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Symposium: Reforming Eyewitness Identification: Convicting the Guilty,**Protecting the Innocent [FN a1]*****381 IMPROVING EYEWITNESS IDENTIFICATIONS: HENNEPIN COUNTY'S BLIND
SEQUENTIAL LINEUP PILOT PROJECT**

Amy Klobuchar [FN d1]

Nancy K. Mehrkens Steblay [FN dd1]

Hilary Lindell Caligiuri [FN ddd1]

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Steblay; Hilary Lindell Caligiuri

I. Introduction [FN aa1]

On a summer night in 1984, 22-year-old college student Jennifer Thompson Cannino was raped at knifepoint by a man who had broken into her North Carolina apartment. [FN1] The police were able to create a composite sketch of the perpetrator from Cannino's detailed description. [FN2] At a photo lineup, she identified the police suspect, Ronald Cotton, as her rapist. [FN3] One week later, she also picked Cotton out of a live lineup. [FN4] She later remarked, "I knew this was the man. I was completely confident." [FN5] Cannino testified against Cotton in court and he was convicted. [FN6] She called it "the happiest day of my life because I *382 could begin to put it all behind me." [FN7] An appellate court overturned Cotton's original conviction for reasons unrelated to Cannino's identification. [FN8] In a second trial in 1987, Cotton was convicted again and sentenced to life in prison. [FN9]

In 1995, eleven years after the rape, Cannino learned she had been mistaken. [FN10] The man who raped her was not Ronald Cotton, but Bobby Poole. [FN11] Poole was already serving life in prison for a string of rapes, and had bragged to other inmates about committing the rape for which Cotton had been imprisoned. [FN12] DNA testing verified that Poole had raped Cannino, and he pleaded guilty to the crime. [FN13] Cotton was freed after having spent eleven years in prison. [FN14] After Cotton's release, he and Cannino became friends. [FN15] Although Cotton has been able to move ahead with his life, Cannino wrote, "I live with constant anguish that my profound mistake cost him so dearly." [FN16] As a result of the experience, Cannino became a prominent advocate for criminal justice reforms, including changes in eyewitness identification procedures that reduce the potential for misidentifications. [FN17]

There have been few problems with mistaken eyewitness identifications in Minnesota. There is increasing concern, however, about the number of wrongful convictions in other parts of the country. When an innocent person is convicted of a crime, not only is there a grave miscarriage of justice, but the actual criminal remains free and able to commit other crimes. This troubling reality raises serious public safety concerns and erodes public confidence in the justice system.

Fortunately, there is a persuasive body of research concerning new methods to secure **eyewitness identifications** from photographic lineups. [FN18] This research shows that relatively simple changes in lineup procedures *383 can lead to stronger **eyewitness identifications**, making it more likely that the right person is held responsible for the crime. [FN19] Accordingly, in the interests of justice, the **Hennepin County** Attorney's Office spearheaded an initiative to improve traditional lineup procedures. In the fall of 2003, the office worked with several police departments to adopt a new photographic lineup protocol consistent with recent scientific evidence on procedures designed to minimize the risk

of misidentifications. The county attorney's office developed a year-long pilot program to examine recommended eyewitness procedures in real police field investigations. The results of this project, detailed below, represent the first available field data on blind sequential lineup performance.

The participating police departments were all from Hennepin County, which includes Minneapolis and several dozen suburban communities, with a total population of over 1.1 million. [FN20] The Chiefs of Police from Minneapolis (approximate population 380,000) and three suburban communities-- two larger (Bloomington, approximate population 86,000, and Minnetonka, approximate population 52,000), and one smaller (New Hope, approximate population 21,000) [FN21]--signed on to conduct the pilot project. Professor Nancy Steblay, an eyewitness scientist at Augsburg College in Minneapolis, was selected to analyze the results of the pilot project.

The Hennepin County Attorney's Office implemented the project with two primary research questions. The first was whether the number and quality of identifications would change with the blind sequential lineup procedure. Second, the office sought to determine whether police departments could smoothly and effectively implement the procedure. Analysis of the data and anecdotal responses from the participating police agencies led to the conclusion that the new protocol is both efficient to implement and effective in reducing the potential for misidentifications.

II. Legal Rationale and Review

Eyewitness identification may be the oldest way of solving a case. As long as there have been eyewitness identifications, however, there has existed the risk of misidentifications. In the late 1960s, the United *384 States Supreme Court began creating safeguards to protect criminal defendants from wrongful convictions, including those that could result from misidentifications. In *United States v. Wade*, [FN22] the Court held that the Sixth Amendment right to counsel applies to critical stages of pretrial proceedings, [FN23] which include a physical lineup procedure. [FN24] The Court recognized the "vagaries of eyewitness identification," and the "innumerable dangers and variable factors which might seriously, even crucially, derogate from a fair trial." [FN25] Having a defense attorney attend a physical lineup would be beneficial, [FN26] since witnesses, lineup participants, and lineup administrators would be unlikely to identify bias in traditional lineup procedures. [FN27] Not only might the presence of defense counsel deter prejudice at the lineup, [FN28] but counsel also would be able to reconstruct an unfair lineup at trial.

The same day as the *Wade* decision, the United States Supreme Court ruled in *Stovall v. Denno* [FN29] that an unduly suggestive lineup might constitute a due process violation if it could lead to an irreparably mistaken identification. [FN30] A defendant could move to suppress prejudicial identification testimony depending on the "totality of the circumstances" surrounding the testimony. [FN31] The next year, in *Simmons v. United States*, [FN32] the Court held that each alleged due process violation during a lineup must be examined on the facts of the individual case. [FN33] Lineups would be excluded from trial if the "procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification." [FN34]

In the 1970s, the Court began retreating from the broader safeguards guaranteed in *Wade*, *Stovall* and *Simmons*. In *United States v. Ash*, [FN35] the Court refused to extend the Sixth Amendment right to counsel *385 to photographic lineups, reasoning that the minimal risks presented in a display of photographs did not require such an extraordinary safeguard. [FN36] The Court also found that even extremely biased lineups were not per se excluded. [FN37] Instead, it was necessary to determine whether the admittedly suggestive lineup was nonetheless reliable. [FN38] In *Neil v. Biggers*, [FN39] the Court considered five factors for determining the dependability of eyewitness identifications: (1) the witness's opportunity to view the perpetrator during the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's initial description of the perpetrator, (4) the witness's certainty at the lineup, and (5) the length of time between the crime and the identification. [FN40] In *Manson v. Brathwaite*, [FN41] the Court concluded, "reliability is the linchpin in determining the admissibility of identification testimony. . . ." [FN42] This emphasized even more firmly that the important question was not whether the identification procedure was prejudicial to the criminal defendant, but

whether the identification itself was reliable.

To varying degrees, these cases sought to remedy the effects of suggestive lineups, but they did nothing to discontinue the use of prejudicial procedures. About the same time the Court was considering these cases, psychologists began researching and positing solutions for the problem of eyewitness misidentifications. [FN43] The subsequent introduction of DNA testing led to the exoneration of wrongfully convicted individuals. [FN44] These recent scientific developments have invigorated interest in improving lineup procedures. New Jersey, however, is the only state to have adopted mandatory guidelines for the administration of eyewitness lineups. [FN45]

Before the new lineup procedures were mandated in New Jersey, a series of reports demonstrated perceptible race discrimination in the *386 New Jersey criminal justice system. [FN46] In 1999, while these findings were being discussed, the New Jersey Supreme Court ruled in *New Jersey v. Cromedy*. [FN47] In 1992, a white female college student had been raped by an African American male. [FN48] Eight months later, the victim saw Cromedy across the street and identified him as her rapist. [FN49] Cromedy was convicted solely on the victim's eyewitness identification; the prosecution offered no corroborating physical evidence. [FN50]

On appeal, the New Jersey Supreme Court held that the cross-racial identification in that case required a special jury instruction due to the unreliability of such identifications in general and, specifically, the total lack of additional evidence supporting the eyewitness identification. [FN51] Consequently, the supreme court reversed Cromedy's conviction and remanded the case for a new trial. [FN52] Pending retrial, a DNA test of biological evidence collected from the victim exonerated Cromedy. [FN53]

