch*
- 1:00-2:00 PM Investigating Human Trafficking: Starting Points and Case Study  
**Lou Longhitano**
- 2:00- 2:15 PM *Break*
- 2:15 – 3:15PM Investigating Human Trafficking: Serving the Warrant and Next Steps  
**Janet Drake**
- 3:15–3:30 PM *Break*
- 3:30 PM-4:15 PM Interviewing Victims  
**Lou Longhitano and Janet Drake**
- 4:15 PM – 4:30 PM The International Victim  
**Lou Longhitano**

**Friday, January 29, 2016**

- 8:30- 8:35 AM Expanded Human Trafficking Training for Investigators
- 8:35-9:30 AM Prosecuting the Case  
**Lou Longhitano**
- 9:30-10:30 AM Ethics Workshop  
**Janise Macanas**  
Special Prosecutions, Section Director  
Utah Attorney General's Office
- 10:30-10:45 AM *Break*
- 10:45-12:30 PM Case Study Workshop

Utah Prosecution Council

# 2016 Spring Conference

Thursday and Friday

April 14-15, 2016

Sheraton Hotel

150 West 500 South

Salt Lake City

## DRAFT Agenda

### Thursday, April 14<sup>th</sup>:

- 9:00 Welcome and Administrative  
~ Bob Church - Director, Utah Prosecution Council
- 9:10 Case Law Update  
~ Laura Dupaix – Chief, Criminal Appeals Division, Utah Attorney General’s Office  
~ Matthew Bates – Deputy Summit County Attorney
- 10:30 Break
- 10:45 Case Law Update – Continued
- 12:00 Lunch - on your own
- 1:30 Case Law Update – Continued
- 2:45 Break
- 3:00 Case Law Update – Continued
- 3:50 Break
- 4:00 Release of Video (Body Cams. Etc.) - An Ethics Presentation  
~ Ken Wallentine - TITLE (Janise to contact. Also, Rich H. to ask SLC)  
(Confirmed - but need to follow up on details (i.e., date and time), E-mail sent, 11-23-15 but still need to send confirmation letter.
- 5:00 Adjourn



# *Tab D*



# ***Tab E***

# Utah Prosecution Council Comparison Report - Budget vs. Actual

July 2015 through June 2016

2:25 PM  
12/30/15  
Cash Basis

	Jul '15 - Jun 16	Budget	\$ Over Budget	% of Budget
<b>Income</b>				
CONFERENCE REGISTRATION FEES				
Advanced Trial Skills Training	0.00	0.00	0.00	0.0%
Basic Prosecutor	1,369.00	975.00	394.00	140.4%
Civil Conference	3,325.00	4,500.00	-1,175.00	73.9%
Domestic Violence	0.00	0.00	0.00	0.0%
Fall Conference	9,150.00	8,250.00	900.00	110.9%
Sexual Assault Conf	0.00	0.00	0.00	0.0%
Spring Conference	0.00	26,250.00	-26,250.00	0.0%
Train the Trainer	0.00	0.00	0.00	0.0%
UMPA	3,150.00	3,200.00	-50.00	98.4%
White Collar	2,100.00	3,735.00	-1,635.00	56.2%
<b>Total CONFERENCE REGISTRATION FEES</b>	<b>19,094.00</b>	<b>46,910.00</b>	<b>-27,816.00</b>	<b>40.7%</b>
<b>EXPENSE REIMBURSEMENTS</b>				
John R Justice Grant	0.00	32,521.00	-32,521.00	0.0%
NAPC grant - Train the Trainers	0.00	16,000.00	-16,000.00	0.0%
Staff Atty DV & SVRP	0.00	37,417.22	-37,417.22	0.0%
VAWA grant for SVRP	0.00	77,647.00	-77,647.00	0.0%
VAWA grant for SVRP	0.00	115,064.22	-115,064.22	0.0%
<b>Total Staff Atty DV &amp; SVRP</b>	<b>0.00</b>	<b>248,652.44</b>	<b>-248,652.44</b>	<b>0.0%</b>
Staff Atty Traffic Safety	0.00	109,145.90	-109,145.90	0.0%
DPS Traffic Safety Funds - TSRP	0.00	109,145.90	-109,145.90	0.0%
<b>Total Staff Atty Traffic Safety</b>	<b>0.00</b>	<b>218,291.80</b>	<b>-218,291.80</b>	<b>0.0%</b>
<b>Total EXPENSE REIMBURSEMENTS</b>	<b>0.00</b>	<b>466,944.24</b>	<b>-466,944.24</b>	<b>0.0%</b>
<b>PIMS Income</b>	<b>34,917.00</b>	<b>23,072.00</b>	<b>11,845.00</b>	<b>151.3%</b>
PIMS User Fees	19,364.00	0.00	19,364.00	100.0%
PIMS Income - Other	15,553.00	23,072.00	-7,519.00	100.0%
<b>Total PIMS Income</b>	<b>54,281.00</b>	<b>46,144.00</b>	<b>8,137.00</b>	<b>235.3%</b>
<b>SCHARGE &amp; NON-LAPSING CARRYOVER</b>	<b>0.00</b>	<b>698,575.28</b>	<b>-698,575.28</b>	<b>0.0%</b>
Non-lapsing carry over	0.00	105,190.00	-105,190.00	0.0%
Surcharge Receipts	0.00	593,385.28	-593,385.28	0.0%
<b>Total SCHARGE &amp; NON-LAPSING CARRYOVER</b>	<b>0.00</b>	<b>698,575.28</b>	<b>-698,575.28</b>	<b>0.0%</b>
<b>Total Income</b>	<b>73,375.00</b>	<b>1,041,288.40</b>	<b>-967,913.40</b>	<b>7.0%</b>
<b>Expense</b>				
ADMINISTRATIVE FEES				
Administrative fee to AG	5,000.00	15,000.00	-10,000.00	33.3%
Building OS&M	1,194.00	36,000.00	-34,806.00	3.3%
DB Purc (West Law)	500.68	1,500.00	-999.32	33.4%
Ins & Bonds	390.76	1,200.00	-809.24	32.6%
<b>Total ADMINISTRATIVE FEES</b>	<b>7,085.44</b>	<b>53,700.00</b>	<b>-46,614.56</b>	<b>13.2%</b>
Conferences				
Advanced Trial Skills Training	0.00	0.00	0.00	0.0%
Airfare	0.00	0.00	0.00	0.0%
catering	0.00	0.00	0.00	0.0%
facilities charge	0.00	0.00	0.00	0.0%
lodging	0.00	0.00	0.00	0.0%
MCLE fee	0.00	0.00	0.00	0.0%
meals	0.00	0.00	0.00	0.0%
mileage	0.00	0.00	0.00	0.0%
printing	0.00	0.00	0.00	0.0%
<b>Total Advanced Trial Skills Training</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.0%</b>

**Utah Prosecution Council**  
**Comparison Report - Budget vs. Actual**  
 July 2015 through June 2016

2:25 PM  
 12/30/15  
 Cash Basis

	Jul '15 - Jun 16	Budget	\$ Over Budget	% of Budget
<b>Basic Prosecutor Course</b>				
catering	2,647.10	0.00	2,647.10	100.0%
facilities charge	2,090.00	0.00	10,343.31	100.0%
lodging	10,343.31	0.00	0.00	0.0%
Lodging, students	0.00	0.00	310.50	100.0%
MCLE fee	310.50	0.00	1,120.00	100.0%
meals	1,120.00	0.00	1,438.68	100.0%
mileage	1,438.68	0.00	370.39	100.0%
miscellaneous	370.39	0.00	0.00	0.0%
printing	0.00	0.00	-17,000.00	0.0%
Basic Prosecutor Course - Other	0.00	17,000.00		107.8%
<b>Total Basic Prosecutor Course</b>	<b>18,319.98</b>	<b>17,000.00</b>	<b>1,319.98</b>	
<b>Civil Training Conference</b>				
catering	1,045.96	0.00	1,045.96	100.0%
facilities charge	1,050.00	0.00	3,345.52	100.0%
lodging	3,345.52	0.00	735.00	100.0%
MCLE fee	735.00	0.00	829.00	100.0%
meals	829.00	0.00	3,496.80	100.0%
mileage	3,496.80	0.00	0.00	0.0%
miscellaneous	719.33	0.00	-11,000.00	0.0%
printing	0.00	11,000.00		102.0%
Civil Training Conference - Other	0.00	0.00		0.0%
<b>Total Civil Training Conference</b>	<b>11,221.61</b>	<b>11,000.00</b>	<b>221.61</b>	
<b>Conference Materials</b>				
Handouts, Materials, SWAG	3,788.65	5,500.00	-1,711.35	68.9%
Utah Travel Council Calendars	1,125.00	1,700.00	-575.00	66.2%
<b>Total Conference Materials</b>	<b>4,913.65</b>	<b>7,200.00</b>	<b>-2,286.35</b>	<b>68.2%</b>
<b>Domestic Violence</b>				
catering	0.00	0.00	0.00	0.0%
Domestic Violence - Other	0.00	0.00	0.00	0.0%
<b>Total Domestic Violence</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.0%</b>
<b>Executive</b>				
air fare	0.00	0.00	0.00	0.0%
catering	0.00	0.00	0.00	0.0%
honoraria	0.00	0.00	0.00	0.0%
lodging	0.00	0.00	0.00	0.0%
meals	46.00	0.00	46.00	100.0%
mileage	0.00	0.00	0.00	0.0%
miscellaneous	248.25	0.00	248.25	100.0%
Executive - Other	0.00	1,500.00	-1,500.00	0.0%
<b>Total Executive</b>	<b>294.25</b>	<b>1,500.00</b>	<b>-1,205.75</b>	<b>19.6%</b>
<b>Fall Conference</b>				
air fare	375.00	0.00	375.00	100.0%
audio-visual	600.00	0.00	600.00	100.0%
catering	4,381.00	0.00	4,381.00	100.0%
facilities charge	5,066.83	0.00	5,066.83	100.0%
honoraria	400.00	0.00	400.00	100.0%
lodging	8,096.09	0.00	8,096.09	100.0%
MCLE fee	1,666.50	0.00	1,666.50	100.0%
meals	882.00	0.00	882.00	100.0%
mileage	943.09	0.00	943.09	100.0%
printing	0.00	0.00	0.00	0.0%
UPC Brief Cases	7,500.00	0.00	-6,012.44	19.8%
Fall Conference - Other	0.00	17,000.00	-17,000.00	0.0%
<b>Total Fall Conference</b>	<b>23,898.07</b>	<b>24,500.00</b>	<b>-601.93</b>	<b>97.5%</b>
<b>New County Attorneys Training</b>				
Other Training Event	0.00	0.00	0.00	0.0%

**Utah Prosecution Council**  
**Comparison Report - Budget vs. Actual**  
 July 2015 through June 2016

2:25 PM  
 12/30/15  
 Cash Basis

	Jul '15 - Jun '16	Budget	\$ Over Budget	% of Budget
<b>Regional Training</b>				
Legislative Update	0.00	0.00	0.00	0.0%
facilities charge	0.00	0.00	0.00	0.0%
lodging	0.00	0.00	0.00	0.0%
meals	0.00	0.00	0.00	0.0%
mileage	0.00	0.00	0.00	0.0%
printing	0.00	0.00	0.00	0.0%
Legislative Update - Other	0.00	1,500.00	-1,500.00	0.0%
<b>Total Legislative Update</b>	0.00	1,500.00	-1,500.00	0.0%
<b>Regional Workshops</b>				
Regional Training - Other	0.00	0.00	0.00	0.0%
<b>Total Regional Training</b>	0.00	1,500.00	-1,500.00	0.0%
<b>Sexual Assault Conf</b>				
catering	0.00	0.00	0.00	0.0%
facilities charge	0.00	0.00	0.00	0.0%
honoraria	0.00	0.00	0.00	0.0%
lodging	0.00	0.00	0.00	0.0%
MCLE fee	0.00	0.00	0.00	0.0%
meals	0.00	0.00	0.00	0.0%
mileage	0.00	0.00	0.00	0.0%
printing	0.00	0.00	0.00	0.0%
<b>Total Sexual Assault Conf</b>	0.00	0.00	0.00	0.0%
<b>Spring Conference</b>				
audio-visual	0.00	0.00	0.00	0.0%
catering	0.00	0.00	0.00	0.0%
honoraria	0.00	0.00	0.00	0.0%
lodging	0.00	0.00	0.00	0.0%
MCLE fee	0.00	0.00	0.00	0.0%
meals	0.00	0.00	0.00	0.0%
mileage	0.00	0.00	0.00	0.0%
printing	0.00	0.00	0.00	0.0%
Spring Conference - Other	0.00	26,000.00	-26,000.00	0.0%
<b>Total Spring Conference</b>	0.00	26,000.00	-26,000.00	0.0%
<b>Staff Attorney Training</b>				
SV/DVRP Training Materials	0.00	2,000.00	-2,000.00	0.0%
SV/DVRP workshops				
lodging	0.00	0.00	0.00	0.0%
meals	0.00	0.00	0.00	0.0%
mileage/car rental	0.00	0.00	0.00	0.0%
miscellaneous	0.00	0.00	0.00	0.0%
SV/DVRP workshops - Other	0.00	1,500.00	-1,500.00	0.0%
<b>Total SV/DVRP workshops</b>	0.00	1,500.00	-1,500.00	0.0%
<b>SVRP Training beg Jan 2012</b>				
audio/visual	0.00	0.00	0.00	0.0%
catering	84.96	0.00	0.00	0.0%
SVRP Training beg Jan 2012 - Other	0.00	0.00	84.96	100.0%
<b>Total SVRP Training beg Jan 2012</b>	84.96	0.00	84.96	100.0%
<b>TSRP Training</b>				
catering	67.00	0.00	157.53	100.0%
lodging	157.53	0.00	76.00	100.0%
meals	76.00	0.00	850.45	100.0%
mileage/car rental	850.45	0.00	91.74	100.0%
miscellaneous	91.74	0.00	0.00	0.0%
printing	0.00	0.00	-12,908.00	0.7%
TSRP Training - Other	92.00	13,000.00	-11,665.28	10.3%
<b>Total TSRP Training</b>	1,334.72	13,000.00	-11,665.28	10.3%

## Utah Prosecution Council Comparison Report - Budget vs. Actual July 2015 through June 2016

	Jul '15 - Jun '16	Budget	\$ Over Budget	% of Budget
Staff Attorney Training - Other	0.00	500.00	-500.00	0.0%
Total Staff Attorney Training	1,419.68	17,000.00	-15,580.32	8.4%
Train the Trainers				
meals	75.00			
Misc (Miscellaneous)	3,736.70			
Train the Trainers - Other	0.00	27,000.00	-27,000.00	0.0%
Total Train the Trainers	3,811.70	27,000.00	-23,188.30	14.1%
UMPA Summer Conf				
air fare	0.00	0.00	0.00	0.0%
audio-visual	0.00	0.00	0.00	0.0%
catering	674.96	0.00	674.96	100.0%
facilities charge	500.00	0.00	500.00	100.0%
lodging	1,895.04	0.00	1,895.04	100.0%
MCLE fee	555.00	0.00	555.00	100.0%
meals	359.00	0.00	359.00	100.0%
mileage	1,574.64	0.00	1,574.64	100.0%
miscellaneous	0.00	0.00	0.00	0.0%
printing	0.00	0.00	0.00	0.0%
UMPA Summer Conf - Other	0.00	6,000.00	-6,000.00	0.0%
Total UMPA Summer Conf	5,558.64	6,000.00	-441.36	92.6%
White Collar Crime				
catering	1,488.75			
miscellaneous	1,511.89	3,000.00	-3,000.00	0.0%
White Collar Crime - Other	0.00	3,000.00	0.64	100.0%
Total White Collar Crime	3,000.64	141,700.00	-69,261.78	51.1%
Total Conferences	72,438.22			
COUNCIL AND COMMITTEE MEETINGS				
Council and other committees				
catering	92.00	0.00	92.00	100.0%
lodging	0.00	0.00	0.00	0.0%
meals	196.00	0.00	196.00	100.0%
mileage	570.63	0.00	570.63	100.0%
Council and other committees - Other	0.00	6,500.00	-6,500.00	0.0%
Total Council and other committees	858.63	6,500.00	-5,641.37	13.2%
Training Committee				
catering	259.83	0.00	259.83	100.0%
lodging	3,488.00	0.00	3,488.00	100.0%
meals	836.00	0.00	836.00	100.0%
mileage	2,216.34	0.00	2,216.34	100.0%
miscellaneous	10.00	0.00	10.00	100.0%
Training Committee - Other	0.00	8,200.00	-8,200.00	0.0%
Total Training Committee	6,810.17	8,200.00	-1,389.83	83.1%
Total COUNCIL AND COMMITTEE MEETINGS	7,668.80	14,700.00	-7,031.20	52.2%
CURRENT EXPENSES				
Annual MCLE Fee	0.00	2,000.00	-2,000.00	0.0%
Donations to Other Groups	0.00	1,000.00	-1,000.00	0.0%
Dues & Memberships	200.00	2,000.00	-1,800.00	10.0%
Equipment/Supplies-not Data Pro	1,583.28	5,500.00	-3,916.72	28.8%
IT (Hardware and software requirements for UPC.)				
Hardware	0.00	120.00	-120.00	0.0%
Network Services	640.14	4,700.00	-4,059.86	13.6%
Software	774.00	1,420.00	-646.00	54.5%
UPC Website	341.31	1,100.00	-758.69	31.0%
Total IT (Hardware and software requirements for UPC.)	1,755.45	7,340.00	-5,584.55	23.9%

## Utah Prosecution Council Comparison Report - Budget vs. Actual July 2015 through June 2016

	Jul '15 - Jun 16	Budget	\$ Over Budget	% of Budget
LEOJ Training	0.00	2,000.00	-2,000.00	0.0%
Library & Subscriptions	3,369.00	2,600.00	769.00	129.6%
Miscellaneous	521.64	1,300.00	-778.36	40.1%
Miscellaneous Motor Pool	0.00	1,300.00	-1,300.00	0.0%
Postage	141.41	1,700.00	-1,558.59	8.3%
Telephone	1,648.14	5,600.00	-3,951.86	29.4%
<b>Total CURRENT EXPENSES</b>	<b>9,218.92</b>	<b>32,340.00</b>	<b>-23,121.08</b>	<b>28.5%</b>
<b>DATA MANAGEMENT - PIMS PROGRAM</b>				
PIMS committees				
PIMS User Group	0.00	0.00	0.00	0.0%
Catering	0.00	0.00	0.00	0.0%
Mileage	0.00	0.00	0.00	0.0%
<b>Total PIMS User Group</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.0%</b>
UPC Technology Committee				
Catering	0.00	0.00	0.00	0.0%
Mileage	0.00	0.00	0.00	0.0%
<b>Total UPC Technology Committee</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.0%</b>
PIMS committees - Other				
<b>Total PIMS committees</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.0%</b>
<b>PIMS Programming &amp; Testing</b>				
Phase II				
Court integration (e-filing)	0.00	0.00	0.00	0.0%
Phase II - Other	0.00	0.00	0.00	0.0%
<b>Total Phase II</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.0%</b>
Phase III				
PIMS modifications/improvements	0.00	0.00	0.00	0.0%
Software	0.00	0.00	0.00	0.0%
<b>Total Phase III</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.0%</b>
<b>Total PIMS Programming &amp; Testing</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.0%</b>
<b>PIMS Support &amp; Installation</b>				
Maintenance / Installation				
Lodging	0.00	1,200.00	-1,200.00	0.0%
Maintenance & enhancements	0.00	6,500.00	-6,500.00	0.0%
Meats	0.00	663.00	-663.00	0.0%
mileage	0.00	1,071.00	-1,071.00	0.0%
<b>Total Maintenance / Installation</b>	<b>0.00</b>	<b>9,434.00</b>	<b>-9,434.00</b>	<b>0.0%</b>
Server hosting charges	700.24	1,850.00	-1,149.76	37.9%
Software	0.00	0.00	0.00	0.0%
<b>Total PIMS Support &amp; Installation</b>	<b>700.24</b>	<b>11,284.00</b>	<b>-10,583.76</b>	<b>6.2%</b>
<b>Total DATA MANAGEMENT - PIMS PROGRAM</b>	<b>700.24</b>	<b>11,284.00</b>	<b>-10,583.76</b>	<b>6.2%</b>
<b>John R Justice Grant</b>	<b>0.00</b>	<b>32,521.00</b>	<b>-32,521.00</b>	<b>0.0%</b>
<b>OTHER IN-STATE TRAVEL</b>	<b>0.00</b>	<b>250.00</b>	<b>-250.00</b>	<b>0.0%</b>
<b>OUT-OF-STATE TRAVEL</b>	<b>0.00</b>	<b>1,200.00</b>	<b>-1,200.00</b>	<b>0.0%</b>
Best Practices				
NAJIS	0.00	930.00	-930.00	0.0%
Board Meeting		1,775.00	267.70	115.1%
Summer Conference		2,705.00	-662.30	75.5%
<b>Total NAJIS</b>	<b>2,042.70</b>	<b>2,705.00</b>	<b>-662.30</b>	<b>75.5%</b>
NAPC				
NAPC Summer mtg	5,223.90	4,500.00	723.90	116.1%
NAPC Winter mtg	867.43	4,500.00	-3,632.57	19.3%
<b>Total NAPC</b>	<b>6,091.33</b>	<b>9,000.00</b>	<b>-2,908.67</b>	<b>67.7%</b>

**Utah Prosecution Council**  
**Comparison Report - Budget vs. Actual**  
 July 2015 through June 2016

2:25 PM  
 12/30/15  
 Cash Basis

	Jul '15 - Jun 16	Budget	\$ Over Budget	% of Budget
<b>NDAA CONFERENCE</b>	0.00	2,500.00	-2,500.00	0.0%
Other out of state travel	0.00	0.00	0.00	0.0%
SVRP Out-of-State Travel	0.00	600.00	-600.00	0.0%
TSRP Out-of-State Travel	0.00	3,000.00	-3,000.00	0.0%
<b>Total OUT-OF-STATE TRAVEL</b>	8,134.03	19,005.00	-10,870.97	42.8%
<b>PERSONNEL SERVICES</b>				
Director				
base salary	28,905.26	104,561.00	-75,655.74	27.6%
benefits	15,476.65	55,785.42	-40,308.77	27.7%
Incentive Award	0.00	0.00	0.00	0.0%
<b>Total Director</b>	44,381.91	160,346.42	-115,964.51	27.7%
Incentive Award	0.00	7,500.00	-7,500.00	0.0%
IT Director				
base salary	23,613.56	78,249.60	-54,636.04	30.2%
benefits	11,776.94	41,553.16	-29,776.22	28.3%
Incentive Award	0.00	0.00	0.00	0.0%
<b>Total IT Director</b>	35,390.50	119,802.76	-84,412.26	29.5%
Law Clerk I				
base salary	6,290.79	29,536.00	-23,245.21	21.3%
benefits	546.16	2,578.49	-2,032.33	21.2%
<b>Total Law Clerk I</b>	6,836.95	32,114.49	-25,277.54	21.3%
Staff Attorney - DV & SVRP				
base salary	28,347.67	106,163.20	-77,815.53	26.7%
benefits	14,301.28	46,663.01	-32,361.73	30.6%
Incentive Award	0.00	0.00	0.00	0.0%
<b>Total Staff Attorney - DV &amp; SVRP</b>	42,648.95	152,826.21	-110,177.26	27.9%
Staff Attorney - Traffic Safety				
base salary	23,795.00	84,760.00	-60,965.00	28.1%
benefits	10,829.91	38,360.76	-27,530.85	28.2%
Incentive Award	0.00	0.00	0.00	0.0%
<b>Total Staff Attorney - Traffic Safety</b>	34,624.91	123,120.76	-88,495.85	28.1%
Training Coordinator				
base salary	19,513.59	68,619.20	-49,105.61	28.4%
benefits	11,716.14	41,843.19	-30,127.05	28.0%
Incentive Award	0.00	0.00	0.00	0.0%
<b>Total Training Coordinator</b>	31,229.73	110,462.39	-79,232.66	28.3%
<b>Total PERSONNEL SERVICES</b>	195,112.95	706,173.03	-511,060.08	27.6%
<b>UNUSUAL PROSECUTION EXPENSES</b>	0.00	0.00	0.00	0.0%
UPAA APPROPRIATION	137.47	12,000.00	-11,862.53	1.1%
UPPAC				
Catering	117.41	2,000.00	-2,000.00	0.0%
UPPAC - Other	0.00	2,000.00	-1,882.59	5.9%
<b>Total UPPAC</b>	117.41	2,000.00	-1,882.59	5.9%
<b>Total Expense</b>	300,613.48	1,025,673.03	-725,059.55	29.3%
<b>Net Income</b>	-227,238.48	15,615.37	-242,853.85	-1,455.2%

***Tab F***

# ***Tab G***

Presented at the County Executive Conference  
November 12, 13, 2015  
St. George, UT

**Commission on Criminal and Juvenile Justice  
National Criminal History Improvement (NCHIP) Grant, \$500,000**

I have the actual grant application and award if anyone wants to review it. Below is what I felt was the critical information for this body to be aware of.

**CRITICAL DATES**

Award	9-1-15
RFP	9-1-15 – 3-1-16
Install software	3-15-16 – 4-15-16
Testing	4-30-16 – 8-31-16
Training Users	4-30-16 – 8-31-16
End Date	9-1-16

**SPECIAL CONDITIONS OF THIS GRANT**

1. CCJJ will reimburse UPC on a monthly or quarterly basis as financial status reports are submitted and approved up to the amount of the grant.
2. Comply with all reports; quarterly financial status reports, narrative progress reports, audit reports, etc.
3. Funds may not be obligated prior to the effective date of the grant or subsequent to its termination date.
4. Protection of victims condition.
  - A. UPC assures that “it” will not ask or require an adult, youth or child victim of an alleged sex offense to submit to a polygraph or other truth telling device as a condition for proceeding with the investigation. UPC assures that the refusal of any person to participate in a polygraph, etc., will not prevent the investigation, charging or prosecution of the alleged offense.
  - B. UPC assures that “it” will not require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical examination or be reimbursed for charges incurred from such an exam.

