A National Survey of

Eyewitness Identification Procedures in

Law Enforcement Agencies*

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TABLE OF CONTENTS

LIST OF TABLES IN MAIN TEXT

LIST OF FIGURES IN MAIN TEXT

EXECUTIVE SUMMARY

When a crime is committed, the identification of a suspect by the victim or by witnesses can be a critical factor in determining whether the perpetrator is identified, arrested, and convicted. Every day, thousands of crime victims and witnesses work with police agencies to try to identify suspects through various procedures: lineups of persons, photo lineups, composite sketches, searches of "mugshot" books, and in cases where police quickly apprehend a suspect near the crime scene, "show-ups," in which the victim is asked whether the suspect is the perpetrator.

Eyewitness identifications can be compelling evidence in court and can be a key to obtaining convictions (Schuster, 2007).

However, in recent decades there has been a growing recognition that eyewitness identifications are often unreliable. In large part, doubts about witness identifications have resulted from news media stories about persons who were convicted of crimes and were later exonerated, often because of the advent of DNA testing. In many cases, the convictions that were later overturned had been based on eyewitness identifications (InnocenceProject.org, 2012).

Furthermore, there is an increasing body of research by psychologists about the nature of human memory, and on techniques that can be used to improve the reliability and accuracy of people's memories of specific incidents. As law enforcement agencies have focused on increasing the reliability of witness identifications resulting from lineups of individuals or photographs, researchers have continued to examine blind and non-blind lineup administration, sequential and simultaneous lineup presentation, and other issues

(e.g. "filler"[1] characteristics and witness instructions) related to lineup composition and presentation. A blind administration is one in which the administrator is unaware of which lineup member is the suspect. In a sequential lineup, an eyewitness views lineup members or photographs one at a time, and is required to make a decision before viewing the next lineup member. In a simultaneous lineup, an eyewitness views all lineup members or photographs at the same time.

In 1998, the National Institute of Justice (NIJ) assembled a working group of leading researchers and practitioners to make recommendations for law enforcement on eyewitness identification procedures. The working group's report, *Eyewitness Evidence: A Guide for Law Enforcement* (NIJ Guide), was published in 1999.[2]

The NIJ Guide presents research and practical perspectives on eyewitness identification and provides recommendations to promote the accuracy and reliability of eyewitness evidence. The guide covers best practices for the initial reporting of a crime, including the information that a 911 call taker or first responder should attempt to elicit from a witness, as well as follow-up interviewing of a witness. Procedures for mugshot book reviews, composite sketches, show-ups and lineups are also addressed.

Since the NIJ Guide was released, laboratory research and field studies in police agencies have produced additional findings that continue to support its recommended guidelines and practices.

The 1999 NIJ Guide offered dozens of detailed recommendations to law enforcement agencies, including the following:

[1] Fillers are individuals who are not suspected of the crime, but who are used to fill out the remaining spots in a live or photographic lineup.
[2] The Guide is available online at https://www.ncjrs.gov/pdffiles1/nij/178240.pdf

1. Develop policies and procedures for eyewitness identification of suspects (p. 2);

2. Provide standardized instructions to witnesses (p. 31);

3. Have only one suspect per lineup (p. 29);

4. Use a minimum of five "fillers" in photographic lineups (p. 29);

5. Standardize the photographs of the lineup members (p. 29);

6. Record witness statements (p. 35); and

7. Prepare lineup reports (p. 38).

In 2003, NIJ published *Eyewitness Evidence: A Trainer's Manual for Law Enforcement* (NIJ Training Manual) to assist law enforcement trainers. The Training Manual was designed to define and verify minimum levels of performance for each procedure and provide the materials needed to establish and maintain the knowledge and skills for performance of the procedures recommended in the 1999 NIJ Guide.

Because the NIJ Guide did not state a preference for either sequential or simultaneous lineup procedures, the Training Manual provides training materials for both sequential and simultaneous lineup administration.

On the question of whether lineups should be conducted by "blind" administrators, the NIJ Guide noted that "unintentional cues (e.g., body language, tone of voice) may negatively impact the reliability of eyewitness evidence," and that "psychology researchers have noted that such influences could be avoided if 'blind' identification procedures were employed." A number of research studies have produced evidence that if the person conducting a lineup is aware of which individual in

the lineup is the suspect, he or she may inadvertently and unknowingly give nonverbal cues to the eyewitness, undermining the validity of the process (Phillips, McAuliff, Kovera, & Cutler, 1999; Garrioch & Brimacombe, 2001; Greathouse & Kovera, 2009).

However, the 1999 NIJ Guide stopped short of calling for law enforcement agencies to adopt blind lineup procedures, saying that such procedures "may be impractical for some jurisdictions to implement," because law enforcement agencies may not have sufficient personnel to ensure that a "blind" administrator could be available at all times in all police facilities (1999 NIJ Guide, p. 9). The NIJ Guide recommended further study of blind lineup administration.

On the question of sequential vs. simultaneous lineups, the NIJ Guide stated that "scientific research indicates that identification procedures such as lineups and photo arrays produce more reliable evidence when the individual lineup members or photographs are shown to the witness sequentially—one at a time—rather than simultaneously." (1999 NIJ Guide, p. 9). However, the NIJ Guide stated that at that time, there was no consensus about a particular method that could be recommended as a preferred procedure.

Since 1999, there have been three published field studies that examine the impact of employing a sequential lineup procedure. Two field studies indicate that blind sequential procedures improve the reliability of photo lineups and reduce mistaken eyewitness identifications, particularly in suspect-absent lineups (Klobuchar, Steblay, and Caligiuri, 2006; Wells, Steblay, and Dysart, 2011). The third study, conducted in Illinois in 2006, suggests that blind sequential lineups lead to a reduced rate of suspect identifications as well as an increased rate of known false errors (Mecklenburg, 2006). Some researchers

have questioned the methodology of the Illinois study and have urged researchers to conduct additional field studies to determine which lineup procedure yields the most reliable results (Schacter, Dawes, Jacoby, Kahneman, Lempert, Roediger, & Rosenthal, 2007; Ross & Malpass, 2008; Steblay, 2010).

With support from NIJ, the Police Executive Research Forum (PERF), a Washington, D.C.-based research organization, conducted the project described in this report, which was designed to obtain the first nationwide assessment of the state of the field regarding eyewitness identification procedures used by law enforcement agencies. The PERF project included several elements:

- A comprehensive review of the research literature on eyewitness identification procedures;
- A national survey of a random stratified sample of law enforcement agencies in the United States regarding their eyewitness identification policies, training, and procedures; and
- A series of in-depth follow-up interviews of officials in 30 selected agencies.

Findings

PERF's national eyewitness identification survey shows that police agencies employ a variety of procedures related to eyewitness identification and that most police agencies have not fully implemented all of the recommendations from the NIJ Guide. Some of the NIJ guidelines have been implemented in many agencies, while other guidelines have been implemented in less than half of the surveyed police agencies. Most surveyed agencies do not have written policies for eyewitness identification procedures. Key findings of the survey include the following:

Existing Practice: The most commonly used procedure is the photo lineup, which is used by 94.1 percent of agencies. The next most frequently used procedures are show-ups (used by 61.8% of the responding agencies), composite sketches (35.5%), mugshot searches (28.8%), and live lineups (21.4%). In general, when agencies use a particular procedure, they use it for most, if not all, Part I offenses in the FBI's UCR system.

Most agencies have no written policy for the five critical eyewitness procedures examined in this survey: 76.9 percent report no written policy for show-ups, 64.3 percent report no written policy for photo lineups, 84 percent report no written policy for live lineups, 90.6 percent report no written policy for composites, and 92.1 percent report no written policy for mugshot searches. However, large agencies (500 or more sworn officers) are consistently more likely to report having a written policy for each of the procedures.[3]

Training: 68 percent of agencies that conduct photo lineups provide training on related lineup procedures. 44 percent of agencies that conduct live lineups provide training on live lineup administration procedures. Large agencies (500 or more sworn officers) are more likely to provide training on both procedures than small agencies (25 or fewer sworn officers). Of the agencies that provide training, half provide their own training, and over a quarter receive training from prosecutors. Significant percentages of these agencies train their personnel in the general principles that "multiple witnesses should participate in identification procedures separately" (47.4%); that "administrators must ensure that no information regarding prior arrests is visible to witness on photos" (42.1%); and that "a statement of certainty should be obtained for the witness identification" (41.4%). While 69 percent of agencies train lineup administrators to

[3] Large agencies (500 or more officers) report having policies at the following rate: Show-ups (66.7%), photo lineups (75.0%), live lineups (56.6%), composites (28.5%), and mugshot searches (12.5%).

instruct witnesses that the perpetrator may or may not be present in the lineup, there is less uniformity and consistency with respect to training administrators to provide three other NIJ recommended instructions.[4] However, more than half of agencies train administrators to "avoid saying anything that may influence the witness's selection." Fewer than 10 percent of all responding agencies reported having training for how to compose live lineups.

Witness Instructions: 83.9 percent of the agencies that use photo lineups and 87.6 percent of agencies that use live lineups provide instructions that "the perpetrator may or may not be present" to the witnesses or victims prior to viewing the lineup. However, just over half of the agencies provide three other instructions recommended by the 1999 NIJ Guide.[5] While agencies use a number of different approaches to providing instructions to eyewitnesses, when they use photo and live lineups, they more likely rely upon standardized instructions, either written or verbally. Just over 40 percent of agencies reported using standardized written instructions for photo lineups (compared to 46% for live lineups) and 43 percent of agencies reported using standardized verbal instructions for photo lineups (compared to 39 percent for live lineups). Agencies also regularly provide witnesses with additional types of specific instructions.

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[4] The 1999 NIJ Guide recommends that witness be instructed that (1) the perpetrator may or may not be in the lineup; (2) it is just as important to eliminate innocent persons from suspicion as it is to identify guilty parties; (3) the appearance of the perpetrator may have changed since the incident, and (4) the investigation will continue whether or not an identification is made.

[5] Ibid.

Number of Lineup Members: Of agencies that use *photo lineups*, nearly 70 percent allow only one suspect in each lineup; 14.4 percent do not have a clear policy on the number of suspects allowed in the lineup. Of the agencies that use *live lineups*, 60.8 percent allow only one suspect per lineup, and 27.8 percent of agencies reported that they have no clear policy on the number of suspects that should be in the lineup. Most agencies (82.6%) use five fillers in photo lineups, while 95.7 percent of agencies use four or more fillers in live lineups.

Blind vs. Non-Blind Procedures: The most commonly reported procedure currently in use for administration of photo lineups (69%) and live lineups (92.1%) is a non-blind administrator—that is, the administrator knows which of the photographs or individuals is the suspect. This is consistently the most common method used by more than half of agencies regardless of agency size.

Sequential vs. Simultaneous Procedures: The most commonly reported procedure for administration of a *photo lineup* is the simultaneous presentation of the photographs (presenting photos all at once rather than one at a time) which is used by 68 percent of agencies. Likewise, for *live* lineups the most common method of presenting lineup members is simultaneously (65.2%), rather than one at a time.

When we consider blind or non-blind procedures in combination with sequential or simultaneous procedures, the majority of agencies use *non-blind simultaneous procedures*, which are considered the traditional approach to administering lineups. In agencies that use *photo lineups*, 57.8 percent use non-blind simultaneous. Of those agencies that use *live lineups*, 61.8 percent use non-blind simultaneous.

The Number of Witness Viewings: Only 41.9 percent of agencies had a clear policy for the number of times that a witness could view a lineup. Just over a quarter of the agencies allow witnesses to see photographs only once, and approximately 10 percent allow for witnesses to see the photographs twice. The remaining agencies either don't have a policy, or their policy doesn't specify the number of viewings allowed by a witness.

Recording Witness Statements and Preparing Lineup Reports: The vast majority of agencies document positive identifications by witnesses during identification procedures. For example, 95.2 percent of agencies using photo lineups document a positive identification and 76.2 percent document statements of certainty related to a positive identification. Fewer agencies document non-identifications and statements of certainty related to those non-identifications. Only 63.2 percent of agencies using photo lineups reported that they document non-identifications, and only 43.9 percent reported that they document statements related to certainty of the non-identification.

A written report was the most common method of documenting a show-up, photo lineup, live lineup, or mugshot search. Agencies also use video and audio recording to document photo and live lineups. 21 percent of agencies reported using either audio or video recording to document *photo lineups* and 17 percent reported using both. 24 percent of agencies reported using either audio or video recording to document *live lineups* and 22 percent reported using both.

Historical View of Changes: Approximately 56 percent of all responding agencies reported one or more changes in policy or procedure since 1999. Most changes appear to have occurred recently, in 2010 or 2011. The following chart presents the type of

procedural or policy change and the percent of respondents indicating they had made a change since 1999.

Procedure/Policy Change	% of Agencies Reporting Change Made Since 1999
Live lineup instructions n=139	39.3
Began use of computer for photo lineups n=396	39.2
Administrator does not know identity or placement of suspect in photo lineup (blind) n=365	38.8
Presenting suspects to witnesses one at a time in photo lineup (sequential) n=379	37.3
Photo lineup instructions n=498	33.9
Number of live lineup fillers n=135	32.0
Procedures for selecting lineup fillers n=434	31.0
Show-up instructions n=325	29.2
Administrator does not know identity or placement of suspect in live lineup (blind) n=118	27.0
Presenting suspects to witnesses one at a time in live lineup (sequential) n=109	19.5
Number of photo lineup fillers N=473	17.3

n = the number of responding agencies

Implications of the Survey

The survey shows that law enforcement agencies lack uniformity with respect to the procedures that they employ related to eyewitness identification. In addition, most agencies have not fully implemented the recommendations in the NIJ Guide. Some of the NIJ guidelines have been implemented in many agencies, while other guidelines have been implemented in less than half of the surveyed agencies. Since 1999, some law enforcement agencies have modified their practices in some areas, but not in others. Given the importance of eyewitness identifications in the justice system and the growing number of exonerations of persons who were convicted based on eyewitness identifications, law enforcement agencies should work with prosecutors and other criminal justice agencies to assess and refine their current eyewitness identification practices and to adopt the procedures recommended in the 1999 NIJ Guide.

The Need for Additional Research

The 1999 NIJ Guide stopped short of recommending blind and sequential lineup procedures. Since that time, there have been three published field studies related to the use of blind and sequential procedures. While some academics, legal scholars and other criminal justice experts have relied on two of these studies to advocate for blind sequential lineup procedures, most law enforcement agencies have retained non-blind and simultaneous lineup administration methods. **A small, but growing, number of law enforcement agencies have adopted and implemented blind and sequential procedures. Inasmuch as both blind and non-blind administrators and sequential**

and simultaneous procedures are being used in different agencies, field and case studies could be performed to continue to evaluate the effectiveness of these eyewitness procedures. Additional field testing of these procedures in large, medium and small agencies would likely benefit the criminal justice system and provide practitioners with additional research that could be used to improve the efficacy of eyewitness identification procedures.

Summary

The results of this survey show that law enforcement agencies for the most part have not implemented the full range of the 1999 NIJ guidelines. Many agencies have adopted a few of the guidelines, but some guidelines have been adopted by less than half of the agencies. Many agencies do not have written eyewitness identification policies, do not provide training to lineup administrators, and do not provide all recommended instructions to witnesses. Due to the growing number of exonerations based on mistaken eyewitness identifications and the importance of eyewitness identification evidence in the criminal justice system, it is critically important that law enforcement agencies review their eyewitness identification policies, practices and training to ensure that they are in line with the 1999 NIJ Guide.

Chapter 1

INTRODUCTION

Eyewitness identification and testimony are fundamental to the United States' criminal justice system. Eyewitnesses often are crucial to charging someone with a crime and to ultimately solving crimes (Schuster, 2007). However, eyewitness testimony is fallible. Memories can be faulty or incomplete. Eyewitnesses can have questionable vision or can be uncertain or confused. In addition, research demonstrates that some lineup procedures can actually make it more difficult for eyewitnesses to identify the culprit (Malpass, Tredoux, and McQuiston-Surrett, 2009; Gronlund, Andersen, & Perry, 2013). A stark reminder that eyewitness evidence is far from perfect is the significant number of exonerations that have occurred since 1989 as a result of advances in forensic DNA evidence, including exonerations of death-row inmates (InnocenceProject.org, 2013).

For almost 100 years, psychologists have studied human memory and its influence on eyewitness identification. In recent decades, based on laboratory experiments and field studies, a number of psychologists published recommendations aimed at making eyewitness identification procedures more reliable (Steblay et al., 2011). Some law enforcement agencies across the country have modified their eyewitness identification procedures in response to the new research. Some agencies have done so on their own initiative, while others made changes as a result of state legislation or other legal mandates[6]. However, the extent of these changes has not been documented, and until we conducted the survey of law enforcement agencies for this project, we did not know how

[6] New Jersey, Wisconsin and North Carolina have passed legislation mandating specific lineup procedures.

many law enforcement agencies have made changes, or the specific procedures they have changed.

To try to answer these and other questions, the Police Executive Research Forum (PERF), with the support of the National Institute of Justice, conducted a national survey of police agencies regarding their practices in this area. This report describes the results of that survey.

The Role that Human Memory Plays in Eyewitness Identification

Human memory has long been a topic of interest in the field of psychology, and for the past century it has been the subject of inquiry and experimentation. Using filmed events and staged crimes, psychologists have found that eyewitnesses frequently make mistakes, even when they are confident about their ability to recall events and identify culprits (Wells and Loftus, 2003). Thinking of the human eye as a camera and the mind as a video recording is <u>not</u> a good analogy. Rather, people interpret what they see in many different ways, and their memories can be altered by external influences and can fade over time (Loftus & Ketcham, 1991).

For years, psychologists tried to persuade officials in the criminal justice system, especially the courts, of the problems that faulty human memory can have in identifying culprits correctly, but they made little progress (Doyle, 2005). The court system's resistance to change is attributable to several factors, including the incremental nature of research, the conservative nature of the judiciary, and the topic of memory itself. Human memory and recall are fundamental parts of being human, and people have strong feelings about their abilities to recall what they have seen. While most people agree that everyone

forgets certain things, many people do not realize the extent to which people remember things incorrectly. The research into human memory demonstrates that people do, in fact, remember things incorrectly, and that our memories of a specific event often change over time. These variations in memory apply to everyday events as well as to traumatic events, such as witnessing a crime (Wells, Malpass, Lindsay, Fisher, Turtle, and Fulero, 2000).

Two major developments have changed how the criminal justice system views this research. One is the significant number of exonerations that have occurred since 1989 as a result of advances in DNA.[7] In many of those exonerations, the primary evidence in the original conviction was eyewitness testimony. Mistaken eyewitness identification testimony was a factor in nearly 75 percent of post-conviction DNA exoneration cases (InnocenceProject.org, 2013; Garrett, 2011).

The other development that changed how the criminal justice system views psychological research into eyewitness identification occurred earlier, when Wells (1978) first made the distinction between system variables (e.g., police procedures) and estimator variables (e.g., whether a victim was able to see the perpetrator clearly). System variables are those things that can be controlled by the criminal justice system, and estimator variables are those things that are beyond the control of the system. Research up to this time had focused on both types of variables but had not made a distinction between them. This distinction began to break down an extremely complex issue into more understandable parts. It helped behavioral scientists and criminal justice practitioners to

[7] As of January 25, 2013, there have been 302 post-conviction DNA exonerations in the United States, according to the Innocence Project. The first DNA exoneration took place in 1989. 18 of the people exonerated through DNA served time on death row. The average length of time served by exonerees is 13.6 years. **Eyewitness misidentification testimony** was a factor in nearly 75 percent of post-conviction DNA exoneration cases, making it the leading cause of these wrongful convictions, according to this source. http://www.innocenceproject.org/Content/Facts_on_PostConviction_DNA_Exonerations.php.

understand the implications of the research findings on using eyewitness identification in investigations and trials.

Estimator Variables

Estimator variables are factors relating to human memory that are beyond the control or influence of the criminal justice system. Wells (1978) grouped estimator variables into four main categories:

1. Characteristics of the witness, including age, race, intelligence, and personality;
2. Characteristics of the event, including the distinctiveness of the culprit, the amount of time the culprit was in view, the lighting, and the presence or absence of a weapon;
3. Characteristics of the testimony, including witness accuracy, speed, and certainty in identifying the culprit in a lineup; and
4. The ability of others to differentiate between accurate and inaccurate testimony, including jurors' judgments about eyewitness identification accuracy (Wells, 1978).

System Variables

System variables affect the accuracy of eyewitness identifications and can be controlled by criminal justice agencies (Wells, 1978). System variables primarily refer to the procedures that police investigators use in obtaining eyewitness identifications, and fall into four categories:

1. Instructions.
2. Lineup content.

3. Lineup presentation method.

4. Behavioral influence of the lineup administrator.

Before discussing these variables in detail, it is important to discuss how lineups are affected by the presence or absence of the actual culprit. Not all lineups contain the culprit. One way this can occur is that law enforcement officials may mistakenly believe that a suspect is the culprit. If the suspect is actually innocent, there is a culprit-absent lineup. Or in some cases, investigators may use a lineup to eliminate one or more suspects, none of whom is the actual culprit. Again, this could create a culprit-absent lineup. Irrespective of the reasons for the culprit-absent lineup, witnesses will tend to approach the lineup as if the culprit is present unless they are told the lineup may not include the culprit (Wells, 1984).

Research has demonstrated that witnesses tend to select a person from the lineup who most resembles their *memory* of the culprit at the time of the crime (Wells, 1984). Researchers refer to this as the relative-judgment decision process, which can create a situation in which a witness identifies a person from the lineup who is not the actual culprit even though the witness believes his or her selection is correct. This also explains why eyewitnesses sometimes mistakenly pick someone out of a lineup even though the culprit is not present. The implications of this process will be discussed below.