In the wake of the Cromedy decision, New Jersey Attorney General John Farmer turned to the photographic lineup procedure reforms recommended by the researchers. [FN54] Professor Gary Wells, an eyewitness scientist, was invited to discuss the subject with New Jersey law enforcement and prosecutors. [FN55] Despite initial unfavorable reactions, Farmer created a new lineup procedure that included safeguards exceeding those recommended by the National Institute of Justice. [FN56] Exercising the unique authority granted to the Attorney General in that state, Farmer implemented mandatory statewide guidelines, [FN57] making New Jersey the first state to uniformly adopt improved lineup procedures. [FN58]

New Jersey's reforms have influenced other states to examine the possibility of adopting similar lineup protocols. In 2002, Illinois Governor *387 George H. Ryan's Commission on Capital Punishment, charged with ensuring the accuracy and justness of capital punishment in Illinois, recommended the implementation of eyewitness identification reforms. [FN59] The North Carolina Actual Innocence Commission created a series of recommendations in 2003 for state law enforcement officers, including a comprehensive lineup protocol. [FN60] In early 2005, the Avery Task Force made similar recommendations for the Wisconsin criminal justice system. [FN61] The Virginia General Assembly also instructed the Virginia State Crime Commission to create guidelines for improving lineup procedures in the commonwealth. [FN62] As reforms are implemented, it is imperative that evaluative data are collected. This Hennepin County project provides the first available field data.

III. Scientific Rationale and Review

A. National Institute of Justice Lineup Protocol

In 1999, the U.S. Department of Justice published its recommendations for eyewitness procedures. This document, the National Institute of Justice's *Eyewitness Evidence: A Guide for Law Enforcement* (NIJ Guide), [FN63] was prepared in response to the high number of wrongful convictions revealed by DNA exoneration cases. [FN64] In the majority of these cases, mistaken identification was the primary evidence responsible for conviction. [FN65]

Psychological research has shown that some eyewitness reports are not reliable and that certain methods of conducting lineups can exacerbate witness tendencies toward erroneous lineup choices. [FN66] To remedy this problem, the NIJ Guide recommends that eyewitnesses be given an unbiased lineup instruction ("the perpetrator may or may not be in this lineup"), [FN67] that lineups be constructed fairly (e.g., fillers must match *388 perpetrator description), [FN68] and that officers record results in a prescribed manner. [FN69] The NIJ Guide also recognizes that "advances in social science and technology will, over time, affect procedures used to gather and preserve eyewitness evidence." [FN70] Three procedures were specified by the NIJ Guide as possibilities for future exploration: the sequential method of lineup presentation, blind lineup administration, and the use of computer-based imaging systems. [FN71]

B. The Sequential Method of Lineup Presentation

A sequential lineup presentation attempts to remedy what researchers describe as the tendency of an eyewitness to engage in relative judgment when evaluating photographs in a lineup. [FN72] Standard police lineups present the eyewitness with all lineup members--usually six individuals--at the same time. [FN73] In this simultaneous format, eyewitnesses tend to compare lineup members using a process called relative judgment to determine which most closely resembles the eyewitness's memory of the perpetrator. [FN74] Even when the true perpetrator is absent from the lineup, it is likely that one of the fillers used in the lineup will provide a better relative match to the witness's memory than the others. [FN75] This process can increase the risk of a misidentification. [FN76]

In contrast, the sequential procedure presents the eyewitness with one lineup member at a time, requiring the witness to decide whether that person is the perpetrator before moving to the next photo. [FN77] This format is intended to discourage the eyewitness from simply identifying the lineup participant who most resembles the perpetrator. [FN78] The result is a more absolute decision criterion and potentially enhanced witness discrimination between the culprit and a similar-looking innocent person. [FN79]

*389 The NIJ Guide only suggested the sequential method for lineups, presumably because existing research did not verify the advantages of the sequential lineup over a traditional simultaneous format. Since that time, a published review of laboratory research has confirmed the benefits of the sequential procedure. [FN80] Sequential and simultaneous formats produce dramatically different choice and accuracy outcomes, as will be discussed below.

C. Blind Lineup Administration

Blind lineup administration was identified in the NIJ Guide "as a direction for future exploration and field testing." [FN81] Double-blind procedures, in which neither the experimenter nor the subject know the subject's treatment condition, are an essential part of good scientific method, used to prevent inadvertent contamination of research results. [FN82] Research conducted since publication of the NIJ Guide indicates that the double-blind (hereinafter more simply referred to as blind) procedure helps to secure accurate eyewitness accounts by eliminating the potential for inadvertent influence by the officer conducting the lineup. [FN83] A lineup administrator who does not know the identity of the suspect is unlikely to influence the witness through verbal or nonverbal cues. [FN84] A complement to this procedure, notifying the witness that the officer does not know which lineup member is the suspect, affords the additional advantage that the witness is less likely to seek or infer cues from the officer's behavior. [FN85]

When blind administration of the lineup is not used, there is also increased potential for the confidence level of an eyewitness in his or her *390 lineup choice to be influenced by the investigator. [FN86] Research demonstrates a moderate correlation between witness confidence and accuracy. [FN87] However, this relationship is easily corrupted, because eyewitness confidence is highly malleable. [FN88] Factors that may increase witness accuracy (e.g., good viewing conditions, lengthy exposure, distinct perpetrator features) are not the same as those that affect confidence (e.g., confirmatory feedback from police, post-event information, and supportive influence of other witnesses). [FN89] An

erosion of the relationship between confidence and accuracy occurs when an **eyewitness** is exposed to factors that inflate confidence but have little relationship to accuracy. [FN90] If confidence is to have any diagnostic value in determining accuracy--an important question for juries assessing **eyewitness identifications**--it will likely depend on conditions of blind administration and the prompt assessment of witness certainty. The **Hennepin County** pilot project made it possible to examine the real-world correspondence between confidence and **eyewitness** choice under blind sequential conditions.

A recent review of existing research underscored the need for lineup administrators to assess **eyewitness** confidence before providing any feedback. [FN91] Analysis of twenty laboratory tests demonstrated that confirmatory feedback immediately after the identification (i.e., "Good, you identified the actual suspect.") significantly inflated the participant-witnesses' retrospective confidence reports when compared with a control group that was told nothing about identification accuracy. [FN92] In other words, those witnesses whose choice was praised indicated they had been more certain of the identification from the outset. [FN93] Confirmatory feedback similarly influenced witnesses' reports of the quality of their view of the perpetrator, their degree of attention, their ease of identification, and of the basis for their identification. [FN94] Participant-witnesses who received immediate confirmatory feedback were also *391 more willing to testify about the identification and reported a greater ability to remember strangers. [FN95] These outcomes support the desirability of double-blind lineup administration and prompt, full recording of eyewitness certainty comments.

IV. Scientific Method

A. Sample

The Hennepin County Attorney's Office pilot project focused on felony cases in four municipal police departments, including both stranger and familiar perpetrator lineups. The cities chosen represent four levels of population and include both urban and suburban locales. In Minneapolis, the largest of the four cities, the protocol was used exclusively by Central Investigations, which handles violent crimes. Ultimately, the project involved 280 lineups from 117 cases, representing 206 eyewitnesses over a twelve month period ending in November 2004 (see table 1).

Table 1. Demographics

	Population	280 Lineups	117 Cases	206 Eyewitnesses
Minneapolis	382,618	138 (49%)	38	89
Bloomington	85,172	86 (31%)	48	69
Minnetonka	51,301	30 (11%)	14	26
New Hope	20,873	26 (9%)	17	22

Result of 280 Lineups

Most Frequent Crimes (of 27 Categories):	Murder	30%
	Assault	24%
	Theft	12%

	Forgery/Check		8%
Suspect Race:	African American	163	58%
	Caucasian	75	27%
	Hispanic	16	6%
	Native American	8	3%
	Other	6	3%
	No Report	12	4%
Witness Race:	African American	77	28%
	Caucasian	63	22%
	Native American	8	3%
	Hispanic	5	2%
	Other	5	2%
	No Report	122	44%
	Cross-race IDs	38	14%
	Same-race IDs	113	40%
	No information	129	46%
Suspect gender	Male	249	89%
	Female	30	11%
Witness gender	Male	181	65%
	Female	96	34%
	No report	3	1%
Weapon presence	Gun	90	32%
	Knife	16	6%
	Other	13	5%
	No weapon	14	5%
	No report	147	53%
Time between event and lineup			Cum %

Lineup within 1 week:	50%
within 2 weeks:	64%
within 3 weeks:	75%
within 4 weeks:	82%

B. Reporting

Investigators continued their prior reporting procedure, in which each investigator wrote a narrative report of the lineup process. The Minnetonka Police Department also developed a supplementary form for the witness that provided instructions, including the cautionary instruction that the perpetrator may or may not be in the collection of photos to be displayed, and response options. Minnetonka witnesses were requested to check one of two options: I am unable to select any photo as the suspect in this case, or, I have selected photograph # ___ from the group. The form also included a space for the witnesses to write comments.