## Issues That Need to be Addressed in Terms of This Grant

This is certainly not an exhaustive list so will look for guidance to take back to the Council.

1. Earlier this year the Council voted/stated that other than maintaining PIMS for the rest of is “life,” UPC was to get out of the software business.
  - a. My intent in applying for this grant was to get one time monies to make or facilitate the purchase, not manage the case management system on an ongoing basis.
  - b. UPC does not have the staff or equipment to maintain a statewide system.
  - c. UPC does not have the resources or experience to draft an RFP, negotiate a contract, etc.
  
2. RFP, Contract Negotiation and Drafting
  - a. Who can do this?
  - b. Who is willing to do this?
  - c. The RFP dates in the grant are not absolute dates but we can delay no longer.
  - d. Need to negotiate a one time payment of \$500,000 rather than pay as jurisdictions come on line.
    - i. Companies such as Justware do not bill until the software is up and running.
    - ii. All jurisdictions will NOT be on line by August 31, 2016.
  - e. Must have an e-filing patch, similar to what Utah County is getting.
  - f. While the grant is to UPC, UPC will not be receiving the program itself but for the benefit of prosecutor offices.
  - g. Each jurisdiction is responsible for yearly fees, training, upgrades, etc. UPC does not warrant future payment by the jurisdictions.
  - h. After the initial payment of \$500,000, UPC will no longer deal with the software company.
  
3. This is a reimbursable grant. UPC does not have \$500,000 in its budget.
  - a. How to pay for it?
    - i. “Loans” from larger cities, counties, AG’s office?
    - ii. “Loan” from legislature?
  
4. Questions that need to answered
  - a. How to divide the grant?
    - i. \$500,000 will not purchase a program for every jurisdiction that wants it.
    - ii. Each jurisdiction will have to supplement the purchase price.
  - b. Does every jurisdiction get an equal amount credited towards the purchase price?
  - c. Should the ability to pay be taken into consideration in dividing the benefit of the grant?
    - i. i.e. Salt Lake County v. Wayne County
    - ii. i.e. Salt Lake City v. Springville
    - iii. Counties v. Cities

- d. Since the grant specifically discusses e-filing in district court should the beneficiaries of the grant be those who file in district court? This would exclude cities who only practice in justice court.
  - e. Do those jurisdictions who contract their prosecution to private law firms receive any benefit?
  - f. Should a larger jurisdiction with more resources and staff than UPC be asked to manage the grant?
  - g. What, if any, benefit should jurisdictions who have already purchased a software program receive under the grant?
  - h. Currently Karpel and Justware are the two main programs being used in the state.
    - i. If UPC ends up purchasing either program should the negotiations include any provision for pro-rating those jurisdictions fees?
    - ii. If all things are equal in the RFP process, should a deciding factor be how many jurisdictions currently have that companies software?
  - i. What, if any, effort should be made to unify all offices onto one program?
    - i. Should this be part of the negotiation process, to somehow make provisions for those offices who have a competing program?
5. Ultimately this is a Council decision but looking for input from County and District Attorneys

6.

***Tab H***

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## **New ways to question eyewitnesses could prevent wrongful convictions, group says**

December 14, 2015



**SALT LAKE CITY** — It's one of the most dramatic moments of a criminal trial: when a victim is asked to point out the person who committed the crime against them.

But officials with the Rocky Mountain Innocence Center also say that kind of identification, while great for courtroom theater, is mostly unreliable.

"The mind and memory really aren't reliable when you look at the science of it," said Marla Kennedy, the center's executive director.

Bad eyewitness identification is the leading cause of wrongful convictions in the United States, she said.

"Over 70 percent of exonerations by DNA were due to faulty eyewitness ID," Kennedy said.

Recently, the Rocky Mountain Innocence Center held a two-day training session with the Unified Police Department to discuss the best techniques for questioning eyewitnesses.

"This was a no-brainer for us," said Salt Lake County Sheriff Jim Winder. "We are all on the same page here. ... Law enforcement and the Innocence Center want the same thing — the right person convicted of the crime."

## **Ronald Cotton case**

The Innocence Project, a national group, often uses the example of Ronald Cotton and Jennifer Thompson-Cannino to drive home their point.

In 1985 in North Carolina, Cotton was convicted of raping Thompson, largely due to her eyewitness testimony. During a retrial in 1987, she again pointed to Cotton as her attacker and he was convicted again. But DNA tests would later prove otherwise, and Cotton was exonerated in 1995 after spending more than 10 years in prison.

According to the Innocence Project, "Cotton and Thompson-Cannino are now good friends and leading

advocates for eyewitness identification reform."

## Utah case

In Utah, Harry Miller was convicted of robbing a woman at knife point in Salt Lake City in 2000 due largely to an eyewitness. After serving four years in prison, he was exonerated.

Unified Police Lt. Lex Bell said it's a common scenario for investigators: They'll interview witnesses at a bank robbery or another crime, and even though there could be six witnesses, sometimes all six will give a different suspect description, with age and height often being the biggest variables. Sometimes witnesses to the same crime will even give different skin colors of the suspect.

When a person is being traumatized or in fear of their life, "You don't see and hear things like you normally would," Bell said.

## New techniques

Some of the new techniques being taught by the Rocky Mountain Innocence Project include detectives no longer laying six pictures in front of a victim and asking them to pick out the suspect.

"When you're given a photo array of six people, you don't focus on picking who you saw, you start picking who you think you saw against one another in the photos. You're comparing 1 to 2, and 2 to 3. So you're not focused on who you saw, you're starting to compare them to each other," Kennedy said. "There's a difference between recall and recognition."

The center recommends showing victims the pictures one at a time, and not giving the victim very long to look at them. The victim also can only look at the pictures twice. If they can't identify a suspect after that, detectives will wait to conduct another photo lineup later.

"Because if you can't pick someone in the first 10 seconds, the accuracy goes down 8 percent," Kennedy said.

Furthermore, the center recommends the person who administers the photo lineup shouldn't be the lead detective on the case, but rather a person who doesn't know who the suspect is. That way, the officer doesn't give any "unknown cues" to pick a particular person, Kennedy said.

"It's the way that we build up the interview with that individual and the way that we present our photo lineups," Bell added on the recommended techniques.

But Bell also noted that with the advances in forensic science and DNA technology over the past decade, it's rare now to solely rely on an eyewitness account to solve a case.

"That is almost unheard of anymore. There has to be something more. We have to collaborate that with additional evidence," he said. "There's so much reliance on other evidence now, DNA and fingerprints and touch evidence, that it's not quite as important as it was years ago when mistakes happened."

Kennedy and the Innocence Center are hoping that police agencies statewide will adopt the best-practices techniques that they are recommending.

# *Tab I*

## **New York State Identification Procedures – An Overview<sup>1</sup>**

### **January 29, 2014**

On May 19, 2010, police and prosecutors from around New York State stood together to endorse new and innovative identification procedures, called the New York State Identification Procedures (NYS ID Procedures).<sup>2</sup> The New York City Police Department, the New York State Police, as well as police departments in urban, suburban and rural areas around the state have adopted the NYS ID Procedures. The collaborative effort that led to these identification procedures demonstrates how law enforcement can work together to enhance public safety, while protecting the rights of the accused.

### **Developing the NYS Identification Procedures**

During early 2010, district attorneys and police worked together to formulate improved and uniform identification procedures. The goal was to produce procedures that would be true to law enforcement's primary mission of protecting public safety, while also protecting the rights of the accused. To develop these new procedures, the Best Practices Committee of the New York State District Attorneys Association (DAASNY) reviewed the social science, examined procedures used in other states, and gathered input from police departments large and small. Weighing all of the information available, along with practical experience from the field, law enforcement reached a statewide consensus on the NYS ID procedures.

### **Highlights of the Procedures**

The thrust of the new procedures is to enhance law enforcement's ability to create a fair and neutral environment in which a witness can make an accurate identification of a perpetrator.<sup>3</sup> This is done in three phases: first, preparing for the identification

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<sup>1</sup> Written by Kristine Hamann, Visiting Fellow - Department of Justice/Bureau of Justice Assistance; Chair of the New York State District Attorneys Association Best Practices Committee and member of the Best Practice Sub-Committee on Identification Procedures that developed the New York State Identification Procedures discussed in this article.

<sup>2</sup> A copy of the NYS Identification Procedures was previously submitted to the Committee.

<sup>3</sup> In addition to the examination of published materials, social scientists in the field, whose work has been peer-reviewed and published, were consulted and their advice was invaluable. They were: Roy Malpass, Ph.D., Professor, Department of Psychology, University of Texas at El Paso; Brian Cutler, Ph.D., Professor of Criminology, Justice and Policy Studies at the University of Ontario Institute of Technology; Heather D. Flowe, Ph.D., Lecturer of Forensic Psychology, University of Leicester, England; and Steven Clark, Ph.D., Professor, Department of Psychology, University of California, Riverside, California.

procedure, second, conducting the procedure itself, and lastly, dealing with next steps after the identification procedure is completed. A pre-made Identification Form walks the officer through these phases of the procedure with instructions and the ability to record the relevant information. This article will explain the NYS ID Procedures as they apply to photographs shown to a witness when a suspect is known to the police.<sup>4</sup>

## 1. Preparing for the Identification Procedure

**Creating the Array:** When the police have a suspect in a case, they will often show a witness a photo array consisting of six photographs, one of which is the suspect. The new procedures require that, where possible, the photo arrays should be computer generated through a system available to the police agencies.<sup>5</sup> This program will compile an array consisting of the suspect's photo, along with five photographs matching the description of the suspect. Some suggest that the filler photos should match the description of the perpetrator, rather than the description of the suspect. Though the perpetrator's description should be taken into account when evaluating the suspect and potential fillers, descriptions are usually far too general to provide much guidance and could create an unfair array if the description differs significantly from the available photograph of the suspect. Thus it was decided that the officer should just match the photographs to the suspect so that the suspect should not stand out unfairly in any way, for example, because of a different background color, physical characteristic, or quality of the photo. Once printed, the array must be placed in a folder.

The array can be created by the administrator of the identification procedure, the case detective or by someone else. Someone who is informed of the suspect's identity should review the array to make sure that the suspect does not unfairly stand out. In training, officers are encouraged to have the array created by someone other than the administrator and then placed in a folder so that the administrator cannot see the array. This way the position of the suspect in the array will be unknown to the administrator, thus reducing the chance of inadvertent cuing of the witness.

**Scheduling the ID Procedure:** The protocols require that when contacting the witness to schedule the identification procedure, the officer must avoid influencing

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<sup>4</sup> The procedures for live lineups are very similar to those used for photo arrays. However, since live lineups are rarely used outside of New York City, this memo will focus on identifications made from photo arrays. It should be noted that in New York photo identifications are not admissible at trial.

<sup>5</sup> Though all New York State police departments have the ability to generate photo arrays from a computer, they use different systems. For example, the NYPD uses Photo Manager, while many upstate police departments use the DCJS system called CJIMS.

the witness' response. The officer should simply say: "We'd like you to come in to view a photo array in connection with the crime that occurred on ...." The officer should not give an opinion about the witness' ability to make an identification or comment about other evidence in the case. Training re-iterates these concepts.

### **Simultaneous and Not Sequential**

There appears to be no studies or empirical evidence that wrongful convictions were the direct result of a photo array being simultaneous rather than sequential. In fact, most of the incorrect identifications leading to a wrongful conviction in New York were not due to poor police-arranged identification procedures, but, rather, to incorrect identifications made by a witness on the street, witnesses who made intentional mis-identifications, or police who intentionally and illegally influenced the identification of a witness. Fortunately, there is now a significant amount of evidence to corroborate an identification, such as DNA, phone records, computer records, GPS information and surveillance cameras, to just name a few. These types of evidence did not exist decades ago when most of the wrongful convictions occurred. That said, it is still extremely important to create a fair and neutral identification procedure that can elicit a reliable identification from a witness.

With much thought and study, the NYS ID Procedures use the "simultaneous" rather than the "sequential" method of showing photographs to a witness. Over the last thirty years, there has been a great deal of discussion and study about whether a person more accurately identifies someone when looking at a number of photographs at the same time (simultaneous), or whether it is better to show the photographs one at a time (sequential). The debate and research on this issue continues.<sup>6</sup> Most of the studies dealing with this issue have been conducted in laboratories, using college students as stand-ins for crime victims.

The results of these studies have been inconsistent, but many have shown that the ability to identify a correct subject is diminished when the sequential method is used.<sup>7</sup>

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<sup>6</sup> Gronlund, S.D., Carlson, C.A., Dailey, S.B., & Goodsell, C.A. (2009). *Robustness of the sequential lineup advantage*. *Journal of Experimental Psychology: Applied*, 15, 140-152; *Journal of Applied Psychology*, 89, 1106-1112; Clark, S.E. (2011). *Costs and benefits of eyewitness identification reform: Psychological science and public policy*. Perspectives on Psychological Science. Accepted for publication; Clark, S.E., Erickson, M.A., & Breneman, J. (2011); Clark, S.E., Erickson, M.A., & Breneman, J. (2011). *Probative value of absolute and relative judgments in eyewitness identification*. *Law and Human Behavior*, 35, 364-380; Wells, G. L. & Loftus, E. F. (2012). *Eyewitness memory for people and events*. In A. Goldstein, Ed. *Handbook of psychology*, 2nd Ed, Volume 11, Forensic psychology. New York: John Wiley and Sons Mecklenburg, S., Bailey, P. & Larson, M. (2008). *The Illinois field study: a significant contribution to understanding real world eyewitness issues*. *Law & Human Behavior* 32 (1), 22-27; Mecklenburg, S., Bailey, P. & Larson, M., *Sorting It Out on Eyewitness Identification*. *The Police Chief*; October 2008, 68-81.

<sup>7</sup> Steblay, N.K., Dietrich, H.L., Ryan, S.L, Raczynski, J.L., & James, K.A. (2011). *Sequential lineup laps and eyewitness accuracy*. *Law and Human Behavior*, 35, 262-274; Steblay, N.K., Dysart, J.E., & Wells, G.L. (2011).

Field studies using actual witnesses have also been inconsistent in their conclusions about the benefits of one method over the other.<sup>8</sup> A field study which was led by the American Judicature Society and the Innocence Project was conducted primarily in Austin Texas has yet to be peer-reviewed and it had some unique features that could influence the interpretation of the results.<sup>9</sup>

Recently, important new research has raised significant issues regarding the alleged superiority of the sequential method. These studies have evaluated sequential versus simultaneous identification procedures using the Receiver Operating Characteristic (ROC) method and have found that the sequential method is actually inferior to the simultaneous procedure in discriminating between the presence or absence of a guilty suspect in a photographic lineup.<sup>10</sup> This is a finding that policy makers must take into

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*Seventy-two tests of the sequential lineup superiority effect.* Psychology, Public Policy, and Law, 17, 99-139; Haw, R.M., & Fisher, R.P. (2004). *Effects of administrator-witness contact on eyewitness identification accuracy.* Journal of Applied Psychology, 89, 1106-1112.

<sup>8</sup> Mecklenburg, S.H. (2006). *Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double-Blind Identification Procedures.* Springfield: Illinois State Police; *but see* Steblay, N.K. (2011). *What we know now: The Evanston Illinois field lineups.* Law and Human Behavior, 35, 1-12; Wells, G., Steblay, N. & Dysart, J. (2011) *A Test of the Simultaneous vs. Sequential Lineup Methods An Initial Report of the AJS National Eyewitness Identification Field Studies.* American Judicature Society, The Opperman Center, Des Moines, Iowa: [www.ajs.org](http://www.ajs.org).

<sup>9</sup> See, *A Test of the Simultaneous vs. Sequential Lineup Methods, An Initial Report of the AJS National Eyewitness Identification Field Studies*, Gary L. Wells, Nancy K. Steblay, and Jennifer E. Dysart (2011). Unlike earlier studies that found fewer suspects were selected using the sequential method, this study found that the rate of suspect selection was the same for sequential and simultaneous. However, though the suspect selection rate for both methods was statistically the same, only 26% of the suspects were identified. This is oddly lower than identification rates in earlier studies. The authors of the Austin Study found significant that the rate of incorrectly identifying a filler (mis-hits) was higher for the simultaneous method than the sequential method. Since mis-hits do not result in the arrest of the filler identified, a very significant question remains as to whether this higher rate is important in evaluating the merits of one system over the other. The Innocence Project argues that the higher rate of mis-hits demonstrate that the sequential method is better. However, it could also be argued that the simultaneous method is better at weeding out those witnesses whose memory of the perpetrator is weak. Methodologies used may also have influenced the results since they were different from identification procedures normally used by police departments. Also, 42% of the samples in the Austin study were excluded for various reasons. Considering that nearly half of the procedures were not included in the outcome, questions remain as to the practicality and validity of the procedures used. Without benefit of a peer review and additional field studies, it remains unclear whether this field study, standing alone, demonstrates that sequential is better. Until the review process is completed, it will remain unclear whether the outcome demonstrates that sequential is better.

<sup>10</sup> Wixted, J. and Mickes, L. (2012) “*The Field of Eyewitness Memory Should Abandon Probative Value and Embrace Receiver Operating Characteristic Analysis.*” Perspectives on Psychological Science 7(3) 275– 278. Mickes, L., Flowe, H. and Wixted, J. (2012) “*Receiver Operating Characteristic Analysis of Eyewitness Memory: Comparing the Diagnostic Accuracy of Simultaneous Versus Sequential Lineups.*” Journal of Experimental Psychology: Applied, Vol. 18, No. 4, 361–376.

account when determining what procedure best serves the interests of public safety, while still protecting the rights of the accused. The National Academy of Science Committee on Scientific Approaches to Understanding and Maximizing the Validity and Reliability of Eyewitness Identification in Law Enforcement and the Courts will be closely reviewing these studies.

In the end, it may never be possible to come up with a system that is ideal for all people. No matter what procedure is used, the most important concern is to assure that the witness makes an identification based on his or her own memory, that is not influenced by outside factors. Until the presentation issue is settled, simultaneous photo arrays, which have not been demonstrated to lead to wrongful identifications or wrongful convictions, will continue to be used as part of the NYS ID Procedures.

## **2. Conducting the ID Procedure**

**Instructing the Witness:** With the photo array in a folder, the officer can conduct the identification procedure anywhere that is convenient for the witness: at the police facility, or at the witness' home or place of business. Regardless of where the officer meets with the witness, the procedure will begin with instructions to the witness. These instructions, which are given before the photos are viewed, are contained in the photo array form that the witness will initial or sign after the instructions have been given. To make sure that the witness does not feel compelled to make an identification, or to seek assistance with a selection, the instructions include these cautionary instructions:

The perpetrator may or may not be among the pictures.

Do not assume that I know who the perpetrator is.

Do not look to me or anyone else in the room for guidance during the procedure.

The instructions also explain how the procedures will be conducted, that the witness should disregard any variation in the quality of the photographs, and that the suspect may not appear exactly as he did on the date of the crime. The witness is told that he or she may not discuss with other witnesses what is said and done during the identification procedures. Finally, the officer informs the witness that after viewing the photos, the witness will be asked specific questions, with the possibility of follow-up questions. These instructions alert the witness that he or she may be asked additional questions as part of the procedure.

**Blinded or Double Blind Administration:** "Double blind" is where the array is shown to the witness by a person who is unfamiliar with the case and does not know the suspect. The "double blind" method can make it easier to demonstrate that there

could be no influence from the administrator on the witness. However, it is often difficult or impractical to find someone who lacks knowledge of the case and the suspect. In addition, even a “double blind” administrator can be easily tipped off to the identity of the suspect, for example, if there is more than one witness and the first witness identifies the suspect, or if the administrator is familiar with the fillers, or if events at the viewing facility reveal the identity of the suspect. Thus, it is important that whether the administrator is “double blind” or not, that the procedures be conducted in a “blinded” fashion.

“Blinded” procedures are designed for situations where the administrator of the procedure knows the suspect’s identity, but conducts the procedure in such a way as to avoid the possibility of inadvertent cuing or influencing the witness. The blinded procedures, described below, include putting the photo array in a folder and requiring the administrator to stand behind and to the side of the witness at the time the array is viewed so that the administrator does not know which photo the witness is viewing at any given moment. Blinded procedures can also include the administrator walking out of the room while the witness is viewing the photographs, or having someone else print the array, so that the administrator does not know the position of the suspect. These blinded procedures are similar to those used by social scientists to “blind” their own studies in the eyewitness research.<sup>11</sup> Regardless of the method used, it is important that the officer understand the importance of not influencing the witness in any way. Officers are educated on this point during training. More study is needed in order to determine the best way to create a blinded procedure that is practical for police officers who are either short of manpower or are showing the array somewhere away from the police facility. There is very little research on these issues.

**Showing the Array:** Before the array is shown, the instructions specifically admonish the officer to: “Remain neutral. Do not comment on the identification before, during or after the identification procedure.” Moreover, the instructions continue: “So as not to distract the witness, do not comment during the identification procedure.” This prevents influence on the witness before the identification and prohibits confirming the identification if an identification is made.

To begin the procedure, the officer will hand the folder containing the photo array to

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<sup>11</sup> See “*Seventy-Two Tests of the Sequential Lineup Superiority Effect: A Meta-Analysis and Policy Discussion*,” Nancy K. Steblay, Augsburg College; Jennifer E. Dysart, John Jay College of Criminal Justice; Gary L. Wells, Iowa State University, Psychology, Public Policy, and Law (2010), p. 26: “Control of experimenter effects. Experimenter effects in lineup research are controlled through a variety of strategies. To limit unintentional cues, the experimenter may leave the room during the lineup, stand behind or away from the participant, not directly handle the lineup photos, allow the witness his or her own pace through the photos, engage in only scripted verbal exchange, and/or use a computer to present the lineup.”

the witness. When the witness is handed the folder, the witness cannot see the array. After the witness has been handed the folder, the officer will stand behind and to the side of the witness when the witness opens the folder. The officer must be able to observe and hear the witness, so as to assess and record their response. This will allow the witness to view the photographs without the potential of inadvertent cues from the officer and is the functional equivalent of a double blind procedure. Again, whether the administrator does or does not know the suspect, the procedures must be conducted in the same way.



It should be pointed out that little scientific research has been done on how, if at all, witnesses can be inadvertently cued by an administrator. Inadvertent cuing is particularly difficult when a witness is looking at a photo array of six photographs, rather than at one photograph at a time, since a witness will be hard pressed to interpret which photograph of the six should be picked due to the inadvertent cue. Most cases cited by advocates in support of the need for reform of identification procedures involve intentional misconduct by police officers. Obviously, the intentional cuing of a witness is absolutely inappropriate.

**The Relationship Between Confidence and Accuracy:** Research has shown that there can be a strong relationship between confidence estimates at the initial identification procedure and the likelihood of being correct in an identification.<sup>12</sup> This

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<sup>12</sup> See, e.g., Lindsay, D., Read, J., and Sharma, K. (1998) "Accuracy and Confidence in Person Identification: The Relationship is Strong When Witnessing Conditions Vary Widely" *Psychological Science*, Vol. 9 no. 3 (215-219); Read, J., Lindsay, D. & Nicholls, T. (1997) "The Relationship Between Accuracy and Confidence in Eyewitness Identification Studies: Is The Conclusion Changing?" In Thompson, et.al. (eds) *Eyewitness Memory: Theoretical and Applied Perspectives*, N.J., Earlbaum (107-130), citing to, Sporer, S., Penrod, S., Read, J. & Cutler, B. (1995) "Choosing, Confidence and Accuracy: A Meta-Analysis of the Confidence-Accuracy Relation in Eyewitness Studies" *Psychological Bulletin*, Vol. 118 (315-327); Palmer, et. al. (2013) "The Confidence-Accuracy Relationship for Eyewitness Identification Decisions: Effects of Exposure Duration, Retention Interval, and Divided Attention." *Journal of*

is not surprising since experience has shown investigators and prosecutors what those strong expressions of confidence look and sound like when, for example, a witness thrusts her finger at the photo, or becomes visibly upset at the sight of a person in a lineup. Thus, the NYS ID Procedures require the officer to record the words and gestures of the witness at the time of the initial identification.

**Recording the Response and Clarifying Questions:** When the witness has viewed the photo array or the lineup, the officer will ask the witness three questions: 1) “Do you recognize anyone?” 2) “If you do, what is the number of the person you recognize?” and 3) “From where do you recognize the person?” If the witness makes an identification with assurance, the administrator must record the words and gestures of the witness, but no further questions are required. The concern is that any question following a confident identification could unduly influence it one-way or the other. Cultural differences between the administrator and the witness could compound this problem. After an unequivocal identification, would the witness believe he got it wrong if he is asked for his level of confidence? Or, could a confidence question make the witness believe that they have to be ultra-certain and reinforce the identification in an inappropriate way? Thus, based on these concerns and following the methodology used by the Metropolitan Police in Washington DC, the choice was made to not ask additional questions following an unequivocal identification.

However, if the witness’ answer is vague, such as, “I think it is number 4,” then it is important to inquire further. Thus, when there is a vague answer, the officer must follow-up by saying “You said ‘I think it is number 4’ [*fill in the witness’ words*], what do you mean by that?” This follow-up question is designed to determine if the vague answer is merely a manner of speaking by the witness who is actually certain of the identification, or if it demonstrates a problem with the witness’ identification. The question, “What do you mean by that?” is intentionally open-ended and non-leading, so that the witness will not be inadvertently influenced by the question itself.

