

California Commission Meeting Minutes
3/15/2006
Reported by Chris Boscia

Commission Members in Attendance: John Van de Kamp, Gerry Chaleff, Glen Craig, Jim Fox, Michael Hersek, Bill Hing, Michael P. Judge, George Ortega (representing Dane Gillette, representing Bill Lockyer), George Kennedy, Michael Laurence, Cookie Ridolfi, Douglas Ring, John Streeter, Greg Totten, Jerry Uelmen

Two Guests: Mary Kennedy from Senate Public Safety Committee and David Angel from Santa Clara County DA's Office

Guest speakers: Dr. Gary Wells, Dr. Ebbe Ebbesen, David Angel, Juliana Humphrey, Drs. Ralph Norman Haber and Lyn Haber, PhD.

Commission Members not in Attendance: Sheriff Lee Baca, Kimiko Burton, Rabbi Freehling, Alejandro Mayorkas, Judge John Moulds

I. Public Hearing

A. Introduction by JOHN VAN DE KAMP

1. Subject of the hearing: improving eyewitness identification procedures
2. Sense of Commission: more inaccurate eyewitness identification leading to reversals of convictions, leading to injustice when that occurs. What can we do about it?
3. At LA meeting, we came up with 11 tentative recommendations
4. Purpose of this meeting: solicit public testimony/reaction on the tentative recommendations
5. Speakers invited; floor will be open afterwards

B. JERRY UELMEN

1. National effort to improve eyewitness identification
2. Janet Reno assembled a task force to come up with guidelines. Dr. Gary Wells from Iowa state was at forefront of commission.

C. DR. WELLS—Eyewitness ID Evidence: Procedural Reforms (view simultaneously with [PowerPoint Presentation](#))

1. Overview—related to the recommendations of the Commission.
 - i. Proven cases of convictions of the innocent
 - ii. memory as trace evidence metaphor
 - iii. scientific method for finding cause-effect relations
 - iv. relative judgments (a psychological process)
 - a. instructions
 - b. selection of fillers
 - c. sequential lineup
 - v. Blind-testing (the most important reform)
 - vi. false certainty (the problem of feedback)
2. Analyses of Convictions of Innocent

- i. 1992-present DNA exoneration cases: show that mistaken identification was primary evidence used to convict people (Connors et al, 1996; Wells et al, 1998; Scheck, Neufeld, and Dwyer, 2000.)
 - ii. Table 1: Sample of 40 cases in which DNA Evidence Exonerated Persons Wrongfully Convicted (Wells et al., Law and Human Behavior, 1998)
- 3. Small slice of mistaken identification cases because:
 - i. biological evidence was not collected
 - ii. biological evidence not collected properly
 - iii. biological evidence was destroyed
 - iv. biological evidence deteriorated
 - v. biological evidence was lost
 - vi. There was no biological evidence
- 4. Only a fraction of cases can be solved with DNA tests because most serious crimes do not leave behind definitive biological evidence—rare to have any definitive, DNA-rich biological trace evidence for: murders, muggings, burglaries, drive-by shooting, robberies. For most people who are accused, there is usually no evidence of this type to exonerate them.
- 5. Mistaken ID is Dual problem
 - i. person who did not commit offense can be convicted
 - ii. actual perpetrator gets away with the crime.
- 6. Eyewitness memory as Trace Evidence
 - i. like physical trace evidence, eyewitness memory traces can be delicate (perp left a trace behind at the scene which is in the mind of the witness)
 - ii. professionalism requires that one be concerned with how evidence is collected, recorded , and so on, so as to avoid: deterioration, cross-contamination, and misinterpretation
 - iii. Need protocol!
- 7. Scientific method for studying eyewitness identification (see Powerpoint slides 17-22 for more information)
 - i. Research supported by National Science Foundation.
 - ii. Event is created
 - iii. Do it over and over again for witnesses to generalize
 - iv. Since event is created, we know who perpetrator is. We can measure identification and certainty.
 - v. Nature of event, type of lineup, behaviors of lineup administrators are all varied
- 8. Common criticisms of scientific method
 - i. “These are just experiments; real witnesses would be too cautious to make these errors.”
 - a. Comparisons when the witness knows it is an experiment at the time of identification (versus think it was real) show no important differences)