Data were drawn directly from investigators' lineup reports. Incomplete reports were supplemented with data from the complete police file. The files provided a rich data set that included information regarding lineup structure and administration, lineup context (e.g., crime type), and eyewitness responses to the lineup task (see table 1).

*393 C. Protocol and Training

The Hennepin County Attorney's Office employed the following five principles for its blind sequential lineup protocol (the first three were already part of the police departments' procedures): [\[FN96\]](#)

- Effective use of fillers (foils). A six-member lineup included one suspect and at least five fillers.
- Cautionary instruction. The witness was instructed that the perpetrator "may or may not be in the lineup."
- Confidence statement. A statement of witness confidence, in the witness's own words, was recorded at the time of the identification and before any feedback.
- Blind Administration. The lineup administrator did not know who the suspect was, and the witness was instructed that the administrator did not know which lineup member was the suspect.
- Sequential presentation. The witness was informed that he or she would be viewing a series of photos. Lineup photos were presented one at a time, with the witness making a decision about each photo before the next was presented. The witness was not allowed to compare photos side-by-side at any time. The full sequence was completed even if an early identification was made, and the witness was informed that this completion is required by the procedure. The Hennepin County procedure also allowed the witness to view the entire sequential lineup display as many times as desired.

Specifically, investigators were instructed as follows:

- Use existing Minnesota Repository of Arrest Photos parameters. These defaults include the use of photographs depicting suspects of similar age, skin color, complexion, hairstyle, and build. Consistency is also required as to backdrop, the use of color or black and white suspect photos, and distinguishing characteristics such as facial hair, scars, eyeglasses, and clothing.
- Use no less than six photographs.

- Preserve a copy of the photos in the order in which they were displayed. One way is to preserve the traditional simultaneous six-photo display.

- *394** • Assemble a different group of photos using new fillers for each suspect.

- Interview witnesses in private, separate from other witnesses.

- Do not tell the witness that the suspect is in a group of photos. Rather, the witness should be told the suspect "may or may not be" in the group of photos displayed.

- Tell the witness that the displaying officer does not know whether the suspect is in the group of photos.

- If a witness is able to recognize the suspect from the photos, a statement from that witness should include a description of how certain the witness is of the identification. Numerical certainty (percentages) should be avoided, but a description of why the photo resembles the suspect is encouraged. The witness should initial and date any photo identified.

- The officer displaying the photographs should report on how the identification was made, including the speed of the identification, statements of certainty made during the process, and any comments about why the photos do or do not look like the suspect. The officer should not encourage the witness to focus on any particular photo.

- Photos should be shown one at a time. While one photograph is being displayed, the other photographs should be face down or otherwise hidden.

- The witnesses may look through the photos more than once, but all the photos should be shown each time. The number of times the photos were shown should be reported. The witness may take as long as necessary to examine each photograph.

- If a witness identifies a suspect before looking at all the photos, the rest of the display should be shown and the witness asked to identify or eliminate each photograph.

- The officer showing the display should not know which photo depicts the suspect. The officer assembling the photos should not be in the witness's view during the display.

- A knowledgeable officer should be available to clarify questions that arise during the identification process and to provide support after the process is completed.

The Hennepin County protocol made the following exceptions:

- Sequential displays should not be used with witnesses of twelve years of age or younger.

- *395** • The blind examination requirement may be disregarded if necessary. Officers should document why an uninformed officer was not available (e.g., it is 3:00 a.m. and no uninformed officer is available). [FN97]

V. Quantitative Results: Do the Number and Quality of Identifications Change with the Blind Sequential Procedure?

A. Overview and Comparative Data

The blind sequential lineup procedure is expected to lower eyewitness choosing rates. [FN98] Researchers believe this is due to the witness's movement from relative to absolute judgment, a process that also may involve an upward criterion shift. [FN99] The witness knows that there could be another person, a better match to memory, coming later in

the sequence. [FN100] Thus, he or she is forced to dig a bit more deeply into memory. [FN101] Guessing should be reduced by the blind sequential procedure. This procedure is seemingly a more conservative test of memory, and, if this technique is working well, a low rate of filler choices is likely.

Investigators may be concerned about the reduction of correct identifications that appeared when sequential lineup laboratory results were compared to simultaneous lineup results (3% and 15% average decreases, for the subgroup of "choosers" and for all witnesses, respectively). [FN102] It is not known whether this difference represents a loss of true memory reports, of lucky guesses, or both. Ideally, the blind sequential lineup would yield no loss in accurate suspect identifications but a substantial drop in false identifications as guessing is reduced. In the field, however, we cannot assess ground truth--memory accuracy or error--only the proxy measures of suspect identifications and filler choices.

Assessment of any change in lineup outcomes resulting from the new lineup procedure would require suitable data from blind simultaneous field lineups against which to compare blind sequential lineup performance. *396 At present, there are no comparative baseline data for simultaneous lineups in Hennepin County. However, existing sources of relevant information from other venues can be examined.

B. Field Data from Simultaneous Lineups

A California field study reported eyewitness decisions for fifty-eight simultaneous live lineups, with a suspect identification rate of 50%, filler choice of 24%, and no choice at 26%. [FN103] In 284 photo arrays, 48% of the identifications were of the suspect; [FN104] filler identifications were not recorded. Three teams of researchers from England provided responses of 3040 eyewitnesses to simultaneous live field lineups, including situations of suspects both known and unknown to witnesses. [FN105] The results of these studies are quite consistent: approximately 20% of witnesses identified a filler, thereby making a known mistaken identification; approximately 40% identified the suspect; and approximately 40% made no identification. [FN106]

C. Laboratory Data from Simultaneous and Sequential Lineups

Another recent work summarized thirty laboratory comparisons of simultaneous and sequential lineup performance. [FN107] This review, representing 4145 test witnesses, [FN108] demonstrated that the sequential procedure reduced eyewitness choosing rates, with significant positive effects on accuracy (see table 2). [FN109] Regardless of whether the criminal was in the lineup (perpetrator-present) or not (perpetrator-absent), the simultaneous format produced a relatively even distribution between filler-choice and no-choice responses. [FN110] Across lineup type, sequential lineups generated a greater percentage of no-choice responses than filler selections. Therefore, in perpetrator-absent lineups there were significantly more errors produced from simultaneous lineups (51%) than from sequential *397 lineups (28%). [FN111] Suspect identifications in sequential lineups are less frequent than in simultaneous lineups, but greater protection is afforded to the innocent suspect. [FN112]

Table 2. Eyewitness Performance

[Note: The following TABLE/FORM is too wide to be displayed on one screen. You must print it for a meaningful review of its contents. The table has been divided into multiple pieces with each piece containing information to help you assemble a printout of the table. The information for each piece includes: (1) a three line message preceding the tabular data showing by line # and character # the position of the upper left-hand corner of the piece and the position of the piece within the entire table; and (2) a numeric scale

following the tabular data displaying the character positions.]

 ***** This is piece 1. -- It begins at character 1 of table line 1. *****

Hennepin County (HC) Results

	HC	SIM	SEQ
		(lab)* Perp-Present	(lab)* Perp-Present
Suspect	54%	50%	35%
ID			
Filler ID	8%	24%	19%
No Choice	38%	26%	46%

In the laboratory*

1...+...10...+...20...+...30...+...40...+...50...+...60...+...70...

 ***** This is piece 2. -- It begins at character 74 of table line 1. *****

SIM

(Field)**

50%

24%

26%

74...80....