The research is clear that the most forensically relevant statement of confidence is the one given at the time of the identification procedure. However, there appears to be no research as to the best way to capture that initial confidence statement - untainted by the influence of the question itself. Two questions which are often promoted as ways to collect the confidence statements present concerns. A question that elicits a numerical response, such as “Give a percentage of how sure you are of the identification” is problematic in that a numerical assessment can vary by personality

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Experimental Psychology: Applied Vol. 19, No. 1, 55–71 (High-confidence identifications are reliably accurate whether attention was divided or not, whether the retention interval was long or short, and whether exposure duration was long or short).

type. Though a number has a veneer of objectivity, it is actually highly subjective and can be misleading. One person's "100%" can be another person's "90%." The concern with the question "In your own words, how sure are you?" is that depending on how the words are expressed, the witness could believe that the officer wants another answer, or that the administrator is confirming the identification. Different personality types will react to these questions in a variety of unpredictable ways, and the concerns are compounded when the witness is fearful, uncomfortable or from a different culture. In combination with these questions, the vocal inflection and body language of the administrator, blind or not, may also influence the witness.

After discussions with detectives who have the greatest experience with witnesses, the most open-ended follow-up question was selected: "You said [*fill in the witness' words*], what do you mean by that?" This question meets the goal of the NYS Identification Procedures to probe the witness' level of certainty and to minimize any influence on the witness' identification. If the witness does not understand the question, the officer will have to probe further. Additional study on confidence questions will help law enforcement to determine the best way to capture a witness' confidence in an identification.

Some jurisdictions in New York State are experimenting with various ways of recording the identification as another means of capturing the witness' response to the identification procedure. Though a recording would provide excellent information about a witness' identification, it raises other significant concerns regarding witness safety and continuing witness cooperation. Will witnesses balk at participating in the criminal justice process if they know that they are being recorded? When a witness does participate, could the recording be used to deter the witness from coming forward by, for example, posting it on the Internet? Serious consideration has to be given to protecting witnesses, if their identifications are to be recorded. A practical, but very real issue is the need for funding. Equipment, software and storage capacity are all needed to record, preserve, copy, and redact the recorded identifications, along with the related need to equip courtrooms and grand jury rooms with the technology needed to play the recordings.

### 3. Next Steps After the Procedure is Concluded

**Final Instruction to the Witness:** Once the identification procedure is concluded, the witness is instructed not to discuss the results of the procedure with any other witness. This is to prevent witnesses from influencing each other.<sup>13</sup> In addition, the

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<sup>13</sup> The procedures also provide guidance about how to deal with multiple witnesses who need to view a photo array.

officer is instructed to not discuss any next steps in the case until the form is completed, and the witness' remarks and gestures are recorded. If the witness does make an identification, it must be memorialized before the officer talks to the witness about matters that may be viewed as confirmatory, such as testifying in the grand jury or appearing for further interviews in the District Attorney's Office.

### **On-Going Training for Police and Assistant District Attorneys**

Over the past three years, training on the new identification procedures and the principles underlying them has been on going throughout the state. When the procedures were first endorsed in 2010, daylong trainings were conducted, with the support of the Division of Criminal Justice Services. Police were trained in Albany, Buffalo, Nassau County, Rochester, Syracuse, Utica, Watertown, Lake Placid, Rockland County, Orange County, and Suffolk County. The training not only explained the new procedures, but discussed the fallibility of eye witness identifications and stressed the importance of fair and neutral procedures. Since that time, police departments have been training their staff in multiple venues. State police and the NYPD are training their officers troop to troop and precinct to precinct. The procedures and the standardized forms are included in their computerized systems in order to make sure that the procedures are uniformly used. A training CD was developed and has been distributed to police departments around the state. Police now get online training on the identification procedures through the DCJS website, along with the written procedures and related forms. Police receive certification credits for completing the online training. District Attorneys' offices have also conducted follow-up trainings for their police departments in various parts of the state. Training for Assistant District Attorneys is ongoing both in-house and through New York Prosecutors Training Institute (NYPTI). A training video is available for CLE credit through the NYTPI online training center.

***Tab J***



U.S. Department of Justice

Ronald C. Machen Jr.  
United States Attorney

*District of Columbia*

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*Judiciary Center  
555 Fourth St., N.W.  
Washington, D.C. 20530*

January 31, 2014

Thomas D. Albright, M.D., and The Honorable Jed S. Rakoff, Co-Chairs  
Committee on Scientific Approaches to Understanding and  
Maximizing the Validity and Reliability of Eyewitness Identification  
in Law Enforcement and the Courts  
National Academy of Sciences  
2101 Constitution Avenue, N.W.  
Washington, D.C. 20418

Attn: Anne-Marie Mazza, Ph.D., Study Director

Dear Dr. Albright, Judge Rakoff, and Committee Members:

Thank you for undertaking the daunting task of reviewing eyewitness identification in order to bring some clarity and objectivity to this important subject. We all listened intently to the presentations on December 2 and 3, 2013. The research on eyewitness identification raises a number of issues that we believe the Committee should explore:

**Statistical Analysis.** Dr. Wixted explained that past methods used to compare simultaneous and sequential lineups are seriously flawed and that a receiver operating characteristic (ROC) analysis must be used. Using ROC analysis, his laboratory and at least two others have found the simultaneous procedure superior to the sequential procedure. The Committee should consider whether other areas of eyewitness research such as weapon focus, own-race bias (ORB), or source misattribution should be re-analyzed using ROC, which Dr. Malpass has characterized as a tectonic shift in the field.

**Simultaneous vs. Sequential.** Dr. Malpass explained that when he re-analyzed the meta-analysis data on sequential and simultaneous presentations of photo arrays and excluded the studies from a lab that always placed the suspect in the fifth position, he found no sequential advantage. The Committee should consider whether prudence dictates examining research in other areas to ascertain whether there may be biasing factors and, if so, re-analyzing the data after exclusion of any biasing factor, particularly where laboratory results have not been replicated in the field or where the studies have not accounted for absence of counterbalancing.

**Confidence and Accuracy.** A witness to a crime who tells law enforcement that he is not able to identify the perpetrator or who identifies the suspect with a low level of confidence is not likely to be a witness upon whom the prosecution will rely as an identification witness at trial. Given this fact, the “growing number of studies [showing that] the magnitude of an individual’s confidence rating in a lineup decision can be well calibrated with its likely accuracy,”<sup>1</sup> and archival research concluding that “witnesses who display high levels of certainty ... are unlikely to choose innocent persons,”<sup>2</sup> the Committee should assess whether it is appropriate for jurors to be told otherwise by an expert witness or a judge.

**Blind Administration.** Professor Wells made clear his strong preference for blind administration of line-ups and photo arrays. While this position certainly has some appeal, “only a handful of empirical studies have examined the effect of investigator knowledge on eyewitness identification decisions,” and they suggest “different conclusions about the conditions under which the effects of administrator knowledge are observed or whether effects are observed at all.”<sup>3</sup> Many of the examples provided of inadvertent cuing are in fact intentional (e.g., “take another look at #3”) and likely the product of a lack of training.<sup>4</sup> The 1999 *Eyewitness Identification: Guide for Law Enforcement* published by the National Institute of Justice identified blind administration as a direction for further exploration and field testing, but this has not been done. The Committee should recommend field studies to test the assumptions that police *inadvertently* cue real eyewitnesses or subjects and that real witnesses or subjects can otherwise intuit what the law enforcement officer administering the procedure is thinking.

**Target Absent Arrays.** Many laboratory studies use “target absent” arrays. However, these arrays frequently include the photograph of a person who *closely resembles* the mock target (the perpetrator in real life). The police, who do not know what the perpetrator looks like, cannot pick a suspect who closely resembles, but is not, the perpetrator, except by chance. Because the police must have a reason to put a suspect in a line-up, show-up, or array, the probability is extremely small that the suspect would closely resemble the true perpetrator but is actually innocent. Even if otherwise sound, laboratory studies that treat target present and target absent

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<sup>1</sup> Dobpolyi & Dodson, *Eyewitness Confidence in Simultaneous and Sequential Lineups*, *Journal of Experimental Psychology, Applied* (2013) (citations and parentheticals omitted).

<sup>2</sup> Behrman & Richards, *Suspect/Foil Identification in Actual Crimes and in the Laboratory: A Reality Monitoring Analysis*, *Law and Human Behavior*, 29:279 at 297 (2005).

<sup>3</sup> Greathouse & Kovera, *Instruction Bias and Lineup Presentation Moderate the Effects of Administrator Knowledge on Eyewitness Identification*, 33 *Law & Hum. Behav.*, 70, 71 (2009); *see also* Phillips, McAuliff, Kovera & Cutler, *Double-Blind Photoarray Administration as a Safeguard Against Investigator Bias*, 84 *J. Applied Psychol.* 940, 941 (1999).

<sup>4</sup> Both the Illinois field study and data from over a thousand live lineups revealed “no concrete evidence to support the claim that inadvertent police influence ... occurs on a systematic basis in real world identifications.” Mecklenburg, Bailey & Larson, *The Illinois Field Study: A Significant Contribution to Understanding Real World Eyewitness Identification Issues*, *Law Hum. Behav.* 1, 4 (2007).

arrays as if they are equally present in the real world and calculate the probability of making a mistake accordingly would exaggerate the danger of a picking an innocent suspect. The Committee should take this into consideration in assessing the laboratory research and its generalizability to real cases.

**Weapon Focus.** As discussed by Professor Steblay, one factor said to detract from accurate identifications is weapon focus. Although laboratory research shows that the weapon focus effect on identification accuracy is small and may disappear altogether if the exposure time is long enough,<sup>5</sup> field and archival studies do not find such an effect. This difference may result from the fact that, in real cases, witnesses who report that they were focused on the weapon to the exclusion of other characteristics that might identify a perpetrator are not asked to participate in an identification procedure. To the best of our knowledge, no laboratory study excluded subjects who said they were focused on the weapon and/or did not look at the perpetrator's face. In the absence of data regarding how many real eyewitnesses are not asked to make an identification when they say their eyes were "glued to the gun," both expert testimony and instructions on weapon focus as applied to a particular testifying witness are not on solid ground. For instance, an instruction that "the presence of a weapon can distract the witness and take the witness's attention away from the perpetrator's face" and "may reduce the reliability of a subsequent identification if the crime is of short duration" does not apply to a real-life witness who reports, despite the presence of a weapon, looking at the perpetrator's face. The Committee should recommend more research on this issue.

**Cross-Racial Identification.** Racial differences also are said to detract from accurate eyewitness identification. Most studies on a cross-race effect are facial recognition studies. The Committee should consider what conclusions can be drawn from such research when the amount of exposure time in these studies may be milliseconds and the subjects are initially shown 8, 10, or 20 photographs in contrast with real-world scenarios with far lengthier exposure times and far fewer individuals observed in person.<sup>6</sup> Further, in assessing the laboratory research, the Committee should examine whether researchers selected same and other race faces across the broad spectrum of colors and facial features in each racial group, how the intersection between

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<sup>5</sup> In the Steblay meta-analysis of laboratory studies, 6 tests supported a weapon focus effect and 13 did not. Steblay, *A Meta-Analytic Review of the Weapon Focus Effect*, *Law and Hum. Beh.*, 413, 424 (1992). When combined, there was a "small effect," 10-12% according to Professor Steblay's presentation. For a recent discussion of "weapon focus" literature, see Fawcett, et al., *Of guns and geese: a meta-analytic review of the 'weapon focus' literature*, *Psych. Crime & Law*, 1 (2011). In some laboratory studies reviewed therein, the presence of a weapon decreased the ability to recall peripheral details, but did not decrease identification accuracy. Archival studies do not disclose a "weapon effect" on eyewitness identification. See, e.g., Cooper, et al., *Weapon focus in assault memories of prostitutes*, *Int'l J. of Law and Psych.* 181 (2002).

<sup>6</sup> In Meissner & Brigham, *Thirty Years of Investigating the Own-Race Bias in Memory for Faces: A Meta-Analytic Review*, *Psych. Pub. Policy & Law*, 3 (2001), the median exposure time was 3 seconds and the longest was 4 ½ minutes. The article does not provide information on where the longer exposure times fell on a continuum. The authors state that "the amount of study time significantly influenced discrimination accuracy in the ORB, particularly through an increase in false alarm responses to other race faces when study time is limited." *Id.* at 24. There is unlikely to be an identification in real life when a crime lasts 3 seconds or less.

ethnicity and race was handled, and how the research accounted for mixed-race individuals. The Committee also should assess whether there has been sufficient research on the amount and *kind* of contacts with members of another race on a person's ability to identify people of a race other than his own, especially given the changes in our society in recent years. Based on our experience and the Illinois Report, we suspect that real eyewitnesses, recognizing their own limitations and understanding the consequences of mis-identification, self-select out of identification procedures altogether or are more reluctant to identify (and therefore do not identify) a person of a different race than their own because they are more afraid of making a mistake. Because such witnesses would not be identification witnesses at trial, either expert testimony or jury instructions based on the ORB found in laboratory studies would be inappropriate. The Committee should recommend further study in the field.<sup>7</sup>

**Stress.** High stress is said to detract from accurate eyewitness identification. There is, however, no uniform standard for what constitutes "high stress," and laboratory studies may in fact involve only moderate stress. Moreover, in laboratory studies, the stressors are often external to the event and may serve as distractors. In our experience – and in research on real witnesses – stress increases the capacity of some victims and witnesses to accurately perceive and remember, even though it may decrease the capacity of others.<sup>8</sup> The effects of stress may depend on the witnesses' physical and mental strength and well-being, their visual acuity, their prior experiences (including exposure to guns or violence), their general powers of observation, the circumstances of the crime, their role, what they were paying attention to,<sup>9</sup> and many other factors. Even field experiments do not replicate the experiences of crime victims and witnesses. Eighty percent of potential jurors in the District of Columbia said that the following statement is false: "An eyewitness under high stress will have better recall of the details of the crime."<sup>10</sup> Both the differences between laboratory studies and real witnesses and prospective jurors'

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<sup>7</sup> The Henderson instruction that "research has shown that people may have greater difficulty in accurately identifying members of another race" suggests that all people have such difficulty. This is not true, but many jurors believe it to be true. See Schmechel, O'Toole, Easterly & Loftus, *Beyond the Ken: Testing Jurors' Understanding of Eyewitness Reliability Evidence*, *Jurimetrics*, 177, 211 (Winter 2006) (60% agree that people not equally accurate in same and cross race identifications). Lay people's beliefs are similar to those found among experts in Kassin, et al., *On the "General Acceptance" of Eyewitness Identification Research*, *American Psychologist*, 404, 408 (2001) (70% agree that people are more accurate in own race identifications).

<sup>8</sup> See, e.g., Christianson, *Emotional Stress and Eyewitness Memory: A Critical Review*, *Psych. Bull.* 284 (1992); Yuille & Daylen, *The Impact of Traumatic Events on Eyewitness Memory*. In the London Dungeon study, the same stressor caused "high" stress in some observers and "low" stress in others. Valentine and Mesout, *Eyewitness Identification Under Stress in the London Dungeon* (2008).

<sup>9</sup> See Chabris & Simons, *The Invisible Gorilla* (Crown 2010) (when asked to count the number of dribble passes in a video, observers did not see a gorilla walking in the midst of basketball players).

<sup>10</sup> Schmechel, et al., *supra* note 7. In the 2001 Kassin 2001 study, only 6.5 percent of respondents said that the statement "very high levels of stress impair the accuracy of eyewitness testimony" was very reliable; another 30% said it was generally reliable; and 27% said it tended to be reliable. Tables 1 & 3. Overall, 60 percent agreed that the phenomenon was reliable enough for a psychologist to present in courtroom testimony, although only 50% would testify. Table 4. It appears that more potential jurors than experts think stress has an adverse effect.

understanding of the effects of stress (even if incorrect) suggest that neither expert testimony nor jury instructions on stress are warranted.

**Show-Ups.** Courts have litigated the suggestivity of show-ups for decades and recognize that the speed with which a showup is conducted outweighs its suggestivity.<sup>11</sup> Experienced prosecutors and police officers know that many eyewitnesses reject the person presented in a street show-up, which demonstrates an ability to discriminate despite suggestivity. To the best of our knowledge, no data has been collected on these show-up rejections. The Committee should consider the applicability of laboratory study findings to real cases given that many lab studies use photographs rather than live individuals for both the exposure and the “show-up,”<sup>12</sup> and that laboratory “show-ups” are sometimes conducted days or weeks later, unlike real-life show-ups that are conducted within a reasonable amount of time – generally no more than two hours – after the crime.<sup>13</sup> Before declaring show-ups to be unduly suggestive, a close look at the laboratory studies and field studies on real-world rejections in actual show-ups should be undertaken.

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As the Committee turns from the research itself to its application in the courts and by law enforcement, we believe the Committee should consider the following:

**Generalizability.** In reviewing laboratory studies or field experiments that do not involve real eyewitnesses to real crimes, are conducted under wholly different circumstances, and do not follow the same procedures as the police in interviewing witnesses, identifying suspects, and conducting identification procedures, the Committee should assess whether there are multiple confounds that preclude generalizing the results of those studies to the field. Such confounds might include presenting a mock crime by video instead a real crime in person, differing lengths of encoding and retention intervals, differing numbers of people/photographs being observed, differing tasks, differing awareness of the importance of remembering a face, differing levels of

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<sup>11</sup> See e.g., *Lyons v. U.S.*, 833 A.2d 481, 486 (D.C. 2003) (“Any potential for suggestivity was outweighed by the promptness of the show-up, which took place about one hour and fifteen minutes after the robbery.”)

<sup>12</sup> See, e.g., Steblay, Dysart, Fulero & Lindsay, *Eyewitness Accuracy Rates in Police Showup and Lineup Presentations: a Meta-analytic Comparison*, *Law & Hum. Beh.* 523, 525 (October 2003) (describing a showup as “a one-photograph technique”); Haw, Dickinson & Meissner, *The phenomenology of carryover effects between show-up and line-up identification*, *Memory* 2007 (describing the facial stimuli as having been chosen from a database of photographs). Police are permitted to use one photograph only when the witness knows the perpetrator and has given his name and/or other identifying information to the police. See MPD General Order 304.07 (April 2013).

<sup>13</sup> Even the available laboratory research “has yielded inconsistent results.” Steblay, *supra*, at 526. Moreover, “[w]hen overall identification decisions are tabulated, showups produce an accuracy advantage over lineups (69% to 51%),” although “[t]he initial result is qualified by subsequent analysis. . . . Overall the results present a surprising commonality in outcome . . . and – specific to target-absent arrays – an apparent contradiction of the ambient knowledge that showups are more dangerous for innocent suspects than are lineups.” *Id.* at 535.

violence, differing emotional impact of the crime, and the differing consequences of making an identification.

**General Acceptance.** Courts have relied heavily on the 2001 Kassin survey to establish the general acceptance of expert testimony on eyewitness identification issues. According to Professor Kassin, in that survey, he included only people who had written articles with “eyewitness” in the title. Of those, 64 of the 186 targeted psychologists responded. Given the method of selecting potential respondents among the thousands of experts in the field of human memory and the potential respondents who chose not to participate, it is unknown whether these survey responses accurately reflect the “consensus” in the relevant field.<sup>14</sup> It appears that at least some of the propositions that the respondents found to be true and reliable enough to be presented in court in 2001 – and that are included in the *Henderson* instructions – are losing their currency.<sup>15</sup> The Committee should explore these issues.

**Professional Standards.** Some researchers do not always disclose results, either by failing to report their data fully in published articles or by not publishing at all.<sup>16</sup> This raises questions about what the results showed and why they were not made available. Some researchers also seem to reach conclusions not wholly consistent with their data and fail to report the limitations of their studies. When testifying at trial, expert witnesses sometimes overstate the significance of certain findings, do not convey the limitations of the research, and weave personal opinions or beliefs into their testimony. The Committee should assess whether professional standards should be developed to address such issues.

**Jury Instructions.** Through examination, the jury can assess the strengths and weaknesses of “eyewitness identification” research and evaluate it in the context of the case. By contrast, jury instructions carry the weight of the court’s authority. Professor Yokum explained that the

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<sup>14</sup> See Kassin, *supra* 408 n. 7 (“[I]ndividuals with the most expertise in an area may also have the greatest motivation to present it in a favorable light. . . . This possible confounding of expertise and motivation implies that perhaps our respondents should have been drawn from a broader population of basic experimental psychologists who study noneyewitness processes or who do not testify in court.”). Notably, Kassin’s respondents were asked to testify for the defense far more often than for the prosecution (22.5:1). *Id.* at 409.

<sup>15</sup> For example, new research has raised questions about the confidence and accuracy propositions discussed in Kassin. *Id.* at 408. Notably, one proposition validated in Kassin – that that eyewitness testimony can be affected by how questions are worded – applies equally to survey questions. See Testimony of Elizabeth Loftus, *U.S. v. Libby*, at 8 (Motions Hearing 10/26/06) (“I cannot tell you why those two numbers [in different surveys] are different. I don’t know if it’s because of the wording of the question, if it’s because of the placement of the question in the context of other questions, if it’s because of different samples, I just can’t tell you.”).

<sup>16</sup> See, e.g., Clark, *Eyewitness Reform: Data, Theory and Due Process, Perspectives on Psychological Science*, 279, 282 (2012) (“By my count, there is only one published study that made the key comparison for both guilty-suspect and innocent suspect lineups, and two published studies that made the key comparison only for innocent suspect lineups and showed inconsistent results. By contrast, there are at least five unpublished studies that have compared blind and nonblind lineup administration. More data are in the shadows than in the light.”) (citations omitted); Steblay, Dysart & Wells, *Seventy-Two Tests of the Sequential Lineups Superiority Effect*, *Psychology, Public Policy & Law*, 99, 104 (2011) (relying on 17 unpublished studies (24%)).

*Henderson* instructions made jurors skeptical of identification testimony whether the evidence was strong or weak, which suggests that the jury may be induced to be more critical of eyewitness testimony than is warranted.<sup>17</sup> Instructing the jury properly about “research” is particularly fraught with peril when the effects found in the research are small, when some effects are trumped by others, when the effects move in opposite directions, when researchers did not follow the same protocols used by law enforcement, when researchers produce inconsistent results, or when new research undermines existing research. Differences between laboratory research and real cases further complicate matters. The Committee should consider whether accurate jury instructions would be excessively long and potentially confusing and, if shortened, jury instructions would be either misleading or wrong.

**Corroboration.** Professor Penrod recommended to the Committee that the law should be changed so that no case (presumably involving the identification of a stranger) could go forward unless eyewitness identification was corroborated.<sup>18</sup> This proposal harkens back to laws that imposed additional evidentiary burdens to corroborate the testimony of rape victims.<sup>19</sup> In today’s technologically advanced world, it is rare for a case to go forward without corroboration. Police and prosecutors evaluate the strength of a case before a person is arrested and/or charged and draw upon the wealth of evidence now available to be satisfied that they can prove the case beyond a reasonable doubt before they go forward.<sup>20</sup> The jury is entrusted with the ultimate decision on guilt or innocence, not the trial judge and not expert witnesses; and those decisions are reviewed by appellate courts for sufficiency.<sup>21</sup> No arbitrary rule can supplant the role of the jury and the courts in gauging the strength of the evidence in an individual case.

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<sup>17</sup> In virtually all laboratory studies, many more people get it right than wrong. Courts should not instruct juries about research findings that may not apply to the witnesses who have testified at trial, but if they do, they should not (as in the *Henderson* instructions) imply that certain effects apply to all witnesses, when it would be more accurate to say that “some laboratory research has shown that some (or a few) people may . . . .” To the extent that field research has not found the same effects, instructions, if given at all, should be qualified further.

<sup>18</sup> Of course, the concept of “corroboration” is difficult to define and may be intrinsic to the identification testimony itself when the identification is the result of an unusual appearance or a lengthy exposure. *See United States v. Crews*, 445 U.S., 463, 473 n.18 (U.S. 1980) (Brennan, J.) (citing long duration, close range, good lighting, accurate description, etc.).

<sup>19</sup> “We reject, therefore, the notion given currency so long in this jurisdiction, that the victim of rape and other sex related offenses is so presumptively lacking in credence that corroboration of her testimony is required to withstand a motion for a judgment of acquittal.” *Arnold v. United States*, 358 A.2d 335, 344 (D.C. 1976).

<sup>20</sup> United States Attorneys’ Manual, § 9.23-220(B) (“no prosecution should be initiated against any person unless the government believes that the person probably will be found guilty by an unbiased trier of fact”). *See also* Rules of Professional Conduct, Rule 3.8(b), (c), (d) – Special Responsibilities of a Prosecutor.

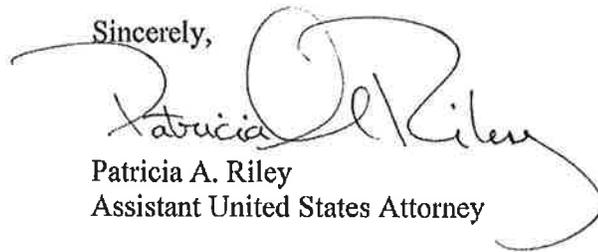
<sup>21</sup> *See, e.g., Benn v. United States*, 978 A.2d 1257, 1282 (D.C. 2009) (“looks like” is not really an identification at all”); *In re As.H.*, 851 A.2d 456, 460-462 (D.C. 2004) (“the doubt of the sole identifying witness in a night-time robbery by strangers to her stood at two or three out of ten, or 20%-30%. We conclude ... that this level of uncertainty constituted reasonable doubt as a matter of law”).

We raise these issues – and there are clearly many more – because it seems that many of them have not been addressed adequately in the laboratory, in litigation, or by legislatures. Without an honest appraisal of the research that has been done to date and a serious effort to test hypotheses in the field with real victims and witness – along with the variety of their personal characteristics – and the circumstances of the crime, the way in which information on eyewitness identification research is presented to juries likely will be flawed and, just as likely, incapable of being appropriately utilized during the jury’s deliberations.