Following is a discussion of the four types of system variables:

<u>1. Instructions</u>

The first important system variable in eyewitness identifications is the pre-lineup instructions given to witnesses. For example, research has demonstrated that advising the

eyewitness that the culprit "might or might not be present" reduced mistaken identifications in culprit-absent lineups, without compromising the ability of witnesses to select the culprit when he or she was present (Steblay, 1997; Steblay, 2013).

2. Lineup Content

This variable concerns the makeup of the lineup, that is, the individuals who comprise the lineup. Seemingly a simple concept, the relationships among the persons in the lineup is rather complex. The most relevant research indicates that in order to reduce the likelihood of false identifications, lineup "fillers"[8]—persons who are not suspected of the crime but are used to fill out the remaining spots in a live or photographic lineup—should reflect the eyewitness's description of the *culprit*. If the witness's description of the culprit is limited or sparse, or when the description of the culprit differs significantly from the appearance of the suspect, research indicates that the fillers should resemble the *suspect* (Wells, Small, Penrod, Malpass, Solomon and Brimacombe, 1998).

3. Lineup Presentation Method

Research has examined the way in which lineups can be constructed, specifically the order in which eyewitnesses view participants. At issue are the relative merits of sequential lineups—in which the eyewitness views lineup members or photographs one at a time, and must make a statement before viewing the next lineup member—as opposed to the traditional simultaneous lineup, in which the eyewitness views all lineup members or photographs at the same time. Laboratory based studies indicate that sequential lineups

[8] See "PERF Eyewitness Definitions Glossary," Appendix A.

reduce the chances of mistaken identifications in *culprit-absent* lineups but may also reduce accurate identifications in *culprit-present* lineups (Steblay, Dysart, Fulero, and Lindsay, 2001; Steblay, 2011). Two published field studies have produced similar findings indicating that sequential lineups reduce the chances of a witness choosing a "filler" rather than the suspect in a lineup (Klobuchar et al., 2006; Wells et al., 2011). [9]

Field studies differ from laboratory studies in several respects. One significant difference in field studies is that researchers are limited to determining whether or not the witness chooses a "suspect" (the person who police *believe* may have committed the offense) or a "filler". The word "culprit" is not used in field studies because there is a chance that the suspect may be innocent. By contrast, in laboratory studies, researchers are able to determine whether or not the witness chooses the "culprit" (the person who actually committed the crime) because the person who was actually depicted as committing the crime in the lab based scenario is presented to the witness in the lineup.

4. Behavioral Influence of the Lineup Administrator

The final variable over which the criminal justice system has control is the person who administers the lineup. The most common approach in traditional lineups is for the case investigator to administer the lineup. This investigator, of course, knows which lineup member is the suspect and which ones are the fillers. Research in laboratory settings shows that when an administrator knows the true identity of the lineup members, the harmful result is that he or she may influence, sometimes unwittingly, the eyewitness selection (Phillips et al., 1999; Wells & Bradfield, 1998; Wells & Bradfield, 1999). The same laboratory research shows that use of a "blind administrator"—one who cannot

[9] The 2011 study results indicated that the sequential procedure did not reduce the number of correct identifications in culprit present lineups.

differentiate between the suspect and the fillers—reduces the opportunities to influence the eyewitness during and after the lineup. However, an unpublished 2005 Brooklyn, New York field study that was designed to isolate the effect of a blind administrator found virtually identical identification rates in blind and non-blind simultaneous lineups. (Mecklenburg, Bailey and Larson, 2008).

National Institute of Justice Efforts to Improve Eyewitness Identification Procedures

Several initiatives have attempted to build upon or apply the evidence of eyewitness scientists. Most notably, in 1999 the National Institute of Justice published *Eyewitness Evidence: A Guide for Law Enforcement,* which included specific guidelines for conducting lineups and photo arrays. The 1999 NIJ Guide resulted from the work of representatives from law enforcement, prosecution and criminal defense organizations, and the judiciary. It includes guidelines on working with eyewitnesses, from the point of the initial call for service to the viewing of lineups. That publication, and its companion piece on training officers to use the guidelines, published in 2003, included discussion of research and practical perspectives on eyewitness identification, and provided recommendations to promote the accuracy and reliability of eyewitness evidence.

The NIJ Guide offers dozens of recommendations, such as instructing the eyewitness that the culprit may or may not be included in a lineup. On the question of whether to use "blind" lineup administrators, the NIJ Guide notes that "investigators' unintentional cues (e.g., body language, tone of voice) may negatively impact the reliability of eyewitness evidence," and that "psychology researchers have noted that such influences could be avoided if 'blind' identification procedures were employed." However, the NIJ Guide states

that blind administration "may be impractical for some jurisdictions to implement," so rather than calling for universal implementation of blind procedures for lineups, the NIJ Guide recommends steps to ensure that that administrator will "avoid saying anything to the witness that may influence the witness's selection."

On the question of sequential vs. simultaneous lineups, the NIJ Guide stated that at the time of its publication in 1999, "there [was] not a consensus on any particular method or methods of sequential presentation that can be recommended as a *preferred* procedure; although sequential procedures are included in the NIJ Guide, it does not indicate a preference for sequential procedures." For both types of lineups, the NIJ Guide recommends a number of procedures to help ensure reliability, such as instructing the witness that it is just as important to clear innocent persons from suspicion as to identify guilty parties, and instructing the lineup administrator to avoid reporting to the witness any information regarding the individual he or she may select prior to obtaining a statement from the witness about his or her level of certainty about the identification.

Some law enforcement agencies, including the Minneapolis Police Department, the Ramsey County, MN Police Department, the Charlotte-Mecklenburg Police Department, the Tucson, AZ Police Department, and the Austin, TX Police Department, have modified their lineup and photo array practices to incorporate blind and sequential procedures. Some agencies made changes on their own initiative, while others did so when state legislatures or court decrees mandated changes. Other states continue to study the issue, and some are leaning toward modifying their procedures.

Doubts about the effectiveness of blind sequential lineups were fueled by one study commissioned by the State of Illinois, which concluded that sequential lineups are *less*

effective than methods traditionally used by law enforcement agencies (i.e., non-blind simultaneous lineups) (Mecklenburg, 2006). The Illinois study has caused some states to reconsider the changes they have mandated, and has created uncertainty in the law enforcement field as to which procedures should be adopted. However, the Illinois study results have been questioned by some researchers, law enforcement executives, and legislative committees due to a number of methodological issues, including not always randomly assigning cases to specific eyewitness identification protocols, and failing to record the results of some of the eyewitness identification procedures (Ross & Malpass, 2008; Steblay, 2010; Schacter et al., 2007).

Although the methodology of this study has come into question, other researchers have found that witnesses who view a lineup in the sequential format are less likely to choose anyone, even when the culprit is in the lineup, than are witnesses who view a simultaneous lineup. A meta-analysis of 72 studies indicated that when the culprit was present in the lineup, the simultaneous lineup procedure produced significantly more correct identifications of the offender, but when the culprit was absent from the lineup, the sequential lineup procedure produced fewer mistaken identifications (Steblay et al., 2011). One of those studies, conducted by Carlson et al. (2008), reported that "the simultaneous lineup was 1.6 times more likely to result in a correct identification than was the sequential." Carlson et al. also concluded that sequential lineups were advantageous only when the lineups were biased or unfair.

In 2011, an initial report was issued regarding a field study that included a direct comparison of blind sequential and blind simultaneous procedures in four police departments (Wells et al., 2011). Using laptop computers to administer the photo lineups,

the initial results of the study show that witnesses identify the suspect at about the same rate regardless of whether the photographs are presented simultaneously or sequentially. There is, however, a statistically significant difference in the rate in which witnesses erroneously choose filler photographs. Witnesses were more likely to choose a filler photograph during a simultaneous lineup than they were to choose a filler photograph during a sequential lineup procedure. In this field test, sequential lineups reduced the number of known errors while causing no significant reduction in identifications of the suspect (Wells et al., 2011).

Despite the complexity of the issues associated with eyewitness identification, consensus has emerged among many researchers and police practitioners about many promising practices for agencies to follow when using eyewitness identification procedures. The NIJ Guide documents and recommends these promising practices. The results of the PERF survey detailed in this report and the findings from three field studies[10] suggest that there remains a lack of consensus on blind and non-blind administrators and sequential and simultaneous procedures.

[10] Klobuchar, A., Steblay, N., Caligiuri, H. L. (2006). Symposium: Reforming eyewitness identification: Convicting the guilty, protecting the innocent: Improving eyewitness's identifications: Hennepin County's blind sequential lineup pilot project. *Cardozo Public Law, Policy & Ethics Journal, 4*: 381–413.;

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Wells, G.L., Steblay, N., Dysart, J. (2011). A Test of the Simultaneous vs. Sequential Lineup Methods: A Test of the Simultaneous vs. Sequential Lineup Methods. A Report by the American Judicature Society. Retrieved January 16, 2013. http://www.ajs.org/wc/pdfs/EWID_PrintFriendly.pdf.

The PERF Eyewitness Survey Project and Report

This report describes a 15-month research project conducted by the Police Executive Research Forum (PERF) to develop and conduct a nationally representative survey of law enforcement agencies, designed to obtain statistical and descriptive information on the current policies, practices and training protocols related to the eyewitness identification process. **The purpose of this project is to describe the state of the field with respect to eyewitness identification procedures and to assess agency progress and change since publication of the 1999 NIJ Guide.**

Presumably as a result of policy guidance from the National Institute of Justice, the results of field experiments in eyewitness identification practices, and state-level model policies and requirements, the survey shows that a number of law enforcement agencies across the country have modified their policies on eyewitness identification.

However, not every agency has implemented the same changes. Many chose some combination of procedures that drew on the NIJ guidelines and academic research while also considering the practical implications of the policy changes on investigations. Some agencies implemented only partial modifications (such as revamping the instructions given to eyewitnesses before a lineup, but not changing the administration of the lineup), while more than 40 percent of agencies report having made no changes to their lineup policies and procedures. Thus, while some changes have been made, they have not been uniform across the country. This is not surprising, given the presence of more than 18,000 autonomous law enforcement agencies in the United States.

PERF's project was guided by the extensive experience of a Technical Advisory Group comprised of practitioners and academic experts, who ensured that the latest

developments and national trends in eyewitness identification were incorporated into the survey and final report.

The project had five objectives: (1) conduct a comprehensive literature review; (2) establish an advisory panel; (3) survey a national sample of law enforcement agencies; (4) select a subset of agencies for in-depth follow-up interviews; and (5) produce a report on the project findings. This report is intended to provide an accurate assessment of the state of the field in law enforcement eyewitness identification practices across the country.

In Chapter 2, we review the research that has been done in the area of human memory and police eyewitness identification procedures. In Chapter 3 we provide a detailed account of the methods we used to conduct this study. In Chapter 4 we present the results of our survey findings. In Chapter 5 we summarize our main findings, discuss the implications of our results for law enforcement practices, and provide recommendations for future research.

Chapter 2
REVIEW OF RELEVANT LITERATURE

Psychologists have long studied human memory as it applies to recall following an event, and a subset of psychologists have focused specifically on the reliability of eyewitness identification by witnesses to crimes. Eyewitness identification and testimony are fundamental to the criminal justice system, and eyewitnesses are crucial to solving many crimes (Schuster, 2007). In many cases, prosecutions have relied heavily on the testimony of an eyewitness; other evidence may not be available to investigating officers and prosecutors.

One challenge with overreliance on human eyewitnesses is that eyewitnesses frequently make mistakes (Wells and Loftus, 2003). Even when they express confidence in their memories, people interpret what they see in different ways; the mind is not a camera set to play back an accurate scene description. Memories may be altered by external influences, and they can fade over time. Witnesses may be uncertain or may become confused, particularly following an event that was traumatic or unusual, such as a crime (InnocenceProject.org, 2012; Wells et al., 2000).

In the past 35 years, there has been a growth of social science research focused on identifying flaws in law enforcement practices that may undermine the reliability and accuracy of eyewitness identifications. Through the use of controlled laboratory experiments, psychologists have amassed a wealth of scientific evidence regarding the variables that affect eyewitness identifications and how identification procedures might be revised to reduce identification errors.

The development of forensic DNA testing has also changed the conversation about eyewitness testimony. Post-conviction DNA testing, and in particular the number of exonerations since 1989, including exonerations of death-row inmates, have created a realization that the status quo is not acceptable. In many exonerations, the primary evidence resulting in the original conviction was eyewitness testimony. These cases are stark reminders that human memory is far from perfect. Some estimate that as many as 75 percent of false convictions are the result of mistaken eyewitness identification (Wells et al., 1998; InnocenceProject.org, 2012).

Photographic and Live Lineups

Much of the relevant body of research on eyewitness identification has examined lineups conducted with live persons or photographs. This research led to scholarly recommendations for eyewitness procedures and has influenced eyewitness guidelines published by the U.S. Department of Justice (Wells et al., 1998; NIJ Technical Working Group for Eyewitness Evidence, 1999).

In examining procedures for lineups of individuals or photographs, there has been a great deal of debate among researchers about the use of blind administration procedures and the use of a sequential presentation method rather than simultaneous. A blind administration is one where the administrator is unaware of which lineup member is the suspect. Laboratory studies have shown that blind procedures reduce inadvertent administrator influences that can result in false identifications (Haw and Fisher, 2004; Phillips et al., 1999).

In a traditional lineup procedure, eyewitnesses are presented with all individuals or photographs simultaneously ("simultaneous lineups"). Laboratory research suggests that simultaneous lineups tend to facilitate relative judgments in which the witness compares all lineup members to each other to determine which one most closely resembles his or her memory of the culprit (Wells 1984). The result is a higher rate of false identifications in lineups where the culprit is not present (Cutler & Penrod, 1988; Lindsay & Wells, 1985; Wells, 1984; Wells, 1993). However, research has demonstrated that when the culprit is in the lineup, the simultaneous lineup procedure produces more culprit identifications as compared to sequential lineup procedures (Steblay et al., 2011). A 2001 meta-analysis of laboratory research showed that when the culprit is present, simultaneous lineups produce more correct culprit identifications than sequential lineups (50% vs. 35%) (Steblay et al., 2001). A more recent analysis indicated that compared to simultaneous lineups, sequential lineups produced an 8% decrease in correct identifications from culprit-present lineups (Steblay, et al. 2011). Simultaneous lineups have also been found to yield more correct positive identifications compared to sequential lineups when an innocent suspect and perpetrator in the lineup were highly similar in appearance (Malpass et al., 2009).

In a sequential lineup, an eyewitness may be presented with each member of the lineup individually and asked to decide whether the person is the culprit before moving on to the next person in the sequence. **Sequential lineups reduce the rate of false identifications in culprit-absent lineups, but also slightly reduce accuracy rates in culprit-present lineups** (Lindsay & Wells, 1985; Cutler & Penrod, 1988; Lindsay et al., 1991; Lindsay, Lea, Nosworthy, et al., 1991; Steblay et al., 2001). However, researchers

discourage the use of sequential lineups for child witnesses (Steblay et al., 2001; Lindsay, Pozzulo, Craig, Lee, and Corber, 1997).[11]

A handful of field studies conducted by law enforcement agencies have directly examined whether these laboratory findings generalize to actual criminal investigations. Because these field studies involve actual cases, researchers assess whether witnesses choose a "suspect" (the person police *believe* to have committed the crime) or a "filler." (The word "culprit" is not used because there is a chance that the suspect may be innocent). Such field studies are critically important to the development and implementation of new policies. For example, some law enforcement agencies have been hesitant to implement blind procedures for logistical reasons, such as the need to have a police employee who is qualified to conduct lineups but has not been involved in the investigation available to conduct the lineup, rather than allowing the detective investigating the case to handle it. A 2006 study in Hennepin County (MN) demonstrated that sequential blind photo arrays were logistically possible and that they resulted in a relatively low rate of false identifications of fillers (members of the photo lineup other than the suspect) (Klobuchar et al., 2006).

On the other hand, a 2006 field study conducted in several Illinois cities, including Evanston, Joliet, and Chicago, produced contrary findings (Mecklenburg, 2006). The Illinois study compared identifications obtained from sequential, blind lineups to those obtained from simultaneous, non-blind lineups (the current procedure predominantly employed by law enforcement). Researchers reported that the study results showed that sequential

[11] There have been few research studies done on children and older adult witnesses. These studies have shown significantly different eyewitness performance than the general adult population using both the simultaneous and sequential formats (Steblay et al., 2001).

blind lineups yielded significantly *more* false identifications of "fillers" than simultaneous non-blind lineups. The results of this experiment caused significant consternation among researchers and practitioners alike, many of whom said there were flaws in the study design and failures to adhere to its methodology (Schacter et al., 2007).

The New York City Police Department also conducted a field study in 2005 designed to isolate the effect of a blind administrator. The results of this unpublished field study comparing simultaneous blind lineups to simultaneous non-blind lineups, data from 1,052 lineups held in Brooklyn showed virtually identical identification rates. (Mecklenburg et al., 2008).

In 2011, an initial report was issued for a new field study that included a direct comparison of sequential and simultaneous procedures (which in both cases were blind) (Wells et al., 2011). This study included random assignment using laptop computers. The study protocol was drawn from a protocol developed in 2006 at a meeting of scientists, attorneys, and law enforcement experts in Greensboro, North Carolina. According to this "Greensboro Protocol," in order for a field study of identification procedures to be acceptable, it would have to utilize a blind procedure for all lineup conditions, because this would allow for direct comparison of sequential and simultaneous lineup procedures.

This field study was conducted in four police departments: the Charlotte-Mecklenburg (NC) Police Department, the Tucson (AZ) Police Department, the San Diego (CA) Police Department, and the Austin (TX) Police Department. The initial results of the study indicate that witnesses identify the suspect at about the same rate regardless of whether the photographs are presented simultaneously or in a sequence. There is, however, a statistically significant difference in the rate in which witnesses incorrectly

choose filler photographs. Witnesses were more likely to erroneously choose a filler photograph during a simultaneous lineup (18.1% yielded identifications) than they were to choose a filler photograph during a sequential lineup procedure (12.2% yielded identifications). In other words, this study determined sequential lineups significantly reduced the number of known errors in these photo lineups (Wells et al., 2011). However, even the procedure yielding the *better* result produced a sizeable percentage of false identifications of fillers, in more than 12% of the cases.

When comparing this field test to previous field studies, one research team stated, "Much remains to be learned from this new field study, including the impact of various procedural changes made to how these sequential lineups were conducted" (Gronlund et al., 2013). Gronlund is currently conducting research on the potential impact of culprit placement in sequential lineups—whether the likelihood of being identified as a suspect is affected by whether a person or a photograph is the first to be viewed in a sequential lineup, or is viewed second, third, or later.

There has also been research on other system variables that affect eyewitness identifications. For example, researchers have recommended that lineup construction incorporate fillers who match the verbal description of the perpetrator previously supplied by the witness (Luus & Wells, 1991; Wells et al., 1993), and that eyewitness instructions include a statement that the perpetrator might or might not be present in the lineup (Steblay, 1997). **In fact, Steblay's meta-analysis showed that the use of an unbiased instruction that the culprit "might or might not be present" (compared to the use of biased instructions) reduced mistaken identification rates in culprit-absent lineups by 41.6%** (60% accuracy rate with unbiased instructions vs. 35% accuracy rate with

biased instructions) (Steblay, 1997).[12] Recently, this research has been reaffirmed by Steblay, 2013 in a new meta-analysis of 16 laboratory studies. The "might or might not instruction" significantly reduced identification errors when the culprit was missing from the lineup, from 70% to 43%, and a designated innocent suspect was picked by half as many witnesses (19% vs. 40%) after hearing a "might or might not" instruction. (Steblay, 2013).

Current Guidance

Currently, there are no national standards for eyewitness identification procedures in the United States.[13] Over the years, many agencies have made changes to their policies and procedures based upon a number of factors. Many agencies first began to examine their procedures in response to DNA exoneration cases. Others made changes in response to the 1999 NIJ Guide, which was based upon the recommendations of a panel of scientists, attorneys, and law enforcement experts. However, the NIJ Guide simply offered guidance and recommendations. Some agencies have changed their procedures and adopted policies based on their voluntary participation in the accreditation program administered by the Commission on Accreditation for Law Enforcement Agencies (CALEA), discussed in more detail below. Other agencies have adopted policies based on a mandate by their local prosecutor, the state attorney general, or state legislation.

[12] Instructions did not appear to have a statistically significant impact on culprit-present lineups. (Steblay, 1997).
[13] Some may consider the 1999 NIJ Guidelines to be standards, but because no agency is required to adopt and use them, they are called guidelines.

The NIJ Technical Working Group for Eyewitness Evidence

In 1998, the National Institute of Justice assembled a working group of leading researchers and practitioners to make recommendations for law enforcement on eyewitness identification procedures. The working group's report was published in 1999, and a subsequent training manual was produced in 2003 (Eyewitness Evidence: A Trainer's Manual for Law Enforcement).

The 1999 NIJ Guide presents research and practical perspectives on eyewitness identification and provides recommendations to promote the accuracy and reliability of eyewitness evidence. The guide covers best practices for the initial reporting of the crime, including the information that a 911 call taker or first responder should attempt to elicit from a witness, as well as follow-up interviewing of a witness. Procedures for mugshot book reviews, composite sketches, and field identifications (show ups) and lineups are also addressed.