- b. DNA exoneration cases. These did not prevent witnesses from making error.
 - c. Archival analyses of real witnesses show high rates of filler identification (20-25% or so for both experiments and actual cases). 6 person lineups in CA—20-25% of time, the witness is picking the wrong person.
 - d. Everything we see with regard to lineups is for photos and live lineups.
 - ii. “Eyewitnesses in experiments do not experience levels of stress and intensity of feeling that real eyewitness experience: higher stress and intense feelings leave stronger memory traces.”
 - a. Due to ethical constraints, few can have similar constraints. Our understanding of how memory works clearly points to stress and intense feelings having a negative impact on memory. Studies that have used stress support the interference theory.
 - b. Stress and intensity...Recent issue of *Psychiatry and the Law* (2004, Vol. 27, issue 3, pages 265-279) article by Charles Morgan et al (Yale University). US military gave permission to use military personnel in survival training to hold up under intense levels of deprivation. They underwent a high stress or low stress interrogation, consisting of food and sleep deprivation for 48 hours. 24 hours later they were shown lineups of interrogators.
 - c. Simultaneous versus sequential—sequential did better, but high stress performed more poorly.
 - iii. “Standard experiment uses college students as witnesses.”
 - a. College students are among the very best eyewitnesses. Their general health, visual acuity, memory abilities, and alertness are exceptional.
 - b. Comparison studies have consistently shown college students outperform other age groups.
9. General Observation—not overall level of error in experiments that is of interest for eyewitness researchers, instead it’s the patterns of errors that are of interest because general principles are contained in patterns.
10. Patterns of Error
- i. Relative-Judgment Process—eyewitness tend to select the person who looks most like the perpetrator relative to other people in the lineup (Wells, *The Psychology of Lineup Identifications* (1984) and *What Do We Know About Eyewitness Identification?* in *American Psychologist*, 1993)—see slides for more info at slide 28.
 - a. Crime staged 200 times for 200 witnesses. All witnesses were warned that actual perpetrator might not be in lineup. 54% chose #3. 21% made no choice.
 - b. Removal—without replacement and relative judgment processes. Give same instruction to other witnesses.

- c. Dominant tendency is to choose the next best guy.
 - d. Problem: some members will always look more like the perpetrator than the remaining members of the lineup; even when actual perpetrator is not in the lineup.
 - e. Important implications of the relative judgment problem:
 - i). Witnesses must be warned explicitly before viewing lineup that actual culprit might not be present in lineup
 - ii). Fillers should be selected who fit witnesses' description of the perpetrator in significant features.
 - ii. Sequential Lineup Procedure (Lindsay and Wells, 1985, *Journal of Applied Psychology*)—devised as a function of the relative judgment process.
 - a. Standard simultaneous procedure—the person who looks most like the perpetrator is most at risk. We want eyewitnesses to recognize or not recognize the person as the perpetrator. (See slides 37-44 for pictures). Take same set of photos, presented one at a time. Ask eyewitness, “Is the man you saw pull the trigger? Yes, no, or unsure.” What happens? Eyewitness can’t compare one to the other. He/she must abandon relative judgment and do something more absolute.
 - b. Data—Steblay et al (*Law and Human Behavior*, 2001)
 - i). Meta-analysis—30 experimental tests using 4,145 participant-witnesses.
 - ii). Results: overall reduction in choosing with sequential, proportionately more reduction of mistaken identifications than of accurate identifications.
 - c. Simultaneous vs. Sequential
 - i). Diagnosticity ratios, sometimes called “index of probative value,” reflect the likelihood that an identification of suspect is accurate.
 - ii). Ratio of hits to false alarms
 - a) Simultaneous = $.50/.27 = 1.85$
 - b) Sequential = $.35/.09 = 3.88$
 - iii). Sequential is a higher standard: “upward criterion shift.”
 - a) Sequential is more conservative: some losses in hits. Proportionately, that loss is not as great in simultaneous.
 - b) Positive id’s are more likely to be accurate through sequential
11. Concept of Blind Testing (most important)
- i. Person who administers lineup should not be aware of which person in lineup might be suspect, does not know correct, or anticipated, or desired answer, e.g. new drugs must be double-blind tested: the patient doesn’t know nor does the person who

administered the drug know whether it was placebo or drug.
Double-blind testing is a staple of scientific community.