Ours is an imperfect system. Criminal cases must be proven beyond a reasonable doubt, not to a mathematical or scientific certainty. Mistakes surely have been made. No one regrets them more than those of us who labor long and hard to do justice – and have taken an oath to do so. But it will not serve victims, the public at large, or the fundamental underpinnings of our system of government to provide information that does not fairly or accurately convey what the laboratory research itself says, much less how it applies in the real world.

We hope this is helpful to the Committee. If you do not have any materials to which we have made reference, we would be glad to forward them to you.

Sincerely,

A handwritten signature in cursive script that reads "Patricia A. Riley". The signature is written in dark ink and is positioned above the typed name and title.

Patricia A. Riley  
Assistant United States Attorney

***Tab K***

# **Identification Procedures: Photo Arrays and Line-ups Model Policy**

*March 2015*



**Municipal Police  
Training Council**

New York State Division of Criminal Justice Services  
80 South Swan Street, Albany, New York 12210

[www.criminaljustice.ny.gov](http://www.criminaljustice.ny.gov)



# Identification Procedures: Photo Arrays and Line-ups Model Policy



STATE OF NEW YORK  
Division of Criminal Justice Services  
Office of Public Safety

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## **Identification Procedures: Photo Arrays and Line-ups Model Policy**

The Identification Procedures: Photo Arrays and Line-ups Model Policy is intended to allow for the individual needs of each of the police departments in New York State regardless of size or resource limitations. Police and district attorneys are encouraged to customize these protocols to meet their regional needs, while being mindful of the intent of the policy. As with all model policies adopted by the Municipal Police Training Council (MPTC), this policy is non-binding upon agencies within NYS and is meant to serve as a guide to be used in developing a department's individual policy.

The Municipal Police Training Council (MPTC) approved the model policy in March 2015.

### **Acknowledgements**

The District Attorney's Association of the State of New York "Photo Identification Guidelines", the District Attorney's Association of the State of New York "Line-up Procedure Guidelines", the International Association of Chiefs of Police "Eyewitness Identifications Model Policy", the National Academy of Sciences report titled: "Identifying the Culprit: Assessing Eyewitness Identification", and the recommendations made by the New York State Justice Task Force in their document titled: "Recommendations for Improving Eyewitness Identifications" served as a basis for this model policy.

The New York State Division of Criminal Justice Services (DCJS) acknowledges the extensive work done by the following associations and agencies:

District Attorney's Association of the State of New York

New York State Association of Chiefs of Police

New York State Police

New York City Police Department

New York State Sheriff's Association

New York State Office of Victim Services

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## I Purpose

The purpose of this policy is to establish guidelines on how to conduct fair and reliable eyewitness identifications.

This policy is intended to allow for the individual needs of each of the police departments in New York State regardless of size or resource limitations. Police and district attorneys are encouraged to customize these protocols to meet their regional needs, while being mindful of the intent of the policy. As with all model policies adopted by the Municipal Police Training Council (MPTC), this policy is non-binding upon agencies within NYS and is meant to serve as a guide to be used in developing a department's individual policy.

There is a body of work that supports the reliability and accuracy of identification procedures conducted close in time to the commission of the crime, frequently a photo array identification, using the methods outlined within this policy. Currently, however, evidence from photo array identification procedures is not admissible at trial in New York State. The MPTC feels strongly that evidence from a photo array identification procedure conducted with safeguards contained in this model policy should be admissible pursuant to CPL 60.25 or 60.30. The MPTC unanimously agrees that CPL 60.25 and 60.30 should be amended promptly to allow for the admissibility of photo array evidence.

Video or audio recording of the identification procedure is endorsed by the MPTC only if testimony regarding the identification procedure and resulting identification is admissible at trial pursuant to CPL 60.25 or 60.30. This conditional endorsement is not, however, meant to discourage agencies who are recording their procedures from continuing to do so.

## II Policy

It is anticipated that the use of eyewitness identification procedures will assist law enforcement in identifying potential suspects and maximize the reliability of those identifications.

## III Definitions

- A. **Photo array:** A collection of photographs that are shown to a witness to determine if the witness can recognize a person involved with the crime.
- B. **Line-up:** A collection of individuals, either sitting or standing in a row, who are shown to a witness to determine if the witness can recognize a person involved with the crime.
- C. **Suspect:** Person the police believe has committed the crime.

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- D. **Filler:** A person, other than the suspect who is used in either a live line-up or a photo array.
- E. **Administrator:** The person who is conducting the identification procedure.
- F. **Blind Administrator:** A term used to describe the administrator of the procedure where the administrator does not know the identity of the suspect.
- G. **Blinded Procedure:** A description of the procedure, meaning that the administrator may know who the suspect is, but by virtue of the procedure's administration, the administrator is unable to inadvertently provide cues to the witness. For example, the use of a folder or envelope to conceal an array from the administrator, blinds the procedure.
- H. **Double-blind Procedure:** Where a blind administrator is used, the procedure is considered to be double-blind.
- I. **Confidence Statement:** A statement from an eyewitness immediately following their identification regarding their confidence or certainty about the accuracy of their identification. The witness should be asked to provide their level of certainty in their own words as opposed to using a numerical scale.

## IV Photo Arrays

- A. Selection of fillers
  - 1. Fillers should be similar in appearance to the suspect in the array.
  - 2. Similarities should include gender, clothing, facial hair, race, age, height, extraordinary physical features, or other distinctive characteristics.
  - 3. An administrator should not use a filler if the administrator is aware that the filler is known to the witness.
  - 4. There should be at least five fillers, in addition to the suspect.
  - 5. Only one suspect should be in each array.
  - 6. If there is more than one suspect, then different fillers should be used in separate arrays for each suspect.
  - 7. Photo quality, color and size should be consistent. Administrators should ensure that the photos do not contain any stray markings or information about the subject. Color and black and white photos should not be mixed.

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8. Any identifying information contained on any of the photos should be covered and those areas of the other photos used should be similarly covered.
- B. Inviting the witness to view the array
1. When a suspect is known and the investigator calls a witness to arrange for the viewing of a photo array, the investigator should simply advise the witness that he/she intends to conduct an identification procedure and should not say anything about the suspect. For example, the investigator should say to the witness: "We'd like you to come in to view a photo array in connection with the crime committed on (*date and location*)."
  2. The investigator should avoid addressing whether or not a person is in custody unless specifically asked.
  3. Investigators should give no opinion on their perception of the witness's ability to make an identification.
  4. Investigators should not inform the witness about any supporting evidence such as confessions, other ID's, or physical evidence that may have been obtained.
  5. Witnesses should be prevented from speaking to the victim and any other witnesses about the identification procedure when they arrive to view the array.
- C. Instructions to witness
1. Consideration should be given to providing written instructions to the witness. The instructions should be communicated in various languages when appropriate. The instructions should be read to the witness and signed by the witness after being read.
  2. Before the procedure begins, the administrator should tell the witness what questions will be asked during the identification procedure.
  3. The investigator should tell the witness that as part of the ongoing investigation into a crime that occurred on (*date*) at (*location*) the witness is being asked to view the photo array to see if the witness recognizes anyone involved with the crime.
  4. These instructions let the witness know that they should not seek assistance from the administrator in either making a selection or confirming an identification. They also address the possibility of a witness feeling any

# Identification Procedures: Photo Arrays and Line-ups

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self-imposed or undue pressure to make an identification. The instructions are as follows:

- a. The perpetrator may or may not be pictured.
  - b. Do not assume I know who the perpetrator is.
  - c. I want you to focus on the photo array and not to ask me or anyone else in the room for guidance about making an identification during the procedure.
5. Instructions to the witness about the quality of the photographs.
- a. Individuals presented in the photo array may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.
  - b. Photographs may not always depict the true complexion of a person; it may be lighter or darker than shown in the photo.
  - c. Pay no attention to any markings that may appear on the photos, or any other differences in the type or style of the photographs.
6. The witness should be informed that if they make an identification at the conclusion of the procedure they will be asked to describe their level of certainty about that identification in their own words and should avoid using a numerical scale of any kind.
7. The witness should be advised that the investigation will continue regardless of whether or not they make an identification.
8. Where the procedure is to be recorded by the use of audio or video, the witness should be informed prior to the start of the procedure, and their consent should be requested prior to the recording.
- a. The witness should sign the form indicating their consent or lack of consent.
  - b. If the witness does not consent, the officer should not record the procedure.

# Identification Procedures: Photo Arrays and Line-ups

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### D. Administering the procedure

1. Photo arrays must always be conducted using either a “blinded procedure” or “double-blind procedure”. A “double-blind” procedure is preferable where circumstances allow and it is practicable.
2. One method to accomplish a blinded procedure is by placing the array into a folder before handing it to the witness. Additional methods can be employed to further enhance the “blinded” nature of the procedure, such as:
  - a. “Two person shuffle” – the array is assembled by an officer other than the investigator and then it is placed into a folder for the investigating officer.
  - b. “One person shuffle” – multiple arrays are created by the investigating officer and the suspect’s position is different in each. Three folders containing the arrays are provided to the witness who selects one to use.
3. Regardless of the method of administration that is to be used, the administrator should be positioned in such a way so that they are not in the witness’ line of sight during the viewing of the array. Where practicable, the administrator should still be able to view the witness and hear what they say.
4. If there are multiple witnesses viewing the array, they should be prevented from speaking to each other about the identification procedure before, during, and after the process.
5. The witnesses must view the array separately. Multiple copies of the same array may be used for the same suspect for each new witness viewing the array.
6. To protect the integrity of the identification procedure, the administrator must remain neutral so as not to, even inadvertently, suggest a particular photograph to the witness.
7. Attention should be given to the location of the procedure so that the witness is not influenced by items in the room such as wanted posters or BOLO (be on the lookout) information.

### E. Post viewing questions

1. After viewing the array ask the witness the following questions:

# Identification Procedures: Photo Arrays and Line-ups

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- a. Do you recognize anyone?
  - b. If so, what number photograph do you recognize?
  - c. From where do you recognize the person?
2. If the witness' answers are vague or unclear, the administrator will ask the witness what he or she meant by the answer.
  3. Confidence Statement
    - a. Ask the witness to describe his/her certainty about any identification that is made.
    - b. Ask the witness to use his/her own words and not a numerical scale.
- F. Documentation
1. Document any changes made to any of the photographs used.
  2. Document where the procedure took place, who was present, the date and time it was administered.
  3. Preserve the photo array in the original form that was shown to each witness.
  4. Each witness should complete a standardized form after viewing the array and the actual array used should be signed and dated by each witness.
  5. Recording the Procedure
    - a. The entire identification procedure should be memorialized and documented in the most reliable way possible. Where practicable and appropriate, the procedure should be memorialized using audio or video recording - provided that the procedure to be recorded is admissible in a court of law, pursuant to CPL 60.25 or 60.30.
    - b. Where the procedure is to be recorded by the use of audio or video, the witness' consent should be obtained and documented on a form prior to recording. If the witness does not consent to the recording, the officer should not record the identification procedure and should request that the witness sign a form saying he/she refused to be recorded.

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- c. Audio or video recording may not always be possible or practicable. Some reasons that may prevent the identification procedure from being recorded include, but are not limited to: witness safety; recording equipment malfunctions; recording equipment is not available; identification procedure is conducted at a location not equipped with recording devices and the reasons for using that location are not to subvert the intent of this policy, e.g., the witness is out of state, in a hospital or is in a correctional facility; inadvertent error or oversight occurs that was not the result of intentional conduct of law enforcement personnel.
  6. Any physical or verbal reaction to the array should be memorialized in a standardized manner. If this is done in writing, anything said by the witness should be verbatim.
  7. The confidence statement should be documented verbatim.
  8. Where an identification is made, complete a CPL 710.30 Notice. Note: Failure to provide this notice could prevent its use in court.
- G. Speaking with the witness after the procedure
1. The administrator, or other appropriate person, should document the statements, comments or gestures of the witness regarding the identification procedure before talking with the witness about next steps.
  2. Once the identification procedure is concluded and documented, the administrator can talk to the witness about how the case will proceed or what the next steps in the case may be.
  3. The administrator should not comment or make gestures on the identification itself by saying things such as: "Great job" or "We knew you would recognize him" or even nodding his/her head in agreement.
  4. The witness should be told not to discuss what was said, seen, or done during the identification procedure with other witnesses, nor should the investigator discuss any other identification procedures with the witness.
- H. All members who will be involved in the administration of a photo array shall receive training on how to properly administer photo arrays.

## V Live Line-ups

- A. Selection of fillers
1. Fillers should be similar in appearance to the suspect in the line-up.

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2. Similarities should include gender, clothing, facial hair, race, age, height, extraordinary physical features, or other distinctive characteristics.
  3. An administrator should not use a filler if the administrator is aware that the filler is known to the witness
  4. Where practicable there should be five fillers, in addition to the suspect, but in no case should there be less than four fillers used.
  5. Only one suspect should appear per line-up.
  6. If necessary, all members of the line-up should be seated to minimize any differences in height.
  7. If there is more than one suspect, then different fillers should be used in separate line-ups for each suspect.
  8. The suspect should be allowed to pick his position within the line-up. If a prior identification was made using a photo array that number should be avoided unless insisted upon by the suspect.
  9. The fillers must be instructed not to speak with each other or make unnecessary gestures. All members of the line-up should be instructed to remain still, hold the placard, and look forward unless instructed otherwise by the security officer.
- B. Inviting the witness to view the line-up
1. When an investigator calls a witness to arrange for the witness to view a line-up, the investigator should simply ask the witness to come in for the identification procedure and should not say anything about the suspect. For example, the investigator should say to the witness: "We'd like you to come in to view a line-up in connection with the crime you witnessed on (*date and location*)."
  2. Investigators should give no opinion on their perception of the witness' ability to make an identification.
  3. Unless the witness specifically asks the investigator if someone is in custody, the witness should not be informed that an arrest has been made and that the police have a suspect that the witness will be viewing.
  4. Investigators should not inform the witness about any supporting evidence such as confessions, other IDs, or physical evidence that may have been obtained.

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5. Witnesses should be prevented from speaking to the victim or any other witnesses about the identification procedure when they arrive to view the line-up.
- C. Instructions to witness
1. Consideration should be given to providing written instructions to the witness. The instructions should be communicated in various languages when appropriate. The instructions should be read to the witness and signed by the witness after being read.
  2. Before the procedure begins, the administrator should tell the witness what questions will be asked during the identification procedure.
  3. The investigator should tell the witness that as part of the ongoing investigation into a crime that occurred on *(date)* at *(location)* the witness is being asked to view the line-up to see if the witness recognizes anyone involved with that crime
  4. These instructions let the witness know that they should not seek assistance from the administrator in either making a selection or confirming an identification. They also address the possibility of a witness feeling any self-imposed or undue pressure to make an identification. The instructions are as follows:
    - a. The perpetrator may or may not be present.
    - b. Do not assume I know who the perpetrator is.
    - c. I want you to focus on the line-up and not to ask me or anyone else in the room for guidance about making an identification during the procedure.
    - d. Individuals presented in the line-up may not appear exactly as they did on the date of the incident because features, such as head and facial hair, are subject to change.
  5. Instructions to the witness about line-up members moving, speaking, or changing clothing:
    - a. Consideration should be given to telling the witness that the line-up members can be asked to speak, move or change clothing, if requested.



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6. The position of the suspect should be moved each time the line-up is shown to a different witness, assuming the suspect and/or defense counsel agree.
  7. Attention should be given to the selection of a neutral location for the procedure so that the witness is not influenced by items in the room such as wanted posters or BOLO (be on the lookout) information.
  8. The security officer who is monitoring the suspect and fillers in the line-up room should remain out of view of the witness. This will eliminate the potential for any claims of inadvertent suggestions by the security officer and it also removes the potential for distracting the witness as the line-up is being viewed.
- E. Post-viewing questions
1. After viewing the line-up the witness should be asked:
    - a. Do you recognize anyone?
    - b. If so, what is the number of the person that you recognize?
    - c. From where do you recognize the person?
  2. If the witness' answers are vague or unclear, the administrator will ask the witness what he or she meant by the answer.
  3. Confidence statement
    - a. Ask the witness to describe his/her certainty about any identification that is made.
    - b. Ask the witness to use his/her own words and not a numerical scale
- F. Documenting the procedure
1. Recording the Procedure
    - a. The entire identification procedure should be memorialized and documented in the most reliable way possible. Where practicable and appropriate the procedure should be memorialized using audio or video recording.
    - b. Where the procedure is to be recorded by the use of audio or video, the witness' consent should be obtained and documented by the use of a form prior to recording. If the witness does not consent to the recording, the officer should not record the identification procedure

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and should have the witness sign a statement indicated they refused to be recorded.

- c. Audio or video recording may not always be possible or practicable. Some reasons that may prevent the identification procedure from being recorded include, but are not limited to: witness safety concerns; recording equipment malfunctions; recording equipment is not available; identification procedure is conducted at a location not equipped with recording devices and the reasons for using that location are not to subvert the intent of this policy, e.g., the witness is out of state, in a hospital or is in a correctional facility; inadvertent error or oversight occurs that was not the result of intentional conduct of law enforcement personnel.
  - d. The line-up should be preserved by photograph. The witness should sign the photograph to verify that it is the line-up that he or she viewed.
2. Any physical or verbal reaction to the line-up should be memorialized in a standardized manner. If this is done in writing, anything said by the witness should be verbatim.
  3. The confidence statement should be documented verbatim.
  4. Document where the procedure took place, who was present, the date and time it was administered.
  5. Anything the line-up members are asked to do (e.g., speak, move, or change clothing) must be documented.
  6. Document all people in the viewing room with the witness and the line-up room with the suspect.
  7. Document the officer or person who escorts the witnesses to and from the line-up room.
  8. Document requests made by the defense counsel and whether they were granted, and if not, why not. Reasonable requests from defense counsel should be honored and documented. Any defense request for a change in the line-up that is not, or cannot be, honored must also be documented.
  9. Where an identification is made, complete a CPL 710.30 Notice. Note: Failure to provide notice of the identification could prevent its use in court.

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- G. Defendant's right to counsel
  - 1. There are circumstances where during a line-up a suspect may have a defense attorney that is present.
  - 2. Investigators should consult with their District Attorney's Office for guidance regarding a defendant's right to counsel.
  - 3. When in attendance, the defense attorney must be instructed not to speak in the viewing room when the witness is present.
  
- H. Speaking with the witness after the procedure
  - 1. The administrator, or other appropriate person, should document the statements, comments or gestures of the witness regarding the identification procedure before talking with the witness about next steps.
  - 2. Once the identification procedure is concluded and documented, the administrator can talk to the witness about how the case will proceed or what the next steps in the case may be.
  - 3. The administrator should not comment or make gestures on the identification itself by saying things such as: "Great job" or "We knew you would recognize him" or even nodding their head in agreement.
  - 4. The witness should be told not to discuss what was said, seen, or done during the identification procedure with other witnesses, nor should the investigator discuss any other identification procedures with the witness
  
- I. All members who will be involved in the administration of a live line-up shall receive training on how to properly administer line-ups.

# LINE-UP FORM

## WITNESS INSTRUCTIONS

### READ THE FOLLOWING TO THE WITNESS PRIOR TO SHOWING THE LINE-UP

- With your consent, the procedure will be recorded using video or audio.
- Do you consent to recording? Video and Audio  Audio Only  No  Initial: \_\_\_\_\_
- As part of our on-going investigation into a crime that occurred at (*location*) on (*date*) you are about to view a line-up. (*Use similarly neutral language to invite witness to the identification procedure.*)
- You will look through a one-way mirror and see six people in the line-up. They will not be able to see you.
- There will be a number associated with each person on the other side of the mirror.
- Take whatever time you want to view the line-up.
- The perpetrator may or may not be present.
- Do not assume I know who the perpetrator is.
- I want you to focus on the line-up and not look to me or anyone else in the room for guidance about making an identification during the procedure.
- Individuals presented in the line-up may not appear exactly as they did on the date of the incident because features, such as head and facial hair, are subject to change.
- Members of the line-up can be requested to speak, move, or change clothing.
- If one line-up member is asked to speak, move, or change clothing then all the line-up members will be asked to do the same.
- If you do make an identification I will ask you to describe your level of certainty about that identification using your own words.
- After you have had an opportunity to view the line-up I will ask you the following questions:
  1. Do you recognize anyone?
  2. If you do, what is the number of the person you recognize?
  3. From where do you recognize the person?
  4. **ONLY IF AN ID IS MADE:** In your own words describe your certainty about the choice that you have made. Avoid using numbers.
- I may ask follow up questions.
- The investigation will continue regardless of whether or not you make an identification.
- DO NOT discuss with other witnesses what you see, say or do during this procedure.**

## WITNESS MUST SIGN

The above instructions have been read to me. \_\_\_\_\_ Date: \_\_\_\_\_

THIS PAGE OF THE FORM **MUST NOT** BE SHOWN TO THE WITNESS

**LINE-UP CASE INFORMATION SHEET**

Complaint or Case Report #: \_\_\_\_\_ Crime Date & Location: \_\_\_\_\_

Line-up Date: \_\_\_\_\_ Time: \_\_\_\_\_ Location: \_\_\_\_\_

Crime Committed: \_\_\_\_\_ Witness' Name: \_\_\_\_\_

Was Witness Transported? Yes  No

Transporting Officer: \_\_\_\_\_

Rank: \_\_\_\_\_ Command: \_\_\_\_\_ ID #: \_\_\_\_\_

Line-up Administrator: \_\_\_\_\_

Rank: \_\_\_\_\_ Command: \_\_\_\_\_ ID #: \_\_\_\_\_

Investigating Officer: \_\_\_\_\_

Rank: \_\_\_\_\_ Command: \_\_\_\_\_ ID #: \_\_\_\_\_

Security Officer: \_\_\_\_\_

Rank: \_\_\_\_\_ Command: \_\_\_\_\_ ID #: \_\_\_\_\_

Asst. District Attorney Present? Yes  No

Name of ADA: \_\_\_\_\_ Phone #: \_\_\_\_\_

Interpreter Present? Yes  No  Name: \_\_\_\_\_

Was the procedure video recorded? Video Only  Audio & Video  Audio Only  No

Line-up photograph taken? Yes  No  Witness initialed? Yes  No

Position	Name	Number Held	Age	Height	Weight
1					
2					
3					
4					
5					
6					

Suspect's name: \_\_\_\_\_ D.O.B. \_\_\_\_\_ Position: \_\_\_\_\_

Comments: \_\_\_\_\_

Signature of Administrator: \_\_\_\_\_ Date: \_\_\_\_\_

# LINE-UP FORM

## RUNNING THE LINE-UP AND RESULTS

Witness: \_\_\_\_\_ Administrator: \_\_\_\_\_

### Instructions to the administrator conducting the line-up:

- Remain neutral. Do not comment on the identification before, during or after the identification procedure.
- After instructing the witness, stand away and out of the witness' line of sight, while still being able to observe and hear the witness.
- Where practicable and appropriate, video record the entire procedure.
- If video or audio recording obtain consent from the witness.
- A photo should be taken of the line-up and the witness should sign the photo to attest that it represents the line-up that they viewed.
- Introduce by name all individuals present in the viewing room to the witness.
- Tell the witness when the identification procedure will begin, (e.g. "You will now look through the one way mirror.")
- If there is a need to have a line-up member speak, move, change clothing, or some other activity, then all the line-up members must do the same activity.
- Complete the entire CASE INFORMATION SHEET that accompanies this form.

### AFTER THE WITNESS HAS VIEWED THE LINE-UP, ASK THE FOLLOWING QUESTIONS

- Did you recognize anyone in the line-up? \_\_\_\_\_
- If the answer to the preceding question is negative, **STOP** and go to the signature line.
  - If the answer is positive, proceed to the next question:
- If so, what is the number of the person that you recognize? \_\_\_\_\_
- From where do you recognize that person? \_\_\_\_\_

Record the words and gestures of the witness: \_\_\_\_\_

### CONFIDENCE STATEMENT

In your own words describe your certainty about the choice that you have made. Avoid using numbers. \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Witness Signature: \_\_\_\_\_

# LINE-UP FORM

## DEFENSE COUNSEL SHEET

Suspect's Attorney Present? Yes  No

Defense Attorney: \_\_\_\_\_ Telephone: \_\_\_\_\_

The Defense Attorney was instructed **not** to speak while in the viewing room with the witness.