As would be expected, the largest section of the NIJ Guide is devoted to a review of recommended procedures for identifications using live and photographic lineups. Issues such as providing instructions to witnesses, methods of conducting the lineup, and recording witness responses are addressed in detail for both simultaneous and sequential lineup procedures. Rather than recommending one method (simultaneous or sequential) over another, the guide stated:

> Scientific research indicates that identification procedures such as lineups and photo arrays produce more reliable evidence when the individual lineup members or photographs are shown to the witness sequentially— one at a time—rather than simultaneously. Although some police agencies currently use sequential methods of presentation, there is not a consensus on any particular method or methods of sequential presentation that can be recommended as a preferred procedure; although sequential procedures are

included in the Guide, it does not indicate a preference for sequential procedures (NIJ Technical Working Group for Eyewitness Evidence, 1999).

In short, the NIJ Guide provided recommended procedures for both sequential and simultaneous lineup administration without stating a preference for either procedure.

Similarly, the NIJ Guide stated that blind administration of identification procedures may prevent investigators from providing unintentional cues to witnesses, but may be impractical for some jurisdictions to implement (NIJ Guide, 1999). Blind procedures were not included in the 1999 NIJ Guide. Rather, blind administration was identified as an area for further exploration and field testing.

Commission on Accreditation for Law Enforcement Agencies (CALEA)

In 2009, CALEA adopted accreditation standards that require agencies to have in place formal procedures for lineups and show-ups in order to establish reliable identification testimony by witnesses (CALEA Standards 42.2.11 & 42.2.12, 2009)[14]. These accreditation standards do not include a recommendation as to the method used, but require agency policies to address issues such as the composition of lineups, instructions on the viewing of the lineup, and the prohibition of feedback by the administrator of the lineup. The CALEA standards have been cited by many agencies as being the impetus for researching and implementing improved eyewitness identification policies.

[14] CALEA Standards 42.2.11 & 42.2.12 can be found at:
http://www.iaclea.org/visitors/professionaldevelopment/accreditation/Standard_Revised.pdf

International Association of Chiefs of Police

In 2010, the International Association of Chiefs of Police issued a model policy for eyewitness identifications to establish guidelines for showups, photo arrays and lineups. Like the 1999 NIJ Guidelines and the 2009 CALEA Standards, this model policy addresses issues such as providing instructions to witnesses, conducting the lineup, composition of the lineup, and recording witness responses. In addition, the model policy encourages blind-sequential administration of both photo and live lineups[15].

Legislation and Statewide Reforms

A handful of states have made eyewitness reforms through statewide requirements imposed by the State Attorney General or through state legislation. The specificity of these state wide mandates ranges from requiring agencies to have a written policy in place (but leaving the content of the policy to the individual agencies to decide) to providing detailed guidelines and requirements for the procedures outlined in law enforcement agency policies.

For example, a law in Maryland requires that all law enforcement agencies have a written eyewitness identification policy, and that policy must also be filed with the Maryland State Police.[16] Similar requirements exist in Virginia.[17]

Other states have adopted more stringent requirements. For example, Texas recently adopted a law that will require all law enforcement agencies to adopt written

[15]See IACP Model Policy, *Eyewitness Identification* (September 2010).
[16] See Md Code §3-506 (HB No. 103).
[17] See Virginia House Joint Resolution 79 (2004).

policies consistent with the state's model policy.[18] Several examples of states with very specific mandated procedures include New Jersey, Wisconsin, and North Carolina:

- **New Jersey.** On April 18, 2001, New Jersey became the first state in the nation to officially adopt the recommendations made in the 1999 NIJ Guide. As a result of DNA-based exonerations in New Jersey, the New Jersey Attorney General issued *Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedure*. These guidelines formally adopt the procedures in the 1999 NIJ Guide, and go beyond the Guide to promote the use of blind sequential lineup administration when possible. **The guidelines advise agencies "to utilize, whenever practical, someone other than the primary investigator assigned to the case to conduct both photo and live lineup identifications." In addition, the New Jersey guidelines recommended that "when possible, sequential lineups should be utilized for both photo and live lineup identifications."**

  To assist with implementing the guidelines, the State Division of Criminal Justice worked with state and local agencies to train investigators. A 2003 survey found that law enforcement agencies of every size throughout the state have used the sequential identification method, with 84 percent of the agencies estimating that they use the sequential identifications "in every case." Fewer agencies, however, report using blind administrators, with only 62 percent reporting that they used blind administrators "in every case."[19]

  However, in August 2011, the New Jersey Supreme Court, in the case of *State vs. Henderson,* found that "science supporting one procedure over another remains inconclusive" and did not find a preference for either sequential or simultaneous lineup procedures.

- **Wisconsin.** After examining wrongful convictions based on misidentification and social science research on eyewitness identification procedures, the Wisconsin Attorney General's Office in September 2005 issued the *Model Policy and Procedure for Eyewitness Identification* (State of Wisconsin OAG, 2005). The model policy incorporates six major recommendations made by the scientific community:
  1. Use non-suspect fillers chosen to minimize any suggestiveness that might point toward the suspect;
  2. Use a blind procedure, ensuring that the administrator is not in a position to unintentionally influence the witness's selection;

[18] See Texas Code Criminal Procedure Art. 38.20.
[19] See New Jersey Attorney General Law Enforcement Survey (2003).

3. Inform eyewitnesses that the real culprit may or may not be present and that the administrator does not know which person is the suspect;
4. Present the suspect and the fillers sequentially rather than simultaneously;
5. Assess eyewitness confidence immediately after identification; and,
6. Do not use repeated photo arrays and lineups in which the same witness views the same suspect more than once.

Officials said the model policy was designed to ensure that the highest quality of evidence is obtained from eyewitnesses, while recognizing that there may be several ways to implement the principles of the policy, depending on the resources of individual law enforcement agencies. The new policies and procedures in Wisconsin have not yet been subjected to an evaluation.

- **North Carolina.** Change in North Carolina began in 2005 when the Criminal Justice Standards Division of the North Carolina Department of Justice endorsed recommendations set forth in the North Carolina Actual Innocence Commission's report, *Recommendations for Eyewitness Identification* (North Carolina Department of Justice, 2005). Recommendations were not mandatory, but they were incorporated into statewide criminal investigation training. Recommendations include sequential presentation of lineups, blind administration, and specific recommendations regarding witness instructions and recording witness responses.

  In 2007, the *Eyewitness Identification Reform Act* was passed in North Carolina, placing very specific requirements on the administration of lineups.[20] Agencies are now required to use sequential presentation of individuals and photos. There must be blind administration, and if it is not feasible to use an officer for a blind administration, a computer program, folder system, or other neutral administrator must be used. Information regarding fillers, witness instructions, confidence statements, and documentation of the procedure is also included in the legislation.

  Requirements include:

  1. Lineups shall be conducted by an "independent administrator" or an alternative method that ensures neutrality (including computer–generated systems and shuffling photos in an envelope and other methods that prevent the administrator from knowing which photograph is being presented to the eyewitness);
  2. Lineups shall be presented sequentially;
  3. Before a lineup, the eyewitness shall be provided with the instructions recommended in the 1999 NIJ Guide;

[20] See NC General Statutes - Chapter 15A Article 14A - § 15A-284.50-53.

4. Fillers should generally resemble the witness's description of the perpetrator;
5. A confidence statement should be documented at the time of the identification; and
6. The identification procedure should be videotaped unless impractical[21].

In other jurisdictions throughout the country, state legislative bodies have studied these issues, and many have made recommendations to state law enforcement agencies. In Florida, a state innocence commission established standards and recommendations for the use of live and photographic lineups (Supreme Court of Florida, 2011). These standards did not require the use of blind sequential procedures. Rather, they include creating and filing a written policy with the state that addresses the following procedures:

1. Creation, composition, and utilization of the lineup;

2. Standardized instructions;

3. Steps to ensure that lineup administrators avoid influencing witnesses;

4. Documentation of the procedure and outcome of the lineup;

5. The methods of presenting the lineup; and

6. Training.[22]

The states of Connecticut, Vermont, Virginia, West Virginia, Rhode Island and Illinois have also studied these issues.[23] The states that have studied eyewitness identification procedures have made recommendations that are consistent with the 1999 NIJ Guide.

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[21] See North Carolina General Statutes - Chapter 15A Article 14A, *Eyewitness Identification Reform Act*. (2007-421, s. 1.)
[22] See *Standards for Florida State and Local Law Enforcement Agencies in Dealing with Photographic or Live Lineups In Eyewitness Identification*, (Issued March 1, 2011 and revised June 15, 2011).
[23] See Connecticut Act No. it-252, Section 2; Vermont H. 470 Section 238e; W.Va. Code, §62-1E-2 (2007); Illinois 725 ILCS 5/107A-5; Rhode Island General Assembly enacted *R.I.* G.L. §12-1-16; Virginia House Document No. 40.

Many of these states have made recommendations on procedure administration, witness instructions, procedure documentation and requiring written policies. The task forces in Connecticut, Vermont, Virginia and Rhode Island also recommended the implementation of blind administration and sequential administration.[24] For example, the Rhode Island Task Force recommended that blind administrators be used if practical and that agencies "strongly consider" using the sequential procedure.[25] The Connecticut Task Force recommended that the sequential procedure be mandated and that blind administration be mandated when practical.[26] However, the Connecticut Eyewitness Identification Act requires blind administration where practical and seeks further research on the use of the sequential procedure.[27]

Future Research and Reforms

As the body of scientific research in this area continues to grow, and additional field studies are completed, we can expect that states and local jurisdictions will continue to examine their eyewitness identification policies and procedures. Where state legislatures and policymakers do not act, it is likely that these reforms will continue through the work of local law enforcement leaders, prosecutors, criminal defense attorneys, and other advocates.[28] As the field continues to progress, routine assessment of current practices will

[24] In 2007, West Virginia passed the *Eyewitness Identification Act*, Criminal Procedure Code, §62-1E, which does not indicate a preference for blind or sequential lineup administration, but creates a task force to study and identify best practices for eyewitness identification.
[25] *Task Force To Identify & Recommend Policies and Procedures To Improve The Accuracy Of Eyewitness Identification*, Rhode Island General Laws §12-1-16, (December 27, 2010).
[26] See Report of the Connecticut Eyewitness Task Force (February 8, 2012).
[27] See Connecticut Act No. it-252, Section 2.
[28] See, e.g., Suffolk County (MA) District Attorney policy. http://www.innocenceproject.org/docs/Suffolk_eyewitness.pdf.

continue to be useful in informing researchers and policymakers on policy areas that require additional attention and reform.

Chapter 3
RESEARCH METHODS

The PERF project summarized in this report was comprised of two phases. First was a National Eyewitness Identification Survey, distributed to a random stratified sample of law enforcement agencies throughout the United States (n=1,377)[29]. In total, 619 completed surveys were returned to PERF, resulting in a response rate of 45 percent. The response rate increased as the size of the agency increased. While response rates were low for law enforcement agencies with fewer than 25 officers (29%), the rates were significantly higher for law enforcement agencies with 51 or more sworn officers (62%) and agencies with more than 500 sworn officers (81%).[30] Sheriffs' offices were less likely than other law enforcement agencies to return the survey instrument.

Agencies with fewer than 25 sworn personnel, and to a lesser extent agencies with 50 or fewer sworn personnel, conduct relatively fewer criminal investigations when compared to larger agencies. The lower response rate among sheriffs may reflect the fact that not all sheriffs' offices are full-service law enforcement agencies—that is, they may not provide criminal investigative functions. The primary responsibilities of some sheriffs' agencies are managing correctional facilities, court security, and civil process. Thus, there may have been a number of law enforcement agencies that did not complete the survey because they did not consider it applicable to their operations.

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[29] The Eyewitness Identification Survey was sent to all 1,401 law enforcement agencies chosen through the above random stratified sample process. However, 24 of those agencies reported back to PERF that the nature of the survey was beyond the scope of their agency functions (i.e. they do not use any eyewitness identification procedures).

[30] To obtain unbiased estimates for the disproportionate stratified sample and reduce any bias due to sampling error and/or non-response effects, the research team utilized post hoc stratification to weight the survey estimates and allow the analysis to better represent the population of law enforcement agencies.

The second phase of the project involved in-depth telephone interviews with 30 agencies that completed the written survey. The 30 agencies were chosen for closer study for a number of reasons, such as the fact that they had written policies in place, had changed their policies to blind and/or sequential lineups, had said in the survey that they had innovative programs, or offered interesting responses to open-ended questions.

The National Eyewitness Identification Survey

Survey Instrument

The survey instrument was developed jointly by PERF in consultation with a Technical Advisory Group (TAG) comprised of academic researchers and law enforcement experts (see Appendix B). The survey was fielded in order to evaluate the current eyewitness identification policies and practices in law enforcement agencies throughout the United States.

A draft outline of the major issues to be included in the survey was developed by PERF utilizing the latest literature on the topic. A focus group meeting of the eight TAG members was convened to examine the major issues to be included in the survey and to identify questions that would effectively evaluate current practices in the field. TAG members were asked to discuss and comment on the critical issues affecting law enforcement eyewitness identification processes and human memory research. This is a survey development method that PERF has used successfully in the past with survey instruments.

After the survey was drafted, it was sent to representatives from nine law enforcement agencies in June-July 2011 for pilot testing (see Appendix C). These agencies

were representative of law enforcement agencies of different sizes and types (e.g., police departments, sheriffs' offices, and state police agencies). In an effort to obtain meaningful feedback from the pilot-testing organizations, agencies were chosen based on their past experiences with and expertise regarding eyewitness identification procedures and policy development.

Representatives from the pilot-test law enforcement agencies were asked to complete the survey and make margin notes concerning questions about the form and content. We requested that they take note of any aspects of the survey that were problematic, confusing, difficult, or unclear. Each person was then contacted via telephone to discuss the survey, item by item. Respondents were queried on their understanding of the intent of each question, as well as the following survey components: the meaning of specific words and phrases in the questions, the types of information respondents needed to answer the questions, the respondents' ability to match their answers to the response categories provided in the survey, and the types of cognitive strategies used by the respondent to retrieve the information. To ensure that PERF would be able to draw correct conclusions from the survey findings, close attention was paid to whether survey items were perceived by the respondents as they were intended by PERF. PERF also collected information from respondents concerning the length of time taken to complete the survey. The feedback received through this cognitive interview process was used to refine the instrument.

The survey contained a series of open- and closed-ended questions, and was divided into three sections: (1) agency information, (2) current policies and practices, and (3) historical agency experiences (see Appendix D). Once finalized by the PERF project staff,

the survey instrument was converted into Teleform. Teleform is a software application that allows for the development of a scan-readable survey.[31] The survey was made available to respondents online, as well as in hard copy. The online version of the survey was accessible only through a password-protected website.

Selecting Law Enforcement Agencies for Sampling

PERF contracted with Tailored Statistical Solutions, LLC (TS^2) to draw a nationally representative sample of law enforcement agencies from the National Directory of Law Enforcement Agencies (NDLEA) database. In addition to the name and address of the current chief executive, NDLEA information included the population served by the law enforcement agency, the type of law enforcement agency, the number of officers in the agency, and the region in which the agency is located.

The database was cleaned to omit agencies that are defunct or do not perform full service police duties—specifically criminal investigations. The cleaned 2011 NDLEA database contained information on 15,685 law enforcement agencies in the United States, each of which is believed to be unique. After the sampling procedure described below was completed, the sample size for the study was finalized at 1,377 agencies.

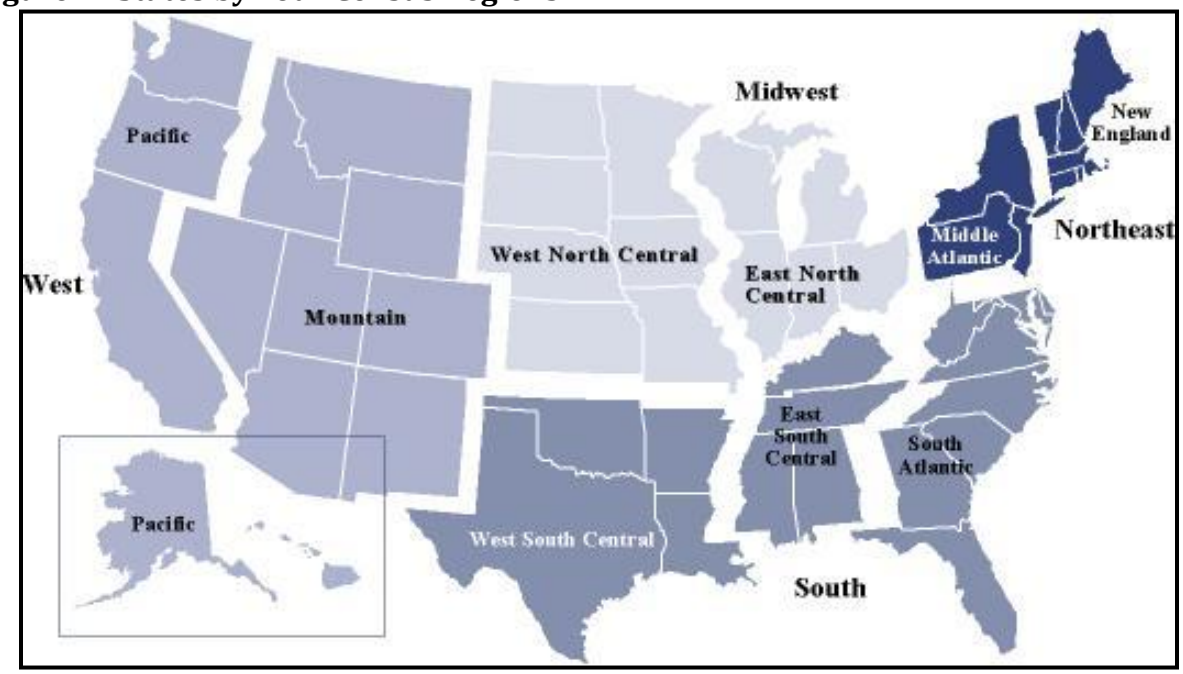
Stratification

The law enforcement agencies in the cleaned database were stratified by region, type, and size based on the number of sworn officers.

[31] PERF staff members have considerable experience with Teleform. Surveys created in Teleform retain all their original visual and methodological characteristics. Creating a scan readable survey precludes the need for data entry since data are scanned directly into the database. This results in increased accuracy.

Region. The map in Figure 1 illustrates the main four regions of the United States along with their nine subdivisions as established by the U.S. Census Bureau. The Uniform Crime Reporting (UCR) Program uses this geographic organization when compiling national crime data. Table 1 provides the list of 50 states and Washington, D.C., broken out into those regions.

Figure 1. States by Four Census Regions*



*Note

- The Northeast region contains the New England and Middle Atlantic subdivisions.
- The Midwest region contains the East North Central and West North Central subdivisions.
- The South region contains the West South Central, East South Central and South Atlantic subdivisions.
- The West region contains the Mountain and Pacific subdivisions.

Table 1. States by Census Regions.

Region 1 – Northeast	Region 2 – Midwest	Region 3 – South	Region 4 – West
Connecticut	Iowa	Alabama	Alaska
Massachusetts	Illinois	Arkansas	Arizona
Maine	Indiana	Delaware	California
New Hampshire	Kansas	Florida	Colorado
New Jersey	Michigan	Georgia	Hawaii
New York	Minnesota	Kentucky	Idaho
Pennsylvania	Missouri	Louisiana	Montana
Rhode Island	North Dakota	Maryland	New Mexico
Vermont	Nebraska	Mississippi	Nevada
	Ohio	North Carolina	Oregon
	South Dakota	Oklahoma	Utah
	Wisconsin	South Carolina	Washington
		Tennessee	Wyoming
		Texas	
		Virginia	
		West Virginia	
		Washington, DC	

Department Type. Law enforcement agencies were grouped into three categories: state police agencies, police departments, and sheriffs' offices. The agencies in the NDLEA list were distributed as follows:

- State Police: 50 available agencies listed as State Police and Highway Patrols in the NDLEA database;
- Police Departments: 12,551 agencies, comprised of 12,504 municipal Police Departments and 47 county Police Departments; and
- Sheriffs' Offices: 3,083 agencies, comprised of 31 independent city Sheriff Offices and 3,052 county Sheriff Offices.

Department Size. The department size, based on the number of sworn officers, was divided into 6 categories:

- 1 to 25 officers;
- 26 to 50 officers;
- 51 to 99 officers;
- 100 to 499 officers;
- 500 or more officers; and
- Unknown.

Among the 15,685 agencies in the NDLEA database, there were 759 agencies that did not have information about department size. Because we were unable to determine in which strata these agencies should be placed, these agencies were placed in a unique category for agency sizes, but they remained part of the potential sample. If these agencies completed and returned the survey, their agency size was recorded as "missing" in our data analysis.

It is important to note that several potential strata do not have any agencies in the population. For example, none of the State Police agencies have a department size smaller than 100 officers. In fact, there are only 54 populated strata within the potential 72 strata (4 Regions x 3 Department Types x 6 Department Sizes).

Sample Selection and Weights

The targeted sample size for this study was approximately 1,400. There were 1,401 in the final sample. Each of the agencies selected for the sample was weighted in order to account for population size.

Sample Selection. The sample was constructed by selecting all of the agencies in the 17 strata with fewer than 30 law enforcement agencies (n = 193). There were seven strata with small population counts where one or more agencies had requested to not be surveyed. For those strata, all of the available and willing agencies were selected.

The remainder (n = 1,208) consisted of approximately 34 law enforcement agencies per stratum for the other 35 cross-stratified groups. If only 34 agencies had been included for each of the other strata, then there would have been only 1,383 in the sample. Thus, for the 18 strata with the highest agency counts, 35 law enforcement agencies were selected; for the one stratum with a very low agency count (Northeast, Sheriffs' Offices, 26 to 50), only 33 law enforcement agencies were selected. Table 2 shows the population distribution across Region, Department Type, and Department Size as well as the selected sample distribution.

