



INFORMATION BULLETIN

OAKLAND POLICE DEPARTMENT

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Double Blind Sequential Line-ups: Background and Information

Background¹

Why are we doing this?

The prominent law enforcement eyewitness identification procedure currently used in Alameda County has been the simultaneous photo line-up, also known as a "six-pack." Under this procedure, it is common practice for an investigator with knowledge of the case, and the identity of the suspect, to show the photo line-up to witnesses. At the July 18, 2012 Operations Working Group (OWG) meeting, the Chair brought a new item of business from the Alameda County Chiefs of Police and Sheriffs Association regarding the county moving to double blind sequential line-ups (DBSL). The police chiefs, Sheriff and District Attorney wanted the OWG to put together a county wide policy adopting the DBSL procedure. This document is intended to layout some background information on DBSL to help move towards adopting this new procedure. It is important to point out that changing current practice in no way implies any doubt about the integrity and professionalism of past investigative methods, however this change is expected to help decrease the likelihood of misidentifications and eliminate the possibility of unintentionally influencing a witness, or amplifying a witness's level of confidence in any identification.

Eyewitness misidentification has been implicated in a majority of the DNA exonerations that have occurred throughout the country; consequently the methods used by criminal investigators to identify suspects have come under increased scrutiny. In June 1996 the National Institute of Justice (NIJ) published a report examining DNA exonerations: *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial* found that eyewitness testimony had played a key role in the wrongful convictions of innocent persons in the majority of cases examined. In May of 1998 the NIJ convened a multidisciplinary working group to develop and publish a best practices guide for law enforcement based upon the state of knowledge of research on the subject of eyewitness identification.

The resulting NIJ research report *Eyewitness Evidence: A Guide for Law Enforcement* acknowledges that both unintentional investigator behavior and *simultaneous* presentation of line-up photographs may each diminish the reliability of the identification. The report authors recognized "scientific research indicates that identification procedures such as line-ups and photo arrays produce more reliable evidence when the individual line-up members or photographs are shown to the witness *sequentially* (one at a time) rather than simultaneously."

Eyewitness identifications and specifically, photographic line-ups have now been the subject of much study for decades, some of the research findings include:

¹ Authored by: Chief Mike McQuiston and Lieutenant John Geissberger, Albany Police Department

"Simultaneous photo display encourages *relative judgment* (i.e., a witness comparing photos side by side is more likely to pick a person who looks *most like* the perpetrator-regardless of whether the person is, in fact, the perpetrator)."

"25 years of scientific research on memory and interview techniques convincingly demonstrates that the likelihood of mistaken identification drops sharply if line-ups are *blind* (that is, conducted by someone who does not know who the suspect is) and *sequential*."

"The most common error in the DNA exoneration cases was the identification of a person the police suspected (a person who looked similar to the real perpetrator) but who turned out to be innocent. The typical simultaneous photo array shown in these cases did not contain the photo of the real perpetrator, and the mistaken eyewitness was, in effect, identifying a "filler" photo" (Source: *The Why and How of Blind Sequential Line up Reform* - Author: Jeanne Schleh, Assistant Ramsey County [MN] Attorney).

Law Enforcement Concerns

This process will become overly burdensome on investigators, and result in prosecutorial complications or additional costs (i.e., overtime).

Some in the law enforcement community have challenged blind administration as a matter of operational significance; however in jurisdictions (large and small) where such policies have been adopted *no significant operational challenges have been reported*. Jurisdictions who have adopted these practices report that defense challenges to the line-up procedure (admissibility, reliability, etc.) have stopped. Our proposed lineup protocols are modeled after the Santa Clara County lineup protocols which have been in place for over a decade of operational use, with no significant problems having surfaced.

What about the "Illinois Study" that showed the sequential, double-blind method wasn't superior when compared to the simultaneous method?

The Illinois study has been widely criticized for methodological errors and potential bias in data collection. The study contained a ruinous confound in the way it was constructed and so it wasn't an "apples to apples" comparison. Remarkably, the Illinois study reports evidence that eyewitness memory actually *improved* over time. The Illinois report has been characterized by researchers as an example of a missed opportunity.

Isn't this just something that's being pushed by special interest groups?

Criminal justice agencies in multiple states have transitioned to these evidence based practices to support more reliable eyewitness identifications. Well over 200 agencies in the State of Wisconsin alone now employ these line-up **best practices**.

Similar procedures are now legally mandated in the states of Oregon, New Jersey, Connecticut, Texas and North Carolina. Recently, Florida's Sixth Judicial District, which includes Pinellas and Pasco counties, implemented similar procedures, joining the Hillsborough County Sheriff's Office and the Tampa Police Department who had earlier adopted such policies.

Procedural Frequently Asked Questions²

1. Do I use the same procedure for live lineups as photo lineups?

Yes.

2. Does this change the way I conduct in-field show-ups?

No. Since in-field show-ups are used to show the witness a single suspect apprehended near the scene, there is no danger of the witness making comparisons.

3. What happens if the witness picks out the very first photo/person? Do I continue showing the rest of the photos?

Yes.

4. If the witness wants to see a particular photo again, may I show it?

Yes, but you must show all the photos/persons again in the same order. In other words, if the witness says, "I want to see number three again," you shall tell the witness that you will show all the photos/persons again. The witness can spend as much and as little time on any one photo/person that he or she wants.

5. Can a witness compare particular photos if he or she wants to?

No. The witness can only look at one photo/person at a time. Make sure that you remove one photo/person before showing a new one.

6. Why video or audio tape the line-up procedure?

Juries have come to expect to see as much of police procedures as they can, and when there is no recording; defendants can make all sorts of unfounded allegations against the police or prosecutors. A recording allows an officer to catch important details that might have been missed while he or she was busy conducting the actual line-up. Videotaping a line-up is the preferred method of documentation, but audio recording is acceptable.

7. Why do we have to shuffle the order of the suspect and filler between line-ups for different witnesses?

A case was reversed in California where latter investigation revealed that all the witnesses were instructed by the first witness to pick out a particular number suspect in the line-up. Neither the police nor the prosecutors knew about this fraud, but we can easily prevent it from happening again by simply shuffling the deck.

² From Santa Clara County line-up protocol