Yes  No

If Defense Attorney makes requests about the line-up, record the request and whether the request was agreed to or refused:

1. Request: \_\_\_\_\_

Agreed  Refused

Reason for refusal? \_\_\_\_\_

\_\_\_\_\_

2. Request: \_\_\_\_\_

Agreed  Refused

Reason for refusal? \_\_\_\_\_

\_\_\_\_\_

3. Request: \_\_\_\_\_

Agreed  Refused

Reason for refusal? \_\_\_\_\_

\_\_\_\_\_

# PHOTO ARRAY FORM

## WITNESS INSTRUCTIONS

READ THE FOLLOWING TO THE WITNESS PRIOR TO SHOWING THE PHOTO ARRAY

- With your consent, the procedure will be recorded using video or audio.
- Do you consent to recording? Video and Audio  Audio Only  No  Initial: \_\_\_\_\_
- As part of the ongoing investigation into a crime that occurred on (*date*) at (*location*) you will view a photo array. (*Use similarly neutral language to invite witness to the identification procedure.*)
- It consists of six photographs of individuals. Each photograph has a number underneath the photograph.
- Take whatever time you want to view the photo array.
- The perpetrator may or may not be pictured.
- Do not assume that I know who the perpetrator is.
- I want you to focus on the photo array and not look to me or anyone else in the room for guidance about making an identification during the procedure.
- Individuals presented in the photo array may not appear exactly as they did on the date of the incident because features, such as head and facial hair, are subject to change.
- Photographs may not always depict the true complexion of a person; it may be lighter or darker than shown in the photo.
- Pay no attention to any markings that may appear on the photos, or any other difference in the type or style of the photographs.
- If you do make an identification I will ask you to describe your level of certainty about that identification using your own words.
- After you have had an opportunity to view the photo array I will ask you the following questions:
  1. Do you recognize anyone?
  2. If you do, what is the number of the person you recognize?
  3. From where do you recognize the person?
  4. **ONLY IF AN ID IS MADE:** In your own words describe your certainty about the choice that you have made. Avoid using numbers.
- I may ask follow up questions.
- The investigation will continue regardless of whether or not you make an identification.
- DO NOT discuss with other witnesses what you see, say or do during this procedure.**

### WITNESS MUST SIGN

The above instructions have been read to me. \_\_\_\_\_ Date: \_\_\_\_\_

THIS PAGE OF THE FORM **MUST NOT** BE SHOWN TO THE WITNESS

**PHOTO ARRAY CASE INFORMATION SHEET**

Complaint or Case Report #: \_\_\_\_\_ Crime Date & Location: \_\_\_\_\_

Photo Array Date: \_\_\_\_\_ Time: \_\_\_\_\_ Location: \_\_\_\_\_

Crime Committed: \_\_\_\_\_ Witness' Name: \_\_\_\_\_

Was Witness Transported? Yes  No

Transporting Officer: \_\_\_\_\_

Rank: \_\_\_\_\_ Command: \_\_\_\_\_ ID #: \_\_\_\_\_

Photo Array Administrator: \_\_\_\_\_

Rank: \_\_\_\_\_ Command: \_\_\_\_\_ ID #: \_\_\_\_\_

Investigating Officer: \_\_\_\_\_

Rank: \_\_\_\_\_ Command: \_\_\_\_\_ ID #: \_\_\_\_\_

Interpreter Present? Yes  No  Name: \_\_\_\_\_

Was the procedure video recorded? Video Only  Audio & Video  Audio Only  No

**The original photo array MUST be preserved.  
Attach a copy of the photo array to this form and provide the information below, if available.**

Position	Name	NYSID (where applicable)	Date of Photo
1			
2			
3			
4			
5			
6			

Suspect's name: \_\_\_\_\_ D.O.B. \_\_\_\_\_ Position: \_\_\_\_\_

Was any photo altered? Yes  No

If yes, which? \_\_\_\_\_

Describe the alteration: \_\_\_\_\_

Comments: \_\_\_\_\_

Signature of Administrator: \_\_\_\_\_ Date: \_\_\_\_\_

# PHOTO ARRAY FORM

## SHOWING THE PHOTO ARRAY

Witness: \_\_\_\_\_ Administrator: \_\_\_\_\_

### Instructions to the administrator showing the photo array:

- Remain neutral. Do not comment on the identification before, during or after the identification procedure.
- Provide the photo array in an envelope or folder when handing it to the witness.
- Stand out of the witness' line of sight, where practical, but still observe the witness as the witness views the photo array.
- Where practicable and appropriate, video record the entire procedure.
- If video or audio recording obtain consent from the witness.
- Complete the entire CASE INFORMATION SHEET that accompanies this form.

### AFTER THE WITNESS HAS VIEWED THE ARRAY, ASK THE FOLLOWING QUESTIONS

- Did you recognize anyone in the photo array? \_\_\_\_\_
- If the answer to the preceding question is negative, STOP and go to the signature line.
  - If the answer is positive, proceed to the next question:
- If so, what is the number of the person that you recognize? \_\_\_\_\_
- From where do you recognize that person? \_\_\_\_\_

Record the words and gestures of the witness: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### CONFIDENCE STATEMENT

In your own words describe your certainty about the choice that you have made. Avoid using numbers. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Witness Signature: \_\_\_\_\_

# *Tab L*

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# Confident Eyewitnesses Considered Credible

*Eyewitness identification can give us valuable information—but only if done right*

By Veronique Greenwood on December 24, 2015



Credit: ©iStock

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## ADVERTISEMENT

DNA tests have made it clear that innocent people have been sent to prison after a witness picked them out of a lineup. In fact, since 1989, more than 70 percent of 333 wrongful convictions in the U.S. have been influenced by misidentification from eyewitnesses. But researchers recently reported that the disdain for eyewitness identification is not always warranted. They found that if witnesses shown a lineup for the first time are asked to state their confidence in their choice, the identifications they are most confident of are much more likely to be of the suspect than of the innocent.

"Ignoring low confidence in the beginning is a grave error," says lead researcher John Wixted at University of California, San Diego. "The witness is telling you that there's a good chance they're making a

mistake."

At the same time, the study, published in this week's *Proceedings of the National Academy of Sciences*, investigates a longstanding debate on how to perform a lineup—which could effectively affect confidence levels in witnesses. When a police officer wants to see if a witness will pick out a suspect from a crowd, he or she will assemble a set of photos of people who match the description of the perpetrator. If the witness chooses a suspect, that's further evidence that the police are on the right track. The fear, though, is that witnesses will pick innocent people. Numerous studies through the past few decades have examined how to structure a lineup so as to minimize that possibility, and have settled on showing people the photos one by one, instead of all together. About 30 percent of the police departments in the US have adopted this sequential method, rather than the older simultaneous method.

Wixted says, though, that some studies used to make that decision overlook an important detail. They look at the ratio of suspect identifications to mistaken identifications of innocents, but assessing the success ratio alone, Wixted explains, without accounting for confidence doesn't tell the whole story. Sometimes, a witness will just pick someone randomly or will openly state that they are not sure about their identification. When studies don't weight those guesses differently than confident statements, they aren't reflecting the way lineups are usually used, Wixted says. "In the real world, they often don't even count random guesses," he says. "Some jurisdictions do, but [in] most places if the witness is hesitant, they won't take it to court."

In the current study, the researchers examined lineups administered by

the Robbery Division of the Houston Police Department to see how the simultaneous and sequential processes compared when witness were asked to rate their own confidence. The lineups, of which 187 were simultaneous and 161 sequential, were administered by people who themselves were unaware of the suspect's identity, and only cases in which the suspect was a stranger to the witness were included. Witnesses rated their identification confidence as low, medium, or high.

In a third of the cases, the witnesses did not identify anyone. In another third, they identified the suspect, and in the remaining cases they chose someone who was not suspected, or a "filler." When the researchers compared the confidence rates between the suspect identifications and the filler identifications, however, they found something interesting: Very few people who chose fillers were confident of their choice—most low confidence IDs, in fact, were of fillers. By contrast, most high-confidence identifications were of the suspect. That suggests that confidence is a good indicator of whether the person identified is the suspect.

Comparing the results of the two different lineup techniques, the researchers found that employing the simultaneous method produced more confident identifications, leading to the conclusion that simultaneous identification may actually be more useful to police departments than sequential identification.

The difference between the two methods is statistically very slight, however, notes Gary Wells, a professor of psychology at Iowa State University who studies eyewitness memory. "The more important part of this article is that witness confidence did a good job of helping sort between accurate and mistaken witnesses (regardless of whether it is

simultaneous or sequential),” he wrote in an email. It does not matter so much which procedure a police department uses—what matters more is that they ensure the lineup is administered by someone who does not know who the suspect is and thus cannot influence the witness one way or another, and that they take the measure of the witness's confidence on the spot. “Police departments, jurors, judges need to know that if their jurisdiction is not using double-blind lineup procedures” in which the test administrator and witness have not been told which is the suspect, “then these findings do not apply to them,” he continues. Fewer than half of US police departments use a double-blind procedure, he writes.

The study is part of a body of research suggesting that witness confidence is not as unreliable as had sometimes been thought, provided the procedure is blind and the measure is taken right away. Studies have found that in a large proportion of cases where a witness confidently identified an innocent person as the culprit in court, the witness was not so sure at the initial lineup.

The shift in favor of measuring confidence during a lineup has not yet made it beyond the realm of research. Wixted hopes his findings will influence how line-ups are handled by the police, but, he says, “the word, has not gotten out.”

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***Tab M***

# Estimating the reliability of eyewitness identifications from police lineups

John T. Wixted<sup>a,1</sup>, Laura Mickes<sup>b</sup>, John C. Dunn<sup>c</sup>, Steven E. Clark<sup>d</sup>, and William Wells<sup>e</sup>

<sup>a</sup>Department of Psychology, University of California, San Diego, La Jolla, CA 92093; <sup>b</sup>Department of Psychology, Royal Holloway, University of London, Egham TW20 0EX, United Kingdom; <sup>c</sup>School of Psychology, The University of Adelaide, Adelaide, SA 5005, Australia; <sup>d</sup>Department of Psychology, University of California, Riverside, CA 92521; and <sup>e</sup>Department of Criminal Justice and Criminology, Sam Houston State University, Huntsville, TX 77341

Edited by Daniel L. Schacter, Harvard University, Cambridge, MA, and approved November 9, 2015 (received for review August 23, 2015)

Laboratory-based mock crime studies have often been interpreted to mean that (i) eyewitness confidence in an identification made from a lineup is a weak indicator of accuracy and (ii) sequential lineups are diagnostically superior to traditional simultaneous lineups. Largely as a result, juries are increasingly encouraged to disregard eyewitness confidence, and up to 30% of law enforcement agencies in the United States have adopted the sequential procedure. We conducted a field study of actual eyewitnesses who were assigned to simultaneous or sequential photo lineups in the Houston Police Department over a 1-y period. Identifications were made using a three-point confidence scale, and a signal detection model was used to analyze and interpret the results. Our findings suggest that (i) confidence in an eyewitness identification from a fair lineup is a highly reliable indicator of accuracy and (ii) if there is any difference in diagnostic accuracy between the two lineup formats, it likely favors the simultaneous procedure.

eyewitness identification | confidence–accuracy relationship | simultaneous vs. sequential lineups

Eyewitnesses to a crime are often called upon by police investigators to identify a suspected perpetrator from a lineup. A traditional police lineup in the United States consists of the simultaneous presentation of six people, one of whom is the suspect (who is either guilty or innocent) and five of whom are fillers who resemble the suspect but who are known to be innocent. Live lineups were once the norm, but, nowadays, photo lineups are much more commonly used (1). When presented with a photo lineup, an eyewitness can identify someone—either the suspect (a suspect ID) or one of the fillers (a filler ID)—or can reject the lineup (no ID). A filler ID is a known error that does not imperil the identified individual, but a suspect ID (including a misidentification of an innocent suspect) does. According to the Innocence Project, eyewitness misidentification is the single greatest cause of wrongful convictions in the United States, having played a role in over 70% of the 333 wrongful convictions that have been overturned by DNA evidence since 1989 (2).

In an effort to reduce eyewitness misidentifications, several reforms based largely on the results of mock crime studies have been proposed. In a typical mock crime study, participants become witnesses to a staged crime (e.g., a purse snatching) and then later attempt to identify the perpetrator from a target-present lineup (containing a photo of the perpetrator) or a target-absent lineup (in which the photo of the perpetrator is replaced by a photo of the “innocent suspect”). The results of mock crime studies have often been interpreted to mean that (i) eyewitness confidence is an unreliable indicator of accuracy (3, 4) and (ii) suspect ID accuracy is enhanced—and the risk to innocent suspects is reduced—when the lineup members are presented sequentially (i.e., one at a time) rather than simultaneously (5–7). In light of such findings, the state of New Jersey recently adopted expanded jury instructions stating that eyewitness confidence is a generally unreliable indicator of accuracy (8). In addition, up to 30% of law enforcement agencies in the United States that use photo lineups have switched to using the sequential procedure (1).

The idea that eyewitness memory is generally unreliable has undergone revision in recent years, as has the notion that sequential lineups are diagnostically superior to simultaneous lineups. With regard to the reliability of eyewitness identifications, recent mock crime studies using a calibration approach have provided strong evidence that confidence in a suspect ID from a photo lineup can be a highly reliable indicator of accuracy (e.g., refs. 9–12). Whether this is true of real eyewitnesses remains unknown and is the first focus of a new police department field investigation that we report here. Previous police department field studies of eyewitness confidence are rare. Those that have been performed found that confident eyewitnesses were more accurate than less confident eyewitnesses (13, 14). However, the investigating officer who administered the lineup knew who the suspect was, raising the possibility that this effect merely reflected administrator influence.

With regard to lineup format (simultaneous vs. sequential lineups), recent mock crime studies using receiver operating characteristic (ROC) analysis (15–17) have generally found that simultaneous lineups are, if anything, diagnostically superior to sequential lineups (18–21). Similarly, in a recent police department field study comparing the two lineup formats, expert ratings of evidence against identified suspects favored the simultaneous procedure (22). However, a different analysis based on filler ID rates from that same field study was interpreted as supporting the sequential procedure (23). Determining which lineup format is diagnostically superior is the second focus of our investigation.

Our field study was conducted in the Robbery Division of the Houston Police Department (24). We focus here on a subset of criminal investigations initiated by the department in 2013 that (i) used photo lineups pseudorandomly assigned to simultaneous ( $n = 187$ ) or sequential ( $n = 161$ ) formats, (ii) were administered by an investigator who was blind to the identity of the suspect, and (iii) involved suspects who were strangers to the eyewitnesses.

## Significance

**In contrast to prior research, recent studies of simulated crimes have reported that (i) eyewitness confidence can be a strong indicator of accuracy and (ii) traditional simultaneous lineups may be diagnostically superior to sequential lineups. The significance of our study is that these issues were investigated using actual eyewitnesses to a crime. Recent laboratory trends were confirmed: Eyewitness confidence was strongly related to accuracy, and simultaneous lineups were, if anything, diagnostically superior to sequential lineups. These results suggest that recent reforms in the legal system, which were based on the results of older research, may need to be reevaluated.**

Author contributions: S.E.C. and W.W. designed research; W.W. performed research; J.T.W., L.M., J.C.D., and W.W. analyzed data; and J.T.W., L.M., J.C.D., S.E.C., and W.W. wrote the paper.

The authors declare no conflict of interest.

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<sup>1</sup>To whom correspondence should be addressed. Email: jwixted@ucsd.edu.

This article contains supporting information online at [www.pnas.org/lookup/suppl/doi:10.1073/pnas.1516814112/-DCSupplemental](http://www.pnas.org/lookup/suppl/doi:10.1073/pnas.1516814112/-DCSupplemental).

Eyewitnesses who made suspect IDs or filler IDs from these lineups were asked to supply a confidence rating using a three-point scale (high, medium, or low confidence). These lineups are of particular interest because they correspond to the “double blind” lineup administration procedure that was recently recommended by a committee of the National Academy of Sciences on eyewitness identification (25). In *SI Results*, we present a similarly detailed and largely convergent analysis of 194 simultaneous and 175 sequential lineups from a “blinded” condition in which the lineup administrator knew the identity of the suspect but was blind to the position of the suspect in the lineup. In analyzing the results, we not only report empirical trends but also offer a quantitative theoretical interpretation of the data by drawing upon standard models of recognition memory.

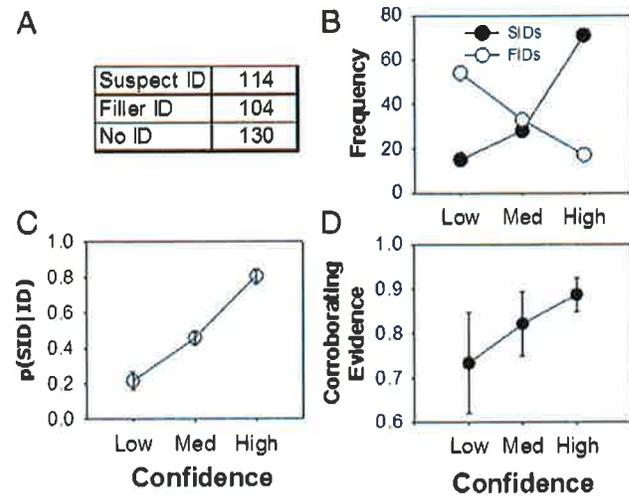
## Results

**Lineup Fairness.** Lineup fairness was examined for a random sample of 30 photo lineups from the blind condition (15 simultaneous and 15 sequential). This analysis assessed the degree to which the suspect stood out by providing the selected photo lineups to 49 mock witnesses and asking them to try to identify the suspect based only on the suspect’s physical description. In a fair, six-person lineup, the suspect should be identified by a mock witness only 1/6 (0.17) of the time. The mean proportion of suspect IDs made by the mock witnesses (0.18) did not differ significantly from the expected value for a fair lineup,  $t(29) = 0.76$ .

**Confidence in Suspect IDs and Filler IDs.** We next analyzed eyewitness identifications collapsed across lineup format (i.e., simultaneous and sequential data combined; see *Table S1*). Suspect IDs, filler IDs, and no IDs (Fig. 1*A*) occurred with approximately equal frequency. The relatively high frequency of filler IDs (which are IDs of known innocents) could be interpreted to mean that eyewitness memory is unreliable (7), but it is important to keep in mind that there are 5 times as many fillers as suspects in a lineup. Moreover, most filler IDs were made with low confidence (Fig. 1*B*). In other words, the proportion of IDs that were suspect IDs increased markedly with confidence (Fig. 1*C*). This pattern of results immediately suggests a strong relationship between confidence and accuracy.

**Corroborating Evidence.** For each lineup, the investigating officer indicated whether or not there was independent corroborating evidence of suspect guilt (see *Table S2*). The proportion of lineups associated with such evidence was higher for lineups involving suspect IDs (97 out of 114) than lineups involving no IDs (67 out of 130),  $\chi^2(1) = 31.02$ ,  $P < 0.0001$ , suggesting that suspects identified by an eyewitness were more likely to be guilty than suspects who were not identified by an eyewitness. In addition, for the suspect IDs, the proportion of cases with corroborating evidence of guilt increased as confidence in the ID increased (Fig. 1*D*). The existence of corroborating evidence was a subjective interpretation made by the investigating officer. However, the results were virtually unchanged when a five-member research team reviewed and recoded the existence of corroborating evidence in a few instances where a majority of the team members disagreed with what the investigating officer counted as independent evidence (see *SI Results, Recoded Corroborating Evidence*).

Although the data in Fig. 1*C* imply that suspect ID accuracy increased with confidence, the dependent measure in that figure, namely, suspect IDs/(suspect IDs + filler IDs), includes all suspect IDs (guilty suspect IDs + innocent suspect IDs). A measure of greater interest to the legal system is suspect ID accuracy: guilty suspect IDs/(guilty suspect IDs + innocent suspect IDs). This measure is of greater interest because, as a general rule, only suspects who are identified from a lineup are placed at risk of prosecution. Suspect ID accuracy cannot be directly computed in a police department field study because it is not known which



**Fig. 1.** (A) Frequency counts of eyewitness decisions in the Houston field study for 187 blind simultaneous and 161 blind sequential lineups combined. (B) Frequency of suspect IDs (SIDs) and filler IDs (FIDs) in A exhibited opposite trends as a function of confidence (low, medium, or high),  $\chi^2(2) = 55.3$ ,  $P < 0.0001$ . (C) The probability that an ID made from a lineup was a suspect ID increased dramatically with confidence. (D) Proportion of suspect IDs rated by the investigating officer as having independent corroborating evidence of guilt increased with confidence in the ID. According to a one-tailed Cochran–Armitage trend test, the effect was marginally significant,  $Z = 1.57$ ,  $P = 0.055$ . Fig. S2 A–D presents corresponding results from the blinded condition. Error bars represent SEs.

identified suspects are guilty and which are innocent, but it can be estimated using a model of recognition memory.

Two traditional and often competing approaches to modeling recognition memory are the “high-threshold” modeling approach and the signal detection modeling approach (26). Our goal here is not to determine which approach is more viable for modeling eyewitness identification performance but is to instead show that, despite being based on completely different assumptions, both approaches provide similar interpretations of the Houston field data. We begin by using a simple version of the high-threshold model to interpret the data and then provide a more detailed interpretation of the same data using a signal detection model.

**High-Threshold Estimates of Suspect ID Accuracy.** A virtue of the high-threshold approach is that it provides an algebraic estimate of suspect ID accuracy. According to this model, of the witnesses presented with a target-present lineup, some proportion of them,  $p$ , will recognize and correctly identify the perpetrator. Of the remaining proportion of those witnesses,  $1 - p$ , some proportion of them,  $g$ , will make a random identification from the lineup despite not recognizing the perpetrator. For a fair, six-member lineup, these witnesses will, by chance, correctly identify the perpetrator 1/6 of the time, and they will instead identify a filler 5/6 of the time. Thus, the probability of a correct suspect ID from a target-present lineup is equal to the probability that a witness recognizes the perpetrator,  $p$ , plus the probability that a witness who does not recognize the perpetrator makes a lucky guess,  $(1 - p) \cdot g \cdot (1/6)$ . Multiplying the sum of these probabilities by the number of target-present lineups,  $n_{TP}$ , yields the predicted number of suspect IDs from target present lineups,  $n_{S_{TP}}$ ,

$$n_{S_{TP}} = n_{TP} \cdot [p + (1 - p) \cdot g \cdot (1/6)]. \quad [1]$$

The probability of a filler ID from a target-present lineup is equal to the probability that a witness who does not recognize the perpetrator makes a guess that lands on a filler,  $(1 - p) \cdot g \cdot (5/6)$ . Thus, the number of filler IDs from target-present lineups,  $n_{F_{TP}}$ , is

$$nF_{TP} = n_{TP} \cdot [(1-p) \cdot g \cdot (5/6)]. \quad [2]$$

For witnesses presented with target-absent lineups, the state of recognition theoretically does not occur because the guilty suspect is not there, so innocent suspect IDs and filler IDs are only made by witnesses who make a random guess. As indicated above, a random guess occurs with probability  $g$ . Thus, the probability of an incorrect (i.e., innocent) suspect ID from a fair target-absent lineup is  $g \cdot (1/6)$ , and the probability of a filler ID from a fair target-absent lineup is  $g \cdot (5/6)$ . Multiplying these probabilities by the number of target-absent lineups,  $n_{TA}$ , yields the predicted number of suspect IDs and filler IDs from target-absent lineups,

$$nS_{TA} = n_{TA} \cdot g \cdot (1/6) \quad [3]$$

$$nF_{TA} = n_{TA} \cdot g \cdot (5/6). \quad [4]$$

These equations underscore the important fact that, for fair lineups, incorrect suspect IDs should be relatively rare compared with incorrect filler IDs.

In a study of real police lineups, the information that is known consists of the number of lineups administered,  $N$ , the number of suspect IDs,  $S$ , the number of filler IDs,  $F$ , and the number of no IDs. In terms of the model,  $S$  is equal to sum of suspect IDs from target-present and target-absent lineups (Eq. 1 + Eq. 3) and  $F$  is equal to sum of filler IDs from target-present and target-absent lineups (Eq. 2 + Eq. 4),

$$S = n_{TP}[p + (1-p) \cdot g \cdot (1/6)] + n_{TA} \cdot g \cdot (1/6)$$

$$F = n_{TP}[(1-p) \cdot g \cdot (5/6)] + n_{TA} \cdot g \cdot (5/6).$$

If, for the sake of simplicity, we assume equal base rates such that  $n_{TP} = n_{TA} = n$ , where  $n = N/2$ , then we can algebraically solve for  $g$  and  $p$  (*SI Results, High-Threshold Model*), which yields

$$g = (6 \cdot F) / (10 \cdot n - 5 \cdot S + F) \quad [5]$$

$$p = (5 \cdot S - F) / (5 \cdot n). \quad [6]$$

Note that, using Eqs. 5 and 6,  $p$  and  $g$  can be directly computed from the data because they are both a function of known values ( $S$ ,  $F$ , and  $n$ ). With  $p$  and  $g$  in hand, Eqs. 1 and 3 can now be used to estimate  $nS_{TP}$  and  $nS_{TA}$ , which can then be used to compute suspect ID accuracy,  $S_{acc}$ ,

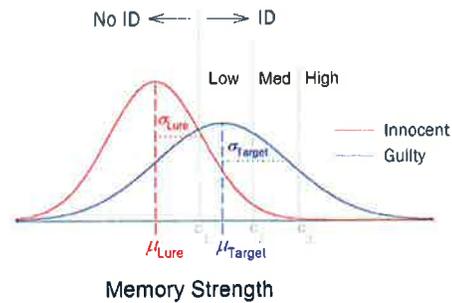
$$S_{acc} = nS_{TP} / (nS_{TP} + nS_{TA}). \quad [7]$$

$S_{acc}$  is the measure of interest. As an example, there were 348 blind lineups ( $n = 348$ ). Therefore, assuming equal base rates,  $n = N/2 = 174$ . There were 114 suspect IDs ( $S = 114$ ) and 104 filler IDs ( $F = 104$ ). According to Eqs. 5 and 6,  $g = 0.49$  and  $p = 0.54$ . Using these parameters, Eqs. 1 and 3 indicate that  $nS_{TP} = 99.8$  and  $nS_{TA} = 14.2$ , so overall suspect ID accuracy (Eq. 7) comes to  $99.8 / (99.8 + 14.2) = 0.88$  (i.e., 88% correct).

A similar high-threshold model can be used to predict suspect ID accuracy separately for each level of confidence by following the same computational steps as before, but, this time, using the number of suspect IDs and filler IDs made with a specific level of confidence in place of the overall  $S$  and  $F$  values. Although the computational steps are exactly the same, the implied underlying model now involves additional parameters that allow for different levels of confidence to be expressed when the witness is in the detect state or in the guessing state (see *SI Results, High-Threshold Model*). This version of the model has as many parameters as there are degrees of freedom in the data, so it cannot be independently validated (e.g., using a goodness-of-fit test).