Table 2. NDLEA Population Strata: UCR Region, Department Type, and Department Size with Selected Sample Count.

UCR Region	Department Type	Department Size	Population Count	Sample Count
Northeast	Police Departments	Missing	102	34
		1 to 25	1936	35
		26 to 50	416	35
		51 to 99	182	35
		100 to 499	128	35
		500 or more	13	13
	Sheriffs' Offices	Missing	5	1
		1 to 25	88	34
		26 to 50	38	33
		51 to 99	31	26
		100 to 499	41	35
		500 or more	8	3
	State Police	100 to 499	4	4
		500 or more	6	5
Midwest	Police Departments	Missing	309	34
		1 to 25	3291	35
		26 to 50	457	35
		51 to 99	201	35

		100 to 499	100	34
		500 or more	16	16
	Sheriffs' Agencies	Missing	5	0
		1 to 25	753	35
		26 to 50	138	34
		51 to 99	84	34
		100 to 499	68	34
		500 or more	6	6
	State Police	100 to 499	5	5
		500 or more	7	7
South	Police Departments	Missing	302	34
		1 to 25	2893	35
		26 to 50	428	35
		51 to 99	232	35
		100 to 499	194	35
		500 or more	51	34
	Sheriffs' Agencies	Missing	1	1
		1 to 25	793	35
		26 to 50	242	35
		51 to 99	148	34
		100 to 499	194	35
		500 or more	28	26
	State Police	500 or more	15	15
West	Police Departments	Missing	35	15
		1 to 25	798	35
		26 to 50	177	35
		51 to 99	141	34
		100 to 499	130	34
		500 or more	20	20
	Sheriffs' Agencies	1 to 25	219	35
		26 to 50	82	34
		51 to 99	42	34
		100 to 499	50	34
		500 or more	19	17
	State Police	100 to 499	6	6
		500 or more	7	7
TOTAL			15685	1401

Table 3. NDLEA Strata: UCR Region, Department Type, and Department Size with Selected Sample and Respondent Counts.

UCR Region	Department Type	Department Size	Population Count	Sample Count
Northeast	Police Departments	Missing	34	3
		1 to 25	35	13
		26 to 50	35	15
		51 to 99	35	20
		100 to 499	35	21
		500 or more	13	12
	Sheriffs' Offices	Missing	1	0
		1 to 25	34	3
		26 to 50	33	10
		51 to 99	26	11
		100 to 499	35	8
		500 or more	3	1
	State Police	100 to 499	4	1
		500 or more	5	4
Midwest	Police Departments	Missing	34	4
		1 to 25	35	7
		26 to 50	35	18
		51 to 99	35	20
		100 to 499	34	24
		500 or more	16	15
	Sheriffs' Offices	Missing	0	0
		1 to 25	35	8
		26 to 50	34	11
		51 to 99	34	13
		100 to 499	34	14
		500 or more	6	1
	State Police	100 to 499	5	2
		500 or more	7	2
South	Police Departments	Missing	34	5
		1 to 25	35	11
		26 to 50	35	15
		51 to 99	35	22
		100 to 499	35	27
		500 or more	34	32
	Sheriffs' Offices	Missing	1	0
		1 to 25	35	5
		26 to 50	35	10
		51 to 99	34	18
		100 to 499	35	17
		500 or more	26	17
	State Police	500 or more	15	9
West	Police Departments	Missing	15	1

		1 to 25	35	14
		26 to 50	35	20
		51 to 99	34	24
		100 to 499	34	30
		500 or more	20	15
	Sheriffs' Offices	1 to 25	35	10
		26 to 50	34	7
		51 to 99	34	19
		100 to 499	34	16
		500 or more	17	11
	State Police	100 to 499	6	1
		500 or more	7	2
TOTALS			1401	619

Sample Weights. To correctly calculate the weights to be applied to the survey response, the population counts must be known. As stated earlier, the NDLEA population size was 15,685. However, there were no respondents in three of the strata. Thus those three strata are not represented in the survey. The missing strata are:

- Northeast, Sheriffs' Offices, Size Missing, with a population count of 5;
- Midwest, Sheriffs' Offices, Size Missing, with a population counts of 5; and
- South, Sheriffs' Offices, Size Missing with a population count of 1.

These missing strata leave a population size of 15,674.

Table 4 shows the population counts and the respondent counts per stratum. The final weights for the sample depend on the number of agencies within the stratum and the number of respondent agencies within the stratum. The respondents were weighted to represent the population size of 15,674, with the weights standardized to maintain the overall respondent sample size of 619 LEAs.

Table 4. NDLEA Strata: UCR Region, Department Type, and Department Size for the Population Represented for the Survey with Respondent Counts.
(Three strata are no longer included in the population.)

UCR Region	Department Type	Department Size	Population Count	Respondent Count
Northeast	Police Departments	Missing	102	3
		1 to 25	1936	13
		26 to 50	416	15
		51 to 99	182	20
		100 to 499	128	21
		500 or more	13	12
	Sheriffs' Offices	1 to 25	88	3
		26 to 50	38	10
		51 to 99	31	11
		100 to 499	41	8
		500 or more	8	1
	State Police	100 to 499	4	1
		500 or more	6	4
Midwest	Police Departments	Missing	309	4
		1 to 25	3291	7
		26 to 50	457	18
		51 to 99	201	20
		100 to 499	100	24
		500 or more	16	15
	Sheriffs' Offices	1 to 25	753	8
		26 to 50	138	11
		51 to 99	84	13
		100 to 499	68	14
		500 or more	6	1
	State Police	100 to 499	5	2
		500 or more	7	2
South	Police Departments	Missing	302	5
		1 to 25	2893	11
		26 to 50	428	15
		51 to 99	232	22
		100 to 499	194	27
		500 or more	51	32
	Sheriffs' Offices	1 to 25	793	5
		26 to 50	242	10
		51 to 99	148	18
		100 to 499	194	17
		500 or more	28	17
	State Police	500 or more	15	9
West	Police Departments	Missing	35	1
		1 to 25	798	14
		26 to 50	177	20

UCR Region	Department Type	Department Size	Population Count	Respondent Count
		51 to 99	141	24
		100 to 499	130	30
		500 or more	20	15
	Sheriffs' Offices	1 to 25	219	10
		26 to 50	82	7
		51 to 99	42	19
		100 to 499	50	16
		500 or more	19	11
	State Police	100 to 499	6	1
		500 or more	7	2
TOTALS			15674	619

Data Collection

The Eyewitness Identification Survey was sent to all 1,401 law enforcement agencies chosen through the above random stratified sample process. However, 24 of those agencies reported back to PERF that the nature of the survey was beyond the scope of their agency functions (i.e. they do not use any eyewitness identification procedures).[32] The remaining agencies comprised our final sample of 1,377 agencies (n=1,377). Hard copies of the survey were mailed to agencies on three separate occasions or waves between August 17 and October 25, 2011. Reminder letters were sent to non-responding agencies in five separate waves between October 18, 2011 and January 11, 2012. Finally, reminder telephone calls were placed to a number of non-respondent agencies between January 17 and January 24, 2012.[33]

[32] Of the 24 agencies that claimed the survey was outside of the scope of their agency duties, 17 were sheriff's offices whose primary duties include court security, corrections, and administration of the county jail. Twenty three agencies that were in the final sample of 1,377 ultimately responded that they were unable to complete the 16-page survey due to staffing shortages caused by budget cuts.

[33] Factors influencing non-response were being from the Northeast, non-PERF members, Sheriff's Offices, and smaller agencies.

PERF received 619 surveys of 1377 sent, resulting in a response rate of 45 percent. Of the 619 surveys that were received, most (363) were received by mail. This was followed by 164 that were received via the Internet; 70 by facsimile; and 20 by e-mail.

When each survey arrived, it was recorded and then reviewed to make certain that all items had been fully completed and that the responses to similar questions were consistent. Any items that contained information that was unclear, inconsistent, or missing were flagged. For all surveys that were flagged, PERF staff members contacted the responding individual to obtain the needed information (either missing information or clarification of responses). Staff members continued to attempt to contact the respondents through mid-January 2012, but were not always able to speak with a representative of every agency whose survey contained missing or inconsistent information. Following data collection, the data were subjected to a rigorous data cleaning procedure in SPSS.[34]

Telephone Interviews

As a second component to this project, PERF conducted follow-up telephone interviews with 30 agencies to further examine themes, trends and to identify promising practices for eyewitness identification (see Appendix E). Agencies were chosen to participate in these interviews based on the answers given in the initial survey about their experiences with eyewitness identification procedures. The majority of the agencies chosen for telephone interviews had written policies on eyewitness identification procedures in place, and most had changed their lineup procedures to include blind administration and/or sequential lineups. Additionally, agencies that provided intriguing

[34] SPSS, originally known as Statistical Package for the Social Sciences, is a computer program used to conduct statistical analysis of data.

answers to open-ended survey questions were considered. Those included agencies that use computer-aided administration of lineups, have regional policy-making experience, or experienced significant challenges in implementing lineup procedures.

When agencies were chosen for follow-up interviews, we identified individuals within those agencies to be interviewed based on their understanding and knowledge of eyewitness procedures. These individuals had either been the representative chosen to complete the initial survey or were chosen by the agency's chief executive as the most knowledgeable person to speak about the agency's experiences with eyewitness procedures.

A total of 44 agencies were asked to participate in the in-depth interviews. The breakdown of the 44 agencies by type of LEA was as follows: 34 county or municipal police agencies, 5 state police agencies, and 5 sheriffs' offices.

A letter inviting the agencies to participate in the interview for this project was sent to 40 agencies on December 13, 2011 and to 4 additional agencies on January 12, 2012. For those agencies unresponsive to the written request for interview, several rounds of follow-up telephone calls were made to schedule interviews. Ultimately, 30 agencies agreed to be interviewed for the project: 23 county or municipal police agencies, 4 state police agencies, and 3 sheriffs' offices. Four of these agencies were located in the Northeast; 13 from the South; 4 from the Midwest; and 9 from the West. With regard to department size, 4 agencies had between 51 and 99 officers; 6 had between 100 and 499 officers; and the remaining 20 had 500 or more officers. Interviews were conducted between December 20, 2011 and February 8, 2012.

Chapter 4
RESULTS

The National Eyewitness Identification Survey

Respondent Demographics

The average number of sworn officers in agencies responding to the PERF survey was 56.8 (median=16) and the average number of civilian employees was 22.1 (median=3). The average population served of responding agencies was 32,945 (median=7,000). [35]

The response rate increased as the size of the agency increased, with small agencies (fewer than 25 sworn officers) least likely (29%) to submit a survey and the largest agencies (more than 500 sworn officers) most likely (81%) to submit a survey (see Table 5). Sheriffs' offices were less likely than other law enforcement agencies to return the survey instrument (see Table 6). Agencies in the Northeast region of the United States were less likely to respond than agencies in other regions (see Table 7).

[35] We have provided both the median and mean as measures of central tendency for the variables included in this report. Many of our variables had positive skew, i.e. most observations fell on the left end of the distribution (closer to zero) while fewer agencies (usually large agencies) participated/experienced in more of our outcome variables. The median represents the middle value in a distribution, where half of the observations are below the median while the other half is above the median. The mean, or average, represents the sum of values divided by the number of observations. It should be apparent that "extreme" values (in most of our cases, extreme positive values) will pull the mean up. When the data are evenly distributed, the net effect will be the mean/median will be approximately equal. We leave it up to the reader to determine which value reflects the typical value of the variable. In statistical tests of the continuous measures we utilized tests of the mean (e.g. ANOVA or Welch's F test). However, to minimize the impact of outliers (which may be unevenly distributed among our group membership variable) we winsorized (i.e., brought the tail of the distribution in) to mark the 95 percentile of cases.

Table 5. Returned surveys by agency size, n=1377

	Survey Completed	No Survey Returned	TOTAL
≤ 25 sworn	80 agencies 28.7%	199 agencies 71.3%	279 agencies
26-50 sworn	110 agencies 40.4%	162 agencies 59.6%	272 agencies
51-99 sworn	145 agencies 56.4%	112 agencies 43.6%	257 agencies
100-499 sworn	167 agencies 58.4%	119 agencies 41.6%	286 agencies
≥ 500 sworn	117 agencies 80.7%	28 agencies 19.3%	145 agencies
Unknown Agency Size	0 agencies 0%	138 agencies 100%	138 agencies
TOTAL	619 agencies 45%	758 agencies 55%	1377 agencies

Table 6. Returned surveys by agency type, n=619

	Survey Completed	No Survey Returned
Sheriff's Office	36.5%	63.5%
Local Police (City or County)	51.5%	48.5%
State Police	42.9%	57.1%

Table 7. Returned surveys by region, n=619

	Survey Completed	No Survey Returned
Northeast	38.5%	61.5%
South	49.7%	50.3%
Midwest	40.3%	59.7%
West	50.1%	49.9%

Current Policies and Practices

Written Policies

Each agency was queried to ascertain whether they have formalized, written policies for eyewitness identification procedures. **Most responding agencies have no written policy for any of the five critical eyewitness procedures examined in this survey: show-ups, photo lineups, live lineups, composites, and mugshot searches** (see Table 8). Of those agencies with a policy, it generally covers issues dealing with both the *construction* of lineups (which includes selecting "filler" photos or persons and planning the order and manner in which photos or persons will be viewed) and the *administration* of lineups (the process of actually conducting the procedure). (See Appendix A for definitions of these and other terms.) Fewer than five percent of agencies with policies indicated that their policies address construction or administration alone.

The question of whether agencies have written policies was also examined in consideration of agency size (see Table 8). Large agencies of 500 or more sworn officers were consistently more likely to report having a policy for each of the procedures. **Generally, as the agency size decreased, the likelihood of the agency having a written policy decreased.**

Table 8. Policy by agency size and identification procedure

		≤ 25 sworn	26-50 sworn	51-99 sworn	100-499 sworn	≥ 500 sworn	All agencies
Show-Ups n=580	No Policy	82.2%	74.5%	66.0%	58.5%	33.3%	77.1%
	Policy for Construction OR Administration	3.0%	1.9%	4.3%	7.3%	11.1%	3.3%
	Policy for Construction & Administration	14.9%	23.6%	29.8%	34.1%	55.6%	19.7%
Photo Lineups n=584	No Policy	72.0%	61.7%	47.9%	28.6%	25.0%	64.4%
	Policy for Construction OR Administration	6.6%	6.6%	6.3&	7.2%	12.5%	6.7%
	Policy for Construction & Administration	21.4%	31.8%	45.8%	64.3%	62.5%	28.9%
Live Lineups n=595	No Policy	84.1%	89.7%	79.2%	82.9%	50.0%	84.2%
	Policy for Construction OR Administration	1.5%	0.9%	2.1%	0%	0%	1.3%
	Policy for Construction & Administration	14.3%	9.3%	18.8%	17.1%	50.0%	14.5%
Composites n=592	No Policy	91.0%	94.3%	85.1%	90.5%	71.4%	90.9%
	Policy for Construction OR Administration	1.5%	0.0%	2.1%	2.4%	0.0%	1.4%
	Policy for Construction & Administration	7.4%	5.7%	12.8%	7.1%	28.6%	7.8%
Mugshot Searches n=595	No Policy	92.6%	92.5%	87.8%	92.7%	87.5%	92.1%
	Policy for Construction OR Administration	2.3%	0.9%	2.0%	2.4%	0.0%	2.0%
	Policy for Construction & Administration	5.1%	6.6%	10.2%	4.9%	12.5%	5.9%

* Percents may not add to 100 due to rounding

Frequency of Eyewitness Identification Procedures

By far the most commonly used eyewitness identification strategy was photo lineups, followed by show-ups, composite sketches, mugshot searches, and then live lineups. (see below) Agencies were also asked to provide the number of procedures conducted in 2010 for each of the five primary identification procedures:

- **Photo lineups:** 94.1 percent of agencies use photo lineups. Of the 316 agencies that reported their use for 2010, an average of 41 photo lineups (median=8) were conducted that year.
- **Show-ups:** 61.8 percent of agencies use show-ups. Of the 196 agencies that reported their use of show-ups from 2010, an average of 30 show-ups (median=5) were conducted.
- **Composites (images of perpetrators created by sketch artists, computer programs, etc.):** 35.5 percent of agencies use composites. Of the 112 agencies that reported using composites in 2010, an average of 3 composites (median=1) were used.
- **Mugshot searches:** 28.8 percent of agencies use mugshot searches. Of the 76 agencies that reported their use in 2010, the average was 53 searches (median=2).
- **Live lineups:** 21.4 percent of agencies use live lineups. Of the 91 agencies that reported using live lineups in 2010, an average of 2 live lineups (median=0) were conducted.

Eyewitness identification procedures conducted in 2010 were then analyzed according to whether or not each agency reported having a written policy for the procedures.[36] Agencies with policy for construction and administration of show-up procedures (mean number of lineups = 96.75) conduct significantly more show-ups than agencies with no written procedures (mean number of lineups = 48.98).[37] The same is true for agencies with written policies for construction and administration of photo lineup procedures, which conducted significantly more lineups (mean number of lineups = 197.85) than agencies without a photo lineup policy (mean number of lineups = 102.62) (see Table 9). In 2010, there was no significant difference in the number of live lineups, composites, or mugshot searches in agencies with or without written policies on the procedures.

[36] The total number of agencies (n) for each type of procedure varies from our overall response rate in part because not all agencies use each of the procedures (show-ups, photo lineups, live lineups, composites, and mugshot searches). Additionally, not every agency tracks officers' use of each type of procedure. For the following mean tests for the number of different procedures performed, we have minimized the influence outliers by "winsorizing" the upper 5 percent of values, i.e. these values have been set to the value marking the 95th percentile. For example, 95 percent of respondents indicated they performed between zero and 60 live lineups. The remaining 5 percent performed between 61 and 835. These extreme values will artificially inflate the average. If more of these outliers were in one of the groups (e.g., those with policies for construction and administration), one could incorrectly infer they performed more of these procedures. To minimize the influence of these outlying observations, we have set them equal to 60. The alternative is to drop these outlying cases. This option is undesirable because we will lose valuable information. An analysis of variance (ANOVA) was conducted to determine if any of the group means were significantly different from the others. Because individual group sample sizes were unequal, we utilized the Levene's test for homogeneity of variance. In cases where the variance was heterogeneous (i.e. a significant Levene's test), we utilized Welch's robust test for the equality of means. To determine where individual mean differences exist, we utilized Tukey's Honest Significant Difference (HSD) test.

[37] Welch's $F(2,47.996) = 2.861$ $p \leq .067$.

Table 9. Procedures with significantly more use in agencies with written policy

		Agencies	Mean Lineups	Std Deviation
Show-Ups n=200	No Policy	101	48.98	92.658
	Policy for Administration *or* Construction	19	58.47	117.566
	Policy for Administration *and* Construction	80	96.75	157.059
	Total	200	68.99	126.019
Photo Lineups n=272	No Policy	107	102.62	203.459
	Policy for Administration *or* Construction	27	164.85	307.677
	Policy for Administration *and* Construction	138	197.85	290.973
	Total	272	157.11	264.761

A subsequent survey item asked respondents if their agency allowed any other types of informal identification procedures other than those listed above. Approximately one-quarter (25.6%) of all agencies indicated that a witness could be escorted to a location where the potential suspect may be located (such as their workplace) to see if the witness recognized anyone.

Lineup Administrators

Agencies were asked to identify all of the employee positions that are authorized to conduct each identification procedure (see Table 10). Across all of the eyewitness identification techniques listed, detectives are the most likely to be authorized to conduct each of the identification techniques, followed by patrol officers, and sworn supervisors.[38]

[38] There were two exceptions to this rule. First, with regard to show-ups, patrol officers were most likely to be authorized to conduct these, followed by detectives and sworn supervisors. Second, the order was slightly different for live lineups, in which detectives were most likely to be authorized, followed closely by sworn supervisors and patrol officers.

No agency allowed civilian non-employees to conduct any of the identification procedures, and very few allowed civilian employees to do so. With regard to live lineups, 19.6 percent of agencies reported "other" and the most common write-in response was that a prosecutor was authorized to conduct the procedure.

Table 10. All positions authorized to conduct each identification procedure. (Agencies were asked to choose all that apply.)

Procedure	Patrol Officers	Detectives	Sworn Supervisors	Civilian Employees	Civilian Non-employees	Other
Show-ups n=369	96.3%	91.1%	82.4%	.2%	0%	5.4%
Photo lineups n=571	75.2%	85.4%	68.0%	2.7%	0%	4.9%
Live lineups n=132	55.5%	92.4%	65.6%	.2%	0%	19.6%
Composites n=216	69.0%	91.3%	64.0%	4.8%	0%	3.2%
Mugshot searches n=170	74.5%	69.4%	64.6%	6.3%	0%	.3%

Witness Instructions and Documentation

Respondents were asked to indicate all formats used to provide instructions to witnesses before conducting each identification procedure (see Table 11). The most common methods for providing instructions for each eyewitness identification technique are as follows:

- **Show-ups** – The most common form of instructions among agencies that conduct show-ups was informal verbal instructions (45.6%);
- **Photo lineups** – For agencies using photo lineups, instructions are more standardized and are provided either in writing (40.1%) or verbally (42.5%);

- **Live lineups** – Agencies using live lineups tend to provide standardized written instructions to witnesses (46.0%); and
- **Mugshot searches** – In agencies using mugshot searches, such searches are most frequently prefaced with informal verbal instructions (46.4%).

Table 11. Instructions provided to witnesses. (Agencies were asked to choose all that apply.)