- a. Single blind—person being tested does not know.
 - b. Double-blind—person who administers test does not know.
 - ii. Need for blind testing does not presume an intentional effort by tester to influence subject. Purpose of blind testing is to prevent unintentional influence. People are generally unaware of the ways in which they unintentionally influence others.
 - iii. Blind Lineup Procedures prevent:
 - a. Verbal influences on identification decision. Examples include:
 - i). When witness picks incorrectly, detective reminds to look at all suspects.
 - ii). When witness identifies suspect, detective asks for more information about that suspect.
 - iii). When witness doesn't say anything, detective says, "I saw you pause on #3." Witness also paused on others as well.
 - iv). *Very difficult for detectives to be objective.*
 - b. Non-verbal influences on identification: pauses, leaning, displays of interest/disinterest
 - iv. Who should conduct lineup?
 - a. Current practice is to have detective do lineups, knowing the suspect.
 - b. Independent Administrator approach would be better; someone who is not aware of which member of the lineup or photo-spread is the suspect
 - c. We need standard that would pass the scientific standard
 - d. Lineups should be interactive. There should be conversation between administrator and witness.
 - v. Note on instructions when using blind procedures
 - a. Witnesses should be told ahead of time that administrator doesn't know suspects vs. fillers.
 - i). Rationale: to prevent witness from looking to the lineup administrator for "cues" and to make clear that task is to find out what eyewitness knows from his/her own memory.
 - ii). Even if they don't know, witness will still look to administrator.
12. Blind and Sequential—sequential should not be used without blind testing.
- i. Greater possibility of administrator influence.
 - ii. If you can't do blind, don't recommend sequential.
13. Eyewitness Certainty—certainty the eyewitness expresses is the primary factor determining whether or not people (e.g. jurors) believe that the eyewitness made an accurate identification.

- i. Certainty and accuracy
 - a. Meta-analyses indicate that the certainty-accuracy correlation in eyewitness identification could be as high as .40-.45 under “pristine” conditions.
 - b. Approximately the same correlation between height and gender.
 - c. The way that identifications are commonly obtained leads to an unfortunate ambiguity about the meaning of eyewitness identification certainty.
 - ii. Creation of False Certainty
 - a. Eyewitnesses can be influenced after they have made a choice from lineup, e.g. “Good, you’ve identified the actual suspect. Yes, you got ‘em.”
 - b. In Iowa, some of the administrators clapped when the eyewitness picked out the person.
 - iii. Post-identification feedback paradigm (Wells and Bradfield, *Journal of Applied Psychology*, 1998)
 - a. Witnessed event→Lineup identification→Manipulation of feedback→Measures.
 - b. Manipulation of Feedback: Example, by saying “Good, you identified suspect.” Control group said nothing.
 - c. Following feedback, participants were asked:
 - i). How certain were you at the time of your identification that you identified the real gunman?
 - ii). How good was the view you had of the gunman?
 - iii). How closely were you paying attention to the gunman?
 - iv). How well could you make out details of gunman’s face?
 - v). How easy was it for you to identify gunman?
 - vi). How good of a basis did you think you had for making an identification?
 - d. Results—retrospective distortions of memory: witness reconstruct to be consistent with feedback from lineup administrator.
 - e. Solution: double-blind testing so that person administering can’t reinforce witness pick.
14. Advantages to Reform
- i. Reduced chance that an innocent suspect will be identified
 - ii. Help keep investigations “on track.”
 - a. Mistaken identifications sidetrack investigations away from actual perp
 - b. Identifications of fillers “spoil” the witness.
 - iii. Greater trust by police and prosecutors for positive identifications
 - iv. Less criticism in court.
 - v. Greater trust by juries and general public.
 - vi. Diminished role for defense experts.