 ***** This is piece 3. -- It begins at character 1 of table line 9. *****

Simultaneous Lineups

	Perpetrator present	Perpetrator absent
Suspect ID	50%	
Filler ID	24%	51%
No Choice	26%	49%

Notes to table:

1...+...10...+...20...+...30...+...40...+...5

 ***** This is piece 4. -- It begins at character 50 of table line 9. *****

Sequential Lineups

Perpetrator present	Perpetrator absent
35%	
19%	28%
46%	72%

50...+...60...+...70...+...80...+

 ***** This is piece 5. -- It begins at character 1 of table line 17. *****

* Nancy Steblay et al., Eyewitness Accuracy Rates in Sequential and

1...+...10...+...20...+...30...+...40...+...50...+...60...+..

***** This is piece 6. -- It begins at character 68 of table line 17. *****

Simultaneous

68.....+...80....

 ***** This is piece 7. -- It begins at character 1 of table line 18. *****

Lineup Presentations: A Meta-Analytic Comparison, 25 Law & Hum. Behav. 459

1...+...10....+...20....+...30....+...40....+...50....+...60....+...70....+.

***** This is piece 8. -- It begins at character 77 of table line 18. *****

(2001).

77.....

 ***** This is piece 9. -- It begins at character 1 of table line 19. *****

** Bruce W. Behrman, & Sherrie L. Davey, Eyewitness Identification in Actual
 Criminal Cases: An Archival Analysis, 25 Law & Hum. Behav. 475, 482 (2001).

1...+...10....+...20....+...30....+...40....+...50....+...60....+...70....+....

D. Hennepin County Results

1. Witness Decisions

For comparison purposes, the Hennepin County (HC) data is presented in the upper section of Table 2 alongside simultaneous (SIM) and sequential (SEQ) lineup laboratory data sets (perpetrator-present conditions). The Hennepin County suspect identification rate is comparable ***398** to that achieved with simultaneous lineups in the field and in the lab, and is higher than laboratory sequential rates, with a much lower filler choice rate (8%). These rates change somewhat as the context of the crime shifts, particularly the relationship between witness and perpetrator, as discussed below.

2. Witness Performance on Sequential Repetitions ("Laps")

Ideal blind sequential protocol calls for only one viewing of the lineup per witness. [FN113] One could speculate that a second review of the photos may produce a de facto simultaneous array, eliminating the sequential lineup's advantage. That is, subjects may begin to compare photos and lapse into relative judgment. However, due to concerns that some number of good identifications would be lost due to overly cautious eyewitnesses, witnesses in the pilot project were allowed multiple repetitions, or "laps," through the lineup, and lineup administrators were to record the details of this process. The details were not as thoroughly recorded as hoped, with 46% of lineup reports including the number of repetitions. The results in Table 3 are based on these 128 lineups, summarizing witness decisions for those who viewed a lineup just once, twice, three times, or more.

Table 3. Witness Decisions for Repeated Viewing of the Sequential Lineup

Witness Decisions in Lineup Laps [Reporting Lineups = 128 (46%)]

Laps	Lineups (n)	Suspect ID	Filler ID	No Choice
1	68	66%	3%	31%
2	42	50%	10%	40%
3	14	50%	14%	36%
4, 5 or 6	4	25%	75%	

Witness Decisions in Lineup Laps - Stranger Crimes Only [Reporting Lineups = 78]

Laps	Lineups (n)	Suspect ID	Filler ID	No Choice
1	33	42%	3%	55%
2	31	32%	13%	55%
3 or more	14	43%	29%	29%

Repeated viewing of the lineup was associated with significantly increased likelihood of filler choices (errors). [FN114] For crimes involving perpetrators familiar to the witness, this is somewhat less evident. With familiar perpetrators, the suspect identification rate was 92% for witnesses who took either one or two laps through the lineup, and 50% for the few witnesses who requested a third viewing, [FN115] For lineups in which the perpetrator was a stranger to the eyewitness, a risk of additional laps was most apparent in the filler identification rate, which increased from 3% to 29%. [FN116]

Returning to the subset of 128 lineups in which lineup repetitions were reported, over half of the witnesses (53%) viewed the lineup just once. Another way to look at the impact of repeated viewing is to examine witness behavior in the remaining 47% of lineups--the sixty lineups in which witnesses requested additional laps. Complete information *399 was available in only thirty-six of these sixty lineups. In fifteen of the thirty-six lineups, witnesses indicated recognition of a photo during the first showing of the lineup, with nine jump-outs (i.e., the witness made an immediate choice or made comments, such as, "that's the guy") and six tentative identifications, but then requested a repeat of the display. The tentative identifications included comments such as, "hold that one," and, "that looks like him." The second lap (for two witnesses, a third lap) was the point at which the witness confirmed his or her choice; 100% (all fifteen) selected the suspect.

Although all of the additional twenty-one witnesses (for whom complete information regarding lineup repetitions was available) selected a photo from the lineup, they did not indicate recognition until after they viewed the lineup two or more times. In these cases, climbing error levels are apparent. Thirteen identifications made after two lineup showings produced 62% suspect and 38% filler choices; eight witnesses made a decision after three or more showings and generated more filler identifications (50%) than suspect identifications (38%).

3. "Jump-out" Identifications

Another concern was that sequential lineups might diminish the likelihood of "jump-out" identifications, inhibiting desirable witness expressions *400 of absolute certainty. Of 175 choosers in this data set (i.e., those who actually selected a photo from the lineup), ninety-six (55%) were "jump-outs." The resulting choices produced 99% suspect identifications. Jump-out identifications do not appear to be inhibited by the sequential lineup format.

4. Patterns of Eyewitness Response: Stranger Perpetrator v. Familiar Perpetrator

The Hennepin County program required blind sequential lineups for all felony cases, regardless of familiarity between eyewitness and perpetrator. The following analyses explore eyewitness responses as a function of familiarity and of the witness's opportunity to view the culprit. First is a comparison of situations in which the perpetrator was a stranger to the witness, based on the best knowledge of the case investigator, with those in which the culprit was at least familiar to the witness and sometimes known quite well. Not surprisingly, suspect identification rates were significantly lower for strangers than for familiar perpetrators (35% versus 90%, respectively (see table 4)), [FN117] with lower choosing rates (47% as opposed to 94% for familiar perpetrators (see table 5)). Filler rates were relatively low in both categories.

Table 4. Eyewitness Response: Stranger versus Familiar Perpetrator

	Stranger Perpetrator (n = 178)	Familiar Perpetrator (n = 93)
Suspect ID	35%	90%
Filler	11%	3%

No Choice 53% 6%

The lower suspect identification rate in the stranger lineups may elicit concern from investigators. A finer distinction is perhaps useful. Crimes of brief duration committed by strangers (estimated as only a few minutes) produced 32% suspect identifications and 11% filler choices (see table 5). Crimes in which the witness viewed a stranger for a longer time (more than ten minutes) generated a 59% suspect identification and 14% filler choice rate. We do not know the accuracy of *401 suspect identifications, of course, but these rates suggest that witnesses are more willing to choose from the lineup when they have had longer exposure to the culprit. Lower suspect identification rates occur in situations where one might expect weaker witness memory, e.g, a short-duration crime committed by a stranger. An interesting ancillary finding is that twenty-nine (43%) of the sixty-eight witnesses who made a lineup selection after a very brief view of a stranger expressed some qualification of their identification (see table 5).