Procedure	In Writing (Standardized)	Verbally (Standardized)	Verbally (Informally)	Recorded Verbally	Other	Do Not Give Instructions
Show-ups n=370	26.9%	38.9%	45.6%	7.1%	.4%	1.4%
Photo lineups n=563	40.1%	42.5%	27.6%	10.0%	1.2%	.4%
Live Lineups n=132	46.0%	39.2%	19.0%	6.2%	1.6%	19.6%
Mugshot searches n=166	15.1%	39.2%	46.4%	4.0%	.2%	1.7%

The majority of agencies surveyed (81.1%) require some sort of acknowledgement from witnesses that they understand the instructions provided to them, with the majority being verbal acknowledgement (42.1%), followed by written acknowledgement (27.3%) and both verbal and written (11.4%).

Respondents were then asked whether they give witnesses four common types of qualifying instructions during each procedure (see Table 12). Most commonly, witnesses are instructed that "the individual may not be the perpetrator" (for show ups) and "the individual may not be present" (for lineups).

Table 12. Qualifying instructions provided to witnesses. (Agencies were asked to choose all that apply.) Weighted Data.

Procedure	The individual may not be the perpetrator or may not be present	The witness need not make an identification	The investigation will continue even without an identification	The appearance of the perpetrator may have changed since the incident
Show-ups n=328	93.8%	61.5%	61.5%	52.6%
Photo lineups n=509	83.9%	56.3%	59.8%	59.8%
Live lineups n=100	87.6%	52.4%	46.0%	56.0%
Mugshot searches n=139	85.7%	60.0%	62.2%	45.4%

Overall, large majorities of agencies reported that a confidence statement or statement of certainty (a statement of the witness' confidence or level of certainty, in his or her own words, that is recorded at the time of the identification, such as "How sure are you?") is asked of witnesses during identification procedures:

- **Show-ups:** 84.9 percent of agencies using show-ups request a certainty statement;
- **Photo lineups:** 84.7 percent of agencies using photo lineups request a certainty statement;
- **Live lineups:** 68.8 percent of agencies using live lineups request a certainty statement; and
- **Mugshot searches:** 83.1 percent of agencies using mugshot searches request a certainty statement.

The vast majority of agencies document positive identifications by witnesses during identification procedures and most agencies also document a corresponding statement of certainty about the positive identification (see Table 13). Fewer agencies document non-identifications and statements of certainty related to those non-identifications.

Table 13. Information documented during identification procedure. (Agencies were asked to choose all that apply.)

Procedure	Positive identification	Statement of certainty for positive identification	No identification	Statement of certainty for no identification
Show-ups n=367	98.7%	79.6%	69.3%	40.3%
Photo lineups n=561	95.2%	76.2%	63.2%	43.9%
Live Lineups n=131	93.8%	60.2%	61.6%	45.6%
Mugshot searches n=165	95.6%	66.2%	49.5%	28.0 %

Agencies were then asked how they document the various eyewitness identification procedures (see Table 14). A written report was the most common method of reporting a show-up, photo lineup, live lineup, or mugshot search.

Table 14. Methods of documenting identification procedures. (Agencies were asked to choose all that apply.)

Procedure	Video Recording	Audio Recording	Written Report by Administrator	Written Report by another	Other	No Documen-tation
Show-ups n=382	31.9%	34.0%	43.8%	62.3%	2.2%	.1%
Photo Lineups n=567	20.7%	20.9%	48.6%	56.1%	5.0%	1.4%
Live Lineups n=132	24.5%	24.0%	37.6%	65.7%	4.3%	0%

Mugshot searches n=168	20.4%	36.3%	54.4%	37.3%	4.9%	.6%

Respondents were also asked if it was possible for a suspect to be included in more than one type of identification procedure. The vast majority of agencies (90.4%) rarely or never allow the same eyewitness to view the same suspect in more than one identification procedure. If this is allowed, the most common order and combination is a show-up followed by a photo lineup (62.8%).

Training

Sixty-eight percent of agencies that conduct photo lineups provide training on these lineup procedures, and 44 percent of agencies that conduct live lineups provide training on these procedures. Seventy percent of agencies that conduct show-ups provide training on show-up procedures. Larger agencies (500 and more officers) are more likely to have training for eyewitness identification procedures than small agencies (25 officers or less). Detectives are the agency employees most likely to receive formalized training on each of the identification procedures except mugshot searches (see Table 15). For mugshot searches, patrol officers are the employees most likely to receive training (41.6%), followed by detectives (35.8%).

Table 15. Positions receiving training for identification procedures. (Agencies were asked to choose all that apply.)

Procedure	Patrol Officers	Detectives	Sworn Supervisors	Civilian Employees	Civilian Non-employees	Other
Show-ups n=379	52.3%	58.6%	43.3%	2.2%	.6%	1.3%
Photo lineups n=576	45.1%	58.2%	41.3%	2.4%	0%	1.2%
Live lineups n=132	25.4%	42.4%	35.6%	4.9%	0%	19.6%
Composites n=212	19.6%	38.7%	24.4%	4.7%	0%	.8%
Mugshot searches n=174	41.6%	35.8%	34.1%	4.0%	0%	.6%

One-half of the responding agencies (50%) reported that they are responsible for training their personnel on eyewitness identification procedures. Agencies also reported that their personnel receive training from a state law enforcement agency (39.6%), a prosecutor's office (25.9%), a county law enforcement agency (23.1%), or a federal law enforcement agency (6.5%). In addition, 19.5 percent of respondents reported receiving training from another entity, with the most common responses being private companies or on-line courses.

The vast majority (85.3%) of respondents replied that their general training on eyewitness identification procedures includes guidance that "multiple witnesses should participate in identification procedures separately." Nearly 76 percent of agencies reported training employees to understand that "administrators must ensure that no visible information regarding prior arrests is visible to the witness on photographs." Approximately half of agencies (51.3%) reported that they train employees to ensure that

"if positive ID is obtained from a show-up, then other witnesses are presented with a lineup or photo lineup."

Of the agencies that use photo lineups, over half of the respondents reported that their training specific to composing photo lineups includes guidance that "at least 5 fillers should be used in each photo lineup" (55.5%), that "the photos used in photo lineups should be preserved" (52.6%), and that "fillers should generally fit the witness's description of the perpetrator" (52.2%). Fewer than 10 percent responded that their photo lineup training included guidance on artificially concealing (8.3%) or artificially recreating (7.1%) any unusual features (e.g., tattoos, facial hair, etc.) to create a consistent appearance between fillers and the suspect.

Fewer than 10 percent of all responding agencies (9.4%) said they have training for composing live lineups. Of those 58 agencies that train personnel on live lineups, 42.8 percent of the agencies said the training includes guidance that "fillers should generally fit the witness' description of the perpetrator," and 40.2 percent said training includes guidance that "the suspect should not stand out."

Respondents were also asked whether training addresses the *specific instructions* that administrators should provide to lineup witnesses in either photo or live lineups. Most agencies include in their training that instructions should include the statement, "The perpetrator may or may not be in the lineup" (47.1%). Additionally, over half of agencies' training instructs administrators to "avoid saying anything that may influence the witness's selection" (56.1%), and to "advise the witness not to discuss the identification procedure or results with other witnesses" (50.5%).

Show-ups

Of the respondents that conduct show-ups, 37.1 percent recommend a time frame limit after the crime beyond which a show-up should not be conducted. The mean amount of time to conduct a show-up is 2.3 hours, and the median is one hour. Agencies most often conduct show-ups when a person matching the suspect's description is found in close proximity to the location where the crime occurred. Almost three-quarters of agencies using show-ups allow officers to transport the witness to the detained person for the show-up procedure (71.6%), and 35.9 percent of agencies will transport the detained person to the witness. However, 40.5 percent of agencies that use show-ups reported that they have no clear policy regarding where the procedure should be conducted.

In the event that a detained person is identified by a witness during a show-up procedure, most agencies do not have a clear policy regarding what type of identification procedure should be used with any remaining eyewitnesses (63.6%). Of those agencies with a written policy for show-ups, 27.8 percent reported that additional witnesses should also undergo a show-up procedure with the detained person.

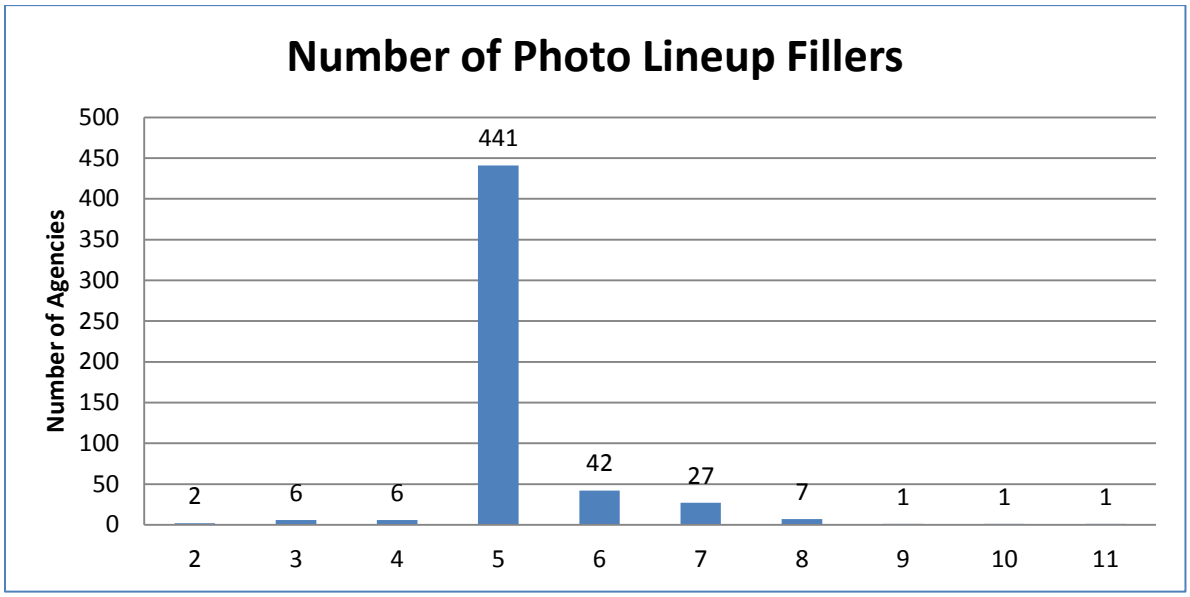
Photographic lineups

Most of the responding agencies use photo lineups (94.1%). The vast majority of agencies that use photo lineups reported that photo lineup identifications are admissible as evidence in their jurisdiction (92.7%).

Agencies that currently use photo arrays were asked a series of questions regarding the construction of the array and practices regarding the administration of the procedure. Over two-thirds of agencies (69.1%) only allow one suspect in each lineup, but 14.4 percent don't have a clear policy on the number of suspects allowed in the lineup. Nearly

three-quarters of agencies (71.8%) require a specific number of fillers. Of those agencies, most agencies (82.6%) use five fillers (see Figure 2).

Figure 2. Photo lineup fillers



Half of the responding agencies (50%) use "photos of fillers who match the general characteristics of the suspect," about one-third (31.2%) use "photos of fillers who look as much like the suspect as possible," and just over 10 percent (11.6%) use "photos of fillers who fit the description the witness gave of the *perpetrator*."

Of agencies using photo lineups, 59.9 percent reported that the location of the suspect's photograph is randomly generated in the lineup and 31 percent reported that the person constructing the lineup chooses the position of the suspect photographs (see Table 16). Very few responding agencies (1.7%) have the lineup administrator choose the order, and just over 5 percent (5.4%) said the suspect photograph is never in a certain position, such as "not first" or "not first or last."

Table 16. Placement of suspect in photograph lineup by agency size

Suspect Placement	≤ 25 sworn	26-50 sworn	51-99 sworn	100-499 sworn	≥ 500 sworn	Total n=565
Randomly Generated	65.1%	59.6%	37.5%	42.9%	50.0%	59.8% n=338
Chosen by person constructing lineup	27.9%	31.2%	50.0%	33.3%	37.5%	31.0% n=175
Other	7.0%	9.2%	12.5%	23.8%	12.5%	9.2% n=52

Agencies were asked to report all methods currently used in presenting photographs to witnesses (see Table 17). Almost half of the responding agencies (46.7%) reported using multiple photographs printed onto a single page; this was even more prevalent among larger agencies with 500 or more sworn officers with 75 percent indicating that they did so. Thirty-nine percent of agencies reported using individual print photographs. Only 4.5 percent of agencies reported that they place the photographs into envelopes before giving them to witnesses, but that increased to 11.1 percent for agencies with over 500 sworn officers. Photo lineups administered by computer are used by 12.2 percent of agencies.

Table 17. Photo lineup presentation methods by agency size. (Agencies were asked to choose all that apply.)

Method	≤ 25 sworn	26-50 sworn	51-99 sworn	100-499 sworn	≥ 500 sworn
Computer n=71	11.5%	19.4%	4.1%	9.3%	12.5%
Individual Print Photographs n=227	39.4%	41.7%	40.8%	27.9%	33.3%
Photographs placed into envelopes n=26	4.3%	5.5%	4.0%	2.4%	11.1%
Photographs placed into sleeve with windows n=180	36.1%	20.2%	18.0%	27.9%	25.0%
Multiple photos printed on one page n=272	41.6%	58.7%	55.1%	46.5%	75.0%
Other n=11	.0%	2.8%	2.0%	16.7%	.0%

<u>Photo Lineups</u>: Sequential vs. Simultaneous, and Blind vs. Non-Blind

The most commonly reported procedure for administration of a photo lineup is the simultaneous presentation of the photographs by a non-blind administrator. This was consistently the most common, regardless of agency size. Not all of the agencies identified a most commonly used procedure, and some agencies use a variety of procedures in their photo lineups.

- **57.8 percent of agencies use non-blind simultaneous** (photographs are shown all at once, administrator knows which photographs are suspects or fillers);

- **20.8 percent use blind sequential** (photographs are shown one at a time, with no side-by-side comparisons, and the administrator does not know the identity of the suspect or fillers);
- **11.2 percent use non-blind sequential** (photographs are shown one at a time, with no side-by-side comparisons, and the administrator knows which are suspects or fillers); and,
- **10.2 percent use blind simultaneous** (photographs are shown all at once, and the administrator does not know which are suspects or fillers).

Table 18 shows the extent to which agencies of different sizes use the various photo lineup procedures.

Table 18. Photo lineups: Most commonly used procedure by agency size

Procedure	≤ 25 sworn	26-50 sworn	51-99 sworn	100-499 sworn	≥ 500 sworn	Total n=547
Non-blind simultaneous	55.6%	67%	53.2%	55%	75%	57.8% n=316
Blind simultaneous	10.9%	8.7%	8.5%	12.5%	0%	10.2% n=56
Non-blind sequential	14.6%	4.9%	6.4%	2.5%	12.5%	11.2% n=61
Blind sequential	18.9%	19.4%	31.9%	30%	12.5%	20.8% n=114

More than half of the agencies (58.1%) have no clear policy or practice regarding the number of times that a witness is allowed to view photographs in a photo lineup. Slightly more than one-quarter (27.7%) of agencies allowed witnesses to see photographs only once, and 7.5 percent allow for witnesses to see the photographs twice. Some agencies elaborated that they only allow a second viewing if the witness specifically requests it. When agency size was taken into account, agencies with 500 or more sworn officers were more likely than smaller agencies to have a policy and to allow only one viewing of the photographs in a lineup (see Table 19).

Table 19. Number of times a witness can view photographs, by agency size

Number of Views	≤ 25 sworn	26-50 sworn	51-99 sworn	100-499 sworn	≥ 500 sworn	Total n=571
One	22.6%	38.0%	32.7%	35.7%	44.4%	27.7% n=158
Two	9.1%	3.7%	6.1%	4.8%	11.1%	7.5% n=43
Three	0%	0%	2.0%	0%	0%	.2% n=1
Other	7.4%	1.9%	8.2%	7.1%	11.1%	6.5% n=37
No Clear Policy or Practice	60.9%	56.5%	51.0%	52.4%	33.3%	58.1% n=332

Live lineups

Only 21.4 percent of the responding agencies use live lineups. Of those that do use live lineups, the most commonly reported procedure for administration of a live lineup is the simultaneous presentation by a non-blind administrator. This was consistently the most common, regardless of agency size. Not all of the agencies

identified a most commonly used procedure. Agencies use a variety of procedures in live lineups as detailed below:

- **61.8 percent of agencies use non-blind simultaneous** (individuals are shown all at once, administrator knows which persons are suspects or fillers);
- **30.3 percent use non-blind sequential** (individuals are shown one at a time, with no side-by-side comparisons, and the administrator knows the identity of the suspect or fillers);
- **4.5 percent use blind sequential** (individuals are shown one at a time, with no side-by-side comparisons, and the administrator does not know which are suspects or fillers);
- **3.4 percent use blind simultaneous** (individuals are shown all at once, and the administrator does not know which are suspects or fillers).

Table 20 shows the extent to which agencies of different sizes use various live lineup procedures.

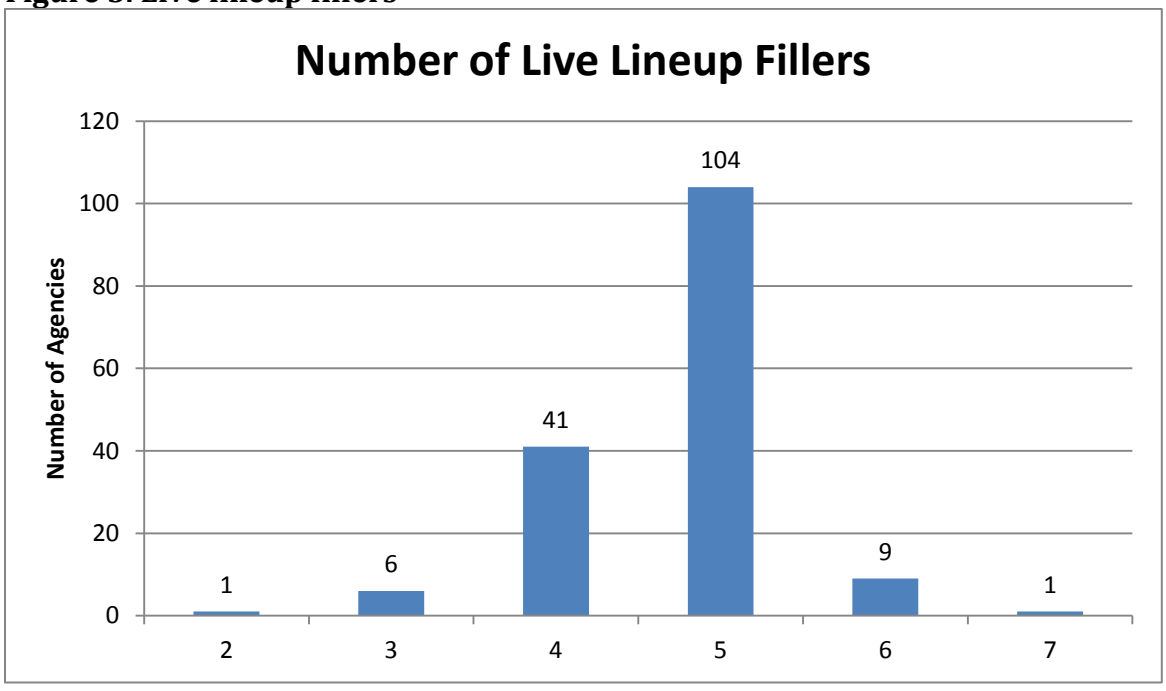
Table 20. Live lineups: Most commonly used procedure by agency size

Procedure	≤ 25 sworn	26-50 sworn	51-99 sworn	100-499 sworn	≥ 500 sworn	Total n=89
Non-blind simultaneous	56.3%	68.8%	58.3%	66.7%	100%	61.8% n=55
Blind simultaneous	0%	6.3%	8.3%	11.1%	0%	3.4% n=3
Non-blind sequential	43.8%	18.8%	16.7%	11.1%	0%	30.3% n=27
Blind sequential	0%	6.3%	16.7%	11.1%	0%	4.5% n=4

Agencies that reported use of live lineups were asked about agency practices regarding the presence of defense counsel during lineup procedures. Eleven percent of agencies try to ensure that a suspect has counsel during a live lineup in all cases, and 61 percent do not. In nearly 10 percent of agencies, officers try to ensure counsel is present if the suspect has already been arrested and nearly five percent of agencies report doing so if the suspect has been charged.

Of the agencies that use live lineups, 60.8 percent allow only one suspect per lineup, and 27.8 percent of agencies reported that they have no clear policy on the number of suspects in the lineup. Of the agencies with a written policy, nearly 40 percent require a certain number of filler individuals for a live lineup procedure (39.9%). Many agencies (64.1%) use five fillers (Figure 3). Fillers are most often randomly chosen (31.2%) or picked by the lineup administrator (26.7%).

Figure 3. Live lineup fillers



Composites

Just over one-third of all responding agencies use composite sketches produced by artists, computer software, or other methods (35.5%). Many agencies make a practice of sharing composite sketches with neighboring law enforcement agencies. Eight percent of agencies responded that the news media always receive copies of composites. 26.9 percent of agencies said the media receive composites only in high-profile cases (see Table 21).

Table 21. Groups that receive composites

Group	Always	Only in High Profile Cases	Sometimes	Never	Other
Patrol Supervisors n=210	65.8	14.6	18.5	.6	.4
Patrol Officers n=216	57.4	14.5	27.0	.6	.4
Detective Supervisors n=197	71.3	12.5	15.3	.4	.4
Detectives n=210	74.6	10.9	13.7	.4	.4
News Media n=205	8.0	26.9	64.2	0	.6
Neighboring LE agencies n=216	29.2	23.1	47.1	0	.4
County Law Enforcement n=205	38.9	16.2	42.7	1.6	.6
State Law Enforcement n=203	33.1	18.0	48.3	0	.5

Of the agencies that reported using composites, the vast majority of agencies create their own (94.4%). The most common method reported was the use of a sketch artist (57.7%), followed by computer software, (38.5%) and physical kits (10.0%). The most common factors that influence whether or not to create a composite are whether the witness had a particularly good view (66.1%), whether it is a high-profile case (53.8%), and whether there are few or no leads in the case (52.2%).