15. Reform Jurisdictions

- i. New Jersey—double-blind, sequential, right way to select fillers, collection, statements by blind administrator
 - a. First to do this. Only state for which there is an authority over police in state, including sheriffs. AG has total control.
 - b. Worked from bottom up before implementation.
 - c. Deputy Attorney General Lori Linskey is most experienced.
 - d. Survey of police—see slides 63—69
- ii. North Carolina—voluntary, but most departments do both
- iii. Wisconsin—AG has most police departments changed with great procedure; best set of guidelines; can be downloaded on internet; we are free to use their guidelines, including rationale.
- iv. Minneapolis (and surround): Pilot project
 - a. Wright, D.B., & McDaid, A.T. (1996). Comparing system and estimator variables using data from real lineups. *Applied Cognitive Psychology, 10*, 75-84. [19.9% of 1,561 picked filler; 20.8% for violent crimes, 17.6% for non-violent crimes]
 - b. Behrman, B.W., & Davey, S.L. (2001). Eyewitness identification in actual criminal cases: An archival analysis. *Law and Human Behavior, 25*, 475-491. [24% filler ids from live lineups]
 - c. Valentine, T., Pickering, A., & Darling, S. (2003). Characteristics of eyewitness identification that predict the outcome of real lineups. *Applied Cognitive Psychology, 17*, 969-993. [21.6% (n=119) filler Ids; 15.9% weapon present & 23.7% weapon absent]
- v. Boston
- vi. Smaller jurisdictions:
 - a. Santa Clara County
 - b. Virginia Beach, VA
 - c. Northampton, MA

16. Conclusion: Wells does not recommend legislating these regulations. He suggests mandating legislation that departments must set up procedures and provide recommended procedures.

17. Q&A for DR. WELLS

- i. JOHN VAN DE KAMP: #6—recommendations for number of people and fillers in lineup. Question: Does accuracy improve by increasing the number of photos or persons in lineup? Answer:
 - a. Most jurisdictions say a minimum of six photos. DOJ has the same minimum. There are diminishing returns with higher numbers. Difference between 8 and 9 person lineup has lesser effect than the difference between 3 and 4. Wisconsin recommended 8. Have a minimum of 6. Wells says 9 is a good number.

- b. Better off with suspect and five good fillers as opposed to suspect with 8 bad fillers. Number is less important than whether the fillers fit the description.
- ii. JOHN VAN DE KAMP: #5—assume that a double-blind administrator tapes statement. Question: What type of impact does later conversation by investigator have when witness is told that they got the right guy? Answer:
 - a. Many witnesses will have confidence elevated later. Great advantage of statement taken and having a record is that it can be used. If the witness is positive at trial, but they weren't positive at the time of id, then the info is on record.
 - b. Wells doesn't see point of recommendation. Witness will always find out info from someone, even at trial. He claims that we can't prevent witness from knowing the status of the person they identified. His recommendation: make a record of their certainty. Victims have a need to know.
- iii. JERRY UELMEN—looking at wrongful identification problems in CA, majority were cross-racial. Question: Any special reforms or suggestions for cross-racial identification? Answer:
 - a. Cross-racial, and cross-ethnic identifications, are the most difficult for people of different background or category. Same safeguards will help that problem, but it doesn't address the less-reliable aspect of cross-race or cross-ethnicity identifications.
 - b. Whatever we do will help this situation, but cross-racial identification problems will still be a risk. Make sure that juries don't think the problem is a myth.
 - c. Wells doesn't recommend expert testimony, but rather educating public or fixing the eyewitness id portion. Make sure to implement safeguards, which should help. But cross-racial will be a problem like lighting, etc.
- iv. JON STREETER—Question: to what extent do findings apply to show-up setting in the field? Answer:
 - a. Science indicates that show-up is less reliable than lineups. Doesn't follow that one should ban show-ups. Show-ups occur under special circumstances. Crime happened and within hour, the individual is detained. No choice to do live lineup; there are no grounds for arrest. Witness has fresh memory. Suspect insists on quick exculpation. Policy says you can't just let suspect loose. So we are stuck with show-ups.
 - b. If you have grounds to arrest, then you've lost the major reason to do a show-up. If you can arrest, arrest and do it right. Just because show-ups are permitted, they shouldn't be done in egregious ways. If you have to do show-up, do it in way that is least suggestive.