Nevertheless, the model can still be used to directly estimate suspect ID accuracy separately for each level of confidence using the same computational steps that were used above for overall suspect IDs and filler IDs. When confidence-specific suspect ID and filler ID values are used, the estimated suspect ID accuracy scores come to 0.97, 0.87, and 0.64 for high-, medium-, and low-confidence IDs, respectively. In addition, when this theoretical analysis is performed separately on the data from the blind simultaneous and blind sequential conditions collapsed across confidence,  $p$  (the probability of successfully identifying the perpetrator from a target-present lineup) is 0.62 for simultaneous lineups and 0.43 for sequential for sequential. The significance of these apparent trends cannot be tested, because the model is saturated. We turn now to a more detailed model-based analysis using signal detection theory. This model has fewer free parameters, so its interpretation of the data can be statistically evaluated. We first fit the model to data from an experimentally controlled study (as a validation test) and then fit the model to the data from the Houston field study.

**Signal Detection Estimates of Suspect ID Accuracy.** In the context of eyewitness memory, the standard unequal variance signal detection model (Fig. 2) (26–28) specifies how memory strength is distributed across guilty suspects (targets) vs. innocent suspects and fillers (lures). Before applying this model to the Houston field data, we first tested its validity in the context of eyewitness identification by evaluating its performance in relation to data recently collected as part of a large-scale ( $n = 908$ ) investigation into the relationship between confidence and accuracy under naturalistic conditions (similar to a mock crime study). In this study, the experimenters approached participants in parks and shopping malls and asked them to view a target person (11). Participant memory for the target (the “guilty suspect”) was subsequently tested using an eight-person simultaneous photo lineup, with half of the participants being tested with a target-present lineup and the other half with a target-absent lineup. Thus, in this study, it was known whether a suspect ID was correct or incorrect.



**Fig. 2.** Signal detection conceptualization of low, medium, or high confidence ratings associated with a positive ID. Memory strength (i.e., familiarity) values for lures (innocent suspects and fillers combined for a fair lineup) and for targets (guilty suspects) are distributed according to Gaussian distributions (red, lures; blue, targets) with means of  $\mu_{Lure}$  and  $\mu_{Target}$ , respectively, and SDs of  $\sigma_{Lure}$  and  $\sigma_{Target}$ , respectively. A fair six-member target-present lineup is conceptualized as five random draws from the lure distribution and one random draw from the target distribution, and a fair six-member target-absent lineup is conceptualized as six random draws from the lure distribution. Using the simplest decision rule, an ID is made if the most familiar person in a lineup exceeds  $c1$ , with confidence (low, medium, or high) being determined by the highest criterion that is exceeded. With  $\mu_{Lure}$  and  $\sigma_{Lure}$  set to 0 and 1, respectively, the model has five parameters ( $\mu_{Target}$ ,  $\sigma_{Target}$ ,  $c1$ ,  $c2$ , and  $c3$ ), all scaled in units of  $\sigma_{Lure}$ . When fit to data produced by many participants, the model conceptualizes group performance (not the performance of any single participant). An equal variance version of the model ( $\sigma_{Lure} = \sigma_{Target}$ ), which eliminates one parameter, allows the addition of a base rate parameter ( $p_{Target}$ ) that can be used to estimate the proportion of target-present lineups in data that have been aggregated across target-present and target-absent lineups (as police department field data necessarily are).

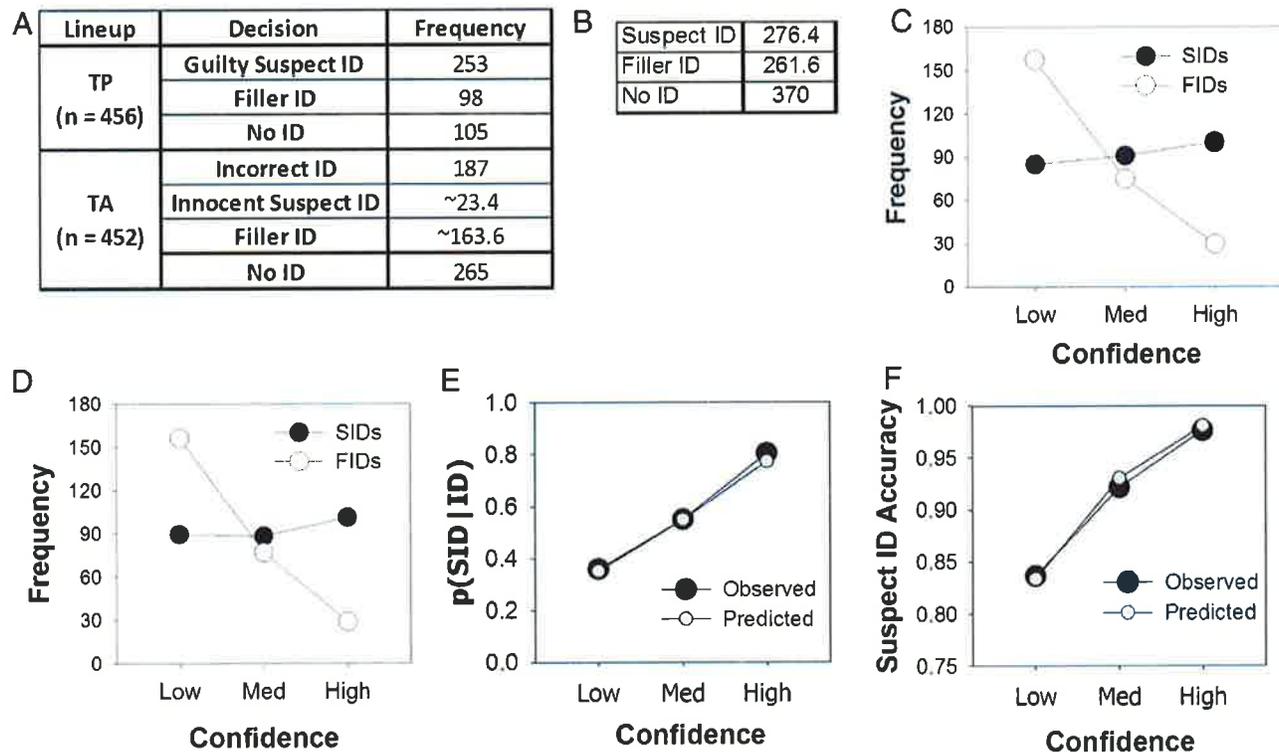
The observed identification decisions (Fig. 3A) can be collapsed across target-present and target-absent lineups (Fig. 3B), as if this study were a police department field study with unknown lineup type, thereby allowing a comparison with the analogous Houston Police Department field data (Fig. 1A). When the data are broken down by confidence (Fig. 3C), the trends are similar to the trends observed in the Houston field data (Fig. 1B).

How well does the signal detection model (Fig. 2) characterize the experimentally controlled field data (Fig. 3C)? Ordinarily, the parameters of the model would be adjusted to minimize the  $\chi^2$  goodness of fit between the predicted target-present and target-absent data vs. the observed target-present and target-absent data in Fig. 3A (see *SI Results, Signal Detection Model Fits*). However, if these data had come from a police department field study, that kind of evaluation would not be possible because it would not be known which lineups contain a guilty suspect (target-present) and which contain an innocent suspect (target-absent). We therefore fit the signal detection model to the experimentally controlled field data as if those data had come from a police department field study. For each iteration of the fit, the model (Fig. 2) generated simulated predicted target-present and target-absent data, which were then collapsed across lineup type to yield predicted suspect IDs and filler IDs (for three levels of confidence in each case), plus predicted no IDs for that iteration. The collapsed predicted values were then compared with the collapsed observed values by computing a  $\chi^2$  goodness-of-fit statistic. The model assumed equal base rates for target-present and target-absent lineups, which is known to be true of these data (11), and the model

parameters were adjusted to minimize the predicted vs. observed  $\chi^2$  statistic, yielding the final predicted values in Fig. 3D. An equal variance model turned out to be adequate (i.e.,  $\sigma_{Target}$  did not differ significantly from 1; thus  $\sigma_{Target} = \sigma_{Lure}$ ). When the observed data (Fig. 3C) and predicted data (Fig. 3D) were used to compute the observed and predicted proportion of IDs that were suspect IDs, the two functions were nearly identical (Fig. 3E).

Using the experimentally controlled field data (11), we can now ask how the observed trend in Fig. 3E based on data collapsed across target-present and target-absent lineups relates to suspect ID accuracy (the measure of primary interest), which, unlike in a police department field study, can be directly computed after disaggregating the target-present and target-absent data. The actual disaggregated suspect ID accuracy data from this study reflect highly reliable eyewitness ID performance (Fig. 3F). Remarkably, the model accurately predicted those data (Fig. 3F) despite having only been fit to the collapsed (real-world-like) data (Fig. 3C and Table S3).

Having established that the signal detection model can recover suspect ID accuracy from collapsed data, we next fit the model to the Houston Police Department field data (i.e., to the data shown in Fig. 1B), for which it is impossible to separate target-present and target-absent lineups. Initially, we made the assumption that the base rate of guilty suspects (i.e., the proportion of target-present lineups) in these real-world data was 50%. The validity of this assumption is unknown, so we repeated the model-fitting exercise assuming a 25% base rate and, then, a 75% base rate. For all of these fits, we allowed  $\sigma_{Target}$  and  $\sigma_{Lure}$  to differ. The model

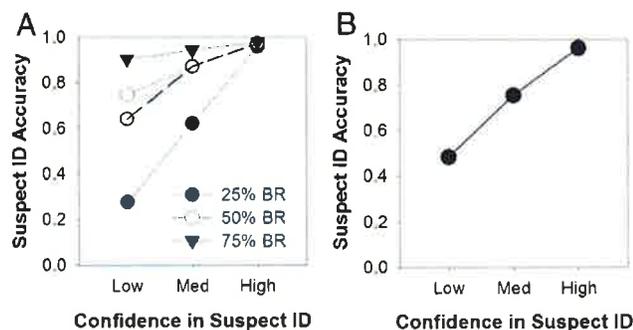


**Fig. 3.** (A) Frequency counts of eyewitness decision outcomes for 456 target-present (TP) and 452 target-absent (TA) simultaneous lineups from an experimentally controlled field study (11). The TA lineups did not have a designated "innocent suspect." Therefore, following standard practice, an estimate (–) of the frequency of innocent SIDs from TA lineups was obtained by dividing all incorrect TA IDs ( $n = 187$ ) by the lineup size of 8, with the remainder of incorrect IDs providing an estimate of the frequency of filler IDs. (B) Eyewitness decision outcomes in A summed (i.e., collapsed) across TP and TA lineups. (C) Frequency of SIDs and FIDs in B as a function of confidence (low, medium, or high). For this plot, the 100-point confidence scale was reduced to a 3-point scale (90–100 = high, 70–80 = medium, and 0–60 = low). (D) Predicted frequency of SIDs, FIDs, and no IDs based on a fit of the unequal variance signal detection model (Fig. 2) to the data in C. The fit was very good,  $\chi^2(1) = 0.34$ . (E) The observed proportion of IDs in C that were SIDs (black symbols) increased dramatically with confidence, as did the predicted values (small gray symbols) computed from the predicted values in D. (F) The proportion of SIDs in C that were guilty SIDs (black symbols) also increased dramatically with confidence, an effect that was accurately predicted by the signal detection model (small gray symbols) despite its having been fit to data collapsed across TP and TA lineups. Data in A–C, E, and F are from ref. 11.

was fit to the simultaneous and sequential data separately and also to the data combined across lineup format (Tables S4 and S5; also see Tables S6 and S7). Critically, we can use the best-fitting model to estimate the accuracy of suspect IDs in the Houston data, just as we did for the data shown in Fig. 3F. Because the suspect ID accuracy estimates were very similar for the two lineup formats, we present the results of the fit to the data combined across lineup format.

Fig. 4A shows the estimated suspect ID accuracy ( $S_{acc}$ ) for the Houston field data—that is, it shows estimated values of  $nS_{TP}/(nS_{TP} + nS_{TA})$ —as a function of confidence for each of the three base rates considered. These data represent the predicted posterior probability of guilt associated with suspect IDs made with low, medium, or high confidence. The estimates for high-confidence suspect IDs remain very accurate regardless of the base rate, whereas the estimated accuracy of low-confidence suspect IDs is always lower but varies considerably depending on the base rate of guilty suspects in police lineups.

**A Model-Based Estimate of the Target-Present Base Rate.** Based on the results of the model fit to the experimentally controlled field data (11), we next made the assumption that an equal variance model ( $\sigma_{Target} = \sigma_{Lure}$ ) also applies to the Houston field data. Removing the unequal variance parameter made it possible to add a base rate parameter ( $p_{Target}$ ) to the model to obtain a principled estimate of the real-world base rate of target-present lineups (see *SI Results, Signal Detection Model Fits*). Again using the experimentally controlled field data (11), we first verified that when target-present and target-absent data are combined in varying proportions and then fit with the equal variance signal detection model, the base rate of target-present lineups can be accurately recovered (Fig. S1). We then fit the equal variance model (including the base rate parameter) to the Houston Police Department field data, and the estimated base rate of target-present lineups came to 0.35 for both lineup formats. That is, assuming the equal variance model is correct, 35% of the photo lineups contained a guilty suspect and 65% contained an innocent suspect. At first glance, this relatively low estimate of the proportion of lineups containing a guilty suspect might be regarded as problematic. However, the confidence–accuracy relationship predicted by this best-fitting model (averaged across the predictions made by separate fits to the simultaneous and sequential data) exhibits a strong relationship between the confidence associated with a suspect ID and the accuracy of that ID (Fig. 4B). In other words, high-confidence IDs are accurate despite the low base rate of target-present lineups.



**Fig. 4.** (A) Signal detection estimates of the posterior probability of guilt associated with suspects identified from lineups in the Houston field study for three different hypothetical base rates (BR). The estimates are averaged across simultaneous and sequential lineups. The dashed line shows the estimates from the high-threshold model assuming a 50% base rate. (B) Model-based estimate of the posterior probability of guilt associated with suspects identified from lineups in the Houston field study assuming an equal variance signal detection model (as suggested by fits to the experimentally controlled field data) and including target-present base rate as a free parameter (estimated to be 0.35). Fig. S2 E and F show corresponding results from the blinded condition.

**Simultaneous vs. Sequential Lineups.** We also analyzed the data separately for simultaneous and sequential lineups (Table S1), focusing first on corroborating evidence of guilt associated with identified suspects. In a previous police department field study conducted in Austin, Texas, expert ratings of corroborating evidence of guilt suggested that innocent suspects were less likely to be identified and guilty suspects were more likely to be identified from simultaneous lineups than sequential lineups (22). Similarly, in the current Houston police department field study, the proportions of suspects identified from simultaneous (SIM) lineups ( $n = 68$ ) and (SEQ) sequential lineups ( $n = 46$ ) rated by the investigating officer as having independent evidence of guilt against them were  $SIM = 0.912$  and  $SEQ = 0.761$ ,  $\chi^2(1) = 4.92$ ,  $P = 0.027$ . That is, according to this proxy measure of guilt, more of the suspects identified from simultaneous lineups were likely to be guilty—and fewer innocent—than suspects identified from sequential lineups. However, on a post-ID questionnaire, the investigating officer noted that some of these witnesses ( $n = 65$ ) reported that they (i) encountered a photo of the suspect before being presented with the photo lineup, (ii) were under the influence of alcohol when they witnessed the crime, and/or (iii) were not wearing their prescribed glasses during the crime (Table S2). The reported differences on the three questionnaire measures, if they were true and had any effect, would have worked against the sequential procedure. When these 65 witnesses were excluded from the analysis, the proportions of identified suspects from simultaneous lineups ( $n = 50$ ) and sequential lineups ( $n = 38$ ) rated as having independent evidence of guilt against them were virtually unchanged ( $SIM = 0.920$  vs.  $SEQ = 0.789$ ),  $\chi^2(1) = 3.12$ ,  $P = 0.077$ . Thus, eliminating these 65 eyewitnesses reduced statistical power without having an appreciable effect on the pattern of results.

As indicated earlier, a five-member research team recoded the presence vs. absence of corroborating evidence based on its judgment of what counted as evidence. When the recoded corroborating evidence data from all of the witnesses were analyzed, the results continued to show a trend favoring the simultaneous procedure ( $SIM = 0.912$  vs.  $SEQ = 0.804$ ),  $\chi^2(1) = 2.77$ ,  $P = 0.096$ . However, when the reduced recoded data set was analyzed (eliminating 65 witnesses based on their questionnaire responses), the effect, although continuing to favor the simultaneous procedure ( $SIM = 0.920$ ,  $SEQ = 0.842$ ), was no longer marginally significant,  $\chi^2(1) = 1.30$ ,  $P = 0.244$ . Although not significant, even for this analysis, more suspects identified from simultaneous lineups had independent corroborating evidence of guilt compared with sequential lineups ( $SIM = 46$  vs.  $SEQ = 32$ ), pointing to possible guilt, and fewer had no evidence of guilt ( $SIM = 4$  vs.  $SEQ = 6$ ), pointing to possible innocence. It therefore seems fair to conclude that all of these corroborating evidence analyses at least weigh against the notion that sequential lineups are diagnostically superior to simultaneous lineups. To the extent that these findings are interpreted as supporting the diagnostic superiority of the simultaneous procedure, they are consistent with the statistically significant corroborating evidence findings from the recent Austin police department field study (22).

Finally, we fit the equal variance signal detection model, with  $p_{Target}$  fixed at 0.35 (free parameters =  $\mu_{Targets}$ ,  $c1$ ,  $c2$ , and  $c3$ ), separately to the simultaneous and sequential Houston field data broken down by confidence (Table S1). When the full data set was analyzed,  $\mu_{Target}$  was significantly higher for the simultaneous procedure than for the sequential procedure ( $SIM = 2.87$  vs.  $SEQ = 2.03$ ),  $\chi^2(1) = 5.01$ ,  $P = 0.025$ . When the reduced data set was analyzed (excluding the 65 witnesses discussed above), the difference in the estimated value of  $\mu_{Target}$  still favored the simultaneous procedure ( $SIM = 2.74$  vs.  $SEQ = 2.12$ ), but the effect was no longer significant,  $\chi^2(1) = 2.06$ ,  $P = 0.15$ . A similar pattern of results held true across a variety of approaches to modeling the data (see *SI Results, Signal Detection Model Fits*). Thus, it seems fair to conclude that the signal detection analyses weigh against the notion that sequential lineups are diagnostically superior to simultaneous lineups. To the extent that these findings are

interpreted as supporting the simultaneous procedure, they are consistent with recent laboratory-based ROC analyses (18–21).

## Discussion

Our results suggest that, contrary to a widely held view that confidence and accuracy are only weakly related but in agreement with recent experimentally controlled noncrime studies using a calibration approach (9–11), eyewitness confidence appears to be a reliable indicator of accuracy when an identification is made from a police lineup. The strong relationship between confidence and accuracy is indirectly suggested by trends in the raw data (Fig. 1B) and is directly implied by model-based estimates (Fig. 4A). In addition, and again contrary to a widely held view, the present results reinforce both ROC analyses of laboratory-based data (18–21) and another police department field study analysis (22) suggesting that sequential lineups are not diagnostically superior to simultaneous lineups and that the reverse is more likely to be true (although, depending on how the data were analyzed here, the simultaneous advantage was not always significant).

Critically, our conclusions apply only to fair lineups initially administered to adults in double-blind fashion, not necessarily to unfair lineups, nonblind lineups, lineups administered to children, or to any ID associated with a subsequent memory test (including the one that occurs much later in a court of law). It is well known that memory is malleable such that by the time a witness testifies at trial or pretrial hearings, an initial low-confidence ID can be transformed into a high-confidence ID (29). In light of the recent recommendations made by a committee of the National Academy of Sciences on eyewitness identification—specifically, that lineups should be administered in double-blind fashion and that initial eyewitness confidence should be recorded (25)—it seems likely that the double-blind approach will be increasingly used by law enforcement agencies and that eyewitness confidence statements will be increasingly available. Under those conditions, our findings suggest that eyewitness confidence is a highly reliable indicator of accuracy and that simultaneous lineups are, if anything, diagnostically superior to sequential lineups.

## Methods

A more detailed description of the experimental design/methods is provided in *SI Methods*.

**Participants.** The participants were 45 police investigators in the Robbery Division of the Houston Police Department and 717 eyewitnesses who were presented with photo lineups between January 22 and December 5, 2013. Inclusion criteria were that (i) the robberies involved strangers and (ii) the witnesses had not previously viewed a photo spread with the suspect.

**Informed Consent.** The study was approved by Protection of Human Subjects Committee in the Office of Research and Sponsored Programs at Sam Houston State University (Protocol 2012-08-202). All of the investigators who participated in the study signed an informed consent document, and witnesses were provided with a cover letter that explained risks and their rights. In addition, at the conclusion of the ID procedure, a survey was provided to each witness asking how the photos were shown to them (all at once or one at a time), whether the detective could see which photos they were viewing, whether they picked someone from the photos, etc. If they completed and returned the survey to the detective, then they were agreeing to participate.

**Procedure.** Witnesses were pseudorandomly assigned to one of four photo lineup conditions: blind sequential ( $n = 161$ ), blind simultaneous ( $n = 187$ ), blinded sequential ( $n = 175$ ), and blinded simultaneous ( $n = 194$ ). A lineup contained six photos (one suspect and five fillers). For the simultaneous procedure, the eyewitness viewed all six photos at the same time. For the sequential procedure, the six photos were viewed one at a time. In the blind procedure, an investigator with no knowledge of the suspect's identity administered the lineup. In the blinded procedure, the primary investigator conducted the viewing but was prevented from knowing which photo the witness was viewing. Eyewitnesses who made suspect IDs or filler IDs from these lineups were asked to supply a confidence rating using a three-point scale. For each case, an investigating officer filled out a questionnaire that addressed a variety of issues pertaining to the case (e.g., where was the lineup conducted, is there independent evidence of suspect guilt, what was the level of confidence expressed by the eyewitness, etc.).

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***Tab N***

## Comparing the diagnostic accuracy of suspect identifications made by actual eyewitnesses from simultaneous and sequential lineups in a randomized field trial

Karen L. Amendola · John T. Wixted

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### Abstract

*Objectives* Eyewitness misidentifications have been implicated in many of the DNA exoneration cases that have come to light in recent years. One reform designed to address this problem involves switching from simultaneous lineups to sequential lineups, and our goal was to test the diagnostic accuracy of these two procedures using actual eyewitnesses.

*Methods* In a recent randomized field trial comparing the performance of simultaneous and sequential lineups in the real world, suspect ID rates were found to be similar for the two procedures. Filler ID rates were found to be slightly (but, in the key test, nonsignificantly) higher for simultaneous than sequential lineups, but fillers will not be prosecuted even if identified. Moreover, filler IDs may not provide reliable information about innocent suspect IDs. Here, we use two different proxy measures for ground truth of guilt versus innocence for suspects identified from simultaneous or sequential lineups in that same field study.

*Results* The results indicate that innocent suspects are, if anything, less likely to be mistakenly identified—and guilty suspects are more likely to be correctly identified—from simultaneous lineups compared to sequential lineups.

*Conclusions* Filler identifications are not necessarily predictive of the more consequential error of misidentifying an innocent suspect. With regard to actual suspect identifications, simultaneous lineups are diagnostically superior to sequential lineups. These findings are consistent with recent laboratory-based studies using receiver operating characteristic analysis suggesting that simultaneous lineups make it easier for eyewitnesses to tell the difference between innocent and guilty suspects.

**Keywords** Eyewitness identification · ROC analysis · Sequential lineups · Simultaneous lineups

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K. L. Amendola  
Police Foundation, 1201 Connecticut Avenue, NW, Suite 200, Washington, DC 20036-2636, USA  
e-mail: kamendola@policefoundation.org

J. T. Wixted (✉)  
Department of Psychology, University of California, San Diego, La Jolla, CA 92093-0109, USA  
e-mail: jwixted@ucsd.edu

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## Introduction

More than 300 people have been exonerated by DNA evidence in recent years, and many of those individuals were wrongfully convicted, at least in part, based on eyewitness misidentifications. The apparent unreliability of eyewitness identification evidence has motivated a concerted effort to find some way to reduce this problem, and much of the focus in this regard has been placed on trying to determine whether sequential lineups should replace simultaneous lineups. Recently, these two lineup procedures were compared using real eyewitnesses in a study known as the American Judicature Society (AJS) field study. Phase 1 results from that study (Wells et al. 2011, 2014) focused on the proportion of simultaneous and sequential lineups associated with suspect IDs, filler IDs, and lineup rejections. The proportion of suspect IDs was similar for the two procedures (25 % for simultaneous lineups and 27 % for sequential lineups), but filler IDs were higher for the simultaneous procedure (18 % for simultaneous lineups vs. 12 % for sequential lineups). Although the difference in filler ID rates was not statistically reliable when based on the final decisions made by eyewitnesses in the sequential procedure<sup>1</sup>, Wells et al. (2014) nevertheless attached interpretative significance to this non-significant effect. Specifically, because fillers are known to be innocent, the authors of the study inferred that innocent suspects are also more likely to be incorrectly identified from simultaneous lineups than from sequential lineups. Here, we report Phase 2 results focusing on measures of likely guilt associated with the suspects who were identified from simultaneous and sequential lineups in the AJS field study. Because suspect IDs—especially *innocent* suspect IDs—are far more consequential than filler IDs, this approach more directly addresses the question of whether simultaneous or sequential lineups lead to fewer false IDs of the innocent and more correct IDs of the guilty.