Table 5. Stranger Identifications and Familiar Perpetrator Identifications

STRANGER IDENTIFICATIONS		
Very Brief Interaction (157 Lineups)		
Eyewitness Decisions:	50 Suspect	32%
	18 Filler	11%
	89 No Choice	57%
Choosing Rate		43%
Jump-outs		12%
Reported qualifiers to the choice		29 of 68 (43%)
Reported qualifiers about other lineup members		28 of 157 (18%)
Eyewitness status:	Observer	68%
	Victim	27%
	Other knowledge	4%
Weapon involved (reported):		29%
Type of crime: (categories > 8%)	Assault	31%
	Theft	17%
	Murder	15%
	Forgery	10%

	Burglary	10%
Longer Interaction (22 Lineups)		
Eyewitness Decisions:	13 Suspect	59%
	3 Filler	14%
	6 No Choice	27%
Choosing Rate		73%
Jump-outs		32%
Reported qualifiers to the choice		6 of 16 (38%)
Reported qualifiers about other lineup members		4 of 22 (18%)
Eyewitness status:	Observer	67%
	Victim	33%
Weapon involved (reported):		9%
Type of crime: (categories > 8%)	Fraud	23%
	Assault	14%
	Forgery	9%
	Credit Fraud	9%
	Theft/swindle	9%
	Robbery	9%
	Theft	9%

FAMILIAR PERPETRATOR IDENTIFICATIONS

"Regular Customer" /Multiple Views (45 Lineups)

Eyewitness Decisions:	38 Suspect	84%
	3 Filler	7%
	4 No Choice	9%
Choosing Rate		91%
Jump-outs		60%

Reported qualifiers to the choice		12 of 41 (29%)
Reported qualifiers about other lineup members		4 of 45 (9%)
Eyewitness status:	Observer	62%
	Victim	33%
	Other	2%
Weapon involved (reported):		60%
Type of crime: (categories > 8%)	Murder	42%
	Assault	24%
	Theft	9%
Know Well (including gang associations) (48 Lineups)		
Eyewitness Decisions:	46 Suspect	96%
	2 No Choice	4%
Choosing Rate		96%
Jump-outs		90%
Reported qualifiers to the choice		1 of 46 (2%)
Reported qualifiers about other lineup members		5 of 48 (10%)
Eyewitness status:	Observer	44%
	Victim	31%
	Other	25%
Weapon involved (reported):		81%
Type of crime: (categories > 8%)	Murder	71%
	Assault	19%

A similar breakdown of the familiar perpetrator category also shows intuitively consistent outcomes. Witnesses who reported some familiarity with the perpetrator (e.g., a face seen on multiple prior occasions) chose from the lineup at a very high rate (91%), selecting the suspect in 84% of the recorded lineups, fillers in only 7%, and making no choice in

9% of the lineups. However, witnesses who knew the perpetrator (often by a street name) made suspect identifications in 96% of the lineups, with only 4% making no choice. It should be noted that, in this latter group, persons making lineup choices were not limited to observers and victims of a crime; 25% of these witnesses were those involved through indirect knowledge of the crime, e.g., having been at the locale just prior to occurrence of the crime. This sub-category (witnesses who knew the perpetrator) thus included "confirmatory" lineups, and a higher level of suspect identifications and lower filler selections would be anticipated. Laboratory tests typically do not include familiar perpetrators, thus keeping suspect identification rates at a lower level.

***403** Variables associated with these four categories are included in Table 5 to describe the correlates of these eyewitness decisions. The patterns of eyewitness response make sense, given the context in which the identifications were made. For example, brief interaction with a stranger produces the lowest choosing, jump-out, and suspect identification rates of the four groups. Also, greater levels of qualifiers to the choice occur with stranger crimes than with familiar perpetrators.

5. Confidence and Decision Outcomes

Lineup administrators were asked to record verbatim any eyewitness comments regarding confidence. However, this requirement led to specific comments in only 15% of lineup reports (n = 42). Assuming that jump-out identifications also indicate a meaningful level of certainty, and can therefore be added to the analysis, a total of 125 out of 280 lineups (45%) yielded information regarding witness confidence. Witnesses expressed confidence in a decision not to choose from the lineup in only two of the 125 cases (1%). For analysis, the memorialized comments were sorted into four categories of decreasing certainty: (1) jump-outs; (2) high confidence--those not included as jump-outs but involving statements of 80% or greater certainty or phrasing such as "quite certain," "sure," and "positive"; (3) moderate confidence, involving statements like "pretty sure" and "fairly sure," and estimates between ***404** 50% and 80% certainty; and (4) low confidence, with phrasing like "not sure" and "not very," or "not too" and "low."

Within this subset of lineup data, witness confidence and decision outcomes were significantly related, with greater confidence associated with higher levels of suspect identifications. [FN118] This significant statistical relationship was largely due to the impact of jump-out decisions, 99% of which were suspect identifications. If the jump-out category is removed from analysis, [FN119] a significant relationship no longer appears. In each of the remaining three confidence categories (high, moderate, and low), witnesses selected fillers at a slightly higher rate than suspects (filler identification rates of 58%, 67%, and 63%, respectively).

6. Summary

Hennepin County blind sequential field tests produced suspect identification rates relatively comparable to those in prior laboratory and field tests. Repeated viewing of the lineup was associated with increased filler identifications (errors). The new procedures do not appear to have sacrificed jump-out identifications. Patterns of eyewitness response to stranger and familiar perpetrators were reasonable, with stranger suspect identifications at a lower level. Confidence and suspect identifications were significantly related, particularly for jump-out identifications. For other categories of expressed confidence (even high), confidence and decision outcome were not significantly related. A positive outcome of the project was the low filler identification rate, which demonstrates increased protection for innocent suspects.

VI. Implementation Results: Can the Procedures be Effectively Implemented in the Field?

A. Initial Reactions

Field implementation effectiveness data from the Hennepin County pilot project consist largely of qualitative and

anecdotal information. A group of thirteen investigators relayed their concerns and perspectives at a formal meeting with the researcher and a representative from the Hennepin County Attorney's Office. Additional feedback from the police agencies involved in implementation was fielded by the county attorney's office. Despite some initial misgivings, the four police *405 departments ultimately affirmed that the new protocol could be implemented smoothly and effectively.

At the outset, police chiefs registered apprehension toward the new protocol primarily because existing lineup procedures were working well. Nevertheless, discussions and training sessions sponsored by the Hennepin County Attorney's Office convinced the chiefs that the pilot was a worthwhile project. All four departments promptly agreed to participate in the project with the desire to improve the system. Bloomington Police Chief John Laux explained, "In my time since 1968 in law enforcement, I've always been willing to experiment, to try something new. I try to be open-minded and say just because it's working doesn't mean it can't work better." [FN120]

Of the five procedures included in the pilot project, three of them--the effective use of fillers, the cautionary instruction, and documentation of the witness's confidence statement--were already in practice throughout Hennepin County. The introduction of double-blind administration and sequential presentation to lineup procedures posed early problems for departments, but these problems proved to be less challenging than originally presumed.

B. Sequential Presentation

Implementation of sequential identifications presented problems of a technical nature. Prior to the pilot project, lineups consisted of so-called "six-packs," six photographs presented on a single sheet of paper. [FN121] Filler pictures were randomly and electronically selected by choosing desired parameters to search online photograph repositories of arrested persons. [FN122] It took some experimentation and innovation to turn this single sheet of paper into a viewable sequence of photos. [FN123] To implement the sequential identification procedure, investigators had to enlarge the six pictures, while maintaining consistency of backgrounds *406 and coloration. [FN124] The larger size of photos in the sequential display was considered a collateral benefit of the sequential format. However, as Chief Laux remarked, "a lot of people spent a lot of time at the Xerox machine." [FN125] The logistical problem was particularly noted for off-site lineups. The Minnetonka Police Department created a new photo template to remedy the logistical problem of constructing a workable photo display. [FN126] To make the process even more efficient, ongoing efforts are being made to create software and adapt the online photo repositories to the requirements of the new protocol. [FN127]

The introduction of sequential presentation of lineups brought to light for investigators the strong desire of eyewitnesses to form a judgment by comparing and contrasting. Even after being instructed about the new lineup procedure, witnesses still would ask to see two photographs simultaneously. [FN128] Now realizing the increased potential for misidentifications when eyewitnesses engage in relativism, investigators say they better understand and appreciate the new protocol. One investigator explained, "I like the format better. I like that the person is studying one picture. It's larger, and . . . you can see them reflecting back to whatever event they had. . . . From that alone, I think it's a success." [FN129]

Ultimately, this change in the lineup procedure caused few problems, none of them serious or enduring. Although New Hope investigators were initially reluctant to implement the sequential presentation requirement, "it took maybe two or three lineups before they realized that it wasn't that big of a deal," [FN130] Captain Jim O'Meara remarked.

C. Blind Administration

Police chiefs and investigators were significantly more concerned about implementing the blind administrator requirement. In a traditional lineup, an investigator would administer lineups as a regular and important part of conducting a thorough case investigation. No additional staff were required or involved. Thus, implementation of the

double-blind requirement raised a number of issues.