- c. Technology may help with show-ups. If a person is detained, their photo can be taken or driver's license can be downloaded. Other photos are emailed to squad car and regular lineup is done.
 - v. MICHAEL P. JUDGE—Question: any recommendations with respect to how show-ups should be handled when police departments have multiple witnesses and putting each in a separate squad car is impracticable? Answer:
 - a. Witnesses must be separated, one at a time. Must make sure that witnesses don't interact. Take witnesses to detained person as opposed to detained person to the witness.
 - b. General recommendation with multiple witnesses: if witness makes an id, then you have grounds for arrest. Preserve other 4 witnesses for more diagnostic lineup test.
 - vi. JIM FOX—Question: what about small population towns where double-blind is very difficult? Answer:
 - a. Wells does not recommend sequential process unless it is not double-blind. Small departments can do it. Even two officer departments in NJ can do it. Someone in nearby jurisdiction can be called in.
 - b. If the double-blind can't be done, there are alternatives. Anything that achieves the same effect, e.g. Envelope procedure, Laptop procedure (preferred). For Laptop Procedure, software can administer photo lineups sequentially or simultaneously; detective does not have to be in room. Laptop administers the lineup to the witness. It also contains a record. See Otto Macklin's software.
 - c. Wells says, "Real Question should be: how can we achieve double-blind or its equivalent?"
 - vii. GREG TOTTEN—Question: what does typical study involve? How is it conducted? Answer:
 - a. Different methodologies. Usually, they stage live crimes (thefts, assaults): because they create event, they know perpetrator.
 - b. Recently, they've used video methodology. Follow-up with questions of description of what happened, about person(s). Followed up with lineup, commonly done with photos b/c 85% of initial ids are done with photo. Then you manipulate instructions to witnesses and fillers in lineup. A typical experiment contains 90-400 subject witnesses.
- D. DR. EBBE EBBESON (view simultaneously with [PowerPoint presentation](#))
1. Main concerns when proposing new policy:
 - i. Perception and Politics: do we believe something is broken? Will new policy fix it?
 - ii. Cost benefit analysis
 - iii. Legal issues raised by recommendations

- iv. Actual outcomes
 - a. Will new policies improve accuracy of eyewitness identification?
 - b. How will we know that it has improved? Whether the recommendations will work depends on predictions from causal analysis by science.
 - i). Can we generalize laboratory results to field settings?
 - ii). Will new policy actually change processes for the “good”?
 - c. Ebbeson’s recommendation: there is not enough real-world research that has been done to support the recommendations of the Commission. Therefore, he proposes pilot research on whether one or more of the recommendations works or will work.
- 2. Things to consider:
 - i. Is current theoretical understanding sufficient to predict effects of new policy?
 - ii. Are existing data consistent enough? See pilot study in Illinois, will be made available week of 3/20/06—3/25/06. Shari Mecklenburg is responsible in IL
 - iii. Do we have relevant data for each recommendation made? In most cases, no. There are no results showing false id is the primary cause of wrongful conviction. False ids occur a lot in wrongful convictions, but they may also occur in correct convictions.
 - iv. Have we considered costs and benefits? How bad is the problem? We have no research telling us rate of false id of innocent suspects in the CA justice system. If false id is rare, cost of detecting and eliminating could be high.
- 3. Actual Outcomes—how to understand nature of research
 - i. Two types of lineups—Concept of “Culprit-Present” and “Culprit Absent/Innocent-Suspect-Present” lineups. In the first, guilty is in the lineup. In the second, innocent suspect is in lineup.
 - ii. What are types of errors?
 - a. In guilty present,
 - i). Guilty picked and charged
 - ii). Filler picked and guilty remains free
 - iii). No one picked: guilty remains free
 - b. In innocent suspect lineup,
 - i). Witness pick innocent and guilty remains free, charges against innocent
 - ii). Witness picks filler and guilty remains free
 - iii). (Need to fill-in with PowerPoint slides from Ebbeson)
 - iii. How to evaluate rate of occurrence of different situations?
 - a. To determine how many good and bad outcomes witnesses are producing, must know how many proportion of lineups