## Background

In the simultaneous procedure, the members of the lineup (usually 6 people—1 suspect and 5 fillers) are presented together, whereas in the sequential procedure, the members of the lineup are presented one at a time for individual recognition decisions. Many mock-crime laboratory studies have evaluated the performance of these two lineup procedures to determine if sequential lineups lead to fewer false IDs of innocent

<sup>1</sup> In keeping with actual practices, witnesses in the AJS field study were permitted to view the photos in the sequential lineup a second time if they requested it. In laboratory studies, by contrast, only one lap is typically allowed. Wells et al. (2014) analyzed the data two ways: first, by using the lap 1 results only (because this allowed them to compare the results to those found in laboratory studies where second laps are typically not allowed, so the lap 1 choices represent the final choices by the witness/victims in those studies); and second, by analyzing the results that accurately reflected how the sequential procedure was used in the field trial (and how it is typically used in field administration of sequential procedures, i.e. allowing a second lap on request). In the first analysis, filler ID rates were significantly higher for simultaneous compared to sequential lineups (although this analysis did not include the final decisions of the cases in which a second lap was actually requested,  $n=37$ ), but in the second analysis reflecting how the sequential procedure was actually used in the field trial, the difference in filler ID rates (specifically, 29 filler IDs out of 236 sequential lineups vs. 46 filler IDs out of 258 simultaneous lineups) was not significant ( $p=.09$ , though reported as  $p=.08$  by Wells et al.). Only the latter (non-significant) result—the one that included the lap 2 decisions of the 16 % of witnesses who requested a second viewing—is relevant to the performance of the sequential lineup in the real world. For this reason, our Phase 2 analysis included the final lap 2 decisions as well.

suspects than simultaneous lineups and, more generally, to determine if sequential lineups are diagnostically superior to simultaneous lineups. In these laboratory studies, some participants view a lineup in which the suspect is, in fact, the perpetrator (target-present lineups), but other participants view a lineup in which the suspect is an innocent person who resembles the perpetrator (target-absent lineups). The proportion of target-present lineups from which the guilty suspect is correctly identified is called the correct ID rate, and the proportion of target-absent lineups from which the innocent suspect is incorrectly identified is called the false ID rate. Ideally, one would like to maximize the correct ID rate and minimize the false ID rate. Because the fillers in a lineup are not suspects and are therefore known to be innocent, a filler ID does not endanger the identified individual and is therefore not treated as the equivalent of a false ID.

In a recent meta-analysis, Steblay et al. (2011) found that the average correct and false ID rates for the simultaneous lineup procedure (computed without regard for filler IDs) were 0.52 and 0.28, respectively, whereas the corresponding values for the sequential lineup procedure were 0.44 and 0.15, respectively<sup>2</sup>. This outcome appears to favor the sequential procedure because the decrease in the false ID rate (from 0.28 to 0.15) considerably exceeds the decrease in the correct ID rate (from 0.52 to 0.44). Intuitively, the cost (namely, the small decrease in the correct ID rate) seems worth the benefit (namely, the large decrease in the false ID rate).

The performance of the two lineup procedures is often summarized by a single measure known as the diagnosticity ratio, which is equal to the correct ID rate divided by the false ID rate. Steblay et al. (2011) found that the diagnosticity ratio was higher for the sequential procedure ( $0.44/0.15=2.93$ ) than the simultaneous lineup procedure ( $0.52/0.28=1.86$ ). A higher diagnosticity ratio implies higher *posterior odds of guilt* (which are the odds that a suspect who has been identified from a lineup is actually guilty). Thus, according to the data analyzed by Steblay et al. (2011), a suspect identified from a sequential lineup is more likely to be guilty than a suspect identified from a simultaneous lineup. On the surface, the overall case in favor of the sequential lineup seems compelling because (one might assume) switching to the sequential procedure in the real world would lower the false ID rate while increasing the trustworthiness of a suspect ID.

Intuition notwithstanding, findings like these do not indicate that sequential lineups are diagnostically superior to simultaneous lineups, nor do they suggest that switching to sequential lineups in the real world would reduce the frequency of false IDs. In fact, sequential lineups might *reduce* diagnostic accuracy and *increase* the risk to innocent suspects even if the findings analyzed by Steblay et al. (2011) are accurate. Many researchers do not accept their interpretation of the literature as being accurate (e.g., Clark 2012; Gronlund et al. 2009; McQuiston-Surrett et al. 2006) but disputing their interpretation is not our purpose here.

A non intuitive fact that has only recently been taken into consideration by the field is that the diagnostic performance of a given lineup procedure cannot be adequately characterized by a single correct and false ID rate pair but can only be adequately characterized by an entire family of correct and false ID rates (Gronlund et al. 2014;

<sup>2</sup> These values were taken from Table 3 of Steblay et al. (2011) because those data came from published studies that used adults as subjects and used a full simultaneous/sequential by perpetrator-present/perpetrator-absent design. For the false alarm rates, we used the values representing "identification of designated innocent suspect".

Wixted and Mickes 2012). Perhaps the easiest way to appreciate the fact that more than one correct and false ID rate characterizes a given lineup procedure is to consider two otherwise identical jurisdictions that differ in only one respect: Jurisdiction A includes a "not sure" response option when eyewitnesses are presented with a simultaneous lineup, whereas Jurisdiction B does not. In Jurisdiction A, eyewitnesses who are not confident of their ability to identify the perpetrator from the lineup would sometimes choose the "not sure" response option instead of making a low-confidence ID. In Jurisdiction B, eyewitnesses who are not confident of their ability to identify the perpetrator from the lineup—and who would choose the "not sure" response option if it were available—would make a low-confidence ID instead. Because more IDs (correct and incorrect) would be observed in Jurisdiction B than in Jurisdiction A, the correct and false ID rates would be higher in Jurisdiction B compared to Jurisdiction A. In that case, there would be *two* sets of correct and false ID rates for the simultaneous lineup, and neither one would be more valid than the other. If, in addition to including a "not sure" response option, Jurisdiction C also included an explicit instruction informing eyewitnesses that they do not have to choose anyone from the lineup (further reducing the pressure to choose), the correct and false ID rates in that jurisdiction might be even lower than those observed in Jurisdictions A or B. This third pair of correct and false ID rates for the simultaneous procedure is as valid as the other two.

The key point is that a lineup procedure (whether simultaneous or sequential) is characterized by an entire family of correct and false ID rates obtained by adjusting the overall tendency of eyewitnesses to make an ID from the lineup—a tendency that policymakers can manipulate (e.g., by including a "not sure" response option and/or by including instructions that reduce the pressure an eyewitness might feel to make an ID). A variable that policymakers can manipulate is known as a *system variable* (Wells 1978). The fact that lineup instructions can be used to reduce the pressure an eyewitness might feel to choose (i.e., to induce a more conservative decision criterion) has been noted before (Clark 2005; Brewer et al. 2005), but the implications of that fact have rarely been considered. The implications are more important than they might seem to be at first glance.

If a given lineup procedure (e.g., the simultaneous procedure) is characterized by more than one correct and false ID rate, it follows that it is also characterized by more than one diagnosticity ratio. That being the case, it can be misleading to compare a singular diagnosticity ratio for the simultaneous procedure (by choosing one from its family of diagnosticity ratios) to a singular diagnosticity ratio for the sequential procedure (by choosing one from its family of diagnosticity ratios). In particular, it is misleading when overall suspect choosing rates differ for the two procedures being compared (Wixted and Mickes 2012), as they usually do for simultaneous and sequential lineups. For example, as noted above, Steblay et al. (2011) found that suspect choosing rates—both the correct ID rate and the false ID rate—were relatively high for the simultaneous lineup procedure (average correct and false ID rates were 0.52 and 0.28, respectively) compared to the sequential lineup procedure (average correct and false ID rates were 0.44 and 0.15, respectively). When overall choosing rates differ like that, it is not meaningful to compare the diagnosticity ratios (or, equivalently, the posterior odds of guilt) because that measure increases dramatically as the choosing rate (i.e., the overall tendency of witnesses to make an ID) decreases for either procedure. Thus, the fact that a procedure with a lower choosing rate has a higher diagnosticity ratio is not, in itself, a particularly informative finding.

It might be tempting to ignore this technical argument about diagnosticity ratios and to concentrate instead on the large difference between the false ID rates associated with the two lineup procedures—a result that appears to suggest that innocent suspects are placed at much greater risk when simultaneous lineups are used compared to when sequential lineups are used. However, appearances can be misleading. For example, Wells et al. (2012) argued that the extra correct and false IDs associated with the simultaneous procedure may result from random guesses, which are less likely to occur than when a sequential procedure is used. This possibility raises an interesting question: what would the correct and false ID rates be when low-confidence guesses are eliminated from consideration for both lineup procedures?

As noted above, one way to reduce the impact of random guesses would be to include a "not sure" response option, which allows witnesses to avoid making an ID by choosing that option instead of guessing. Under those conditions, the correct and false ID rates would both decrease. Imagine that the correct and false ID rates for the sequential procedure decrease to 0.40 and 0.10, respectively (down from 0.44 and 0.15, respectively), and the correct and false ID rates for the simultaneous procedure decrease to 0.45 and 0.05, respectively (down from 0.52 and 0.28, respectively). These new correct and false ID rates are purely hypothetical and were deliberately chosen to illustrate the possibility that, using the traditional metrics (i.e., the false ID rate and the diagnosticity ratio), simultaneous lineups could be superior to sequential lineups when the effects of guessing are minimized. In this hypothetical example, the simultaneous lineup has both a lower false ID rate (0.10 for sequential; 0.05 for simultaneous) and a higher diagnosticity ratio ( $0.40/0.10=4$  for sequential;  $0.45/0.05=9$  for simultaneous).

Which correct and false ID rate pair should be used to decide whether or not one procedure is superior to other? The first pair that included guesses or the second (more conservative) pair that excluded guesses? Considerations like these illustrate why receiver-operating characteristic (ROC) is needed to evaluate the diagnostic accuracy of competing lineup procedures. ROC analysis involves nothing more than examining the full range of correct and false ID rates that arise for a single lineup procedure as the tendency to identify someone from the lineup varies over a wide range (while holding *discriminability*—which is the ability to tell the difference between an innocent suspect and a guilty suspect—constant). The ROC analytic method was first developed in World War II by mathematicians and engineers seeking better ways to measure the diagnostic performance of radar and sonar, but it is now widely used in many applied fields, including diagnostic medicine. Previously published articles provide a detailed introduction to ROC analysis in the eyewitness domain, explaining how to do it, why it is necessary, and why it is the method of choice in many other applied fields (Gronlund et al. 2014; Wixted and Mickes 2012).

Recent ROC analyses have consistently found that the simultaneous lineup yields a higher ROC—that is, the simultaneous lineup yields higher diagnostic accuracy—than the sequential lineup (Carlson and Carlson 2014; Dobolyi and Dodson 2013; Gronlund et al. 2012; Mickes et al. 2012). What does this result actually mean? First, it means that simultaneous lineups make it easier for eyewitnesses to tell the difference between innocent and guilty suspects. Second, and critically, it means that if suspect choosing rates happened to be the same for simultaneous and sequential lineups, then it would have to be the case that the false ID rate would be lower and the correct ID rate would be higher for the *simultaneous* procedure.

When choosing rates are the same (as they were in the AJS field study, Phase I), one can simply refer to the correct and false ID rates to easily determine which procedure is superior, as in the hypothetical example presented above. For the sequential lineup, the correct and false ID rates in that example were chosen to be 0.40 and 0.10, respectively. For the simultaneous lineup, the corresponding values were 0.45 and 0.05. Thus, the overall suspect choosing rate<sup>3</sup> for the sequential lineup is  $(0.40+0.10)/2=0.25$ , and the overall suspect choosing rate for the simultaneous lineup is the same, namely,  $(0.45+0.05)/2=0.25$ . When the choosing rates are the same, the correct and false ID rates clearly indicate which procedure is superior (the simultaneous procedure in this example). But one can also use the diagnosticity ratio, or the posterior of odds of guilt, to make that determination. These measures are problematic when suspect choosing rates differ for the two procedures (because their values increase when the choosing rate is reduced by inducing more conservative responding for either procedure), but when choosing rates are the same, a measure like the posterior odds of guilt can be used to directly identify the superior procedure. In this example, the posterior odds of guilt are higher for the simultaneous procedure ( $0.45/0.05=9$ ) than for the sequential procedure ( $0.40/0.10=4$ ). This means that a suspect identified from a simultaneous lineup is 9 times more likely to be guilty than innocent, whereas a suspect identified from a sequential lineup is only 4 times more likely to be guilty than innocent. The performance of the two lineup procedures can also be quantified using the posterior probability of guilt, which in this example is higher for the simultaneous procedure [ $0.45/(0.45+0.05)=0.90$ ] than the sequential procedure [ $0.40/(0.40+0.10)=0.80$ ].

The critical point of this hypothetical example is that if suspect choosing rates happen to be the same for both lineup procedures, as they were in the AJS field study, then the posterior probability of guilt for suspects identified from each procedure would unambiguously indicate which procedure is diagnostically superior. Specifically, the procedure associated with the higher posterior probability of guilt would necessarily have both a higher correct ID rate and a lower false ID rate than the other procedure. This raises a key question: which procedure yielded the higher posterior probability of guilt in the AJS field study?

Measuring the posterior probability of guilt requires information about the ground truth of the guilt or innocence of identified suspects, and that information is usually not available in a field study. Indeed, this is precisely why Wells et al. (2011, 2014) relied on filler IDs as a proxy for the false ID rate. However, in our analysis of the data generated in Phase 2 of the AJS field study, we used case dispositions (Study A) and expert ratings (Study B) as proxies for the ground truth of guilt versus innocence. Our goal was to estimate the posterior probability of guilt for suspects who were identified from simultaneous and sequential lineups in the AJS field study.

### The AJS field study

In response to calls for a robust field study, the American Judicature Society implemented a randomized field trial designed to compare sequential and simultaneous

<sup>3</sup> We make the assumption of equal base rates of target-present and target-absent lineups throughout (in which case the diagnosticity ratio = the posterior odds of guilt) for the sake of our illustrative examples, but none of our final conclusions depend on that assumption.

presentation methods in multiple field sites (Wells et al. 2011). Wells et al. (2011, 2014) implemented that experiment in four sites: Charlotte-Mecklenburg County, North Carolina; Tucson, Arizona; San Diego, California; and Austin (Travis County), Texas. In this study, all factors other than the presentation method were held constant. The protocol required standardized instructions administered via a laptop presentation mode and ensured that all lineup administrations were double blind. The lineup presentation method itself—sequential versus simultaneous—was randomly assigned by computer for each witness immediately prior to viewing.

The dataset consisted of 494 double-blind lineups from witnesses who were attempting to identify a suspect who was a stranger and who were seeing the suspect's photo for the first time. In laboratory studies, witnesses are usually told that the perpetrator may or may not be in the lineup, and this instruction was included in the AJS field study as well. Eyewitnesses were also told that they would view all the individuals in the sequential lineup, and they were allowed to view the lineup a second time if requested. Critically, witnesses in the field study (unlike in the typical laboratory study) were given a "not sure" response option. This allowed witnesses to say that they were not sure, in which case they made no identification at all. The use of a "not sure" response option is conceptually similar to using a lineup instruction to induce more conservative responding, such as an instruction that says "Do not identify someone from the lineup if you are not sure of your decision." A few laboratory studies have found that providing eyewitnesses with an explicit "don't know" option reduces suspect IDs (i.e., it leads to more conservative responding), yielding the expected increase in the diagnosticity ratio that generally accompanies more conservative responding (Perfect and Weber 2012; Weber and Perfect 2012; see also Steblay & Phillips 2011). In addition, to further reduce the pressure to choose, witnesses in the AJS field study were told that they "did not have to make an identification" and that "the investigation would continue even if they did not identify someone." These various methods (the "not sure" response option and special instructions designed to reduce the pressure to choose) would be expected to induce conservative responding and likely account for why Wells et al. (2011, 2014) found that, in the AJS field study, overall suspect choosing rates were lower than the rates observed in previous studies.

As noted earlier, the considerations discussed above indicate that the suspect choosing rate is, to a certain degree, a system variable (i.e., it is under the control of the legal system), which means, for example, that the suspect choosing rate for simultaneous lineups could easily be reduced (e.g., by including a "not sure" response option, as was done in the AJS field study) if policymakers decided that the cost in terms of reduced correct IDs is worth the benefit in terms of reduced false IDs. This point is important to appreciate because many are under the mistaken impression that simultaneous lineups are inferior to sequential lineups because simultaneous lineups yield higher correct and false ID rates. The key point is that switching to the sequential procedure is not the only way (and is not likely to be the best way) to lower suspect choosing rates. The methods used in the AJS field study illustrate another way to induce conservative responding, and when those methods are used, suspect choosing rates are reduced and turn out not to differ for simultaneous and sequential lineups. That fortuitous outcome created a unique opportunity to effectively evaluate the diagnostic accuracy of simultaneous and sequential lineups in the real world without having to perform ROC analysis.

Table 1 summarizes the most relevant results reported by Wells et al. (2011, 2014). For witnesses who requested a second viewing of the sequential lineup, their lap 2 decisions were used in this analysis because only those final decisions would be taken into consideration in a court of law. Wells et al. found that the two lineup procedures yielded similar suspect ID rates (25 % for simultaneous and 27 % for sequential, a negligible, nonsignificant difference), whereas filler ID rates differed to a greater degree (18 % for simultaneous compared to 12 % for sequential, though this was still not a significant difference,  $p=0.09$ ). For suspect and filler IDs combined, 44 % of eyewitness made an ID from simultaneous lineups, and 40 % of eyewitness made an ID from sequential lineups (also not a significant difference,  $p>0.35$ ). Thus, for these key results, there were no statistically reliable differences in the choosing rates for simultaneous and sequential lineups in the AJS field study.

As described earlier, when suspect ID rates are similar, the posterior probability of guilt provides an objective measure of which procedure has a lower false ID rate and a higher correct ID rate. In laboratory studies, the researcher knows which suspect IDs are correct and which are incorrect, so the measure of interest (the diagnosticity ratio—that is, the posterior odds of guilt) can be directly computed. In the field study, the innocence or guilt of the suspect is not known. For that reason, Wells et al. (2011, 2014) used filler ID rates as a proxy measure. Because fillers are known to be innocent, Wells et al. reasoned that the procedure with the higher filler ID rate would also be the procedure with the higher innocent suspect ID rate. As they put it: “Hence, if the simultaneous procedure inflates rates of filler identifications relative to a sequential procedure, it logically follows that it also inflates risk to an innocent suspect” (p. 34).

In considering this claim, it should be kept in mind that the difference in simultaneous-versus-sequential filler ID rates in the AJS field study was *not statistically significant* in the analysis of interest (i.e., in the analysis of final decisions, which included the lap 2 decisions made by witnesses who asked to view the sequential lineup a second time). Instead, the difference was significant only when it was based on lap 1 decisions (not taking into account the final decisions of witnesses who asked for a second viewing). Although that analysis is relevant to laboratory studies, which typically do not allow a second viewing, it is not relevant to how sequential lineups are typically used in actual practice, which is the analysis of interest to policymakers (i.e. the final decision by the witness/victim). It may not be prudent to attach interpretative significance to the nonsignificant difference in filler ID rates in the analysis of interest.

Moreover, even if the nonsignificant trend in filler ID rates is taken seriously, it is not necessarily true that filler ID rates serve as a valid proxy for innocent suspect ID rates. This point is most easily appreciated by considering the results from a laboratory study that were reported by Carlson et al. (2008). When the data from their Fair Condition are collapsed across target-present and target-absent lineups (as if it were a field study with

**Table 1** Percentage of witnesses who picked a suspect, picked a filler, or rejected the lineup when simultaneous (SIM) or sequential (SEQ) lineups were used in the AJS field trial (Wells et al. 2011)

	SIM	SEQ
Picked a suspect	25 %	27 %
Picked a filler	18 %	12 %
Rejected lineup	57 %	61 %

suspect status unknown), the pattern of results looks very much like the pattern observed in the AJS field study. Table 2 shows the collapsed data from Carlson et al. (2008). As in the AJS field study, overall filler choosing rates were higher for the simultaneous procedure (bolded values in the second row of data under "Collapsed"). However, unlike in the AJS field study, we can uncollapse these laboratory data to determine whether or not the overall filler choosing rate is a useful proxy for the innocent suspect choosing rate. Table 2 also presents those results (bolded values in the first row of data under "Target absent"), and it is clear that, in this case, the sequential procedure yielded a *higher* (not a lower) innocent suspect ID rate, this despite the fact that the sequential procedure also yielded a lower filler identification rate. Thus, according to this study, filler ID rates do not necessarily predict innocent suspect ID rates (at least not when the data show the same pattern as was observed in the AJS field study). These findings serve as a reminder that intuitively reasonable inferences can be empirically wrong and therefore quite misleading.

In any case, the real question of interest has nothing to do with filler IDs (because fillers are "known innocents," they are not endangered when identified by an eyewitness)<sup>4</sup> but instead has to do with the *ground truth* of guilt versus innocence for suspects identified in the AJS field study. In our analysis of Phase 2 data, we focus specifically on measuring the ground truth regarding the guilt or innocence of suspects identified from simultaneous and sequential lineups in the AJS field trial. The key issue is whether the posterior probability of guilt is higher for one procedure or the other. Given that suspect choosing rates were similar, the procedure that yields the higher posterior probability of guilt is the one associated with a higher correct ID rate and a lower false ID rate. In Part A of our study, we track case outcomes across three of the four AJS field study sites (and ask: were the identified suspects ultimately adjudicated to be guilty or not guilty?) as a proxy measure of ground truth. In Part B of our study, we use expert ratings of evidentiary strength connecting the suspect to at least one of the crimes charged (as a proxy for likely guilt) as assessed by actual police investigators, prosecutors, defense attorneys, and judges in Austin as a measure of ground truth.

Given the previous discussion, it is perhaps not surprising that the prediction derived from recent laboratory-based ROC analyses (Carlson and Carlson 2014; Dobolyi and Dodson 2013; Gronlund et al. 2012; Mickes et al. 2012) and the Wells et al. (2011, 2014) prediction derived from filler picks in the AJS field study are diametrically opposed. The ROC data indicate that simultaneous lineups are diagnostically superior to sequential lineups. One implication of diagnostic superiority is that whenever the overall proportion of suspects identified from the two lineups happens to be the same, simultaneous lineups will result in a higher number of guilty suspect IDs and fewer innocent suspect IDs than sequential lineups. Thus, the ROC-based prediction is that because the overall proportion of suspects identified from the two lineups was approximately the same in the AJS field study, the posterior probability of guilt (i.e., the probability that an identified suspect is guilty) will be higher for the simultaneous lineup than for the sequential lineup. This outcome would mean that the correct ID rate is higher, and the false ID rate is lower, for simultaneous lineups compared to sequential

<sup>4</sup> Theoretically, they could be endangered if district attorneys actually prosecuted known innocent fillers, but this has not to our knowledge ever been demonstrated.

**Table 2** Percentage of participants who picked a suspect, picked a filler, or rejected the lineup when simultaneous (*SIM*) or sequential (*SEQ*) lineups were used in a laboratory study reported by Carlson et al. (2008).

	Collapsed		Target present		Target absent	
	SIM	SEQ	SIM	SEQ	SIM	SEQ
Picked a suspect	24 %	31 %	31 %	41 %	<b>16 %</b>	<b>20 %</b>
Picked a filler	<b>37 %</b>	<b>18 %</b>	22 %	20 %	51 %	16 %
Rejected lineup	40 %	52 %	47 %	39 %	33 %	64 %

These data are from the Fair Condition of Carlson et al. (2008), which is the one condition that yielded a pattern of results similar to the AJS field study when the data were collapsed over the *Target present* and *Target absent* conditions. For explanation of bold, see text

lineups. By contrast, using filler picks as a guide, the opposite prediction follows. Because the simultaneous procedure may inflate filler identifications relative to a sequential procedure, the prediction is that the simultaneous procedure also inflates the risk of misidentifying innocent suspects. In that case, the sequential procedure would be associated with a higher posterior probability of guilt. This outcome would mean that the correct ID rate is higher, and the false ID rate is lower, for sequential lineups compared to simultaneous lineups, which data to be presented here show to be untrue.

### Study A: Analysis of case outcomes

What is the relationship between the lineup presentation method (sequential vs. simultaneous) and the case dispositions of identified suspects? If more innocent suspects were misidentified from simultaneous lineups than from sequential lineups (as might be assumed based on filler picks), then one would expect that a smaller proportion of suspects identified from simultaneous lineups would be found guilty. If, instead, more innocent suspects were identified from sequential lineups than from simultaneous lineups (as might be assumed based on recent ROC analyses conducted in the laboratory), then one would expect that a smaller proportion of suspects identified from sequential lineups would be found guilty.

### Method

In order to ensure that the cases associated with the lineups from the AJS field study (Wells et al. 2011) had reached disposition, we required that at least one year pass since the lineups were presented. In order to assess the relationship between lineup presentation methods and case dispositions, we conducted an archival analysis with data collected from the AJS field study (Wells et al. 2011). We received disposition data from all four sites, and while the agencies were not able to provide us with dispositions for every case, we examined the data for all but one site. Because the descriptions of the outcomes varied by agency, we were only able to categorize the dispositions as having

been adjudicated guilty (by plea or judgment) versus not prosecuted. Dispositions from Charlotte-Mecklenburg County were not used because the study was prematurely discontinued based on changes in state law mandating the double-blind sequential procedure for lineup presentation. Thus, our analysis included cases from Austin, San Diego, and Tucson.

## Results

The cases for which dispositions were reported by the agencies are presented in Table 3. As is shown in the Table, the rate of guilty judgments (by verdict or plea bargain) among these cases is 38 %, with Austin having the highest (48 %) as compared to just 25 % in Tucson and 21 % in San Diego. The rate of guilty judgments appears much lower than the national average of 78 % in state courts, where the vast majority of all felony convictions in the U.S. occur (Durose and Langan 2003). One possible explanation for the differences in conviction rates is that our dataset primarily consisted of stranger crimes (suspect and victim unknown to each other), whereas in non-stranger crimes, the victim or witness often provides the name of the perpetrator and his/her relationship to the victim, rendering a lineup unnecessary. Another reason may be that more conservative criteria were used thereby lowering choosing rates (e.g. a “not sure” choice was made available; the instructions included both that “the suspect may or may not be in the lineup,” and that “the investigation will continue whether or not you identify someone”).