***407** In smaller departments, where there are few investigators, all officers may be focused on a single case and additional personnel are hard to come by. [FN131] Witnesses located at odd hours (e.g., in the middle of the night) or those in transient populations can make the coordination of a second investigator at the scene inconvenient or difficult. Even in larger departments, circumstances can produce logistical difficulties. Some departments may bring a near full force of officers to a significant crime just after it happens. This "all-hands" policy constrains the pool of officers available for displaying lineups who lack knowledge of the case. A related circumstance arises during investigations of great urgency (e.g., an "Amber Alert") or of high profile crimes. A high level of collaboration and cooperation among investigators in the Bloomington Police Department make it difficult to find a truly blind administrator. [FN132] Chronic offenders presented a problem in Minneapolis, because their mere presence in a lineup would cause any administrator from the department to suspect that individual was the perpetrator. [FN133]

A desire to protect the relationship that develops between an investigator and a witness was another issue related to the double-blind aspect of the protocol. [FN134] This rapport is especially pivotal for lineups in which the witness is the victim of a violent crime. [FN135] Consequently, there was some apprehension about introducing a new, unknown officer into an emotional part of the investigation--the viewing of the lineup. [FN136]

In some departments, there were also worries about cases involving multiple witnesses. Since a blind administrator must sometimes travel with the main case investigator to meet witnesses, the administrator loses valuable time that would otherwise be spent working in a larger role on other cases. [FN137] Furthermore, one witness's certainty about the identity of the perpetrator might cause the blind administrator to develop an opinion about who the suspect is. This would jeopardize the ***408** unbiased administration of lineups to other witnesses. [FN138] Requiring a separate blind administrator for each witness may be prohibitively expensive in terms of time, money, and energy. [FN139]

Like many initial concerns, real-life problems with the blind administrator requirement were less serious than anticipated. New Hope reported no problems with implementing the double-blind procedure despite employing only two investigators. [FN140] The other agencies were able to overcome most issues with minimal difficulty. [FN141] When they compared blind sequential lineup outcomes with past simultaneous lineup outcomes, investigators reported no perceived drop in effective suspect identifications or in their ability to "get the job done." [FN142]

The introduction of a new officer for lineup administration was not found to hinder investigations in any significant way. [FN143] No witness refused to view the lineup with an officer other than the main case investigator. On the contrary, witnesses in Minnetonka have said they appreciate the procedure and understand the reasoning behind it. [FN144]

To address the shortage of blind administrators, New Hope and Minnetonka turned to other department staff, such as patrol officers, captains, and sergeants. [FN145] Without greatly hindering collaboration, Bloomington used property crime investigators as blind administrators for investigations dealing with crimes against persons, and vice versa. [FN146] To address concerns about repeat offenders and multiple witnesses, the Minneapolis Police Department is working with the Hennepin County Attorney's Office to develop laptop computer lineup administration. [FN147] The laptop will randomly order six photos for viewing by the witness alone, out of sight of the administering officer. [FN148] In cases with multiple witnesses, the laptop will randomly shuffle the six pictures for each administration. [FN149] With this new procedure in place, investigators will be able to conduct a lineup administration without the aid of a second ***409** officer, dispelling any lingering concerns about the double-blind procedure. [FN150] As noted earlier, the National Institute of Justice guidelines were positioned as a "framework for innovation," in anticipation of technological developments like computer-based imaging, to add effectiveness and efficiency to lineup procedures. [FN151] Hennepin County is developing laptop lineup delivery to enhance sequential lineup presentation and facilitate the blind procedure.

D. Summary

Overall, police chiefs and investigators alike found the pilot project to be easier to implement and less work than anticipated. Implementation was extremely efficient. Minnetonka investigators came up with a new photo template in less than a week. [FN152] New Hope had the whole project underway in less than two weeks. [FN153] In the larger jurisdictions, Minneapolis and Bloomington, the process took less than a month. [FN154] Initial skepticism and unease faded and attitudes mellowed. "By the end of the project," Minneapolis Police Chief William McManus reported, "the burden on investigators was far less than my department had anticipated." [FN155]

The pilot project also involved minimal cost. From an administrative perspective, the police chiefs initially wondered whether the need for blind administrators would significantly increase work-hours. As Minnetonka Police Chief Joy Rikala noted, however, "There [are] no cost implications of this. It's negligible." [FN156]

Since the biggest hurdle in implementation was overcoming a general resistance to change, even fewer problems are expected the longer *410 the protocol is used. New investigators will be trained in the new procedures, and will not be tied to the old methods. [FN157] Allen Ringate, who became an investigator with the Minnetonka Police Department during the pilot project, confirmed that the protocol "was simple to pick up." [FN158]

Apart from the scientific data, agencies also saw perceptible positive effects on lineup results due to the new procedures. Anecdotally, the participants perceive that witnesses are now less likely to make a misidentification. As Chief Rikala observed, "We're not having a lot of people pick fillers." [FN159]

These changes ultimately reveal four police departments that are flexible and willing to make changes in traditional protocol if it will aid the cause of justice. Chief Link explained, "[O]ur objective is to identify perpetrators and not falsely accuse those who did not perpetrate a crime. And if we can reduce false positives and increase accurate identifications of the true perpetrators, then we're meeting our moral and legal obligations to do the best job we can." [FN160]

VII. Discussion of Findings and Future Implications

The key objective of the new blind sequential procedure is to secure better quality identifications based on what eyewitnesses actually remember. Identification decisions vary along a continuum from "jump-out" recognitions, to statements of lesser certainty ("this is really difficult"), to conditional identifications ("I thought the hair was longer and blond"), to rejection of the lineup ("I really don't know," or, "he's not there"). Whether an identification is made or not, this is all important information to the extent that it accurately portrays the status of the witness's memory.

The blind sequential procedure facilitates two important behaviors relevant to acquisition of the best possible information: the witness's independent judgment about each photo based on memory alone, and the investigator's objective documentation of those judgments. Thus, sequential procedures are more likely than traditional lineups to reveal what witnesses really remember and are trying to convey. This in turn allows attorneys, judges, and juries to be more confident when identifications *411 are made and to appreciate the significance of conditional identifications.

Put another way, blind sequential identification procedures give us a clearer view of the truth. Blind sequential procedures also accrue practical advantages for the investigator. Better lineup screening devices allow police to move more quickly in their work, to find the right perpetrator without wasting time on false leads, and to remove perpetrators from the streets before additional offenses are committed. Additionally, the use of a blind administrator effectively removes the possibility of stringent cross-examination at trial regarding cues consciously or inadvertently sent to witnesses.

Hennepin County blind sequential field tests produced suspect identification rates comparable to laboratory and field

tests, and not unlike those achieved with simultaneous lineups in other jurisdictions (see table 2). Investigators perceived no drop in number or quality of achieved suspect identifications. [FN161] Data are currently being collected to ascertain identification rates in the Hennepin County simultaneous lineups conducted just prior to implementation of the blind sequential protocol. Although this will by no means provide a perfect control group comparison, it will be helpful to ascertain the prior pattern of eyewitness decisions.

A positive outcome for Hennepin County is the low filler choice rate, suggesting a reduction in guessing and an increase in protection for innocent suspects. Of course, filler identifications, which are known errors, do not lead to criminal prosecutions. However, a filler choice may signal a witness's weak memory or an eagerness to choose with no firm memory basis for the selection. If the blind sequential lineup is working, its safeguards should diminish lineup choices by those witnesses with a poor memory for the perpetrator. Thus, a reasonable suspect identification rate, low filler rate, and associated rise in "no choice" represent a promising outcome. In addition to the central benefit of increased accuracy, the low filler rate has a practical advantage: prosecutors and investigators are less likely to spend time tracking down and clearing the filler as a suspect to avoid defense challenges at trial.