- are guilty or innocent suspect lineups. We don't know this info. We must know the rate of investigator-created guilty-culprit lineups vs. innocent suspect-lineup creates.
- b. Ebbeson recommendation: put money into researching that issue, being done in San Diego presently.
- iv. Reasons witnesses choose wrong person
 - a. Witness has poor memory and is guessing
 - b. Memory poor and filler and our innocent suspect matches poor memory
 - c. Filler actually looks like culprit in some way
 - d. Picture of (or live) suspect presented in lineup...
- v. Reasons witnesses don't pick anyone
 - a. No one looks like culprit
 - b. Witness memory poor
 - c. Witness sets very high "memory match" standard
 - i). Witness is concerned with memory in head and picture in lineup. Is the match sufficient in a person's head?
 - ii). The standard for memory match for each person varies. because different people have different concerns, e.g. afraid of consequences, or non-involvement.
- vi. Other critical factors: more fillers means more opportunities for witnesses to choose known innocents. This is true for both guilty-culprit-present and innocent-present lineups. The impact of additional fillers should be focused on similarity to culprit.
- 4. Demonstration—colors on screen (see Powerpoint slides)—results from few real-world vs. laboratory lineups are most like guilty-suspect lineups in laboratory.
 - i. Sequential lineup theories (Relative judgment v. absolute, Differential discrimination, Differential criterion placement, Multiple differential criterion placement)
 - ii. Science does not know what proper theoretical view is about difference between simultaneous and sequential. At least 5 independent lines of research suggest that sequential is not the prophylactic that some suggest. Check out pilot project in Illinois.
 - iii. Problems: depend on similarity structure of lineups, position of suspects and most similar fillers, and unresolved issues such as: second viewings, set asides, instructions re: stop after pick, number of times witness expects to see, changes of mind if witness shown all items.
- 5. Recommendations—Need research on the combination of effects of research for conviction rates and correct id.
 - i. Position Effect Problem
 - a. Early fillers affect the odds that witnesses will get to see suspect/culprit
 - b. Placing suspect early means lineup is smaller

- c. Problem of shifting “memory match” standard or criterion as witness progresses through sequence
- d. Early positions are not fair, odds are higher for selection.
- e. Greater opportunity for investigator influence if double-blind not successful. Need to videotape?
- ii. Jury Instructions
 - a. Instructions affect “memory match” standards of judgment
 - i). E.g. “Be careful” raises memory match standard
 - ii). If no instructions, standards go down. It changes the affect of innocent suspects getting picked as well as guilty culprits being picked.
 - b. Instructions affect different people differently.
 - c. Better strategy: detect those whose memory is poor and whose “memory match” standards are too low.
- iii. Double-Blind
 - a. No research showing that false IDs are the result of investigator “leakage” or conscious instruction
 - b. Sequential lineups are prone to investigator bias, no research on it
 - c. No research on envelope method, especially in real world
 - d. Problem of reluctant witnesses.
- iv. Videotaping
 - a. Record keeping is a good thing
 - b. Videotaping without pilot project study designs are not nearly as useful for research purposes
 - c. Taping is not a perfect record, according to legal system point of view. Lighting, field of view, point of view, time-line, context, and so on can affect conclusions of observers. Subject to challenge
- v. No feedback—early recording of confidence, and other expressions of “strength” of memory
- vi. Minimum line up size
 - a. No research on this. Research says that lineups of 1 produce higher accuracy than lineups of more than 1.
 - b. No research tells us what number of lineup is correct. It’s a tradeoff between number of innocents vs. guilty conviction rates
- vii. Fillers fit witness descriptions
 - a. Fit description could be a problem when witness memory is less than perfect and neither suspect nor fillers look a lot like a culprit
 - b. Fit description creates widely variable similarity structures across crimes. Not clear if this is a good thing
- viii. Independent witness testing—good
- ix. Train police in procedures
 - a. Depends on which procedures police are trained on