If there are multiple witnesses, the most common practice is for all witnesses to work individually with the composite creator, (43.7%), followed by some of the witnesses working individually with the composite creator (26.9%), or the witness with the best memory working with the composite creator (17.7%). Less than four percent of agencies using composites had witnesses working in groups with the creator, whether it was all of the witnesses (3.4%) or some of the witnesses (0.3%).

Mugshot Searches

More than one-quarter of responding agencies (28.8%) use mugshot searches (see Table 22). The most common method of presenting them to witnesses is through the use of a computer (54.4%), followed closely by books/photo albums (48.3%). The vast majority of agencies do not limit the number of mugshots viewed by a witness (84.5%). The most common ways that agencies sort mugshots are by gender (61.4%), race (56.7%), and age (41.5%).

Table 22. Mugshot searches by agency size

	≤ 25 sworn	26-50 sworn	51-99 sworn	100-499 sworn	≥ 500 sworn	Total n=619
Use Mugshot Searches	25.4%	36.7%	38.8%	25.6%	44.4%	28.8% n=178
Do Not Use Mugshot Searches	74.6%	63.3%	61.2%	74.4%	55.6%	71.2% n=441

Historical Agency Experiences

Respondents were asked whether their policies on identification procedures had changed since the NIJ guidelines were published in 1999. The survey asked two questions: what policies or practices did agencies change, and what year did the agency make the change. The number of agencies that made changes varied by policy/practice, with the largest number of agencies (169) saying they changed "photo lineup instructions." Table 23 provides a breakdown of changes to policy/practice by agency size.

Table 23. Percentage of agencies that reported making changes to identification procedures after 1999. (Agencies were asked to choose all that apply.)

Change	All agencies	≤ 25 sworn	26-50 sworn	51-99 sworn	100-499 sworn	≥ 500 sworn
Live lineup instructions n=55	39.6%	39.3%	47.6%	33.3%	33.3%	40.0%
Began use of computer for photo lineups n=156	39.3%	37.1%	31.6%	65.7%	45.2%	42.9%
Administrator does not know identity or placement of suspect in photo lineup n=141	38.6%	42.6%	28.6%	45.2%	30.0%	25.0%
Presenting suspects to witnesses one at a time in photo lineup n=141	37.4%	39.8%	28.6%	46.4%	30.8%	40.0%
Photo lineup instructions n=169	33.9%	32.3%	30.9%	45.5%	38.5%	50.0%
Number of live lineup fillers n=42	31.3%	34.9%	33.3%	26.7%	11.1%	16.7%
Procedures for selecting fillers n=134	30.9%	33.1%	24.1%	34.1%	27.0%	25.0%
Show-up instructions n=95	29.2%	30.1%	28.4%	25.6%	28.6%	37.5%
Administrator does not know identity or placement of suspect in live lineup n=32	27.1%	22.9%	43.8%	33.3%	28.6%	33.3%

Presenting suspects to witnesses one at a time in live lineup n=22	20.0%	15.1%	31.6%	30.0%	33.3%	0%
Number of photo lineup fillers n=82	17.3%	14.8%	22.4%	25.6%	17.9%	12.5%
Other n=4	6.9%	0%	11.1%	33.3%	11.1%	0%

For the half of agencies reporting that they changed one or more policy/practices after 1999, they were asked to indicate the year in which the change occurred (see Table 24). Of the agencies that made one or more policy changes, most changes appear to have occurred very recently, in 2010 or 2011, but a number of agencies reported making changes in 2005.

Table 24. Changes made, by most frequent years

Change	% of agencies that made the change in 2005	% of agencies that made the change in 2010/2011
Procedures for selecting lineup fillers n=107	24.1	42.9
Number of photo lineup fillers n=81	25.9	48.1
Number of live lineup fillers n=39	48.1	35.9
Show-up instructions n=94	21.7	55.8
Photo lineup instructions n=148	19.2	57.7
Live lineup instructions n=52	36.9	47.1
Began use of computer for photo lineups n=150	4.0	18.7
Administrator does not know identity or placement of suspect in photo lineup n=123	17.8	53.6

Administrator does not know identity or placement of suspect in live lineup n=27	61.8	17.2
Presenting suspects to witnesses one at a time in photo lineup n=112	24.7	46.9
Presenting suspects to witnesses one at a time in live lineup n=18	5.5	65.8
Other change n=5	7.5	53.9

n =number of respondents who indicated "yes" they made a change.

Telephone Interviews

The second phase of the project consisted of telephone interviews with 30 agencies to further examine themes and trends and to identify promising practices for eyewitness identification. Ultimately, we sought to identify and interview officials of agencies that were indentified through their survey answers as using innovative practices or policies, or that had made significant changes to their eyewitness procedures (usually a shift to the use of a blind, sequential procedure of eyewitness identification). However, our goal was not to focus on agencies that have changed to a specific policy. Our goal was to understand each agency's experience and why it is practicing its current procedures of eyewitness identification. The information presented here is intended to provide context to agencies' practices, and to explain practices in more detail than was available in the national survey.

Lineup Administration and Policy

Photo Lineups

Thirteen of the 30 agencies that were interviewed use a sequential, blind procedure for administering photo lineups. Three additional agencies said they had plans to move

from their current use of a non-blind, simultaneous procedure to a sequential, blind procedure for photo lineups.

Eight agencies currently use a non-blind, simultaneous procedure for photo lineups. Four of these agencies just use a sheet of paper printed with six photographs. One large urban agency uses a "door and window procedure," where photographs are placed in window slots on a board. The administrator opens one window at a time until all photographs are revealed, and witnesses are allowed to close the windows and open them at will to compare the photographs.

Nine agencies use a combination of both blind, sequential and non-blind, simultaneous administration procedures for photo lineups. In only two of these nine agencies do the written policies on eyewitness procedures explicitly allow for the use of both procedures (simultaneous or sequential), while the majority with written policies do not mention any instruction on either procedure. In two agencies, a change to the blind administration procedure for photo lineups has been mandated, but there is still a choice to use sequential or simultaneous.

Five out of the nine agencies that use both sequential and simultaneous procedures of showing photo lineups leave it to the officers' discretion to choose which to use in an investigation. Some agencies commented that officers are allowed to choose to use the procedure they prefer. Further, within those five agencies, all stated that the majority of the time, given the choice, a non-blind, simultaneous administration procedure is used.

The remaining four out of the nine agencies that use a combination of both blind, sequential and non-blind, simultaneous administration procedures for photo lineups have specific instances written into policy of when to use each procedure. For example, one

agency only uses a blind sequential procedure for photo lineups for felony cases, and uses a non-blind simultaneous procedure for misdemeanor crimes. Another agency stated that it uses the sequential procedure when trying to identify witnesses or other non-suspects related to a crime, while simultaneous procedures are used when trying to identify suspects.

The filler photographs are usually found using various computer databases of drivers' license or mug shot photographs.

Live Lineups

Regarding live lineups, 13 of the 30 agencies use live lineups (the 17 that do not use live lineups said they are too inconvenient or not as valuable as photo lineups). Nine of the agencies that conduct live lineups use a non-blind, simultaneous procedure. Two agencies use a blind, sequential procedure for administrating live lineups. One agency uses a sequential, non-blind procedure for live lineups because the facility used for live lineups is only big enough to show one individual at a time. One agency initially presents lineup members to the witness one at a time, and then has all the lineup members stand together before the witness.

The fillers in live lineups are usually jail inmates or police officers, and all individuals participating in live lineups wear the same clothes. For agencies using uniform clothing in live lineups, prison jumpsuits are usually used.

The interviews revealed that agencies do not consistently use the same lineup procedures across live and photo lineups. When comparing the live lineup practices to the agencies' photo lineup practices, the interviews showed six of the 13 agencies use a combination of both blind, sequential and non-blind, simultaneous for their photo lineups.

Five of the agencies use a blind, sequential procedure for photo lineups. Finally, the remaining two out of the 13 agencies that conduct live lineups use a non-blind, simultaneous procedure for both photo lineups and live lineups.

Memorializing the Lineup

Twenty-eight of the 30 agencies require witnesses, either verbally or in writing, to state that they understand the instructions and agree to abide by the lineup procedure.

All 30 agencies require the administrator of the lineup to write a specialized report or narrative following an identification in a photo lineup. Nineteen agencies use video or audio recording of the lineup procedure when feasible, but not all the time. Only 11 of the 30 agencies audiotape and/or videotape the lineup procedure all the time.

One agency is required by a state law to always audio record (and video record when possible) witness interviews in any procedure. Nine agencies that conduct live lineups record audio of that procedure and use video when available. Two agencies take photographs of each stage of the live lineup and use that as the primary recording procedure of that procedure. Two agencies do not record their live lineups with any electronic equipment.

Almost all of these agencies ask witnesses to describe their degree of certainty in their own words. Only a few agencies ask for a number or percentage to gauge the witness's certainty. In one agency, a witness is asked to describe the strength of his or certainty by one of four phrases: "strong positive, tentative positive, weak negative, strong negative." The use of negatives is for non-identifications.

Changes and Challenges to Practice and Policy

All 13 agencies that have changed to a blind, sequential procedure have done so in the last 11 years. Three main reasons were given for implementing these changes. First, in eight agencies, a member of the agency or the prosecutor's office brought case law or research studies to the attention of the agency. In many cases, that individual wrote the initial draft of the new policy (often in conjunction with the local prosecutor's office). In one instance, that individual also brought it to the county or state prosecutor, as well as the state attorney general's office, to try to create a regional or state policy.

The second reason for change, in two agencies, was that legislation was passed that required a change to the practice.[39]

Regarding the third reason for change, three agencies decided to change procedures after participating in a study, a panel, roundtable, or committee on issues pertaining to eyewitness procedures or wrongful convictions. The agencies that participated in these studies or roundtables made, or are making, changes predominately within a few years of those experiences, generally on their own terms (as opposed to a legal mandate or legislation). However, in one case, an agency participated in a yearlong pilot study that led it to change its eyewitness procedures to blind, sequential from non-blind, simultaneous. The agency said it saw no change in the quality of their identifications and went back to the traditional non-blind, simultaneous identifications after the study.

In agencies that changed to a blind, sequential procedure from a non-blind, simultaneous procedure, the changes were not seen as being difficult, or there was

[39] State legislation has been passed in the states of North Carolina, Connecticut and New Jersey. Legislation on eyewitness procedures also has been approved in Texas, and was being implemented in late 2012.

only minimal resistance from officers about the changes to the traditional procedures. The 13 agencies interviewed that have changed to a blind, sequential procedure said they have seen an impact on prosecutions, including a greater level of confidence in the quality of evidence. An official of one agency said, "It is difficult for the defense to challenge the identification procedure when there is nothing left to challenge."

However, a representative from another agency that made the change to blind, sequential procedures stated that he believed improvements in the quality of identifications and evidence have been mostly due to new technology and tools that promote higher quality lineups. For example, new databases make it easier to find fillers with similar physical characteristics to the suspect's. And computerized manipulation of photos makes it possible to create lineups with photographs of the same size, background, and quality. These technologies help law enforcement agencies create more standardized lineups that incorporate more of the 1999 NIJ guidelines regarding lineup composition.

Of eight agencies using simultaneous, non-blind eyewitness procedures for photo lineups, three were changing to blind, sequential procedures. The remaining five agencies that do not plan to change their procedures stated they have encountered very few or no challenges to their procedures.

The remaining nine agencies, which use a combination of blind, sequential and non-blind, simultaneous procedures for eyewitness procedures, said they have run into few or no challenges using both procedures, and have had no legal challenges on their procedures. Most of these agencies' written policies allow for the use of either simultaneous or sequential procedures.

Summary

The telephone interviews demonstrate many variations on how eyewitness identification procedures are conducted by law enforcement agencies. Some agencies have made significant changes to their procedures, while others have made only a few changes. Some agencies have not made any changes to their eyewitness identification procedures.

Some of the practices are widespread and uniform across the 30 agencies. All 30 agencies reported that they use standardized instructions for witnesses for photo lineup procedures and document the results of positive identifications. Almost all the agencies generally try to use lineup photographs that are uniform in size and have similar backgrounds, and almost all the agencies that document a statement of certainty do so by documenting the witness's statement in the witness's own words.

Interestingly, in those agencies that made changes, the telephone interviews revealed that agencies have taken a "mix and match" approach to change. They have modified some traditional procedures in accordance with NIJ's 1999 guidelines, but kept other traditional procedures. For example, many of the agencies said they use both blind sequential and non-blind, simultaneous methods for photo lineups, depending on the circumstances. In some agencies the use of procedures is left to the administrator's discretion, or varies by crime. Another example is that most of the agencies that ask witnesses to provide a certainty statement for a positive identification do not document witness certainty for non-identifications.

Chapter 5
DISCUSSION

Eyewitness identification is one of the fundamental investigative practices in criminal justice. The police, prosecutors and the courts have long relied on the testimony of witnesses and victims to identify, prosecute and convict individuals. Eyewitness testimony has been given considerable credence in the criminal justice system, perhaps because we assign significance to those who say, "I saw it with my own eyes."

However, research on eyewitness memory over the past three decades, as well as the increasing attention to wrongfully convicted individuals, has raised questions and concerns about eyewitness memory to the point that it can no longer be given the very high level of credence that it received in the past. In fact, human memory research findings have shown that in many situations, especially those that are confrontational or traumatic, human memory can be faulty. Scientists in this field have sought to better understand how human memory works, and then to apply that knowledge to real-world situations where human memory is critical.

DNA exoneration cases have exposed eyewitness error as the predominant factor in wrongful convictions. Over a decade ago, this fact propelled joint action among law enforcement, legal professionals, and researchers, resulting in the 1999 publication of *Eyewitness Evidence: A Guide for Law Enforcement* by the National Institute of Justice. The NIJ Guide used the available body of scientific research and best practices in law enforcement to provide recommendations for effective eyewitness identification procedures.

The PERF survey detailed in this report provides the first comprehensive description of the state of law enforcement eyewitness identification practices across the country. The survey findings provide an assessment of the state of eyewitness identification procedures in the field and can serve as guidance for future improvements. This chapter summarizes our main findings and discusses their implications for law enforcement agencies. This section also provides recommendations for future research.

Summary of Findings

Survey Response Rate

In total, 619 of the 1,377 sample agencies completed the survey, resulting in a response rate of 45 percent. The response rate increased as the size of the agency increased, with smaller agencies (fewer than 25 sworn officers) least likely (29%) to complete the survey and the largest agencies (more than 500 sworn officers) most likely to complete the survey (81%). Sheriffs' offices were less likely than other law enforcement agencies to return the survey instrument. For all law enforcement agencies with 51 or more sworn personnel, the response rate was 62 percent.

The response rate fell short of our expectations but may be understandable given that a subset of agencies in our sample may rarely perform criminal investigations that rely upon photo or live lineup identification procedures. Agencies with fewer than 25 sworn personnel, and to a lesser extent among agencies with 50 or fewer sworn personnel, conduct relatively few criminal investigations when compared to larger agencies.

The lower response rate among sheriffs may reflect the fact that not all sheriffs' offices are full-service law enforcement agencies—that is, they may not provide patrol

functions or criminal investigative functions. The primary responsibilities of some sheriffs' agencies are managing correctional facilities, court security, and civil process. Thus, there may have been a number of law enforcement agencies that did not complete the survey because it was not particularly applicable to their operations.

The most significant findings of the survey are summarized below.

Written policies for eyewitness identification procedures.

Most agencies that completed the survey have no written policy that addresses the five critical eyewitness procedures examined in this survey: 76.9 percent report no written policy for show-ups, 64.3 percent for photo lineups, 84.0 percent for live lineups, 90.6 percent for composites, and 92.1 percent for mugshot searches. However, large agencies (500 or more sworn officers) are consistently more likely to report having a written policy for each of the procedures.[40] Generally, as agency size decreases, so does the likelihood of the agency having written policies in this area.

While the majority of agencies do not have written policies, those that do have them almost always take a comprehensive approach by addressing both the construction of lineups (selecting the photographs or persons to be included in the lineup and choosing the order or manner in which they are presented) and the administration of lineups (the rules for overseeing and conducting the procedure), rather than just the construction *or* administration of lineups.

Moving from policy to practice, by far the most commonly used procedure is the photo lineup, which 94.1 percent of agencies use. The next most frequently used

[40] Large agencies (500 or more officers) are more likely to have written policies for each procedure and report having policies at the following rate: Show-ups (66.7%), photo lineups (75.0%), live lineups (56.6%), composites (28.5%), and mugshot searches (12.5%).

procedures are show-ups (used by 61.8% of the responding agencies), composite sketches (35.5%), mugshot searches (28.8%), and live lineups (21.4%). When agencies use a particular procedure, they usually use it for all Part I offenses in the FBI's UCR system.

The results also indicate that agencies with 500 or more sworn officers are most likely to have written policies on those procedures. Agencies with a written policy for show-ups conduct significantly more show-ups than agencies with no written policies. The same is true for photo lineups, as agencies with a written policy on photo lineups conduct significantly more photo lineups than agencies that lack a policy. However, there is a significant gap between the number of agencies that use eyewitness procedures and those that have written policies. For example, 38.2 percent of agencies conduct show-ups without a written policy; 33.4 percent conduct photo lineups; 47.5 percent conduct live lineups; 52.5 percent conduct composites; and 55.7 percent conduct mugshot searches without a written policy.

Training employees who conduct eyewitness identifications.

The survey results indicate that more agencies provide training to their employees than have written policies, and just over half of the agencies provide training that addresses many of the key NIJ guidelines. The majority of agencies train their personnel in the general principles that multiple witnesses should participate in identification procedures separately, that administrators must ensure that no visible information regarding any prior arrests of photo lineup members is visible to witnesses, and that a statement of certainty should be obtained for identification.

Of the agencies that use photo lineups, more than half of the survey respondents reported that their training includes guidance on how to construct photo lineups that is generally consistent with the 1999 NIJ Guide. Almost half of the agencies train their personnel in the general principles that "multiple witnesses should participate in identification procedures separately" (47.4%); that "administrators must ensure that no information regarding prior arrests is visible to witness on photos" (42.1%); and that "a statement of certainty should be obtained for the witness identification" (41.4%). **While a majority of agencies (69%) train lineup administrators to instruct witnesses that the perpetrator may or may not be present in the lineup, there is less uniformity and consistency with respect to training administrators to provide three other NIJ recommended instructions.**[41] However, more than half of agencies train administrators to "avoid saying anything that may influence the witness's selection."

In our follow-up telephone interviews with 30 agencies, many of the agency representatives stated that they would like their agencies to provide more extensive training than what they currently provide. According to many of the representatives, much of the training for both officers and detectives can be best characterized as on-the-job-training by senior officers or supervisors.

Instructions for witnesses.

It is important that eyewitnesses understand how a lineup works and what is expected of them. The vast majority of agencies provide some type of general instructions

[41] The 1999 NIJ Guide recommends that witness be instructed that (1) the perpetrator may or may not be in the lineup; (2) it is just as important to eliminate innocent persons from suspicion as it is to identify guilty parties; (3) the appearance of the perpetrator may have changed since the incident, and (4) the investigation will continue whether or not an identification is made.

to witnesses prior to an eyewitness identification procedure, and also require either a verbal or written acknowledgment from witnesses indicating that they understood the instructions provided.

Of the agencies that use live lineups, 87.6 percent provide some type of instructions to the witnesses or victims, while 83.9 percent of the agencies that use photo lineups provide some type of instructions. Agencies use a number of different approaches to providing instructions to eyewitnesses, and when they use photo and live lineups, they rely upon standardized instructions, either in writing or verbally. This finding from our survey was supported in our in-depth telephone interviews of 30 agencies.

However, for show-ups and mugshot searches, agencies rely more on informal instructions.

Agencies also regularly provide witnesses with additional types of specific instructions. Regardless of the procedure, more than 83 percent of the agencies advise witnesses that "the individual may not be the perpetrator or may not be present." The next most commonly used instruction for witnesses is that the "witness need not make an identification" (used approximately 50 to 60 percent of the time for any of the procedures). Two other instructions recommended by the NIJ Guide—that "the investigation will continue even without the witness' identification" and that "the appearance of the perpetrator may have changed since the incident"—are used approximately 45 to 60 percent of the time, depending on the specific eyewitness procedure being used.

With respect to photo lineups (the most commonly used identification procedure), while the large majority (83.1%) of agencies are giving witnesses the critical instruction that the perpetrator may not be among the persons or

photographs presented to the witness, they do not provide other important instructions with the same frequency. For example, 43.7 percent do not instruct the witness that they are not required to make an identification and 40.2 percent do not instruct the witness that the investigation will continue even without a positive identification or that the suspect's appearance may have changed since the incident.

Overall, the survey responses indicate that photo and live lineups tend to be accompanied by some standardized instructions in written or verbal form. However, while a large percentage of agencies provide some of the instructions recommended by the 1999 NIJ Guide, many provide some, but not all of the recommended instructions.

<u>The number of suspects and total members per lineup.</u>

The survey found that a majority of agencies are allowing just one suspect in lineups, which is consistent with recommended practices. And a majority of agencies are following the NIJ Guide by using at least six lineup members in photo lineups (five fillers and one suspect) and five lineup members in live lineups (four fillers and one suspect).