The Hennepin County pilot project also yielded new information regarding the effects of repeated lineup viewings. One can extrapolate from theory and existing laboratory data to the conclusion that a repeated *412 sequential lineup will ease the witness into relative judgment, with predictable reduction in performance accuracy. However, this hypothesis has not been tested in the laboratory. Now the Hennepin County pilot project has provided field data about the effects of lineup repetition; these data indicate that identifications are likely to be more reliable when the witness has made a decision after a single lap. [FN162]

It is impossible to know the extent to which suspect identifications include misidentification of innocent persons; as noted earlier, suspect identifications are an imperfect indicator of memory accuracy. [FN163] On the other hand, repeated lineup laps are associated with increased likelihood of error in the form of filler choices. Interestingly, witnesses who made an initial comment of recognition during the first lap were highly likely to identify the suspect in the second lap. Perhaps these are cases of witnesses who have reasonably strong memory of the perpetrator, but simply need to "be sure" with a second, reinforcing lap. It remains important, however, that lineup administrators record procedural details and witness comments carefully and methodically, particularly if a witness opts for a repeated viewing of the lineup.

It is further noteworthy that a traditional simultaneous lineup format does not allow us to know the level of "comparison shopping" (relative judgment) employed by the witness prior to the witness's decision. In contrast, the sequential lineup with this repetition option affords an objective indicator of eyewitness laps through the lineup.

A concern of the police investigators, that jump-out identifications may be sacrificed, proved to be unfounded. Jump-outs occurred at a relatively high level, particularly for instances of familiar perpetrators. Jump-outs may be instances of absolute recognition. If so, we would not expect a reduction in jump-outs from a sequential lineup, the sequential lineup being a better test of absolute judgment than the traditional format.

Laboratory studies of blind sequential lineups typically deal with stranger crimes of short duration, which might be considered the most difficult test of memory. The subset of **Hennepin County** data that involved crimes committed by a stranger provides evidence that laboratory principles generalize well and productively to the field. In addition, the **Hennepin County** data afford a look at **eyewitness** responses to a lineup with a familiar perpetrator. Patterns of **eyewitness** response to *413 stranger versus familiar perpetrators square well with what is known regarding **eyewitness** memory, with stranger suspect identifications occurring at a lower level. The **Hennepin County** data also indicate that blind sequential lineups work well in situations involving both familiar perpetrators and confirmatory lineups. Given that even a confirmatory lineup is still a test of memory (and the investigating officer is unlikely to know just how familiar the perpetrator is to the witness), sequential lineups provide an appropriate protocol.

The purpose of the project was to determine how recommended lineup procedures can best be brought into practice. The experience of the pilot project indicates that the double-blind sequential protocol is workable for police in both large and small departments without undercutting the ability to solve cases. At the same time, the protocol elicits valuable new information for the effective investigation and prosecution of criminal cases.

VIII. Conclusion

Prosecutors are "ministers of justice," not merely zealous advocates. We have a fundamental duty to guarantee justice for everyone. We must strive to protect the rights of innocent people while prosecuting the guilty. Perfect justice may never be attained. Yet prosecutors, police, and other members of the criminal justice system must work tirelessly toward that goal. Improving **eyewitness identification** procedures is an important part of ensuring that the **law** is applied fairly and consistently to all.

[FNa1]. This symposium was hosted by **Cardozo Law Review** at the Benjamin N. **Cardozo School of Law** on September 12-13, 2004.

[FNd1]. Amy Klobuchar is currently serving her second four-year term as **Hennepin County** Attorney. She is a past president of the Minnesota **County** Attorneys Association. In recognition of Klobuchar's initiatives as **County** Attorney, the U.S. Department of Justice has twice honored her office as a national leadership site. Prior to her election as **County** Attorney in 1998, Klobuchar was a partner with the Minneapolis **law** firms of Gray Plant Mooty and Dorsey & Whitney. She is a graduate of Yale University and the University of Chicago **Law School**.

[FNdd1]. Nancy Steblay is Professor of Psychology at Augsburg College in Minneapolis. She received her B.A. from Bemidji State University, her M.A. from the University of Montana and her Ph.D. from the University of Montana.

[FNddd1]. Hilary Lindell Caligiuri is an Assistant Hennepin County Attorney. She is a felony prosecutor and acts as the office's legislative coordinator. She was previously a Deputy Attorney General and head of the Criminal Division of the Minnesota Attorney General's Office. She is a graduate of the University of Wisconsin-Madison and the University of Minnesota Law School.

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[FN1]. Jennifer Thompson, *I Was Certain, but I Was Wrong*, N.Y. Times, June 18, 2000, § 4, at 15.

[FN2]. Id.

[FN3]. Id.

[FN4]. Id.

[FN5]. Id.

[FN6]. Id.

[FN7]. Id.

[FN8]. Id.

[FN9]. Id.

[FN10]. Id.

[FN11]. Id.

[FN12]. Id.

[FN13]. Id.

[FN14]. Id.

[FN15]. Id.

[FN16]. Id.

[FN17]. Id.; see also Frontline: What Jennifer Saw (PBS television broadcast Feb. 25, 1997).

[FN18]. Gary L. Wells et al., From the Lab to the Police Station: A Successful Application of Eyewitness Research, 55 Am. Psychologist 581, 582 (2000) [hereinafter From the Lab to the Police Station].

[FN19]. Id. at 585.

[FN20]. Hennepin County, Population Counts by City by Race/Ethnicity (2000), http://www.hennepin.us/vgn/portal/internet/hcdetailmaster/0,2300,1273_1716_105146205,00.html.

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[FN22]. 388 U.S. 218 (1967).

[FN23]. Id. at 224-25.

[FN24]. Id. at 236-37.

[FN25]. Id. at 228.

[FN26]. Id. at 236.

[FN27]. Id. at 230.

[FN28]. Id. at 236.

[FN29]. 388 U.S. 293 (1967).

[FN30]. Id. at 301-02.

[FN31]. Id. at 302.

[FN32]. 390 U.S. 377 (1968).

[FN33]. Id. at 384.

[FN34]. Id.

[FN35]. 413 U.S. 300 (1973).

[FN36]. Id. at 321.

[FN37]. *Manson v. Brathwaite*, 432 U.S. 98, 114 (1977).

[FN38]. Id.

[FN39]. 409 U.S. 188 (1972).

[FN40]. Id. at 199.

[FN41]. 432 U.S. 98 (1977).

[FN42]. Id. at 114.

[FN43]. Gary L. Wells et al., *Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads*, 22 *Law & Hum. Behav.* 603, 604 (1998) [hereinafter *White Paper*].

[FN44]. Taryn Simon et al., *The Innocents* 8 (2003).

[FN45]. See State of New Jersey, *Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures* (2001) [hereinafter *NJ Guidelines*].

[FN46]. James M. Doyle, *True Witness: Cops, Courts, Science, and the Battle Against Misidentification* 192 (2005).

[FN47]. 727 A.2d 457 (1999).

[FN48]. Id. at 459.

[FN49]. Id.

[FN50]. Id. at 460.

[FN51]. Id. at 467.

[FN52]. Id. at 468.

[FN53]. Ronald Smothers, *DNA Tests Free Man After 6 Years, Had Been Convicted of Rape of Student*, *N.Y. Times*, Dec. 15, 1999, at B6.

[FN54]. Doyle, *supra* note 46, at 193.

[FN55]. Id.

[FN56]. Id.; see also National Institute of Justice, *Eyewitness Evidence: A Guide for Law Enforcement* iii (1999) [hereinafter *NIJ Guide*].

[FN57]. Doyle, *supra* note 46, at 193.

[FN58]. See NJ Guidelines, *supra* note 45, at 1.

[FN59]. Report of the Governor's Commission on Capital Punishment 31-40 (2002), available at http://www.idoc.state.il.us/ccp/ccp/reports/commission_report/index.html.

[FN60]. North Carolina Actual Innocence Commission, Recommendations for Eyewitness Identification 1-6 (2003).

[FN61]. Avery Task Force, Eyewitness Identification Procedure Recommendations 1-8 (2005).

[FN62]. Virginia State Crime Commission, Mistaken Eyewitness Identification 14-15 (2005).

[FN63]. See NIJ Guide, *supra* note 56.

[FN64]. See From the Lab to the Police Station, *supra* note 18, at 590.

[FN65]. *Id.*

[FN66]. White Paper, *supra* note 43, at 604.

[FN67]. NIJ Guide, *supra* note 56, at 32.

[FN68]. *Id.* at 29.

[FN69]. *Id.* at 37.

[FN70]. *Id.* at 8.