- b. Be careful about sequential
 - x. Training of others
 - a. Cross-race: may be less of a problem than people suggest. Studies of real-world lineups say cross-race ids don't exist. Cross race raises the decision standards because it's a harder lineup.
 - b. Relative-judgment process—clearly wrong
 - c. Value of expert testimony dealing with eyewitness reliability
 - xi. Standardized Jury Instruction
 - a. Jury is concerned with absolute probability that witness is correct.
 - b. None of research in psychology is set up to define that number.
 - c. Recommendation to do research on this
 - xii. Other suggestions
 - a. Standardized measures of similarity structures
 - b. Pilot research to determine rate of innocent suspects lineups that result in charges being filed
 - c. Test relative
 - 6. Other eyewitness procedures
 - i. multiple simultaneous lineups
 - ii. witness determined presentation
 - iii. multiple view simultaneous lineups
 - iv. elimination procedure
 - v. all possible pairs (triplets)
 - vi. ratings rather than categorical decisions
 - 7. Q&A till 12:45pm
- E. DAVID ANGEL, Santa Clara County DA's office
1. Exonerations became a concern. It's a disaster when an innocent person is convicted—both because of harm to innocent and the bad guy is still out there.
 2. DOJ study: lead cause was sincere, but false, eyewitness identification. DOJ concludes that it is causal.
 3. What does literature and scientific community say is best reform? Santa Clara County looked at problem proactively. What would be best policy moving forward?
 - i. NJ experience, DOJ, and review of scientific literature
 - ii. Only changes that SC made was to make double-blind and sequential.
 - iii. The change has been remarkably seamless.
 4. What about the cost? There is essentially no cost involved, save some training issues and more personnel. But preventing one reversal pays for that.
 5. George Kennedy has respect of law enforcement in county. Need a strong respected person to interact with law enforcement

6. Law enforcement reacted positively. Concerns: time and research issues; law enforcement feels looked down upon and views this as imposed upon them and impugning their integrity.
 7. Santa Clara created a Training video and a Prosecutor training
 8. 100% compliance in Santa Clara County, only one incident
 9. No perceivable change in rate of identifications.
 10. See [Santa Clara County Protocols](#)
- F. RALPH AND LYN HABER, PhD—research scientists in same category as first few witnesses. Their paper has gone out to Commission.
1. Wells focuses on things under control of criminal justice system. There is much evidence that human beings, as observers, make mistakes under optimal conditions as to how they are questioned when identifying strangers.
 2. Recommendation of Drs. Haber: implement as many of Dr. Wells' recommendations as possible.
 3. Concern: if you put all recommendations into effect simultaneously, we would only remove some portion of inaccuracies when witness is identifying a perpetrator.
 4. All data converge on 50% accuracy and 50% error: eyewitnesses make mistakes when trying to identify a perpetrator.
 5. Focus of recommendations would significantly improve eyewitness ids leading to more accurate convictions and exonerations. But, there will still be witnesses that make erroneous identifications.
 6. Consider other alternatives beyond improving police practices:
 - i. Juries believe eyewitnesses. That's the most important evidence that juries attend to when presented with eyewitness testimony. Juries are sensitive to eyewitness certainty. We shouldn't allow "confidence" statements into evidence in trials. We must control the "confidence" statements.
 - ii. Use of in-court identifications—powerful influences on jury. If witness has already made identification in another context, the probative value of id in court may not be worth the possibility of unduly influencing jury if it turns out to be erroneous.
 - iii. Focus of Commission should go beyond simple procedural issues, but move to other options
 - iv. Training for judges and attorneys?
- G. Juliana Humphrey from CA Public Defenders' Association
1. CPDA endorses all recommendations of Commission. It provides provide training for members. Eyewitness ID training is well-attended.
 2. CPDA supports the Wisconsin protocol.
 3. Add language for field identification procedures
 - i. Show-ups may be forever preserved or forever contaminated.
 - ii. Lack of confidence is borne out in that generally speaking law enforcement will do 2 or 3 more eyewitness lineups after show-up. That only reinforces the original show-up selection. The benefit of show-ups is that people do get eliminated.

- iii. If there is probable cause, preserve evidence not for a show up, but for a regular lineup.
- 4. ID is an issue in every case. Where eyewitness ID is an issue is where it is the only evidence. Very difficult to prove a negative.