More specifically, of agencies that use *photo lineups*, 69.1 percent allow only one suspect in each lineup, but 14.4 percent don't have a clear policy on the number of suspects allowed in the lineup. Of the agencies that use *live lineups*, 60.8 percent only allow one suspect per lineup, but 27.8 percent of agencies reported that they have no clear policy on the number of suspects that are permitted to be in a single lineup.

Of agencies that use *photo lineups*, 59.8 percent reported that the location of the suspect's photograph is randomly generated for the lineup and 31 percent reported that the person constructing the lineup chooses the position of the suspect photographs.

Among agencies that use *live lineups*, the two most common ways of identifying fillers to be used in lineups are "randomly chosen" (31.2%) or "picked by the lineup administrator" (26.7%).

The survey revealed a consensus for using five fillers along with a single suspect in photo lineups, for a total of six lineup members. Of those agencies that use *photo lineups*, nearly three-quarters of them use five fillers (70.9%), and since the majority of agencies place only one suspect in a lineup, most photo lineups include a total of six members. Of those agencies that use *live lineups*, 95.7% use four or more fillers. Twenty-seven percent of agencies use more than five fillers, and according to those who participated in follow-up telephone interviews, the reason for this is to increase the perception that the lineup is a fair procedure.

<u>The photographs of the lineup members.</u>

The NIJ Guide recommends that fillers be selected "who generally fit the witness's description of the perpetrator. When there is a limited/inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features." Half of the responding agencies use photographs of fillers who "match the general characteristics" of the suspect, while about a third used photographs of fillers who "look as much like the suspect as possible," and just over 10 percent use photographs of fillers who fit the description the witness gave of the perpetrator as recommended by the NIJ Guide.

While the survey did not ask detailed questions about the quality of the photographs, the telephone interviews revealed that agencies generally try to use photographs that are uniform in size and have similar backgrounds. Often this is accomplished by drawing photographs from databases that are populated by photographs that appear similar. **The NIJ Guide suggested that computers, computer-based imaging systems and the Internet may enable law enforcement to share images and improve procedures through standardization of photographs, but only a small percentage (12.4%) of agencies use computers for this purpose.**

Blind vs. non-blind procedures.

By a large margin, the most commonly reported procedure currently in use for administration of a *photo lineup* in agencies (69%) is a non-blind administrator—that is, the administrator knows which photograph is of the suspect. This is consistently the most common method, regardless of agency size. While only about a fifth of the responding agencies use *live lineups*, of those that do, the most common administration procedure was non-blind (92.1%), regardless of agency size.

The in-depth follow-up interviews with agencies conducted in this study found that several agencies have adopted blind procedures and reported that implementation of the blind procedures was straightforward and relatively easy, with most sworn personnel being receptive to the new procedures.

Sequential vs. simultaneous presentations

The most commonly reported procedure among agencies in the PERF survey for administration of a *photo lineup* is the simultaneous presentation of the photographs

(68%). Almost half of the responding agencies in the PERF survey reported using multiple photographs printed onto a single page, and this figure increases to 75 percent for agencies with more than 500 sworn personnel. Likewise, in *live lineups* (which are used by only 21.4% of the agencies), the most common method of presenting lineup members was simultaneously, rather than one at a time.

When we analyzed the use of blind vs. non-blind administration in connection with sequential vs. simultaneous procedures, we found that most agencies use non-blind simultaneous procedures in both *photo lineups* (57.8%) and *live lineups* (61.8%). The second most frequently used procedure in *photo lineups* is blind sequential (20.8%). The second most frequently used procedure in *live lineups* is non-blind sequential (30.3%), indicating that the vast majority of live lineups are conducted by an administrator who knows which lineup member is the suspect.

Some agencies also use a combination of different procedures in the same type of lineup. In our telephone interviews with 30 selected agencies, many of them said that for *photo lineups* they use both blind sequential and non-blind simultaneous procedures, depending on the circumstances, such as the type of crime or the investigating officer's preference.

The number of viewings by the witness.

Of the agencies surveyed, only 41.7 percent of agencies had a clear policy for the number of times that a witness could view a lineup. Just over a quarter of all agencies surveyed (whether they had a written policy or not) allowed witnesses to see photographs only once, and 7.6 percent allow for witnesses to see the photographs two times or more

(with the remaining agencies indicating some other frequency). When agency size was taken into account, agencies with 500 or more sworn officers were more likely than smaller agencies to have a written policy and to allow for only one viewing of the photographs in a lineup.

The vast majority of agencies (90.4%) rarely or never allow the same eyewitness to view the same suspect in more than one identification procedure. If this is allowed, the most common combination of procedures is a show-up followed by a photo lineup.

Witness statements and lineup reports.

The vast majority (92.3%) of agencies document positive identifications by witnesses during identification procedures, and most (73.6%) agencies also document a corresponding statement of certainty about the positive identification. Almost all of the 30 agencies that PERF contacted for in-depth interviews that document a statement of certainty do so by documenting the witness's statement in the witness's own words. Nearly all of the 30 agencies ask witnesses for a number or percentage regarding the certainty of their identification.

Fewer agencies document non-identifications and statements of certainty related to those non-identifications. **Sixty-three percent of agencies using photo lineups reported that they document non-identifications, and 43.9 percent reported that they document statements related to certainty of the non-identification.**

While the large majority of agencies are documenting positive identifications, they are not documenting non-identifications at the same rate, yet both outcomes can be equally important to an investigation.

A written report was the most common method of documenting a show-up, photo lineup, live lineup, or mugshot search. Agencies also use video and audio recording to document photo and live lineups. Slightly more than one-fifth of agencies reported using either audio or video recording to document *photo lineups* and 17 percent reported using both. Twenty-four percent of agencies reported using either audio or video recording to document *live lineups* and 22 percent reported using both.

Implications of the Findings for Police Agencies

The survey described in this report represents the first national effort to comprehensively measure current eyewitness identification procedures in local and state law enforcement agencies. It has been 14 years since NIJ produced a guide for law enforcement agencies to use as a tool for refining their eyewitness identification procedures. The NIJ Guide and its companion Training Manual, published in 2003, were groundbreaking in several ways, including their melding of psychological research with the practical demands of law enforcement agencies to establish uniform practices for the collection and preservation of eyewitness evidence. The 1999 NIJ Guide was the primary resource for any agency interested in modifying its eyewitness identification procedures, and to this day remains the most comprehensive guide on this topic designed for law enforcement agencies.

This survey assessed the extent to which law enforcement agencies have adopted the 1999 NIJ guidelines, as reflected in their current eyewitness identification policies and procedures. **The survey shows that law enforcement agencies lack uniformity with respect to the procedures that they employ related to eyewitness identification. Most agencies have not fully implemented the recommendations in the NIJ Guide.**

Some of the NIJ guidelines have been implemented in the majority of agencies, while others have been implemented at a much lower rate. For example, the majority of agencies report that they provide standardized instructions to witnesses, construct lineups with one suspect and five fillers, and document the results of eyewitness identification procedures. On the other hand, fewer than half of the agencies have developed written policies on their eyewitness procedures; almost a third do not provide training on photo lineup procedures; and 40 percent do not provide several of the recommended instructions to witnesses viewing photo lineups.

Since 1999, some law enforcement agencies have modified their practices in some areas, but not in others. For those agencies that reported policy or procedure changes after 1999, most changes appear to have occurred either in 2005 or more recently, in 2010 or 2011.

The most commonly reported changes since 1999 include providing instructions to witnesses for live lineups, using computers to administer photo lineups, using blind administration of photo lineups, and using sequential presentation of photo lineups. Of those agencies that reported making changes to the administration of photo lineups, 40 percent of them reported changing to a blind procedure in 2010. One-quarter of the agencies that made photo lineup administration changes adopted sequential photo lineup

procedures in 2005, and 27.7 percent did so in 2010. Of those agencies that reported making changes to the administration of live lineups, 70.7 percent of them reported changing to a blind procedure in 2005 and 63.2 percent reported a change to sequential presentation of individuals in the lineup in 2011.

In our follow-up telephone interviews with 30 agencies, almost all of the agencies that have recently made changes to eyewitness identification procedures reported that the changes were either not problematic or were actually welcomed within the department, and most agencies were receptive to changing decades-old procedures.

It would appear that the 1999 NIJ Guide and the 2003 Training Manual had some immediate influence on changing agency practices, regardless of whether those changes were voluntary or were required by state law or other legal mandates. After a roughly five-year lull, the pace of change to policy or procedure picked up again in 2010 and 2011.

To some extent, all of the 1999 NIJ guidelines have been implemented in some agencies, but the extent and pace of the change lack uniformity. Just over half of responding agencies report making at least one change to their eyewitness identification procedures, however, only about a third of agencies report changing a specific procedural/policy item.

CONCLUSION

The results of this survey show that law enforcement agencies for the most part have not implemented the full range of the 1999 NIJ guidelines. Many agencies have adopted a few of the guidelines, but some guidelines have been adopted by less than half of

the agencies. Many agencies do not have written eyewitness identification policies, do not provide training to lineup administrators, and do not provide all recommended instructions to witnesses. Moreover, there is a lack of uniformity among law enforcement agencies with respect to eyewitness identification procedures. **Due to the importance of eyewitness identifications in the criminal justice system and the growing number of exonerations of persons whose convictions were based on eyewitness identifications, it is critically important that law enforcement agencies review their eyewitness identification policies, practices and training to ensure that they are in line with the 1999 NIJ Guide.**

Law enforcement agencies, in cooperation with prosecutors' offices and other criminal justice agencies with a stake in effective eyewitness identifications, should continue to examine eyewitness identification procedures to determine how they can be refined, to ensure that they are standardized across the agency, and to incorporate research-based practices and recommendations. Law enforcement agencies should ensure that any procedure used is documented in policy and that officers are trained in how to correctly and consistently use the procedures. Researchers should also conduct additional field studies that include practical implementation issues and should disseminate the results of these studies to law enforcement.

Implications for Research and Technical Assistance

Building upon the information obtained through the national survey and subsequent telephone interviews in this project, there are several areas where future research and study could benefit the field's understanding and knowledge of eyewitness identification procedures. These areas include:

- In-depth case studies to learn from individual agencies' experiences;

- Further study of how agencies implement changes to their procedures (e.g. the impetus for change, potential challenges, resistance to change, and best practices); and
- Additional field testing of blind and sequential administration methods in small, medium and large law enforcement agencies.

The survey findings raise a number of questions about agency practices, including why more agencies have not made changes to their eyewitness identification procedures. **Practitioners, policy-makers and researchers would benefit from an in-depth examination of why agencies adopted some reforms but not others.** For example, why do some agencies adopt sequential presentation of photographs but not a blind procedure? Why do agencies provide certain instructions to witnesses but not others? By examining the reasons behind changes in policies, we may find ways of ensuring that future attempts at reforming eyewitness identification procedures will be more effective.

There were areas in which the PERF survey instrument and interview protocol were unable to fully examine agencies' decision-making processes, changes, and current procedures. **Further examination of agency practices will allow for greater analysis of why some agencies are successful in implementing comprehensive eyewitness identification procedure reforms while others only adopt changes in piecemeal fashion or are hesitant to make any change in their procedures.** The positive experiences of some agencies in effecting change should be shared with other agencies.

Some practitioners may not have a clear understanding of the field research findings, or may be uncertain about conflicting research results, which makes them reluctant to make change. Learning more about the reasons behind change and hesitancy

to change may provide an opportunity to apply lessons about other criminal justice system innovations that have been more readily accepted.

Additional Field Testing

The NIJ Guide did not state a preference for blind lineup administration or sequential or simultaneous procedures. Rather, it recommended further study of the use of blind administrators and stated that there was no consensus as to the use of sequential or simultaneous methods that could be recommended as a preferred procedure at the time. Since 1999, there have been three published field studies that examine the impact of employing blind and sequential lineup procedures. Two field studies indicate that blind sequential procedures improve the reliability of photo lineups and reduce mistaken eyewitness identifications, particularly when a suspect is not in the lineup (Klobuchar, Steblay, and Caligiuri, 2006; Wells, Steblay, and Dysart, 2011). The third study, conducted in Illinois in 2006, suggests that blind sequential lineups lead to a reduced rate of suspect identifications, as well as an increased rate of known false errors (Mecklenburg, 2006).

Additional field studies are critical to examine the effectiveness of these specific procedures as they continue to move from the laboratory to law enforcement investigations. **Field studies in small, medium and large agencies will help researchers and practitioners to better understand how the requirements of rigorous scientific research may apply to real-life situations, so that procedures identified as effective in the laboratory can be transferred to the police stationhouse. Field studies can also help to identify effective and standardized approaches to the implementation of new procedures, including blind and sequential lineup administration.** In addition, longitudinal studies may be possible as

more agencies adopt and implement the 1999 NIJ recommended procedures as well as blind and sequential procedures. Such studies may be able to assess the long-term effects of eyewitness identification reforms in law enforcement, prosecution and the courts.

Training and Technical Assistance

Police agencies would benefit from greater assistance to develop written policies and provide training to their personnel that are reflective of best professional practices. Other technical assistance about how to overcome some of the challenges associated with implementing recommended eyewitness identification procedures would also assist agencies. A number of agencies have successfully made changes, and their experiences could serve as a model for other agencies about how to implement reforms and the reasons for making the changes. For example, after participating in field studies using blind sequential lineup administration methods, the Austin, Texas Police Department and the Minneapolis Police Department adopted these procedures for photographic lineups.

Research in the laboratory and the field must continue, so that we can more fully understand eyewitness identification procedures and how they can be improved to assist in criminal investigations. It is also important to conduct research on the factors that have led to incorrect eyewitness identifications in cases where wrongful convictions were overturned. An analysis of what type of lineup procedure was conducted, how fillers were chosen, what instructions were provided, whether or not the actual culprit was in the lineup, etc. would provide researchers and practitioners with additional information as to which practices and procedures have been likely to lead to inaccurate identifications. Additional field research, case studies of agency experiences, training and technical assistance will all help agencies to improve eyewitness identification procedures.

The 1999 NIJ Guide remains a viable resource for law enforcement agencies. However, many law enforcement agencies have not adopted and implemented all of the NIJ guidelines. The integrity and credibility of the criminal justice system requires best practices for convicting the guilty and protecting the innocent. Eyewitness identifications are critical and compelling evidence in trials. Researchers, prosecutors and police must work together to improve eyewitness identification procedures to ensure that law enforcement practices promote the reliability and accuracy of identifications.

There has been a great deal of controversy in recent years about whether police should shift to from non-blind simultaneous procedures to blind sequential procedures. Research into that question should continue. But it is important to note that the "blind sequential" issue is only a part of a larger question, namely, how can the criminal justice system improve the reliability of eyewitness identifications, in terms of reducing false identifications of innocent persons while increasing accurate identifications of perpetrators? The field study by Wells et al in four police departments found that blind sequential procedures had a lower rate of incorrect choices of fillers (12.2 percent) when compared to blind simultaneous procedures (18.1 percent) in suspect-absent lineups. <u>This research indicates that even when blind sequential procedures are used, false identifications are still made in nearly one out of eight suspect-absent lineups</u>.

Thus, the challenge to the justice system goes far beyond the "blind sequential" issue. Future research might begin with a closer examination of cases in which persons have been exonerated after being convicted based on eyewitness

identifications. This could include examination of the procedures under which the identifications were produced and the extent to which other types of evidence were produced in the cases.

Another line of research could focus on how police and prosecutors can work together to avoid or reduce the number of culprit-absent lineups, which have a much more significant risk of false identifications than culprit-present lineups. Other research could address whether changes in evidentiary rules, jury instructions and other court procedures might reduce the chances of erroneous convictions based on faulty eyewitness testimony.

While the research continues, it is important for police and other justice system officials to exercise caution when using eyewitness identification evidence, particularly in cases where an eyewitness identification is the sole evidence of guilt. And for law enforcement agencies, the most important steps that can be taken immediately are to adopt all of the recommendations of the 1999 NIJ Guide, which are not controversial. The PERF survey showed that a great deal of work remains to be done merely to bring law enforcement agencies up to the existing NIJ guidelines.

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APPENDIX A

PERF Eyewitness Definitions Glossary

PERF Eyewitness Definitions Glossary

Composite: An image of a perpetrator, created by a sketch artist or mechanical means, based on input from a witness.

Confidence Statement: A statement of witness confidence, in the witness's own words, had to be recorded at the time of the identification and before any feedback. The procedure allowed for but did not demand a witness comment for each photograph.

Culprit(s): The person(s) who actually committed the crime; sometimes referred to as the perpetrator.

Double-Blind: A procedure used in live or photo lineups in which the law enforcement official administering the lineup has not been told by his colleagues in the police department which person is a suspect. Thus, the term blind means that neither the administrator nor the eyewitness is told which individual or photograph in the lineup is the suspect.

Estimator Variables: Factors relating to human memory and are beyond the control or influence of the criminal justice system. These include the setting or lighting of the crime scene and whether the victim and offender are of the same or different races. Wells grouped estimator variables into four main categories:

1. Characteristics of the witness, including things such as age, race, intelligence, and personality.
2. Characteristics of the event, including the distinctiveness of the culprit, the amount of time the culprit was in view, the lighting, and the presence or absence of a weapon.
3. Characteristics of the testimony, including witness accuracy, speed, and certainty in identifying the culprit in a lineup.
4. The ability of others to differentiate between accurate and inaccurate testimony, including jurors' judgments about eyewitness identification accuracy. Again, these variables are beyond the control of the criminal justice system. They cannot be modified or influenced. For this reason, this chapter will only identify them and will focus more on system variables.

Fillers: Individuals who are not suspected of the crime, but who are used to fill out the remaining spots in a live or photographic lineup.

Lineup: A procedure in which a criminal suspect or his photograph is placed among fillers to allow an eyewitness the opportunity to identify the suspect as the culprit.

Lineup Administration: Used to describe the act of overseeing or conducting an eyewitness identification procedure.

Lineup Construction: Selecting non-suspect "filler" photographs or persons and then choosing the order or manner in which they are to be displayed in a photographic lineup, live lineup, or mugshot search.

Live Lineup: A procedure in which a live suspect is embedded among live non-suspects ("fillers").

Mugshot Search: A procedure in which the witness is allowed to look through a large number of photographs of known offenders.

Perpetrator: The person who committed the offense in question.

Photographic Lineup or Arrays: A procedure in which a photograph of the suspect, either paper or on a computer screen, is placed among photographs of fillers to allow an eyewitness the opportunity to identify the suspect as the culprit.

Sequential: A photo or live lineup procedure in which the eyewitness views lineup members or photographs one at a time, and is required to make a decision before viewing the next lineup member.

Show-ups: A procedure in which a suspect is detained, usually in a public place, to allow an eyewitness to determine if the suspect is the culprit. In this procedure, the eyewitness is shown only the suspect (either live or by photograph).

Simultaneous: A lineup or photo array procedure in which the eyewitness views all lineup members or photographs at the same time.

Suspect: A person of interest who law enforcement officials believe might have committed the offense in question.

System variables: Factors that affect the accuracy of eyewitness identifications and can be controlled by criminal justice agencies. System variables primarily refer to the procedures police investigators use in obtaining eyewitness identifications, and fall into four categories:

1. Instructions.
2. Lineup content.
3. Lineup presentation method.
4. Behavioral influence of the lineup administrator.

Witness: Used in this survey to represent any individual (including a crime victim) who observed the perpetrator.

APPENDIX B

Technical Advisory Group

Members of the Technical Advisory Group:

Sergeant Paul Carroll (Retired)
Chicago Police Department

John DeCarlo, Ph.D.
University of New Haven
Retired Police Chief, Branford (CT) Police Department

Jennifer Dysart, Ph.D.
John Jay College of Criminal Justice

Nancy Steblay, Ph.D.
Augsburg College

Detective Jim Trainum (Retired)
Metropolitan Police Department (Washington, DC)

Assistant Chief Ron Waldrop (Retired)
Dallas Police Department

Gary L. Wells, Ph.D.
Iowa State University

Daniel Wright, Ph.D.
Florida International University

APPENDIX C

Survey Pilot Test Agencies

Survey Pilot Test Agencies:

Ada County (ID) Sheriff's Office

Arlington (TX) Police Department

Greeley (CO) Police Department

Montgomery County (MD) Police Department

New Jersey State Police

Philadelphia (PA) Police Department

Prince William County (VA) Police Department

San Diego (CA) Police Department

Shakopee (MN) Police Department

APPENDIX D

Eyewitness Identification Survey

POLICE EXECUTIVE RESEARCH FORUM

Eyewitness Identification Survey

ID NUMBER

INTRODUCTION PARAGRAPH(S) NEEDED HERE.

Participating agencies will not be identified without their explicit permission.

There are three ways to respond to this survey:

1. Internet: An electronic version of this questionnaire is located online at http://survey.policeforum.org/eyewitness.pdf. If you choose to complete the survey online, you will be prompted to enter the following information:

   USER NAME: _____ PASSWORD: _____

   Without entering your agency's user name, password, and ID number (located in the box at the top right of this form), you will not be able to complete the survey online. The user name and password provide a secure login to submit your survey.

2. Fax the completed survey to the Police Executive Research Forum at (202) 466-7826.

3. Mail the completed survey to: Kevin Greene
   Police Executive Research Forum
   1120 Connecticut Avenue, NW, Suite 930
   Washington, DC 20036

If you have questions regarding this survey, please contact Jerry Murphy at 202-454-8314 or jmurphy@policeforum.org. Thank you for your time and assistance with this important law enforcement survey.

Respondent Contact Information:

AGENCY

TITLE

LAST NAME

FIRST NAME

TELEPHONE ( ) - EXT.