[FN71]. *Id.* at 9.

[FN72]. Gary L. Wells & Eric P. Seelau, *Eyewitness Identification: Psychological Research and Legal Policy on Lineups*, 1 *Psychol. Pub. Pol'y & L.* 765, 772 (1995).

[FN73]. From the Lab to the Police Station, *supra* note 18, at 585.

[FN74]. Wells & Seelau, *supra* note 722, at 768.

[FN75]. *Id.* at 769.

[FN76]. *Id.*

[FN77]. From the Lab to the Police Station, *supra* note 18, at 586.

[FN78]. *Id.*

[FN79]. *Id.*

[FN80]. Nancy Steblay et al., Eyewitness Accuracy Rates in Sequential and Simultaneous Lineup Presentations: A Meta-Analytic Comparison, 25 *Law & Hum. Behav.* 459 (2001) [hereinafter *Eyewitness Accuracy Rates*].

[FN81]. NIJ Guide, *supra* note 56, at 9.

[FN82]. Gary L. Wells & Elizabeth A. Olson, Eyewitness Testimony, 54 *Ann. Rev. of Psychol.* 277, 289 (2003).

[FN83]. See generally Amy Douglass et al., A Problem with Double-Blind Photospread Procedures: Photospread Administrators Use One Eyewitness's Confidence to Influence the Identification of Another Eyewitness, 29 Law & Hum. Behav. 543 (2005); see also Mark R. Phillips et al., Double-Blind Photoarray Administration as a Safeguard Against Investigator Bias, 84 J. of Applied Psychol. 940, 941 (1999).

[FN84]. Wells & Olson, *supra* note 82, at 289.

[FN85]. *Id.*

[FN86]. See Gary L. Wells & Amy Bradfield, "Good, You Identified the Suspect": Feedback to Eyewitnesses Distorts Their Reports of the Witnessing Experience, 83 J. of Applied Psychol. 360 (1998).

[FN87]. White Paper, *supra* note 43, at 619.

[FN88]. *Id.* at 622.

[FN89]. *Id.* at 621.

[FN90]. *Id.*

[FN91]. Amy Douglass & Nancy Steblay, Memory Distortion in Eyewitnesses: A Meta-Analysis of the Post-Identification Feedback Effect, 20 Applied Cognitive Psychol. (forthcoming 2006).

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[FN93]. *Id.*

[FN94]. *Id.*

[FN95]. *Id.*

[FN96]. Memorandum from Paul Scoggin, Managing Attorney, Violent Crimes Division, Hennepin County Attorney's Office to the Investigators and Detectives of the Minneapolis (Central Investigation Division), Bloomington, Minnetonka and New Hope Police Departments on the Hennepin County Pilot Program for the Sequential Identification Process (Oct. 27, 2003) (on file with author) [hereinafter Memorandum from Paul Scoggin].

[FN97]. *Id.*

[FN98]. Eyewitness Accuracy Rates, *supra* note 80, at 464. Note that in this discussion "choosing" includes any pick from the lineup, suspect or filler. "No choice" indicates that the witness did not pick any photo from the lineup.

[FN99]. Wells & Olson, *supra* note 80, at 289.

[FN100]. From the Lab to the Police Station, *supra* note 18, at 586.

[FN101]. *Id.*

[FN102]. Eyewitness Accuracy Rates, *supra* note 80, at 464, 463,468.

[FN103]. Bruce W. Behrman, & Sherrie L. Davey, Eyewitness Identification in Actual Criminal Cases: An Archival Analysis, 25 Law & Hum. Behav. 475, 482 (2001).

[FN104]. Id. at 481.

[FN105]. Tim Valentine & Patricia Heaton, An Evaluation of the Fairness of Police Lineups and Video Identifications, 13 Applied Cognitive Psychol. S59 (1999).

[FN106]. Tim Valentine et al., Characteristics of Eyewitness Identification that Predict the Outcome of Real Lineups, 17 Applied Cognitive Psychol. 969, 973 (2003); see also id. at S61.

[FN107]. Eyewitness Accuracy Rates, supra note 80, at 461.

[FN108]. Id.

[FN109]. Id. at 462.

[FN110]. Id. at 463.

[FN111]. Id.

[FN112]. Id.

[FN113]. From the Lab to the Police Station, supra note 18, at 595.

[FN114]. $X^2(10) = 31.23$, $p < .001$. A statistically significant outcome is one in which $p < .05$, meaning that the obtained result is unlikely to be due to chance.

[FN115]. $X^2(4) = 7.34$, $p = .06$

[FN116]. $X^2(10) = 22.00$, $p = .007$

[FN117]. $X^2(2) = 74.68$, $p < .001$

[FN118]. $X^2(9) = 83.73$, $p = .0001$

[FN119]. Leaving $n = 26$

[FN120]. Interview by Kirstin Petersen with John Laux, Chief of Police, and Kevin Hinrichs, Commander, Bloomington Police Dep't, in Bloomington, Minn. (Aug. 9, 2005) [hereinafter Bloomington PD].

[FN121]. Interview by Kirstin Petersen with Gary Link, Chief of Police, and Jim O'Meara, Captain, New Hope Police Dep't, in New Hope, Minn. (Aug. 5, 2005) [hereinafter New Hope PD].

[FN122]. Id.

[FN123]. Interview by Kirstin Petersen with Joy Rikala, Chief of Police, Steve Owens, Investigator, and Allen Ringate, Investigator, Minnetonka Police Dep't, in Minnetonka, Minn. (Aug. 3, 2005) [hereinafter Minnetonka PD]; Bloomington PD, supra note 120.

[FN124]. Bloomington PD, supra note 120.

[FN125]. Id.

[FN126]. Minnetonka PD, supra note 123.

[FN127]. New Hope PD, supra note 121.

[FN128]. Bloomington PD, supra note 120.

[FN129]. Minnetonka PD, supra note 123.

[FN130]. New Hope PD, supra note 121.

[FN131]. Bloomington PD, supra note 120.

[FN132]. Id.

[FN133]. Interview by Kirstin Petersen with William McManus, Chief of Police, and Richard Stanek, Captain, Minneapolis Police Dep't, in Minneapolis, Minn. (Aug. 11, 2005) [hereinafter Minneapolis PD].

[FN134]. Bloomington PD, supra note 120.

[FN135]. Minnetonka PD, supra note 123.

[FN136]. Bloomington PD, supra note 120.

[FN137]. Minnetonka PD, supra note 123.

[FN138]. Id.

[FN139]. Id.

[FN140]. New Hope PD, supra note 121.

[FN141]. Minnetonka PD, supra note 123; Minneapolis PD, supra note 133.

[FN142]. Minneapolis PD, supra note 133.

[FN143]. Minnetonka PD, supra note 123.

[FN144]. Id.

[FN145]. Id.; New Hope PD, supra note 121.

[FN146]. Bloomington PD, supra note 120.

[FN147]. Minneapolis PD, supra note 133.

[FN148]. Id.

[FN149]. Id.

[FN150]. Id.

[FN151]. NIJ Guide, supra note 56, at 9.

[FN152]. Minnetonka PD, supra note 123. The Minnetonka Police Department also developed a standardized script to

facilitate the administration of the lineup:

You will be viewing a series of photographs. The suspect in this case may or may not be present in these photographs. Take as much time as you need but only look at one photograph at a time. Please remember that the photographs may NOT be current. Therefore, clothing, facial hair, length of hair, etc, may have changed. Each photograph is assigned a number that appears at the bottom of the photo. If you are able to identify the suspect from THIS offense inform me using the number assigned to that photograph.

Id.; Memorandum from Paul Scoggin, supra note 96.

[FN153]. New Hope PD, supra note 121.

[FN154]. Bloomington PD, supra note 120; Minneapolis PD, supra note 133.

[FN155]. Minneapolis PD, supra note 133.

[FN156]. Minnetonka PD, supra note 123.

[FN157]. Id.; Bloomington PD, supra note 120.

[FN158]. Minnetonka PD, supra note 123.

[FN159]. Id.

[FN160]. New Hope PD, supra note 121.

[FN161]. Minneapolis PD, supra note 133.

[FN162]. See supra Part V.D.2.

[FN163]. See supra Parts III.B.-C, V.A.

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