



# PROSECUTORS' CENTER FOR EXCELLENCE

## EYEWITNESS IDENTIFICATION TOOLKIT



This eyewitness identification toolkit provides prosecutors with an overview of the research behind witness memory and offers guidance for developing identification procedures. Prosecutors should take the lead in making sure that the identification procedures used in their state yield reliable, admissible evidence. The first step is to learn what procedures their police departments are using and to determine if they are fair and reliable.

Prosecutors' Center for Excellence is available to prosecutors to offer further assistance on the issues briefly described below.

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### CORE TOPICS FOR DEVELOPING A POLICY

#### **Simultaneous vs. Sequential**

The 2017 Department of Justice memo on eyewitness identification issues states: “Some research suggest[s] that simultaneous procedures may result in more true identifications and fewer false ones. Until additional research is conducted, however, it is not possible to say conclusively whether one identification method is better than the other.” (p.8) [Read](#). The National Academy of Science recommends not changing display procedures until the science is settled. (p.5) [Read](#)

#### **New studies demonstrating that simultaneous procedures are superior to sequential:**

- The Role of Site Variance in the American Judicature Society Field Study Comparing Simultaneous and Sequential Lineups (2015) [Read](#)
- Estimating the Reliability of Eyewitness Identifications from Police Lineups (2015) [Read](#)
- Eyewitness Confidence in Simultaneous and Sequential Lineups: A Criterion Shift Account for Sequential Mistaken Identification Overconfidence (2013) [Read](#)

#### **Confidence Statements**

A witness who makes a strong, positive identification at the initial identification procedure has a high degree of accuracy. [Read Article](#); [Read Research](#)

Immediately after the identification, the officer should ask the witness about the witness's level of confidence and document it. *This statement should be obtained before the officer discusses the next steps in the case and the officer should not comment on the identification.*

A confidence statement can be taken in a variety of ways, for example:

- **Method 1:** “In your own words, can you tell me how sure you are?”
- **Method 2:** If the witness has selected a photograph, ask them to choose one:  
(1) I'm positive that number \_\_\_\_ is the person who I observed; or



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- (2) I'm not positive but I'm fairly sure that number \_\_\_\_ is the person who I observed; or
- (3) Not very sure, but I think that number \_\_\_\_ is the person who I observed"

**Note:** Asking the witness for a number or percentage of certainty is strongly discouraged.

### **Double-Blind and Blinded-Alternatives**

In a double-blind procedure the administrator of the identification procedure does not know the suspect's identity and is thus unable to give cues to the witness about who to pick. However, manpower and logistics often make this impossible. Effective, practical alternatives allow an officer with knowledge of the suspect to conduct the procedure. Regardless of method, the administrator should remain neutral and **never** direct the witness' attention to any one photo to the exclusion of the others, e.g., "Did you take a good look at number 3?"

### **Blinded Alternatives:**

- **Method 1:** The administrator places the array in a folder and stands back or turns away from the witness so that the administrator does not know which photo the witness is viewing. If there is an identification, the witness should sign or initial the photograph identified.





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- **Method 2:** After the administrator creates the array of photos, someone else can re-arrange the positions of the photos and place the array in a folder so the administrator does not know where the suspect photo is placed within the array. Most computer systems have a shuffle function to re-arrange the photos. The administrator hands the folder to witness and stands back or turns away from the witness during the viewing. If there is an identification, the witness should sign or initial the photograph identified.
- **Method 3:** The administrator places the array in a folder, hands it to the witness and leaves the room so the witness views the array alone. If there is an identification, the witness should sign or initial the photograph identified.
- **Method 4:** Create three versions of the same photo array with the same fillers, but with the suspect in a different position. Place each array in a folder. Give all three folders to the witness and let the witness decide which folder to open. Stand back from the witness. If there is an identification, the witness should sign or initial the photograph identified.

### **Witness Instructions**

In addition to explaining the identification process to a witness, it is important to make sure that the witness does not feel compelled to make an identification or to seek assistance with a selection. These cautionary instructions should be included:

- The perpetrator may or may not be among the pictures.
- Do not assume that I know who the perpetrator is since I was not at the crime scene.
- Do not look to me or anyone else in the room for answers during the procedure.
- We will continue to investigate whether or not you identify anyone.

**Note:** Statements such as “It is just as important to exonerate the innocent as it is to convict the guilty,” or “You are not required to make an identification,” may discourage a witness from making any identification even though they could make a reliable one. Therefore, they should not be included in any recommendations.



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### Other Issues:

- **Fillers:** Fillers should be similar to the suspect and not stand out, but they do not have to be clones of the suspect.
- **Documenting the Procedure:** An identification should always be documented and the photos preserved. See New York policies for sample forms. [Read Policy](#). Video or audio recording an identification, with consideration for witness safety, can provide excellent evidence of the identification and can eliminate avenues of cross-examination.
- **Multiple Witnesses:** An identification should be conducted with one witness at a time. Witnesses should be instructed not to speak with each other about the identification, before or after, the procedure.
- **Corroboration:** Prosecutors should always strive to corroborate identifications by additional evidence, if available. Surveillance cameras, social media and cell phone records are often good sources of corroboration.

### Training of Police and Prosecutors

As with any new procedure, police and prosecutors should receive training on witness memory and the new procedures. Prosecutors should check that police adopt, implement and follow the improved protocols. Contact Prosecutors' Center for Excellence for examples of police/prosecutor training programs.

## HELPFUL MATERIALS

### Overview of Eyewitness Identification Issues

- **National Academy of Sciences:** Identifying the Culprit; Assessing Eyewitness Identification (2014) [Read](#)
  - Prosecutor Input to the National Academy of Science Committee:
    - AUSA Patricia Riley letter [Read](#)
    - NDAA testimony [Read](#)
- **Articles written by prosecutors:**
  - Policy Evolves on Improving Eyewitness Identifications, Empire State Prosecutor Magazine (2016) [Read](#)



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- The Unreliable Case Against the Reliability of Eyewitness Identifications: A Response to Judge Alex Kozinski, Quinnipiac Law Review (2016) [Read](#)

### **Policies Developed by Prosecutors and Police**

- Colorado Best Practices Committee (2015) [Read Policy](#)
- Department of Justice (2017) [Read Policy](#)
- International Chiefs of Police (2016) [Read Policy](#)
- Kansas Best Practices Committee (2016) [Read Policy](#)
- Michigan Best Practices Committee (2016) [Read Policy](#)
- New York Best Practices Committee (2015) [Read Policy](#); [Read how the policy was developed](#)
- Pennsylvania Best Practices Committee (2016) [Read Policy](#)
- Washington State Best Practices Committee (2015) [Read Policy](#)

### **PCE Policy Library**

An extensive collection of articles, research and prosecution responses on eyewitness issues is available to prosecutors with access to Prosecutors Encyclopedia. [Link](#)

### **Legislation**

Legislating identification procedures is not ideal as the social science and identification procedures are evolving. However, when legislation becomes inevitable, prosecutor input has assured that reliable identifications are not excluded by overly restrictive laws. Here are examples:

- **Colorado** [Read](#)
- **Kansas** [Read](#)
- **New York** [Read](#)
- **Virginia** [Read](#)