E-MAIL ADDRESS

1138429839

POLICE EXECUTIVE RESEARCH FORUM

Eyewitness Identification Survey

ID NUMBER

I : Agency Information

1. What is the actual number of sworn officers in your agency? ☐☐,☐☐☐
2. What is the actual number of civilian employees in your agency? ☐,☐☐☐
3. What is the population of your jurisdiction? ☐,☐☐☐,☐☐☐
4. Please provide your agency's UCR Part I Offense statistics for 2010.

Part I Offenses	2010
Murder	☐☐,☐☐☐
Forcible rape	☐☐,☐☐☐
Robbery	☐☐,☐☐☐
Aggravated assault	☐☐,☐☐☐
Burglary	☐☐,☐☐☐
Larceny-theft	☐☐,☐☐☐
Motor vehicle theft	☐☐,☐☐☐
Arson	☐☐,☐☐☐

POLICE EXECUTIVE RESEARCH FORUM

Eyewitness Identification Survey

ID NUMBER

II : Current Policies and Practices

Please use these definitions for key terminology used throughout this survey.

Types of Procedures:

Show up - A procedure where the eyewitness is shown only the suspect (either live or by photo).
Photographic lineup - A procedure in which a suspect's photo is embedded among photos of non-suspects ("fillers").
Live lineup - A procedure in which a suspect is embedded among non-suspects ("fillers").
Composite - An image of a perpetrator, created by a sketch artist or mechanical means, based on input from a witness.
Mugshot search - A procedure in which the witness is allowed to look through a large number of photos of known offenders.

Other Terms:

Fillers - Individuals who are not suspected of the crime, but who are used to fill out the remaining spots in a live or photographic lineup.
Suspect - A person of interest who might have committed the offense in question.
Perpetrator - The person who committed the offense in question.
Witness - Used in this survey to represent any individual (including a crime victim) who observed the perpetrator.
Construction - Selecting non-suspect "filler" photos or persons and then choosing the order or manner in which they are to be displayed in a photographic lineup, live lineup, or mugshot search.
Administration - Used in this survey to describe the act of overseeing or conducting an eyewitness identification procedure.

5. How many of each identification procedure did your agency conduct in 2010?

	Actual #	Estimated #	We do not track #s for this procedure	We do not use this procedure
Show-ups	☐☐,☐☐☐	☐☐,☐☐☐	☐	☐
Photographic lineups	☐☐,☐☐☐	☐☐,☐☐☐	☐	☐
Live lineups	☐☐,☐☐☐	☐☐,☐☐☐	☐	☐
Composites	☐☐,☐☐☐	☐☐,☐☐☐	☐	☐
Mugshot searches	☐☐,☐☐☐	☐☐,☐☐☐	☐	☐

6. For which Part I Offenses do you use eyewitness identification procedures? Please mark all that apply.

	Homicide	Rape	Robbery	Aggravated Assault	Burglary	Larceny	MV Theft	Arson
Show-ups	☐	☐	☐	☐	☐	☐	☐	☐
Photographic lineups	☐	☐	☐	☐	☐	☐	☐	☐
Live lineups	☐	☐	☐	☐	☐	☐	☐	☐
Composites	☐	☐	☐	☐	☐	☐	☐	☐
Mugshot searches	☐	☐	☐	☐	☐	☐	☐	☐

Policies and Procedures

7. Does your agency have a written policy for the following identification procedures?

	No	Yes, policy for construction only	Yes, policy for administration only	Yes, policy for administration and construction
Show-ups	☐	☐	☐	☐
Photographic lineups	☐	☐	☐	☐
Live lineups	☐	☐	☐	☐
Composites	☐	☐	☐	☐
Mugshot searches	☐	☐	☐	☐

*PERF requests that you please provide us with a copy of any written policies when you return this survey.

8. Who in your agency is authorized to conduct the following identification procedures? Please mark all that apply.

	Patrol Officer	Detective	Sworn Supervisor	Civilian Employee	Civilian Non-employee	Other (please specify below*)	We do not use this procedure
Show-ups	☐	☐	☐	☐	☐	☐	☐
Photographic lineups	☐	☐	☐	☐	☐	☐	☐
Live lineups	☐	☐	☐	☐	☐	☐	☐
Composites	☐	☐	☐	☐	☐	☐	☐
Mugshot searches	☐	☐	☐	☐	☐	☐	☐

*If you marked "other" for any of the identification procedures listed above, please specify the position or person who is authorized to conduct that particular identification procedure:

9. Does your agency allow any other type of informal identification procedures other than those listed in Question 8?

☐ No

☐ Yes, witness escorted to location where the potential suspect may be located (e.g., place of work, public place, crime location) to see if the witness recognizes anyone

☐ Other (please specify):

POLICE EXECUTIVE RESEARCH FORUM

Eyewitness Identification Survey

ID NUMBER

10. How does your agency provide instructions to witnesses for the following identification procedures?

	Written (standardized)	Oral (standardized)	Oral (informal)	Recorded Oral (computer/video)	Other (please specify below*)	No instructions given	We do not use this procedure
Show-ups	☐	☐	☐	☐	☐	☐	☐
Photographic lineups	☐	☐	☐	☐	☐	☐	☐
Live lineups	☐	☐	☐	☐	☐	☐	☐
Composites	☐	☐	☐	☐	☐	☐	☐
Mugshot searches	☐	☐	☐	☐	☐	☐	☐

*If you marked "other" for any of the identification procedures listed above, please specify how the instructions are provided to witnesses for that particular identification procedure:

11. Does your agency require that witnesses acknowledge the instructions provided to them?

☐ No

☐ Yes, verbal acknowledgement

☐ Yes, written acknowledgement

☐ Yes, other acknowledgement (please specify):

☐ NA - we do not provide instructions to witnesses (SKIP to Question 13)

12. Are your witnesses instructed that...(please mark all that apply)

	...the individual may not be the perpetrator or that the perpetrator may not be present?	...the witness need not make an identification?	...the investigation will continue even without an identification?	...the appearances may have changed or been altered?
Show-ups	☐	☐	☐	☐
Photographic lineups	☐	☐	☐	☐
Live lineups	☐	☐	☐	☐
Composites	☐	☐	☐	☐
Mugshot searches	☐	☐	☐	☐

13. Does your agency explicitly ask the witness for some kind of statement of certainty (e.g., "How sure are you?") if the witness makes an identification?

	No	Yes
Show-ups	☐	☐
Photographic lineups	☐	☐
Live lineups	☐	☐
Composites	☐	☐
Mugshot searches	☐	☐

14. Which of the following does your agency document for the identification procedures listed? Please mark all that apply.

	Instructions to Witness(es)	Person(s) Identified	Statements About Certainty of Identification	Statements About Certainty of Non-identification	None of the Documentation Types Listed
Show-ups	☐	☐	☐	☐	☐
Photographic lineups	☐	☐	☐	☐	☐
Live lineups	☐	☐	☐	☐	☐
Composites	☐	☐	☐	☐	☐
Mugshot searches	☐	☐	☐	☐	☐

15. If your agency documents the identification procedures specified in Question 14, how does your agency document those procedures?

	Video Recording	Audio Recording	Written Report by Administrator	Written Report by Another	Other (please specify below*)	No Documentation	We do not use this procedure
Show-ups	☐	☐	☐	☐	☐	☐	☐
Photographic lineups	☐	☐	☐	☐	☐	☐	☐
Live lineups	☐	☐	☐	☐	☐	☐	☐
Composites	☐	☐	☐	☐	☐	☐	☐
Mugshot searches	☐	☐	☐	☐	☐	☐	☐

*If you marked "other" for any of the identification procedures listed above, please specify how your agency documents those procedures:

16. How often does your agency allow the same eyewitness to view the same suspect in more than one identification procedure?

Never ☐ Rarely ☐ Often ☐

↳ If you answered "rarely" or "often," which is the most commonly used combination of multiple identification procedures?

- ☐ Show-up followed by photo lineup
- ☐ Show-up followed by live lineup
- ☐ Photo lineup followed by live lineup
- ☐ Mugshot book followed by photo lineup
- ☐ Mugshot book followed by live lineup
- ☐ Other (please specify):

Training

17. Who, in your agency, receives formal, organized training on the following identification procedures?

	Patrol Officer	Detective	Sworn Supervisor	Civilian Employee	Civilian Non-employee	Other (please specify below*)	We do not use this procedure
Show-ups	☐	☐	☐	☐	☐	☐	☐
Photographic lineups	☐	☐	☐	☐	☐	☐	☐
Live lineups	☐	☐	☐	☐	☐	☐	☐
Composites	☐	☐	☐	☐	☐	☐	☐
Mugshot searches	☐	☐	☐	☐	☐	☐	☐

*If you marked "other" for any of the identification procedures listed above, please specify the position or person who receives formal, organized training to conduct that particular identification procedure:

18. Who provides formal, organized training on eyewitness identification procedures? Please mark all that apply.

- ☐ Our agency
- ☐ County law enforcement
- ☐ State law enforcement
- ☐ Federal law enforcement
- ☐ Prosecutor's office
- ☐ Other (please specify):

19. Our training includes the following general guidance on eyewitness identification procedures (please mark all that apply):

- ☐ Multiple witnesses should participate in identification procedures separately
- ☐ If positive ID is obtained from one witness, other identification procedures should be used for remaining witnesses
- ☐ Statement of certainty is obtained for identification
- ☐ Statement of certainty is obtained for non-identification
- ☐ Ensure that no visible information regarding prior arrests is visible to witness on photos
- ☐ Other (please specify):

20. Training includes the following guidance on composing photo lineups (please mark all that apply):

- ☐ Fillers should generally fit the witness's description of the perpetrator
- ☐ At least 5 fillers should be used in each identification procedure
- ☐ Artificially recreate any unusual features (e.g., tattoos, scarring, etc.) to create a consistent appearance between fillers and suspect
- ☐ Artificially conceal any unusual features (e.g., tattoos, scarring, etc.) to create a consistent appearance between fillers and suspect
- ☐ Place suspects in different positions in photo lineup
- ☐ Do not reuse fillers for different suspect photo lineups shown to same witness
- ☐ Preserve presentation order of photo lineup
- ☐ Preserve photos used in photo lineup
- ☐ Other (please specify):

21. Training includes the following guidance on composing live lineups (please mark all that apply):

- ☐ Fillers should generally fit the witness's description of the perpetrator
- ☐ At least 4 fillers should be used in each identification procedure
- ☐ Artificially recreate any unusual features (e.g., tattoos, scarring, etc.) to create a consistent appearance between fillers and suspect
- ☐ Artificially conceal any unusual features (e.g., tattoos, scarring, etc.) to create a consistent appearance between fillers and suspect
- ☐ Place suspects in different positions in live lineup
- ☐ Do not reuse fillers for different suspect live lineups shown to same witness
- ☐ Other (please specify):

22. Training instructs lineup administrators (for either photo or live lineups) to provide the following instructions to witnesses (please mark all that apply):

- ☐ The perpetrator may or may not be in the lineup
- ☐ It is just as important to avoid identifying an innocent person as it is to identify a guilty person
- ☐ The individuals in the lineup may not appear exactly as they did on the date of the incident
- ☐ The investigation will continue regardless of whether an identification is made or not
- ☐ Witness is told that the investigator may ask him/her to state how certain he/she is of any identification
- ☐ Other (please specify):

23. Training provides the following guidance to lineup administrators (for either photo or live lineup) (please mark all that apply):
    - ☐ Avoid saying anything that may influence the witness's selection
    - ☐ Avoid reporting to the witness information regarding the individual selected prior to obtaining a statement of certainty
    - ☐ Advise the witness not to discuss the identification procedure or results with other witnesses
    - ☐ Other (please specify):

Show-ups

Show-up - A procedure where the eyewitness is shown only the suspect (either live or by photo).

24. Does your agency conduct show-ups?
    - ☐ No (SKIP to Question 28)
    - ☐ Yes

25. Does your agency recommend a time frame limit after the crime beyond which a show-up should not be conducted?
    - ☐ No
    - ☐ Yes ⇨ If YES, within what time frame must a show-up be conducted?

      ☐☐☐ days ☐☐ hours

26. Where do you conduct live show-ups? Please mark all that apply.
    - ☐ The detained person may be transported to the witness
    - ☐ The witness may be transported to the detained person
    - ☐ At a police facility
    - ☐ There is no clear policy or practice on this
    - ☐ Other (please specify):

27. After a detained person has been identified by a witness, do you continue to do show-ups with remaining witnesses, or save those witnesses for other identification procedures (e.g., photo or live lineups)?
    - ☐ All witnesses would usually view the show-up
    - ☐ The remaining witnesses would not view the show-up
    - ☐ There is no clear policy or practice on this
    - ☐ Other (please specify):

Photographic Lineups

Photographic lineup - A procedure in which a suspect's photo is embedded among photos of non-suspects ("fillers").

28. Are photographic lineups admissible as evidence of identification in your jurisdiction?
    - ☐ No ⇨ If NO, do you still use them as an investigative tool, but not submit them to the court as evidence? ☐ No ☐ Yes
    - ☐ Yes
    - ☐ Other (please specify):

29. What best describes the photographic lineup procedures in your agency?
- ☐ Photos are shown one at a time, administrator does not know which photos are suspects or fillers
- ☐ Photos are shown one at a time, administrator knows which photos are suspects or fillers
- ☐ Photos are shown all at once, administrator does not know which photos are suspects or fillers
- ☐ Photos are shown all at once, administrator knows which photos are suspects or fillers
- ☐ Other (please specify):
- ☐ We do not conduct photographic lineups (SKIP to Question 36)

30. Does your agency try to ensure that a suspect has defense counsel present during a photographic lineup?
- ☐ No
- ☐ Yes, but only if the suspect has been arrested
- ☐ Yes, but only if the suspect has been charged
- ☐ Yes, in all cases
- ☐ Other (please specify):

31. How many suspects are allowed in each photographic lineup?
- ☐ One
- ☐ Two
- ☐ Other (please specify):
- ☐ There is no clear policy/practice on this

32. What is the minimum number of fillers required by your agency for photographic lineups?
- ☐ Required number of fillers (please specify the number): ⇨
- ☐ Other (please specify):
- ☐ There is no clear policy/practice on this

33. Which of the following best describes the procedure your agency uses to select filler photos for a photographic lineup?
- ☐ Use photos of fillers who look as much like the suspect as possible
- ☐ Use photos of fillers who fit the description the witness gave of the perpetrator
- ☐ Use photos of fillers who match the general characteristics of the suspect (e.g., age, race, facial hair, hair color, etc.)
- ☐ Other (please specify):

34. How does your agency determine the position of the suspect photos and fillers in the photographic lineup? Please mark one response.
- ☐ Randomly chosen
- ☐ Chosen by person constructing the photographic lineup
- ☐ Chosen by photographic lineup administrator
- ☐ Never in a certain position (please specify):
- ☐ Suspect permitted to choose the position
- ☐ Other (please specify):

35. How does your agency present the photos to a witness? Please mark all that apply.

- ☐ Computer
- ☐ Individual print (hardcopy) photographs
- ☐ Photographs placed into envelopes
- ☐ Photographs placed into a sleeve with windows
- ☐ Multiple photographs printed out onto one page
- ☐ Other (please specify):

Live Lineups

Live lineup - A procedure in which a suspect is embedded among non-suspects ("fillers").

36. What best describes the live lineup procedures in your agency?

- ☐ Persons are shown one at a time, administrator does not know who is a suspect and who is a filler
- ☐ Persons are shown one at a time, administrator knows who is a suspect and who is a filler
- ☐ Photos are shown all at once, administrator does not know who is a suspect and who is a filler
- ☐ Photos are shown all at once, administrator knows who is a suspect and who is a filler
- ☐ Other (please specify):
- ☐ We do not conduct live lineups (SKIP to Question 41)

37. Does your agency try to ensure that a suspect has defense counsel present at a live lineup?

- ☐ No
- ☐ Yes, but only if the suspect has been arrested
- ☐ Yes, but only if the suspect has been charged
- ☐ Yes, in all cases
- ☐ Other (please specify):

38. How many suspects are allowed in each live lineup?

- ☐ One
- ☐ Two
- ☐ Other (please specify):
- ☐ There is no clear policy/practice on this

39. What is the minimum number of fillers required by your agency for live lineups?

- ☐ Required number of fillers (please specify the number): ⇨ ☐☐
- ☐ Other (please specify):
- ☐ There is no clear policy/practice on this

40. How does your agency determine the position of the suspect photos and fillers in the live lineup? Please mark one response.

- ☐ Randomly chosen
- ☐ Chosen by person constructing the live lineup
- ☐ Chosen by live lineup administrator
- ☐ Never in a certain position (please specify):
- ☐ Suspect permitted to choose the position
- ☐ Other (please specify):

Composites

Composites - An image of a perpetrator, created by a sketch artist or mechanical means, based on input from a witness.

41. Which of the following does your agency use to create composites? Please mark all that apply.

- ☐ Sketch artist
- ☐ Physical kit (e.g., Identi-Kit)
- ☐ Computer software
- ☐ Other (please specify):
- ☐ We do not create and use composites (SKIP to Question 45)

42. What influences the decision regarding whether to make a composite or not in a particular case? Please mark all that apply.

- ☐ Witness had particularly good view
- ☐ Few or no leads in case
- ☐ Detective assigned to case
- ☐ Agency supervisors
- ☐ High profile case
- ☐ Routinely done for certain cases (please specify what cases):
- ☐ Other (please specify):

43. If there are multiple witnesses, how many would generally be asked to create a composite?

- ☐ All witnesses individually - working individually with composite creator
- ☐ All witnesses as a group - working as a group with composite creator
- ☐ Some of the witnesses - working individually with composite creator
- ☐ Some of the witnesses - working as a group with composite creator
- ☐ One witness - the witness who has the best memory of the perpetrator
- ☐ One witness - the witness who volunteers to create a composite
- ☐ Other (please specify):

44. Who receives copies of composites? Please mark all that apply.

	Always	Only in High Profile or Priority Cases	Sometimes	Never	Other (please specify below*)
Patrol supervisors	☐	☐	☐	☐	☐
Patrol officers	☐	☐	☐	☐	☐
Detective supervisors	☐	☐	☐	☐	☐
Detectives	☐	☐	☐	☐	☐
Media	☐	☐	☐	☐	☐
Neighboring LE agencies	☐	☐	☐	☐	☐
County law enforcement	☐	☐	☐	☐	☐
State law enforcement	☐	☐	☐	☐	☐
Other (please specify):	☐	☐	☐	☐	☐

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*If you marked "other" for any of the identification procedures listed above, please specify how frequently that particular position receives copies of composites:

Mugshot Searches

Mugshot search - A procedure in which the witness is allowed to look through a large number of photos of known offenders.

45. How does your agency present the mugshots to a witness? Please mark all that apply.

☐ Computer
☐ Books (e.g., photo albums)
☐ File drawers
☐ Other (please specify):
☐ We do not use mugshot searches (SKIP to Question 48)

46. Does your agency limit the number of mugshots viewed by a witness?

☐ No
☐ Yes
☐ Other (please specify):

47. How does your agency sort mugshots prior to presenting them to the witness? Please mark all that apply.

- ☐ Gender
- ☐ Race
- ☐ Age
- ☐ Height
- ☐ Weight
- ☐ Specific features of perpetrator's appearance
- ☐ Type of crime
- ☐ Location of crime
- ☐ Other (please specify):
- ☐ NA -- we do not sort mugshots

III : Historical Agency Experiences

48. Please indicate any eyewitness identification policies or practices that have changed since 1999. Please mark all that apply.

		Changes Were Made (note the year)	No Changes Were Made	NA -- We Do Not Use This Procedure
Procedures for selecting lineup fillers	☐ ⇨ year		☐	☐
Number of photo lineup fillers	☐ ⇨ year		☐	☐
Number of live lineup fillers	☐ ⇨ year		☐	☐
Show-up instructions	☐ ⇨ year		☐	☐
Photo lineup instructions	☐ ⇨ year		☐	☐
Live lineup instructions	☐ ⇨ year		☐	☐
Began use of computer for photo lineups	☐ ⇨ year		☐	☐
Other changes (please specify):	☐ ⇨ year		☐	☐

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49. What, if any, challenges did your agency face when making changes to eyewitness identification procedures?

50. What, if any, assistance did your agency receive from outside partners (e.g., other law enforcement agencies, prosecutor, researchers, private entities) when making changes to eyewitness identification procedures?

51. Are you aware of any innovative practices in eyewitness identification in your agency or others?

52. Has your agency participated in any research or experiment on eyewitness identification procedures?

53. What guidance, assistance, or resources would your agency like to receive about eyewitness identification?

Thank you for assistance with this important eyewitness identification survey!

APPENDIX E

Telephone Interview Agencies

Telephone Interview Agencies:

Ada County (ID) Sheriff's Office
Amarillo (TX) Police Department
Atlanta (GA) Police Department
Boston (MA) Police Department
Broward County (FL) Sheriff's Office
Charlottesville (VA) Police Department
Colorado Springs (CO) Police Department
Darien (CT) Police Department
Des Moines (IA) Police Department
Hillsborough County (FL) Sheriff's Office
Hobbs (NM) Police Department
Hot Springs (AR) Police Department
Houston (TX) Police Department
Joliet (IL) Police Department
Kansas City (MO) Police Department
Las Vegas (NV) Metropolitan Police Department
Maryland State Police
Metropolitan Police Department (DC)
New Jersey State Police
Northampton (MA) Police Department
Palm Beach County (FL) Police Department
Richmond (VA) Police Department
San Diego (CA) Police Department
San Jose (CA) Police Department
Seattle (WA) Police Department
St. Paul (MN) Police Department
Texas Department of Public Safety
Tucson (AZ) Police Department
Washington State Patrol
Wilson (NC) Police Department