H. Audience participation

- 1. Harry Souza—two sons were convicted of a crime; one on death and the other doing 25 to life
 - i. Lineup in Oakland, sons are half native-american. Witnesses that were doing id were also native-american.
 - ii. Photos consisted of whites and Mexicans; they were only native Americans in photos.
 - iii. During trial, key witness also admitted that he was in a different room hiding behind a refrigerator.
 - iv. Public Defender asked which one of his sons should be put to death. PD never cross-examined witness behind refrigerator and only represented one of the sons. Nothing was brought up about photo id's.
 - v. The cases are on appeal now. He is skeptical b/c lawyer has never done an appeal. It's a public appeals lawyer.
- 2. Natasha Minsker—Director of Death Penalty Policy for ACLU of Northern California
 - i. What level of error are we willing to tolerate in our system? In some cases, this is a case of life and death. Recommendations we make will apply to the most serious cases.
 - ii. Scientists can provide much information through redundancy. Eyewitness ID is one part of a larger issue. Should investigation continue whether eyewitness id has been made or not? Don't rest whole case on eyewitness id.
 - iii. Instructions to witness that perpetrator might not be in lineup. This instruction should also be given to police to continue investigation, even if id is made.
- 3. Sharon Shaffer(?)—California State Sheriff's Association
 - i. Association does not support all recommendations. Double-blind procedural questions. What about impact on smaller law enforcement agencies across state?
 - ii. Concerns about videotaping procedure; operations and resources.
 - iii. If state provided videotaping equipment and additional personnel to do double-blind lineups, would that be okay? Concern of Sheriffs is that we need more than equipment, but a way to operationalize the equipment.
 - iv. JOHN VAN DE KAMP—We are conscious of practical realities.

I. WELLS AND EBBESON

1. WELLS

- i. Wells agrees with many of Ebbeson's ideas, but not that hypothetical details have been articulated.
- ii. Questions of set-aside were answered by Wisconsin.

- iii. Body of Knowledge is better than current haphazard.
- iv. Are there other possibilities? Yes, but don't let the fact that we don't know everything keep us from moving ahead.
- v. We don't know why sequential lineups work, but it does based on his conception of relative-judgments.
- vi. Only controversial issue is sequential: it's not political decision but policy decision. Where do we want to draw the line?
- vii. As for double-blind, Laurie Linsky from NJ says double-blind has no cost.
- viii. Commission should be the bully-pulpit for convincing law enforcement to take these issues seriously.
- ix. Minimize frequency with which witnesses see lineups with innocent suspect. Problem occurs when witnesses look at lineup without perpetrator in lineup.
- x. Should we change ritual of trial where eyewitness points finger at defendant?
- xi. BILL HING: Question: Is cross-racial id issue not as big of a deal as some people argue? Answer: DNA exonerations are greatly overrepresented by cross-racial identifications.

2. EBBESON

- i. Use medical model: feedback and then change hypothesis.
- ii. Commission needs a system that allows for feedback that measures the variables that everyone agrees are important to measure. Exs. Wrongful convictions, False ids, Correct ids, Correct guilty people being convicted
- iii. Penalty—accept differential rates of error that allows for feedback
- iv. Body of knowledge
 - a. Ideal recommendation: study impact of recommendations on outcomes that we are interested in.
 - b. Don't just make recommendations and walk away. We must examine rate at which crucial outcomes are occurring.
- v. What about 50% rule?
 - a. To draw conclusion, you need to establish that there are different types of mistake that people make and different legal consequences.
 - b. Which mistakes are most important to us?
- vi. If you want to eliminate false ids, make sure lineups all include a guilty person.
- vii. Illinois study and San Diego studies say that cross-racial identifications are not as big a deal as they seem. With regards to meta-analyses, large majority of tests are done with people who look at faces. Those studies suggest that people in cross-racial situations are 1.5 times more likely to choose someone of another race than someone of their own race when they haven't seen the person.

- viii. GREG TOTTEN. Question: Are DOJ guidelines appropriate? Answer: Guidelines didn't go far enough. WELLS: I was a founding member, appointed by Reno. The committee had the full consensus of 34 people in working group, although law enforcement and prosecutors constituted majority. The report is good, especially the instructions.
- ix. Question: Should there be simultaneous lineups or should they be banned? Answer: When law enforcement knows pros and cons, they will choose sequential. Wells does not think there is no place for simultaneous lineups.