For present purposes, the key question concerns case dispositions for *suspects* identified from simultaneous and sequential lineups. We focus on suspect IDs because, with respect to lineups, the goal of the legal system is to maximize correct IDs (reducing the threat to society) while minimizing incorrect IDs (reducing the threat to innocent suspects). By comparison, filler IDs are relatively inconsequential because they do not increase or decrease the threat to anyone. Case disposition information was available for 32 suspects identified from a sequential lineup and 37 suspects identified from a simultaneous lineup.

What are the posterior odds of guilt for these suspect IDs? Of the 32 suspects identified from a sequential lineup, 21 were ultimately judged guilty and 11 were not prosecuted. Thus, by this measure, the posterior odds of guilt were  $21/11=1.91$ . Of the 37 suspects identified from a simultaneous lineup, 26 were ultimately judged guilty and 11 were not prosecuted. Thus, by this measure, the posterior odds of guilt were  $26/11=2.36$ . Expressed as a probability, the posterior probability of guilt for the sequential

**Table 3** Number of cases with dispositions provided by research site

Agency (study site)	<i>n</i>	Guilty	Not prosecuted	Total
Austin, TX	143	67	76	143
San Diego, CA	24	5	19	24
Tucson, AZ	69	17	52	69
Total	236	89 (38 %)	147 (62 %)	236

procedure,  $21/(21+11)=0.656$ , was lower than the posterior probability of guilt for the simultaneous procedure,  $26/(26+11)=0.703$ . Although the difference is small and not significant, the direction of the effect slightly favors the simultaneous lineup. Thus, these data offer no support for a sequential superiority effect in the real world and instead provide slight evidence for a simultaneous superiority effect (as predicted by recent laboratory-based ROC analyses).

It is important to emphasize that the finding by Wells et al. (2011, 2014) that simultaneous lineups lead to slightly more filler picks (a non-significant finding) ultimately *did not matter* in these cases in terms of the guilty or not prosecuted outcomes. This result indicates that “filler picks” are not necessarily representative of the more consequential error of picking an innocent suspect in a lineup. This conclusion accords with our earlier analysis of the Carlson et al. (2008) data summarized in Table 2. Based on the case disposition data we analyzed, 30 % (11 out of 37) of suspects identified from a simultaneous lineup were not prosecuted (and were perhaps innocent), whereas 34 % (11 out of 32) of suspects identified from a sequential lineup were not prosecuted (and were perhaps innocent). Thus, based on these results, if the goal is to protect innocent suspects, switching to the sequential lineup would not be advised.

### Study B: Evidentiary strength study

Because the case disposition measure used in Part A may be a noisy measure of ground truth (e.g., case outcomes are partly determined by the skill of the attorneys involved), the present study also included a second and arguably much better proxy for ground truth, namely, an “evidentiary strength” scale developed in large part by a number of police investigators, defense attorneys, prosecutors, and judges under the guidance of Police Foundation researchers (see Amendola and Slipka 2009). The instrument uses a 5-point Likert scale where a “5” means that the evidence is particularly strong in linking to the identified suspect, and a “1” means that the evidence is exceptionally weak in linking to the identified suspect. The scale requires ratings across six categories of evidence (physical evidence, suspect statement information, suspect history, victim characteristics, witness characteristics, and identification information) plus an overall evidentiary strength rating. Exemplars are provided on the scale to give concrete illustrations of what a particular rating means. The case files for suspects identified from simultaneous and sequential lineups were rated by an expert team of decision makers in the criminal justice system (police investigators, prosecutors, defense attorneys, and judges) who were blind to the type of lineup that was used. One of the main questions of interest was whether suspects identified from simultaneous lineups had higher or lower ratings of guilt, on average, than suspects identified from sequential lineups.

Horry, Halford, Brewer and Milne (2014) argued that the use of corroborating evidence to establish the ground truth of guilt versus innocence is potentially problematic if (1) the corroborating evidence influences police behavior (e.g., if it causes a non-blind lineup administrator to steer the witness towards the suspect) or (2) the eyewitness ID itself influences the search for further corroborating evidence. The first concern was minimized in the AJS field study by using blind administrators for both simultaneous

and sequential lineups. The second concern, while valid, would presumably apply equally to simultaneous and sequential lineups and would therefore be unlikely to bias our findings in favor of one lineup procedure or the other.

## Method

### Site selection

The study was conducted in Austin (Travis County), Texas, the site in the AJS field study (Wells et al. 2011) from which 70 % of the data were generated. The three other sites were excluded from this site for a variety of reasons. First, two sites (Charlotte, NC, and San Diego, CA) had limited sample sizes and the former had to discontinue participation early on when the state law mandated a sequential procedure. In Tucson, AZ, a study had been underway for some time without District Attorney involvement in the AJS study, and prior to the establishment of a methodology for the outcome analysis. Another reason to focus on the Austin data was to minimize random error that might be introduced by site variance (e.g., error variance associated with differences in protocol adherence, or other characteristics of the respondents or agency culture).

### Case selection

The cases were initially selected from the overall pool of cases in the AJS field study in which all the experimental protocols had been followed in phase one ( $n=340$ ) and were thusly classified as “pristine” by Wells et al. (2011). The cases included were criminal and primarily made up of assaults and aggravated assaults, burglaries, robberies, and thefts. Next, due to state law in Texas, and instructions from the District Attorney’s Office, we also eliminated any cases involving juvenile suspects ( $n=6$ ) and lineups associated with cases that involved sexual assault ( $n=6$ ), resulting in 328 lineups that met the criteria of the agency and research team. Additionally, we eliminated the 15 cases that were referred to the county attorney’s office (primarily due to their status as misdemeanors), resulting in a sample of 313 eligible lineups (156 simultaneous lineups and 157 sequential lineups).

A subset of these 313 cases was then randomly selected to be rated in the Phase 2 analysis. Specifically, we selected a random sample of 200 lineups<sup>5</sup> stratified by lineup presentation method in order to obtain relative balance among the pick types. Note that this random sampling step was performed as part of a broader study (AJS field study Phase 2) which included an experimental study investigating the extent to which knowledge of a suspect ID or lineup procedure influenced the interpretation of evidentiary strength for other case evidence (see Amendola et al. 2014). Here, we focus solely on evidentiary strength ratings associated with suspect identifications from simultaneous and sequential lineups because, as explained earlier, the probative value of these identifications directly indicates which lineup procedure is superior to the other. Upon further review of case details after the stratified random sampling procedure, an

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<sup>5</sup> As suggested by our power analysis.

additional 49 cases were found to be ineligible for inclusion by research staff (e.g., juvenile involvement, sexual assault, inconsistencies in case details, suspect not mentioned in case). After excluding these cases, the final analysis sample consisted of 151 cases (sequential  $n=75$ ; simultaneous  $n=76$ ). In this sample of cases, we had 22 suspect picks from a simultaneous lineup and 30 suspect picks from a sequential lineup to analyze. Filler picks were represented in 19 simultaneous lineups and 16 sequential lineups, and no picks were made in 29 of the sequentially presented lineups and 35 of the simultaneously presented lineups. These 151 photo arrays were rated by our team of case evaluators.

### Participants

Case evaluators were selected from a recruited pool of 26 criminal justice decision makers (10 female and 16 male). The cases were rated in various sessions held in the fall of 2012. On a given day, cases were rated by eight participants (2 each of police investigators, prosecutors, defense attorneys, and judges). Some of the raters had career experience that fell into more than one category (e.g., 2 raters had prior experience serving as a district attorney, as a defense attorney and as a judge) and could therefore serve in a different role on different days to balance out the expertise of the eight raters.

### Training

Training was provided to the participating criminal justice evaluators to explain how the instrument was developed, what the exemplars (rating scale anchors) represented, how they were derived, and how to rate each category of evidence independently. This training required a block of approximately 4–5 hours to complete.

Next, the evaluators practiced using the instrument on actual cases provided by an independent jurisdiction. This training began with a group session in which all of the case evaluators read the same case and came up with a rating. This was followed by a group discussion in which the variability in ratings was discussed in order to calibrate the ratings, so that all had an equal understanding of what constituted weak, moderate, and strong evidence, as well as how to arrive at a category score and overall case rating score. The remainder of the two-day training was spent evaluating 4–5 additional cases and conducting consensus discussions so that raters could best prepare for rating actual cases individually before engaging in a discussion with the remaining members in their group and making their final ratings.<sup>6</sup>

### Study oversight and monitoring

Research team members were on site for the entire time during which ratings were conducted in the fall of 2012. Two members of the research team oversaw the rating teams and assigned cases for each day, while a third team member ensured materials were sufficient for scoring and assisted in checking in the data at the end of each consensus session (also checking for missing data). Depending on the complexity of

<sup>6</sup> Each group was made up of one police investigator, one prosecutor, one defense attorney and one judge.

the case as estimated by the researchers, approximately 2 to 13 cases were provided to evaluators in any given 8-hour day.

#### Discussion and final rating process

After half of the day's cases had been rated by all individual evaluators (evaluators were provided with 'morning' and 'afternoon' cases), a member of the research team facilitated a discussion that began with raters (one at a time) providing their scores for all six categories of evidence followed by their overall case strength rating (down a column) that were transferred to a white board by the researcher. The facilitator and group reviewed the rows across, noting discrepancies of two points or more. The research protocol required that when such a discrepancy was found between any two evaluators within the team, or when the raters differed in their belief that a certain type of evidence was present or not, a facilitated discussion among evaluators was necessary. The purpose of this discussion was not to force raters to come up with the same scores. Instead, the purpose was to ensure that all raters had seen and/or considered all evidence thoroughly because of the limited time allotted to review the case (which would not necessarily be the case if the evaluators were working in their formal capacities).

The case evaluators were provided with case files stripped of case dispositions, and other necessary data, so as not to influence their determination of the case strength. All of the photo array cases involving identified suspects were assigned to two groups of raters (4 in each group) on a given day. The first group was provided with the cases inclusive of the photo array and associated pick type (but they were blind to the lineup presentation method). The second group examined the same cases, but all photo array information was redacted from the case altogether (including case details about the photo array, the photo array printout and associated pick types). Thus, their ratings were based on evidence that did not include the fact that a witness had identified the suspect from a lineup. The results were virtually identical whether or not the photo array information was included, so we present the results averaged across that manipulation.

## Results

The question of interest concerns the posterior probability of guilt (using expert ratings of evidentiary strength as a proxy) for suspects identified from simultaneous and sequential lineups in the Austin field study. As indicated earlier, laboratory-based ROC analyses (which usually find a simultaneous superiority effect) predict that the posterior probability of guilt—and therefore, average ratings of evidentiary strength (a proxy for "guilt")—will be higher for suspects identified from a simultaneous lineup. By contrast, using filler picks, the opposite prediction would be made (i.e., the posterior probability of guilt should be higher for suspects identified from a sequential lineup). The results again supported the prediction made by the laboratory-based ROC analyses. More specifically, the average evidentiary strength rating for the suspects identified from a simultaneous lineup (see Table 4) was 4.10, whereas the average rating of a suspect identified from a sequential lineup was 3.56, a difference that was statistically significant,  $t(50)=2.17$ ,  $p=0.035$ , and which represents a medium effect size (Cohen's  $d =$

**Table 4** Mean differences in evidentiary strength ratings (1–5 scale) by presentation method within pick types across all case outcomes

Pick Type	Sequential	Simultaneous	t-test, significance
No pick	2.76 (29) SD 1.40	2.89 (35) SD 1.32	n.s.
Suspect	3.56 (30) SD 1.00	4.10 (22) SD 0.69	$t(50)=2.17, p=0.0347$
Filler	2.74 (16) SD 1.21	2.87 (19) SD 1.36	n.s.
Total	(75)	(76)	

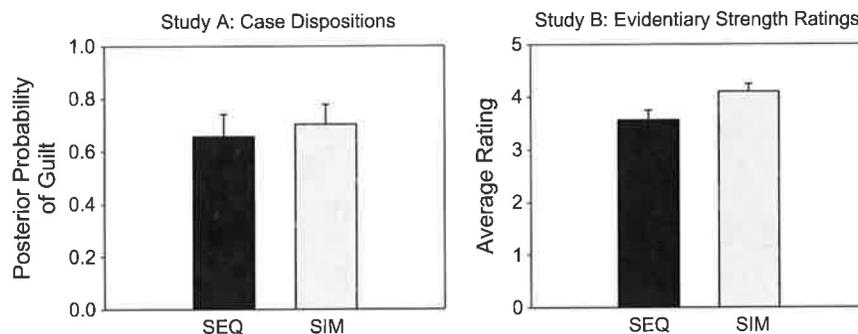
0.61). The differences in the average ratings for filler picks and no picks from simultaneous and sequential lineups were small and did not approach significance<sup>7</sup>. Figure 1 summarizes the main results from Study A and Study B. Taken together, these results point to a simultaneous superiority effect in the real world AJS field data.

## Discussion

The AJS field study presented a rare opportunity to evaluate the effectiveness of simultaneous and sequential lineups in the real world. In that study, actual eyewitnesses were randomly assigned to lineup type, and double-blind administration<sup>8</sup> was used. Moreover, overall suspect choosing rates fortuitously turned out to be similar for both lineup types (unlike in laboratory studies, where suspect choosing rates are often lower for sequential lineups). That unexpected result made it possible to directly compare the diagnostic performance of the two lineup procedures while avoiding the complexities that arise when suspect choosing rates differ (in which case ROC analysis is required to meaningfully compare lineup procedures). When suspect choosing rates are the same, one need not resort to ROC analysis because the posterior odds of guilt (a close relative of the diagnosticity ratio) directly indicates which lineup procedure has a higher correct ID rate and a lower false ID rate. Using case outcomes and, separately, using expert ratings of evidentiary strength both as proxies for guilt, the AJS field data indicate that the posterior odds of guilt are higher for suspects identified from simultaneous lineups compared to sequential lineups. This result will likely be surprising to some, but it is nevertheless highly consistent with recent laboratory-based ROC data suggesting that sequential lineups make it harder for eyewitnesses to tell the difference between innocent and guilty suspects.

<sup>7</sup> The higher average rating that was observed for suspect picks from simultaneous lineups should be balanced by a higher average rating for both filler picks and no picks from sequential lineups (because the guilty suspects who did not show up in sequential suspect picks should instead show up in the other two categories, increasing those ratings). However, that effect should be very small because there were many more filler picks and no picks in the original sample of 313 cases than suspect picks (thereby diluting the expected effect). Moreover, because only a random sample of these cases was selected for rating in Phase 2, the expected small difference in the average rating for filler picks and no picks from simultaneous and sequential lineups would have a wide confidence interval (one that would easily encompass the small and non-significant difference that was observed in favor of simultaneous lineups).

<sup>8</sup> Double blind administration is when not only the witness but also the lineup administrator is unaware of who the suspect is (the administrator is not the case detective) thereby eliminating the possibility that even an inadvertent cue could be sent to the witness during the photo array procedure.



**Fig. 1** Results of Study A (Case Dispositions) and Study B (Evidentiary Strength Ratings). The difference obtained in Study A was not statistically significant (although trended in favor of the simultaneous procedure), whereas the difference obtained in Study B was statistically significant. The results of both studies are consistent with laboratory-based ROC analyses suggesting that simultaneous (*SIM*) lineups are diagnostically superior to sequential (*SEQ*) lineups. Error bars represent standard errors

The applied implications of our findings are far reaching. It seems fair to say that the primary motivation for reforming the standard simultaneous lineup procedure has been to reduce mistaken false IDs of innocent suspects. The fact that in laboratory-based studies, sequential lineups typically yield a lower false ID rate (in addition to a lower correct ID rate) compared to simultaneous lineups has been interpreted to mean that the same result would likely be true in the real world. However, this does not appear to be the case. If we assume that the overall rates of choosing suspects were the same for simultaneous and sequential lineups in the AJS field study (as the data indicate), then the results reported here suggest that the sequential procedure is, if anything, associated with a *higher* false ID rate in the real world. This is a sobering conclusion given that the International Association of Chiefs of Police has crafted a model policy endorsing the sequential procedure and emphasizing that the simultaneous procedure should be avoided whenever possible. Indeed, up to 30 % of law enforcement agencies that use photo arrays have already switched (perhaps prematurely) to using the sequential procedure (Police Executive Research Forum, 2013), largely because sequential lineups lower the false ID rate in laboratory studies (and perhaps also because the filler pick rate for sequential lineups was lower in the AJS field study).

Why have years of laboratory studies found that the sequential procedure reduces the false ID rate, whereas the same result was not observed in the AJS field study? Did the laboratory studies get it wrong? A major difference in laboratory versus field settings has to do with fidelity or the extent to which laboratory studies can mimic conditions of the real world. One criticism of laboratory studies, for example, is that the consequences associated with decision-making errors (especially choosing an innocent suspect) are much lower than in real-world settings where people's lives are at stake. For this reason alone, real eyewitnesses may be more cautious (i.e., more conservative) than participants in a laboratory study. In addition, the AJS field study used special instructions that were clearly designed to encourage conservative responding. For example, in addition to the standard instruction typically used in laboratory studies (namely,

"the person who committed the crime may or may not have been included in the lineup"), the AJS field study also included instructions telling witnesses that they "did not have to make an identification" and that "the investigation would continue even if they did not identify someone." Such instructions are by no means unique to this study and are often used by law enforcement agencies. As noted by Wells et al. (2011), instructions like these "...helped make sure that the witness would not feel undue pressure to make an identification" (p. 9). That is simply another way of saying that the instructions helped to induce conservative responding. The fact that lineup instructions can be used to bring about a more conservative decision criterion has been noted by others (Brewer et al. 2005; Clark 2005), but the point does not appear to be widely appreciated in the eyewitness identification literature. Beyond instructions, the inclusion of a "not sure" response option in the AJS field study likely yielded even more conservative responding by siphoning off low-confidence IDs that would have otherwise occurred. The fact that deliberate steps were taken to induce conservative responding most likely explains why overall suspect choosing rates were rather low in the AJS field study (and why choosing rates did not differ for simultaneous and sequential lineups).

The fact that the overall suspect choosing rate associated with a particular lineup procedure is under the control of policymakers (and hence is a "system variable") should be emphasized because, according to one theory (Lindsay and Wells 1985; Wells 1984), witnesses presented with a simultaneous lineup experience pressure to make a "relative judgment." That is, they experience pressure to identify the lineup member who looks most like the perpetrator. However, as just described, pressure to make an ID can be easily reduced—or increased for that matter—by a variety of simple methods (e.g., changes in protocol such as offering an unsure option and noting that the suspect may not be in the photo array). The use of these methods will reduce suspect choosing rates for both lineup procedures and may also have the fortuitous effect of producing equivalent suspect choosing rates by effectively cancelling out any extra pressure to choose that is theoretically associated with a relative judgment strategy (thereby erasing the lower suspect choosing rate often associated with sequential lineups in laboratory studies). Indeed, that seems to be what happened in the AJS field study. The results of this study suggest that when standardized instructions are used to induce more conservative responding, the pressure to choose from simultaneous lineups matches that of sequential lineups. Under those conditions, simultaneous lineups appear to be diagnostically superior to sequential lineups (see Fig. 1).

What would the implications of our findings be for jurisdictions in which suspect choosing rates were thought to be higher for simultaneous than sequential lineups (as is often true in laboratory studies)? Might sequential lineups be preferred under those conditions because of their lower false ID rates? In our view, the answer is clearly "no." A jurisdiction that uses simultaneous lineups and that wishes to reduce the false ID rate (and is willing to tolerate the loss of correct IDs that will also occur) has two choices: (1) switch to the diagnostically inferior sequential lineup procedure (which induces conservative responding while also making it harder for eyewitnesses to tell the difference between innocent and guilty suspects), or (2) stick with the simultaneous procedure and take steps to induce more conservative responding (which would reduce the false ID rate

without making it more difficult for eyewitnesses to tell the difference between innocent and guilty suspects). It would only make sense to switch to the sequential procedure if the overall suspect ID rate were a fixed, immutable variable. In truth, it is to a large extent a manipulable (system) variable.<sup>9</sup> That being the case, there is never a reason to switch to a diagnostically inferior lineup procedure to achieve a lower false ID rate because that approach depresses the correct ID rate more than is necessary to achieve the desired outcome. A better approach would be to induce more conservative responding using the diagnostically superior procedure, which achieves the desired outcome while also maintaining the highest possible correct ID rate. More conservative responding can be achieved before the fact by using cautionary instructions, which causes witnesses to withhold low-confidence IDs that they might otherwise make, or it can be achieved after the fact by taking confidence ratings and only counting IDs made with some criterion level of confidence (such as high confidence). These two strategies are theoretically identical in that both result in the withholding of low-confidence IDs that would otherwise result in higher correct and false ID rates. Yet another complementary approach to reducing the false ID rate without switching to a diagnostically inferior lineup procedure would be to require police investigators to provide greater justification for including a particular person as a suspect prior to proceeding with the lineup procedure (thereby reducing the chances that an innocent person would end up in a lineup in the first place).

In Phase 1 of the AJS field study (Wells et al. 2014), suspect ID rates were similar for simultaneous and sequential lineups, but filler ID rates were lower for sequential lineups (though not significantly so). As noted earlier, a filler ID does not endanger the identified individual and is therefore not treated as the equivalent of a false ID. Nevertheless, Steblay et al. (2011) argued that a filler ID from a target-absent lineup "spoils" a witness should the real perpetrator be captured and placed in a different lineup at a later time. The fact that sequential lineups are less likely to spoil witnesses in this way has been advanced as a separate argument in favor of that procedure. However, this is a debatable point because research shows that witnesses who make a filler ID when they are initially tested using a blank lineup (i.e., a lineup that contains only fillers) exhibit reduced accuracy compared to other eyewitnesses when they are tested again using a different lineup (Palmer et al. 2012; Wells 1984). Thus, an argument could be made that the simultaneous procedure is better not only because it reduces the risk to innocent suspects (as shown in Fig. 1) but also because it provides useful information about witnesses whose IDs should be considered less trustworthy if they are tested again (namely, those who identified a filler on a previous test). Nevertheless, if policymakers were persuaded that it is important to reduce filler IDs in order to protect eyewitness credibility, one need not switch to the diagnostically inferior sequential lineup, which would achieve that goal while increasing the risk to innocent suspects. Instead, additional steps could be taken to induce even more conservative responding using the diagnostically superior simultaneous lineup.

<sup>9</sup> If the instructions were altered to say "too many guilty suspects are being released, so please make an ID even if you have only a slight hunch that you see the perpetrator in the lineup," then almost all witnesses would make an identification, whereas almost no one would make an ID if the instructions instead said "too many innocent suspects have been misidentified in recent years, so please don't make any ID unless you are 100 % certain of being correct and could not possibly be making an error".

What is it about simultaneous lineups that make them diagnostically superior to sequential lineups? A new theory about that issue was recently proposed by Wixted and Mickes (2014). The essence of their theory holds that a simultaneous lineup (but not a sequential lineup) provides immediate, diagnostically relevant information that an eyewitness can use to help identify a guilty suspect and to avoid misidentifying an innocent suspect. Specifically, a simultaneous lineup immediately reveals to the eyewitness that every person in the lineup shares certain facial features (e.g., every face is that of a clean-shaven white male in his mid-20s with short brown hair)—features that will also be shared by innocent and guilty suspects alike. Everyone in the lineup shares these features because those are the features that were used to apprehend the suspect and to select the fillers. Because these features are shared, they are *non-diagnostic* and therefore cannot be relied upon to tell the difference between innocent and guilty suspects. Instead, the shared features need to be discounted by the eyewitness in order to make an accurate ID based on other, non-shared features (e.g., shape of face, eyebrow thickness). Although simultaneous lineups draw attention to non-diagnostic (shared) features and thereby make it possible for eyewitnesses to attach less weight to them, sequential lineups do not because, in that procedure, faces are presented in isolation. Thus, when a sequential lineup is used, the witness will be more inclined to take into consideration shared features, making it harder to tell if a suspect is the perpetrator or not without other discriminable features.

In summary, our results suggest that when suspect choosing rates are similar, as they were in the AJS field study, the diagnostic accuracy of simultaneous lineups is higher than that of sequential lineups. The fact that filler choosing rates are also higher for simultaneous lineups turns out to be an irrelevant consideration (in agreement with a laboratory study that yielded data similar to that of the field study; see Table 2). The current results suggest that not only is the correct ID rate higher for simultaneous versus sequential lineups, but also the false ID rate is lower, thereby balancing the concerns of justice perfectly (that innocent persons are not convicted and that guilty persons are). In light of these findings, it is hard to imagine why sequential lineups would be preferred to simultaneous lineups in practice.

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**Karen L. Amendola** has 20 years of experience in public safety testing, training, research, technology, and assessment. With the Police Foundation for almost 20 years, Dr. Amendola currently serves as the Chief Behavioral Scientist. Amendola earned both her Ph.D. and M.A. in Industrial and Organizational Psychology from George Mason University. Karen has worked with dozens of local, state, and federal agencies. Dr. Amendola is Associate Editor for *Psychology and Law* for the just released ten-volume Encyclopedia of Criminology and Criminal Justice published by Springer Verlag, New York.

**Joh T. Wixted** is a Distinguished Professor at the University of California, San Diego. He received his Ph.D. in Clinical Psychology from Emory University, and his research addresses a wide range of issues pertaining to memory, including cognitive models of recollection and familiarity, signal-detection theory, the neuroanatomical basis of declarative memory, memory consolidation, and eyewitness memory. He is currently an associate editor at *Psychological Review*, and he is an author on more than 100 research articles.